

TWENTY TWENTY

2020 ANNUAL REVIEW

CORNERSTONE RESEARCH

ABOUT CORNERSTONE RESEARCH

Cornerstone Research provides economic and financial consulting and expert testimony in all phases of complex litigation and regulatory proceedings. The firm works with an extensive network of prominent faculty and industry practitioners to identify the best-qualified expert for each assignment.

Cornerstone Research has earned a reputation for consistent high quality and effectiveness by delivering rigorous, state-of-the-art analysis for more than thirty years. The firm has over 700 staff and offices in Boston, Chicago, London, Los Angeles, New York, San Francisco, Silicon Valley, and Washington.

This Annual Review highlights a few of the matters we worked on last year. While this is only a brief summary of our work, these cases provide insight into issues that will continue to be important aspects of the litigation landscape in 2021 and beyond.



ECONOMIC CONSULTING

FEDERAL TRADE COMMISSION V. QUALCOMM

Qualcomm, an innovator in cellular technology, both licenses its patented technology and sells cellular modem chips that embody portions of its technology. In a suit filed in the Northern District of California in January 2017, the Federal Trade Commission alleged that Qualcomm's business practices relating to its licensing of patents and its selling of cellular modem chips were anticompetitive. Among other allegations, the FTC claimed that Qualcomm's royalty rates are unreasonably high and "impose an artificial and anticompetitive surcharge" on its chip market rivals' sales. A ten-day bench trial was held in January 2019.

Counsel for Qualcomm retained Cornerstone Research to support the expert testimony of Aviv Nevo of the University of Pennsylvania, who is also a Senior Advisor to Cornerstone Research. At trial, Professor Nevo addressed numerous issues, including a number of shortcomings in the FTC's surcharge theory. For example, Professor Nevo explained that any supposed "surcharge" would be chip neutral, meaning that the royalty was the same regardless of whether the original equipment manufacturer (OEM) used a Qualcomm chip or a competitor's chip. Consequently, it would not affect the OEM's decision of which chip to purchase. Professor Nevo also described a number of procompetitive justifications for Qualcomm's practices.

The district court ruled in favor of the FTC. Qualcomm appealed the decision to the Ninth Circuit. In a decision issued on August 11, 2020, a three-judge panel unanimously reversed the ruling, stating, "the district court's 'anticompetitive surcharge' theory fails to state a cogent theory of anticompetitive harm." The panel noted that Qualcomm's practices "do not impose an anticompetitive surcharge on rivals' modem chip sales. Instead, these aspects of Qualcomm's business model are 'chip-supplier neutral' and do not undermine competition in the relevant antitrust markets."

Counsel for Qualcomm also retained Professor Nevo for the cases *Apple v. Qualcomm* and *Qualcomm v. Korea Fair Trade Commission (KFTC)*. The former case settled in April 2019 just as trial began. For the latter case, Professor Nevo testified before the Seoul High Court in May 2019.

The Ninth Circuit also found that Qualcomm presented reasonable procompetitive justifications that were consistent with industry practices. The appellate court's rulings on both the logical flaws in the FTC's "surcharge theory" and the reasonableness of Qualcomm's procompetitive justifications closely follow Professor Nevo's testimony.

FEDERAL TRADE COMMISSION MATTERS

TRONOX HOLDINGS PLC.'S PROPOSED ACQUISITION OF TIZIR TITANIUM AND IRON

The Federal Trade Commission initiated an investigation into Tronox Holdings plc.'s proposed \$300 million acquisition of TiZir Titanium and Iron (TTI). U.S.-based Tronox is one of the largest producers of titanium dioxide pigment. TTI, with its smelting facility in Norway, is one of the few producers globally of chloride slag—a key input used to make titanium dioxide pigment. Tronox claimed that the acquisition would help them better fulfill their internal requirements of chloride slag and lower its costs.

The FTC retained Nathan Miller of Georgetown University and Cornerstone Research to assist with its investigation. Professor Miller analyzed the potential for vertical harm in the production of titanium dioxide pigment from the foreclosure of a key input. This case was one of the first vertical merger investigations after the release of the Vertical Merger Guidelines in June 2020.

After the FTC staff had recommended to challenge the transaction, the parties abandoned the transaction. The FTC closed its investigation and concluded that the market for pigment "will not face this vertical threat to competition."

EDGEWELL PERSONAL CARE COMPANY AND HARRY'S INC.

The Federal Trade Commission filed a suit to enjoin Edgewell Personal Care Company's proposed \$1.37 billion acquisition of its competitor Harry's Inc. The FTC retained Cornerstone Research to support Nathan Miller of Georgetown University.

In February 2020, the FTC dismissed its lawsuit after the parties decided not to pursue the merger.

AVEANNA HEALTHCARE LLC AND MAXIM HEALTHCARE SERVICES

The Federal Trade Commission initiated an investigation into the proposed merger of Aveanna Healthcare LLC and Maxim Healthcare Services. The FTC sought to investigate the potential effects on the market for nursing services. The FTC retained Cornerstone Research to support experts Mark Duggan of Stanford University and Bob Majure of Cornerstone Research.

After the parties decided to abandon the transaction, the FTC closed its investigation.

ANDREW SWEETING REAFFILIATES WITH CORNERSTONE RESEARCH

In January 2021, Andrew Sweeting completed his tenure as director of the Bureau of Economics at the Federal Trade Commission.

While at the FTC, Professor Sweeting oversaw many merger investigations conducted by the agency, and was director when the 2020 Vertical Merger Guidelines were released. He was also involved in high-profile consumer protection investigations, including several related to digital platforms and data security.

He is a professor in the Department of Economics at the University of Maryland, College Park.

NEMET ET AL. V. VOLKSWAGEN GROUP OF AMERICA INC. ET AL.

Counsel for Volkswagen retained Cornerstone Research to support economics expert Lorin Hitt and a marketing expert in a proposed class action brought by buyers and lessees of "clean diesel" Volkswagen and Audi vehicles. Based on the testimony of Cornerstone Research experts, U.S. District Court Judge Charles R. Breyer concluded that plaintiffs failed to provide any evidence that the putative class members were economically damaged and excluded plaintiffs' analyses. The judge dismissed the case.

Plaintiffs had purchased or leased Volkswagen or Audi diesel vehicles that contained a defeat device causing excess NOx emissions, but had sold their vehicles or ended their leases before the disclosure of the emissions issue. Plaintiffs claimed that they had paid a premium for the vehicles at the time of acquisition, and did not fully recover this premium upon selling or ending their leases because the vehicles' value had depreciated.

In ruling that plaintiffs' evidence was unreliable and inadmissible, Judge Breyer also cited decisions in *MacDougall v. American Honda Motor Co.* and *In re General Motors LLC Ignition Switch Litigation*. In these cases, experts supported by Cornerstone Research successfully argued that conjoint analysis cannot be used to reliably estimate a market price premium because it does not adequately account for supply-side considerations.

Professor Lorin Hitt of the Wharton School of the University of Pennsylvania submitted a report rebutting several damages methods put forth by plaintiffs' experts. Professor Hitt testified that plaintiffs' damages methods did not attempt to measure the premium that solely stemmed from the vehicles' emissions. He also showed that plaintiffs' damages methods inappropriately assumed that the change in the value of the alleged premium could be measured by the vehicle's overall depreciation rate.

In his ruling, Judge Breyer reiterated the critical flaws in plaintiffs' analyses identified by Professor Hitt and found that plaintiffs' damages methods were unreliable and inadmissible. In his opinion, Judge Breyer stated that "[c]ar features and characteristics are likely to affect depreciation to different degrees" and that "low emissions might hold a relatively stable value over a vehicle's lifetime compared to features that naturally wear down." These conclusions are in line with the critiques Professor Hitt offered in his testimony.

The marketing expert submitted a report rebutting the conjoint survey and analysis put forth by plaintiffs as evidence of overpayment. He pointed out several critical flaws in plaintiffs' conjoint analysis. He testified that it could not be used to calculate the market price that consumers would have paid if they had been informed of the diesel emissions issue at the time of purchase or lease.

In dismissing the case, Judge Breyer ruled that plaintiffs' conjoint analysis was unreliable and inadmissible.

Other Recent Automobile Cases: Chrysler-Dodge-Jeep EcoDiesel Litigation • Johannesson et al. v. Polaris Industries Inc. • MacDougall v. American Honda Motor Co.

IN RE NIASPAN ANTITRUST LITIGATION

A U.S. district judge declined to certify a class of end-payor plaintiffs (EPPs) in this pay-for-delay case. Defense counsel for the brand manufacturer, AbbVie, and the generic manufacturer, Teva, retained Cornerstone Research to support James Hughes of Bates College.

A class of EPPs alleged that AbbVie compensated Teva to delay entering the market with a competing generic version of the brand name drug. The plaintiffs claimed this was an anticompetitive patent settlement agreement that caused consumers to pay inflated prices for the cholesterol drug, Niaspan.

Professor Hughes submitted an expert report in opposition to class certification. He rebutted the plaintiffs' expert and opined that EPPs do not provide common evidence of antitrust injury.

Professor Hughes also showed that individualized inquiry was necessary to determine whether any such injury occurred and the extent of injury. Many groups of consumers may have been uninjured, including brand-loyal consumers, those who benefited from copayment assistance programs or received free samples, and consumers whose copayments for brand and generic would have been the same.

A U.S. district judge for the Eastern District of Pennsylvania declined to certify the class of EPPs. His conclusion was based on the challenges of identifying class members, the lack of common evidence of antitrust injury, and variations in applicable state laws. In his ruling on the class, the judge stated "EPPs have not satisfied their burden of establishing ascertainability, predominance, or superiority by a preponderance of the evidence."

Professor Hughes's expert report is cited throughout the court's decision. The judge cited Professor Hughes's conclusion that, at best, plaintiffs' expert "could establish the average 'overcharge' per prescription paid by the class. But this average overcharge simply does not speak to whether any or all individual class members were injured."

U.S.–CANADA SOFTWOOD LUMBER DISPUTE

WORLD TRADE ORGANIZATION RULING (SEPTEMBER 2020)

The WTO issued a ruling in favor of our client, the Government of Canada, in a case arising out of the decades-long U.S.–Canada softwood lumber dispute. Counsel for the Canadian government retained Cornerstone Research to support John Asker of the University of California, Los Angeles, in his review of the benchmarks used to assess the impact, if any, of government ownership of timberlands on stumpage—the price of timber and the right to harvest it—in Canadian provinces.

Softwood lumber is used primarily for structural purposes in the building industry. The United States has maintained that Canadian softwood lumber is artificially cheap because government ownership of timberlands in Canada effectively subsidizes timber harvesting.

This recent WTO ruling concerns the propriety of a 2017 U.S. Department of Commerce (USDOC) finding that Canada subsidized its softwood lumber industry. As a result of this ruling, the United States had imposed a 20 percent tariff on imports of Canadian softwood lumber. The WTO ruling identified a number of improprieties in the methodology used by USDOC.

Specifically, one of the WTO findings was that the United States used inappropriate benchmarks in determining that stumpage prices across Canada were artificially low. Most notably, the United States compared stumpage pricing in the maritime province Nova Scotia (where wood is harvested from private, not public lands) to stumpage in several other inland provinces.

Professor Asker submitted a report on behalf of the Canadian government describing the various demand- and supply-side factors that would make Nova Scotia stumpage and U.S. stumpage prices inappropriate benchmarks for other Canadian provinces.

The WTO's ruling cites Professor Asker's report throughout its discussion of these differing dynamics, including transportation costs, the presence of a market for by-products, and harvesting factors.

The WTO agreed with Professor Asker's assessment, stating “the evidence suggests that the local nature of stumpage renders inter-regional comparisons of timber prices too complex to be meaningful . . . because timber prices are a function of many dynamics.”

U.S.–CANADA SOFTWOOD LUMBER DISPUTE

USITC INVESTIGATION AND NAFTA RULING (SEPTEMBER 2020)

A NAFTA panel issued a favorable ruling for our clients, the Government of Canada and British Columbia Trade Council, and remanded a decision by the USITC regarding tariffs imposed on lumber imports from Canada. Counsel for the Canadian government retained Kivanc Kirgiz and Emre Uyar of Cornerstone Research.

One of the main issues focused on “substitutability.” Because of the small overlap between the species of lumber in Canada and in the United States, their different characteristics, usage areas, and other economic factors, there is limited substitution between domestically produced lumber and lumber imported from Canada. Dr. Kirgiz and Dr. Uyar authored a declaration that presented qualitative and quantitative economic evidence on low substitutability, and Dr. Kirgiz testified in the USITC hearing.

In its decision, the NAFTA panel referenced the Kirgiz–Uyar declaration. The panel remanded the USITC’s determinations on various topics, including substitutability, directing the USITC to “reconsider its calculation of substitution elasticity” and to “demonstrate how, and to what extent, the limitations to substitutability . . . factored into the Commission’s analysis.”

ADVANCED ANALYTICS



ADVANCED ANALYTICS AND COMPUTER SCIENCE

ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING

Our staff and experts utilize AI and machine learning to automate complex tasks and develop analytic approaches to supplement traditional econometric and statistical methods.

TEXT ANALYTICS, CONTENT ANALYSIS, AND SENTIMENT ANALYSIS

To enhance the discovery process and support expert testimony, Cornerstone Research uses modern and defensible natural language processing methods. Our capabilities allow us to sift through vast quantities of text, delivering efficient and accurate retrieval of critical information.

WEB DATA AND SOCIAL MEDIA

Cornerstone Research is experienced in collecting and distilling large amounts of online information, including a deep familiarity with social media data sources and analyses. Our experience with machine learning and AI tools equips us to assess the relevancy and relative prominence of content and contributors.

STATISTICS, SIMULATIONS, AND OPTIMIZATION

Cornerstone Research regularly formulates and implements empirical analyses to respond to economic and financial issues. We frequently use real-world data with sophisticated statistical and econometric methods.

DATA VISUALIZATION AND GEOSPATIAL ANALYTICS

A critical part of expert testimony is the ability to discover and convey information and relationships visually. The increasing volume, variety, and velocity of data in recent years has only increased the importance of data visualization.

Cornerstone Research has extensive graphics and programmatic capabilities to automate the creation of thousands of exhibits, collect, and visualize data on an ongoing basis.

An industry leader in advanced tools, techniques, and infrastructure, Cornerstone Research provides clients with efficient and secure data science and engineering capabilities. We use advanced analytical techniques, artificial intelligence, and machine learning to meet the exacting challenges of big data.

ADVANCED ANALYTICS AND COMPUTER SCIENCE

COVID-19 MEMO DATABASE

Cornerstone Research is collaborating with the Rock Center for Corporate Governance at Stanford University to develop and maintain the COVID-19 Memo Database. The database provides searchable access to a collection of full-text memoranda related to legal, regulatory, accounting, and governance issues raised by the pandemic. These memoranda are prepared by the nation's leading law firms, audit firms, and other business advisors.

CASE STUDIES

- Conducted keyword searches, text parsing, and sentiment and uncertainty analysis to assess how COVID-19 was mentioned in various company filings.
- Leveraged existing sentiment models to efficiently generate large-scale, methodologically consistent sentiment scores associated with online reviews.
- Developed a custom optimization method for merger simulations, decreasing runtime by 80 percent with improved stability over standard methods.
- Applied machine learning approaches to healthcare risk adjustment models, which explained approximately twice as much variation in claims data as the status quo linear regression model.
- Addressed issues involving large healthcare claims data analytics, patient record linkage, and de-identification.

- Evaluated sampling analyses by opposing parties in False Claims Act litigation.
- Performed statistical assessments of "no poach" allegations in hiring agreements between tech firms.
- Provided statistical analysis of wages and promotion outcomes across individual employees and, on average, across different store locations in a labor discrimination class action.
- Employed advanced language models to effectively facilitate the reliable and scalable detection of public awareness of alleged material omissions prior to required disclosure.
- Deployed server infrastructure interfacing with various cryptocurrency networks to collect and analyze hundreds of gigabytes of real-time and historical ledger data. Ingested and analyzed a table with 300 billion rows of order book data.
- Developed case-specific neural network models to visually identify key documents within a massive document corpus, even when reliable OCR (optical character recognition) is unattainable or inapplicable.
- Completed regular SOC 2 Type I and Type II audits related to data security, availability, processing integrity, confidentiality, and privacy.

DIGITAL ECONOMY: TECHNOLOGY AND ARTIFICIAL INTELLIGENCE

Even prior to the COVID-19 pandemic, digital technology was transforming traditional business models, global value chains, and terms of the workplace. Numerous surveys show the pandemic accelerated these forces and triggered a tipping point for technology adoption.

The worldwide pandemic spurred technology's influence and adoption as it forced widespread restructuring of traditional practices throughout the private sector, government, and public services organizations. For numerous entities, pivoting to operate digitally was the only way to stay in business through mandated shutdowns and restricted activity.

Experts anticipate new policy responses to the rapid spread of technology and its changing applications. Data-driven businesses use customer information to improve processes, deliver new products, and provide a customized experience for consumers. The collection and use of such data, however, can lead to allegations of privacy and security breaches, anticompetitive behavior, discrimination, and market manipulation.

The digital economy raises many issues that require emerging and specialized analyses—including multidisciplinary expertise, sophisticated modeling, and machine learning and artificial intelligence techniques.

As the world transitions from a health and economic crisis, the influence of technology and data-driven decision making is expected to keep growing, and organizations will continue adapting to changing consumer needs and market conditions.

Data-driven businesses systematically use customer information to improve processes, deliver new products, and provide a more customized experience for consumers. The collection and use of such data, however, can lead to allegations of privacy and security breaches, anticompetitive behavior, discrimination, and market manipulation.

DIGITAL ECONOMY: TECHNOLOGY AND ARTIFICIAL INTELLIGENCE

ANTITRUST AND COMPETITION

The importance of tech firms, big data, and the accelerating use of digital technologies in many industries has led to a range of emerging competition issues in the U.S. and abroad.

- Two-sided markets
- Mergers and killer acquisitions
- Collusion and algorithms
- Exclusionary practices
- Price discrimination

FINANCE

Cornerstone Research leverages significant experience in complex securities and asset management cases and applies it to issues specific to FinTech, blockchain technology, and consumer finance.

- FinTech investments
- Consumer FinTech
- Blockchain technology
- Big data analysis

HEALTHCARE AND LIFE SCIENCES

The sensitive nature and multiple uses of healthcare and pharmaceutical data have raised a number of concerns related to privacy, competition, bias, and intellectual property.

- Patient data, barriers to entry, and market power
- Algorithmic bias
- Electronic data, privacy, and data breach
- Disease diagnosis
- Software-driven medical devices
- Drug discovery

INTELLECTUAL PROPERTY

Technology-intensive industries and big data applications present unique challenges—from patent thickets and licensing to trade secrets and artificial intelligence.

- Patent thickets
- Standards and FRAND licensing
- Copyrights
- Trade secrets and artificial intelligence

LABOR, EMPLOYMENT, AND ALGORITHMIC BIAS

Firms are increasingly using algorithmic processes to help make business decisions. These changes have important implications for legal issues related to employment and discrimination.

- Algorithmic bias and big data
- Data-driven self-assessment
- Worker classification and the gig economy

PRODUCT MISREPRESENTATION, PRODUCT LIABILITY, DATA PRIVACY, AND DATA BREACH LITIGATION

Through innovative frameworks, advanced data analytics capabilities, and case experience, our staff and experts are equipped to address issues related to causation, impact, and damages in these novel matters.

- Data privacy and data breach litigation
- Artificially intelligent products and risk
- Digital marketing
- In-app mobile advertising
- Search engine advertising
- Consumer behavior online
- User-generated data

FINANCIAL CONSULTING



ACCOUNTING AND AUDITING

ALLEGATIONS OF ACCOUNTING FIRM LIABILITY

Defense counsel for an accounting firm retained Andrew Richmond of Cornerstone Research in a case involving an audit of a large family-owned construction company. The plaintiffs alleged that the accounting firm failed to detect a long-running fraud orchestrated by the company's CEO. The plaintiffs claimed substantial damages resulting from the accounting firm's alleged failure to uncover the fraud.

Mr. Richmond testified at arbitration about the nature of the fraud and concealment schemes and the lack of any causal link between the alleged audit failures and claimed damages.

The arbitration panel found in favor of the audit firm on all counts, including the recovery of costs.

AUDITOR INDEPENDENCE: INDIVIDUAL AUDITOR

Defense counsel for an audit partner of an international accounting firm retained Cornerstone Research to support John Owens of the University of Southern California in a case involving an audit of a publicly traded company.

The SEC claimed that the audit partner's independence had been impaired due to the provision of certain non-audit services and the reporting of those services to the company's audit committee. Professor Owens addressed issues related to the independence, both in fact and appearance, of the audit partner.

Professor Owens presented analyses of PCAOB, SEC, and firm-specific guidance relevant to the facts of the case. His analysis showed that the audit partner did not impair his independence as a result of the non-audit services provided to the audit client.

FINANCIAL REPORTING INVESTIGATION FOLLOWING SEC INQUIRY

Cornerstone Research was retained by counsel for an investigation into an entity's financial statement close and reporting process in response to issues raised by the SEC.

We worked closely with counsel and a company subject matter expert to extract and analyze thousands of accounts payable transactions across multiple countries and general ledgers. We systematically standardized these data and assisted counsel and our client with presenting the relevant data in simple waterfall schedules for each relevant reporting period.

The SEC ultimately issued a no-action letter in this matter.

FINANCIAL GUARANTY INSURANCE CO. V. PUTNAM ADVISORY CO. LLC

Financial Guaranty Insurance Company (FGIC) alleged that our client, Putnam, had failed to appropriately discharge its responsibilities as the collateral manager of Pyxis, a \$1.5 billion mortgage-backed collateralized debt obligation (CDO) that failed in the wake of the 2007–2008 financial crisis. Counsel for Putnam retained Cornerstone Research to support expert testimony by independent consultant John Dolan.

FGIC, which had insured Pyxis's \$900 million super-senior tranche, filed a complaint in 2012 alleging that Putnam had made false and misleading statements regarding the nature and selection of Pyxis assets. It also alleged that a hedge fund had a short interest in Pyxis that gave it an incentive to see Pyxis fail, and that Putnam had allowed the hedge fund to influence the selection of Pyxis collateral, despite allegedly knowing of the asserted short interest.

In his expert report, Mr. Dolan explained the roles of different parties to a CDO and the responsibilities of a collateral manager in selecting CDO assets. He also assessed information available to FGIC at the time it decided to participate in Pyxis; how Pyxis compared to contemporaneous CDOs; and what the evidence suggested regarding the independence of Putnam's collateral selection.

The expert discovery phase of the case lasted for several years and included extensive *Daubert* briefings. During that phase, Dr. Ronnie Barnes of Cornerstone Research filed an affidavit in support of a *Daubert* motion in which counsel successfully argued for the exclusion of certain of FGIC's expert analyses.

After eight years of litigation, Judge Liman ruled that “[i]n the end . . . the evidence was not close. Putnam clearly prevailed on all of the elements of FGIC's claims.”

After a three-and-a-half-week virtual trial in the Southern District of New York, the Honorable Lewis Liman ruled in favor of our client on all counts. Originally adjourned due to the COVID-19 pandemic, this case was one of the first remote bench trials in the United States involving complex commercial litigation.

FREDERICK HSU LIVING TRUST V. ODN HOLDING CORP. ET AL.

Oak Hill Capital Partners, a private equity firm, was an investor in internet company Oversee.net (later called ODN). During the relevant period, Oak Hill held the majority of the company's common stock. The plaintiff, one of Oversee's founders, sued Oak Hill alleging that it made certain business decisions that prevented the owners of common stock from realizing any value. Defense counsel retained Cornerstone Research to support Professor David Smith of the University of Virginia in rebutting the plaintiff's claims.

The plaintiff contended that Oak Hill prioritized redeeming its preferred stock, which it held in addition to common stock, and therefore behaved in a way that was against the best interest of the owners of the common stock. Professor Smith's analysis showed that there was no evidence that Oversee failed to make any investments that could have reasonably been expected to generate additional value for the common stock. He opined that Oversee failed because of general industry challenges, including shifts in the competitive landscape.

Vice Chancellor Laster agreed that "Smith's analysis showed that investing in Oversee's business would not have generated value for the common stock." The court further concluded that "Oak Hill had an incentive to enhance the value of the common stock" and "inflicted no harm on the common stockholders, who are in at least as good a position now as they would have been if the Company had followed a different course."

Finding in favor of the defendants, Vice Chancellor Laster concluded, "The defendants proved that their conduct was entirely fair. Judgment will be entered in their favor."

MOONEY ET AL. V. DIVERSIFIED BUSINESS COMMUNICATIONS ET AL.

Minority shareholders of DBC Pri-Med LLC (Pri-Med) sued over a private company transaction in which the majority shareholder, Diversified Business Communications (Diversified), exercised an option to purchase the minority shareholder's shares. The plaintiffs alleged that Diversified took actions that temporarily reduced the value of the company in order to exercise the option at an artificially low price. Defense counsel retained David Marcus of Cornerstone Research to respond to plaintiffs' damages claim.

The plaintiffs retained an expert to value Pri-Med "but for" Diversified's alleged conduct. Under this but-for scenario, the plaintiffs' valuation was 70 percent higher than the enterprise value determined by a third-party appraisal.

In his expert report and trial testimony, Dr. Marcus identified several flaws in the plaintiffs' expert's analysis.

Dr. Marcus showed that the expert had relied on assumptions that were unsupported or contradicted by evidence in the record, and demonstrated that the opposing expert failed to account for several value-relevant factors.

In particular, Dr. Marcus showed that if the expert's model was correct, it would mean that the same alleged conduct would have increased the value of the primary subsidiary of the company, while reducing the value of certain subsidiaries that were attempting to develop a new technology. In other words, the plaintiffs' expert had ignored an offsetting effect caused by his assumptions in his purported damages calculation.

Dr. Marcus also explained that new technologies are inherently risky and the fact that the technology did not ultimately succeed did not prove that any misconduct took place.

The Superior Court of Massachusetts ruled in favor of our client. In her opinion, the judge stated that "[a]lthough plaintiffs' damages expert . . . came up with a far higher value for Pri-Med, this was based on several assumptions of alleged wrongdoing that this Court has found not to be true."

NELSEN ET AL. V. PRINCIPAL GLOBAL INVESTORS TRUST COMPANY ET AL.

The plaintiffs brought a class action on behalf of all 401(k) plan participants and beneficiaries whose retirement plans invested in the Principal LifeTime Hybrid Collective Investment Trusts. Counsel for Principal retained Cornerstone Research to support Russell Wermers of the University of Maryland in analyzing whether Principal used appropriate underlying funds in creating the LifeTime Hybrid Collective Investment Trusts.

The plaintiffs alleged that Principal failed in its fiduciary duty by using proprietary, unreasonably high-cost underlying funds to generate additional revenues for Principal. The plaintiffs proposed a set of alternative investments they claimed were more appropriate and sought to recover the differential in fees and performance as damages.

Professor Wermers opined that the LifeTime Hybrid Collective Investment Trusts were competitive in terms of performance and fees with other target-date funds and that Principal's choice of underlying investments was reasonable. Analyzing the funds underlying the LifeTime Hybrid Collective Investment Trusts, he showed that these funds' fees and tracking errors were in line with alternative investment options that Principal could have used.

Professor Wermers also demonstrated that, were Principal to have used the plaintiffs' proposed set of alternative investments, it would have needed to recuperate lost revenue in ways that would have affected proposed class members differently.

After both sides' experts submitted multiple expert reports and before a ruling on class certification, Principal and the plaintiffs jointly agreed to dismiss the case.

VIGNOLA V. FAT BRANDS INC. ET AL.

In two related securities class actions involving claims under Section 12 of the Securities Act, one filed in federal court and the other in state court, both judges denied the plaintiffs' motions for class certification.

The shareholders in the federal case alleged FAT Brands, a restaurant franchising company, omitted relevant information from its prospectus about the "experience and effectiveness of FAT Brands' leadership" ahead of its initial public offering (IPO). The IPO prospectus was filed under Regulation A+.

Plaintiffs claimed the defendant concealed the fact that subsidiaries of the major shareholder had filed for bankruptcy eight years before the IPO. Defense counsel retained Filipe Lacerda of Cornerstone Research to analyze the extent to which the allegedly omitted information was readily available from public sources.

Dr. Lacerda identified several articles freely and publicly available on the internet and elsewhere that discussed the bankruptcy filings. He documented that these articles were publicly available over the eight years prior to the IPO, and appeared in a variety of media outlets with myriad readership, including major publications.

A judge for the U.S. District Court for the Central District of California found that the proposed class did not meet federal requirements, as individualized issues predominated over common ones.

A related case, *Rojany v. FAT Brands Inc. et al.*, was filed in the Superior Court of the State of California for the County of Los Angeles. The judge denied class certification on the same grounds and cited Dr. Lacerda's expert declaration.

Denying the plaintiffs' motion for class certification, the judge stated that the "evidence shows that it is likely that, before investing, some purchasers came upon, or discovered or were exposed to this allegedly omitted information regarding the bankruptcies, requiring individualized inquiries into each class member's alleged lack of knowledge."

The background features a dark navy blue gradient. Overlaid on this are several sets of thin, parallel lines radiating outwards from the bottom left corner. These lines are colored in a gradient: the innermost set is yellow, followed by light green, medium green, light blue, and finally a bright red/orange set at the top right.

**PRO
BONO**

CHILDREN'S RIGHTS

TINSLEY ET AL. V. MCKAY ET AL.

Children's Rights, a national advocacy organization, retained Paul Zurek of Cornerstone Research in a pro bono matter involving Arizona's foster care system. In the course of the litigation, Dr. Zurek submitted two expert reports and a rebuttal report, and was deposed.

In a settlement approved by the court, the Arizona Department of Child Services (DCS) agreed to expand the behavioral and physical healthcare services provided to children in the system, to maximize the placement of children in family-like settings, and to ensure case managers have sufficient time to make sure children receive the services and interventions they need.

The named plaintiffs, ten minors, filed suit on behalf of 16,000 children in state foster care. The lawsuit alleged that DCS was not providing adequate resources to manage the foster care system in Arizona. Plaintiffs specifically claimed that children in foster care were not receiving the regular and timely medical care required by DCS's own guidelines and that DCS failed to investigate reports of maltreatment in a timely manner.

Dr. Zurek and Cornerstone Research analyzed various data sets that contained foster care records for over 60,000 children in Arizona's foster care system in a multiyear effort.

In February 2021, the court approved the settlement reached by the parties.

The Cornerstone Research team analyzed various data sets that contained foster care records for over 60,000 children in Arizona's foster care system.

THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS OF SAN FRANCISCO

THE ROLE OF RACE IN NON-TRAFFIC CITATIONS

The Lawyers' Committee for Civil Rights of San Francisco (LCCRSF) published a report that assesses how non-traffic citations, such as loitering or jaywalking, are distributed with respect to demographics and geography. The report shows that police across California assign Black, Latinx, and unhoused people a disproportionate number of non-traffic citations. In support of LCCRSF's report, Cornerstone Research analyzed data on non-traffic police citations in California.

We partnered with LCCRSF to compile a unique dataset of non-traffic citations from various cities and counties, obtained from police departments through public record requests, alongside other public data. We produced several charts, tables, and descriptive statistics, including:

- The frequency of non-traffic citations in each location
- The demographic distributions of non-traffic citations in each location
- Felony and misdemeanor rates in California

By comparing the non-traffic citation demographic breakdowns to the overall demographics in each city and county, the report demonstrates the racial and socioeconomic disparities in non-traffic citations across California. LCCRSF discusses its findings in detail and provides recommendations to reform California's policing and justice system in the report.

Our analyses are featured in LCCRSF's report, "Cited for Being in Plain Sight: How California Polices Being Black, Brown and Unhoused in Public."



THOUGHT
LEADERSHIP

REPORTS

ACCOUNTING AND AUDITING ENFORCEMENT ACTIVITY

This research examines trends in accounting and auditing enforcement actions that were publicly disclosed by the U.S. Securities and Exchange Commission (SEC) and the Public Company Accounting Oversight Board (PCAOB).

ACCOUNTING CLASS ACTION FILINGS AND SETTLEMENTS

This report compares accounting case filings and settlements to overall securities class action trends. It provides a year-by-year breakdown of accounting cases versus non-accounting cases over a ten-year span.

CHARACTERISTICS OF U.S. NATURAL GAS TRANSACTIONS: FERC FORM 552 SUBMISSIONS

This annual report is based on data from FERC Form 552 submissions.

HEALTHCARE MERGER ANALYSIS

This research examines anticipated forthcoming litigation challenges stemming from the COVID-19 pandemic—particularly for healthcare mergers.

TRENDS IN MERGER INVESTIGATIONS AND ENFORCEMENT AT THE U.S. ANTITRUST AGENCIES

This annual report provides context for evaluating possible outcomes of individual cases as they proceed through the enforcement process.

All reports featured in this Annual Review are available on cornerstone.com

SEC ENFORCEMENT ACTIVITY: PUBLIC COMPANY AND SUBSIDIARIES

Cornerstone Research collaborates with the Securities Enforcement Empirical Database (SEED) on annual publications that analyze trends in SEC enforcement actions.

SECURITIES CLASS ACTION FILINGS: YEAR IN REVIEW AND MIDYEAR ASSESSMENT

The Securities Class Action Clearinghouse (SCAC) is cosponsored by Cornerstone Research and Stanford Law School. It includes regularly updated information on post-Reform Act federal securities class actions.

SECURITIES CLASS ACTION SETTLEMENTS: REVIEW AND ANALYSIS

This research applies regression analysis to examine the relationship between settlement outcomes and certain security case characteristics of Post-Reform Act cases.

TRENDS IN CFTC VIRTUAL CURRENCY ENFORCEMENT ACTIONS

This report analyzes CFTC enforcement actions against virtual currency market participants, including traders, issuers, exchanges, and service providers from January 2015 through June 2020.

TRENDS IN LARGE CORPORATE BANKRUPTCY AND FINANCIAL DISTRESS

This report examines trends in Chapter 7 and Chapter 11 bankruptcy filings between January 2005 and September 2020 by companies with over \$100 million in assets.

COVID-19

COVID-19 MEMO DATABASE

A collaboration with the Rock Center for Corporate Governance at Stanford University to provide insight into a wide range of topics related to COVID-19.

ASSESSING HEALTH DATA PRIVACY DAMAGES DURING A PANDEMIC

How increased telehealth and contact tracing could open the door to class actions related to data privacy and data breaches.

COLLATERALIZED LOAN OBLIGATIONS IN THE AGE OF COVID-19

A discussion of the economics of collateralized loan obligations and the extent to which they may be vulnerable to the economic downturn caused by the COVID-19 pandemic.

"CONTANGO WITH ME": COVID-19 AND THE U.S. CRUDE OIL MARKET

How the COVID-19 pandemic and other events created a price structure in futures and spot markets that incentivizes market participants to store crude oil in the United States.

ECONOMIC TOOLS CAN HELP EVALUATE CARTELS AMID RECESSIONS

An analysis of whether cartel formation is linked with broader macroeconomic conditions, such as pandemics.

Available on cornerstone.com/Resource/COVID-19.

EXPECTATIONS FOR HEALTHCARE MERGERS DURING THE PANDEMIC

An examination of the likely developments in healthcare mergers and challenges particular to the COVID-19 pandemic.

FINANCIAL STRATEGIES FOR OIL AND GAS COS. DURING THE SLUMP

A discussion of how the oil price decline due to COVID-19 could lead to changes in the oil and gas industry.

MARCH TRADING HALTS AND OTHER TRADING RESTRICTIONS MAY COMPLICATE SECURITIES CLASS ACTIONS

A look at the high number of automatic trading halts and other trading restrictions triggered in March 2020 at the start of the COVID-19 pandemic and the potential implications for analyzing market efficiency in securities litigation.

THE POTENTIAL IMPACT OF COVID-19-INDUCED VOLATILITY ON BUSINESS VALUATION IN M&A AND BANKRUPTCY LITIGATION

An assessment of the impact of COVID-19-induced volatility on company valuations.

PRICE GOUGING AND THE PANDEMIC: AN ECONOMIC PERSPECTIVE

How economics can be useful in navigating the line between recognizing the market realities of a crisis and running afoul of price gouging laws.

ECONOMICS

CORNERSTONE RESEARCH STAFF REVIEW NEW U.S. VERTICAL MERGER GUIDELINES

In January 2020, the agencies released the draft vertical merger guidelines for public comment. Cornerstone Research staff and experts submitted three public comments to the agencies in response to the draft guidelines.

COMPARING VERTICAL MERGER GUIDELINES ACROSS JURISDICTIONS

The possible implications of these guidelines for national, cross-border, and transatlantic mergers.

ECONOMIC PRINCIPLES AND THE REFORM OF THE EUROPEAN COMMISSION'S APPROACH TO VERTICAL AGREEMENTS

Five economic principles that should guide the European Commission's revision of VBER and its Vertical Guidelines.

AN INITIAL COMPARISON OF THE U.S. DRAFT VERTICAL MERGER GUIDELINES WITH E.U. AND U.K. GUIDELINES

The authors provide an initial comparison of the draft U.S. Vertical Merger Guidelines with the E.U. Non-Horizontal and the U.K. Merger Assessment Guidelines.

VERTICAL MERGER GUIDELINES OVERLOOK HEALTHCARE COMPANY ISSUES

How the agencies' Vertical Merger Guidelines analyze non-horizontal mergers, specifically in the healthcare industry.

ANTITRUST IMPACT IN CLASS/COLLECTIVE ACTIONS

How economic analysis can be used to assess the common impact question in the U.S., Canada, and the U.K.

EFFICIENCIES DEFENSE IN THE SPOTLIGHT AFTER T-MOBILE/SPRINT RULING

A discussion of the efficiencies case in T-Mobile/Sprint and the impact this may have for future litigation strategies.

LEGAL AND ECONOMIC ANALYSIS OF PERSONAL DATA-RELATED COLLECTIVE ACTIONS IN THE UK

How the right to compensation under the GDPR and DPA 2018 has introduced a significant risk of damages actions following allegations of unauthorized use of personal data.

NECESSITY AS THE MOTHER OF INVENTION?

A discussion of a framework to streamline the evaluation of competitor collaborations.

NON-STANDARD COUNTERFACTUALS IN MERGER CONTROL

Competition agencies' approaches to competition and failing firm counterfactuals in merger cases.

ONLINE MARKETING: REIMAGINING THE CONSUMER DECISION JOURNEY

The consumer decision journey framework has many important implications for litigation.

(VIDEO) CORNERSTONE RESEARCH EXPERTS IN FOCUS: LESLEY CHIOU

Professor Lesley Chiou of Occidental College discusses her research on two-sided platforms and competition in the digital space.

FINANCE

ACCOUNTING FOR THE EFFECT OF DISCLOSURES ON PEER STOCK PRICE

The application of the event study methodology when company disclosures affect their peers' stock prices.

ACCOUNTING RULES MAY SPARK NEXT WAVE OF BANKRUPTCY SUITS

How certain accounting and auditing standards implemented after the Financial Crisis could affect the next wave of trustee and receiver litigation.

APPROVED CLAIMS RATES IN SECURITIES CLASS ACTIONS: EVIDENCE FROM 2015–2018 RULE 10B-5 SETTLEMENTS

This study uses data from 2015–2018 Rule 10b-5 settlements to analyze approved claim rates.

THE CFTC'S APPROACH TO VIRTUAL CURRENCIES

A review of the CFTC's regulatory and enforcement approach to cryptocurrency in the United States.

COUNTRY RISK PREMIUM

A discussion of expropriation risk in quantum assessments in international arbitration.

CROSS-MARKET MANIPULATION UNDER THE MICROSCOPE

A discussion of illustrative cross-market manipulation enforcement cases and their implications for market participants in the E.U., U.K., and U.S.

ECONOMIC ANALYSIS AT THE CLASS CERTIFICATION STAGE OF EXCHANGE ACT SECURITIES CLASS ACTIONS

An overview of issues requiring economic analysis at the class certification stage of securities class actions and the effects of market disruptions on these analyses.

(VIDEO) CORNERSTONE RESEARCH EXPERTS IN FOCUS: ANDREA EISFELDT

Andrea Eisfeldt, the Laurence D. and Lori W. Fink Endowed Chair in Finance at the UCLA Anderson School of Management, discusses her research into asset market liquidity and corporate solvency and its relevance to market events during times of financial and economic crisis.

(VIDEO) CORNERSTONE RESEARCH EXPERTS IN FOCUS: MARK GARMAISE

Mark Garmaise, Professor of Finance at the UCLA Anderson School of Management, discusses his research on commercial real estate markets, entrepreneurial finance, and consumer finance.

All articles featured in this Annual Review are available on cornerstone.com.

OUR CLIENT COMMITMENT

We continually strive to maintain the trust our clients place in us. To provide a customized and creative response to each case, we identify the most qualified experts and employ sophisticated analytical tools to address complex challenges. We support clients with robust, objective testimony that is grounded in real-world data, academic research, and case precedent.

Our values underpin everything we do. It is why we build multidisciplinary case teams across practices, industries, and offices. It is why we draw strategically from our international expert network of academics, industry specialists, and former regulators. And when matters require large-scale data analytics, it is why we provide industry-leading analytical, artificial intelligence, and machine learning expertise and techniques. It is why we always bring our expertise and teamwork to your matters ensuring exceptional breadth of perspective, as well as superior efficiency and analytic depth.

While there have been unprecedented changes to the way we work, the expertise, creativity, and dedication we bring our clients and experts are unabated.

At Cornerstone Research, we have always been guided by our core values—commitment to our clients, our experts, our staff, and to delivering consistently high-quality service.

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