

### **INTEGRATING EXPERTISE IN ACCOUNTING, ECONOMICS, AND FINANCE**

With financial statements and disclosures under increased scrutiny, lawsuits involving the accuracy of financial reporting continue to proliferate. Successfully resolving these matters in litigation calls for insights drawn not only from the accounting field, but also from the disciplines of economics and finance.

For more than 30 years, Analysis Group has provided research, analysis, and expert testimony in a broad range of complex litigations involving accounting and financial issues. We bring to these matters extensive expertise across many industries and outstanding litigation credentials in accounting, economics, and finance. Our professional staff, which includes Ph.D.s in accounting, as well as CPAs, CMAs, and CFAs, works with a network of academic affiliates who are leaders in these areas and who have earned wide recognition for their cutting-edge research.

We structure our firm to foster collaboration across disciplines and industries, enabling us to bring the appropriate integration of expertise to the litigation issues we address. We tailor our work to the particular requirements of each case and client, carefully considering how best to approach the data and present our results to judges, juries, and other finders of fact.

## **CAPABILITIES AND EXPERTISE**

### ***Liability***

We have examined many complex accounting liability issues on behalf of clients from multiple industries. Our work has included:

- Analyzing whether company financial statements were in compliance with GAAP—for example, whether revenues were properly recognized and costs properly capitalized
- Analyzing whether certain financial information—such as data suggesting an imminent bankruptcy—was publicly available
- Ascertaining whether an adverse event was material—for example, whether a particular event was sufficiently adverse that one party to a merger had the right to terminate the merger unilaterally
- Analyzing various purchase price disputes—for example, whether post-closing adjustments were calculated correctly
- Analyzing a firm’s accounting for financial derivatives and measuring the effects of the firm’s choices on its financial statements

### ***Damages***

We frequently conduct damages analyses based on the facts and issues surrounding liability, and are adept at demonstrating how actions leading to liability also affect damages measurement. Our work has included:

- Assessing how accounting misstatements affected stock prices and/or compensation of senior officers
- Measuring actual losses suffered by large groups of shareholders or debt holders
- Criticizing plaintiffs’ damages models
- Analyzing damages in an affirmative fashion—i.e., measuring damages properly under various liability scenarios
- Serving as an arbitrator or expert witness in arbitration of accounting disputes

### ***Tools and Techniques***

Some of the forensic and investigative tools and techniques we have used in these assignments involve:

- Modeling the financial position of a firm “but for” the actions of the defendant
- Reconstructing financial statements to ascertain, for example, what events occurred that led to bankruptcy, or whether the business purpose of a transaction was in accordance with IRS regulations
- Analyzing issues related to cost or managerial accounting—for example, measuring the incremental or variable costs associated with a particular project
- Comparing the book value and market value of net assets at the time of sale or transfer in cases of alleged fraudulent conveyance
- Analyzing price relative to various cost measures—for example, using the Areeda-Turner test to ascertain whether costs were higher than revenues in predatory pricing cases

## SELECTED CASE EXPERIENCE

Our case experience spans liability as well as damages issues for both plaintiffs and defendants and includes several of the highest-profile cases involving accounting issues in recent years.

### Florida State Board of Administration v. Alliance Capital Management

Seeking more than \$1 billion in damages, the Florida State Board of Administration sued Alliance Capital Management for allegedly failing to sufficiently research investments in Enron that Alliance made on behalf of the state's pension fund, which lost more than \$280 million when Enron collapsed. Retained by defense counsel for Alliance, Analysis Group provided extensive research and supported six academic affiliates with specialized expertise in several areas of accounting and financial management. One of our academic affiliates, an accounting expert, testified that Alliance Capital could not reasonably have been expected to detect Enron's accounting fraud. Another expert demonstrated that it was not possible to conclude that the FSBA suffered any financial harm as a result of the Enron investments. The jury found Alliance Capital not liable on all counts.

### In re Clarent Corporation Securities Litigation

Analysis Group was retained by counsel for Ernst & Young in a securities fraud class action trial. The case involved alleged accounting irregularities at Clarent Corporation, for whom Ernst & Young had done auditing work. After the irregularities were made public in 2001, Clarent shareholders asked for approximately \$125 million in damages, alleging that Ernst & Young was liable for securities fraud. A key area of contention involved the nature of Clarent's stock price decline and the overpricing per share that could be attributed to any accounting misstatements. We conducted damages analysis in support of the Analysis Group expert, who provided testimony attributing damages to various transactions in the accounting restatement. He also explained to the jury how Clarent's stock price decline, which occurred before the fraud was revealed, could be attributed to market forces affecting similar companies, independent of the question of fraud. The jury found no liability and no damages against Ernst & Young.

### Venture Capital Firm v. Home Furnishings Company

The plaintiff, a venture capital firm, invested in the preferred stock of a home furnishings company. The redemption price of the preferred stock was to be based on a measure of earnings determined in accordance with U.S. GAAP. Following the filing of a lawsuit in connection with the redemption, Analysis Group and one of our affiliates, an accounting expert, were retained to conduct research regarding whether various accounting treatments were consistent with U.S. GAAP.

### **Lehman Merchant Banking v. Monsanto**

Our client, Lehman Merchant Banking, sued Monsanto over alleged violations of representations and warranties surrounding Monsanto's sale of its Kelco division. Lehman alleged that Monsanto had overstated the financial performance of Kelco in terms of both revenues and profits. As a result of these alleged misrepresentations, the debt that Lehman issued to fund the purchase was nearly in violation of its covenants after the first earnings announcement. In support of our academic expert, who testified at trial, Analysis Group assessed the materiality of the alleged misrepresentations and their likely effects on the transaction purchase price. Lehman reached a favorable settlement in the case.

### **Sumitomo Corporation v. Major Investment Banks**

Analysis Group assisted our clients, two major investment banks, in a securities case involving a rogue trader employed by the plaintiff. Among other allegations, Sumitomo Corporation claimed that the trader had inflated profits and conspired with our clients to finance the alleged fraud through the use of various swaps and a combination of options and forwards. As a result of the trader's activity, Sumitomo suffered losses of approximately \$2.6 billion. Analysis Group analyzed transactions involving the derivatives and supported the work of several academic experts. One of our experts provided insight into the nature of structured instruments as financing vehicles, while another conducted a forensic accounting exercise to identify "red flags" that should have alerted Sumitomo to the trader's actions. The case settled in 2002.

### **Baptist Foundation of Arizona v. Arthur Andersen**

Arthur Andersen LLP agreed to pay \$217 million to settle all accounting malpractice suits resulting from its audits prior to the Chapter 11 bankruptcy of the Baptist Foundation, whose collapse in 1999 was the largest non-profit bankruptcy in U.S. history. Analysis Group assisted counsel for the Liquidating Trust of the Baptist Foundation in finding expert witnesses for both liability issues and damages. We also worked with our academic expert on the calculation of damages for the Liquidating Trustee. Our expert's report showed that because Baptist Foundation continued to operate after the time that Arthur Andersen's audits should have revealed the insolvency of the Baptist Foundation and acts of wrongdoing on the part of management, the Baptist Foundation lost assets in excess of \$150 million that it could have used to pay the claims of its account holders.

*For more information on our case work, please see our website, [www.analysisgroup.com](http://www.analysisgroup.com).*

## SELECTED PROFESSIONAL STAFF

*For contact information, please refer to our website, [www.analysisgroup.com](http://www.analysisgroup.com).*

### MANAGING PRINCIPALS AND PRINCIPALS

#### **Maureen M. Chakraborty**

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### VICE PRESIDENTS

#### **Bruce L. Blacker**

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#### **Gene J. Kovacs**

Ph.D., business (accounting), Columbia University; M.B.A., accounting and finance, The University of Chicago

#### **Ted Laguerre**

Completed Ph.D. Coursework, management, Sloan School of Management, Massachusetts Institute of Technology; M.B.A., Boston University; CPA

#### **Orlando Visbal**

M.S., finance, and M.S., accounting, Boston College; Postgraduate degree in finance, Universidad del Norte

## SELECTED AFFILIATES AND EXPERTS

*Analysis Group works with a network of academic experts who have a broad range of accounting and finance expertise.*

*The list below represents a selection of experts with whom we have worked in major accounting-focused litigation.*

#### **W. Steve Albrecht**

Associate Dean and Professor of Accounting, Marriott School of Management, Brigham Young University

#### **Ray Ball**

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**A LEADING PROVIDER OF ECONOMIC ANALYSIS**

Analysis Group provides economic, financial, and business strategy consulting to leading law firms, Fortune 500 companies, and government agencies.

Founded in 1981, with over 500 professional staff, we assist law firms with all aspects of litigation and advise corporations and government clients on business issues that require expert analysis and interpretation of economic and financial data. We also help organizations create strategies for innovation and growth.



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