
SECURITIES & FINANCIAL INSTRUMENTS

The scale and complexity of the recent global economic downturn will have long-lasting implications for the ways in which financial products are developed, marketed, and regulated. Disputes involving investment products and strategies range from regulatory investigations to class actions, and raise challenging questions. How can complex securitized assets be valued accurately absent a market for them? What role does market competition play in assessing the appropriateness of retirement plan fees? How is loss causation established, and what are its implications for damages assessments in securities fraud matters?

Addressing these and other complicated questions in securities-related litigation has been a major focus of Analysis Group since the firm's inception in 1981.

We have worked on some of the most important securities and finance litigations of recent years, including the Bear Stearns bankruptcy matter; Enron-related cases involving major financial institutions; the Royal Bank of Scotland securities class action, reported to be the first ruling on class certification among the numerous mortgage-backed securities actions pending; and several high-profile excessive fee actions involving retirement plans and mutual funds. We provided consulting and testifying expertise in one of the few 10b-5 securities cases to go to trial in the last decade, *In re Clarent Corporation*. More recently, we have analyzed complex securitized assets in connection with the subprime mortgage fallout and subsequent credit crisis and in numerous bankruptcy litigations.

Our professional staff and affiliated experts also have significant experience in the analysis of investment suitability, claims regarding breach of contract and fiduciary responsibility, accounting issues, equity research and analysis, solvency-related analyses, and class certification issues.

SECURITIES FRAUD ANALYSES Expert quantitative analysis is an essential tool in successfully litigating claims. We have extensive consulting experience in securities-fraud litigations, where our assistance has ranged from preliminary analysis for use in settlement to support of expert witness testimony.

Many factors influence stock prices, often in interrelated ways stemming from both specific corporate activities and overall market movements. Our economists are skilled in using methodologies to isolate the alleged loss in value attributable to a specific event or series of events.

CLASS ACTION SECURITIES FRAUD

Analysis Group has a distinguished track record of providing consulting, testifying, and settlement assistance in securities-related class action litigation. In analyzing causation and damages, we have assessed market factors and materiality and have identified and estimated the effects of confounding events. Our staff and affiliated experts have presented analyses related to market efficiency in several stock drop matters; in a 10b-5 class action involving a medical devices company, for example, we performed statistical analysis of stock price movements to demonstrate that the market was fully informed of the allegedly omitted material information.

We also have illustrated how causation and damages may require individualized assessments, as opposed to those based on common methods of proof for the entire class. In addition, our critiques of opposing experts' analyses have had significant influence on case outcomes. We also have developed a proprietary database of class action settlements and a model for use in settlement negotiations.

Our experience extends to civil and criminal cases in which executives, officers, board members, and investment managers have faced allegations of misleading investors, failure to disclose, breach of fiduciary duty, and

market manipulation. In a notable example, *United States v. Cioffi*, the high-profile trial of ex-Bear Stearns hedge fund managers, our expert testified on investment strategy, portfolio composition, and fund performance.

Our experience in securities fraud matters extends to civil and criminal cases involving executives, officers, board members, and investment managers.

New Jersey Carpenters Vacation Fund, et al. v. The Royal Bank of Scotland Group, plc, et al.

Class certification was denied in a securities class action against Analysis Group client the Royal Bank of Scotland (RBS) and affiliates involving allegations of misstatements and omissions in connection with residential mortgage-backed securities. We supported our expert, who filed an expert report as part of defendants' opposition to plaintiffs' motion for class certification.

The judge declined to certify the putative class, which included large institutional investors, stating that because the defendants could offer evidence of widely different levels of sophistication and knowledge among investors in the putative classes, individual issues predominated over class issues.

ERISA CLASS ACTIONS

The steep drop in the value of plan assets that occurred during the recent financial downturn has coincided with an increase in litigation over the causes of these investment losses. These lawsuits often are complicated by the complexity of the underlying securities in which managers have invested plans' funds.

When employees lose retirement savings as a result of their investment in company stock at artificially inflated prices, they often allege breach of fiduciary duty. They may claim that company officers had been aware of the price inflation, had failed in their obligations to conduct due diligence, or had failed to diversify the investment

plan properly. Analysis Group's experience in these matters includes analysis related to class certification, the prudence of offering company stock, and damages.

We have worked on ERISA matters related to a variety of issues. In the IKON Office Solutions class action, for example, we compared IKON's retirement savings plan to those of other large firms, constructing a data

set we used to analyze more than 15 million transactions of nearly 90,000 participants.

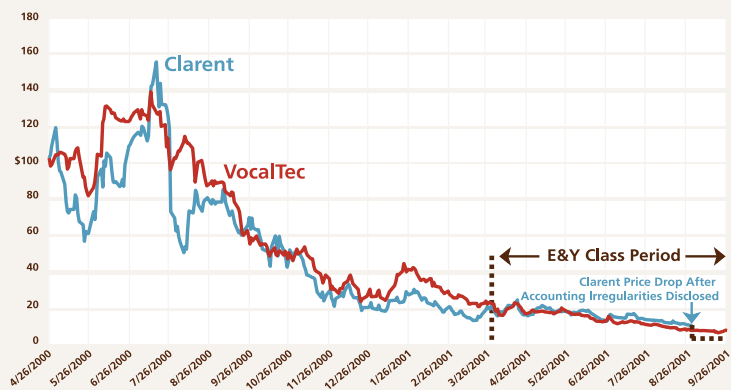
We have also evaluated the level and structure of compensation to service providers, analyzed competition, measured a defined benefit plan's liabilities, valued illiquid assets held in pension plans, and assessed the fees and benefits offered under employee welfare plans.

Increasingly, ERISA suits are filed as class actions, rather than by individuals, with the result that damages claims can reach billions of dollars.

Clarent: Prevailing in a Rare Class Action Securities Trial

Only infrequently do the parties in a 10b-5 class action go to trial instead of settling. Analysis Group was retained on behalf of the defendant, Ernst & Young, in a case involving alleged accounting irregularities at Clarent Corporation, a Voice-over-Internet Protocol (VoIP) company audited by Ernst & Young. Plaintiffs claimed Ernst & Young was liable for securities fraud and asked for \$125 million in damages. We critiqued the

plaintiffs' damages methodology and estimates and provided expert testimony on damages. Our expert, affiliate Robert Sherwin, testified, using the above exhibit to illustrate the market conditions affecting VoIP companies during the period in question, comparing Clarent's stock performance to that of a competitor. The stocks of both companies were negatively affected in approximately equal proportions by the market downturn until the final drop in Clarent's stock price following disclosure of accounting irregularities. After hearing three weeks of testimony, the jury returned with a finding of no liability and no damages against Ernst & Young.



VALUATION OF COMPLEX FINANCIAL INSTRUMENTS From our firm's earliest days, we have participated in landmark cases involving the valuation of financial instruments. In subprime mortgage-related litigations, we have valued mortgage-backed securities, collateralized mortgage obligations, and collateralized debt obligations on behalf of leading investment banks, portfolio managers, and ratings agencies. We also have valued derivatives including stock options, commodity-based futures, and forward contracts. Our understanding of the complexity of financial instruments is matched by knowledge of specific industry practices gained through a long history of casework involving banks and other financial institutions.

ACCOUNTING EXPERTISE

Increasingly, securities-related litigation requires specialized accounting expertise. We have assisted plaintiffs and defendants in assessing accounting issues, determining materiality, computing damages, and demonstrating how actions leading to liability also affect damages measurements. Many of our staff are credentialed accounting professionals. Our affiliates, some formerly with the Securities & Exchange Commission, provide expertise in assessing specialized issues such as accounting for derivatives, tax effects of accounting decisions, and corporate governance.

Analysis Group also has provided consulting expertise to firms being investigated by the SEC. In one recent investigation, we documented what a firm's financial statements would have looked like had certain information related to pensions been included, determined whether the information was already disclosed publicly, and analyzed whether a reasonable investor would have found the additional information material.

Credit Default Swaps Analysis in Enron-Related Matter

Analysis Group assessed the impact of a credit default swap on the value of certain trusts set up jointly by our client and Enron Corporation. Following the Enron bankruptcy, investors sued our client, focusing on the solvency of the trusts and claiming they were deceived as to the credit quality of the underlying instruments. We supported our affiliate Dr. Michael Koehn, who authored an expert report and was deposed regarding the impact of the credit default swap on the value of the trusts.

In re Parmalat Securities Litigation

Analysis Group provided consulting expertise in numerous cases related to the multibillion-dollar Parmalat bankruptcy. We supported academic affiliates in analyzing how an alleged securitization fraud affected Parmalat's accounting entries and financial statements; in examining structured financial instruments at Parmalat; and in evaluating the solvency of various Parmalat entities.

In re Oracle Securities Litigation

We supported Dean R. Glenn Hubbard and Professor George Foster in a shareholder suit alleging violations of Section 10b-5 by our client Oracle Corporation. Plaintiffs claimed Oracle issued misleading forecasts on the company's financial condition that ignored deteriorating economic and business conditions and alleged quality issues with a new product. Dean Hubbard assessed macroeconomic and sectoral data and authored an expert report analyzing the extent to which the 2000 recession and its impact on Oracle's business could have been foreseen. Professor Foster assessed the performance and reliability of Oracle's forecasting process. Oracle was granted summary judgment in a ruling that stated plaintiffs failed to show credible loss causation between the allegations made and losses suffered by shareholders.

BANKRUPTCY AND SOLVENCY ANALYSES Analysis Group has extensive experience in complex and high-profile litigations involving bankruptcy and solvency issues, including some of the largest bankruptcies in U.S. history. Our expertise includes evaluation of the causes of bankruptcy, determination of liability, damages measurement related to the actions of various defendants, quantification of damages to particular plaintiffs, and distinguishing between damages claims made on behalf of shareholders and those made on behalf of the bankruptcy trustee. We also have provided analytical and strategic consulting in assessment of risk and alternatives in restructuring engagements.

In subprime mortgage litigations, we have valued mortgage-backed securities and collateralized debt obligations, assessed underwriting standards, evaluated accounting methods, and analyzed credit ratings and risk disclosure related to securitized assets.

INVESTMENT SUITABILITY, PRUDENCE, AND RISK ASSESSMENT When a portfolio suffers large losses, lawsuits often result. We draw on a range of statistical and analytical approaches based on portfolio theory and analyses of investment strategy to determine the cause of the portfolio losses and whether the investment decisions were consistent with an agreed-upon investment strategy.

We have provided analysis and supported expert testimony in cases involving allegations of breach of fiduciary duty or improper implementation of investment strategies, including high-profile litigations with large damages claims. In addition, we have evaluated the content and efficacy of investment policy statements to ensure that they unambiguously represent a fund's objectives.

Investor Class Action v. Investment Bank

In this case involving a massive credit card securitization fraud, our client, a major investment bank, was granted summary judgment in an action brought against it by a financial services company. The company charged off credit card receivables purchased from card-issuing banks and financed its purchases using lines of credit and asset-backed securitizations. The company collapsed into bank-

ruptcy after its massive fraud was exposed. Analysis Group was retained to analyze the solvency of the financial services company. We also undertook an econometric analysis of its portfolio of securitized credit card receivables. We supported our academic affiliate Professor Stuart Gilson of the Harvard Business School, who filed an expert report.

Recently, Analysis Group evaluated the investment strategies, portfolio composition, and performance of hedge funds in the high-stakes trial of two former Bear Stearns hedge fund managers. The jury found our clients not guilty of alleged securities fraud related to the 2007 collapse of funds

that had been heavily invested in collateralized debt obligations, including subprime instruments. We supported our expert, Dean R. Glenn Hubbard, who filed an expert report and testified on the funds' investment strategies and the expectation of performance, and reviewed the causes

of the funds' eventual collapse. The effectiveness of Dean Hubbard's testimony to the jury was noted in several media outlets. The jury found no clear evidence of criminal intent and both fund managers were acquitted of all charges.

Analysis Group works with some of the foremost experts in portfolio management, derivative securities, asset securitization, and securities lending. Together, we provide analyses and support testimony related to the suitability and prudence of particular investments.

In re: Bear Stearns Litigation

In a widely reported decision, the Supreme Court of the State of New York granted summary judgment, dismissing class action lawsuits claiming that JPMorgan Chase's offer to purchase Bear Stearns was "unfair and inadequate" and that Bear Stearns' directors breached their fiduciary duties by failing to get the highest possible price. Analysis Group was retained to help address whether Bear Stearns' shareholders would have done better in a bankruptcy rather than through its sale to JPMorgan. Our affiliate Professor Stuart Gilson, supported by an Analysis Group team, reviewed numerous SEC filings, security analyst and rating agency reports, and other documents in preparation of an expert report and affidavit. The Court cited Professor Gilson's affidavit extensively in opining that "Bear Stearns' only alternatives were to accept the offer proposed by [JPMorgan] or to file for bankruptcy [in which case] its bondholders would not have received payment in full and the shareholders would have suffered a total loss." Professor Gilson also concluded that Bear Stearns was "liquidity insolvent" as of certain dates.

Florida State Board of Administration v. Alliance Capital Management

In a landmark trial victory, a Florida jury found Alliance Capital Management not liable for the losses incurred by the Florida Retirement System pension fund as a result of Alliance Capital's investments in Enron stock. Seeking more than \$1 billion in damages, the Florida State Board of Administration sued Alliance Capital for not following an agreed-upon investment strategy. An Analysis Group team supported six academic experts in providing consulting and testimony on portfolio management, accounting, corporate compliance and control, corporate governance, and damages. The jury found Alliance Capital not liable on all counts. The verdict was named a Top 10 defense win by *The National Law Journal*.

HEDGE FUNDS, MUTUAL FUNDS, AND QUALIFIED RETIREMENT INVESTMENTS

Our firm has developed expertise in many aspects of hedge funds, including comparative performance and benchmarking, as well as valuation and market analysis in the context of litigation. For example, when a group of funds collapsed following a series of interest rate increases and subsequent margin calls, we developed analytical models to compute the fair market values of the funds' portfolios of collateralized mortgage obligations and mortgage-backed securities on the margin call and liquidation dates.

Mutual fund complexes have been the subject of high-profile investigations into fee structures, allegations of market timing and late trading, and allegations involving "shelf space" in the promotion of fund products. We have drawn on our experience in evaluating economies of scale and industry competition to analyze key issues surrounding mutual fund fee

structures, including analysis of excessive fees from an economic perspective. We also have investigated the appropriateness of investment strategies and total costs to participants. Our firm has played a leading role in the analysis of the economic impact of market timing, working on many of the largest mutual fund settlements.

As a result of our casework involving major financial services firms, institutions, and the SEC, we have a comprehensive understanding of financial market structure and operating mechanisms. Clients have found our ability to manage massive and often highly complex data sets to be a distinct asset.

Mutual Fund Excessive Fee Actions

Analysis Group has helped clients achieve successful outcomes in important litigations involving allegations of excessive fees. In *In re: American Funds Fee Litigation*, one of the largest securities matters and the first mutual funds fee case to go to trial in more than 20 years, the judge rejected all of the plaintiffs' theories of liability, resulting in a decisive victory for our client, Capital Research and Management Company, investment manager for the American Funds. Analysis Group supported three experts, each of whom issued a report and testified in deposition and at trial. In *Baker v. American Century Investment Management*, which was dismissed with prejudice before trial, our client American Century faced allegations totaling more than \$1 billion.

In these and similar matters, we helped experts examine such issues as mutual fund fees, economies of scale, and competition within the industry. We also analyzed claims of underperformance

and failure to adhere to investment strategy, and assisted experts in comparing retail fees to institutional fees and assessing the governance processes in fund management.

Disproving Allegations of Excessive 401(k) Plan Management Fees

We have supported experts in excessive fee litigations involving defined contribution retirement plans with billions of dollars in assets. Plaintiffs in these cases alleged that the defendants' inadequate disclosure of revenue sharing arrangements contributed to the allegedly excessive fees. Our experts' reports explained the economics of revenue sharing, constructed benchmarks for the services provided to the plans, and showed that the plans' fees were economically reasonable. In one of two recent cases, our client won summary judgment on most claims, and in the other, the court granted a motion to dismiss.

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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 also help organizations create strategies for innovation and growth.



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