

ANALYSIS GROUP FORUM

Economic, Financial and
Strategy Consultants

FALL/WINTER 2005

Milestones and New Directions

... a note from the CEO



Next spring, Analysis Group will mark the 25th anniversary of our firm's opening. We began as a small group of economists in Belmont, Massachusetts, dedicated to bringing academic rigor to challenges in business litigation and strategy. Over the years, our company has grown – along with the field of economic consulting – in response to the increased need for economic analysis, in both litigation and non-litigation contexts.

Companies have come to rely on experts who can translate complicated economic theories into real-world explanations. Last August, *The New York Times* took note of this trend in an article on the growing use of experts in litigation. The article cited Analysis Group's work in a recent case involving Alliance Capital Management, in which we called upon experts in diverse fields on behalf of our client.

We are always looking to expand and strengthen our affiliate network, and in this issue of *Forum* we welcome seven distinguished experts as new affiliates of the firm: Erik Brynjolfsson, Dennis Campbell, Frances Frei, Mitchell Polinsky, Steven Shavell, Laura Starks, and Walter Thurman. (See page 5.)

Within our firm, we recently named a new Managing Principal, Steven Herscovici, in our Boston office. Steve has been with the firm since 1996 and has helped us develop major client relationships in numerous areas of our business. We are also pleased to welcome a new Vice President, Dr. Timothy Reichert, in our Denver office. Dr. Reichert comes to us from Ernst & Young, where he developed extensive transfer pricing expertise. (See page 9.)

As we begin our second quarter century, we look forward to continued collaboration with our experts, staff, and clients in solving problems that grow more interesting, and more challenging, with each year.

MARTHA S. SAMUELSON
PRESIDENT AND CEO

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Jury Awards Damages Estimate to the Penny

Analysis Group's client prevails in an antitrust matter in which we provided expert testimony on both liability and damages issues.

Four health insurance plans – **Blue Cross Blue Shield of Massachusetts**, **Blue Cross Blue Shield of Minnesota**, **Federated Mutual Insurance Company**, and **Health Care Service Corporation** – successfully sued generic drug manufacturer Mylan and its suppliers for increasing prices of Mylan's popular anti-anxiety medications, Lorazepam and Clorazepate, and for entering into exclusive supply agreements. The evi-

finished tablets by as much as 2,500%.

Working with the law firms **Robins, Kaplan, Miller & Ciresi LLP** and **Porter Wright Morris & Arthur LLP**, counsel to plaintiffs, Analysis Group Managing Principal **Atanu Saha** provided expert testimony on both liability and damages issues. The Analysis Group team was led by Vice Presidents **Lau Christensen**, **Justin McLean**, and **Stanley Ornstein**.

plaintiffs' drug reimbursement costs absent defendants' anticompetitive conduct. The Analysis Group team undertook extensive analyses of plaintiffs' claims data detailing prescription reimbursements for the two drugs over a five-year period. Dr. Saha determined that damages of \$12 million were suffered by plaintiffs as a result of Mylan's overcharges.



“Our team’s analysis of claims data helped us better understand the transactional history involving Mylan products at issue, including the pattern of payments, co-payments, and dispensing fees. This, in turn, enabled us to isolate the effect of the price change on reimbursements, a crucial step in proving anti-competitive harm in this case.”

– Atanu Saha, Managing Principal

dence at trial, held in the U.S. District Court for the District of Columbia, showed that in November 1997, Mylan entered into exclusive supply arrangements with Profarmaco, an Italian manufacturer of raw materials for these two drugs, and Gyma Laboratories of America, its U.S. distributor. These arrangements foreclosed the supply of raw materials to Mylan's competitors, allowing Mylan to raise prices of the

In assessing liability, Dr. Saha defined the relevant product markets, analyzed the economics of vertical restraints, and assessed harm to competitors and consumers. He concluded that the defendants' actions had caused antitrust injury in the relevant markets and that the defendants were liable for damages.

In measuring damages, Dr. Saha conducted a “but-for” analysis, assessing

The 12-member federal jury found Mylan liable on all eight antitrust counts, and awarded Dr. Saha's damages estimate to the penny. This figure will likely be trebled, because the jury found Mylan's actions to be willful. The decision is expected to be appealed.

Atanu Saha (212 492 8104) is based in our New York office. ■

Methodology Spotlight:

Assessing Conflict in Indirect-Purchaser Class Action Litigation

Managing Principals Pierre Cremieux and Steve Herscovici and Manager Adam Decter discuss the role of economic analysis in determining impact and common methods of proof.



Certifying a class in cases involving indirect purchasers requires that specific legal standards, which vary considerably in practice across states, be satisfied. However, courts are often reluctant to deny class certification even when class-wide impact is unclear and common methods of proof are untested.

State courts have determined generally that a class can be certified if it meets five key requirements of state analogues to Federal Rules 23(a) and 23(b)(3), which stipulate that certain provisions be met:

- **Numerosity:** The class is so numerous that joinder of all members is impractical.
- **Commonality:** Questions of law or fact are common to the class.
- **Typicality:** The claims or defenses of the representative parties are typical of the claims or defenses of the class.
- **Adequacy:** The representative parties will fairly and adequately protect the interests of the class.

- **Predominance/Superiority:** Questions of law or fact common across members of the class predominate over any questions affecting only individual members; and a class action is superior to other available methods for fair and efficient adjudication of the controversy.

In evaluating the appropriateness of class certification, attorneys often turn to economic experts, who apply relevant economic analyses to the legal arguments most familiar to attorneys and judges.

Numerosity is a legal issue on which economists do not often opine. Commonality, typicality, and predominance are frequently the pivotal class certification issues in both direct- and indirect-purchaser litigations. In indirect-purchaser cases, these issues are often illuminated through the question of impact – whether, for example, the behavior at issue affects each class member equally. Adequacy issues may become evident through conflicts of economic interest resulting from trade among class members situated at different levels in the product distribution chain.

While each of the statutory provisions indicated above must be reviewed to properly examine class certification, the conflict issue inherent in some indirect-purchaser class certification cases requires especially rigorous application of economic analyses, and may be an important determinant of certification. Conflicts often occur when multiple levels of intermediaries trading with one another are combined into a single, indirect-purchaser class.

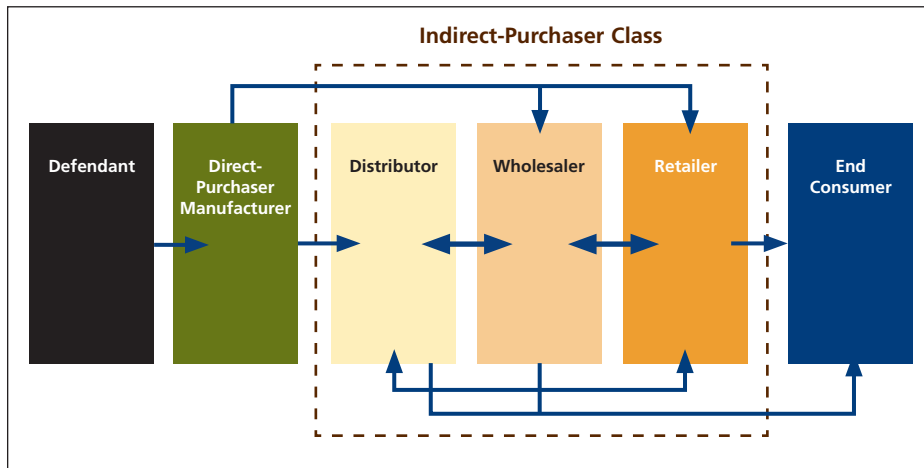
Figure 1 (see page 4) illustrates a hypothetical distribution chain, one in which indirect purchasers may buy from and sell to one another. This example suggests not only the complexity of the resulting economic relationships among class members, but also the conflicts revealed by “upstream” and “downstream” pass-through analyses.

Upstream pass-through represents the overcharge paid by the indirect purchaser. In contrast, downstream pass-through represents how much of the overcharge paid is passed on from one indirect purchaser to the next in the distribution chain.

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Indirect-Purchaser Class Actions *(continued from page 3)*

FIGURE 1. DISTRIBUTION CHAIN FOR MULTILEVEL INDIRECT-PURCHASER CLASS



In the distribution chain shown in Figure 1, plaintiff experts could argue that market conditions implied full pass-through within the class. Using this argument, retailers would have paid the full overcharge, and distributors and wholesalers would not have suffered impact. On the other hand, plaintiff experts could argue that there was no pass-through beyond the first indirect level of distribution. In this scenario, distributors would have paid

the entire overcharge, while wholesalers and retailers would not have suffered impact.

Assessing conflicts may be further complicated in this example when indirect purchasers are the first indirect purchaser (i.e., distributors) in the chain for some transactions, but are the second or third indirect purchaser (i.e., wholesalers or retailers) in the chain for other transactions, and have varying rela-

tionships to end consumers. Conflicts among class members who trade with one another can be significant, and raise questions about whether common methods of proof can be used to determine impact, or to calculate damages.

By carefully considering the nature of interactions among class members, and integrating legal and economic concepts effectively, plaintiffs and defendants are more likely to achieve decisions consistent with the characteristics of the market and the nature of the transactions at issue. Doing so successfully, however, requires that litigators understand and invoke the economic underpinnings of class certification arguments, including the often complicated issues associated with upstream and downstream pass-through.

Pierre Cremieux (617 425 8135), Steve Herscovici (617 425 8147), and Adam Decter (617 425 8427) are based in our Boston office. ■

RECENT LITIGATION

POST-TRIAL SETTLEMENT RESULTS IN ACQUISITION OF U.S. UNWIRED

Analysis Group was retained by **Jenner & Block LLP**, on behalf of **U.S. Unwired Inc.**, in its recent lawsuit against Sprint Corp. By converting the affiliate status of U.S. Unwired, Sprint assumed greater control over U.S. Unwired's operations, including its customer service. The suit alleged that this conversion was illegal and that it harmed U.S. Unwired. Analysis Group worked with academic affiliate Professor **Robert Hall**, who estimated the extent of that harm and provided trial testimony.

The Analysis Group team was led by Managing Principal **Bruce Deal** and managed by Vice President **Stephen Schurman**. Associate **Sara Filipek** was also a central team member. During the time period of the trial, U.S. Unwired gained considerable market value, and the value gains persisted through the defense expert's testimony and the conclusion of the trial. The case was settled after trial, but before the Court ruled, when Sprint agreed to acquire U.S. Unwired for \$1.3 billion.

Academic Affiliates: Complexities of Business Environment Drive Increased Need for Highest-Quality Experts

“The business problems that often result in litigations have just become more complicated, harder to understand, and the dollars involved are often very significant,” Analysis Group CEO Martha Samuelson told *The New York Times* last August. The *Times* article (“More and More, Expert Witnesses Make the Difference”) discussed the increased use of experts in litigation and cited the work of Analysis Group in *Florida State Board of Administration v. Alliance Capital Management*. In that case, we supported six academic experts (including Professor Laura Starks, profiled on the next page) who provided consulting and testifying expertise on behalf of Alliance.

“As the issues become increasingly complex,” Mark Kirsch, lead counsel for Clifford Chance in the Alliance case, told the *Times*, “it’s increasingly important to find experts who can simplify the issues.”

Analysis Group is pleased to announce seven new academic affiliates, who have helped us solve a wide range of business and legal issues for our clients. We work with Professors Campbell and Frei, for example, to analyze service management in the banking industry; Professor Brynjolfsson on intellectual property issues in high technology markets; and Professor Thurman on agricultural indirect-purchaser litigation. We look forward to collaborating with our new affiliates on challenging cases in the future.

Erik Brynjolfsson

George and Sandi Schussel Professor of Management, Sloan School of Management, and Director, Center for eBusiness, MIT



Professor Brynjolfsson conducts research, lectures, and consults worldwide on topics related to Internet strategy, pricing models, and intangible assets. A director or advisor for several technology-intensive firms, he was profiled as one of the world’s five eBusiness “visionaries” by *BusinessWeek* and has served on the editorial boards of numerous academic journals, as well as on *Time Magazine*’s Board of Economists and the Academic Advisory Council of the Federal Reserve Bank of Boston.

Dennis W. Campbell

Assistant Professor and Tukman Faculty Fellow, Harvard Business School



Professor Campbell is a leader in the use of cause-and-effect analysis in management decision making. His research focuses on linking performance measurement with financial and managerial outcomes in service organizations, and he has worked with numerous banks and retailers to improve their service operations. He has also conducted research on activity-based costing and management, balanced scorecard, consumer behavior, customer profitability analyses, customer relationship management, and electronic commerce.

Frances X. Frei

Associate Professor of Business Administration, Technology and Operations Management (TOM) Unit, Harvard Business School



A leading expert in service management and the retail banking industry, Professor Frei has conducted research addressing issues such as why moving customers to the online channel may not improve profits; why demographic data may not help firms improve performance; and how to detect early signs of customer defection. She teaches and consults around the world, and her research has been published in leading journals such as *Management Science* and *Harvard Business Review*.

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RECENT LITIGATION

**REDUCED DAMAGES AWARD
IN PATENT INFRINGEMENT CASE**

Analysis Group Managing Principal **John Jarosz** provided expert testimony that played an important role in the reduced damages award assessed against our client, defendant **Cyber International**, in a patent infringement matter. A federal jury in Boston found Cyber, a leading maker of cardiovascular and strength-training equipment, liable for infringing a patent for a flexible treadmill deck. The patented invention, incorporated in the Stableflex feature of the Cyber treadmills at issue, was designed to reduce shock and wear on the equipment and its users. The plaintiff's damages expert proposed a reasonable royalty form of relief and quantified it at \$7.6 million.

Working with Cyber's outside counsel **Gibbons, Del Deo, Dolan, Griffinger & Vecchione**, an Analysis Group case team managed by Vice President **Michael Chapman** investigated a variety of issues, including: Cyber's historical product line profits; licensing practices of the parties in the suit and of industry players; Cyber's ability to design around the patent; and the relative importance of flexible decks for treadmills.

The jury ultimately awarded damages of \$2.5 million, slightly higher than the amount proposed by Mr. Jarosz, but using a royalty rate that was within the quantitative range he had provided at trial. Cyber reportedly plans to appeal the liability ruling.

New Affiliates *(continued from page 5)*

A. Mitchell Polinsky

Josephine Scott Crocker Professor of Law and Economics and Director, John M. Olin Program in Law and Economics, Stanford Law School



An economist specializing in the economic analysis of legal issues, Professor Polinsky has testified or been deposed in numerous litigations. He is a leading expert on punitive damages and class action litigation, focusing in the latter area on the fairness of settlements and on the reasonableness of attorney fee requests. Professor Polinsky also has extensive experience in product liability litigation.

Steven M. Shavell

Samuel R. Rosenthal Professor of Law and Economics and Director, John M. Olin Center for Law, Economics, and Business, Harvard Law School



Professor Shavell has extensive experience as a consultant for both defendant corporations and plaintiffs in litigation, focusing on cases involving torts, punitive damages, contractual liability, violations of public law, and class actions. He has testified or been deposed numerous times and has prepared many expert reports and affidavits. Professor Shavell has published over 100 articles, focused primarily on the application of economics to legal issues and on the economics of litigation.

Laura T. Starks

Chair, Department of Finance and Director, AIM Investment Center, McCombs School of Business, University of Texas at Austin



Professor Starks's research on finance issues has appeared in leading academic publications including the *Journal of Finance*, *Journal of Financial Economics*, *Review of Financial Studies*, and many others. Her recent research focuses on institutional investors, particularly mutual funds, and corporate governance. She has served as an expert witness in numerous federal cases, and recently provided expert consulting assistance in *Florida State Board of Administration v. Alliance Capital Management*.

Walter N. Thurman

Professor of Agricultural and Resource Economics, North Carolina State University



Professor Thurman is an expert in agricultural markets and regulation and has published widely on agricultural and natural resource topics. He has consulted on projects involving international agricultural trade, the pulp and paper industry, and markets for precious metals. As an expert witness, he has analyzed agricultural antitrust issues and econometric measures of oil spill damages.

Practice Focus: Transfer Pricing & Tax

Transfer pricing (how companies price goods and services across tax jurisdictions) is a major component of corporate tax planning. Managing Principal **Deloris Wright**, an international authority on tax and transfer pricing issues, and **Timothy Reichert**, who has directed economic analysis in landmark transfer pricing cases, and who recently joined our firm as a Vice President (see page 9), discuss aspects of their work.

Can you describe transfer pricing in the context of applied economics?

Dr. Wright: I think of transfer pricing as a combination of microeconomics, law, and accounting. When we do what we call “functional analysis,” we are really trying to uncover key value drivers like barriers to entry, market structures that result in economic profit, market segmentation choices, or general strategic choices that have either hurt or helped a firm.

Dr. Reichert: In many of our cases, we are applying standard microeconomics and finance to help clients understand the pricing implications of a given economic relationship.

Can you give us an example?

Dr. Reichert: Deloris and I recently worked on a case for a large pharmaceutical company. The object was to determine a royalty rate for the license of a highly successful pharmaceutical product, written about six years after the launch of the compound. The problem you typically have in such cases is that very few third-party arrangements exist for similar compounds, so you don’t have much in the way of direct pricing evidence to go on.

Dr. Wright: We ended up using several approaches. First, we used regression analysis of licenses negotiated up through the end of Phase III clinical trials to generate an estimate of the split of intangible profit that licensors and licensees would bargain to. Second, Tim developed a microeconomic model that requires a demand curve and a cost curve to pinpoint the maximum rational royalty rate that a licensor would demand. Third, we used a game theoretic model of the bargaining between licensor and licensee.

How do you see transfer pricing regulation changing over time?

Dr. Reichert: There has been a slow move toward a more liberal definition of the word “intangible.” Governments in European countries, and Canada, argue that intangibles are developed by companies located within their borders and deserve significant amounts of profit. The U.S., when it interprets the “commensurate with income” principle as giving it the ability to “look back,” or makes *ex post* adjustments to transfer prices that were consistent with arm’s-length consideration *ex ante*, is adopting rules that are non-arm’s-length. The next few years are going to be very interesting worldwide as governments work through these issues.

What are the biggest areas of focus and concern for foreign tax authorities?

Dr. Wright: They are concerned about how “transferable” intangible property and intangible property returns are, and about the movement of core strategic functions and decision rights to tax havens.

Both you and Dr. Reichert worked at Big Four accounting firms before joining Analysis Group. Are there distinctive advantages for clients in working with economic consulting firms?

Dr. Wright: While not all economic consulting firms offer transfer pricing, I feel that clients are well served by the broad range of skills – economics, finance, accounting, and quantitative modeling, to name just a few – that the staff of a firm like ours possesses.

Dr. Reichert: I also think clients really benefit from hands-on service from senior professionals. That kind of direct client interaction is particularly encouraged in this firm. ■

RECENT LITIGATION

TRIAL VICTORY FOR HOLLY CORPORATION IN MERGER CASE



The Delaware Court of Chancery ruled in favor of our client, petroleum refiner and marketer **Holly Corporation**, in a case concerning Holly’s 2003 merger agreement with Frontier Oil Corporation. When the merger agreement collapsed, Frontier sued Holly for breach of contract and sought over \$100 million in damages. An Analysis Group team led by Vice Presidents **Nick Crew** and **Michael Hsu** provided damages analysis in support of the testifying expert, Managing Principal **Robert Sherwin**. Mr. Sherwin’s trial testimony focused on the estimation of the relevant costs of capital as well as other valuation issues regarding the energy businesses of the parties and the synergies that were contemplated. After an expedited trial, the Court ruled that Frontier had breached the agreement but that Holly had not, and that Holly was not liable for any damages. Both companies have the right to appeal the decision to the Delaware Supreme Court.

Spotlight on Analysis Group

PUBLICATIONS & PRESS

Analysis Group CEO **Martha Samuelson** discussed the work of economic consultants in the Spring/Summer newsletter of the Committee on the Status of Women in Business. Her article, "The Business of Economic Consulting," provides examples of the kinds of cases economic consultants frequently handle, from analyzing competitive issues such as network effects and economies of scale in antitrust cases to assessing the impact of alleged patent infringement in intellectual property matters.

In "Caveat Emptor," an Op-Ed in *The Wall Street Journal*, Analysis Group academic affiliate **Burton Malkiel** and Managing Principal **Atanu Saha** argued that hedge funds provide lower returns for their investors than is commonly understood. According to Professor Malkiel and Dr. Saha, hedge fund return indexes, which are constructed from popular databases, are often inflated due to biases in the way the indexes are structured for reporting. Their findings are based on a paper that will be published in December by the *Financial Analysts Journal*.

The Summer 2005 edition of the *Journal of Applied Corporate Finance* summarizes a roundtable discussion led by Analysis Group Chairman **Bruce Stangle** on market efficiency versus behavioral finance. The discussion featured Analysis Group academic affiliate **Burton Malkiel** and Sendhil Mulainathan, Professor of Econom-

ics at Harvard University and a proponent of behavioral finance.

Managing Principal **Susan Tierney** was interviewed on NPR's *On Point* program, and published an Op-Ed in *The Boston Globe*, about the recently enacted energy legislation. Dr. Tierney and Manager **Paul Hibbard** also co-authored a report on regional energy challenges for the New England Energy Alliance.

A congressional letter to Hon. Joe Barton, Chairman of the House Committee on Energy and Commerce, regarding the return of analog spectrum by television broadcasters, cited research by Analysis Group Vice President **Coleman Bazelon**. Findings from Dr. Bazelon's report, which quantified the costs and benefits of accelerating the time frame for the switch to digital television, were presented to the House Subcommittee on Telecommunications and the Internet in May.

Managing Principal **Elizabeth Becker** co-authored an article on the wage impact of discrimination for *Managerial and Decision Economics*. Dr. Becker, writing with Clemson University professor Cotton Lindsay, discussed the limitations of standard approaches to measuring discriminatory wage impact, and suggested an alternative standard that more accurately accounts for wage gaps.

Analysis Group Manager **Alan Meister**'s annual *Indian Gaming Industry Report* was cited in a Page-One article in *The Wall Street*

Journal on the continued growth of the Indian gaming industry. Dr. Meister's report found that, while gaming revenue at Indian gaming facilities nationwide was up 12 percent in 2004, the rate of growth had slowed from 2003.

Managing Principal **Pierre Cremieux**'s abstract for a paper concerning the effects of weight loss surgery was accepted at the European meetings of the International Society for Pharmacoeconomics and Outcomes Research. Manager **Eric Wu**'s abstracts for papers dealing with the effects of obesity on health and employment status were accepted at the North American Association for the Study of Obesity's 2005 scientific meeting and the 2005 annual meeting of the International Society for Quality of Life Research.

Analysis Group Manager **Judson Jaffe**'s Op-Ed regarding the excise tax exemption on ethanol was published in the *Oil & Gas Journal*. Mr. Jaffe argued that the tax exemption, originally intended to support a nascent ethanol industry, is no longer appropriate in its current form.

A 2004 study analyzing the financial impact of terrorist attacks on the U.S. economy, co-authored by Analysis Group academic affiliate **R. Glenn Hubbard** and Managing Principal **Bruce Deal**, was discussed in an article in *The New York Times*, "Who Bears the Risk of Terror?"

NEWS, EVENTS, AND SEMINARS

Accounting: Managing Principal **Bruce Deal** and Vice President **Elizabeth Evans** discussed accounting issues in litigation from an economist's perspective at "When the Numbers Lie: Assessing Claims Involving Accounting Irregularities," an Analysis Group-hosted seminar in San Francisco. Vice President **David Sosa** moderated.

Data and Discovery: At an Analysis Group-hosted seminar in Denver, Vice President **Lau Christensen** used case examples to illustrate challenges of the data discovery process and applications for data analysis. Managing Principal **Deloris Wright** moderated.

Energy: Manager **Paul Hibbard** spoke at "Ensuring Resource Adequacy in the Northeast," a conference hosted by Law Seminars International.

Finance: Managing Principal **Atanu Saha** participated in a panel discussion, "Demystifying Hedge Funds II," at the American Enterprise Institute in Washington. The panel explored questions concerning hedge fund regulation and the distinctions between hedge funds and other money management vehicles.

Health Care Strategy: Academic affiliate **Ernst Berndt** and Managing Principal **Andrew Parece** were presenters at a conference hosted by the American Enterprise Institute on the competitive impact of

NEW VICE PRESIDENT**Timothy A. Reichert, Denver**

Dr. Reichert comes to Analysis Group from Ernst & Young, where he was a partner in the transfer pricing practice. In that role, he was responsible for transfer pricing and economic relationship development and management for many of the firm's Global 100 accounts.

Dr. Reichert has directed economic analysis in several landmark transfer pricing cases. He will work closely with Managing Principal Deloris Wright to manage and build Analysis Group's Transfer Pricing practice. Dr. Reichert holds a Ph.D. in Economics from George Mason University, an MA in International Political Economy from the Catholic University of America, and a BA in Political Science from the Franciscan University of Steubenville.

PROMOTED TO MANAGING PRINCIPAL**Steven Herscovici, Boston**

Dr. Herscovici, an expert in microeconomic theory, econometrics, and data analysis, joined Analysis Group in 1996. He has testified as an expert in antitrust and commercial litigation, and has presented economic analyses to federal agencies reviewing proposed mergers.

Dr. Herscovici has directed large-scale projects on behalf of numerous clients involved in high-profile litigation, including antitrust, finance and securities, and entertainment matters. He also has significant experience directing analyses addressing economic issues related to class certification. Dr. Herscovici holds Ph.D., MA, and BA degrees in Economics from the University of Chicago.

authorized generic drugs. Professor Berndt and Mr. Parece discussed the findings of their new study, co-authored with Managing Principal **Edward Tuttle**, Manager **Richard Mortimer**, and Ashoke Bhattacharjya of Johnson & Johnson, that authorized generics tend to promote competition and benefit patients.

Intellectual Property:

Managing Principal **Keith Ugone** presented a conference overview at "Intangible Assets: Capitalizing on Your Great Ideas," an event hosted by the North Dallas Chamber of Commerce. Vice President **Bruce Blacker** served on the conference's planning committee.

Managing Principal **Laura Boothman Stamm** participated in a panel discussion on "Proving

Damages and Issues to Consider in Pursuing and Defending the Damages Case" at Patent Litigation 2005, hosted by the Practising Law Institute.

Managing Principal **Jeffrey Kinrich** spoke on the application of econometrics and statistical analysis in evaluating damages at the Fraud and Litigation Services Conference of the American Institute of Certified Public Accountants (AICPA). He will also speak on "Uses and Misuses of Statistical Analysis" as part of an AICPA webcast.

Managing Principal **Carla Mulhern** and Vice President **Robert Vigil** ran a workshop entitled "Factors Affecting Royalties" at the Annual Meeting of the Licensing Executives Society. Managing Principal **John Jarosz**

led the Valuation and Taxation Group's business meeting.

At a joint seminar co-sponsored by Analysis Group and Farella Braun & Martel, Robert Sloss, Intellectual Property partner at Farella Braun & Martel, and **Bruce Deal**, Managing Principal at Analysis Group, discussed the economic issues surrounding patent cases.

Litigation: Managing Principal **Pierre Cremieux** moderated a panel discussing "Strategies for Complex Litigations: The Role of Economic Experts." Panelists included attorney Claude Brunet, Analysis Group academic affiliates **Marcel Boyer** and **Pierre Fortin**, and Vice President **Marc Van Audenrode**. The panel event was hosted by Analysis Group.

Telecommunications: Vice President **Coleman Bazelon** participated in a roundtable on telecom investment in Europe and the United States at the American Institute for Contemporary German Studies. At the COMPTEL Executive Business & Policy Summit in December, Dr. Bazelon will discuss the implications of accelerating the transition to digital television in the U.S., which would make radio spectrum available for new uses much sooner than planned under current law.

If you would like more information on these events, as well as a list of upcoming presentations, seminars, and conferences, please visit our new website, www.analysisgroup.com. ■

INNOVATIVE APPROACHES

FRENCH ECONOMIST'S THEOREM USED TO ASSESS DAMAGES

Academic affiliate Professor **Robert Hall** of Stanford University is a leading economist and damages expert who has worked with Analysis Group on many cases. Professor Hall quantified damages in a high-profile antitrust case settled last December, in which Analysis Group worked with attorneys representing **PeopleSoft** in a suit against Oracle. The antitrust allegations stated that Oracle's tender offer and subsequent actions were intended to harm a competitor and drive down the value of PeopleSoft.

In assessing damages, Professor Hall drew on a seldom-used economic theorem originated by French economist Robert Gibrat. Gibrat's Law of Proportional Effect states that the expected growth rate of a firm is proportional to its size, implying that lost sales in the short run will affect long-term growth for a firm. Although the concept dates back to 1931, Professor Hall's was likely one of the first instances of its use to estimate damages. His analysis focused on the long-term financial implications of a shock to a business, such as that which PeopleSoft would be subject to as a result of Oracle's actions.

Ultimately, Oracle's tender offer was substantially increased, the companies were merged, and the case was dropped.

Academic Affiliate News

Potential Impact of Vioxx Verdict:

In an Op-Ed for *The Boston Globe*, academic affiliates **A. Mitchell Polinsky** and **Steven Shavell** discussed the potential negative impacts on consumers of the Vioxx verdict in Texas, which involved \$229 million in punitive damages on top of a \$24 million base award. The authors cite the view held by many economists that damages awards should not be excessive unless a company has the chance to escape liability.

Agricultural Policy and the State of the Farm Economy:

Analysis Group academic affiliate **Nicholas Piggott** was invited to testify before the House General Farm Commodities and Risk Management Subcommittee hearing on "U.S. Farm Policy and the General State of the Farm Economy." Professor Piggott is the 2005 recipient of the American Agricultural Economics Association's "Distinguished Extension Award: Less Than 10 Years' Experience." The award recognizes individuals' achievement of excellence in agricultural economics extension and outreach programs.

Thomas W. Hazlett Joins Faculty at George Mason University:

Academic affiliate **Thomas W. Hazlett** has been appointed Professor of Law and Economics at George Mason University, where he will also serve as Director of the Information Economy Project of the National Center for Technology & Law. Dr. Hazlett will teach Economic Foundations of Legal Studies for first-year law students, as well as Telecom and Internet, Strategy & Policy.

In the aftermath of Hurricane Katrina, Professor Hazlett urged market-based reforms for public-safety radio networks in an Op-Ed in *The Financial Times*.

Mental Illness Study Draws Major Media Coverage:

The findings from a \$20 million survey on mental illness, sponsored by the National Institute of Mental Health, were the subject of articles in both *The New York Times* and *The Wall Street Journal*. Led by Analysis Group academic affiliate **Ronald C. Kessler**, Professor of Health Care Policy at Harvard Medical School, the National Comorbidity Survey is a once-per-decade study that was first conducted in 1994.

Estimating Damages in Antitrust Cases:

At an Analysis Group-hosted seminar in New York, academic affiliate **Robert Pindyck** of MIT discussed the merits of a number of approaches to damages quantification, and why acceptable damages assessments must take into account the real-world complexity of case-specific contexts. Professor Pindyck also described some of the techniques he has used as an expert analyzing damages in high-profile antitrust cases.

Glenn Hubbard interviewed on NPR's On Point:

With the federal budget deficit expected to increase in the wake of Hurricane Katrina, Analysis Group academic affiliate **R. Glenn Hubbard** was interviewed on NPR's *On Point* program to discuss issues involving tax and fiscal policy. Professor Hubbard, Dean of Columbia Business School and former Chairman of President Bush's Council of Economic Advisers, argued that the major long-term U.S. budget problem is the cost of entitlement programs. He stated that a combination of spending restraint and economic growth can minimize the deficits over time.

See the back cover of Forum or visit www.analysisgroup.com for a list of selected academic affiliates and experts. ■

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