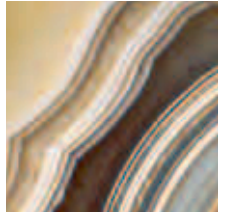


# SECURITIES AND FINANCIAL MARKETS



The foundation of our securities practice is a **highly skilled and experienced staff** with graduate degrees and industry backgrounds in finance, accounting, and economics. We work in a distinctive partnership with an **unparalleled network of experts** from leading business schools, law schools, economics departments, and the securities profession. With these experts, we operate **at the forefront** of academic research and industry developments. We use our combined experience to address client needs and develop **creative approaches** to challenging case issues.

Through our collaboration with the Stanford Law School on the **Securities Class Action Clearinghouse** and our own in-house research, we are leaders in identifying trends in securities class action filings and settlements.



Cornerstone Research staff and experts provide high-quality testimony and economic and financial analysis in all phases of commercial litigation and regulatory proceedings. We are a leading consulting firm retained by attorneys in complex securities litigation. Our objective, state-of-the-art analysis has earned us a reputation for excellence and effectiveness.

Cornerstone Research has worked with attorneys in numerous securities matters, including trials and summary judgments. The objective, state-of-the-art analysis that we have provided in thousands of securities cases, spanning many areas of finance and economics, has earned us a reputation for excellence and effectiveness.

Drawing on decades of academic research on security price formation, we have developed innovative approaches to evaluating alternative per-share damages scenarios and modeling settlement outcomes in Rule 10b-5 and Section 11 and 12 claims. Our analyses addressing loss causation, market efficiency, and trading behavior have supported successful *Daubert* challenges and arguments on class certification and summary judgment.

Cornerstone Research and the Stanford Law School cosponsor the Securities Class Action Clearinghouse, the leading source of data on the financial and economic characteristics of securities class action litigation and an invaluable tool in the analysis of class action trends.

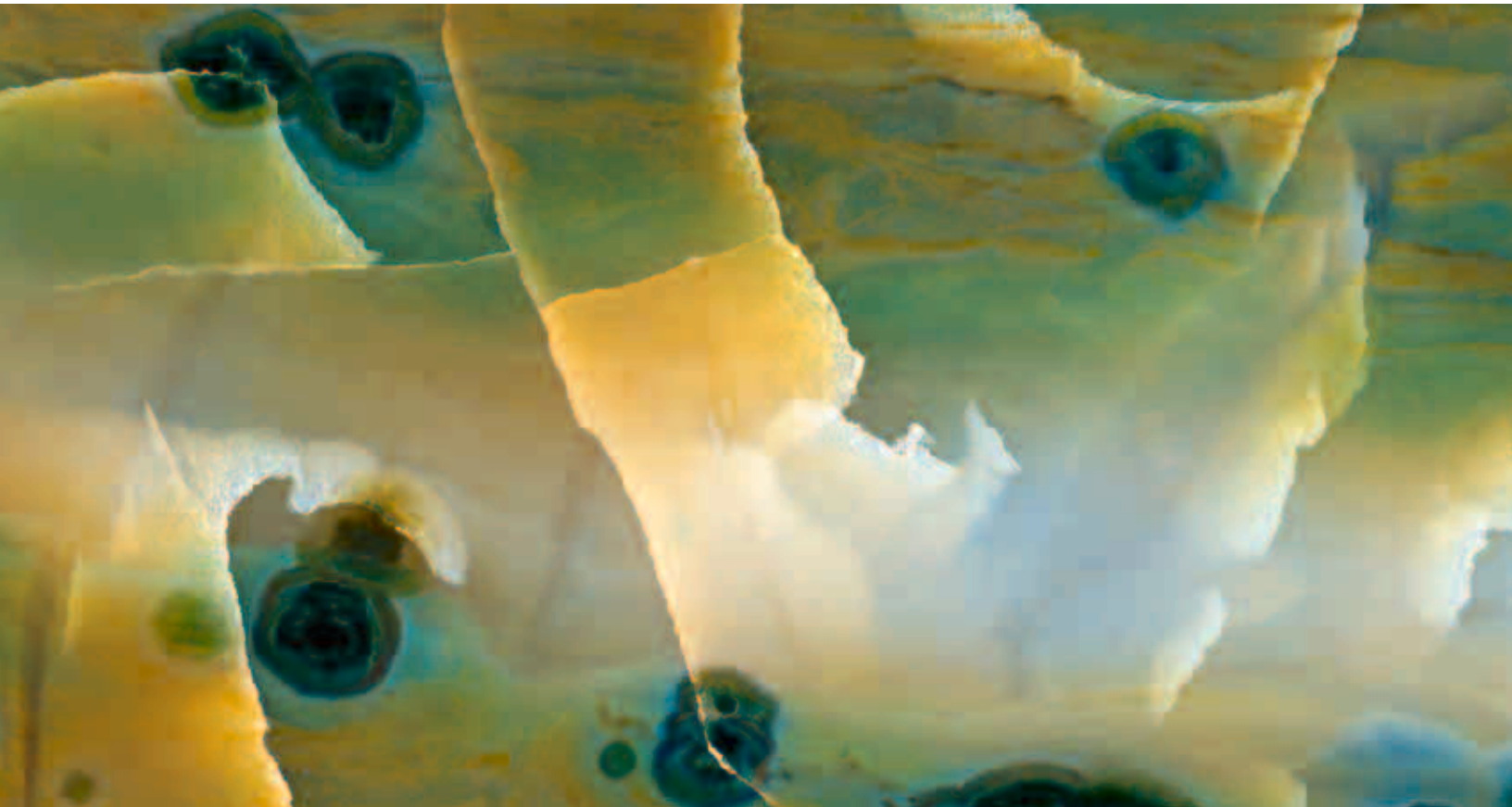
Our securities expertise extends beyond securities class actions and includes issues related to asset and business valuation, trading behavior, market manipulation, fixed income, derivatives, and company stock cases related to the Employee Retirement Income Security Act (ERISA). Case experience across a variety of industries, including energy, financial institutions, high technology, and pharmaceuticals, has proved important in analyzing industry-specific factors in securities cases.

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## RULE 10b-5/SECTION 11 SECURITIES CLASS ACTIONS

Cornerstone Research provides rigorous financial and statistical analysis and expert testimony in all phases of Rule 10b-5 and Section 11 matters. Drawing on decades of academic research on security price formation, we have developed innovative approaches to evaluating alternative per-share damages scenarios in Rule 10b-5 and Section 11 and 12 claims. Our staff and affiliated experts consistently have defined the leading methods of analysis for issues of class certification, loss causation, and damages in thousands of cases across a range of industries.



**SECURITIES TRIAL VICTORY** Morrison & Foerster, counsel for **JDS Uniphase** (JDSU) and several former executives, retained Cornerstone Research in this securities class action in which plaintiffs sought damages of approximately \$20 billion due to claimed violations of Rule 10b-5, Section 11, and insider trading regulations. Cornerstone Research worked with three experts throughout this trial. Dr. Allan Kleidon, a senior vice president of Cornerstone Research, testified regarding causation and damages; Professor Wayne Guay of the University of Pennsylvania provided testimony on insider trading and executive compensation; and Professor James Vander Weide of Duke University testified on industry issues.

Dr. Kleidon conducted an event study and industry analysis and found JDSU's stock performance during the class period consistent with that of the industry. He opined that the opinions of the plaintiffs' damages expert were unscientific and unreliable.

Professor Guay testified about JDSU stock trades by the former CEO and about executive compensation principles generally. He opined that a poorly diversified, retiring executive would typically sell shares. Further, he found the CEO's retention of a large position in JDSU inconsistent with the "perfect timing" claims of the plaintiffs' expert.

Professor Vander Weide testified about industry conditions and demand for JDSU products. He demonstrated that a wide variety of sources forecasted strong industry demand throughout 2000. He further concluded that the plaintiffs' claims regarding sales of specific products to specific customers did not suggest a broad downturn in demand prior to 2001.

After only two days of deliberation following a four-week trial, the jury returned a verdict for the defendants on all counts.

### JDSU STOCK PERFORMANCE RELATIVE TO INDUSTRY



## RULE 10b-5/SECTION 11 SECURITIES CLASS ACTIONS

**SUMMARY JUDGMENT** *In re Boston Scientific Corporation Securities Litigation*, a Rule 10b-5 case, involved allegations that the company withheld material information about alleged faults with a medical device that it eventually recalled. Cornerstone Research was retained by **Boston Scientific** and its counsel, Shearman & Sterling, to analyze loss causation and to assist in the preparation of an expert report showing that the plaintiffs' expert had failed to establish a causal connection between the alleged omissions and his estimate of recoverable losses.

The court agreed with the defendants' loss causation analysis, ruling that the market was aware of the issues raised in the complaint prior to the alleged corrective disclosure dates. He also rejected the plaintiffs' argument that trading activity by Boston Scientific executives during the class period was probative of scienter in this case. Trading analyses prepared by Cornerstone Research supported the defendants' scienter arguments.

**DAUBERT CHALLENGE** Cornerstone Research worked with attorneys from Wilmer Cutler Pickering Hale and Dorr and Becker, Glynn, Melamed & Muffly in the *Xcelera Securities Litigation*. **Xcelera** filed a motion to exclude the testimony of the plaintiffs' damages expert. The case involved allegations that Xcelera shareholders suffered losses resulting from the company's disclosure that it might be required to issue new common shares to a third party, which would dilute the value of the ownership interests of then-current Xcelera shareholders. Our analysis demonstrated that Xcelera's shareholders had incurred no damages because the stock price rose after the first alleged corrective disclosure. Further, our analysis showed that the alleged corrective disclosures did not provide any new material information. Finally, our analysis showed that the plaintiffs' expert did not apply reliable methods when conducting his event study, and even by applying his flawed methodology, the stock price decline following the first alleged corrective disclosure was not statistically significant. After a *Daubert* hearing, the court agreed and granted Xcelera's motion to exclude the testimony of the plaintiffs' expert.

**CLASS CERTIFICATION** Cornerstone Research assisted defense counsel Wilmer Cutler Pickering Hale and Dorr in defeating class certification in the *Organogenesis Securities Litigation*. The plaintiffs put forward an analysis purporting to show that the proposed named plaintiff lost money when investing in **Organogenesis** stock, based on the first-in, first-out (FIFO) accounting method. However, Dr. John Gould, a senior vice president of Cornerstone Research, demonstrated that the named plaintiff actually realized a gain on his class period purchases under the last-in, first-out (LIFO) method of matching purchases to sales. Dr. Gould showed that LIFO was more appropriate in this case because the FIFO method ignored many of the named plaintiff's class period sales by matching them with purchases made before the class period. The court agreed and declined to certify a class in this matter.

**LOSS CAUSATION** The plaintiffs alleged that **Broadcom's** stock was overvalued due to inappropriate accounting treatment of performance-based warrants issued in acquisitions in *In re Broadcom Securities Litigation*. Using a percentage-based inflation approach and a computer trading model, the plaintiffs' expert initially alleged class damages in excess of \$5.6 billion.

Cornerstone Research worked with four experts who reviewed the event study approach used by the plaintiffs' expert and determined that his trading model had no scientific validity. Additionally, Cornerstone Research worked with Broadcom's attorneys in achieving several key legal victories, including the exclusion of the aggregate damages testimony of the plaintiffs' expert.

Cornerstone Research also advised on the implications of the *Broudo v. Dura Pharmaceuticals* ruling on the plaintiffs' claimed damages. The case ultimately settled for approximately \$150 million.

## RULE 10b-5/SECTION 11 SECURITIES CLASS ACTIONS

**FIXED INCOME** Mortgage-backed securities (MBSs), collateralized debt obligations (CDOs), and their derivatives, such as credit default swaps (CDSs), have been at the center of the current wave of subprime mortgage litigation. For a number of reasons, it can be challenging to value these securities:

- They often trade infrequently and privately, and it can be difficult to observe a market price.
- The potential illiquidity of a particular instrument at a given time can have an impact on its value.
- Their values vary with the credit risk, interest rate sensitivity, and optionality of the underlying loans.

Cornerstone Research staff and experts have worked extensively on the analysis and valuation of these structured debt instruments and their derivatives. We are very familiar with the market dynamics, information sources, and derivatives pricing methods relevant to valuing these instruments. For example, we have worked with Professor Michael Gibbons of the Wharton School and Professor René Stulz of The Ohio State University in a number of matters to assess the availability and pricing of bond and loan assets purchased to create CDO pools, as well as the pricing, hedging, and performance of CDOs.

**HIGH-YIELD DEBT** Cornerstone Research worked with Professor Edward Altman of New York University and Professor Christopher James of the University of Florida to address allegations regarding an investment bank's role in the failure of a Florida life insurance company.

The investment bank was alleged to have conspired to engage in year-end transactions aimed at concealing the life insurance company's insufficient capital, and to have contributed to the company's failure by purchasing highly illiquid assets from the life insurance company at a fraction of their value. The allegation of concealment of the capital deficiency centered on whether year-end trades of high-yield securities were conducted at "market prices." We constructed a database of high-yield debt prices that validated the prices of the year-end trades. We also analyzed the highly illiquid securities purchased by the bank from the life insurance company to refute the plaintiff's claim that these securities were purchased at a fraction of their value. The case settled.

[securities.stanford.edu](https://securities.stanford.edu)

**CLASS ACTION TRENDS** Cornerstone Research and the Stanford Law School cosponsor the Securities Class Action Clearinghouse, the leading source of data on the financial and economic characteristics of federal class action securities fraud litigation.

# VALUATION

Valuation analysis is often a key component of securities and financial markets litigation. The analysis necessary to calculate value is complex and requires a thorough understanding of the facts and issues of each case. Cornerstone Research approaches valuation matters using sound economic and financial principles, fitting the analysis to the problems at hand. The range of matters that require valuation analysis is widespread. Company valuations often are needed in disputes associated with mergers and acquisitions, initial public offerings, private placements, reorganizations, bankruptcies, divestitures, buyouts, and going-private transactions. Valuation calculations are also used in cases that focus on intellectual property rights, derivative securities, debt, and the valuation of operating divisions and subsidiaries.

**MERGERS AND ACQUISITIONS** In *Oracle v. PeopleSoft*, **Oracle** initiated a hostile takeover of PeopleSoft. Over the next eighteen months, Oracle made multiple offers, all of which PeopleSoft rejected as being inadequate. PeopleSoft also took defensive measures that were challenged by Oracle.

Davis Polk & Wardwell and Richards, Layton & Finger, counsel for Oracle, retained Cornerstone Research and a finance professor to analyze the valuation methodologies used by PeopleSoft, to evaluate the bases for PeopleSoft's rejection of Oracle's offers, and to estimate the premium represented by each offer. Our expert presented his findings at a hearing. The parties resolved their differences and announced a merger agreement.

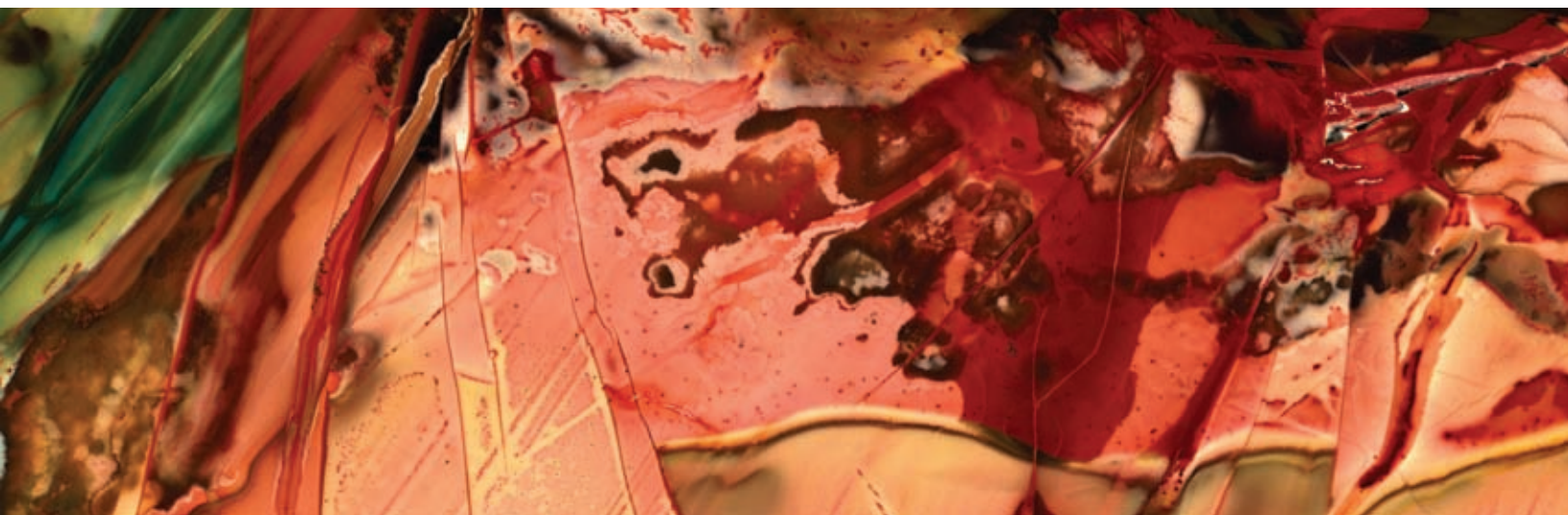
**SPECIFIC SECURITIES AND INTERESTS** Counsel for **Ernst & Young Cayman Islands** retained Cornerstone Research and Stanford University Professor Steven Grenadier in *Bullmore v. Ernst & Young*, a New York Supreme Court case related to the failure of Beacon Hill Asset Management, a hedge fund. The court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

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. The valuations utilized were based instead on sophisticated valuation models. Drawing on a deep understanding of these models, as well as 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.

**CORPORATE RESTRUCTURING** In *Unsecured Creditors of Iridium v. Motorola, Inc.*, a litigation arising from the high-profile bankruptcy of Iridium, a global provider of satellite telecommunications services, the plaintiffs alleged that the more than \$2 billion that Iridium paid **Motorola** to design, develop, and launch sixty-six satellites and related ground equipment was avoidable as a fraudulent conveyance under bankruptcy law and should be returned to the Iridium estate.

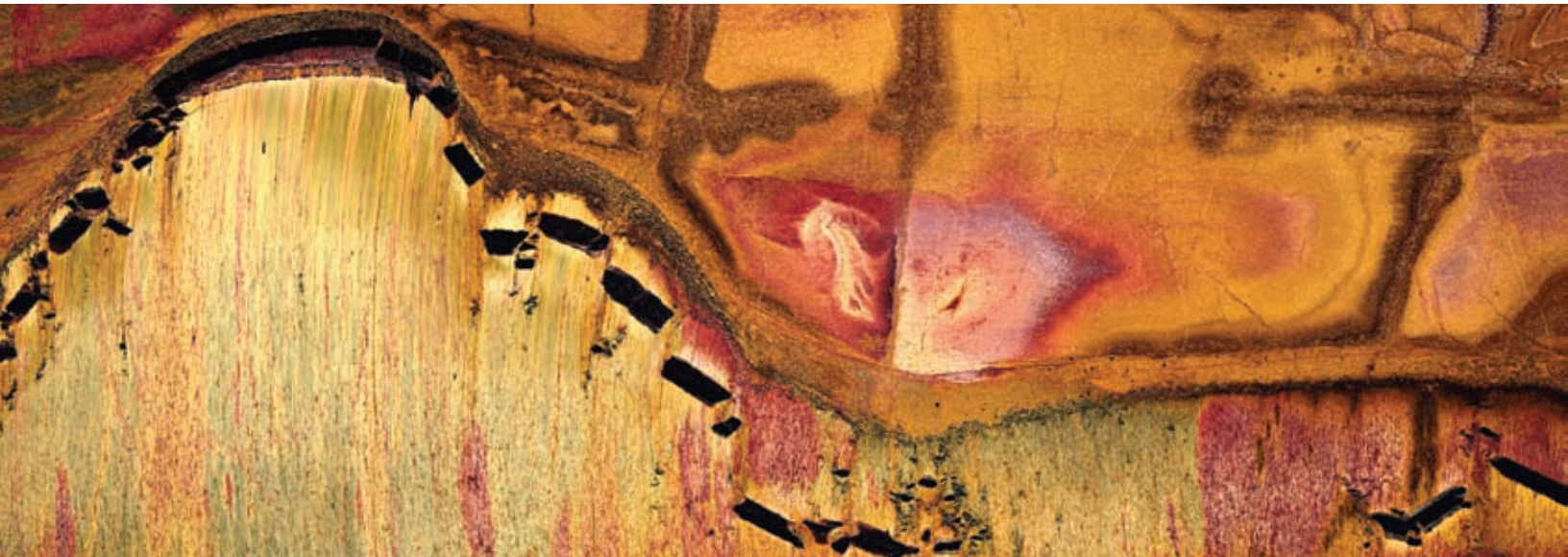
Motorola's counsel, Kirkland & Ellis, retained Cornerstone Research and Professor Paul Pfleiderer of Stanford University. Professor Pfleiderer testified that Iridium was solvent and adequately capitalized during the relevant time frame. He also showed that the failure of the plaintiffs' experts to account for contemporaneous market information led to severe hindsight biases in their assessment of Iridium's historical viability.

After a trial lasting several months, the court found that the plaintiffs had failed to meet their burden of proving Iridium's insolvency and unreasonably small capital at the times of the contested transactions. Relying significantly on Professor Pfleiderer's analysis, the court dismissed the plaintiffs' fraudulent conveyance and other bankruptcy claims, noting that Professor Pfleiderer was "an especially credible witness" of "great candor."



# EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA)

Cornerstone Research provides attorneys with analytical support in ERISA company stock drop and 401(k) fees/fiduciary cases. We have worked with leading business and academic experts on damages and liability issues. Many of these cases have been resolved favorably for our clients through trial, summary judgment, mediation, or settlement.



**PRECEDENT-SETTING DECISION** In *WorldCom, Inc., ERISA Litigation*, a precedent-setting decision regarding the role of a directed trustee, our client, **Merrill Lynch Trust Company, FSB** (Merrill Lynch), won summary judgment. Gibson, Dunn & Crutcher retained Cornerstone Research and Professor John Peavy of Texas Christian University, who testified regarding the viability of WorldCom prior to its bankruptcy filing in July 2002. The court ruled in favor of Merrill Lynch, concluding that “[t]he publicly available information regarding WorldCom did not create at any time before June 25, 2002, a reliable picture of serious concerns regarding the short-term viability of WorldCom.” The court’s opinion was the first to adopt the guidance provided by a Department of Labor December 2004 Field Assistance Bulletin that a directed trustee has a fiduciary duty of inquiry “when it knows or should know of reliable public information that calls into serious questions the company’s short-term viability as a going concern.” This decision has been cited in several subsequent cases.

**TRIAL VICTORY** In *Brieger et al. v. Tellabs, Inc., et al.*, the second post-Enron ERISA company stock drop case to go to trial, Morgan, Lewis & Bockius, counsel for **Tellabs, Inc.**, retained Cornerstone Research and multiple experts, including Professor Laura Starks of the University of Texas at Austin. The plaintiffs contended that the defendants breached their fiduciary duty by allowing and holding investments in the Tellabs stock fund when investment in Tellabs’ stock was allegedly imprudent due to the company’s worsening financial situation. The plaintiffs also alleged that the defendants failed to disclose material information concerning the efficacy of and demand for Tellabs’ products.

Professor Starks filed a report and testified at trial regarding whether the defendants engaged in a proper process to evaluate the continued inclusion of the Tellabs stock fund as part of the company’s profit-sharing and savings plan, and she rebutted the arguments of the plaintiffs’ expert as “form over substance.” In her report and trial testimony, Professor Starks showed the strong financial position and solvency of Tellabs and concluded that Tellabs’ stock was a prudent investment for the plan.

Following a two-week bench trial, the court ruled in favor of the defendants. The court determined that the “plaintiffs have not established that defendants failed to exercise their discretion or were procedurally imprudent.” In his ruling the judge found the testimony of the plaintiffs’ expert to be unpersuasive and agreed with Professor Starks’s assessment that the plaintiffs’ expert “elevated form over substance.” Further, he found that there was no threat that Tellabs faced bankruptcy due to its “strong cash position, positive cash flow, and low amounts of debt.” The judge also ruled that the defendants did not make any material misrepresentations to the plaintiffs, nor did they withhold material information from the plaintiffs.

## CORNERSTONE RESEARCH ERISA DATABASES

Cornerstone Research maintains an extensive database of ERISA company stock drop cases, allowing us to provide relevant historical data on cases and settlements to our clients. Using a broad range of data sources, we have collected detailed information, including docket information, size and composition of the retirement plans involved, company stock price performance, and case status.

# FINANCIAL INSTITUTIONS

Cornerstone Research has been retained in many complex matters involving financial institutions, including a number of cases relating to subprime mortgages and derivatives. Our expertise in securities analysis, valuation, risk management, financial services regulation, real estate markets, and industry economics makes Cornerstone Research particularly qualified to address issues related to banks, savings and loans, insurers, securities firms, and other financial institutions. Our experience with financial institutions includes many of the largest litigation matters and regulatory proceedings to date.

## Our areas of expertise include:

- Banks, Securities Firms, Insurance Companies, and Credit Card Companies
- Hedge Funds, Private Equity Firms, Mutual Funds, and Structured Investment Vehicles
- Auction Rate Securities and Municipal Issuances
- Subprime Mortgages, Mortgage-Backed Securities, Collateralized Debt Obligations, Leveraged Loans, and Credit Default Swaps
- ERISA/Institutional Investing
- Corporate Bankruptcy and Financial Institution Failure/Bankruptcy

**PEARCE ET AL. v. UBS PAINEWEBBER, INC., ET AL.** 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.

Wilmer Cutler Pickering Hale and Dorr retained Dr. Allan Kleidon, a senior vice president of Cornerstone Research, to analyze trade data on NASDAQ stocks purchased and sold by the lead plaintiff and other PaineWebber customers. Dr. Kleidon 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.

**ANGLO AMERICAN SECURITY FUND ET AL. v. S.R. GLOBAL INTERNATIONAL FUND ET AL.** In a case arising from losses incurred by hedge fund investors, counsel for **Ernst & Young** retained Cornerstone Research. The plaintiffs claimed that the hedge fund’s annual financial statements, audited by Ernst & Young, failed to disclose the general partner’s withdrawal of its incentive compensation fee. The plaintiffs further alleged that had they been aware of such information, they would have withdrawn their assets from the fund in time to avoid losses incurred by the fund the following year.

Cornerstone Research worked with Professor René Stulz of The Ohio State University, who served as a testifying expert in the case. He found that the alleged omission was not material to the plaintiffs. Through an analysis of the fund’s financial statements and the timing of the plaintiffs’ receipt of them, Professor Stulz showed that the plaintiffs suffered no damages. After expert discovery was completed, the court granted the defendants’ motion for summary judgment on all counts.



## FINANCIAL INSTITUTIONS

**BENNING ET AL. v. WIT CAPITAL GROUP, INC., ET AL.** A proposed class claimed that it was incorrectly denied IPO allocations by **Wit Capital Group**. Defense counsel, Morgan, Lewis & Bockius, retained Dr. Allan Kleidon, a senior vice president of Cornerstone Research, to provide economic analysis of the putative class for class certification purposes.

Research by Dr. Kleidon showed that there was no evidence that all putative class members had suffered an economic loss from the defendants' allegedly improper failure to allocate IPO shares to the 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."

**BAKER v. AMERICAN CENTURY INVESTMENT MANAGEMENT** Milbank, Tweed, Hadley & McCloy, counsel for **American Century**, retained Cornerstone Research in an action alleging that the investment management company had charged excessive fees to its mutual fund customers. Cornerstone Research worked with Christine Hammer, a cost accounting expert and senior advisor with Cornerstone Research, and an industry expert who discussed the differences between retail and institutional markets.

Ms. Hammer reviewed American Century's cost accounting system and the reasonableness of the company's profitability. Just before the trial was to begin, the plaintiffs agreed to a dismissal with prejudice and without costs. The dismissal eliminated claims involving several hundred million dollars in annual fees associated with more than \$30 billion in managed assets.

**JAMES N. BENEDICT**  
**MILBANK, TWEED, HADLEY & MCCLOY**

I COUNT ON CORNERSTONE RESEARCH AND ITS AFFILIATED EXPERTS FOR ADVICE AND CUTTING-EDGE ANALYSIS, ESPECIALLY IN MATTERS LIKE *AMERICAN CENTURY*, WHERE WE ARE SETTING THE CONCEPTUAL STANDARD FOR CASES THAT FOLLOW.

## FINANCIAL INSTITUTIONS

**EQUITEC ROLLUP LITIGATION** 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. Weil, Gotshal & Manges and Latham & Watkins, counsel for the master limited partnership offering's sponsor, 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 who testified 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 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.

**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 assisted four experts with their analyses of alleged damages and their assessments of the economic and regulatory environments. We worked with two experts to analyze damages and to evaluate the plaintiffs' damages calculations; a real estate expert to assess the thrift's real estate portfolio; and an economist to evaluate industry and regulatory conditions.

**SUBPRIME MORTGAGE LITIGATION** Building on decades of experience assessing financial and economic issues that arise in litigation involving mortgage lenders and financial institutions, Cornerstone Research staff and experts have worked on a number of matters involving subprime mortgages. Our firm's partnership with leading academic and industry experts provide us with the basis to address issues in finance, real estate economics, and accounting that arise in subprime matters.

## HEDGE FUNDS

Cornerstone Research staff and experts have worked on a number of matters involving disputes over both the performance and failures of hedge funds. In these matters we have addressed such issues as investment strategy, risk management, and valuation.

# DERIVATIVE SECURITIES

Cornerstone Research staff and experts consult and provide expert testimony in cases involving complex derivatives and other contingent claims. Our staff combines knowledge of option-pricing theory and application with expertise in implementing state-of-the-art valuation methods to effectively deliver analysis in a range of derivatives litigation.

## Our experience with analytical issues in derivatives litigation includes:

- Building valuation and damages models for a variety of complex derivative contracts, including CDOs, employee stock options, warrants, and many types of exotic options.
- Developing valuation models based on contingent claims theory for convertible equity, high-yield bonds, and warrants.
- Developing options-based valuation models for firms that have a large number of “real” options for which the standard discounted cash flow approach is not appropriate.
- Evaluating the structure and performance of complex hedging strategies used by a variety of firms, including hedge funds and other financial institutions.

**COMPLEX DERIVATIVE CONTRACTS** Clifford Chance, defense counsel for **Rice Financial Products Company**, retained Cornerstone Research and Professor René M. Stulz of The Ohio State University in *West Basin Municipal Water District v. P.G. Corbin and Company et al.*, a case arising from a series of complex derivative contracts. The plaintiff, West Basin Municipal Water District, had entered into leveraged municipal interest rate swap contracts with Rice Financial Products. The swap contracts were based on the Bond Market Association Municipal Swap Index and LIBOR rates, and contained leverage and spread features that complicated their structure. West Basin alleged that it did not receive fair market pricing on the swaps.

Working with Professor Stulz, we analyzed the components and risks of the swaps, including liquidity risk in the over-the-counter swap market in the immediate aftermath of the 9/11 terrorist attacks. We performed pricing analyses, investigated issues related to fiduciary duty, and assessed the work of an opposing expert witness. Professor Stulz testified that both parties were well aware of the structure of the swaps, but that the plaintiff had failed to consider factors related to liquidity, termination, and overnight risk. The case settled.

**RISK MANAGEMENT AND HEDGING** Milbank, Tweed, Hadley & McCloy, counsel for the defendants, retained Cornerstone Research in *Ashanti Goldfields Securities Litigation*, a securities class action involving securities issued by **Ashanti Goldfields** (now AngloGold Ashanti) to support testifying experts on the issues of market efficiency, liability, and damages. In light of the then-descending trend of gold spot prices, Ashanti, one of the largest gold mining companies in Africa, undertook a substantial hedging program using gold derivative transactions between 1995 and 1999.

Following the surprise late-September 1999 announcement by a group of European central banks that they would be restricting future gold sales, the gold spot price increased dramatically over the course of a few days. As a result, the mark-to-market value of Ashanti's hedgebook dropped. The plaintiffs alleged that Ashanti had "lost" more than \$800 million when the gold spot price spiked and that its stock price had been artificially inflated because of the defendants' failure to disclose the speculative nature of the derivative transactions.

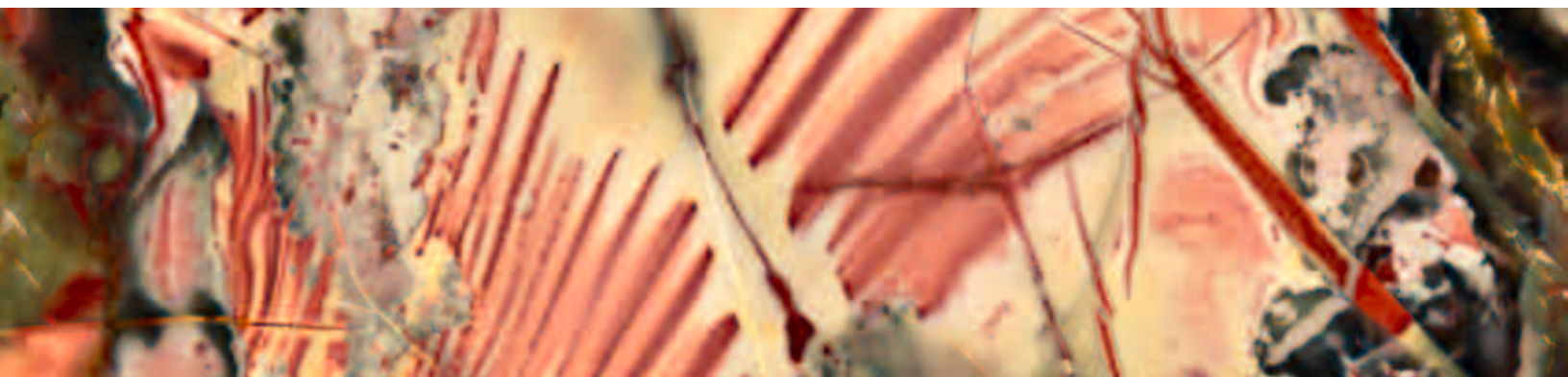
Working with Cornerstone Research, the defendants' experts designed and implemented various analytical and simulation analyses to value commodity derivatives and proved in their reports that Ashanti would not necessarily have been better off if it had employed a plain vanilla hedging program. The experts established the rationale for Ashanti's hedging program—it helped stabilize cash flows and avoid possible shutdowns. They also showed that the *ex ante* margin call probability was remote, and hence, any alleged stock price inflation would be immaterial. The case settled.

**FIRM CAPITAL STRUCTURE** Wilson Sonsini Goodrich & Rosati, counsel for the defense, retained Cornerstone Research and Professor Michael Gibbons of the Wharton School in *Alex Tse et al. v. Ventana Medical Systems, Inc., et al.*, a securities fraud lawsuit. The plaintiffs had invested in **BioTek Solutions**, which agreed to merge with Ventana Medical Systems. The plaintiffs alleged that Ventana had committed securities fraud by, among other things, failing to disclose information about a compensation package for two Ventana directors that included stock options in the soon-to-be-merged company, and misrepresenting that the conversion price offered to the BioTek investors on convertible notes was fair market value of the soon-to-be merged company's common stock. The plaintiffs claimed that this alleged fraud caused them to agree to merger terms that were less than favorable.

Professor Gibbons opined on both damages and the value of the securities that the BioTek investors were offered in the merger. The defendants won the case, with their motion for summary judgment being granted in full. The court found the plaintiffs' damages claim speculative and found no evidence that Ventana had misrepresented the conversion price to BioTek investors.

## BANKRUPTCY AND FINANCIAL DISTRESS

Cornerstone Research staff and experts have experience in many cases involving financial distress and bankruptcy. Our clients have included counsel for corporations and counsel for officers, directors, transaction counterparties, investment bankers, auditors, and other professional advisors of those corporations. Our experience spans a broad spectrum of issues related to bankruptcy and financial distress, including fraudulent conveyance and preferential transfer; valuation of distressed issuers and their securities; securities fraud; ERISA; shareholder, lender, and auditor liability and damages; and piercing the corporate veil.



**FRAUDULENT TRANSFER** In the *Bennett Funding Group Bankruptcy* cases, Simpson Thacher & Bartlett retained Cornerstone Research to work with Professor William Silber of New York University on behalf of the **Bennett** bankruptcy estate to assess the value of a warrant of a small publicly traded company that was sold by the Bennett Funding Group shortly before its bankruptcy. We used a modified binomial tree technique and the Monte Carlo simulation technique to accommodate the “forced exercise” features of the instrument.

At trial, Professor Silber presented convincing testimony that the sale price of the warrant had been inadequate and thus provided the key evidence that the transaction should be voided as a preferential transfer. In its ruling the court cited Professor Silber’s work and testimony as authoritative in the area of valuation.

**BOND DEFAULT LITIGATION** Cornerstone Research analyzed the relative value of several classes of high-yield bonds issued by an emerging market company that subsequently failed during the 1998 currency crisis. The bonds, which were issued simultaneously to fund a large industrial project, had different times to maturity and different priorities in the event of bankruptcy. The lack of adequate market comparables for each class of bonds required us to employ a contingent claims framework in which bonds of different priority are viewed as options on the company’s underlying assets. The model we developed allowed us to quantify the difference in the price of junior bonds relative to senior bonds while simultaneously matching the observed market value of equity.

**AUDITOR LIABILITY** Bartlit Beck Herman Palenchar & Scott, counsel for **Ernst & Young**, retained Cornerstone Research and Professor Christopher James of the University of Florida in *Metropolitan Creditors’ Trust et al. v. Ernst & Young*, an accountant’s malpractice claim brought by the bankrupt estate of Metropolitan Mortgage & Securities Co. (Metropolitan), a \$2 billion investment, real estate, and insurance conglomerate that collapsed in 2004 after suffering liquidity problems and a fraud by its senior management. After a four-week trial, an arbitration panel consisting of three former federal judges found in favor of Ernst & Young. This is the second successful defense of Ernst & Young in claims stemming from the Metropolitan bankruptcy.

**BANK HOLDING COMPANY BANKRUPTCY** Davis Polk & Wardwell, counsel for the defense, retained Cornerstone Research in a claim brought by the trustee of a bankrupt bank holding company. The trustee claimed that the holding company had been insolvent at the time of a debt offering, and thus, the ensuing transfer of proceeds from the offering to subsidiary banks had been inappropriate. Cornerstone Research helped prepare expert testimony establishing that the holding company had been solvent at the time of the transaction and found that the subsequent deterioration in the condition of the holding company and its subsidiaries arose from unfavorable regulatory and economic developments after the debt offering. At trial, we assisted in preparing expert testimony presenting those findings and helped counsel prepare to cross-examine many of the trustee’s experts. The case settled during the trial.

## CORNERSTONE RESEARCH SELECTED SECURITIES EXPERTS

Alexander "Sasha" Aganin  
Cornerstone Research

Reena Aggarwal  
Georgetown University

Edward I. Altman  
New York University

William H. Beaver  
Stanford University

Geert Bekaert  
Columbia University

Jennifer E. Bethel  
Babson College

Colin C. Blyden  
Dartmouth College

Michael Bradley  
Duke University

David A. Chapman  
Boston College

John C. Coates  
Harvard University

Jennifer S. Conrad  
University of North Carolina,  
Chapel Hill

Larry Y. Dann  
University of Oregon

Kenneth M. Eades  
University of Virginia

Daniel M. Garrett  
Cornerstone Research

Michael R. Gibbons  
University of Pennsylvania

Ronald J. Gilson  
Columbia University

Paul A. Gompers  
Harvard University

John Gould  
Cornerstone Research

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