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Dr. Heavner has consulted on a wide variety of litigation topics, including ERISA, securities, and antitrust. In all of these areas, he has analyzed issues related to class certification, liability, and damages. Dr. Heavner's ERISA casework includes several disputes over the fees and services provided to multi-billion dollar retirement plans. His securities litigation experience includes directing the support of expert witnesses retained on behalf of mutual fund advisors in many of the largest mutual fund excessive fee actions ever filed, including four such cases that culminated in trial victories for our clients. His other finance and securities casework includes cases involving allegations of securities fraud, imprudent asset management, and investment suitability. In *Florida State Board of Administration v. Alliance Capital Management*, Dr. Heavner directed the support of expert witnesses retained on behalf of Alliance Capital. This case culminated in a trial in which a Florida jury found Alliance Capital not liable for the losses incurred by the Florida Retirement System pension fund. *The National Law Journal* declared the verdict one of the top ten defense wins of the year. Dr. Heavner's antitrust experience includes matters involving allegations of collusion (including alleged concerted refusals to deal), anticompetitive vertical restraints of trade, predatory pricing, illegal price discrimination, mergers, and standards setting. Known for his ability to concisely present complex economic concepts in an accessible manner, he has earned Accredited Investment Fiduciary® designation and has been a member of the Analysis Group 401(k) Committee since 2009. He also formerly taught economics and finance at Tulane University's A.B. Freeman School of Business.

EDUCATION

1998	Ph.D., The University of Chicago Graduate School of Business Dissertation: <i>Economic Essays on the Organization of Firms</i> Primary coursework: Microeconomics, industrial organization, and finance
1995	M.B.A., The University of Chicago Graduate School of Business
1991	S.B., economics, Massachusetts Institute of Technology

PROFESSIONAL AFFILIATIONS

Accredited Investment Fiduciary Designee
Member, American Economic Association
Member, American Finance Association
Associate Member, American Bar Association

PROFESSIONAL EXPERIENCE

2003–Present	Analysis Group Inc., Los Angeles, CA <i>Managing Principal (2009–Present)</i> <i>Vice President (2005–2009)</i> <i>Manager (2003–2004)</i>
2000–2003	Economic Analysis LLC, Los Angeles, CA <i>Senior Economist (2001–2003)</i> <i>Economist (2000–2001)</i>
1998–2000	Tulane University, A.B. Freeman School of Business, New Orleans, LA <i>Assistant Professor of Finance and Economics</i>
1991–1993	Economic Analysis Corporation, Los Angeles, CA <i>Research Associate</i>

HONORS AND AWARDS

1999–2000	J. F., Jr. and Jessie Lee Seinsheimer Faculty Fellow
1993–1998	University of Chicago Fellowship
1994	Center for Research in Security Prices Fellowship

EXPERT CASEWORK

- ***Draney v. Westco Chemicals***
US District Court, Central District of California, Case No. 2:19-cv-01405-ODW-AGR
Rebuttal expert report (April 15, 2021)
- ***St. Jude Heritage Medical Group v. Integrated Wealth Management***
US District Court, Central District of California, Case No. 8:17-cv-00647
Expert report (June 12, 2019); Deposition (August 19, 2019); Declaration In Lieu Of Direct Trial Examination (September 4, 2019)
- ***Moreno v. Deutsche Bank Americas Holding Corp.***
US District Court, Southern District of New York, Case No. 1:15-cv-09936 (LGS)
Expert report (May 4, 2017)
- **Confidential government investigation**
Confidential government investigation involving allegations that plan fiduciaries made imprudent investment selections and breached their duties to monitor investments.
Expert report (August 14, 2015)
- ***Elias v. American Dental Partners***
AAA Arbitration, Case No.: 72 193 01098 11 JENF
Expert report (May 28, 2013)
- ***Goldenberg v. Indel***
US District Court, District of New Jersey, Case No. 1:09-cv-05202-JBS-AMD
Expert report (February 25, 2013)

- ***Tigerman v. Heller Capital***
JAMS Arbitration, Reference No. 1220040639
Deposition (January 11, 2011); Arbitration (February 10, 2011)
- ***Carimati v. Ginsglobal Index Funds***
US District Court, Central District of California, Case No: CV 09-2373 AHM (RZx)
Expert report (December 9, 2010)

CONSULTING EXPERIENCE

ERISA

- **Excessive fees, revenue sharing, and the selection of investments and service providers for retirement plans (multiple engagements)**
Led teams supporting experts in more than 20 class action litigations involving allegations of imprudent selection of investments and service providers for defined contribution retirement plans. These cases include *Hecker v. Deere* and *Ramos v. Banner Health*. In these engagements, we were retained by corporate and nonprofit sponsors of 401(k) and 403(b) plans with billions of dollars in assets, as well as by some of the largest providers of retirement plan services. Topics of analysis included reasonableness of plan fees; economics of revenue sharing; reasonableness of the process used to select, monitor, and terminate investment options; performance of investment options; competition in the retirement plan services industry; class certification; and quantification of alleged damages.
- ***St. Jude Heritage Medical Group v. Integrated Wealth Management.***
Retained by the plaintiff in this ERISA litigation filed against various parties related to the investment advisor to the St. Jude Heritage Medical Group Cash Balance Pension Plan. The plaintiff alleged that the defendants transferred some of the plan's money to an entity controlled by the defendants and that the defendants imprudently transferred other plan assets to another investment in order to generate a commission for the defendant. Prepared an expert report and provided deposition testimony related to damages incurred by the plan. The case was resolved following Dr. Heavner's preparation of a Declaration in Lieu of Direct Trial Examination.
- **Confidential Department of Labor (DOL) investigation**
Retained by counsel for the sponsor of a multi-billion dollar defined contribution plan to assist in responding to a DOL investigation. Among other things, the DOL asserted that the processes used to select and monitor certain plan investments were imprudent and inconsistent with the plan's investment policy statement (IPS). Submitted an expert report demonstrating that the challenged processes were consistent with the practice of investment professionals, academic research, and a reasonable interpretation of the IPS in effect at the time. The report also rebutted the DOL's attempt to quantify harm to the plan.
- ***Goldenberg v. Indel***
Assessed the plaintiff's claim that the portfolio allocation of a sponsor-directed defined contribution plan was imprudent. Evaluated the reasonableness of the plan's target asset allocation given the plan's design objectives as stated in the IPS. Used information available when portfolio decisions were being made to evaluate whether the plan's actual asset allocation was appropriate and reasonable in light of the plan's goals and objectives stated in the IPS. Critiqued the opposing experts' reports.

- **Confidential matter involving the management of a stable value fund**
Led a team supporting an expert retained by the manager of one of the largest wrapped stable value funds. The plaintiffs had accused the manager of imprudent portfolio management following the financial crisis. Led the support of an expert who evaluated, from an *ex ante* perspective, whether the construction and management of the portfolio were reasonable given the information and market conditions at the time. As part of this analysis, we assessed the availability and terms of wrap insurance, as well as the realized performance of the fund.
- **Class certification (multiple engagements)**
Led teams supporting experts retained to evaluate and opine on issues related to class certification. These engagements included ERISA litigations involving claims of excessive fees, and the imprudent selection of plan investments. The areas of analysis in these cases included ascertainability of the class, intra-class conflicts, the ability to use common methods and common evidence to evaluate liability and/or show impact, and the representativeness of the named plaintiffs.
- **Employee stock option plan (ESOP) litigation (multiple engagements)**
Led teams supporting experts retained to evaluate and opine on the due diligence process used to value a company purchased by an ESOP. The teams also assessed the terms of the external debt financing, the use of warrants, the strike price of options, managerial ownership and appreciation rights, and alleged dilution of the ESOP's stake.
- **Company stock (multiple engagements)**
Led teams supporting experts in litigations in which plaintiffs alleged that plan fiduciaries imprudently allowed the plan to invest in company stock. Topics of analysis included sophisticated investors' view of the company stock as an investment, the viability of the sponsor company, participants' ability to diversify their investments within the retirement plan, class certification, and quantification of alleged damages.

Finance and Securities

- **Mutual fund fees litigation under Section 36(b) of the Investment Company Act (multiple engagements)**
Retained by counsel to support expert and provide consulting in more than a dozen cases filed under Section 36(b) of the Investment Company Act of 1940. Topics researched include the economic reasonableness of mutual fund fees, economies of scale, fee sensitivity of investor demand for mutual funds, determinants of mutual fund fees, economics of mutual fund distribution, closet indexing, board process, profitability of the funds to the advisor, and differences between mutual funds and other investment products. Four of these cases have culminated in trials in which the court found for our clients: *Obselo v. Great-West Capital Management*, *Chill v. Calamos Advisors*, *Kasilag v. Hartford Investment Financial Services*, and *In re: American Funds Fee Litigation*. In a fifth case, *Baker v. American Century Investment Management*, the plaintiffs stipulated to the dismissal of the action with prejudice one week before the case was scheduled to go to trial, stating that "it is likely that the Defendant will prevail on most of [the relevant] issues," and that "Plaintiffs have concluded that the Defendant has not violated its fiduciary duties under Section 36(b) of the Investment Company Act of 1940."

- ***Financial Guaranty Insurance Company (FGIC) v. The Putnam Advisory Group***
Led a team supporting an expert retained on behalf of Putnam to assess whether a collateralized debt obligation (CDO) portfolio was constructed and managed consistent with disclosures, whether the alleged influence by the equity investor caused losses to the super senior tranche, and whether the alleged misrepresentations about the collateral portfolio affected FGIC's decision to insure the super senior tranche. The case resulted in a complete trial victory for our client.
- ***Florida State Board of Administration v. Alliance Capital Management***
Directed the support of expert witnesses on behalf of Alliance Capital to evaluate and opine on issues related to portfolio theory, portfolio management, corporate governance, compliance, and damages. This case culminated in a trial in which a Florida jury found Alliance Capital not liable for the losses incurred by the Florida Retirement System pension fund. The verdict was a landmark ruling for active investment managers and was declared one of the top 10 defense wins of 2005 by *The National Law Journal*.
- **Securities fraud – multiple engagements**
Led teams supporting experts in civil and criminal matters involving securities fraud allegations. Analyzed issues related to causation, damages, and class certification. Cases include Rule 10b-5 claims, Section 11 claims, criminal matters, and state court securities litigation.
- ***In re: Parmalat Securities Litigation***
Led teams supporting experts retained on behalf of Citigroup to research and testify about the securitization of accounts receivables and about loss causation. The claims against Citigroup were dismissed on summary judgment.
- **Securities fraud and securitization – confidential arbitration**
Retained as a consulting expert on behalf of a wholesale mortgage lender that created funds that used debt to purchase mortgages. The funds packaged the mortgages into mortgage-back securities (MBS). After the funds went bankrupt, plaintiffs sued, alleging that the lender's securitization strategy was a cause of the bankruptcy. Directed the comparison of the actual value of the funds to the amounts the funds would have been worth had the funds retained the mortgages. As part of this analysis, valued the MBS associated with the mortgages that the funds securitized. For the MBS that were not frequently traded, this analysis involved, among other things, using prices from public sources; extrapolating from data on other securities; extrapolating from ABX indices; and looking at the value of underlying pool of mortgages accounting for prepayments, expected defaults given delinquency rates, and foreclosure costs. Presented the results at the mediation.
- **Investment management – securities lending collateral pool**
Directed the support of experts retained on behalf of the investment manager. The manager had invested a portion of the portfolio in an SIV-lite. The SIV-lite invested in asset-backed securities (ABS), non-agency MBS, and CDOs. When the SIV-lite was dissolved, investors were given the choice between receiving a share of the underlying securities or receiving a specified amount of cash. The plaintiff selected the cash option. Estimated the value of the underlying securities to determine how much of the plaintiffs' losses resulted from its decision to take cash rather than securities.

- **Investment management – multiple engagements**
Led teams supporting academic and industry experts retained on behalf of investment advisors to analyze and opine on whether the portfolios' investments were consistent with investment agreements, historical practice, and prudent portfolio management. In several of these engagements, portfolio managers were alleged to have violated the funds' respective investment guidelines by investing too much of the portfolio in non-agency MBS and ABS. In some of these matters, the plaintiffs alleged that the investment adviser temporarily hid the magnitude of portfolio losses by not marking down the value of non-agency MBS and ABS to reflect their true value. Assessed whether the investment managers had valued the securities reasonably.
- ***In re: New York Stock Exchange/Archipelago Merger Litigation***
Led team supporting an academic affiliate who was retained on behalf of the New York Stock Exchange, Inc. (NYSE) in litigation brought on behalf of a small number of NYSE members. The plaintiffs were seeking an injunction to delay the NYSE members' vote on whether to approve the merger between NYSE and Archipelago Holdings, Inc. Topics researched include the industry conditions at the time of the merger, the bankers' valuations of the merging entities, market reactions to the merger, and the language of the fairness opinion. Provided consulting support to counsel for the NYSE during trial including research and analyses related to the plaintiffs' expert's opinion. During the preliminary injunction hearing, the parties reached a settlement that allowed the vote on the merger to proceed as scheduled. Under the settlement, an independent party was retained to evaluate the terms of the merger. Subsequently, this party found the terms of the merger to be fair, and the members of the NYSE voted to approve the merger by an overwhelming margin.
- ***In re: Enron Securities Litigation***
Led team supporting an academic affiliate retained on behalf of Alliance Capital Management to testify on the role of dual directors and related allegations. The court granted summary judgment for Alliance Capital.
- ***Tigerman v. Heller Capital***
Evaluated and testified on issues related to damages, foreseeability, investment risk, and economic conditions in a dispute involving the investment suitability of leveraged municipal bond funds.

Antitrust and Competition

- ***The Solyndra Residual Trust v. Trina Solar.***
Led team supporting an expert retained by the defendants in a matter in which the defendants were alleged to have conspired to set prices below cost, and that this strategy caused Solyndra to incur losses and become insolvent. Evaluated issues of market definition and power, whether the defendants' pricing behavior was consistent with the alleged conspiracy, the likelihood of recoupment, whether defendants set prices below cost, barriers to entry, and the market forces that led to the plaintiff's failure to be profitable. Also investigated and explained critical differences between dumping margins as calculated by the International Trade Commission and economic analysis of below-cost pricing.
- **Horizontal price collusion – confidential engagement related to automobile parts**
Led team providing consulting support to counsel retained by a defendant accused of colluding to inflate the prices of parts sold to automobile manufacturers.

- ***Fran-Am Partnership v. Sports Club Car of America***
Led team supporting an expert retained on behalf of Fran-Am to analyze and to opine on matters of market definition, standard setting, joint ventures, harm to competition, and damages.
- ***Rowe Entertainment v. The William Morris Agency***
Led team supporting an expert retained on behalf of the joint defense group consisting of talent agencies and music concert promoters. Evaluated economic issues related to market definition, allegations of concerted actions to restrain trade, and concerted refusals to deal.
- ***Oakland Raiders v. National Football League***
Led team supporting an expert retained on behalf of the National Football League (NFL) to analyze and to opine on the economics of sports league governance and on the NFL's governance mechanisms.
- ***Hingel v. Exxon Corporation***
Led team supporting an expert retained on behalf of Exxon to study and to opine on the economic reasonableness of the restrictions in Exxon's distribution system as well as the economic reasonableness of Exxon's wholesale pricing to lessee-dealers.
- **Merger analysis – confidential engagement**
Led team supporting an expert retained by a government entity to analyze and submit an expert report on the competitive effects of a proposed hospital merger. After reviewing the report, the government entity decided not to challenge the proposed merger.
- **Predatory pricing – confidential engagement**
Led team providing consulting support to counsel retained by a defendant accused of predatory pricing in the medical services industry. The analysis involved costs allocations and the California standard for predatory pricing.
- **Exclusive dealing – confidential engagement**
Led team providing consulting support to counsel retained by a defendant accused of using exclusive dealing in an attempt to monopolize a market.

Other

- ***Cross Refined Coal v. Commissioner of Internal Revenue***
Cross Refined Coal (Cross) was a partnership that refined coal and received Section 45(e)(8) refined coal production tax credits. The IRS had reduced the Cross's and certain partners' tax credits and had also disallowed claimed operating losses because the IRS had concluded that Cross was not a real partnership but instead was a transaction to "monetize" tax credits. Led a team that supported an expert retained by the tax matters partner to assess whether Cross was a partnership from an economic perspective, and whether the partners in Cross shared in the risk of the enterprise. At the end of a nine-day trial, the judge ruled from the bench in favor of our client and held that Cross was a bona fide partnership.
- **Bankruptcy – confidential engagement**
Led teams supporting an economist and a lending expert retained on behalf of a lender in a bankruptcy-related litigation. The economist opined on issues related to the borrower's solvency, and the lending expert opined on whether the terms of related party company loans would have been available to the borrower via an arm's-length transaction.

- **Confidential arbitration regarding holdout by professional hockey player**
Provided consulting support to assess damages suffered by a professional hockey team caused by a player's refusal to play.
- ***Viacom Outdoor v. Strategic Technologies International***
Led team supporting an expert retained on behalf of Viacom Outdoor to calculate the value of any economic damages suffered by Strategic Technologies International (STI) as a result of an alleged improper dissolution of a joint venture. A Los Angeles Superior Court ruled in favor of Viacom Outdoor and assessed punitive damages against STI.
- **Telecommunications regulation**
Led teams providing statistical and economic consulting to competitive local exchange carriers (CLECs) in multiple phases of the California Public Utilities Commission's (CPUC's) Section 271 proceedings regarding Pacific Bell's entry into the California long distance telephone business. Analyses include evaluating how different testing, enforcement, and penalty mechanisms would affect Pacific Bell's incentives to provide service to CLECs. Analyzed and critiqued the statistical methodology used by the third-party testers of Pacific Bell's Operational Support Systems. Participated in CPUC workshops on behalf of AT&T.
- **Valuation (multiple engagements)**
Directed analyses on multiple matters related to the valuation entities. These analyses including valuing of entities under the assumption that an alleged wrongdoing or contractual breach did not occur, and valuing assets in conjunction with solvency analyses.
- **Violation of non-compete clauses and theft of trade secrets (multiple engagements)**
Led teams supporting experts retained to estimate the damages suffered as a result of alleged theft of trade secrets, tortious interference, and violations of non-compete clauses.

ARTICLES AND PUBLICATIONS

- "State vs. Local Management of Pension Assets: Effects of the Massachusetts Chapter 68 Public Pension Reform," with Bruce E. Stangle, Yao Lu, Alex N. Iselin, and Priyanka Singh, *Journal of Retirement* (Fall 2020)
- "ERISA Litigation Involving Welfare Plans," with Mark Gustafson, Peter Rybolt, and Philip Hall-Partyka, *Recent Developments in Business and Corporate Litigation: 2020 Edition, Volume 1* (ERISA chapter), ABA Publishing (2020)
- "Back to School – Three Years Later: An Update on University Retirement Plan Litigation," with Lisa S. Brogan, *Recent Developments in Business and Corporate Litigation: 2020 Edition, Volume 1* (ERISA chapter), ABA Publishing (2020)
- "ERISA Litigation Involving Target Date Funds," with Raghav Ahuja, Brian D. Boyle, Ahmer Nabi, and Meaghan VerGow, *Recent Developments in Business and Corporate Litigation: 2019 Edition, Volume 2* (ERISA chapter), ABA Publishing (2019)
- "Returning Back to School: An Update on University Retirement Plan Litigation," with Lisa S. Brogan, *Recent Developments in Business and Corporate Litigation: 2019 Edition, Volume 2* (ERISA chapter), ABA Publishing (2019)

- “Back to School: A Primer on University 403(b) Plan Litigation,” with Lisa S. Brogan, *Recent Developments in Business and Corporate Litigation: 2018 Edition, Volume 2* (ERISA chapter), ABA Publishing (2018)
- “Expert Analysis of Class Certification Issues,” with Christopher Chorba, Mark A. Gustafson, and Peter P. Simon, *Litigation Services Handbook*, ed. by Roman L. Weil, Daniel G. Lentz, and Elizabeth A. Evans, John Wiley & Sons, Sixth Edition (2017)
- “Economic Analysis in Fiduciary Monitoring Disputes Following the Supreme Court’s ‘Tibble’ Ruling,” with Susan Mangiero, *BNA Pension & Benefits Daily* (June 24, 2015)
- “Expert Analysis: Using Simulation to Assist Courts in Assessing the Prudence of Retirement Plan Investment Decisions,” *BNA Pension & Benefits Daily* (July 15, 2014)
- “Expert Analysis of Plan Losses in ERISA Class Action Litigation,” *BNA Pension & Benefits Daily*, (April 24, 2012)
- “Expert Analysis of Class Certification Issues,” with Christopher Chorba, Mark A. Gustafson, and Peter P. Simon, *Litigation Services Handbook*, ed. by Roman L. Weil, Daniel G. Lentz, and David P. Hoffman, John Wiley & Sons, Fifth Edition (2012)
- “Seventh Circuit Creates Uncertainty About 401(k) Provider RFPs,” with Jamie O. Fleckner, *BNA Pension & Benefits Daily* (May 24, 2011)
- “The Importance of Supply-Side Effects in Antitrust Analyses,” with Peter P. Simon, *ABA Section of Antitrust Law, Economics Committee Newsletter* 8(2), 15–18 (2008)
- “Vertical Enclosure: Vertical Integration and the Reluctance to Purchase from a Competitor,” *Journal of Industrial Economics* 52, 179–199 (2004)
- *Social Networks and the Aggregation of Individual Decisions*, with Lance Lochner, N.B.E.R. Working Paper 8979 (June 2002)

PRESENTATIONS AND SPEAKING ENGAGEMENTS

- “Wins and Losses in 401(k) Fee Cases and Trial/Settlement Outcomes of 403(b) University Cases: What’s the Score and What’s Next?” panel member, ACI 17th National Forum on ERISA Litigation (November 21, 2019)
- “The Surge of 403(b) University Plan Litigation and Keeping Abreast of the Latest Wave of 401(k) Cases,” panel member, ACI 16th National Forum on ERISA Litigation (November 15, 2018)
- “Plan Sponsor Litigation,” 2018 SageView National Conference (April 3, 2018)
- “The Continued Rise in Fiduciary Investment Litigation: 401(k) / Excessive Fee Litigation, Proprietary Fund and Stable Value Fund Cases, and Other Investment Vehicle Challenges,” panel member, ACI 5th National Forum on ERISA Litigation (November 2, 2017)
- “Developments in ERISA Litigation including Fee Litigation, Church Plan Litigation, and Stable Value Litigation,” panel member, meeting of ERISA and Pension Litigation Subcommittee (Business and Corporate Litigation Committee) at the American Bar Association Business Law Section’s annual meeting (September 14, 2017)

- “ERISA Litigation: Significant Trends and Developments for 2017 & Beyond,” panel member, webinar hosted by The Knowledge Group (July 21, 2017)
- “Roundtable on Surveys and Statistics in Class Certification,” panel member, teleseminar hosted by the American Bar Association Section of Litigation, Class Actions and Derivatives Suits Committee (July 13, 2017)
- “Use of Derivatives in Pension Plans,” with Susan Mangiero, webinar hosted by The Professional Risk Managers’ International Association (March 2, 2017)
- “Fiduciary Investment Litigation: Employer Stock, 401(k) Fee Cases, Stable Value Cases, and Settlement Practices,” panel member, ACI 13th National Forum on ERISA Litigation (October 27, 2016)
- “Life After Tibble: Investment Monitoring and Litigation Defense Considerations for ERISA Fiduciaries,” panel member, webinar sponsored by Bloomberg BNA (January 13, 2016)
- “The Tibble v. Edison International Decision: Current Landscape of 401(k) Fee Cases and Evolving Defense Strategies,” panel member, ACI 10th National Forum on ERISA Litigation (October 26, 2015)
- “ERISA Fiduciary Litigation: New and Emerging Theories of Liability, Effective Defense Strategies, Minimizing Exposure to Fiduciary Liability, and More,” panel member, ACI 6th National Forum on ERISA Litigation (October 24, 2013)
- “Fee & Disclosure Cases: Strategies for Addressing the DOL Disclosure Rules and Examining Recent Decisions in Fee Litigation and the Impact on ERISA Claims,” panel member, The ERISA Litigation Congress sponsored by Momentum Events (September 9, 2013)
- “Statistics and Regressions: An Overview of Some Things You Probably Hoped to Avoid but Should Know,” continuing education forum for attorneys, sponsored by Milbank, Tweed, Hadley & McCloy LLP (January 21, 2010)