

ANALYSIS GROUP FORUM

CELEBRATING
YEARS 25

FALL/WINTER 2006

ISSUE HIGHLIGHTS

SUCCESSFUL RESULT FOR AMERICAN CENTURY IN BILLION- DOLLAR MUTUAL FUND FEE SUIT

Analysis Group and its academic affiliates provided consulting and expert witness services in one of the largest mutual fund excessive fee actions ever filed... *page 2*

OFF-LABEL MARKETING INVESTIGATIONS IN THE PHARMACEUTICAL INDUSTRY

Estimating the incremental sales at issue requires knowing not only the portion of a drug's prescriptions that was off-label, but also the portion that can be tied to the improper marketing... *page 3*

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... a note from the CEO



Our 25th year has been one of the most active in the history of Analysis Group across a breadth of practice areas.

In a mutual fund excessive fee action, our consultants supported two academic experts and helped our client, American Century Investment Management, achieve a highly favorable result (see page 2). The case was voluntarily dismissed by the plaintiffs in August. Our work for American Century is part of a long track record in the mutual funds area. We

have supported Independent Distribution Consultants, fund complexes, and brokerage firms in some of the largest settlements involving alleged market timing and other practices that came under investigative scrutiny.

In another important finance-related case, involving the Gemstar accounting fraud, our team supported an academic expert on behalf of the SEC. The case resulted in one of the largest civil penalties ever obtained by the Commission (see page 5).

Looking ahead, regulatory investigations into alleged stock option backdating at many U.S. companies have triggered restatements and shareholder litigation. As companies consider the scope of the risk they face, they will need to understand the complex valuation issues involved. Read our Q&A about potential costs to companies, as well as new valuation approaches (see page 6).

One of our firm's priorities has always been to find the best academic thinking in areas that affect our clients, and we have recently added several preeminent experts in antitrust and finance as academic affiliates. In addition, we welcome some very talented new senior staff (see page 8). We look forward to working with clients and experts in the coming year.

A handwritten signature in blue ink that reads "Martha S. Samuelson".

MARTHA S. SAMUELSON
PRESIDENT AND CEO

Successful Result for American Century in Billion-Dollar Mutual Fund Fee Suit

Academic experts provide testimony on competition and economies of scale

In *Baker v. American Century Investment Management*, the plaintiffs used new legal theories to challenge the level of mutual fund fees. Analysis Group and its academic affiliates **R. Glenn Hubbard** and **Peter Tufano** were retained by **Milbank, Tweed, Hadley & McCloy LLP** to provide consulting and expert witness services on behalf of **American Century**.

competitive marketplace. Professor Tufano, Senior Associate Dean of Harvard Business School and a noted mutual fund industry expert, provided analysis and testimony regarding economies of scale at American Century. Together, their work also revealed several fundamental flaws in the theories and analyses put forth by the plaintiffs' experts.

“Analysis Group and its experts, with their knowledge of the mutual fund industry, helped expose the weaknesses of the plaintiffs' methodologies.”

— **SEAN M. MURPHY**, PARTNER, MILBANK, TWEED, HADLEY & MCCLOY LLP, COUNSEL FOR AMERICAN CENTURY

The case concerned allegations that American Century had charged excessive management fees to three of its largest mutual funds, in violation of Section 36(b) of the Investment Company Act of 1940. The plaintiffs' action challenged more than \$1 billion in fees paid by the funds from March 2003 through July 2006.

Professor Hubbard, Dean of Columbia Business School and former Chairman of the President's Council of Economic Advisers, conducted research and provided deposition testimony regarding competition in the mutual fund industry, and evaluated plaintiff allegations that the fees American Century charged its retail mutual fund clients were not consistent with a

One week before the case was scheduled to go to trial, the plaintiffs stipulated with prejudice to the dismissal of the action, stating, “It is likely that the Defendant will prevail on most of [the relevant] issues,” and that “if the case were tried, the Court would likely determine that the compensation Defendant received for managing the Funds was fair and reasonable. Therefore, Plaintiffs have concluded that the Defendant has not violated its fiduciary duties under Section 36(b) of the Investment Company Act of 1940.” The case was dismissed with prejudice.

Managing Principal **Mark Egland** led the Analysis Group case team, which included President and CEO **Martha Samuelson**, Vice Presidents



Lee Heavner, Stanley Ornstein, and Michael Quinn, and Managers **Kristen Barry, Arindam Ghosh, and Mike Holland**.

Analysis Group's work on the *American Century* engagement is part of an extensive body of work in the mutual funds area. Over the last several years, we have had significant roles in major mutual fund investigations involving alleged market timing. More information on our work can be found at our website, www.analysisgroup.com.

Mark Egland (213 896 4523) is based in our Los Angeles office. ■

Off-Label Marketing Investigations in the Pharmaceutical Industry

Managing Principal Paul Greenberg and Vice President Tamar Sisitsky discuss the challenges of isolating the impact of off-label marketing on sales

Purchases of prescription pharmaceuticals are driven partially by science and partially by marketing. Physicians prescribe a drug based on its clinical characteristics, including expected patient-specific safety, efficacy, and side-effect profiles. In addition, drug selection is based, in part, on efforts by the manufacturer to increase product visibility.

Science or Marketing?

Disentangling that portion of a drug's sales that results from science versus marketing has long been a challenge in pharmaceutical industry disputes involving issues such as transfer pricing, intellectual property, antitrust, and breach of contract. Recently, efforts to parse out the effects of science and marketing on pharmaceutical sales have moved into a new arena. Government investigations are increasingly focused on incremental sales obtained by pharmaceutical manufacturers' marketing of drugs for various "off-label" uses — indications that the FDA has not formally approved.

Physicians have long prescribed medications for off-label uses, and such experimentation is both legal and an accepted part of medical practice. According to a November 2003 Knight Ridder report, the number of off-label prescriptions increased 96% between 1997 and 2003. During that same period, off-label sales of drugs accounted for 23% of the total retail value of all drug sales. Research appearing in *The New Jersey Law Journal* in 2006 indicates that 60% of oncology patients and 80% of AIDS patients have received off-label medications.

The issue in the government investigations is not the physician's prescribing behavior but the manufacturer's marketing behavior. FDA rules allow for some publicizing of scientific information concerning a drug's benefits, but there often is no bright line separating science from marketing. Drug manufacturers are barred from directly promoting off-label uses to physicians, but they are permitted to answer questions or provide information if asked by medical practitioners. In

SETTLEMENTS IN OFF-LABEL INVESTIGATIONS

Genentech: \$50 million settlement with the U.S. Department of Justice for off-label marketing of **Protropin**, a synthetic growth hormone, for use in treating burns and a kidney disorder (1999).

Pfizer: \$430 million settlement associated with off-label marketing of epilepsy drug **Neurontin** for various psychiatric disorders, back pain, and headache (2004).

Eli Lilly: \$36 million to settle charges related to off-label marketing of osteoporosis drug **Evista** for breast cancer prevention (2005).

Serono: \$704 million to resolve charges for off-label marketing of **Serostim**, an FDA-approved drug for the treatment of AIDS wasting, for treatment of loss of body cell mass (2005).

Schering-Plough: \$435 million to resolve charges regarding off-label marketing of **Temodar**, approved to treat certain types of brain tumors, to treat other kinds of brain cancers, and hepatitis drug **Intron A** for superficial bladder cancer (2006).

InterMune: \$36 million to settle charges related to off-label marketing of immune disorder drug, **Actimmune**, for treatment of idiopathic pulmonary fibrosis (2006).



continued on next page

Off-Label *(continued from page 3)*

In addition, manufacturers often sponsor continuing medical education seminars where off-label use of various drugs can be discussed, including the results of clinical trials for off-label indications. Manufacturers argue that these events are designed to keep up with the latest scientific developments and respond to the results of physician experimentation; critics see them as violations of the FDA's ban on off-label promotional activity. A complex challenge exists in trying to isolate the impact on sales of marketing as opposed to a range of other possible influences.

KEY ISSUES IN OFF-LABEL MARKETING INVESTIGATIONS

The government has indicated that the following could be considered potential evidence in off-label investigations:

- **Rates of off-label prescriptions before and after physician conferences hosted by the manufacturer.**
- **Market research recording doctors' state of mind after marketing meetings.**
- **Role of the manufacturer in prescribing activity.**
- **A small market for approved use relative to a large sales force.**
- **Financial incentives for off-label use.**
- **Failure to identify company funding for research, articles, presentations.**
- **Health consequences from off-label use.**

Source: "Fraud Issues in Off-Label Promotion," PharmaCongress presentation by Virginia Gibson, Assistant U.S. Attorney, October 2, 2003.

Damages Approaches

Estimating the incremental sales at issue requires knowing not only the portion of a drug's prescriptions that was off-label, but also the portion that can be tied to the improper marketing. Pharmaceutical industry data, including internal company financials, public and private administrative claims data concerning patient health care use, and third-party market research, can inform the total amount of a drug's off-label sales. However, even with access to all of these data sources,

defining what is off-label may be ambiguous to the extent that the label does not map neatly to available disease classifications (e.g., ICD-9, which is often used for reimbursement) and patterns of use (e.g., recommended daily dose). Moreover, determining the portion of total off-label sales due to the conduct at issue in these investigations requires knowing the percentage of off-label sales that would have occurred in the absence of any off-label marketing. This "background rate" recognizes that an accepted part of medical practice is for physicians to prescribe medications for non-indicated uses.

In some early cases (such as the 1999 *Genentech* case), the government did not distinguish between off-label sales directly resulting from illegal promotion and such background-rate off-label sales. More recently, the government did attempt to account for these distinctions in the 2004 *Neurontin* case (*United States v. Warner-Lambert Company LLC*), concluding that slightly over a quarter of Neurontin sales would have been for off-label uses even without improper promotional activity.

Future Directions

As costly as past and ongoing off-label marketing investigations have been, they may represent only the beginning of an upward trend. Michael K. Loucks, First Assistant U.S. Attorney for the District of Massachusetts, recently encouraged companies to file off-label suits against their competitors to protect their lawfully gained labels. He described such suits as in the "economic self interest" of companies that had made "an honest effort to market products lawfully." Such lawsuits have not occurred to date, but should they start to be filed, they would represent a significant expansion of off-label investigations.

Mr. Loucks also recently indicated that with the advent of Medicare Part D and Medicare's expanded payments for prescription drugs, the government will maintain its focus on pharmaceutical marketing activity.

Paul Greenberg (617 425 8128) and Tamar Sisitsky (617 425 8202), based in our Boston office, have developed economic analyses in connection with numerous off-label investigations. ■

SEC Wins Large Civil Penalty in Accounting Fraud Case

Analysis Group worked on behalf of the SEC in one of the largest civil penalties ever obtained by the Commission against an individual in an accounting fraud case. A federal judge ordered Gemstar ex-CEO Henry Yuen to pay a \$22.3 million penalty for overstating the company's revenue by more than \$225 million between 2000 and 2002. Gemstar, an entertainment company, publishes *TV Guide* and holds patents on technology for interactive TV programming guides. Mr. Yuen was alleged to have used tactics such as recording phantom revenue and booking "round-trip" transactions with no economic substance.

Led by Managing Principal **Bruce Strombom** and Manager **Mark Gustafson**, Analysis Group supported academic affiliate **Gerard Tellis** of the University of Southern California, whose report was filed in rebuttal to that of a defense expert. The team's work included analyzing invoices for advertising on Gemstar's interactive programming guide and demonstrating that the limited number of invoices executed as arm's-length transactions were fundamentally different from the remaining invoices, for which there was no market justification.

The ruling was widely covered in major media outlets and followed a four-year SEC investigation.

Analysis Group Client Pays Lowest Average Price at FCC Auction

Bidding in the FCC's Advanced Wireless Services (AWS) auction of 1,122 wireless licenses, which concluded in September, totaled \$13.7 billion in net bids. The bidders included most major wireless companies as well as smaller regional firms. Analysis Group provided expert economic consulting and auction advising services on behalf of SpectrumCo, a cable-Sprint consortium whose members include Cox Communications, Comcast, Time Warner Cable, Sprint Nextel, and Bright House Networks.



Analysis Group Vice President **Coleman Bazelon** worked closely with academic affiliate **Thomas Hazlett** and George Mason professor David Porter to help our client develop and implement a bidding strategy for the auction. Their work included modeling relative prices of wireless spectrum licenses. SpectrumCo paid almost \$2.4 billion (or \$0.45 per megahertz "pop") for 20 MHz of spectrum covering more than 260 million people — "the lowest average price paid by all the major bidders in the auction," according to *Optical Networks Daily*.

The Analysis Group team included Manager **Daria Killebrew** and Associates **Robin Heider** and **Justin Works**.

CALCULATING DAMAGES IN BROKER RAIDING CASES

In the Spring 2006 issue of *Stanford Journal of Law, Business & Finance*, Analysis Group Vice President **Maureen Chakraborty** and her coauthors, academic affiliate **John Finnerty** of Fordham University and attorney Michael McAllister of Satterlee Stephens Burke & Burke LLP, discuss methodologies for calculating lost profits damages in corporate raiding cases. Such cases arise when a securities broker or dealer improperly hires away a number of a firm's producers. When these cases go to arbitration, the issue of lost profits is a critical one considered by the arbitration panel. Drawing on concepts from contract and tort case law, established economic and financial theories, and their own experience in securities-related arbitration, the authors provide a framework for calculating lost profits damages in such cases that is consistent with law and financial and economic principles.

"The purpose of the article," they write, "is to bring consistency and rationality to the award of damages in 'raiding' cases." The article is available on Analysis Group's website at www.analysisgroup.com.

RECENT LITIGATION

**\$900 MILLION SETTLEMENT
IN HEALTH CARE FRAUD CASE**

Analysis Group was retained by the U.S. Department of Justice to provide quantitative analysis of allegedly questionable billing practices by Tenet Healthcare Corp., operator of the country's second-largest hospital chain.



The DOJ contended that Tenet hospitals inflated charges in excess of any increase in patient treatment costs and billed for services not provided.

Analysis Group Vice President **Howard Birnbaum** and Manager **Mark Gustafson** worked with our academic affiliates, **Laura Peterson** of the Harvard School of Public Health and **Arnold Barnett** of MIT's Sloan School of Management, to review, analyze, and classify detailed bills for hospital stays. In question was the issue of inappropriate "outlier payments" — payments that are associated with very sick, expensive-to-treat patients, where the treatment costs fall outside of prescribed parameters.

In a widely reported outcome, Tenet settled the claims of fraud without admitting wrongdoing, agreeing to pay the U.S. more than \$900 million — one of the largest settlements ever paid in association with health fraud.

Stock Option Backdating Investigations

Lawsuits emerging from alleged backdating of employee stock options now number more than 200, and many companies acknowledge that they will need to restate their financials. **Bruce Deal**, a Managing Principal at Analysis Group and expert in valuation and damages calculation, discusses the economic issues and financial implications facing firms in the option backdating scandals and subsequent litigation.

What role will valuation play in the litigation?

Bruce Deal: The initial investigations and financial restatements will mostly involve relatively simple option valuation calculations under the old accounting rules, which were in effect when most of the problems occurred. However, as the cases move from accounting restatements to civil litigation, the questions surrounding the value of the options at the time of the grant date will become more critical, and that is where an appropriate valuation framework and more sophisticated option valuation models will be crucial.

What is the role of an economist here, as opposed to an accountant?

Bruce Deal: Accounting firms have the expertise to implement the accounting regulations and do the calculations based on the rules that were in place over the past 10 years. However, the true value of employee stock options can best be estimated through the use of more sophisticated models, often implemented by economic and financial consultants. Using these models, we can analyze the true value of what was granted at the *true* grant date, compared to the value of what was granted as of the *recorded* grant date.

Isn't there a standard approach to valuing ESOs — the Black-Scholes model?

Bruce Deal: The Black-Scholes model was developed for exchange-traded options and has been in widespread use

for years. However, the characteristics of employee stock options are different from exchange-traded options, and a straight Black-Scholes will give an inaccurate — and often inflated — value of the options. Many companies are now looking at more sophisticated models, such as binomial lattice models.

Also, the Public Company Accounting Oversight Board (PCAOB) recently issued audit guidance stating that lattice models "might more fully reflect the substantive characteristics of ESOs." Under the direction of Vice President **Ronald Rudkin**, Analysis Group has developed a set of flexible, extremely accurate stock option valuation models that apply both the traditional Modified Black-Scholes approach and the lattice-based valuation approach.

How much might "expert valuations" of stock option grants influence actual settlements?

Bruce Deal: For the regulatory investigations, likely not much. But in civil litigation — the shareholder suits and the derivative litigation — it may be critical to have a rigorous methodology for valuation. To the extent the option grants affect shareholders, the question of how much value was granted and when it was granted will be important.

Is the value of the option grants the only financial issue that will arise in the civil litigation?

Bruce Deal: Not at all. In addition to the option valuations, it will also be

very important to understand the broader implications of backdating and its financial impact. In some litigation, plaintiffs are likely to claim as damages various costs beyond the value of the options and the resulting shareholder dilution. Among these costs are the actual cost to the corporation of undertaking the investigation and defending all resulting litigation, which can run to millions or tens of millions of dollars.

In addition, plaintiffs may claim additional non-cash financial impact on the corporation's value. To the extent the stock option issues: 1) distract management and/or the board, or 2) provide unfavorable information to the public about the quality of management and/or the board, you may see stock price reaction exceeding that which is related to the directly measurable costs. Understanding the variables associated with stock price reaction can be complex, and that is where an economist comes in.

When will we start to see the full economic impact of backdating litigation?

Bruce Deal: We are in the midst of the internal investigations and the regulatory investigations by the SEC. Over the next several months, the civil litigation cases will start moving forward in a more serious way. Based on our experience with the dot-com and telecom declines and the subsequent litigation, it may take years to resolve many of these cases.

Bruce Deal (650 853 7201), based in our Menlo Park office, moderated Analysis Group's backdating seminars in November. ■

RECENT LITIGATION

UNANIMOUS VERDICT IN FAVOR OF GE HEALTHCARE IN LOST PROFITS CASE

Analysis Group was retained by **Paul, Hastings, Janofsky & Walker LLP** on behalf of **GE Healthcare** in its successful defense against a lost-profits lawsuit brought by Vitascan, a Santa Barbara-based mobile body scanning company. The jury in the case ruled unanimously in favor of GE Healthcare on all of Vitascan's claims and also ruled in favor of GE's claims for unpaid service, awarding more than \$50,000. Vitascan had sued GE Healthcare for \$12.8 million in lost profits, alleging that the portable scanners Vitascan leased from GE contained a design flaw that destroyed the company after just two years in business. GE countered that Vitascan's failure was not due to scanner defects, but to poor management. Analysis Group Managing Principal **Bruce Strombom** testified at trial, providing a rebuttal of Vitascan's damages analysis. Manager **Kevin Gold** supported Dr. Strombom.

JUDGE DISMISSES CLAIMS AGAINST ANALYSIS GROUP CLIENT IN BREACH OF FIDUCIARY DUTIES CASE

The Supreme Court of the State of New York found that **Proyectos Y Construcciones Procisa**, a Mexican corporation, failed to establish alleged breaches of its contractual and legal rights by **Continental Tire of North America (CTNA)**. The case originated when the plaintiff sought to enjoin CTNA from proceeding with a \$600 million stock issuance transaction. When injunctive relief was denied, the plaintiff filed an amended complaint seeking over \$100 million in damages for breach of contract and fiduciary duties. The court's decision cited testimony provided by Analysis Group academic affiliate **George Foster**, who testified concerning debt-to-equity swaps, intercompany loans, CTNA's value, and other case issues. Analysis Group and Professor Foster worked with CTNA's outside counsel, **Shearman & Sterling LLP**. Vice Presidents **Elizabeth Echer** and **Samuel Weglein** led the Analysis Group case team supporting Professor Foster.

ANALYSIS GROUP CLIENT PREVAILS IN BIOTECH PATENT INFRINGEMENT CASE

Following upon a finding by the U.S. District Court for the Western District of Wisconsin that a patent held by **Innogenetics** was infringed by **Abbott Laboratories**, a jury there found that the patent, which covers a method of genotyping the hepatitis C virus, was valid. The jury also awarded Innogenetics \$7 million in damages, an amount proffered at trial by Analysis Group Managing Principal **John Jarosz**. The award could be enhanced because the infringement was determined to be willful. Analysis Group worked with Innogenetics' outside counsel, **Heller Ehrman LLP**. Vice President **Christopher Borek** helped lead Analysis Group's team, which examined, among other things, industry licensing practices, actual and expected profits, conveyed benefits, and the strategic significance of the patent.

Spotlight on AG

PROFESSIONAL STAFF

New Vice Presidents

Aniruddha (Andy) Banerjee, Boston



Ph.D. in agricultural economics, The Pennsylvania State University; M.A. in economics, Delhi School of Economics

Dr. Banerjee specializes in regulatory, litigation, and strategic aspects

of network industries, primarily telecommunications. He has testified extensively on behalf of industry clients before the Federal Communications Commission and state regulatory agencies, and has provided a broad range of consulting services to U.S. and international clients.

Don O. May, New York



Ph.D. in finance and economics and MBA in finance and econometrics, The University of Chicago Graduate School of Business

Dr. May is an expert in finance, economics, and accounting and

provides economic analysis and testimony in the areas of securities litigation and complex claims analysis. His experience includes some of the highest-profile cases involving asbestos litigation, leveraged buyouts, solvency analysis, and director and executive liability.

Thomas A. Ortenzi, San Francisco



MBA, Georgetown University

Mr. Ortenzi specializes in financial analysis and valuation, damages assessment, and economic modeling. His recent projects include

quantifying the effects of Basel II and the European Union's Markets in Financial Instruments Directive (MiFID) on the UK financial services sector; he has also managed consulting projects involving intellectual property and commercial damages.

Analysis Group Announces New York Office Leadership



Managing Principal **Laura Stamm** now leads the firm's New York office and continues

to serve clients in Boston as well as New York. An expert in the application of finance and accounting to complex business litigation, Ms. Stamm testifies frequently on damages arising out of securities litigations, intellectual property matters, and commercial disputes. She was instrumental in opening the firm's New York office in 2000.

PUBLICATIONS & PRESS

In an article in *Health Affairs*, Vice President **Genia Long** and academic affiliates **Henry Grabowski** and **Iain Cockburn** explored the future of biologics, which are medical treatments derived from living organisms.

In a study done with Novartis Pharmaceuticals and the Mayo Clinic, and published in *Clinical Breast Cancer* journal, Vice President **Mei Sheng Duh** and Dr. Edith Perez of the Mayo Clinic analyzed the impact of aromatase inhibitors on bone loss in breast cancer patients.

Vice Presidents **Howard Birnbaum** and **Alan White** and Managing Principal **Paul Greenberg**, along with several academic and industry colleagues, published a study in *Clinical Journal of Pain* quantifying the economic burden of opioid abuse on society.

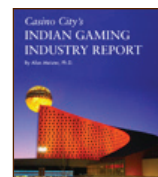
New research on the costs of bipolar disorder was published in the *American Journal of Psychiatry*. The research was conducted by academic affiliate **Ronald Kessler**, Managing Principal **Paul Greenberg**, Vice President **Howard Birnbaum**, and academic and industry colleagues.

Managing Principal **Susan Tierney** authored a report for the Massachusetts LNG Commission on the state's need for natural gas for power generation and residential and business use.

In an *International Transfer Pricing Journal* article, Managing Principal **Deloris Wright** examined changes to the U.S. advance pricing agreement program. Dr. Wright was also interviewed for the October 2006 issue of *Inside Counsel* regarding

new regulations for intercompany agreements.

Manager **Alan Meister** published the newest edition of his annual *Indian Gaming Industry Report*, which was cited by major media.



PRACTICE NEWS, EVENTS & SEMINARS

Antitrust: President and CEO **Martha Samuelson**, a Vice Chair of the Trial Practice Committee of the Section of Antitrust Law of the American Bar Association, moderated an ABA teleconference, "Litigation Practice before the European Commission: Perspectives from Both Sides of the Atlantic."

Data Analysis: At the Western Users of SAS Software Confer-

ence, Manager **Mark Gustafson** presented a paper, "How to Analyze Terabytes of Data with a Word."

Energy: At an Analysis Group-hosted seminar in Denver, "Revisiting the Energy Policy Act of 2005: What's Working – And What's Not," Managing Principal **Susan Tierney** assessed the future of power in the West. At an LSI conference, Dr. Tierney discussed development incentives in the Act; Vice President **Paul Hibbard** presented a forecast for global fuel markets and the likely impact on electric generation in the Northeast.

Managing Principal **Rodney Frame** participated in a panel review of proposed new Federal Energy Regulatory Commission rules on market-based pricing.

Reporting to the National Commission on Energy Policy, Vice President **Paul Hibbard** reviewed the vulnerabilities of U.S. energy infrastructure, focusing on petroleum and natural gas.

Health Care: Vice President **Howard Birnbaum** joined academic affiliate **Ronald Kessler** and others in a breakout session on employer health care and productivity at an event co-hosted by the National Business Group on Health and the Integrated Benefits Institute.

Vice President **Genia Long** spoke about the impact of antihypertensive drugs at the Second World Ageing and Generations Conference of the World Demographic Association in Switzerland.

At the ACI's 11th Annual Drug and Medical Device Litigation conference, Managing Principal **Paul Greenberg** will join George Lykos, Chief Legal Officer for Bayer Corporation, and Steven Kohn, a partner with Reed Smith, to discuss approaches to mass tort settlements.

Intellectual Property: For the LES's Professional Development Series held in San Francisco and Chicago, Vice President **Robert Vigil** conducted intermediate and advanced workshops on IP valuation.

Managing Principal **Jeff Kinrich** was presented with this year's "FLS Volunteer of the Year Award" at the 2006 AICPA National Conference on Fraud and Litigation Services.

At LSI's Calculating and Proving Patent Damages conference in Philadelphia, Managing Principal **Carla Mulhern** participated in a panel on "Reasonable Royalties: New Issues from Lawyer, Economist, and Business Perspectives."

Managing Principal **Laura Stamm** discussed approaches to damages as a panel member at the Practising Law Institute's Patent Litigation 2006 conference in New York.

Analysis Group Sponsors Amicus Brief for Supreme Court Case

In late November, the U.S. Supreme Court was scheduled to hear oral arguments in *Weyerhaeuser Co. v. Ross-Simmons Hardwood Lumber Co.*, a case concerning allegations of predatory bidding constituting exclusionary conduct under the Sherman Act. Analysis Group sponsored an *amicus curiae* brief submitted to the Court on behalf of Weyerhaeuser, a manufacturer of hardwood lumber. The brief considers economic issues in the case and advocates reversal of a lower court ruling against Weyerhaeuser, stating: "Input prices or purchases should be labeled 'predatory' only if the cost of inputs exceeds the revenues they generate, and there is a realistic expectation ... that the scheme could be successfully implemented and consumers harmed through some form of future recoupment." In addition to Analysis Group President and CEO **Martha Samuelson**, signatories to the brief included several of the firm's academic affiliates: Professor **Robert Hall** of Stanford University, Dean **R. Glenn Hubbard** of Columbia Business School, Professor **Sharon Oster** of Yale School of Management, and Dean **Edward Snyder** of The University of Chicago Graduate School of Business, along with other distinguished experts in antitrust economics.

Securities: President and CEO **Martha Samuelson** participated in a panel discussion, "Settlement Procedures and Trends in Securities Actions," at the Practising Law Institute's Securities Litigation & Enforcement Conference.

Strategy: At the 11th Annual Drug Delivery Technology and Deal Making Conference, Managing Principal **Brian Gorin** participated in a keynote panel concerning drug delivery. He also

presented a session on increasing chances of drug delivery success.

Telecommunications: Vice President **Coleman Bazelton** presented a study on the trade-offs between licensed and unlicensed spectrum at the 34th Annual Telecommunications Policy Research Conference.

See www.analysisgroup.com for a complete list of presentations, seminars, and conferences. ■

Academic Affiliate News

New Academic Affiliates:



Hendrik Bessembinder

Professor of Finance and A. Blaine Huntsman Presidential Chair in Finance, David Eccles School of Business, University of Utah

Professor Bessembinder has consulted for the Department of Justice on stock market collusion; the Securities and Exchange Commission on mutual fund trading practices; the Internal Revenue Service on option-based tax shelters, and the Commodity Futures

Trading Commission on energy market manipulation. His research has been published in leading academic journals and focuses on equity, bond, currency, and energy markets, as well as trading costs and strategies.



Ajay Khorana

Wachovia Associate Professor of Finance, College of Management, Georgia Institute of Technology

Professor Khorana's research and teaching interests include corporate finance and investments, with a special focus on mutual funds.

His research has appeared in many distinguished academic journals as well as mainstream media, including *The Wall Street Journal* and *Smart Money*. His research has also been presented at various academic and practitioner conferences, including events held by the Securities and Exchange Commission and the Investment Company Institute.

Recent Affiliate Engagements

Analysis Group has worked in recent litigation involving analysis of the mutual fund industry with **Mark Grinblatt**, Professor of Finance and J. Clayburn LaForce Endowed Chair in Management at the UCLA Anderson School of Management.

Professor Grinblatt's research, which has appeared in most major finance and economics journals, focuses on asset pricing, rational expectations equilibria, performance evaluation, stock market anomalies, corporate finance, derivatives valuation, and agency theory. He has authored many papers in finance and economics and received a Smith Breeden distinguished paper award in 2001.

Professor Grinblatt is also a research associate of the National Bureau of Economic Research and Past President of the Western Finance Association.

RECENT LITIGATION

SETTLEMENT IN PHARMACEUTICAL INSURANCE MATTER

Analysis Group academic affiliate **Steven Shavell** of Harvard Law School provided expert analysis for **Purdue Pharma L.P.** in a matter involving insured legal costs incurred by the pharmaceutical manufacturer. Purdue Pharma had been the target of nearly 1,400 lawsuits over its painkiller, OxyContin, and the company's insurer, Steadfast Insurance Co., filed suit over the defense costs related to suits involving the drug. Professor Shavell, supported by an Analysis Group team led by

Managing Principal **Paul Greenberg**, analyzed insurer-insured conflicts of interest, legal defense strategy, and financial exposure associated with product liability claims involving pharmaceutical products. This included compilation of key facts about mass tort cases, including projections of the likely number of claimants and the average payout per case.

"The case presented a number of interesting issues," said Professor Shavell, "including the economics of litigation

and the degree of control that an insured, faced with large potential liabilities, can exercise over litigation and settlement, versus the liability insurer." The case settled before reaching trial.

To read about other economic issues involved in mass tort litigations, see "Off-Label Marketing Investigations in the Pharmaceutical Industry" on page 3.

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