

DAVID N. MISHOL, PH.D.
Principal

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Dr. Mishol is an economist who specializes in competition, econometrics, microeconomic theory, statistics, securities, health care, and pharmacoeconomics. He has provided consulting support to counsel throughout many phases of litigation, including preparation of expert deposition and trial testimony; development, presentation, and review of pretrial discovery; and critique of analyses of opposing experts. He has served as an expert witness and worked with leading academic scholars, providing economic and damages analysis on matters involving cartels, mergers, and other cases involving market definition issues in a variety of industries; economic, financial, and quantitative analyses related to allegations of securities fraud in 10b-5, ERISA, and mortgage-backed securities matters; and economic, quantitative, and damages analyses in the pharmaceutical industry.

Outside of litigation, Dr. Mishol has used sophisticated econometric modeling techniques to help major pharmaceutical companies make product entry decisions by assessing the impact of market factors such as product quality, pricing, patent expiration, and regulatory policy on the demand for prescription pharmaceuticals. His work also includes econometric analysis of the spending experience of private-pay and Medicare patients across the United States, examining direct usage and cost impacts related to the supply of specific technologies, such as diagnostic imaging, cardiac care, newborn care for at-risk infants, and cancer care.

EDUCATION

1998 Ph.D., economics, concentration in econometric theory, Boston College

1986 B.A., economics, Brandeis University

PROFESSIONAL EXPERIENCE

1998–Present Analysis Group, Inc.

SELECTED EXPERT CASEWORK

- ***Federal Housing Finance Agency v. Nomura Holding America, Inc.***
U.S. District Court, Southern District of New York
Performed numerous analyses related to the performance of residential mortgage-backed securities, including an analysis of the due diligence process associated with the securitization of mortgage loans, an econometric analysis to assess the extent to which borrower and loan characteristics impact the performance of those loans, and a damages analysis of the securities collateralized by those loans. Provided support for several experts, and prepared written testimony and provided trial testimony on behalf of Nomura.

- ***Ideal Steel Supply Corp. v. Joseph Anza, Vincent Anza, and National Steel Supply, Inc.***
U.S. District Court, Southern District of New York
Prepared expert report and provided deposition and trial testimony on behalf of Ideal Steel Supply Corp., analyzing competition and estimating damages in the wholesale and retail steel business due to defendant's failure to charge state tax to certain customers.
- ***Carlo Vichi v. Koninklijke Philips Electronics, N.V., et al.***
Court of Chancery, State of Delaware
Provided support to academic affiliate Professor Robert S. Pindyck, of MIT Sloan School of Management, in his rebuttal analysis of the plaintiff's expert's assessment of financial projections for LG.Philips Displays, and whether those projections were reliable taking into account allegations of price-fixing in the cathode ray tube industry. The court ruled in favor of the defendants.
- **RR Donnelley & Sons Co. Acquisition of Bowne & Co., Inc.**
Provided support to Professor Pindyck in his analysis of the financial printing industry. Oversaw the development of several analyses used in the preparation of a white paper that supported the merger, which included an analysis of the various business segments of the industry, prices, competition, and recent advances in technology which enabled entry. The U.S. Federal Trade Commission (FTC) approved the transaction in November 2010.
- **RR Donnelley & Sons Co. Acquisition of Von Hoffmann Holdings**
Provided support to Professor Pindyck in his examination of the educational textbook manufacturing industry, with a specific focus on issues related to recent and potential market entry, market shares, the economic cost of entry, and economic profitability. The FTC approved the transaction in May 2007.
- **VeriFone Holdings Acquisition of Lipman Electronics Engineering**
Provided support to Professor Pindyck in his analysis of market shares, market entry issues, price and quality competition, and buyer power and vertical integration issues. The U.S. Department of Justice approved the acquisition in September 2006.
- **Libbey, Inc.'s Proposed Acquisition of Anchor Hocking Corporation**
Provided support to Professor Pindyck in his analysis of a merger in the retail glassware industry, including an assessment of market definition issues, price and quality competition, and an economic analysis of entry.
- ***Medinol Ltd. v. Boston Scientific Corporation, et al.***
U.S. District Court, Southern District of New York
Developed econometric analysis to estimate the impact of product delays on market share and resulting lost profits in a breach of contract and trade secrets case in the medical device industry. Provided support for expert testimony prepared by Professor Sharon Oster, of Yale School of Management.
- ***Sensormedics Corporation and Pulmonox Medical, Inc. v. INO Therapeutics, Inc., et al.***
U.S. District Court, Southern District of New Jersey
Performed an economic analysis in support of expert testimony related to alleged tying practices in

the medical device and pharmaceutical gases industry. Provided support for expert testimony prepared by an Analysis Group affiliate.

- ***GlaxoSmithKline Holdings (Americas) Inc. v. Commissioner of the IRS***
U.S. Tax Court
Performed an analysis of the various licensing and contracting procedures related to the development, commercialization, and marketing of a patented pharmaceutical product in a transfer pricing dispute.
- ***Ohio Public Employees Retirement System, et al. v. Freddie Mac, f.n.a. Federal Home Loan Mortgage Corporation, et al.***
U.S. District Court, Southern District of New York
Assessed plaintiff-style event studies and performed other quantitative analyses to assess fluctuations in stock price movements related to allegations in a securities fraud matter. Provided support to academic affiliate Professor Glenn Hubbard, of Columbia University.
- ***In Re Freddie Mac ERISA Litigation***
U.S. District Court, Southern District of New York
Provided an economic analysis of class certification issues in an ERISA matter.
- **FINRA investigation of several broker dealers**
Provided quantitative analysis and developed methodologies for determining penalty and remediation amounts in connection with proposed settlements of mutual fund-related matters involving A, B, and C share classes, and qualified retirement plans.
- ***Expressway Motel Corp. v. ATC Group Services, Inc.***
Prepared expert report on behalf of ATC Group Services, Inc. analyzing competition and assessing lost profits due to an alleged breach of contract in the lodging and hospitality industry.
- ***Hamilton Securities Advisory Services, Inc. v. United States of America***
U.S. Court of Federal Claims
Prepared expert report and provided deposition testimony on behalf of the United States of America in a breach of contract matter involving the outcomes of several auctions of government-owned mortgages.
- ***In Re Shell Oil Products Co. dealer Franchisees Litigation***
U.S. District Court, District of Massachusetts
Performed an economic and statistical analysis of wholesale gasoline prices charged to lessee-dealer franchises by Shell Oil and its competitors. Provided support for expert testimony prepared by Analysis Group expert Brian S. Gorin.
- ***Compaq Computer Corp. v. eMachines, et al.***
U.S. District Court, Southern District of Texas, Houston Division
Performed econometric modeling and developed hedonic price analysis to estimate lost profits in a patent infringement case in the personal computer industry. Provided support for expert testimony prepared by Professor Pindyck.

- ***Intelnet International Corp., v. ITT Corporation et al.***
Superior Court of New Jersey, Camden County, Law Division
Performed an economic analysis in support of expert testimony related to the development of telecommunications and media services in the hotel industry. Provided support for Professor William H. Lehr, of Massachusetts Institute of Technology.

Microsoft Litigation Cases

- ***Netscape Communications Corporation v. Microsoft Corporation***
U.S. District Court, State of Maryland
Damages estimation, economic, industry and strategy analyses, and general support to counsel, in connection with allegations of attempted monopolization and leveraging claims.
- ***Sun Microsystems v. Microsoft Corporation***
U.S. District Court, State of Maryland
Damages estimation, economic, industry and strategy analyses, and general support to counsel, in connection with allegations of attempted monopolization and leveraging claims.
- ***Joe Comes, et al. v. Microsoft Corporation***
U.S. Superior Court, State of Iowa
Industry and strategy analyses, damages estimations, rebuttal of multiple opposing expert witnesses, and general support to counsel during trial and settlements, on overcharge allegations regarding Microsoft's operating systems, word processors, and spreadsheets.

SELECTED CONSULTING EXPERIENCE

- Managed large case teams involved in the development of economic arguments and econometric models to investigate factors affecting the performance of mortgages in residential mortgage-backed securitizations.
- Performed a quantitative and economic analysis of sales, prices, and costs in assessing potential overcharges in an antitrust matter in the international air cargo industry.
- Performed economic analysis and econometric modeling to estimate the impact of marketing, quality, and other factors on the demand for particular prescription pharmaceutical products.
- Applied statistical analysis to several audits of alleged fraudulent Medicare and Medicaid claims against a national health claims billing firm to determine liability.
- Performed economic and quantitative analyses to estimate potential damages in a government investigation of alleged off-label marketing efforts associated with a major brand pharmaceutical product.
- Estimated damages in support of expert testimony in a case involving government reimbursement methodologies under Medicare Secondary Payer regulations.

- Developed economic arguments and analysis to estimate a reasonable royalty in a patent infringement case in the market for handheld computing devices.
- Estimated damages in a breach of contract case using extensive database analysis for a large telecommunications firm.
- Performed statistical analysis of over 1.2 million life insurance policies to assess various allegations of fraudulent life insurance sales practices.

PUBLICATIONS AND PRESENTATIONS

“Tools for Handling Mortgage-Based FCA Claims,” with Rebecca Kirk Fair and David N. Mishol, *Law360*, September 26, 2012

“A Single Center Experience with Low-dose Warfarin in Patients Undergoing Total Hip or Knee Replacement Surgery,” with William B. Balcom, David N. Mishol, Sara Eapen, Brahim K. Bookhart, Edith A. Nutescu, Jeffery R. Schein, and Mei Sheng Duh, *Current Orthopaedic Practice*, v. 23, no. 3, May/June 2012

“Appendix - Economists’ Use of Industry Data In Antitrust Cases,” with Paul E. Greenberg, David N. Mishol, Tamar Sisitsky, and Carletta Bruno, *Pharmaceutical Industry Antitrust Handbook*, 2009, published by the American Bar Association

“Relationship Between Technology Availability and Health Care Spending,” with Laurence C. Baker, Howard G. Birnbaum, Jeff Geppert, David N. Mishol, and Erik Moynour, *Health Affairs Web Exclusive*, 2003; W3: 537-551

“Variety, Quality, Entry Order and Marketing: the Diffusion of New Antidepressants,” with Ernst R. Berndt, Ashoke Bhattacharjya, David N. Mishol, Almudena Arcelus, and Thomas Lasky, *The Journal of Mental Health Policy and Economics*, 5, 3-19, July 2002

“Modeling the Diffusion of New Antidepressants: The Impacts of Variety, Product Attributes, Order-of-Entry and Marketing Efforts,” paper presented at the International Health Economics Association’s 2nd World Conference, Erasmus University, Rotterdam, The Netherlands, June 6-9, 1999