

*The Following Types of  
Cases Are Discussed:*

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**Real Estate Securities**

**Real Estate Valuation**

**Financial Institutions and  
Subprime Lending**

**Real Estate Antitrust and  
Competition Litigation**

**R**ecent changes in real estate markets have affected virtually every sector of the economy and have led to litigation in a wide variety of contexts. Real estate investment vehicles that were once obscure—mortgage-backed securities (MBSs), commercial mortgage-backed securities (CMBSs), and collateralized debt obligations (CDOs)—are now often central to complex business litigation. Real-estate-related litigation requires expertise spanning securities, financial institutions, valuation, bankruptcy, accounting, antitrust, and other issues.

For more than twenty years, Cornerstone Research has worked on real estate matters, from real estate investment trust (REIT) and failed financial institution litigation in the 1980s to current litigation involving subprime lending, securitized real estate assets, portfolio lending/investing disputes, and failed real estate ventures. In collaboration with leading academic experts in finance, economics, accounting, and marketing, and industry practitioners in the fields of real estate investment and finance, we have addressed the often complex financial and economic issues in these matters. We have applied expertise in evaluating real estate markets and analyzing real estate transactions in a range of real estate matters.

Cornerstone Research has consulted on numerous matters involving real estate securities. We have addressed disclosure, equity and debt financing, investment decisions, securitization, and derivatives issues. We have worked on matters involving general and limited partners of real estate partnerships, home builders and other development companies, publicly held companies, hedge funds, auditors, and underwriters. In recent and ongoing credit-crisis litigation, we have analyzed complex securitized real estate instruments such as MBSs and CDOs. For example, in a dispute between a REIT and an investment bank, we worked with a professor of real estate finance to examine the default rates of the securities in the collateral portfolio and determine the reasonableness of the initial pricing of securitization tranches. In a bankruptcy matter that involved the valuation of residual MBS interests, Cornerstone Research and a finance professor examined the appropriate discount rate to apply to the expected cash flows of the residual tranche.

### **BULLMORE v. ERNST & YOUNG**

Counsel for Ernst & Young Cayman Islands retained Cornerstone Research and Professor Steven Grenadier of Stanford University in a New York Supreme Court case related to the failure of Beacon Hill Asset Management, a hedge fund. The court granted summary judgment in favor of and awarded costs to Ernst & Young Cayman Islands.

At issue was the fund's net asset value for a period before its failure. Cornerstone Research and Professor Grenadier investigated the reasonableness of the prices assigned to the individual securities held in the fund's portfolio of collateralized mortgage obligations (CMOs). Because the CMOs were illiquid, they could not be valued based on contemporaneous market transactions. Instead, the valuations presented by Professor Grenadier were based on sophisticated valuation models. Drawing on a deep understanding of these models, as well empirical research on the reasonable range of valuations for these complex derivative securities, Professor Grenadier established that the prices used by the hedge fund fell within a reasonable range of valuation estimates.

### **BRICHARD SECURITIES LITIGATION**

Retained by Gibson, Dunn & Crutcher and by Morrison & Foerster

Defense counsel retained Cornerstone Research in a case involving the failure of a number of real estate limited partnerships (RELPs). Working with an economics expert who testified on loss causation and damages, we provided evidence of the reasonableness of the offerings and the fees in light of the economic conditions, syndication industry standards, and market expectations. We showed that the returns on these RELPs were comparable to those in similar limited partnerships and that changes in the value of the underlying properties were comparable to those of similar properties. The expert testified that the losses the RELPs incurred were the result of events that unexpectedly changed the market for real estate investments.

### **EQUITEC ROLLUP LITIGATION**

Retained by Weil, Gotshal & Manges and by Latham & Watkins

This case centered on a rollup transaction in which several real estate limited partnerships created by Equitec were combined into one publicly traded master limited partnership. Our clients, counsel for the sponsor of the master limited partnership offering, disputed the plaintiffs' contention that their security interests had lost value in the transaction. We worked with an industry expert, a finance expert, and a real estate expert to provide testimony on national real estate trends, local real estate valuation issues, and Rule 10b-5 and Section 11 damages rebuttal. The experts found that, based on sales and dispositions of comparable properties, the likely returns from selling the subject properties and liquidating the partnerships were no greater (and most likely less) than the returns from creating the rollup. Additionally, the increase in value associated with the greater liquidity of a publicly traded master limited partnership security offset the rollup fees paid by the plaintiffs and therefore did not reduce the value of their holdings. After several months of trial, the case settled.

The real estate crisis has led to substantial declines in the value of single- and multifamily residential, office, retail, industrial, and hospitality properties. Litigation involving these assets requires the expertise to identify relevant macroeconomic factors, local market factors, and intrasector effects. Cornerstone Research has analyzed these factors to examine issues arising from failed real estate joint ventures, breach of contract, and breach of fiduciary duty claims.

### CIENEGA GARDENS ET AL. v. THE UNITED STATES

Retained by Latham & Watkins

Counsel for the plaintiffs retained Cornerstone Research to estimate damages in a breach of contract suit brought against the U.S. government. The plaintiffs owned low-income apartment properties with mortgages insured by the Department of Housing and Urban Development (HUD). The insurance contract stipulated that the plaintiffs could prepay the mortgages and convert the rents from HUD-restricted levels to market rates after twenty years. Subsequently, Congress passed legislation prohibiting the exercise of this contractual right. Cornerstone Research worked with Professor Richard Peiser of Harvard University to construct a damages model that compared the actual cash flow to the cash flow the plaintiffs would have received at market rates for each property. The court ruled in our clients' favor and adopted the damages model presented by Professor Peiser. The judge's opinion made numerous references to the "comprehensiveness and reliability" of our model, which was described as "based on objective, verifiable HUD and industry data."

### SHOPPING MALL VALUATION

A large retailer entered into an agreement with a developer planning to develop a string of shopping malls in which the retailer would be the anchor tenant. The malls were not built, and when the contract came up for renewal, the new owner of the retailer declined to renew the contract. The developer sued for breach of contract. On behalf of counsel for the defendant, Cornerstone Research worked with an expert to assess alleged damages, including the potential profitability of the contract to the developer and the developer's ability to complete the deal.

### GROUND LEASE VALUATION

On behalf of an arbitration respondent, Cornerstone Research evaluated the impact of a disputed appraisal on the value of a ground lease. We investigated alternative valuation methods, collected comparable real estate market data, and analyzed expected future cash flows. Using market data on real estate price volatility, Cornerstone Research applied financial option theory to value a rent floor provision in the ground lease. We were able to establish that the rent floor provision had a much smaller impact on the present value of future cash flows than asserted by the complainant, reducing claimed damages by more than 60 percent.

# FINANCIAL INSTITUTIONS AND SUBPRIME LENDING

Assessing the financial and economic effects of changes in real estate markets is often a critical component of litigation faced by financial institutions, such as mortgage lenders, banks, and insurance companies. Cornerstone Research has analyzed risk management, loss reserves, forecasting, disclosure, and accounting issues related to real estate assets. We have addressed issues in real estate matters involving lending and workout procedures, housing policy, and regulatory practices.

## ACC/LINCOLN SAVINGS SECURITIES LITIGATION

In a suit brought by security holders against the officers and professional advisors of a bankrupt Arizona thrift holding company, we were retained by counsel for certain of the professional advisors to assess liability and damages claims. Cornerstone Research staff worked with four experts. We worked with two experts on the analysis of damages, a real estate expert on an assessment of the thrift's real estate portfolio, and an economist on an evaluation of industry and regulatory conditions.

## ASSET MANAGEMENT

Cornerstone Research worked with attorneys representing a custodial bank that was sued by three pension funds whose asset portfolios had disappointing returns in a period of declining real estate markets. The funds claimed the bank should have alerted them to the declining performance of their investments. Cornerstone Research analyzed delinquency rates both within the portfolios and more broadly in the relevant real estate markets. We collaborated with several experts to assess real estate market conditions, real estate investment allocation within pension funds, and the fiduciary obligations of custodial banks. The case settled.

## FAILED FINANCIAL INSTITUTION

Retained by Latham & Watkins

Defense counsel retained Cornerstone Research in a Resolution Trust Corporation lawsuit against the former officers and directors of a savings and loan, in which the plaintiff claimed that the defendants had imprudently conceived and directed the institution's diversification strategy. Cornerstone Research and economist Dan Brumbaugh evaluated the economic conditions facing the savings and loan at the time the diversification decisions were made. This analysis showed that the strategy was both reasonable and encouraged by regulations. We developed a model that demonstrated that the savings and loan would have become insolvent much earlier had it continued a traditional lending strategy. We also worked with Professor Robert Edelstein of the University of California, Berkeley, to evaluate the real estate markets into which the institution diversified and showed that the lending decisions were justified given demographic and property-specific market conditions. The case settled.

Contracts among participants in real estate markets and the structure of these markets have led to antitrust and competition allegations. Cornerstone Research has worked on a variety of competition cases related to real estate, including those involving allegations of exclusionary practices, monopolization, and price fixing.

### MACPHERSON'S v. WINDERMERE REAL ESTATE

Windermere Real Estate Services Company, a franchisor of residential real estate brokerage businesses, started its business in the Pacific Northwest in the 1970s. MacPherson's Inc., a competing real estate brokerage business, sued Windermere claiming that Windermere violated the antitrust laws by restricting competition among its franchisees and engaged in exclusionary conduct. Windermere's counsel retained Dr. Michael Keeley, a senior vice president of Cornerstone Research, as an expert witness to examine MacPherson's antitrust claims.

Dr. Keeley analyzed the provision of real estate brokerage and property management services in the Pacific Northwest to assess the competitive effects of the conduct at issue. Dr. Keeley explained that the conduct was actually procompetitive and could not lead to antitrust injury. His analysis showed that the defendants lacked market power and had not engaged in exclusionary conduct, that Windermere franchisees actively competed against one another and other brokerages, and that cost-reduction measures (e.g., sharing legal, marketing, and accounting expenses) were procompetitive. Dr. Keeley also noted the absence of barriers to entry for real estate brokerage services and the fact that the plaintiff was itself a member of a competing franchise network.

The court issued an order for summary judgment in the case. The order dismissed all antitrust claims against the defendants, stating there was "a finding of no antitrust injury."

### MULTIPLE LISTING SERVICE TYING CASES

Retained by Sidley & Austin and by Spencer Fane Britt & Browne

In separate cases counsel representing either a local board of realtors or a multiple listing service (MLS) retained Cornerstone Research to analyze the plaintiffs' claims that membership in a Board of Realtors as a condition for participating in an MLS constituted an illegal tying agreement and a group boycott.

In these separate cases Professor Christopher James of the University of Florida, Dr. Michael Keeley, a senior vice president of Cornerstone Research, and an economics professor concluded that membership requirements were procompetitive, not anticompetitive as claimed by the plaintiffs; that board membership and MLS membership are not separate products; that the multiple listing services did not have market power; and that the membership requirement did not meet the definition of a group boycott.

### REAL ESTATE SERVICES FRANCHISOR MARKET ANALYSIS

Cornerstone Research analyzed the plaintiffs' claims that a regional real estate services franchisor established a "federation" with its franchisees to control a regional market for real estate and property management services. We evaluated competition in the market for real estate broker and property management services, analyzed multiple listing service data, and studied the practices of real estate franchisors as well as unaffiliated brokers and property managers in the region.

## Selected Experts in Real Estate

<b>Thomas J. Adams</b> Paykin Krieg & Adams	<b>Michael R. Gibbons</b> University of Pennsylvania	<b>Daniel A. Lupiani</b> Lupiani & Associates; University of Notre Dame	<b>Katherine Schipper</b> Duke University
<b>William "Andy" Barnes</b> Barnes & Company	<b>Steven R. Grenadier</b> Stanford University	<b>Andrew Metrick</b> Yale University	<b>Erik R. Sirri</b> Babson College
<b>William H. Beaver</b> Stanford University	<b>Christopher M. James</b> University of Florida; Cornerstone Research	<b>Richard B. Peiser</b> Harvard University	<b>René M. Stulz</b> The Ohio State University
<b>Robert H. Edelstein</b> University of California, Berkeley	<b>Edward P. Lazear</b> Stanford University; Cornerstone Research	<b>Matthew P. Richardson</b> New York University	<b>Eric H. Sussman</b> University of California, Los Angeles; Amber Capital, Inc.;
<b>George W. Gau</b> University of Texas at Austin		<b>Anthony M. Santomero</b> University of Pennsylvania	Fountain Management, LLC
			<b>Kerry D. Vandell</b> University of California, Irvine

## Selected Client Law Firms

Akin Gump Strauss Hauer & Feld	Dorsey & Whitney	Kirkland & Ellis	Reed Smith
Alston & Bird	Drinker Biddle & Reath	K&L Gates	Richards, Layton & Finger
Arnold & Porter	Farella Braun + Martel	Latham & Watkins	Robins, Kaplan, Miller & Ciresi
Axinn, Veltrop & Harkrider	Fenwick & West	Manatt, Phelps & Phillips	Schulte Roth & Zabel
Baker Botts	Finnegan, Henderson, Farabow, Garrett & Dunner	Mayer Brown	Shartsis Friese
Baker & Hostetler	Fitzpatrick, Cella, Harper & Scinto	McDermott Will & Emery	Shearman & Sterling
Baker & McKenzie	Folger Levin & Kahn	McKenna Long & Aldridge	Sheppard Mullin Richter & Hampton
Bartlit Beck Herman Palenchar & Scott	Fried, Frank, Harris, Shriver & Jacobson	Milbank, Tweed, Hadley & McCloy	Sidley Austin
Bingham McCutchen	Fulbright & Jaworski	Mintz Levin Cohn Ferris Glovsky and Popeo	Simpson Thacher & Bartlett
Boies, Schiller & Flexner	Gibson, Dunn & Crutcher	Mitchell Silberberg & Knupp	Skadden, Arps, Slate, Meagher & Flom
Cadwalader, Wickersham & Taft	Goodwin Procter	Montgomery, McCracken, Walker & Rhoads	Snell & Wilmer
Cahill Gordon & Reindel	Harkins Cunningham	Morgan, Lewis & Bockius	Sonnenschein Nath & Rosenthal
Chadbourne & Parke	Haynes and Boone	Morris, Nichols, Arsht & Tunnell	Stroock & Stroock & Lavan
Choate Hall & Stewart	Hogan & Hartson	Morrison & Foerster	Sullivan & Cromwell
Cleary Gottlieb Steen & Hamilton	Holland & Hart	Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer	Thompson & Knight
Clifford Chance	Howrey	Munger, Tolles & Olson	Vinson & Elkins
Cooley Godward Kronish	Hunton & Williams	O'Melveny & Myers	Vorys, Sater, Seymour and Pease
Covington & Burling	Husch Blackwell Sanders	Orrick, Herrington & Sutcliffe	Wachtell, Lipton, Rosen & Katz
Cravath, Swaine & Moore	Irell & Manella	Patton Boggs	Weil, Gotshal & Manges
Davis Polk & Wardwell	Jenner & Block	Paul, Hastings, Janofsky & Walker	Wiley Rein
Debevoise & Plimpton	Jones Day	Paul, Weiss, Rifkind, Wharton & Garrison	Williams & Connolly
Dechert	Katten Muchin Rosenman	Pepper Hamilton	Willkie Farr & Gallagher
Dewey & LeBoeuf	Kaye Scholer	Perkins Coie	Wilmer Cutler Pickering Hale and Dorr
Dickstein Shapiro	Kelley Drye & Warren	Pillsbury Winthrop Shaw Pittman	Wilson Sonsini Goodrich & Rosati
DLA Piper	Kilpatrick Stockton	Proskauer Rose	Winston & Strawn
	King & Spalding	Quinn Emanuel Urquhart Oliver & Hedges	

## Cornerstone Research

www.cornerstone.com

<b>Boston</b> 617.927.3000	<b>Los Angeles</b> 213.553.2500	<b>Menlo Park</b> 650.853.1660	<b>New York</b> 212.605.5000	<b>San Francisco</b> 415.229.8100	<b>Washington</b> 202.912.8900
Christine S. Nelson	George G. Strong, Jr.	Michael C. Keeley	James K. Malernee, Jr.	Cynthia L. Zollinger	Michael E. Burton
John Gould	Catherine J. Galley	Allan W. Kleidon	James C. Meehan	Vandy M. Howell	Lassaad Adel Turki
Rahul Guha	Richard W. Dalbeck	Daniel M. Garrett	Jonathan M. Rozoff	Matthew R. Lynde	Michelle M. Burtis
David F. Marcus	Elaine M. Harwood	Michael D. Topper	Lori Benson	Andrea Shepard	Sharon B. Johnson
Yesim C. Richardson	Elisabeth A. Browne	Alexander Aganin	Darwin V. Neher	Colleen M. Connolly	Greg Leonard
Anu Bharadwaj	Carlyn Irwin	Kristin M. Feitzinger	Nickolay V. Moshkin	Mike DeCesaris	Greg Eastman
Sath Shukla		Bradley F. Johnson	Geeta Singh	Ilene S. Friedland	Shankar Iyer
John P. Simon		Olga Koumrian		Samid Hussain	Kıvanç A. Kırğız
Nari Subramanian		Andrew H. Roper		Adoria Lim	Karin Tuerlinckx
Sally D. Woodhouse		Joseph T. Schertler		Dina Older Aguilar	Mary A. Woodford
Demetri Zaphiris		Andrea L. Scott		Torben Voetmann	
		Adam A. Wantz			
		Jingming "Marshall" Yan			

