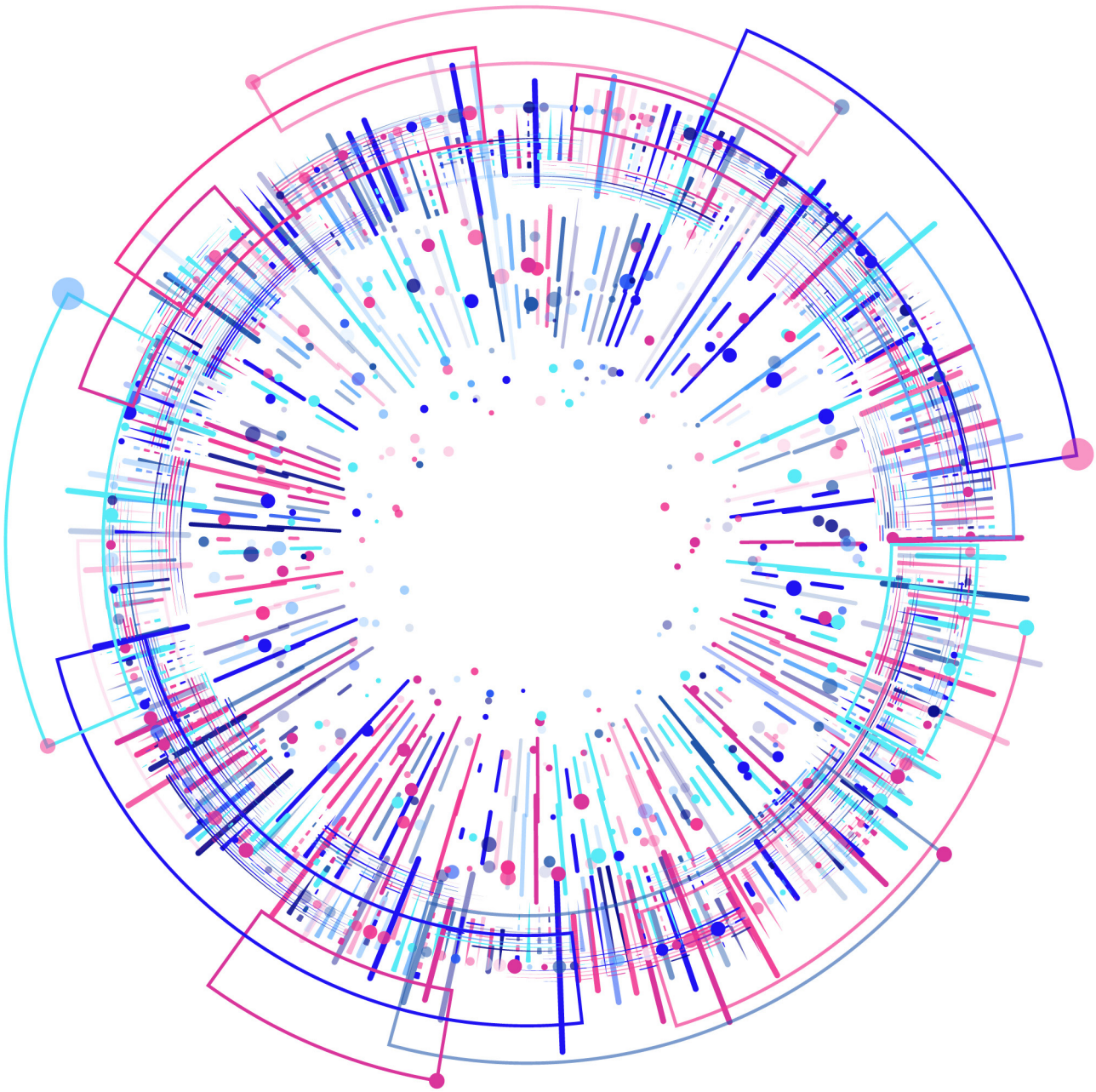
TWENTY NINETEEN

2019 ANNUAL REVIEW



CORNERSTONE RESEARCH

PRACTICES

Accounting // Antitrust and Competition // Automotive and Related Industries
Bankruptcy and Financial Distress Litigation // Consumer Finance // Consumer Fraud and Product Liability
Corporate and Government Investigations // Corporate Governance // Corporate Transaction Litigation
Data Analytics // Employee Retirement Income Security Act (ERISA) // Energy and Commodities
Financial Institutions // Healthcare // Intellectual Property // International Arbitration and Litigation
International Trade // Labor and Employment // Life Sciences // Real Estate // Securities // Valuation

2019 // **TWENTY NINETEEN**

This review highlights a few of the matters we worked on last year. While only a brief summary of our work, each of these cases provides insight into issues and sectors that will continue to be important aspects of the litigation landscape in 2020 and beyond.

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FROM OUR CEO AND PRESIDENT

Welcome to the latest edition of our Annual Review. This publication highlights several prominent cases we worked on in 2019. While the world we live in today seems dramatically different from the state of affairs in 2019, the key takeaways from these cases remain relevant for the legal challenges we continue to face.

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. We continually strive to maintain the trust our clients and experts place in us by identifying and supporting the most qualified experts for each matter; employing sophisticated analytical tools to address complex challenges; and supporting robust, objective testimony that is grounded in real-world data, academic research, and case precedent.

Our values underpin everything we do. That 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.

While 2020 has brought unprecedented changes to the way we work, the expertise, creativity, and dedication we bring to our clients and experts are unabated. We are here for you, now and in the future.

Please be safe and well.

Rahul Guha
Chief Executive Officer

Yesim Richardson
President

AUTOMOTIVE

A central question in consumer class actions is whether, or to what extent, prices would be different absent an alleged defect or misrepresentation. In the automotive and transportation sectors, analyzing market outcomes and identifying the economic factors that drive supply and demand are key.

FEATURED MATTERS //

PRODUCT LIABILITY / VOLKSWAGEN "CLEAN DIESEL" MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION

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.

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 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.

ADDITIONAL 2019 AUTOMOTIVE CASES

Counsel for automobile manufacturers turn to Cornerstone Research in major product liability cases. We have been retained to address alleged product and safety defects as well as false advertising claims in cases involving major automobile manufacturers. In addition to our experience in automobile cases, we have provided expert analyses in multiple matters involving all-terrain vehicles, recreational vehicles, and heavy-duty trucks.

- Beaty v. Ford Motor Company
- Chrysler-Dodge-Jeep EcoDiesel Litigation
- General Motors LLC Ignition Switch Litigation
- Johannessohn et al. v. Polaris Industries Inc.
- Takata Airbags Product Liability Litigation

CONJOINT ANALYSIS

Plaintiffs' experts in a variety of consumer class actions have increasingly proposed conjoint analysis as a method to estimate classwide damages.

FEATURED TOPIC //

CHALLENGES RELATED TO ESTIMATING CLASSWIDE DAMAGES

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 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 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.

TECHNOLOGY

The rapidly changing environment inherent in dynamic markets, such as mobile phone services, and in two-sided markets, such as commerce platforms or social networks, may require nontraditional economic models to assess market definition and establish competitive effects.

FEATURED MATTERS //

TECH AND THE DIGITAL ECONOMY

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

In addition, global events in 2020 have accelerated the application of online technologies. As the scope of the digital world expands, so do the challenges that businesses and organizations face. Our experts and consulting staff are at the frontier of the relevant fields and bring the highest quality insights and data analytics capabilities to these complex matters.

MERGER / T-MOBILE/SPRINT

Counsel for SoftBank and Sprint Corporation retained antitrust experts John Asker of UCLA, Timothy Bresnahan of Stanford University, and Kostis Hatzitaskos of Cornerstone Research to assist with the regulatory review of T-Mobile's $26 billion merger with Sprint. After a ten-day trial, a New York federal court judge approved the merger.

Cornerstone Research supported Professors Asker and Bresnahan and Dr. Hatzitaskos in analyzing how consumers choose wireless carriers and how wireless carriers compete. This analysis used highly granular data comprising billions of data points on when, where, and how consumers use their mobile phones. The experts submitted white papers evaluating the competitive effects of the proposed merger and presented to the DOJ and the FCC as part of the regulatory review.

The merging parties announced the transaction in April 2018 and the DOJ and FCC granted approval with certain remedies in July 2019 and November 2019, respectively.

In a concurrent proceeding, Cornerstone Research supported Professor Bresnahan in his testimony before the California Public Utilities Commission evaluating the competitive effects of the transaction. The CPUC approved the merger in April 2020.

Cornerstone Research also supported Professor Asker in the related litigation, *New York et al. v. Deutsche Telekom AG et al.,* in which a group of states' attorneys general sued to block the deal. Professor Asker submitted affirmative analyses of the competitive effects of the merger and rebutted analyses of plaintiffs' economics experts. Consistent with Professor Asker's rebuttal, the Southern District of New York judge partially excluded the plaintiffs' economic expert's coordinated effects opinions. The court ruled for the merging parties, refusing to enjoin the merger.

DATA ANALYTICS

The explosion of big data continues to raise an array of complex and evolving legal issues. At Cornerstone Research, we use advanced analytical techniques, artificial intelligence, and machine learning to meet the exacting challenges of large-scale data analytics.

FEATURED TOPIC //

ADVANCED EMPIRICAL ANALYSIS AND DATA SCIENCE TECHNIQUES

Social Media

With a vast user base that eclipses traditional media, social media platforms offer rich sources of data that multiply at dizzying speed. In litigation contexts, knowing how to effectively navigate, collect, and characterize such huge volumes of data is crucial. Our experience in these matters has given us deep familiarity with social media data sources and analyses. We have performed targeted searches and data collection, using both custom scraping techniques and other proprietary and third-party resources. Our experience on the cutting edge of machine learning and AI tools equips us to assess the relevancy and relative prominence of content and contributors.

Online Consumer Reviews

Online consumer reviews of products and services are among the most intriguing—and demanding—social media data. These reviews can be the subject of litigation; yet if employed appropriately, they can also provide a valuable source of real-world data. Cornerstone Research is skilled in evaluating these distinctive data, including assessing the relative importance of product features, changes in customer sentiment over time, and fraudulent reviews.

Algorithmic Decision Making

AI-based systems substitute human decisions with data-driven decisions, which can reduce subjectivity and error when processing large volumes of complex information. At the same time, data privacy, abuse, and bias concerns can create potentially contentious issues. In applying AI and machine learning to such complex issues as healthcare risk adjustment or deep learning–based image recognition, Cornerstone Research has built a solid understanding of these analytical techniques, including the benefits and limitations.

Text Analytics/Content Analyses

Distilling useful insights from a high-volume text requires scalable analytical techniques. Our staff and experts use sophisticated AI methods to organize documents by topic, highlight important entries, characterize content, and compile relevant databases of extracted information. Our capabilities also enable us to provide structured data through record linkage, resolve distinct entries to a common entity, and aggregate data from disparate sources.

Cryptocurrency/Blockchain Ledger Data

Disputes related to cryptocurrency and blockchain technology often involve huge quantities of real-time and historical ledger data, with individual tables comprising hundreds of billions of records. Our in-house massively parallel processing capabilities and team of programming specialists ensure that we can conduct large-scale data analytics efficiently and effectively.

Cryptocurrency/Blockchain Ledger Data // High-Frequency Trading Data // Healthcare Claims Data // Social Media Data // Geospatial Analytics // Web Data Collection // Data Visualization

HEALTHCARE

Healthcare competition matters require expertise with the complex network of entities involved in the financing and provision of medical care, overlapping regulatory frameworks, and sophisticated economic empirical and theoretical models.

FEATURED MATTERS //

MERGER / IN THE MATTER OF OTTO BOCK HEALTHCARE NORTH AMERICA INC.

The FTC issued a complaint related to the acquisition of Freedom Innovations (Freedom) by Otto Bock HealthCare North America Inc. (Otto Bock) in September 2017. The FTC retained Cornerstone Research and Christine Hammer, a certified public accountant and senior advisor with Cornerstone Research.

In a hearing before the chief administrative law judge, Ms. Hammer provided testimony related to:

- Whether Freedom qualified as a "failing firm" as defined by the DOJ and FTC Horizontal Merger Guidelines.
- What, if any, efficiencies were likely to result from Otto Bock's acquisition of Freedom and be cognizable under the Merger Guidelines.

Ms. Hammer concluded that Freedom did not meet any of the three circumstances to be considered a failing firm under the Merger Guidelines. She found that Freedom would have been able to meet its financial obligations in the near future and there was no evidence that Freedom initiated or seriously considered a Chapter 11 reorganization. She also determined that Freedom did not make "good faith" efforts to elicit reasonable alternative offers during the sales process.

With regard to alleged merger-specific efficiencies, Ms. Hammer opined that Otto Bock had not presented any verifiable efficiency claims. Because Otto Bock only presented ambiguous assertions, it was not possible to evaluate the merger specificity of the claims. The efficiencies as alleged were therefore not cognizable under the Merger Guidelines.

In an April 2019 decision, as a remedy, the ALJ ordered Otto Bock to fully divest Freedom to a FTC-approved acquirer, with limited potential exceptions to a complete divestiture of all of Freedom. The ALJ cited Ms. Hammer's expert report and testimony throughout his decision.

In November 2019, the FTC issued its opinion, stating "We hold that, to fully restore the competition lost from the Acquisition, [Otto Bock] must divest Freedom's entire business with the limited exceptions granted by the ALJ. We enter an order consistent with this Opinion."

ANTITRUST & COMPETITION / OSCAR INSURANCE COMPANY OF FLORIDA V. BLUE CROSS AND BLUE SHIELD OF FLORIDA INC. ET AL.

A new entrant in the Orlando health insurance marketplace alleged that the defendant attempted to monopolize the sale of individual plans through its use of exclusive agents. Defense counsel for Blue Cross and Blue Shield of Florida Inc. (Florida Blue) retained Cornerstone Research to support expert testimony by Laurence Baker of Stanford University.

In denying the plaintiff's motion for preliminary injunction, the judge concluded that the plaintiff "failed to carry its burden of proving irreparable harm and a substantial likelihood of success of the merits." The judge later dismissed the case on the grounds that Florida Blue's exclusive contracts were covered under the McCarran-Ferguson Act.

LIFE SCIENCES

While opioid-related lawsuits and generic price-fixing matters dominated in 2019, life sciences companies continued to face more traditional litigation stemming from reverse payment antitrust claims and securities class action filings.

FEATURED MATTERS //

ANTITRUST & COMPETITION / INTUNIV ANTITRUST LITIGATION

Indirect purchaser plaintiffs alleged that two pharmaceutical companies entered into an anticompetitive patent settlement agreement. They claimed that this resulted in the delayed availability of a generic equivalent of a branded ADHD drug, which caused inflated prices for consumers. Defense counsel for the brand manufacturer, Shire, and the generic manufacturer, Actavis, retained Cornerstone Research and James Hughes of Bates College.

Professor Hughes submitted two expert reports in opposition to class certification and testified at deposition. He identified several categories of proposed class members who would not have suffered any apparent injury from the alleged generic delay, including:

- Those who would have continued to pay for the brand drug after generic entry.
- Those whose use of Shire's coupon programs meant they would have paid more for the generic than the brand.
- Those who would still have reached their out-of-pocket prescription maximums with earlier generic entry.

Professor Hughes estimated that thousands of proposed class members would not have been injured.

Citing Professor Hughes's analysis of these categories of uninjured class members, a U.S. district court judge denied the plaintiffs' motion for class certification. In her decision, the judge stated, "Identifying uninjured consumers with any degree of confidence would require an assessment of individual-specific facts such as the consumer's insurance plan, any peculiar views about the equivalence of brand and generic Intuniv, their consumption habits when faced with similar choices between brand and generic drugs, their use of coupons, the timing of their purchases of Intuniv, and potentially other factors."

SECURITIES / HSU ET AL. V. PUMA BIOTECHNOLOGY INC. ET AL.

In a rare securities class action trial, plaintiffs claimed that Puma Biotechnology (Puma) and its CEO made misleading statements about the results of its phase III clinical trial for a breast cancer drug. Puma and its counsel retained Cornerstone Research and Paul Gompers of Harvard University to respond to the plaintiffs' damages expert.

The plaintiffs' damages expert testified that these alleged misrepresentations were corrected when the clinical trial results were released on two separate dates and caused Puma's stock price to decline. He presented claims that damages experienced by class members were $87.20 per share.

In his response, Professor Gompers testified that the plaintiffs' expert had not established loss causation, and had failed to reliably quantify damages for the allegedly corrective disclosures.

The jury found in Puma's favor on three of the four alleged misrepresentations and awarded only $4.50 per share for the first corrective disclosure date, or 5 percent of the claimed damages per share.

This case was the first federal securities class action to reach a jury verdict in eight years.

DECADE REVIEW 2010–2019

We celebrated our thirtieth anniversary in 2019. As we begin a new decade, we look back on some of the successful trials, regulatory investigations, and motions related to dismissal, class certification, and summary judgment we have been privileged to be a part of during the past ten years.

T-Mobile/Sprint | Wholesale Grocery Products Antitrust Litigation | Google's Acquisition of AdMob | Monsanto Co. v. E.I. du Pont de Nemours & Co. | Actiq Sales and Marketing Practices Litigation | Microsoft Corp. v. Motorola Mobility | Barclays Bank plc Securities Litigation | Aetna/Humana | U.S-Canada Softwood Lumber Dispute | Online DVD Rental Antitrust Litigation | BlackRock Mutual Funds Advisory Fee Litigation | Intuniv Antitrust Litigation | Facebook IPO Securities and Derivatives Litigation | Beaty et al. v. Ford Motor Company | Optical Disk Drive Antitrust Litigation | AT&T/Time Warner | Credit Default Swaps Market | General Motors LLC Ignition Switch Litigation | Air Cargo Shipping Services Antitrust Litigation | Moody's Corporation Securities Litigation | Anderson News LLC et al. v. American Media Inc. et al. | Asbestos Workers Philadelphia Pension Fund v. Merix Corp. | New York v. Exxon Mobil Corp. | Beef Products Inc. et al. v. American Broadcasting Companies Inc. et al. | U.S. v. EnergySolutions Inc. et al. | BP p.l.c. Securities Litigation | Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation | Neurontin Off-Label Marketing | SEC v. BankAtlantic Bancorp Inc. | Cigna's Acquisition of Express Scripts | U.S. v. Dow Chemical and E.I. Dupont | Comcast/Time Warner Cable | Southeastern Milk Antitrust Litigation | Essilor/Luxottica | NPM Adjustment Proceedings | Students for Fair Admissions Inc. v. Harvard University | Whirlpool Front Loading Washer Products Liability Litigation | Flash Memory

DECADE REVIEW continued

2015 2016 2017 2018 2019

Antitrust Litigation | Move Inc. et al. v. Zillow Inc. et al. | Volkswagen Diesel Product Liability Litigation | Boston Scientific Corp. et al. v. Cordis Corp. | Evonik/PeroxyChem | Firefighters' Retirement System et al. v. Citco Group et al. | FCA's First Competition Enforcement Decision | Mortgage-Backed Securities Litigation | Sysco/US Foods | Hsu et al. v. Puma Biotechnology Inc. et al. | FTC v. Wilhelmsen et al. | Foreign Exchange Investigations | General Electric's Acquisition of Alstom's Thermal Power, Renewable Power and Grid Businesses | IBEW Local 90 Pension Fund et al. v. Deutsche Bank AG et al. | ISDAfix Investigations | John Q. Hammons Hotels Inc. Shareholder Litigation | Selectica Inc. v. Versata Enterprises Inc. | Walt Disney Company's Acquisition of 21st Century Fox Film and TV Studios and Certain Cable Networks | CoStar Group/LoopNet | Northfield Laboratories Securities Litigation | Novack v. GSI Commerce Inc. et al. | Oscar Insurance Company of Florida v. Blue Cross and Blue Shield of Florida Inc. et al. | Google's Acquisition of ITA Software | Shuffle Tech International LLC et al. v. Scientific Games Corp. et al. | Sivolella et al. v. AXA Equitable Life Insurance Company et al. | Skelaxin (Metaxalone) Antitrust Litigation | Sprint Corp. Buyout of Clearwire Corp. | Axiom Investment Advisors LLC et al. v. Deutsche Bank AG | Stragent LLC et al. v. Intel Corp. | USA v. Cabell Huntington Hospital Inc. and St. Mary's Medical Center Inc. | Libor Investigations and Civil Litigation | Comcast–NBC Universal Joint Venture | City of Pontiac Policemen's and Firemen's Retirement System et al. v. UBS AG et al.

2015 2016 2017 2018 2019

LABOR & DISCRIMINATION

Academic experts are often called on to explain the unique economics of labor markets in matters involving a variety of issues, including class certification, monopsony power, and discrimination in wages, promotion, or pre-labor market education.

FEATURED MATTERS //

AFFIRMATIVE ACTION / STUDENTS FOR FAIR ADMISSIONS INC. V. PRESIDENT AND FELLOWS OF HARVARD COLLEGE ET AL.

Defense counsel retained Cornerstone Research in a high-profile trial addressing Harvard College's use of race in its undergraduate admissions process. Cornerstone Research supported David Card of the University of California, Berkeley, as Harvard's testifying economic expert.

Professor Card filed two rounds of reports and testified at a bench trial, presenting the federal district court with extensive statistical analyses of Harvard's admissions process.

After a three-week trial, the U.S. district court judge ruled in favor of Harvard on all counts. She cited Professor Card's testimony and analyses extensively in her opinion, aligning with Professor Card on nearly all points of methodological disagreement between the economic experts.

NO-POACH AGREEMENTS

Labor market monopsony and its potential effects on workers is a topic of increased scrutiny by antitrust regulators. A wave of class action litigation challenging the use of "no-poach" clauses across numerous industries—with a particular focus on large franchises in the fast-food industry—has raised important questions about the potential anticompetitive effects of such clauses. At its most basic level, a no-poaching clause is an agreement between two or more companies not to solicit or recruit each other's employees, either during or after their employment.

Cornerstone Research has been retained to analyze the alleged anticompetitive effects of no-poach clauses in multiple matters. In these cases, Cornerstone Research staff and experts have analyzed the potential procompetitive benefits of such arrangements. We have also conducted statistical analyses to assess whether there was evidence of coordinated behavior not to hire or recruit. In addition, we have analyzed whether, on net, such an alleged conspiracy would harm all employees subject to the clauses.

CLASS CERTIFICATION ANALYSIS IN EMPLOYMENT DISCRIMINATION LITIGATION

Defense counsel retained Justin McCrary of Columbia Law School and Cornerstone Research in a class action labor discrimination case brought against a large retailer.

Professor McCrary provided expert analysis on the question of whether the class should be certified. He analyzed the retailer's internal wage and promotion data in order to assess the differences in wages, job titles, and career progression across individual employees and across stores. Professor McCrary's statistical analysis established that there were large and significant differences in wages and promotion outcomes across individual employees and, on average, across stores. The judge denied certification of the plaintiffs' proposed class.

EXCHANGE-TRADED FUNDS

Exchange-traded funds (ETFs) are pooled investment vehicles similar to mutual funds, but whose shares trade on securities exchanges, allowing investors to buy or sell shares at market-determined prices throughout the trading day.

FEATURED MATTERS //

FINANCIAL INSTITUTIONS / TRADING IN ETF BASKET SECURITIES BY AN AUTHORIZED PARTICIPANT

Cornerstone Research was retained by counsel for a large financial institution to assist with its internal investigation into whether the net asset value (NAV) of certain high-yield ETFs was manipulated through trading in the market for the underlying bonds.

We examined whether manipulative trading occurred in certain bonds in the delivery basket of an authorized participant (AP) such that the bond price was inflated close to 3:00 PM, when the fund's NAV was calculated. This inflation would benefit the AP if the bond was included in the AP's delivery basket in a higher proportion than its weight in the fund's portfolio. However, fund shareholders would be damaged as the delivery basket would be overvalued, causing the fund to issue "too many" shares to the AP.

We analyzed bond trading data from FINRA, quotation data from Bloomberg, and "request for quotes" data from the AP to examine whether there was a pattern of trades at abnormally high prices close to 3:00 PM in bonds included in the AP's delivery basket. We calculated the potential inflation in the bond price and the associated damages.

We presented our findings to the relevant parties, including the SEC and the ETF's board.

FINANCIAL INSTITUTIONS / TRADING IN ETF SHARES BY AFFILIATED PARTIES

Cornerstone Research was retained by counsel for a financial institution to assist with an internal investigation into trading in ETF shares by affiliated parties (affiliated trades).

We examined whether certain affiliated trades may have been motivated by the desire to manipulate the reported closing price for the ETF shares on certain dates. We researched the closing price reporting rules of different exchanges and data vendors and studied the pricing of the affiliated trades relative to market quotes, as well as the intraday indicative values at the time of the trade. We analyzed whether the affiliated trades impacted the closing price of the funds relative to the net asset value.

For certain affiliated trades, we compared the relative economics of purchasing the ETF shares in the open market versus having an authorized participant create the shares.

We presented our findings to the ETF's board.

INVESTMENT MANAGEMENT

Investment firms are frequently sued for investor losses or for the size of the fees that they charge. Recent decisions demonstrate the difficulties that plaintiffs have in establishing damages in these cases.

FEATURED MATTERS //

SECURITIES / FIREFIGHTERS' RETIREMENT SYSTEM ET AL. V. CITCO GROUP ET AL.

Following the failure of their investment in a hedge fund managed by Fletcher Asset Management, plaintiffs brought a $220 million suit against Citco, the fund's administrator. Defense counsel retained Cornerstone Research and Shane Johnson of Texas A&M University to opine on loss causation and damages.

Plaintiffs alleged that certain misrepresentations, omissions, and conflicts of interest of the administrator defendants caused their losses. Professor Johnson analyzed these factors and assessed whether any of the plaintiffs' losses were attributable to the allegations.

Professor Johnson demonstrated that the plaintiffs' expert had failed to establish a causal relationship between the alleged misrepresentations, omissions, and conflicts of interest and the plaintiffs' losses. In particular, his analysis showed that the plaintiffs' expert ignored the impact of several factors on the fund, including that of the financial crisis.

He also showed that the plaintiffs' expert did not consider the impact of the actions of other parties, including the investment manager, or the plaintiffs' own investment decisions. Finally, Professor Johnson explained that the expert's calculation substantially overstated damages, due to a misinterpretation of the structure of the investment as a "guaranteed" investment.

Shortly before trial, our clients prevailed on summary judgment on all counts.

SECURITIES / BLACKROCK MUTUAL FUNDS ADVISORY FEE LITIGATION

Plaintiffs sued BlackRock under Section 36(b) of the Investment Company Act, alleging that the firm charged excessive advisory fees to shareholders of two of its largest mutual funds, the Global Allocation and Equity Dividend funds. Given that the funds together grew to over $80 billion during the relevant period, alleged damages exceeded $1.5 billion. Defense counsel retained Erik Sirri of Babson College, supported by Cornerstone Research, to provide expert and rebuttal testimony.

This is the first Section 36(b) case brought under a "sub-advisor" theory that has reached a trial decision. BlackRock is responsible for all day-to-day operations of the Global Allocation and Equity Dividend funds. At the same time (using similar investment mandates, but providing more limited services and charging lower fees), it sub-advises several funds that insurance companies offer within their variable annuity products. Plaintiffs argued that BlackRock provides essentially the same services to its mutual funds as to these sub-advised funds, and that its mutual fund fees are therefore excessive.

At trial, Professor Sirri presented a comparative fee analysis showing that the fees BlackRock charges to Global Allocation and Equity Dividend fund shareholders are in line with those charged by peer mutual funds. He also exposed flaws in the plaintiffs' expert's analyses, and provided important context about the broad and complex range of activities in which investment advisors such as BlackRock must engage to provide mutual funds.

Following an eight-day bench trial, the judge found in favor of BlackRock.

INVESTMENT MANAGEMENT continued

FEATURED MATTER //

SECURITIES / KENNIS V. METROPOLITAN WEST ASSET MANAGEMENT LLC

The plaintiff alleged that Metropolitan West Asset Management LLC (MetWest) charged excessive fees, and that those fees did not meet the "arm's-length bargaining" standard under Section 36(b) of the Investment Company Act. Defense counsel retained John Coates of Harvard Law School and Cornerstone Research to evaluate MetWest's role as advisor to the Metropolitan West Total Return Bond Fund (the Fund) and to rebut the plaintiff's experts' arguments on all fronts.

The plaintiff's experts opined that, due to the purported lack of competition in the mutual fund industry, peer mutual funds were an inappropriate yardstick to evaluate the Fund's fees. They argued that, instead, the fees MetWest charged other funds for sub-advisory services should be used as a benchmark, given the purportedly similar services performed by MetWest as an advisor to the Fund and as a sub-advisor to the externally sponsored sub-advised funds. According to the plaintiff's experts, if MetWest had charged the Fund the same advisory fee it charged other funds for sub-advisory services, MetWest would still have been sufficiently profitable while appropriately sharing economies of scale with the Fund's shareholders.

Based on his analyses of the mutual fund market, Professor Coates opined that there was ample competition for comparable mutual funds with fees he evaluated to be in line with peers. He also analyzed the Fund's performance and testified on MetWest's profitability from the Fund, the ways mutual funds may or may not experience and share economies of scale, and the differing services offered and risks borne by advisors and sub-advisors. He opined that MetWest provides different services when playing its different roles, operates a different set of businesses, and incurs different risks as an advisor than it does as a sub-advisor, and thus sub-advisory fees on their own could not be used to determine if the Fund's fees were reasonable.

Following a bench trial, a federal judge found in favor of MetWest and called Professor Coates's testimony convincing across a wide range of topics. In his decision, the judge stated "the Court agrees with Coates's criticism" of the plaintiff's experts' estimation of economies of scale and opined that "Coates proffered convincing testimony as to why economies of scale as to a non-index mutual bond fund would dissipate at well below $10 billion AUM." He also cited Professor Coates's assessments regarding competition in the mutual fund industry as persuasive.

INDUSTRY-LEADING RESEARCH

For more than thirty years, our staff and experts have been at the forefront of reporting trends in securities filings, settlements, and shareholder litigation. Our collaborations with institutions such as Stanford Law School and NYU Pollack Center provide counsel with updated data and analyses.

FEATURED REPORTS //

Accounting Class Action Filings and Settlements

In 2018, he value of securities class action settlements involving accounting allegations reached the second-highest total in the last 10 years.

Appraisal Litigation in Delaware—Trends in Petitions and Opinions

The number of appraisal petitions filed in the Delaware Court of Chancery continued to fall in 2018.

Characteristics of U.S. Natural Gas Transactions: FERC Form 552 Submissions

Both U.S. natural gas trading activity and marketed production reached record highs in 2018.

Opt-Out Cases in Securities Class Action Settlements

Out of 382 securities class action settlements between 2014 and 2018, there were at least 34 cases in which one or more plaintiffs opted out to pursue separate litigation against the defendant.

Regulatory Actions Involving Accountants

The SEC and PCAOB finalized 45 enforcement actions involving accountants in 2018. Monetary settlements totaled less than $3.3 million.

SEC Enforcement Activity: Public Company and Subsidiaries

The number of new SEC enforcement actions against public companies and subsidiaries in fiscal year 2019 rose more than 30 percent over the previous fiscal year.

Securities Class Action Filings

The pace of federal securities class actions continued at near-record levels in 2018.

Securities Class Action Settlements

The total settlement value of securities class actions rose sharply to $5 billion in 2018, driven by five settlements of at least $100 million.

Shareholder Litigation Involving Acquisitions of Public Companies

Shareholders of public target companies challenged 82 percent of merger and acquisition deals valued over $100 million in 2018, consistent with the previous year.

Trends in Merger Investigations and Enforcement at the European Commission

The inaugural edition of the report shows that the deal value of transactions subject to merger enforcement has increased significantly over the past decade.

Trends in Merger Investigations and Enforcement at the U.S. Antitrust Agencies

U.S. government agencies reported 1,992 transactions in FY 2017, up from 1,772 in the previous fiscal year.

All the reports featured in this Annual Review, as well as the most recent updates, are available at cornerstone.com.

PRO BONO

We partner with law firms and nonprofits to support individual rights and freedoms. Brown v. Madison County, *a first-of-its-kind consent decree on racial profiling by police, is widely recognized as one of the most important decisions in 2019.*

FEATURED MATTERS //

RACIAL PROFILING / BROWN ET AL. V. MADISON COUNTY, MISSISSIPPI

Cornerstone Research worked with Simpson Thacher & Bartlett and the ACLU of Mississippi in this pro bono case that resulted in a landmark consent decree. The citizens of Madison County, Mississippi, brought a class action against the county's Sheriff's Department. The plaintiffs alleged the Sheriff's Department used unconstitutional tactics and racial profiling in traffic and pedestrian stops.

Rahul Guha and Bryan Ricchetti of Cornerstone Research, Justin McCrary of Columbia Law School, and Patricia Frontiera of the University of California, Berkeley, served as expert witnesses for the plaintiffs. The experts analyzed the frequency of traffic stops across different racial groups, and assessed whether roadblocks in Madison County were implemented more frequently in neighborhoods that are predominantly African-American.

In October 2019, a U.S. district judge for the Southern District of Mississippi approved a groundbreaking consent decree, one of the first in the state of Mississippi to address these kinds of policing practices. The settlement implements new policies for non-biased policing, roadblocks, and pedestrian stops. It also establishes new data collection, record-keeping, and disclosure requirements, as well as a community advisory board to monitor compliance and to provide a forum for community complaints and comments.

SUSPENSION RATE DISCREPANCIES IN SCHOOL DISTRICTS

Cornerstone Research investigated differences in suspension rates based on gender, race, disability status, and other factors for public school districts across the San Francisco Bay Area. In 2019, the Lawyers Committee for Civil Rights (LCCR) of the San Francisco Bay Area honored our firmwide team with the Robert G. Sproul Jr. Award, presented at the LCCR's annual MLK Awards Dinner. LCCR presents the award for exemplary provision of legal services to underrepresented communities.

RACIAL DIVERSITY IN HIRING PRACTICES

Cornerstone Research assessed whether hiring practices for police and firefighters in Boston communities yielded sufficient racial diversity to match the racial makeup of the qualified workforce in the local communities.

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CORNERSTONE RESEARCH

Economic and Financial Consulting and Expert Testimony