

CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony

# Consumer Fraud and Product Liability



## **CAPABILITIES**

Product Liability and Defects  
Product Misrepresentation  
False and Misleading Advertising  
Privacy and Data Breach  
False Claims Act

## **ANALYTICAL EXPERTISE**

Content Analysis  
Statistical and Econometric Analysis  
Survey Methods and Conjoint Analysis

## **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, data 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 and assess exposure, reliance, impact, and damages. We have substantial experience in a variety of analytical methods, including regression analysis, survey and sampling design, conjoint analysis, and content analysis.

### Experts

We have a 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

- Expertise in advanced economics modeling and statistical techniques, including difference-in-differences, hedonic regression, and synthetic control methods

#### Survey Methods and Conjoint Analysis

- Experience designing, implementing, and critiquing surveys
- Experience effectively conveying the limitations of conjoint analysis based on our in-depth understanding of survey methods, economic damages, and class certification frameworks
- 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
- 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 classwide 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
- 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.

## CONJOINT ANALYSIS

### **Challenges Relating to Estimating Classwide Damages Using Conjoint Analysis**

Conjoint analysis is a survey-based marketing research tool developed by academics to understand and estimate consumer preferences. Over the last several years, plaintiffs have increasingly proposed conjoint analysis as a method to estimate classwide damages in a variety of consumer class actions, including product liability, false advertising, product labeling, data privacy, and data breach. However, the underlying assumptions and limitations of this technique do not render it suitable for calculating damages in a class action setting.

### **Willingness-to-Pay Measures Generated by Conjoint Analysis Cannot Approximate Fair Market Value or Market Price**

Plaintiffs have proffered conjoint analysis as a method to estimate benefit-of-the-bargain damages (i.e., alleged overpayment or price premium claims). These damages are typically measured as the difference between the fair market value (or price) of the product as warranted and the fair market value (or price) of the product as sold. Price is determined by the interaction of factors impacting product demand as well as supply. Conjoint analysis is not equipped to account for supply-side factors (e.g., the manufacturer's willingness to sell its products at a given price) or competitive activity in the marketplace. It can only generate estimates of consumers' willingness to pay for a product, a measure that is untethered to market prices.

Some plaintiff experts claim that they can account for these limitations based on the assertion that the number of products sold is fixed as a matter of history. Others have argued that the use of actual market prices (which already reflect demand and supply considerations) sufficiently accounts for supply-side factors. When rebutting conjoint analysis, it is crucial to explain properly the lack of foundation for these and other economically unsound assertions.

### **Analysis of Individual-Level Willingness-to-Pay Estimates Can Demonstrate Lack of Common Impact**

Plaintiffs' experts also use willingness-to-pay measures averaged across respondents when estimating damages. Changes in aggregate measures of willingness-to-pay obscure differences in changes at the individual level. An analysis of individual-level willingness-to-pay estimates can therefore demonstrate lack of common impact.

### **Reliability and Validity of Consumer Preference Data Generated by a Conjoint Study Should Be Carefully Assessed**

Assessing the reliability and validity of a conjoint survey and the data it generates should include determining whether the survey is properly designed and executed; whether the relevant population of consumers is targeted; whether a representative sample from that target population participates in the survey; whether valid economic and statistical models are used to analyze collected data; and whether the interpretation of the results is consistent with economic and conjoint analysis theory.

Furthermore, conjoint surveys that exclude features that are important drivers of purchase decisions are susceptible to biases that can generate unreliable results. Features that are not described clearly and those that stand out in any particular fashion have also been found to result in biased evaluations by respondents.

Demonstrating the impact of these inappropriate survey design choices on willingness-to-pay estimates can involve replicating plaintiffs' conjoint study after correcting for these biases. It is also important to analyze real market data, where available, as an additional test for the validity of conjoint results.

## In re: General Motors LLC Ignition Switch Litigation

After a U.S. district court judge granted General Motors' motion for summary judgment, the judge preliminarily approved a settlement that is less than 1 percent of the Plaintiffs' originally claimed damages in excess of \$77 billion.

The judge granted General Motors' motion for summary judgment against plaintiffs' benefit-of-the-bargain economic loss damages claims, holding that the plaintiffs could not prove any such damages. The plaintiffs ultimately agreed to settle for less than 1 percent of their originally claimed damages.

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Consistent with our experts' findings, the judge ruled that plaintiffs' conjoint survey "does not provide competent proof of Plaintiffs' damages."

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GM announced numerous recalls stemming from an ignition switch system assembly. The resulting lawsuits were consolidated in a multidistrict litigation in the U.S. District Court for the Southern District of New York. Plaintiffs retained several experts, including an expert who submitted a conjoint survey aimed at measuring plaintiffs' alleged benefit-of-the-bargain economic losses due to GM's recalls.

Counsel for GM retained Cornerstone Research to support several academic experts who filed reports analyzing plaintiffs' allegations and rebutted plaintiffs' analyses, including the conjoint survey. These experts concluded that plaintiffs' allegations were inconsistent with the real-world market data and the proffered conjoint survey was not equipped to measure market value, was unreliable, and its results were inconsistent with market and other survey data:

- Professor Kevin Lane Keller of Dartmouth College conducted surveys demonstrating that many consumers expect that vehicles may not be defect free and may be recalled to

fix a safety defect, directly contradicting the plaintiffs' expert's assumptions.

- Professor Wayne Hoyer of the University of Texas at Austin conducted surveys demonstrating that putative class members varied widely in whether they relied on GM advertising and in the reasons for purchasing the at-issue vehicles, directly contradicting plaintiffs' assumptions that putative class members had uniform reasons for purchasing at-issue vehicles and were uniformly influenced by GM advertising.
- Professor Dominique Hanssens of the UCLA Anderson School of Management analyzed GM vehicle sales and the effect of GM's advertising on vehicle sales. Contrary to plaintiffs' allegations, he found that there was not a statistically significant change in sales after the recalls and, consistent with the academic literature, the effects of GM's at-issue advertising were *de minimis*.
- Professor Shari Diamond of Northwestern University evaluated plaintiffs' conjoint survey from a survey design perspective, and found that it contained several flaws and sources of bias that rendered its results unreliable.
- A marketing expert demonstrated that the plaintiffs' conjoint survey did not account for any supply-side factors and therefore could not measure any alleged difference in value for at-issue vehicles. He also found that the plaintiffs' conjoint survey suffered from multiple methodological flaws that rendered it unreliable.

## Selected Case Experience: Automotive and Manufacturing

### *General Motors continued*

- Cornerstone Research also supported other experts who evaluated the reliability and validity of plaintiffs' conjoint survey results, and analyzed transaction data finding no evidence of a negative, classwide impact on at-issue vehicles due to the recalls.

Consistent with our experts' findings, U.S. District Judge Jesse M. Furman ruled that plaintiffs' conjoint survey "does not provide competent proof of Plaintiffs' damages"

because it "measures consumers' private valuations (on average) of certain hypothetical GM vehicles sold with fully disclosed defects; it does not measure the *market value* of those vehicles."

Judge Furman further concluded, "the Court must grant New GM's motion for summary judgment on the named Plaintiffs' claims to the extent they seek damages measured as the difference in value between their cars as bargained-for and their cars as received.

## In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation

Jury in bellwether “clean diesel” opt-out trial accepts Volkswagen’s expert’s damages analysis showing limited economic damages.

A federal jury in a bellwether trial in the U.S. District Court for the Northern District of California agreed with the economic analysis put forward by Volkswagen Group of America’s expert, finding small to no economic damages for ten plaintiffs who owned or leased “clean diesel” Volkswagen or Audi vehicles containing defeat devices.

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**The jury accepted all of Professor Bresnahan’s economic damages numbers, including no economic damages for five of the plaintiffs.**

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Defense counsel for Volkswagen retained Cornerstone Research to support economics Professor Timothy Bresnahan of Stanford University in a case brought by a set of plaintiffs who had opted-out of a class action settlement between Volkswagen and owners and lessees of certain Volkswagen and Audi diesel vehicles. These opt-out plaintiffs claimed significant economic damages from Volkswagen’s failure to disclose the defeat devices installed in these vehicles at the time of acquisition.

Professor Bresnahan served as the sole witness for Volkswagen in the compensatory damages phase of the bellwether trial, testifying for three days before the jury. He used several methods for measuring the economic damages incurred by each plaintiff, including a regression analysis that compared how much the prices of the at-issue vehicles declined relative to benchmark vehicles. He opined that his analyses indicated no damages for some plaintiffs and only small damages for the other plaintiffs.

The jury accepted all of Professor Bresnahan’s economic damages numbers, including no economic damages for five of the plaintiffs.

## Johannessohn et al. v. Polaris Industries Inc.

The court declined to certify the class in this product liability litigation, ruling that the plaintiffs had no standing and failed to fulfill predominance requirements.

A U.S. district court judge denied the plaintiffs' motion to certify the class in this product liability matter. Purchasers of certain Polaris all-terrain vehicles (ATVs) alleged in their suit that the vehicles were defective because they emitted excessive heat.

To respond to the plaintiffs' class certification model and proposed classwide damages model, counsel for Polaris retained Cornerstone Research to support three testifying experts, including Natalie Mizik of the University of Washington and Lorin Hitt of the University of Pennsylvania's Wharton School.

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**A U.S. district judge ruled that the plaintiffs' damages approach was "not appropriate" for showing causation, injury, and damages.**

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- Professor Mizik demonstrated that the plaintiffs' conjoint survey failed to replicate the consumer purchase decision-making process for at-issue ATVs and contained a number of methodological errors, that, when corrected, reversed plaintiffs' findings.
- Professor Hitt analyzed market data for ATVs and found no evidence of an average loss in value in the at-issue ATVs. He also demonstrated a lack of uniform price impact associated with the announcement of the alleged heat issues on the ATVs owned by putative class members.

- Our third expert also found that the plaintiffs' conjoint survey suffered from design flaws. In addition, he opined that the plaintiffs' market simulation model relied on several flawed assumptions that rendered any estimates of economic damages unreliable.

U.S. District Judge Nancy E. Brasel ruled that the plaintiffs' damages approach was "not appropriate" for showing causation, injury, and damages. She concluded, "Plaintiffs cannot satisfy the Rule 23(b)(3) predominance requirements with respect to their proposed nationwide class, and class certification will be denied."

Wendy Bloom, a partner at Kirkland & Ellis who represented Polaris, noted to [Law.com](https://www.law.com) in April 2020 that "we retained preeminent experts who are intimately familiar with the conjoint survey and economic damages methodologies used by the plaintiffs' experts. As a result, we were able to efficiently and effectively develop the mature factual and expert record necessary to respond to plaintiffs' class certification motion and classwide damages model on a very tight time frame."



## In re: Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation

Defense counsel retained Cornerstone Research to support two experts who showed the plaintiffs' damages models could not reliably estimate damages on a classwide basis.

Counsel for Fiat Chrysler Automobiles (FCA) retained Cornerstone Research in a national class action related to the marketing of certain EcoDiesel Jeep SUVs and Ram trucks. The plaintiffs claimed that the vehicles violated EPA regulations and that the "EcoDiesel" name and branding misrepresented the vehicles to consumers as "environmentally friendly and fuel efficient." According to the plaintiffs, putative class members had "paid a significant premium" for the allegedly falsely advertised EcoDiesel features.

Cornerstone Research supported two experts, who addressed the plaintiffs' claims. Both experts put forward analyses demonstrating that the damages models proposed by the plaintiffs' experts could not estimate damages that were consistent with the plaintiffs' theory of harm and could not reliably estimate damages on a classwide basis.

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**Professor Hanssens showed that the damages models proposed by the plaintiffs' experts were not consistent with the plaintiffs' theory of harm and could not estimate harm on a classwide basis.**

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Professor Dominique Hanssens of the University of California, Los Angeles, evaluated the plaintiffs' proposed conjoint methodology and identified a number of deficiencies. Notably, he showed that plaintiffs' expert's proposed methodology could not isolate the effects of the challenged conduct from unrelated confounding factors. Professor Hanssens also provided analysis demonstrating that the proposed conjoint introduced several sources of bias that inflated estimates of reduction in value.

In addition, Professor Hanssens evaluated the plaintiffs' content analysis of FCA's advertising, demonstrating a number of significant errors in the analysis. He concluded that the analysis did not support the plaintiffs' conclusions regarding putative class members' exposure to or reliance on FCA's advertising of EcoDiesel features.

The second Cornerstone Research expert analyzed market price and sales data and showed that the plaintiffs' conjoint study predicted market outcomes inconsistent with real-world data. He also evaluated the plaintiffs' other proposed damages method, which was based on the price premium of EcoDiesel vehicles relative to gasoline-engine models. He found that this method inflated estimated damages because, among other reasons, it attributed the entire amount of the EcoDiesel premium to the at-issue emissions-related features and ignored the value that purchasers placed on features that are not related to emissions, such as fuel economy, torque, towing capacity, and longevity.

The parties 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.

Defense counsel retained Timothy Bresnahan of Stanford University and Cornerstone Research on behalf of Whirlpool to address damages issues in the case.

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### Professor Bresnahan testified at trial and in two depositions, and submitted two expert reports.

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The court certified the class for liability despite the fact that less than 5 percent of buyers reported the alleged mold-related problems at issue. Because the court did not certify the class for damages, the case was nominally about damages for two named plaintiffs. However, the plaintiffs' experts asserted in their reports and at trial that each member of the purchaser class was entitled to damages arising from price elevation or reduced willingness to pay because Whirlpool had allegedly failed to disclose the mold-related user instructions to buyers at the point of sale.

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.

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

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Defense counsel retained George Strong 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 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).

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

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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.

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**The court granted our client’s motion for a preliminary injunction.**

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In support of the motion, Dominique Hanssens of the University of California, Los Angeles, prepared a declaration that documented the advertising’s potentially large negative impact. 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.

## Beef Products, Inc. et al. v. American Broadcasting Companies, Inc. et al.

In this high-profile \$1.9 billion defamation case, Cornerstone Research worked with three experts who analyzed the impact of news coverage on beef product sales.

This closely watched defamation case, one of the largest ever filed in the United States, settled midway through trial after almost five years of litigation. The plaintiff, Beef Products Inc. (BPI), claimed \$1.9 billion in damages, which were subject to trebling under South Dakota's food disparagement law.

Counsel for BPI retained Cornerstone Research and three experts to assess causation, damages, and media content issues related to ABC News's primetime broadcasts about BPI's lean finely textured beef (LFTB) product. In the broadcasts, ABC News repeatedly described LFTB as "pink slime," and as a cheaper filler that was approved over the objections of USDA scientists.

BPI alleged that ABC News engaged in a disinformation campaign and made numerous false statements about BPI and LFTB during its news broadcasts and in published reports. In the wake of the ABC broadcasts, the firm's sales of LFTB dropped dramatically. BPI was forced to close three of its four manufacturing plants and laid off about 700 workers.

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**Cornerstone Research worked with three experts, in consumer behavior, content analysis and media, and agricultural economics, respectively.**

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Ran Kivetz of Columbia University Business School showed that the ABC coverage of LFTB was extensive and negative. He conducted four surveys to study consumers' perceptions in

response to the ABC broadcasts. These consumer surveys showed that the ABC broadcasts communicated that LFTB was not beef, not nutritious, not safe, and that BPI had improperly obtained approval for the product.

Kimberly Neuendorf of Cleveland State University showed that ABC's coverage was unprecedented, both relative to other news coverage of LFTB and to ABC's own coverage of other food-related events. She also performed an attribution analysis of tweets about "pink slime," demonstrating that ABC News was the main driver of the social media conversation on that topic.

Daniel Sumner of the University of California, Davis, an agricultural economist, projected but-for shipments and prices absent the ABC coverage. Using an event study approach, he developed a regression model that controlled for various factors that could affect LFTB demand and supply, including other media on the topic of "pink slime."

BPI first filed suit in September 2012 and the case settled during trial in June 2017. During this time, Cornerstone Research assisted counsel with many phases of the litigation, including a number of consulting projects, expert depositions, Daubert motions, and the preparation of direct and cross-examination materials for trial. Notably, the judge in the case admitted the testimony of all three Cornerstone Research experts, and either excluded or limited the testimony of several opposing economics and marketing experts.

## 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 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.

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

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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.

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### The court decertified the class.

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

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

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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.



## Computer Hardware Product Features

In several class actions involving a computer hardware manufacturer, the plaintiffs alleged that the manufacturer had misrepresented one of the product's features.

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.

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

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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 classwide 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, the manufacturer's counsel retained Cornerstone Research and an academic expert to respond to the damages analyses and a survey submitted by the plaintiffs' experts.

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.

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**In rebutting the damages analyses, Professor Hitt showed that the plaintiffs' experts failed to account for individual differences.**

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Defense counsel retained Cornerstone Research and 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.

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

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Defense counsel retained Cornerstone Research and 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.

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

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Plaintiff counsel retained Cornerstone Research and Dominique Hanssens of the University of California, Los Angeles, to analyze the short-term impact on the plaintiff's and defendant's profits and sales. In addition, he reviewed the campaign's claims to determine if they were based on rigorous scientific method and supported by product data.

Professor Hanssens also analyzed the impact of the advertising campaign under different expansion scenarios. He found that the defendant's sales did increase as a direct result of the advertising campaign. His analysis of the campaign showed that the claims lacked a reasonable level of scientific rigor and validity and were false. The case settled.

## 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.

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

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Plaintiff counsel retained Matthew Lynde of 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.

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### The court rejected the plaintiffs' motion for class certification.

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Counsel for the manufacturer retained Peter Reiss, an economics professor at Stanford University, 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.

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

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Defense counsel retained Cornerstone Research and 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 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 Samid Hussain of Cornerstone Research to estimate the potential damages faced by the manufacturer.

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**Dr. Hussain's estimated potential damages for several scenarios.**

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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.

## Healthcare Insurance Payments Kickback Trial

The jury found for our client, a major health insurance company, in this case related to the business practices of a group of surgery centers.

Our client, a major health insurance company, alleged that the defendants billed them at excessive rates and caused physicians to improperly refer medical care out of network. After a month-long trial, the jury found for the insurance company on all counts and awarded the precise amount of damages calculated by healthcare expert Daniel Kessler of Stanford University and Cornerstone Research senior advisor.

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**The jury awarded the precise amount of damages calculated by healthcare expert Professor Daniel Kessler.**

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The insurance company alleged the defendants used kickbacks to induce in-network physicians

to refer patients to out-of-network ambulatory surgery centers. Specifically, the surgery centers provided financial incentives to physicians in the form of discounted ownership stakes and payments in proportion to the volume of surgeries they referred to the centers. The defendants also allegedly waived patient coinsurance payments without disclosing this to the insurance company.

Professor Kessler's trial testimony demonstrated that the ownership stakes influenced physician referral patterns. In addition, he calculated the amount that the insurance company overpaid relative to in-network benchmark prices at other area providers.

## Negligence Lawsuit against Healthcare Provider

This civil matter involving allegations of patient overtreatment settled.

Counsel for a healthcare provider retained Cornerstone Research and Daniel Kessler of Stanford University to review allegations of patient overtreatment and support a counterclaim lawsuit alleging false advertising and defamation.

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**Professor Kessler's analysis found no evidence of a pattern or practice of patient overtreatment during the time period at issue.**

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Professor Kessler analyzed claims data and benchmarked our client against other comparable providers. His analysis showed that our client's cost per patient was less than the other providers, even when controlling for patient age. In addition, while the other providers' cost per patient increased over time, our client's costs declined.

The case settled favorably for our client.



## 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.

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

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Cornerstone Research worked with 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 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.

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

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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.

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**Dr. Keeley's analysis determined that there could not be a classwide impact and that many class members were not harmed.**

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The defendant retained Michael Keeley 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 classwide 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.

## 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.

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

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Counsel for the provider retained Cornerstone Research and 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 Matthew Lynde of Cornerstone Research to provide testimony on damages.

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

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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.

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### The court denied certification of the proposed class.

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Cornerstone Research worked with three experts to address class certification and damages issues: W. David Bradford of the University of Georgia; Pradeep K. Chintagunta of the University of Chicago Booth School of Business; and 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.

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**Based on this analysis, our expert filed a declaration in support of summary judgment.**

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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 to assess liability and damages issues. Our expert 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, our expert 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, he 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 Experts

**Jonah Berger**

Associate Professor of Marketing,  
The Wharton School,  
University of Pennsylvania

**Eric T. Bradlow**

The K. P. Chao Professor,  
Professor of Marketing, Statistics and  
Data Science, Economics and Education,  
Vice Dean of Analytics, The Wharton School,  
University of Pennsylvania

**Timothy F. Bresnahan**

Landau Professor in Technology and the Economy  
Emeritus, Stanford University;  
Senior Advisor, Cornerstone Research

**Randolph E. Bucklin**

Professor of Marketing,  
Peter W. Mullin Chair in Management, Anderson  
School of Management,  
University of California, Los Angeles

**David Card**

Class of 1950 Professor of Economics,  
Director, Center for Labor Economics,  
University of California, Berkeley

**Lesley Chiou**

Professor of Economics,  
Occidental College

**Ravi Dhar**

George Rogers Clark Professor of Management  
and Marketing,  
Director, Center for Customer Insights,  
Yale School of Management,  
Professor of Psychology,  
Yale University

**Avi Goldfarb**

Rotman Chair in Artificial Intelligence and  
Healthcare, Professor of Marketing,  
Rotman School of Management,  
University of Toronto

**Dominique "Mike" Hanssens**

Distinguished Research Professor of Marketing,  
Anderson School of Management,  
University of California, Los Angeles;  
Senior Advisor, Cornerstone Research

**Donna L. Hoffman**

Professor of Marketing,  
Louis Rosenfeld Distinguished Scholar, George  
Washington University School of Business

**Lorin M. Hitt**

Zhang Jindong Professor of Operations,  
Information, and Decisions, The Wharton School,  
University of Pennsylvania;  
Senior Advisor, Cornerstone Research

**Wayne D. Hoyer**

Professor of Marketing,  
James L. Bayless/William S. Farish Fund Chair for  
Free Enterprise,  
McCombs School of Business,  
University of Texas at Austin

**Kinshuk Jerath**

Associate Professor of Business,  
Marketing Division,  
Columbia Business School

**Michael C. Keeley**

Senior Advisor  
Silicon Valley  
mkeeley@cornerstone.com  
650.470.7120

**Kevin Lane Keller**

E. B. Osborn Professor of Marketing,  
Tuck School of Business,  
Dartmouth College

**Ashley Langer**

Associate Professor of Economics,  
Eller College of Management,  
University of Arizona

**Justin McCrary**

Paul J. Evanson Professor of Law,  
Columbia Law School;  
Senior Advisor, Cornerstone Research

**Natalie Mizik**

Professor of Marketing,  
J. Gary Shansby Endowed Chair in  
Marketing Strategy,  
Foster School of Business,  
University of Washington

## Selected Consumer Fraud and Product Liability Experts

**Kimberly Neuendorf**

Professor,  
School of Communication,  
Cleveland State University

**David J. Reibstein**

William Stewart Woodside  
Professor of Marketing,  
The Wharton School,  
University of Pennsylvania

**Marc Rysman**

Professor of Economics,  
Boston University

**Victor Stango**

Professor,  
Graduate School of Management,  
University of California, Davis

**Joel Waldfogel**

Frederick R. Kappel Chair in Applied Economics,  
Carlson School of Management,  
University of Minnesota

**Ronald T. Wilcox**

NewMarket Corporation Professor of Business  
Administration,  
Associate Dean, MBA for Executives Program,  
Darden School of Business,  
University of Virginia

**Gal Zauberman**

Joseph F. Cullman 3rd Professor of Marketing,  
Yale School of Management,  
Yale University



## Selected Staff

**Samid Hussain**

Senior Vice President and Head of  
Consumer Fraud and Product Liability Practice  
New York  
shussain@cornerstone.com  
212.605.5320

**Vildan Altuglu**

Vice President  
New York  
valtuglu@cornerstone.com  
212.605.5006

**Carlos D. Brain**

Principal  
Silicon Valley  
cbrain@cornerstone.com  
650.470.7016

**Richard W. Dalbeck**

Vice President  
Los Angeles  
rdalbeck@cornerstone.com  
213.553.2650

**Mike DeCesaris**

Vice President, Data Analytics  
San Francisco  
mdecesaris@cornerstone.com  
415.229.8108

**Rahul Guha**

Chief Executive Officer  
Chicago  
rguha@cornerstone.com  
312.345.7624

**Vandy M. Howell**

Senior Vice President  
San Francisco  
vhowell@cornerstone.com  
415.229.8156

**Matthew R. Lynde**

Senior Vice President  
San Francisco  
mlynde@cornerstone.com  
415.229.8146

**Neill E. Norman**

Principal  
Silicon Valley  
nnorman@cornerstone.com  
650.470.7108

**Dina Older Aguilar**

Vice President  
San Francisco  
dolder@cornerstone.com  
415.229.8101

**Ashish A. Pradhan**

Vice President  
Los Angeles  
apradhan@cornerstone.com  
213.553.2521

**Maria Salgado**

Vice President  
San Francisco  
msalgado@cornerstone.com  
415.229.8149

**Sachin Sancheti**

Vice President  
New York  
ssancheti@cornerstone.com  
212.605.5449

**Daniel Schmierer**

Principal  
Los Angeles  
dschmierer@cornerstone.com  
213.553.2558

**Anna Shakotko**

Principal  
New York  
ashakotko@cornerstone.com  
212.605.5405

**Michael D. Topper**

Chair of the Board  
Silicon Valley  
mtopper@cornerstone.com  
650.470.7116

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