CONSUMER FRAUD AND PRODUCT LIABILITY

Capabilities
Consumer Fraud
Product Liability
Product Misrepresentation
Product Defects
False Advertising and Deception
Disclosure Practices
Privacy and Data Breach
False Claims Act

Industries
Automotive and Manufacturing
Beverage and Food
High Technology
Other Consumer Products
Pharmaceuticals and Healthcare
OVERVIEW

Cornerstone Research staff and experts have substantial experience in both class actions and individual actions involving allegations of consumer fraud, product liability, product misrepresentation, product defects, false advertising and deception, disclosure practices, privacy and data breach, and violations of the False Claims Act. We have worked on a range of such cases in a number of industries, including automobiles, high technology, pharmaceuticals and healthcare, financial institutions, manufacturing, consumer financial products, other consumer products, energy, and real estate.

Staff

The issues our clients typically encounter in consumer fraud and product liability matters require multidisciplinary expertise in economics, marketing, consumer behavior, finance, and statistics. Our staff is skilled at effectively utilizing these multiple specializations to analyze case issues. In addition, we have substantial experience in a variety of analytical methods to assess exposure, reliance, impact, and damages issues. These methods include regression analysis, survey and sampling design, conjoint analysis, and content analysis.

Experts

We have a global network of academic, industry, and in-house experts from which to draw. Our faculty experts, from the nation’s leading business schools, economics departments, marketing departments, and law schools, are at the forefront of academic research and have experience in a wide range of industries. Many have previous regulatory experience at government agencies, such as the Department of Justice and the Federal Trade Commission. Our industry experts offer insights informed by the specific conditions and practices in the industry at issue. And our in-house experts bring with them a deep knowledge of consumer fraud and product liability claims and analyses addressing such claims.

Analytical Expertise

Our multidisciplinary expertise includes:

Statistical and Econometric Analysis
- A specialized staff with expertise in advanced modeling and statistical techniques, including difference-in-differences, hedonic regression, and synthetic control methods, among others

Survey and Sampling Design
- Experience creating and critiquing surveys (including conjoint and contingent valuation surveys)
- Familiarity with efficient and reliable sampling techniques

Content Analysis
- Experience working with experts to develop and implement rigorous, state-of-the-art content analysis of marketing messages and other content involving large textual data such as public press spanning multiple years

Large Database Analysis
- Experience analyzing company and/or public databases
- A vast, practical knowledge of many large public datasets
- Experience working with large datasets containing millions of observations compiled from disparate sources in many different formats
MATTER TYPES

Class Actions

We address issues of class certification, exposure, reliance, impact, and damages. Key questions in consumer fraud and product liability class actions involve whether common evidence can be used to determine the factors that influenced consumer purchasing decisions and whether each member of the proposed class was injured by the challenged conduct.

Another key question is whether each proposed class member’s damages, if any, can be determined by common evidence and a common method. In several cases, we have designed, implemented, and rebutted surveys of market participants to determine consumer behavior, attitudes, and preferences. In other cases, we have analyzed company and public data about the factors driving consumers’ decisions.

Cases in this area often involve claims that the alleged false advertising or misrepresentation caused plaintiffs to purchase a product that was worth less than they paid, or that they would not have purchased but for the alleged misrepresentation. In other cases, plaintiffs allege diminished resale value of a durable good due to a product defect or other challenged conduct.

We bring a range of analytical approaches to these cases, including rigorous examination of demand and supply conditions, product price trends, and market and industry conditions. These approaches can be used to:

- assess whether a product is “defective” relative to benchmarks or whether the product’s features were misrepresented to consumers,
- assess marketplace response to news of potential defects, and
- estimate the value of a particular feature or manufacturer claim.

Class actions may also involve allegations of demand and price inflation that plaintiffs argue caused class-wide impact, even for consumers who were not exposed to or influenced by the challenged conduct. Class certification in these cases frequently turns on the particulars of the challenged conduct, the overall structure of the industry and the market, and the characteristics of individual transactions.

The overarching question is whether common evidence can be used to show that the challenged conduct shifted demand and, if so, caused the prices paid by all proposed class members to increase. Cornerstone Research staff and experts recognize the importance of evaluating these issues through empirical research within a framework of sound economic, marketing, financial, accounting, and statistical concepts.

Individual Actions

Cornerstone Research also has experience in individual actions involving alleged fraud and misrepresentation claims, which are often brought by a defendant’s competitors. These cases may require experts to:

- define the relevant market,
- quantify the effect of the challenged conduct on demand and prices for competing products, and
- estimate the damages suffered by competitors due to the defendant’s alleged fraud or misrepresentation.

In addition to lost sales and price erosion, some plaintiffs may seek reputational or punitive damages. We have substantial experience analyzing these specific types of claims, applying our expertise in economics, marketing, finance, econometrics, and accounting.
Multiple Cases of Alleged Defects in Automobiles

Counsel for an automobile manufacturer retained Cornerstone Research and several experts to address plaintiffs’ claims in two national class actions.

In two national class actions against a large automobile manufacturer, plaintiffs alleged that many of the vehicles contained a safety defect and that the company misrepresented the safety and reliability of the vehicles in its marketing. The plaintiffs also claimed that consumers would have paid less if they had known about the alleged defect at the time of purchase, and that the subsequent disclosure diminished the vehicles’ value. In both cases, the plaintiffs sought to certify a class of all owners of affected vehicles.

The court did not certify the class in one case, and the other settled before the court ruled on class certification.

Counsel for the automobile manufacturer retained Cornerstone Research and several experts to address these claims. Cornerstone Research worked with Professor Edward Lazear of Stanford University to determine if a common method could be used to measure the economic impact and damages for all putative class members. Through an analysis of detailed automobile transaction data, Professor Lazear showed that there was wide variation in prices and trends over time, which undermined a common methodology to determine impact and damages across the proposed class.

Cornerstone Research worked with Professor John Lynch of the University of Colorado at Boulder and Professor Kevin Lane Keller of Dartmouth College to analyze whether the alleged misrepresentation affected the purchasing behavior of all putative class members. Based on an analysis of the company’s marketing communications and vehicle purchaser information, Professors Lynch and Keller demonstrated that purchasing behavior differed significantly across consumers. In addition, many consumers did not rely on the manufacturer’s communications in their purchase decisions. Professors Lynch and Keller opined that, because of these differences, the impact was not uniform across putative class members.

Cornerstone Research worked with Professor Kimberly Neuendorf of Cleveland State University to analyze the volume and content of news coverage related to the alleged defect. Professor Neuendorf concluded that it was a major news story, and that consumers’ understanding of the defect varied substantially because the media reported the story in a wide range of contexts.

The court did not certify the class in one case, and the other settled before the court ruled on class certification.
In re Whirlpool Corp. Front-Loading Washer Products Liability Litigation

In a closely watched case, an Ohio federal jury rejected the plaintiffs’ allegations.

A federal jury in a bellwether product-defect class action rejected the plaintiffs’ allegations that some front-loading washers manufactured by Whirlpool Corporation from 2001 to 2009 suffered from a design defect. The jury found that the washers were not negligently designed, and that Whirlpool did not breach any implied warranty.

Wheeler Trigg O’Donnell retained Professor Timothy Bresnahan and Cornerstone Research on behalf of Whirlpool to address damages issues in the case. Other law firms for the defense included Nelson Mullins Riley & Scarborough and Bartlit Beck Herman Palenchar & Scott.

Professor Bresnahan testified at trial and in two depositions, and submitted two expert reports. He opined that the plaintiffs’ theory of damages had no link to the alleged washer design defect (indeed, the plaintiffs claimed all buyers were entitled to damages regardless of whether the alleged defect ever manifested itself), that the plaintiffs’ nondisclosure claims were demonstrably false, and that real-world evidence contradicted the plaintiffs’ survey-based conclusion as to consumers’ reduced willingness to pay.

The case was closely watched due to its potential influence on the framework for class certification following Wal-Mart Stores Inc. v. Dukes and Comcast Corp. v. Behrend. The Whirlpool case went to trial after the U.S. Supreme Court vacated the circuit court’s class certification opinion in light of Comcast, only to have the circuit court reinstate its earlier ruling on remand.

A jury in the U.S. District Court for the Northern District of Ohio found Whirlpool not liable both for the alleged defect in design and for purportedly breaching its implied warranty.
Effectiveness of Fiber-Reinforced Composite Materials

Defense counsel retained a Cornerstone Research expert to identify factors that could affect the plaintiff’s sales, market share, and profitability.

A recreational vehicles manufacturer sued a large manufacturer of fiber-reinforced composite materials for producing allegedly defective materials. The plaintiff alleged that the defendant’s product caused the plaintiff to suffer damages including repair costs, lost sales and profits, and reputational damage.

The jury awarded no punitive damages and awarded only a small amount in compensatory damages.

Defense counsel retained George Strong, a managing director of Cornerstone Research, to identify factors that could affect the plaintiff’s sales, market share, and profitability and to assess the damages analysis of the plaintiff’s expert. Mr. Strong’s analysis showed that the plaintiff’s expert had failed to account for the plaintiff’s weak historical financial performance, a slowing economy, and the small number of RVs shipped to dealers and customers.

In addition, Mr. Strong showed that the stock market’s lack of reaction to the announcement of the allegedly defective product was inconsistent with the magnitude of the damages estimated by the plaintiff’s expert. The jury awarded no punitive damages and awarded only a small amount in compensatory damages, substantially less than the damages estimate of the plaintiff’s expert.
“All Natural” Product Labeling Class Action

A packaged foods company retained Cornerstone Research and a marketing expert to determine if the “100% Natural” label impacted consumers’ purchasing behavior. A packaged foods company retained Cornerstone Research and Professor Dominique Hanssens of the University of California, Los Angeles, in a product labeling class action. The case centered on whether the “100% Natural” label on one of the company’s products impacted consumers’ purchasing behavior or understanding of the label’s association with genetically modified organisms (GMOs).

The consumer survey results showed no significant differences between the two groups.

To assess these questions, Professor Hanssens conducted an online consumer survey using test and control groups. Both groups were shown images of the product and were asked how likely they were to purchase it and what factors influenced their decision. All references to “100% Natural” were removed from the control group’s images.

The survey results showed no significant differences between the two groups, demonstrating the label had no discernable impact on stated purchase intent. Instead, consumers cited purchase factors such as brand, taste, and quality, with very few mentions of the “100% Natural” label.

Professor Hanssens also surveyed consumers’ understanding of the association between the “100% Natural” label and the presence of GMOs in the product. There were no significant differences between the two groups, indicating that the label was not a direct cause of such an association. In addition, few respondents thought “100% Natural” meant the product was free of GMOs.

Beverage Product Advertising

Counsel for a large consumer packaged goods manufacturer, retained Cornerstone Research and two marketing professors in a false advertising matter involving dairy products.

Counsel for a large consumer packaged goods manufacturer, retained Cornerstone Research and two marketing professors in a false advertising matter involving dairy products. The plaintiff filed a motion for a preliminary injunction to block another manufacturer’s advertising that compared their two competing products. In support of the motion, Professor Dominique Hanssens of the University of California, Los Angeles, prepared a declaration that documented the advertising’s potentially large negative impact. Professor Ronald Wilcox of the University of Virginia conducted two consumer surveys demonstrating that the advertising created the perception that the plaintiff’s product was unsafe, and had a negative impact on consumer purchase intent.

The court granted our client’s motion for a preliminary injunction.
Class Action Involving Food Product Labeling

A food manufacturer retained Cornerstone Research and a marketing professor to design and implement a nationwide survey to assess consumers’ purchasing behavior.

A food manufacturer retained Cornerstone Research and Professor Dominique Hanssens of the University of California, Los Angeles, to address class certification issues related to consumer behavior. The plaintiffs alleged that the manufacturer mislabeled the amount of food in the packaging.

Professor Hanssens opined that the wide variety of factors influencing consumer purchases undermined the plaintiffs’ assumption.

Professor Hanssens designed and implemented a nationwide online survey to assess the behavior, recollection, and satisfaction of the manufacturer’s customers. His analysis of the survey results showed that a variety of factors influenced purchases, many customers could not recall their purchases, and the majority of customers were satisfied with their purchases.

Professor Hanssens submitted an expert report and testified in deposition. He opined that the wide variety of factors influencing consumer purchases of the product undermined the plaintiffs’ assumption that the alleged mislabeling was relevant to all or many putative class members.

Furthermore, since many survey respondents could not recall their purchases, Professor Hanssens questioned whether these customers could reliably identify themselves as proposed class members eligible for damages. Finally, he challenged the plaintiffs’ theory that consumers were harmed by the alleged mislabeling by citing consumers’ high product satisfaction.
Advertising of Software

Defense counsel retained Cornerstone Research and a marketing professor after a class was certified to assess the plaintiffs’ “price inflation” claims.

The plaintiffs in a class action alleged that a software company’s marketing campaign misled consumers into purchasing certain products. The plaintiffs also alleged that the challenged conduct improperly increased demand for these products and inflated prices.

The court decertified the class.

Defense counsel retained Cornerstone Research and Professor Lorin Hitt of the University of Pennsylvania, after a class had been certified to assess the plaintiffs’ “price inflation” claims.

Professor Hitt analyzed available market information, consumers’ product characteristic preferences, and the economics of manufacturing and retail industries. He demonstrated that a mix of information was available to consumers and that not all customers could have been misled.

He concluded that only a very small fraction of customers in the class could have been misled and induced to buy the products. Professor Hitt also showed that the plaintiffs’ experts had failed to demonstrate that the challenged conduct caused price inflation. The court decertified the class.
Benefits Offered by Early Versions of a High-Tech Product

In a nationwide class action, defense counsel retained Cornerstone Research and two economic experts to determine whether common evidence could address misrepresentation allegations.

In a nationwide class action involving a high-technology manufacturer, the plaintiffs alleged that the defendant misrepresented the benefits of early versions of a new product. The plaintiffs further alleged that the claimed misrepresentation resulted in a market-wide shift in demand, which increased prices for all class members.

Defense counsel retained Cornerstone Research and two experts: Professor A. Mitchell Polinsky of Stanford University and Professor Steven Shavell of Harvard University to determine whether common evidence could address the plaintiffs’ allegations, or if individual inquiry would be required.

The court denied the plaintiffs’ motion for class certification, finding that individual issues predominated.

Professors Polinsky and Shavell described how product performance in this industry is evaluated differently by each individual consumer depending on their usage. They showed that the relative performance of the product compared to the previous technology differed depending on each of these potential individual uses.

The experts also identified several flaws in the plaintiffs’ expert’s opinion that both the demand and the price of the product at issue would have been inflated even if only a subset of class members were allegedly misled. Their analysis showed that prices may actually have been lower for some class members, in particular for early adopters.

They concluded that individual inquiry would be necessary to determine whether:

- the challenged representations regarding product performance were in fact false for any individual purchasers
- any given proposed class member was misled by the alleged misrepresentations

Even assuming that some proposed class members were misled, Professors Polinsky and Shavell showed that individual inquiry would be needed to determine whether a given purchaser was affected.

The trial court denied the plaintiffs’ motion for class certification, finding that individual issues predominated.
In several class actions involving a computer hardware manufacturer, the plaintiffs alleged that the manufacturer had misrepresented one of the product’s features. Cornerstone Research was retained to analyze class certification issues.

Motions to certify a national class, as well as several state-level classes, were all denied.

Cornerstone Research worked with a marketing professor to design a survey to analyze the factors important to consumers in their purchase decisions and the sources of information used by consumers when purchasing the product. The survey and related analysis showed that impact could not be demonstrated on a class-wide basis.

Cornerstone Research also worked with a marketing professor to analyze relevant market conditions and market research on consumer choice. This analysis confirmed that common evidence could not be used to determine whether the challenged conduct harmed class members.

Motions to certify a national class, as well as several state-level classes, were all denied.
Energy Labeling of a Household Appliance

In a nationwide class action against a leading household appliance manufacturer, the plaintiffs alleged that one of the defendant’s models was labeled with an ENERGY STAR logo even though it did not meet the required standards. The plaintiffs claimed that they had higher energy costs than advertised and paid a price premium for the logo.

In rebutting the damages analyses, Professor Hitt showed that the plaintiffs’ experts failed to account for individual differences. Defense counsel retained Cornerstone Research and Professor Lorin Hitt of the University of Pennsylvania, to evaluate whether the economic effect of the ENERGY STAR logo could be assessed through a common method across all class members. Specifically, he responded to the plaintiffs’ damages analyses and their survey on consumers’ willingness to pay for the logo.

In rebutting the damages analyses, Professor Hitt showed that the plaintiffs’ experts failed to account for individual differences in the meaning and understanding of the ENERGY STAR logo, such as preferences for a more energy efficient product or appliance usage. Therefore, individual inquiry would be necessary to assess damages, if any, of the alleged mislabeling.

Professor Hitt also pointed out several flaws in the design and execution of the opposing side’s survey that rendered inflated and unreliable results. The case settled.
Power Ratings of a Household Appliance Manufacturer’s Product

Defense counsel retained Cornerstone Research and an academic expert to evaluate the economic effect of the alleged misrepresentation and whether common impact could be assessed.

In a nationwide class action against a large manufacturer of household appliances, plaintiffs alleged that the manufacturer misrepresented its product’s power ratings. Plaintiffs sought damages for the full purchase price or for the amount consumers allegedly overpaid.

Professor Hitt demonstrated that the number of consumers who could have been potentially harmed, if any, was very small.

Defense counsel retained Cornerstone Research and Professor Lorin Hitt of the University of Pennsylvania, to evaluate the economic effect of the defendant’s alleged misrepresentation and whether common impact could be assessed across all proposed class members.

Professor Hitt opined that, contrary to the plaintiffs’ proposed damages theories, most class members were likely not harmed. He noted that the manufacturer’s power ratings had been standard for decades and comparable across manufacturers, allowing consumers to make reasonable inferences across competing products and against their own expectations. Moreover, consumers could consult other information sources about the product’s performance, many of which correlate highly with the power ratings.

Professor Hitt also presented evidence on the low rate of product returns, high customer satisfaction ratings, and substantial rate of repeat product purchases, demonstrating that the number of consumers who could have been potentially harmed, if any, was very small.

He further opined that the alleged misrepresentation’s impact could not be assessed without individual inquiry. Consumers consider a variety of product features and information sources when making their purchase decisions. Therefore, a common method could not be used to determine whether and to what extent a class member was harmed. The case settled.
Fine Jewelry Advertising Campaign

Plaintiff counsel retained Cornerstone Research and a marketing professor to analyze the short-term impact on the plaintiff’s and defendant’s profits and sales.

In a case between two fine jewelry retailers, the plaintiff alleged that the defendant made false representations about one of its products in an extensive print, television, and digital marketing campaign based on “independent laboratory testing.” The plaintiff also alleged that the unscientific testing method yielded inaccurate and unreliable results, making the advertisements false and misleading to consumers.

Professor Hanssens found that the defendant’s sales did increase as a direct result of the advertising campaign.

Advertising in a Product Launch Campaign

Plaintiff counsel retained a Cornerstone Research expert to analyze the impact of the alleged false statements and the impact of normal competitive entry.

In this alleged false advertising and unfair competition matter, the plaintiff alleged that the defendant included false and misleading statements in a product launch campaign.

The jury adopted Dr. Lynde’s analysis of damages in its entirety.

Plaintiff counsel retained Dr. Matthew Lynde, a vice president at Cornerstone Research, to provide damages testimony at trial.

Dr. Lynde provided detailed analyses of launch and advertising timing and differential market segment changes in order to distinguish between the impact of the false statements and the impact of normal competitive entry.

In finding for the plaintiff, the jury adopted Dr. Lynde’s analysis of damages in its entirety.
Customer Satisfaction and Effectiveness of Residential Building Products

In a class action suit, the plaintiffs alleged that the manufacturer’s windows were susceptible to certain types of leaks.

In a class action suit brought on behalf of California homeowners against a national window manufacturer, the plaintiffs alleged that the manufacturer’s windows were susceptible to certain types of leaks, which resulted in water damage to the windows and framing around the windows.

The court rejected the plaintiffs’ motion for class certification.

Counsel for the manufacturer retained Professor Peter Reiss, an economics professor at Stanford University, Professor John Hauser, a marketing professor at the MIT Sloan School of Management, 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.

Professor Hauser worked with Cornerstone Research to create a representative sample of homeowners and conducted an independent customer satisfaction survey. This survey showed 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.
Customer Satisfaction and Effectiveness of Weatherproofing Products

Cornerstone Research worked with a marketing and an economics expert to implement customer satisfaction surveys and analyze millions of customer service records.

In a nationwide class action against a leading manufacturer of weatherproofing products, the plaintiffs alleged that the manufacturer’s products were not effective in protecting against adverse weather conditions and that purchasers of these products were not satisfied with the performance of the products.

An analysis of the data showed that a majority of these purchasers were satisfied.

Defense counsel retained Cornerstone Research and Professor John Hauser, a marketing professor at the MIT Sloan School of Management, to design and implement multiple regional, national, and international customer satisfaction surveys to assess whether purchasers of these products were satisfied and how the experiences of these purchasers compared to the experiences of purchasers of competing products. An analysis of the data using discrete choice regression models showed that a majority of these purchasers were satisfied and that their experiences were comparable to experiences of purchasers of other similar products.

Working with Professor Peter Reiss, an economics professor at Stanford University, Cornerstone Research analyzed the manufacturer’s customer service database. This analysis of millions of records showed that the actual incidence of complaints regarding the effectiveness of the defendant’s products was small and, when customers were not satisfied with the products, their concerns were sufficiently resolved by the defendant. The case settled.
Home Improvement Product Manufacturer Advertising

In a nationwide class action, counsel for the manufacturer retained a Cornerstone Research expert to estimate potential damages.

In a nationwide class action against a leading manufacturer of a home improvement product, the plaintiffs alleged that the product did not perform as promised, deteriorated more quickly than advertised, and required removal or replacement with an alternative product. Counsel for the manufacturer retained Dr. Samid Hussain, a vice president of Cornerstone Research, to estimate the potential damages faced by the manufacturer.

Dr. Hussain analyzed product sales and complaints, as well as refunds and replacements to consumers who had complained. Using this data, he estimated the complaint rate and the rate at which the manufacturer had provided refunds or replacements products.

Dr. Hussain also estimated potential damages for several scenarios under which the putative class members could claim damages. These scenarios allowed the manufacturer to gauge the range of possible total damages and use them in settlement negotiations.
Discounting of Prices in Healthcare Products and Services

Cornerstone Research worked with a marketing professor to analyze whether the defendant’s everyday discounting of prices allegedly misled consumers.

In a class action against a large manufacturer and retailer of consumer healthcare products and services, the plaintiffs alleged that the defendant’s everyday discounting of prices misled consumers about the magnitude of the “true” discount that members of the proposed class received. In addition, the plaintiffs alleged that some members of the proposed class did not receive the full value of certain discounts that had been negotiated by insurance companies.

Professor Hanssens’s analysis showed that most proposed class members were unlikely to have been misled as the plaintiffs had alleged.

Cornerstone Research worked with Professor Dominique Hanssens, a marketing professor at the University of California, Los Angeles, to evaluate whether common evidence could be used to determine if the challenged conduct misled consumers.

Professor Hanssens’s analysis involved examining the different factors that influence consumers’ purchasing decisions and determining whether a common method could be used to evaluate whether the decisions were affected by an everyday discount.

Professor Hanssens analyzed the defendant’s range of promotions and marketing materials used to advertise these programs. He demonstrated that proposed class members were offered different discounts and would have been exposed to different information about these discounts. He also analyzed a wide array of public information on prices and showed the variety of pricing information available to different members of the proposed class.

This analysis showed that most proposed class members were unlikely to have been misled as the plaintiffs had alleged. Professor Hanssens also noted that the level of discount implied by the plaintiffs would result in below-cost pricing.
Class Certification Opposed on Behalf of Healthcare Provider

The judge denied the motion for class certification in its entirety in this case involving claims that a service provider reordered physician diagnosis codes.

A large provider of healthcare services retained Professor Laurence Baker of Stanford University and Cornerstone Research to respond to a motion to certify a class of patients. The plaintiffs alleged that a large healthcare provider reordered physician diagnosis codes when submitting claims for insurance payment, resulting in patient cost sharing for services that should have been provided at no cost to patients.

Professor Baker demonstrated that many putative class members would not have been harmed by the challenged conduct.

Professor Baker submitted a declaration for the defendant, showing that it was not possible to ascertain which patients were in the proposed class based on the definitions provided by the plaintiffs. He also demonstrated that, given the heterogeneity in insurers, plans, and the circumstances of putative class members, one could not determine using a common method whether a given class member was affected at all by the challenged conduct, let alone suffered damages.

Professor Baker showed that any determination of impact or damages would require an individualized analysis, patient-by-patient and service by service, of what the patient’s responsibility would have been under an alternative ordering of codes. Such an analysis could only be done by each specific insurer, since only that insurer would know whether the order of codes may have mattered for a particular patient, and what the impact of an alternative ordering would have been, if any.

Finally, Professor Baker showed that many putative class members would not have been harmed by the challenged conduct.
Efficacy and Safety of Pharmaceutical Products

Defense counsel retained Cornerstone Research to determine whether common evidence could show that the alleged conduct caused higher prices.

The plaintiffs in a class action against a large pharmaceutical company alleged that the company provided false and misleading information about the efficacy and safety of its products, resulting in all class members paying higher prices and consuming more products.

Dr. Keeley’s analysis determined that there could not be a class-wide impact and that many class members were not harmed.

The defendant retained Dr. Michael Keeley, a senior vice president of Cornerstone Research, to determine whether common evidence could be used to determine if the challenged conduct caused the price of any given product to be higher or if individual inquiry would be required.

Dr. Keeley’s empirical analysis of the pharmaceutical market showed that there could not be a class-wide impact. He also showed there could not be a presumption that any allegedly false and misleading information affected all prices. In addition, Dr. Keeley showed that many class members were not harmed. The case settled.
Selected Case Experience: Pharmaceuticals and Healthcare

Advertising Targeting a Medical Services Provider

Counsel for a large medical services provider retained Cornerstone Research and an accounting professor to analyze the economic impact of the challenged advertising campaigns.

A law firm ran advertisements that targeted a large medical provider’s quality of care and alleged overtreatment of pediatric patients. The provider filed a lawsuit claiming defamation, business disparagement, false advertisement, and injury to business reputation.

Professor Klein opined that the ad campaigns had a significant economic impact.

Counsel for the provider retained Cornerstone Research and Professor Gordon Klein of the University of California, Los Angeles, to analyze the economic impact of the challenged advertising.

In his report, Professor Klein opined that the ad campaigns had a significant economic impact, leading to substantial lost profits. The case settled.

Vision Improvement Products Advertising

In a false advertising case, the defendant retained a Cornerstone Research expert to provide testimony on damages.

In a false advertising case, a manufacturer of vision improvement products brought suit against one of its competitors alleging that the defendant made false statements in advertising materials related to the launch of its new product. The defendant retained Dr. Matthew Lynde, a vice president of Cornerstone Research, to provide testimony on damages.

The jury rejected the plaintiff’s damages claim and returned a verdict consistent with Dr. Lynde’s estimates of lost profits.

Dr. Lynde identified several flaws in the opposing expert’s analysis of lost profits. He also showed that the plaintiff’s expert had failed to establish causation. Finally, Dr. Lynde examined reputational damages and found that these were not quantifiable in this matter.

The jury rejected the plaintiff’s damages claim, returned a verdict consistent with Dr. Lynde’s estimates of lost profits, and awarded no reputational damages.
In re Actiq Sales and Marketing Practices Litigation

Cornerstone Research worked with three experts to address class certification and damages issues.

Counsel for Cephalon Inc., a subsidiary of Teva Pharmaceutical Industries Ltd., retained Cornerstone Research to analyze class certification and damages issues relating to the alleged off-label marketing of Actiq, a painkiller approved for the management of breakthrough cancer pain. A purported class of third-party payers (TPPs) claimed that Cephalon unjustly enriched itself by marketing Actiq for non-approved indications in order to increase prescription sales, and that they were damaged by the actions of the defendant.

The court denied certification of the proposed class.

Cornerstone Research worked with three experts to address class certification and damages issues: Professor W. David Bradford of the University of Georgia; Professor Pradeep K. Chintagunta of the University of Chicago Booth School of Business; and Ms. Christine M. Hammer, CPA, senior advisor at Cornerstone Research.

A key question in this case was whether issues common to all class members predominated over issues affecting individual TPPs. TPPs each made their own coverage decisions and set their own reimbursement policies for Actiq. Professor Bradford explained that TPPs had a number of methods by which they could and did influence and monitor the prescriptions for which they reimbursed in order to manage their costs for Actiq. He concluded that individualized inquiry would be required to establish that class members were harmed by Cephalon’s alleged actions.

Professor Chintagunta showed that physician prescribing behavior is influenced by a number of different factors and that there is diversity in how physicians respond to pharmaceutical marketing; consequently, because each TPP reimbursed for prescriptions prescribed by different physicians, individualized inquiry would be required to demonstrate the impact of the alleged off-label marketing.

Ms. Hammer analyzed the plaintiffs’ proposed damages model to estimate the alleged unjust enrichment.

Judge Petrese B. Tucker of the U.S. District Court for the Eastern District of Pennsylvania found that individual issues in this case predominated over common ones, and that individualized inquiry would be required to determine whether a particular prescription was unjust.

The court denied certification of the proposed class.
False Claims Act Suit Involving Title IV Programs

The plaintiffs argued that the defendants knowingly made false claims and statements in order to obtain Title IV program eligibility.

The United States, along with several states and the District of Columbia, filed a False Claims Act suit against a for-profit school system. The plaintiffs argued that the defendants knowingly made false claims and statements in order to obtain Title IV program eligibility.

Based on this analysis, Professor Lazear filed a declaration in support of summary judgment.

In particular, the plaintiffs alleged that the defendants violated Title IV’s ban on incentive compensation, and solely based recruiters’ salaries on the number of students they enrolled. The plaintiffs sought to recover treble damages based on billions of dollars of federal funds obtained by the defendants.

Defense counsel retained Cornerstone Research and Professor Edward Lazear of Stanford University to assess liability and damages issues. Professor Lazear used the defendants’ diverse data systems and records to construct a complex database of personnel, compensation, and student enrollment information.

To assess the validity of the plaintiffs’ claims, Professor Lazear performed descriptive, statistical, and regression analyses. His findings demonstrated that the number of student enrollments was not the only factor determining recruiter compensation. Based on this analysis, Professor Lazear filed a declaration in support of summary judgment.

Cornerstone Research also supported defense counsel during settlement negotiations by analyzing the defendant’s potential exposure and assessing possible damages and settlement scenarios. The case settled.
Selected Consumer Fraud and Product Liability Experts

Samid Hussain is the Head of Consumer Fraud and Product Liability Practice at Cornerstone Research.

Cornerstone Research has a global network of academic, industry, and in-house experts from which to draw. Our faculty experts, from the nation’s leading business schools, economics departments, marketing departments, and law schools, are at the forefront of academic research and have experience in a wide range of industries. Many have previous regulatory experience at government agencies.

Our industry experts offer insights informed by the specific conditions and practices in the industry at issue. And our in-house experts bring with them a deep knowledge of consumer fraud and product liability claims and analyses addressing such claims.

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