

Financial Institutions Capabilities

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For more than fifteen years clients have retained Cornerstone Research in complex matters involving financial institutions. Our clients have included counsel for financial institutions as well as for officers, directors, auditors, and other professional advisors of those institutions. We have substantial experience addressing issues related to banks, savings and loans, insurers, mutual funds, private equity firms, securities firms, and other types of financial institutions.

Cornerstone Research staff draw on expertise in financial industry economics and regulation, asset valuation, securities analysis, accounting, and real estate markets. We have developed specialized databases containing comprehensive financial information, regulatory and legal documents, stock price information, as well as merger and failure data on financial institutions. We also maintain databases on financial institution-related macroeconomic and real estate data.

We provide our clients with a unique “partnership” of our consulting staff and renowned faculty and industry experts. The faculty are drawn from leading business schools, law schools, and economics departments. Industry experts have long-standing experience as managers, directors, and regulators of financial institutions.

Cornerstone Research staff have advanced degrees in finance, accounting, economics, and business, as well as experience with the litigation process and its demands for timeliness, accuracy, and reliability. Our firm maintains state-of-the-art information and computer resources, including the most current statistics, graphics, and database software.

The following pages provide brief descriptions of a few of our several hundred financial institutions case assignments. As these summaries show, we are prepared to support multiple experts and provide formal written reports, demonstrative exhibits, and authoritative testimony.



Auditor Liability

NationsBank, et al. v. KPMG Peat Marwick Retained by KPMG

Cornerstone Research and Professor Christopher James of the University of Florida were retained to assist KPMG in a dispute with a syndicate of banks over a secured line of credit for Model Imperial, a discount perfume retailer. The line of credit was secured by Model Imperial's accounts receivables and perfume inventory. After Model Imperial filed for Chapter 11 bankruptcy protection, the banks claimed they had based their credit decisions on Model Imperial's financial statements and therefore KPMG, as Model Imperial's auditor, was responsible for their losses. We were able to demonstrate that the banks' professed reliance on the audited financial statements was inconsistent with the typical practice of secured lenders. Moreover, our analysis of the banks' collateral examinations demonstrated that they had ignored warnings of Model Imperial's financial difficulties that would have allowed the banks to mitigate their losses.

David Wagner, KPMG Associate General Counsel, credited Professor James's testimony as key to his firm's success at trial. He noted that plaintiffs' counsel "went out of his way in his closing argument to try (plainly without success) to undermine your testimony—always a telling indication of the damage you inflicted on his clients' claims."

Antitrust

Leary, et al. v. Wells Fargo, et al. Retained by Heller Ehrman White & McAuliffe and by O'Melveny & Myers

Cornerstone Research evaluated plaintiffs' claims of price fixing in the bank credit card industry. We examined market definition issues as well as the economics of the pricing of credit card services. Our findings helped to demonstrate that the defendants' pricing practices were inconsistent with the plaintiffs' allegations.

Financial Derivatives

In a dispute between a bank and a former corporate client, counsel for the bank retained Cornerstone Research in a matter involving over-the-counter derivatives transactions. In preparation for trial we worked with three financial economics experts: Professors William Sharpe of Stanford University; Mark Rubinstein of the University of California, Berkeley; and René Stulz of Ohio State University. With Professor Sharpe we developed an overview of derivatives and how corporations use them in managing risk; with Professor Rubinstein we developed models to determine the prices of certain derivatives; and with Professor Stulz we examined risk management activities undertaken by the plaintiff and assessed various pricing models for the derivatives in question. In a series of pre-trial rulings, the court dismissed most of the plaintiff's claims. The case settled shortly thereafter.

Lender Liability

In a lender liability case involving a large European bank and its merchant banking subsidiary, we assisted the banks' counsel. With Professor Anthony Santomero of the Wharton School, we analyzed the value over time of two failed leveraged buyouts financed by the bank and evaluated the information provided to bank executives. Based on this analysis, we showed that the decisions made by the bankers were consistent with industry standards for managing loan pricing, lending portfolios, and balance sheet risk.

In addition to analyzing case issues, our staff provided support during all phases of the litigation, including document discovery, expert selection, deposition of opposing witnesses, and preparation of affidavits of experts' findings. We worked with counsel to prepare for direct examination and cross-examination of fact and expert witnesses. Our staff created trial exhibits and provided research in support of closing arguments and post-trial and appellate briefs.

Supervisory Goodwill/ Breach of Contract

Glendale Federal Bank, FSB v. The United States

**Retained by Kirkpatrick & Lockhart
and by Sidley & Austin**

Glendale Federal Bank sought recovery for damages because certain accounting practices previously guaranteed by the government were later disallowed by the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA).

Cornerstone Research initially identified and supported rebuttal experts. Our role later expanded to include supporting the direct experts as they developed their damage theories, providing analyses and exhibits for both fact and expert witnesses, and helping attorneys prepare their cross-examination and rebuttal of government experts. After a fourteen-month trial and two appeals, the Federal Circuit affirmed a judgment of \$381 million to Glendale. Ron Stevens of Kirkpatrick & Lockhart, the lead counsel for Glendale, stated, "Cornerstone Research was terrifically helpful and extremely responsive in a trial with very demanding deadlines."

Securities Fraud

ACC/Lincoln Savings Securities Litigation

**Retained by Heller Ehrman White
& McAuliffe**

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 damage claims.

Cornerstone Research staff assisted four experts with their analysis of alleged damages and their assessment of the economic and regulatory environments. We worked with Professor Mark Wolfson of Stanford University and with Professor Roman Weil of the University of Chicago to analyze damages and evaluate the plaintiffs' damage calculations; with real estate expert Elliott Pollack to assess the thrift's real estate portfolio; and with Dr. Dan Brumbaugh to evaluate industry and regulatory conditions. The case settled during trial.

Officer and Director Liability

Retained by Husch & Eppenberger

Defense counsel retained Cornerstone Research in a Resolution Trust Corporation (RTC) lawsuit against the former officers and directors of a savings and loan, in which the RTC claimed that defendants had imprudently conceived and directed the institution's diversification strategy.

We supported Dr. Dan Brumbaugh in evaluating the economic conditions facing the savings and loan at the time the diversification decisions were made and created a model that demonstrated that the savings and loan would have become insolvent at a much earlier time had it continued a traditional lending strategy. We also worked with Professor Robert Edelstein 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.

Auditor Negligence

First Columbia Financial Corp. v. Price Waterhouse

A holding company alleged that the negligence of the auditor of its savings and loan subsidiary resulted in an accounting misstatement and claimed damages related to activities it would not have pursued had it known the true financial condition of the subsidiary.

The audit firm retained Cornerstone Research, Professor John McConnell of Purdue University and Professor James Barth of Auburn University to evaluate the plaintiff's claims. Our research with Professor McConnell showed that the savings and loan's use of financial derivatives for purposes of risk management would have been generally suitable even if the thrift's financial results had been presented differently. Our work with Professor Barth showed that the parent would have had to provide a capital infusion, even under a restatement of the firm's financial results, given management's growth plans for the savings and loan and the changing economic and regulatory environments affecting thrifts.

Business Coverage Liability

A major property-casualty insurer and a large corporate client were engaged in a dispute over approximately \$100 million in settlement costs and legal fees incurred in nearly two dozen product liability suits brought by industrial customers against the corporate client.

Counsel for the insurer retained Cornerstone Research to assess the economics of the original product liability cases and of the corporate client's claim against the insurer. We developed critical reviews of opposing experts' findings, examined replacement costs associated with the product failures, and evaluated industry and financial factors affecting lost profits. We applied a variety of models to predict product failure and assessed the impact of product warranty terms on claimed damages. Counsel used our findings in depositions of opposing witnesses and in settlement negotiations.

Securities Fraud

**Vesta Insurance Group, Inc.
Securities Litigation
Retained by Hogan and Hartson**

Following its disclosure of accounting irregularities and other restatements to its historical financial statements, an insurance company's stock fell more than 46 percent. Shareholders sued the company and its auditors for securities fraud, claiming that the stock price was artificially inflated for the prior three years. Retained by defense counsel, we worked with Professor Kenneth Lehn of the University of Pittsburgh to determine how the company's stock price would have differed given its restated financial statements, to analyze the differential impact of the accounting irregularities, and to evaluate the damage analysis of the plaintiffs' expert. After experts from both sides submitted reports, the case settled.

Valuation

**Monona Wire Corporation v.
Code, Hennessey &
Simmons II, LP, et al.
Retained by Kirkland & Ellis**

A leveraged buyout fund sued a venture capital firm, claiming an operating company sold to the plaintiff had been valued inappropriately and alleging failure to disclose material information about the operating company. Retained by defense counsel, we worked with Professor Paul Gompers of the Harvard Business School to assess the custom and practice of due diligence in venture capital transactions, to consider the materiality of information in such transactions, and to examine the valuation analysis prepared by the plaintiff's expert. After both experts submitted reports and were deposed, the case settled.

*Breach of Fiduciary Duty***Jack Green, et al. v. Nuveen Advisory Corporation**
Retained by Jenner & Block

Nuveen Advisory Corporation served as advisor to six closed-end, leveraged, tax-exempt municipal bond funds. Certain plaintiff shareholders of these funds, on behalf of a class, charged Nuveen with breach of fiduciary duty, alleging a conflict of interest arising out of Nuveen's fee agreements because the agreements allegedly created an incentive to maintain leverage in the funds during periods when leverage resulted in larger net asset value declines.

Working with counsel for Nuveen, Cornerstone Research supported Professor Mark Grinblatt of UCLA's Anderson School. Professor Grinblatt was asked to review Nuveen's compensation arrangement and the funds' leverage decisions. Based on a review of relevant documents and thorough empirical analyses, Professor Grinblatt concluded that the funds' leverage decisions were consistent with the funds' investment objectives and were not driven by any alleged conflict of interest.

In granting Nuveen's Motion for Summary Judgment, U.S. District Judge Ronald A. Guzman wrote "[t]his Court holds that any conflict of interest between the interests of the funds and shareholders and Nuveen's interest arising out of the compensation agreement at issue is minimal at best and fails to establish a breach of the fiduciary duty imposed under Section 36(b) of the ICA."

The U.S. Court of Appeals for the Seventh Circuit affirmed the decision of the district court.

Market Timing

Cornerstone Research has worked with a number of clients to investigate mutual fund and insurance product concerns such as market timing, management fees, and best execution. We have assisted mutual fund and insurance complexes in a wide range of roles relating to "market timing," including internal investigations, negotiations with the Securities and Exchange Commission and state attorneys general, and the distribution of settlement funds.

Working with finance experts such as Christopher James of the University of Florida, Allan Kleidon of Cornerstone Research and Stanford University, Kenneth Lehn of the University of Pittsburgh, and Erik Sirri of Babson College, we have developed approaches to identify frequent traders, stale price traders, and late traders that have allowed our clients to understand how the behaviors of short-term traders may have affected long-term investors.

High-Yield Debt

Cornerstone Research worked with Professor Edward Altman of New York University and Professor Christopher James of the University of Florida in addressing 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 insurance company's insufficient capital and to have contributed to the company's failure by purchasing highly illiquid assets 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 highly illiquid securities purchased by the bank to refute the plaintiff's claim that these securities were purchased from the insurance company at a fraction of their value. The case settled prior to trial.

Selected Experts

Edward I. Altman New York University	Jeremy I. Bulow Stanford University	William W. Holder University of Southern California	Alfred E. Osborne, Jr. University of California, Los Angeles
Orley C. Ashenfelter Princeton University	Charles Calomiris Columbia University	Robert W. Holthausen University of Pennsylvania	Paul C. Pfleiderer Stanford University
Arnold I. Barnett Massachusetts Institute of Technology	Patricia M. Danzon University of Pennsylvania	Robert E. Hoyt University of Georgia	Mark Rubinstein University of California, Berkeley
Robert J. Barro Harvard University	George Davis Consultant on Management of Commercial and Investment Banks	Christopher M. James University of Florida	William F. Sharpe Stanford University
James R. Barth Auburn University	Robert H. Edelstein University of California, Berkeley	Michael C. Keeley Cornerstone Research	A. Sami Siddiqui Consultant on Consumer Credit and Credit Cards
William H. Beaver Stanford University	Richard W. George Consultant on Banking Issues	Michael Klausner Stanford University	William L. Silber New York University
Dennis R. Beresford University of Georgia	Michael R. Gibbons University of Pennsylvania	Allan W. Kleidon Cornerstone Research; Stanford University	Erik R. Sirri Babson College
Colin C. Blaydon Dartmouth College	Stuart C. Gilson Harvard University	Kenneth M. Lehn University of Pittsburgh	René M. Stulz The Ohio State University
Michael Bradley Duke University	Paul A. Gompers Harvard University	Timothy S. Lucas Consultant on Financial Reporting	Sheridan Titman University of Texas, Austin
R. Dan Brumbaugh Milken Institute	Steven R. Grenadier Stanford University	John J. McConnell Purdue University	Roman L. Weil University of Chicago
Gary W. Brummett Consultant on Financial Institutions	Mark S. Grinblatt University of California, Los Angeles	John G. McDonald Stanford University	Kent L. Womack Dartmouth College

Selected Client Law Firms

Akin Gump Strauss Hauer & Feld	Drinker Biddle & Reath	Latham & Watkins	Robins, Kaplan, Miller & Ciresi
Alston & Bird	Farella Braun + Martel	LeBoeuf, Lamb, Greene & MacRae	Schulte Roth & Zabel
Arnold & Porter	Fenwick & West	Mayer, Brown, Rowe & Maw	Shartsis, Friese & Ginsburg
Axinn, Veltrop & Harkrider	Finnegan, Henderson, Farabow, Garrett & Dunner	McDermott Will & Emery	Shearman & Sterling
Baker Botts	Folger Levin & Kahn	McKenna Long & Aldridge	Sidley Austin Brown & Wood
Baker & Hostetler	Fried, Frank, Harris, Shriver & Jacobson	Milbank, Tweed, Hadley & McCloy	Simpson Thacher & Bartlett
Baker & McKenzie	Fulbright & Jaworski	Mintz Levin Cohn Ferris Glovsky and Popeo	Skadden, Arps, Slate, Meagher & Flom
Bartlit Beck Herman Palenchar & Scott	Gardner Carton & Douglas	Mitchell Silberberg & Knupp	Snell & Wilmer
Bingham McCutchen	Gibson, Dunn & Crutcher	Montgomery, McCracken, Walker & Rhoads	Sonnenschein Nath & Rosenthal
Boies, Schiller & Flexner	Harkins Cunningham	Morgan, Lewis & Bockius	Stinson Morrison Hecker
Cadwalader, Wickersham & Taft	Haynes and Boone	Morris, Nichols, Arsht & Tunnell	Stroock & Stroock & Lavan
Cahill Gordon & Reindel	Heller Ehrman White & McAuliffe	Morrison & Foerster	Sullivan & Cromwell
Chadbourne & Parke	Hogan & Hartson	Munger, Tolles & Olson	Testa, Hurwitz & Thibault
Choate, Hall & Stewart	Holland & Hart	O'Melveny & Myers	Thompson & Knight
Cleary Gottlieb Steen & Hamilton	Howrey Simon Arnold & White	Oppenheimer Wolff & Donnelly	Tydings & Rosenberg
Clifford Chance	Husch & Eppengerger	Orrick, Herrington & Sutcliffe	Vinson & Elkins
Cooley Godward	Irell & Manella	Patton Boggs	Vorys, Sater, Seymour and Pease
Coudert Brothers	Jenner & Block	Paul, Hastings, Janofsky & Walker	Wachtell, Lipton, Rosen & Katz
Covington & Burling	Jones Day	Paul, Weiss, Rifkind, Wharton & Garrison	Weil, Gotshal & Manges
Cravath, Swaine & Moore	Katten Muchin Zavis Rosenman	Pepper Hamilton	Whiteford, Taylor & Preston
Davis Polk & Wardwell	Kaye Scholer	Perkins Coie	Wiley Rein & Fielding
Debevoise & Plimpton	Kelley Drye & Warren	Pillsbury Winthrop	Williams & Connolly
Dechert	Kilpatrick Stockton	Powell, Goldstein, Frazer & Murphy	Willkie Farr & Gallagher
Dewey Ballantine	Kirkland & Ellis	Proskauer Rose	Wilmer Cutler Pickering Hale and Dorr
Dickstein Shapiro Morin & Oshinsky	Kirkpatrick & Lockhart Nicholson Graham	Reed Smith	Wilson Sonsini Goodrich & Rosati
DLA Piper Rudnick Gray Cary		Richards, Layton & Finger	Winston & Strawn

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