

CLASS CERTIFICATION CAPABILITIES

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For more than twenty-five years, Cornerstone Research staff have assisted counsel in a wide variety of class action lawsuits. Our experience and expertise with class certification span a broad spectrum, including antitrust, securities, labor, and product misrepresentation/false advertising.

Economic questions at the class certification stage typically involve (a) whether common evidence can be used to show that all proposed class members were harmed (injured) by the defendant's alleged illegal conduct, (b) whether each proposed class member's damages can be calculated using a common formula on a classwide basis, and (c) whether there are potential conflicts of interest among the class members. As shown in the case descriptions that follow, Cornerstone Research approaches these issues both conceptually and empirically.

We have applied our expertise in a wide range of class certification matters. In cases where individual issues have predominated, our clients have relied on our analysis to support the defeat of class certification. Where common issues have predominated, our analysis has been used to support class certification. Cornerstone Research has the experience to address the detailed, complex issues that arise in class certification, and to communicate our findings effectively. We provide clear conceptual thinking, accuracy, and reliability.

Cornerstone Research works with affiliated faculty and industry experts in a distinctive "partnership" that combines the strengths of the business and academic worlds. Several of our senior staff also serve as testifying experts. Our staff consultants have advanced degrees in economics, finance, accounting, and business, are familiar with the litigation process, and are committed to producing outstanding results.

ANTITRUST

Cornerstone Research staff and experts have extensive experience with both direct-purchaser and indirect-purchaser antitrust class actions. Economic research and analysis often prove critical to resolving class certification. For example, a study may analyze the particulars of the alleged conduct, the overall structure of the industry and the market, and the characteristics of individual transactions. We recognize the importance of evaluating these issues through empirical research within a framework of sound economic concepts. ■

Polyester Staple Antitrust Litigation

Retained by Williams & Connolly and by Sidley Austin

A class of direct purchasers accused the four major polyester staple fiber producers of conspiring to raise prices. On behalf of two of the defendants, Nan Ya Plastics Corp., America and Wellman, Inc., Cornerstone Research assisted Professor Edward Erickson of North Carolina State University in evaluating the plaintiffs' class certification arguments. Professor Erickson presented an empirical analysis of prices, margins, and supply and demand factors to show that polyester staple fiber comprises several differentiated products that supply separate and distinct markets—and therefore the fact of impact and amount of damages could not be established with classwide proof. Both defendants settled with the class.

Cigarette Antitrust Litigation

Retained by Heller Ehrman, by Boies, Schiller & Flexner, by Jones Day, by Kirkland & Ellis, and by Weil, Gotshal & Manges

In an antitrust case, major cigarette manufacturers faced allegations of price fixing. The related class action litigation included both direct-purchaser and indirect-purchaser suits. The defendants retained Cornerstone Research to support expert testimony by Professor Edward Snyder of the University of Chicago regarding class issues in an ongoing series of indirect-purchaser cases in *Illinois Brick* repealer states.

Dr. Snyder analyzed store-level purchase data specific to the states in which the cases were filed to show that retail prices varied widely by store, as did the extent to which individual stores passed on manufacturer price increases. The defense team also presented testimony from retailers stating that local competitive conditions affected pricing decisions.

To date, courts in four states have issued rulings. In Minnesota the judge ruled against class certification, concluding that “certification of the proposed class here would be an invitation for fraud” because “it would be nearly impossible to determine what amount any particular consumer was damaged...or whether the particular consumer was damaged at all.” The courts denied class certification in Michigan because damages to consumers could not be computed by common proof. Courts certified classes in Kansas and New Mexico.

S&M Farm Supply v. Pharmacia

Retained by Husch & Eppenberger

A proposed class of direct purchasers of glyphosate-based and paraquat-based herbicides alleged a price-fixing conspiracy between the defendant, Monsanto Company (a subsidiary of Pharmacia at the time the lawsuit was filed), and one of its competitors, Imperial Chemical Industries.

Monsanto's counsel retained Dr. Michael Keeley of Cornerstone Research as Monsanto's class certification expert. Following the filing of expert reports, depositions, legal briefings, and an oral argument, U.S. District Court Judge E. Richard Webber denied the plaintiffs' motion for class certification. The Eighth Circuit later denied the plaintiffs' writ for an interlocutory appeal, allowing Judge Webber's decision to stand.

In re Sorbates Direct Purchase Antitrust Litigation

Retained by Berman DeValerio Pease Tobacco Burt & Pucillo

A class of direct purchasers of sorbates brought a suit alleging a price-fixing conspiracy. Dr. Daniel Garrett of Cornerstone Research submitted declarations in support of class certification, arguing that all class members were injured and that it was possible to assess damages on a classwide basis. The court adopted Dr. Garrett's arguments and certified the proposed class. The case settled favorably for the class members just a few days before trial.

SECURITIES

Cornerstone Research has broad experience with class certification issues in securities cases. These cases often turn on the principles of market efficiency and reliance, and we work with top experts in trading behavior. Our securities-related experience also extends to brokerage cases and undisclosed commissions and best execution by investment services firms. ■

James T. Pearce, Jr., et al. v. UBS PaineWebber, Inc., et al.

Retained by Wilmer Cutler Pickering Hale and Dorr

This securities class action was filed on behalf of all noninstitutional investors who purchased and/or sold equity securities listed on NASDAQ through PaineWebber brokers during the class period. The plaintiffs alleged that PaineWebber charged undisclosed commissions on NASDAQ trades executed on behalf of noninstitutional investors and failed to provide “best execution” when executing the trades.

Dr. Allan Kleidon of Cornerstone Research analyzed trade data on NASDAQ stocks purchased and sold by the lead plaintiff and other PaineWebber customers, and concluded that it would be impossible to determine on a classwide basis whether any PaineWebber customer received something other than the best reasonably available price on his or her trades, or to determine on a classwide basis whether PaineWebber incorporated a commission on top of the best reasonably available price. The court found that individual issues predominated and denied certification of the proposed class.

In re Organogenesis Securities Litigation

Retained by Wilmer Cutler Pickering Hale and Dorr

U.S. District Court Judge Joseph L. Tauro declined to certify a class in the Organogenesis 10b-5 securities matter, finding that neither of the two named plaintiffs could represent the class: one because he did not have standing to assert claims against all the defendants; the other because his trades, when properly analyzed, did not result in a loss. The latter’s trading appeared to have resulted in a loss when the first-in, first-out (FIFO) accounting method proposed by the plaintiff was used to evaluate his trading records. However, as demonstrated by Cornerstone Research’s analysis, the plaintiff actually realized a gain on his class period purchases under the last-in, first-out (LIFO) method of matching purchases to sales. Judge Tauro noted, “Traditionally, individual questions regarding damages would not hinder class certification where a common question exists regarding liability. But the Supreme Court recently made clear that a securities fraud plaintiff must properly allege actual monetary loss—not merely harm related to purchasing at an increased price—in order to state a claim for securities fraud.”

Defense counsel retained Cornerstone Research to provide consulting analysis and expert testimony. Dr. John Gould of Cornerstone Research filed an expert affidavit explaining the strengths and weaknesses of alternative methods for calculating losses (or gains) realized on class period purchases. Dr. Gould explained that the LIFO method was the most appropriate for capturing the potential harm realized by the named plaintiff during the class period.

The court concurred with the defendants’ argument that “[u]sing the preferred accounting method, [the named plaintiff] did not suffer actual loss.” The court went on to state that using the LIFO method to analyze the plaintiff’s trading records “actually proved fatal” to his ability to represent the class.

Arthur E. Benning, Sr., et al. v. Wit Capital Group, Inc., et al.

Retained by Morgan, Lewis & Bockius

A proposed class claimed that it was incorrectly denied IPO allocations by Wit Capital Group. Defense counsel retained Dr. Allan Kleidon of Cornerstone Research to provide an economic analysis of the putative class for class certification purposes.

Research by Dr. Kleidon and Cornerstone Research showed that there was no evidence that all putative class members had suffered an economic loss from the defendant’s allegedly improper failure to allocate IPO shares to plaintiffs. Whether an individual defendant would have gained or lost on a hypothetical stock investment would depend on when he or she sold the shares, which cannot be determined in the absence of individualized inquiry (if at all).

The court denied class certification because the plaintiffs failed to show that all putative class members suffered an injury in fact. As the court noted, “In some cases, plaintiffs lost the opportunity to lose money. Those plaintiffs were not injured in fact.”



LABOR

Richard Bell, et al. v. Ascendant Solutions, Inc., et al.

Retained by Akin Gump Strauss
Hauer & Feld

The plaintiffs alleged that Ascendant made various misstatements in its IPO Prospectus and Registration Statement concerning its customer relationships and computer system capabilities. The plaintiffs filed a motion to certify a class of Ascendant investors for a ten-week period following the IPO. The plaintiffs claimed via expert testimony that Ascendant traded in an efficient market, a necessary element for certifying the class.

Cornerstone Research assisted Professor Paul Gompers of the Harvard Business School in evaluating whether Ascendant traded in an efficient market as well as in assessing the plaintiffs' market efficiency analysis. A study of the Cammer factors, an event study, and a fundamental valuation analysis showed that Ascendant did not trade in an efficient market during the class period. Further, in a rebuttal report Professor Gompers showed that the plaintiffs' market efficiency analysis was flawed and not based on any scientific method.

With the help of Professor Gompers's testimony, the judge found the plaintiffs' expert testimony to be inadmissible and denied the motion for class certification.

Cornerstone Research has consulted on multiple class certification matters involving labor markets, including anti-trust and discrimination cases. Research often focuses on the definition of the relevant labor market(s). The defendant's ability to cause harm, and that harm's likely impact on putative class members, will vary because labor markets vary along geographic, job definition, and organizational dimensions. In addition, critical circumstances and facts relevant to class members may differ substantially. Labor matters generally require careful empirical analysis. The pertinent information for these types of detailed analyses may never have been assembled for such a use. In these circumstances Cornerstone Research has offered efficient, insightful use of data and facts that are readily available, as well as helped design original survey tools. Cornerstone Research applies its expertise and creativity, working with counsel to provide compelling, factually supported testimony. ■

Raymond Verdin, et al. v. R&B Falcon Drilling, U.S.A., et al.

Retained by multiple law firms

Major firms in the international offshore drilling industry were accused of fixing wages and other compensation for their offshore employees in violation of Section 1 of the Sherman Act. The plaintiffs proposed that the court certify a broad class of tens of thousands of workers. In response, the defendants jointly retained two experts, New York University Professor William Baumol and Dr. Michael Keeley of Cornerstone Research, to analyze class certification issues.

Working closely with Cornerstone Research staff, Professor Baumol and Dr. Keeley analyzed voluminous data on wages and benefits over time for each type of offshore drilling job and each defendant firm. Their reports showed that the impact of the alleged conspiracy, if any, would need to be analyzed on an individual basis. They also showed that for multiple reasons, many class members would not have sustained any damages even if the plaintiffs' allegations were true.

The plaintiffs and all but one of the defendants reached a series of settlements prior to the hearing on class certification. These settlements totaled only a small percentage of the plaintiffs' original multibillion-dollar damages claim. The plaintiffs dismissed the remaining defendant from the case.

PRODUCT MISREPRESENTATION

Cornerstone Research staff and experts have played instrumental roles in several cases involving product misrepresentation claims. These cases are diverse, spanning both securities and false advertising issues. Product misrepresentation cases often require expertise in marketing and market research and sometimes involve original survey work to determine consumer attitudes and preferences. ■

Larry R. Cooper, et al. v. E*Trade Group, Inc.

In a putative class action involving the online brokerage company E*Trade, the plaintiffs complained that they had experienced delays in accessing E*Trade's online brokerage system and executing trades. They claimed that their experts could determine on a classwide basis what damages these alleged delays had caused to individual class members.

Dr. Allan Kleidon of Cornerstone Research analyzed the claim and concluded that it would be impossible to determine on a classwide basis whether plaintiffs had suffered damages or to determine damages without knowing each individual's trading intentions at the time of delay. The court found that individual issues predominated and denied certification of the proposed class. Two other claims followed, and class certification was denied in each case based on similar analyses by Dr. Kleidon.

Building Product Matter

Retained by Sedgwick, Detert, Moran & Arnold and by Heller Ehrman

In a class action suit brought on behalf of California homeowners against a national window manufacturer, the plaintiffs alleged that the aluminum-framed windows made by the manufacturer contained defects that resulted in water damage to the windows as well as the framing around them.

Counsel for the manufacturer retained Professor Peter Reiss of Stanford University, Professor John Hauser of the Massachusetts Institute of Technology, and Cornerstone Research. With Cornerstone Research's assistance, Professor Reiss performed extensive statistical analysis of the manufacturer's sales and service records to show that the actual incidence of possible window deficiencies was far below that alleged by the plaintiffs and was in fact minimal. Professor Hauser worked with Cornerstone Research to create a representative sample of homeowners and conducted an independent customer satisfaction survey to show that homeowners were satisfied with their windows, and that those few homeowners who reported problems with their windows were satisfied with the service they received under the manufacturer's warranty program.

The court rejected the plaintiffs' motion for class certification. This finding contrasted with two previous findings in which courts had granted class certification to plaintiffs alleging defective aluminum-framed windows in lawsuits brought against two other manufacturers.

Large Data Set Capabilities

Class certification often hinges on empirical analysis. The ability to work with large amounts of data can be critical. Cornerstone Research has the experience and technological capability to meet the demanding requirements and deadlines for such matters. Our capabilities include:

- A staff of economics and finance Ph.D.s who are experts in advanced modeling and statistical techniques.
- Experience working with data sets with millions—sometimes hundreds of millions—of observations that are often compiled from disparate sources in many different formats.
- State-of-the-art computing facilities.
- Broad practical knowledge of many large public data sets in securities and other fields.
- Experience creating and conducting original surveys to address individual issues.
- Efficient, reliable sampling techniques.

Selected Experts

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Massachusetts Institute of Technology

William H. Beaver
Stanford University

Timothy F. Bresnahan
Stanford University

Michelle M. Burtis
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New York University

Selected Client Law Firms

Akin Gump Strauss Hauer & Feld

Alston & Bird

Arnold & Porter

Axinn, Veltrop & Harkrider

Baker Botts

Baker & Hostetler

Baker & McKenzie

Bartlit Beck Herman Palenchar & Scott

Bingham McCutchen

Boies, Schiller & Flexner

Cadwalader, Wickersham & Taft

Cahill Gordon & Reindel

Chadbourne & Parke

Choate, Hall & Stewart

Cleary Gottlieb Steen & Hamilton

Clifford Chance

Cooley Godward Kronish

Covington & Burling

Cravath, Swaine & Moore

Davis Polk & Wardwell

Debevoise & Plimpton

Dechert

Dewey & LeBoeuf

Dickstein Shapiro

DLA Piper

Dorsey & Whitney

Drinker Biddle & Reath

Farella Braun + Martel

Fenwick & West

Finnegan, Henderson, Farabow, Garrett & Dunner

Folger Levin & Kahn

Fried, Frank, Harris, Shriver & Jacobson

Fulbright & Jaworski

Gibson, Dunn & Crutcher

Goodwin Procter

Harkins Cunningham

Haynes and Boone

Heller Ehrman

Hogan & Hartson

Holland & Hart

Howrey

Hunton & Williams

Husch & Eppenberger

Irell & Manella

Jenner & Block

Jones Day

Katten Muchin Rosenman

Kaye Scholer

Kelley Drye & Warren

Kilpatrick Stockton

King & Spalding

Kirkland & Ellis

Kirkpatrick & Lockhart Preston Gates Ellis

Latham & Watkins

Manatt, Phelps & Phillips

Mayer Brown

McDermott Will & Emery

McKenna Long & Aldridge

Milbank, Tweed, Hadley & McCloy

Mintz Levin Cohn Ferris Glovsky and Popeo

Mitchell Silberberg & Knupp

Montgomery, McCracken, Walker & Rhoads

Morgan, Lewis & Bockius

Morris, Nichols, Arsh & Tunnell

Morrison & Foerster

Munger, Tolles & Olson

O'Melveny & Myers

Orrick, Herrington & Sutcliffe

Patton Boggs

Paul, Hastings, Janofsky & Walker

Paul, Weiss, Rifkind, Wharton & Garrison

Pepper Hamilton

Perkins Coie

Pillsbury Winthrop Shaw Pittman

Powell Goldstein

Proskauer Rose

Quinn Emanuel Urquhart Oliver & Hedges

Reed Smith

Richards, Layton & Finger

Robins, Kaplan, Miller & Ciresi

Schulte Roth & Zabel

Shartsis Frieze

Shearman & Sterling

Sheppard, Mullin, Richter & Hampton

Sidley Austin

Simpson Thacher & Bartlett

Skadden, Arps, Slate, Meagher & Flom

Snell & Wilmer

Sonnenschein Nath & Rosenthal

Stroock & Stroock & Lavan

Sullivan & Cromwell

Thompson & Knight

Vinson & Elkins

Vorys, Sater, Seymour and Pease

Wachtell, Lipton, Rosen & Katz

Weil, Gotshal & Manges

Weston Benschop Rochefort Rubalcava MacCuish

Wiley Rein

Williams & Connolly

Willkie Farr & Gallagher

Wilmer Cutler Pickering Hale and Dorr

Wilson Sonsini Goodrich & Rosati

Winston & Strawn

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