

- CLASS CERTIFICATION

- The Role of Economic Analysis

Our assessment of class certification claims encompasses a range of approaches in matters involving securities and financial services, health care, labor and employment, and antitrust issues. Over more than 30 years, for clients across the U.S. and Canada, we have performed numerous analyses, testified at depositions and trials, and supported multiple experts in high-profile, high-stakes litigations stemming from class actions.

Our work in class certification claims has focused on evaluating the economic methods proposed for use in measuring damages. In assessing issues such as typicality, commonality, and adequacy, Analysis Group has provided assistance in evaluating predominance of a common method of proof over individual inquiries, including attention to:

- Commonality of facts and implications for using common methods of proof
- Whether all members of the class have suffered economic injury, assuming liability
- Representativeness of the named plaintiffs

In addition, we have assisted clients in settlement talks and settlement agreements to ensure targeted and appropriate relief to the damaged class members.

» Class Action v. Allstate Insurance

Analysis Group was retained to consult on damages in a class action suit involving “diminished value” for automobiles after accidents. The class included 387,000 Allstate policyholders from 32 states. Claiming damages of \$300-\$430 million, counsel for the class argued that Allstate was obligated to pay not only for repairs, but for any value the cars had lost as a result of the accidents even after repairs had been completed.

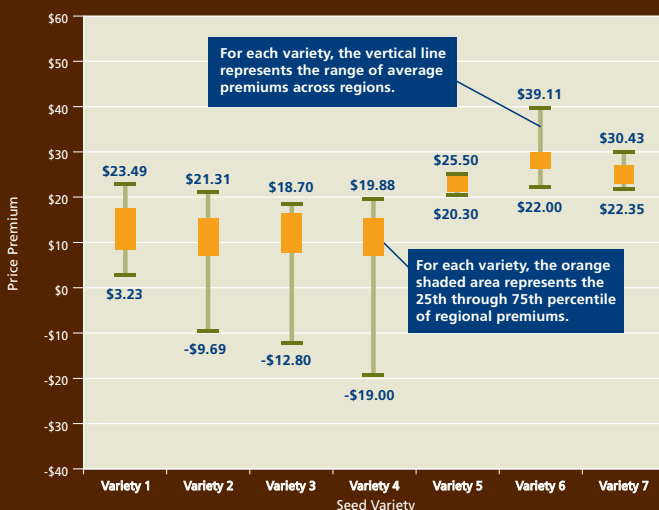
Our role, and that of our damages expert, Professor Robert Hall of Stanford University, focused on critiquing the methodology by which the plaintiffs’ expert witness arrived at his damages assessment. We also assisted counsel in preparing for the plaintiffs’ expert witness deposition and trial testimony. We conducted technical analyses of multiple data sets, including regression analysis, all used in the development of the plaintiffs’ damages estimates. After three weeks of trial, the jury rejected the plaintiffs’ damages claims, found no liability for Allstate, and awarded no damages.

» Allegations of Bid Rigging by Major Insurers

We supported our affiliate, Yale School of Management Dean Edward Snyder, who was retained by a group of defendants in a class action against major insurers to assess allegations of steering through contingent commissions and bid rigging. Dean Snyder was asked to determine whether a class approach was appropriate to assess impact and potential damages, assuming liability was established.

Analysis Group reviewed the documentary evidence and analyzed individual policyholder insurance data over multiple years to determine whether the alleged conduct impacted the efficiency of the market. We also examined patterns of customer retention and insurance premiums to determine whether these behaviors indicated consistencies that would allow a class-wide evaluation of impact and damages, or whether the patterns of behaviors across companies, customers, and time suggested that individual inquiry would provide a superior approach. Defendants’ motions to dismiss were granted as to the RICO claims, with prejudice.

SAMPLE, ET AL. V. MONSANTO COMPANY, ET AL.



Analysis Group was retained by counsel for two biotechnology companies accused by farmers of conspiracy to fix prices of genetically modified seeds. We evaluated whether common evidence could be used to determine the extent of any injury suffered by farmers as a result of the alleged conspiracy. Working under the direction of Professor Catherine Morrison Paul of the University of California, Davis, an Analysis Group team analyzed internal invoice data from both companies covering approximately 40 million transactions, and third-party industry survey data covering purchasing patterns of farmers. Our findings showed that many farmers paid zero or negative premiums, and therefore did not suffer economic harm. On the basis of these findings, the judge concluded that individual impact could not be established from class-wide evidence, and denied class certification in the case.

» **Evan Weiner et al. vs. Snapple Beverage Corporation**

Analysis Group was retained in a putative class action case against our client, Snapple Beverage Corporation (“Snapple”), in the Southern District of New York. Snapple was alleged to have misled consumers and caused them economic injury by marketing certain Snapple beverages as “All Natural” when they contained high fructose corn syrup. Plaintiffs sought class certification of all persons and entities who purchased Snapple “All Natural” beverages within the State of New York.

Analysis Group was retained by Baker Botts LLP, counsel for Snapple, to evaluate plaintiffs’ position that standard economic analyses could be employed to quantify on a class-wide basis the economic injury allegedly suffered by the putative class members. Managing Principal Keith R. Ugone and Vice President Na L. Dawson examined pricing-related documents and Nielsen retail sales data associated with Snapple’s “All Natural” beverages and concluded that the putative class members’ economic injury as a result of the alleged mislabeling could not be determined by proof common to the proposed class. As the case team demonstrated, wide variations existed in Snapple beverages’ retail prices across distribution outlets, across geographic areas, and across the time periods

considered. In addition, because of promotional discounts and coupons offered by Snapple and the fact that Snapple does not sell directly to consumers, whether consumers paid a price premium because of the “All Natural” labeling (and, if any, how much) could not be determined by proof common to the proposed class. Also, a comparison of the average retail prices of Snapple’s “All Natural” beverages to identified benchmark products did not provide economic evidence that Snapple’s “All Natural” beverages possessed a systematic price premium as a result of the “All Natural” labeling. The Analysis Group case team evaluated plaintiffs’ economics expert’s opinions and concluded that the expert failed to demonstrate that the claimed injury to putative class members could be reliably or accurately evaluated using class-wide proof.

Dr. Ugone issued an expert report and provided deposition testimony. A judge in the Southern District of New York denied plaintiffs’ class certification motion and granted Snapple’s motion to exclude plaintiffs’ economic expert’s opinion. The judge’s opinion was referenced in *American Lawyer*, Law.com, and the *National Law Journal*.

MICROSOFT CLASS ACTION LAWSUITS

Analysis Group has worked on class action suits on behalf of Microsoft Corporation in New York, Minnesota, Wisconsin, Iowa, and British Columbia, identifying and supporting experts from class certification through trial.

We led the team in a 2006 Iowa class action, in which we supported our academic affiliate Catherine Morrison Paul. Professor Morrison Paul assessed whether plaintiffs’ expert’s proposed methodology could provide a common method of proof with which to measure damages for the entire class and if the proposed class members were, from an economic perspective, representative of the class. Under her direction, our team analyzed whether pass through of alleged overcharges by Microsoft through the levels of the software distribution system could be measured. Professor Morrison Paul also prepared an evaluation of the pass-through analysis of plaintiffs’ expert and concluded that the data and methodology on which the expert relied did not support the plaintiffs’ expert’s findings.

» **Health Care Class Actions and Pharmaceutical Mass Torts**

We have addressed the appropriateness of class certification in health care class actions, often drawing on a variety of data including federal and state data, and proprietary private insurance data, as well as client-provided data such as patient records, epidemiological data, and clinical trial (Phase III and IV) results. In a recent class action involving allegations of consumer deception, for example, we examined whether a common method of proof of impact could be established. In a mass tort involving a blockbuster drug with an ongoing market presence, we analyzed the economic underpinnings of commonality and typicality arguments. We showed that causation and damages assessments could not reliably be based on common methods of proof for the entire class based on examination of patient demographics, medical profiles, medical injury, and drug usage.

On behalf of the manufacturer of a blockbuster drug withdrawn from the market, we constructed a comprehensive plaintiff database to permit statistical analysis of thousands of plaintiffs' medical records. We developed a medical data input sheet to permit systematic compilation of relevant data from the plaintiff medical files. We compared these data to plaintiffs' self-reports, and found consistent overstatement of the nature and extent of injury. In addition, we assessed the extent to which preset causation criteria (e.g., injury occurring within a defined window following last known use of drug) agreed to by defendant and plaintiff counsel were present in the plaintiffs' medical records. This dataset also formed the basis for our projections of the likely number of different types of adverse drug-related events in the entire population.

» **Labor and Employment Class Actions**

We have provided consulting and expert services related to claims of discrimination on the basis of age, race, gender, religion, and national origin in employment class actions. Our work has included statistical analysis of data sets and surveys and observational studies relevant to the commonality and typicality provisions that are central to class certification.

We have reviewed corporate organizational structure and the distribution and movement of employees through that structure. We have also studied differences in the outcome of disputed employment practices for named plaintiffs compared with other class members as well as among non-named class members.

Our work also includes wage and hour class action disputes in a range of industries, in which we have:

- Assisted with compliance or calculation of damages in litigation
- Evaluated appropriateness of class
- Calculated correct regular rates of pay
- Implemented sampling and survey techniques

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*By applying economic theory and analysis to a specific industry setting and
assuming liability, our economists can assess whether all members of a putative
class were injured by an alleged behavior.*

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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 help organizations create strategies for innovation and growth.



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