

令和 6 年 6 月 13 日現在

機関番号：13901  
研究種目：基盤研究(C) (一般)  
研究期間：2019～2023  
課題番号：19K01367  
研究課題名(和文) Executive Compensation and the Courts

研究課題名(英文) Executive Compensation and the Courts

## 研究代表者

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交付決定額(研究期間全体)：(直接経費) 900,000円

研究成果の概要(和文)：Sean McGinty, 'Pay Fight! Corporate Director Compensation Disputes in Japanese Courts and What to Make of Them' 53 Journal of Japanese Law 109 (2022); Sean McGinty, 'The Courts and Executive Compensation in Canada' 14(2) Law and Development Review 753 (2021)

## 研究成果の学術的意義や社会的意義

The research has elucidated the role played by litigated disputes in the Court system in shaping corporate executive compensation. This is an issue of important public debate, with implications for economic efficiency and also income and wealth inequality.

研究成果の概要(英文)：Sean McGinty, 'Pay Fight! Corporate Director Compensation Disputes in Japanese Courts and What to Make of Them' 53 Journal of Japanese Law 109 (2022); Sean McGinty, 'The Courts and Executive Compensation in Canada' 14(2) Law and Development Review 753 (2021)

研究分野：Corporate Law

キーワード：Corporate Law Executive Compensation Corporate Governance

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## 1 . 研究開始当初の背景

The general issue of the relationship between executive compensation and the legal system at the time this study was commenced had been the subject of research both in the Japanese context and internationally (particularly in the United States). Domestically recent studies have included Nakazato et al (2011) who examined tax records to determine executive compensation levels and their determinants, Jackson and Milhaupt (2014), who examined the role of corporate governance mechanisms in Japan and their relationship to pay, and Salazar and Raggiunti (2016) who analyzed explanations for comparatively modest compensation paid to Japanese corporate executives. None of these, or other, studies have specifically looked at the role of the courts in Japan, a gap which this research will fill.

Internationally there was a broader base of literature examining this issue, particularly in the United States (Bebchuk and Fried, 2004 being the most prominent). The more specific issue of the role of the courts however had only been looked at in a small number of papers. Thomas and Martin (2001) conducted an empirical analysis of case law decisions in the United States in which shareholders used the derivative action to challenge executive compensation, a method similar to that to be employed in this research, and provided data on how courts responded to such suits. Thomas and Wells (2011) in a follow up paper make the normative argument that the courts should play a larger role in policing executive pay through enforcement of fiduciary duties claims.

## 2 . 研究の目的

This research sought to build on the above noted literature by adding two missing elements. First, while the previous literature was focused on the United States, this research broadened it by examining other jurisdictions, namely Japan and Canada. Second, this research looked at a broader set of legal claims involving executive pay outside the narrow confines of the derivative action. This gives us a much greater and deeper understanding of the role of the courts than these previous papers have allowed.

## 3 . 研究の方法

In terms of methodology, the research searched relevant case law databases in each jurisdiction (LexisNexis for Canada, WestlawJapan for Japan – this was a narrower focus than originally intended since as the research progressed it focused on these two rather

than the four originally planned) for all decisions in which all or part of the compensation to be paid to one or more corporate executives (defined as directors or officers whose position requires board appointment) was at stake in the dispute (in other words where the court was asked to decide whether an executive was legally entitled to their pay). This definition is left intentionally broad in order to account for an additional lacuna in the literature which this research also seeks to fill: we have no idea what the legal basis for claims involving executive compensation which appear before the courts in any jurisdiction are. As noted above previous studies had focused solely on American court decisions in the very narrow confines of a specific type of claim – shareholder derivative actions challenging pay. Yet the substantive law of all jurisdictions this research looks at provide numerous other avenues through which executive compensation disputes may make their way to the courts. These include a diverse set of doctrinal areas of law (bankruptcy, contract, employment and corporate law) and a diverse set of plaintiffs which can bring such claims (shareholders, creditors, and the executives themselves or the corporations they have contracted with). Thus the first step in this research was to provide a comparative map of what kinds of disputes are brought by what kinds of plaintiffs and how often in each country based on their frequency in reported decisions.

The research then conducted both a quantitative and qualitative analysis of the assembled case law. With regard to the former the aggregate data allowed for the answering of basic descriptive questions such as what are the most common legal grounds on which executive pay disputes are litigated, who brings such cases, are cases involving publicly traded companies more common than in private ones, how have the volume and type of cases changed over time (have there been litigation “booms”) and how often the pay was either approved or rejected by the courts. Though the samples were too small to perform meaningful statistical analysis – a problem further complicated by the fact that reported decisions are an imperfect proxy for overall cases filed (but not litigated to conclusion) - analysis of the data allowed for an understanding of the trends that exist in each and their relative importance (measured by frequency, size and success rate).

#### 4 . 研究成果

The research has demonstrated that the Courts in the countries examined have played a significant, though differing role over time in relation to corporate executive pay practices. In each it found that the nature of litigation changed over time, with the types of disputes appearing before courts evolving and the courts fashioning new rules to deal with them. Moreover, litigation has become significantly more common since 2000. Despite these superficial similarities, however, significant institutional differences exist and both the substantive rules governing pay, as well as practice, remain distinct. The specific results

for each are detailed in two publications in peer reviewed journals which can be referred to for further information: Sean McGinty, 'Pay Fight! Corporate Director Compensation Disputes in Japanese Courts and What to Make of Them' 53 *Journal of Japanese Law* 109 (2022); Sean McGinty, 'The Courts and Executive Compensation in Canada' 14(2) *Law and Development Review* 753 (2021)

5. 主な発表論文等

〔雑誌論文〕 計2件（うち査読付論文 2件 / うち国際共著 1件 / うちオープンアクセス 0件）

1. 著者名 Sean McGinty	4. 巻 53
2. 論文標題 Pay Fight! Corporate Director Compensation Disputes in Japanese Courts and What to Make of Them	5. 発行年 2022年
3. 雑誌名 Journal of Japanese Law	6. 最初と最後の頁 109-148
掲載論文のDOI（デジタルオブジェクト識別子） なし	査読の有無 有
オープンアクセス オープンアクセスではない、又はオープンアクセスが困難	国際共著 -

1. 著者名 Sean McGinty	4. 巻 14(2)
2. 論文標題 Law and Development Review	5. 発行年 2021年
3. 雑誌名 The Courts and Executive Compensation in Canada	6. 最初と最後の頁 753-796
掲載論文のDOI（デジタルオブジェクト識別子） 10.1515/ldr-2021-0046	査読の有無 有
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〔学会発表〕 計3件（うち招待講演 0件 / うち国際学会 3件）

1. 発表者名 Sean McGinty
2. 発表標題 Japanese Corporate Law and Executive Compensation at a Crossroads
3. 学会等名 Asian Law Institute（国際学会）
4. 発表年 2021年

1. 発表者名 Sean McGinty
2. 発表標題 The Courts and Executive Compensation in Canada
3. 学会等名 Law and Development Institute（国際学会）
4. 発表年 2021年

1. 発表者名 Sean McGinty
2. 発表標題 Japanese Courts and Corporate Executive Compensation
3. 学会等名 Japan Studies Association of Canada (国際学会)
4. 発表年 2020年

〔図書〕 計0件

〔産業財産権〕

〔その他〕

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6. 研究組織

氏名 (ローマ字氏名) (研究者番号)	所属研究機関・部局・職 (機関番号)	備考
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7. 科研費を使用して開催した国際研究集会

〔国際研究集会〕 計0件

8. 本研究に関連して実施した国際共同研究の実施状況

共同研究相手国	相手方研究機関
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