ANALYSIS GROUP ECONOMIC, FINANCIAL and STRATEGY CONSULTANTS

FORUM

FALL/WINTER 2013

FROM THE CEO

For the second year in a row, Analysis Group was ranked the best large firm in Massachusetts in the *Boston Globe*'s Top Places to Work poll. This recognition is incredibly gratifying. We achieved this through an enduring focus not only on what we do, but on how we do it – by reinforcing a culture of respect, collaboration, and opportunity for the people who work here.

Our collaborative work environment also benefits our clients, leading to superior service and the highest-quality work product, a few examples of which are highlighted in this issue: the successful trial outcomes of long-running LCD antitrust litigation, our participation in the first case adjudicated in the International Trade Commission's new "fast-track" pilot program, our research into global antitrust enforcement and the value of water, and a challenge to traditional reasonable royalty damages approaches.

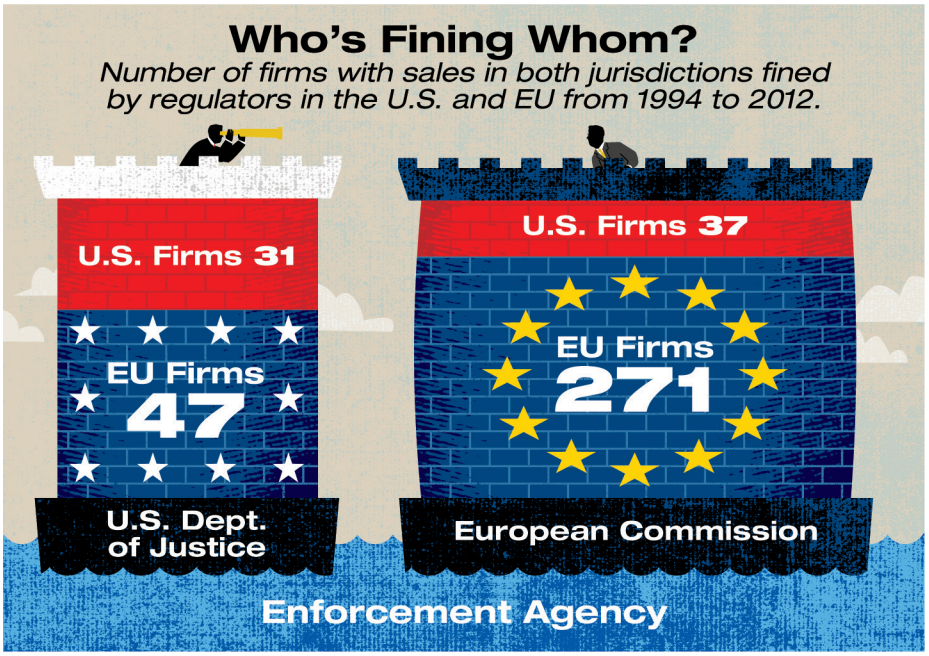
The diversity of our work, and range of expertise it demonstrates, are hallmarks of our distinctive culture.

MARTHA S. SAMUELSON, PRESIDENT AND CEO

Antitrust Policy

International Enforcement in a Global Economy

International economic activity involving multiple regulatory jurisdictions has increased significantly in recent decades. Between 1960 and 2009, imports of goods and services as a percentage of the global gross domestic product (GDP) have more than doubled.



Together, the United States and European Union economies account for more than half of the world's GDP. In addition, cross-country corporate mergers as a percentage of total worldwide mergers have risen from 30% in 1998 to 45% in 2007.

This cross-border economic activity has spurred the creation of more fully developed antitrust policies and an increase in enforcement. Will domestic policy makers be tempted to use antitrust enforcement as a back door to protectionism? Are policies across jurisdictions naturally converging, or does enforcement differ for domestic and foreign firms?

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Global Antitrust Policy (continued from page 1)

Edward Snyder, dean of the Yale School of Management, and Analysis Group Managing Principal **Pierre Cremieux** explored these issues in a recent study, "Global Antitrust Enforcement: An Empirical Assessment of the Influence of Protectionism."

Professor Snyder and Dr. Cremieux posit that antitrust authorities may exhibit three possible approaches to enforcement (see right). They analyzed how EU and U.S. antitrust authorities enforced anti-cartel laws from 1994 through 2012. They studied instances in which firms sold the same product lines in both jurisdictions, and examined the pattern of fines imposed to test whether the approach to enforcement was neutral, protectionist, or domestic. The authors found a surprisingly low level of overlap in enforcement across jurisdictions; most firms fined in one jurisdiction were not fined in the other.

> "It is clear that domestic firms are more likely to be investigated by their own authority than by the foreign jurisdiction."
>
> – EDWARD SNYDER, DEAN, YALE SCHOOL OF MANAGEMENT

They also found that authorities in both the European Union and United States are somewhat more likely to fine domestic rather than foreign firms. Furthermore, they discovered that EU authorities impose higher fines on EU firms, while U.S. authorities impose higher fines on non-U.S. firms.

The authors conclude that their results provide little support for the notion that antitrust enforcement of cartels has yielded to protectionism. The United States is less likely to fine foreign than domestic firms, but when it does, those fines are significantly larger. By contrast, the European Union is unambiguously domestically focused, with EU firms both more likely to be fined and to receive larger fines than their foreign counterparts.

As a possible explanation for the European Union's more aggressive domestic focus, Professor Snyder and Dr. Cremieux note that EU antitrust policies are relatively new compared with those in the United States. U.S. firms have been regulated by antitrust policy for more than a century – since the passage of the Sherman Act in 1890 – while the foundations of EU antitrust enforcement date back only to 1957, and the emergence of cartel enforcement to 1986. ■

Three Possible Approaches to Enforcement

1. **NEUTRAL ENFORCEMENT** refers to a regulatory environment in which factors such as a large number of bilateral trade agreements encourage authorities to cooperate and monitor the impact of anticompetitive conduct on other countries. The threat of retaliation can provide an incentive for authorities to favor a neutral approach.

2. **PROTECTIONISM** can emerge when bilateral agreements lack teeth. When sovereignty or national interests trump nonbinding agreements, it falls on domestic antitrust authorities to restrain foreign competition by using fines or tariffs.

3. **DOMESTIC ORIENTATION** occurs when authorities focus on national firms, primarily because foreign firms are logistically more challenging to deal with and more complicated to investigate and prosecute. Also, authorities charged with protecting domestic consumers may believe that the deterrent effects of prosecuting domestic companies are greater, given their higher collective share of GDP.

An Inside Look at ITC's Expedited Investigations Pilot Program

The U.S. International Trade Commission (ITC) launched a pilot program to identify patent cases it deems eligible for "fast tracking" – that is, for early resolution of a dispositive issue. Managing Principal ***Carla Mulhern*** *testified at the evidentiary hearing on the first such case,* In the Matter of Certain Products Having Laminated Packaging, Laminated Packaging, and Components Thereof *("Lamina"). Here, she and Vice President* ***Robin Heider*** *discuss the potential effects of expedited investigations.*

Why did the ITC develop the pilot program?

Ms. Mulhern: Some have voiced concerns that the ITC has become an attractive venue for patent litigation filed by patent holders that do not practice their patents. That's because the default remedy at the ITC is an exclusion order barring infringing goods from being imported. For companies in industries like consumer electronics, in which manufacturing typically happens overseas, this remedy is tantamount to an injunction. Meanwhile, the 2006 decision in *eBay v. MercExchange* has made it much less likely that nonpracticing entities (NPEs) and patent assertion entities (PAEs) would get injunctive relief in district courts, so the ITC has become a relatively more attractive venue for these patent holders.

In some cases, however, these types of complainants may not have sufficient activity in the United States to satisfy the domestic industry requirement, a prerequisite for standing to sue in the ITC. The pilot program provides a mechanism by which a dispositive issue, such as domestic industry, can be ruled on quickly, thereby reducing the time and costs involved for all parties. An administrative law judge oversees a discovery period and an evidentiary hearing on the dispositive issue, and then is required to issue a ruling within 100 days from the start of the investigation. A dispositive ruling such as a finding of no domestic industry will result in termination of the investigation.

Lamina Timeline

February 2013: Lamina Packaging Innovations LLC files a patent infringement complaint with the ITC, which hears the case under an expedited process.

July 2013: An administrative law judge rules that Lamina failed to satisfy the economic prong of the domestic industry requirement. The ITC upholds that finding, thereby disposing of the case.

What effects might this expedited process have on ITC investigations?

Ms. Heider: Some observers believe this new process could be effective in discouraging NPEs or PAEs with questionable domestic industry claims from filing patent infringement suits at the ITC, which would limit their ability to extract favorable settlements based on the leverage they could gain from an exclusion order.

The limited scope of the initial investigation and the compressed time frame likely will save both complainants and respondents substantial sums of money. The fees associated with an expedited 100-day investigation into just one issue would be much lower than those associated with conducting a full investigation that could last a year or two. Some have estimated potential savings in the millions of dollars.

How did fast tracking play out in the Lamina case?

Ms. Mulhern: The commission directed the administrative law judge to expedite a decision on whether the complainant, Lamina, an NPE, could demonstrate that it had met the economic prong of the domestic industry requirement. To analyze the extent of a complainant's domestic industry activities in exploitation of the asserted patents, we often look at its U.S. investments in the manufacturing, design, or development of products that practice the patents in suit. Lamina did not conduct these types of activities; its claims were based instead on its investments in licensing the patents in suit, as well as on certain domestic activities of its licensees. We were asked to respond to Lamina's claims regarding its domestic investments and analyze the sufficiency of the evidence on this point. I submitted an expert report and testified at the evidentiary hearing on economic issues relating to domestic industry. After 100 days, Judge Theodore Essex handed down a ruling that was favorable to our clients, finding that Lamina had not satisfied the economic prong of the domestic industry requirement, thereby disposing of the case. ■

What Is Water Worth?

The economic value of water has become a top-of-mind issue for utilities, policy makers, business leaders, and other stakeholders. Their perceptions of an abundant and reliable U.S. water supply have changed significantly over the past few years, as we've entered a period of more frequent and intense weather patterns – think of Hurricane Sandy in 2012, recent record snowfall in the northeast, and devastating wildfires in the south and west.

Changing climate conditions are having both direct and indirect effects on water quality, quantity, and overall availability. Companies that rely on water for manufacturing, energy generation, or health and safety in their daily operations, and those who need to make hard decisions about infrastructure investments, are finding it increasingly difficult to quantify the value of this natural resource.

Quality and quantity. Concerns about water quality and the liability and damages associated with the incidence of contamination of the U.S. water supply are as prevalent as ever. But more attention is also being paid to water quantity. Droughts in some areas of the country are prompting utilities and manufacturers to focus on risk, competition, and compliance issues – specifically in relation to upcoming changes to Section 316(b) of the Clean Water Act. We and our colleagues have helped power plants perform cost-benefit analyses to evaluate the various technologies that can be used to reduce their water flow and thermal discharge so they can comply with 316(b). There are also growing economic concerns about having too much water: more frequent and intense flooding can damage agricultural lands, leading to extensive crop loss, and, as we saw in recent flooding in Colorado, the destruction of property and infrastructure.

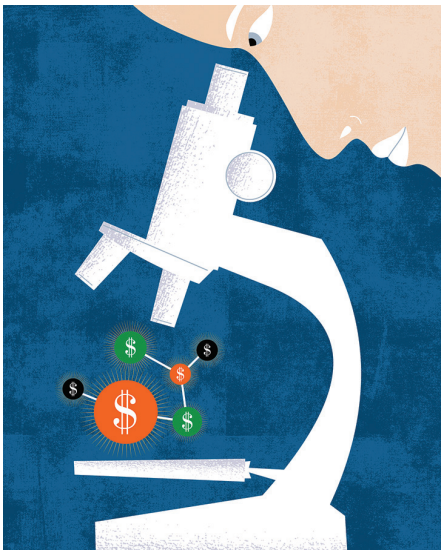
Availability. Contrary to popular belief, drinking water is not the largest or even the most expensive use of water in the United States. The power and energy sector accounts for half of all water withdrawals from U.S. streams, lakes, and rivers. This water is used to cool generation turbines and engines – one of the biggest effects of recent droughts has been brownouts caused by curtailed electricity generation. According to the draft *National Climate Assessment,* power production at existing facilities, as well as the permitting of new power plants, will continue to be constrained if there is not enough water for cooling, hydropower, or for absorbing warm water discharges from some power plants – the latter of which can also affect aquatic life.

Value. Because of its previous abundance, water has typically been considered a free (or nearly free) resource. But the average price and the value of water are not the same thing. During periods of drought, businesses and households have experienced decreased production and increased costs, respectively. Economists are now recognizing that a critical measure of water's value is as an input to energy production, agriculture, and other manufacturing and service functions. One way to assess this value is to understand factors associated with reliability (of water service) and resiliency (of key industrial sectors that experience service disruptions). A team from Analysis Group recently worked with the American Water Works Association to better understand how the value of water may be calculated and incorporated in national cost-benefit analyses. The team found that water could be worth between $60 and $400 per person per day during periods of short-term disruption, depending on the region and industry. The "standard" value currently used in regulatory analyses is $93 per day. More accurate information about the value of water can help in strategic planning, in assessing damages in disputes involving water shortages and lost output, and in assessing liability and damages in cases in which contamination or water rights and contracts are at issue.

BY MANAGING PRINCIPAL **SUSAN TIERNEY** AND ASSOCIATE **CRAIG AUBUCHON**, BOTH IN THE BOSTON OFFICE OF ANALYSIS GROUP. DR. TIERNEY IS A CO-CONVENING LEAD AUTHOR FOR THE "ENERGY SUPPLY AND USE" CHAPTER OF THE DRAFT *NATIONAL CLIMATE ASSESSMENT*.

Drug Safety Litigation

The Role of Clinical Trials in Mass Torts and Related Shareholder Suits



In mass tort product liability lawsuits, the key causality claim is whether and to what extent illnesses and deaths are related to exposure to the drug at issue. "Randomized controlled clinical trials offer an effective vehicle for establishing or debunking a causal relationship, beginning with study design up through, and including, the proper statistical analysis of the data," says Managing Principal and Chief Epidemiologist **Mei Sheng Duh**.

Similar data and analyses, centering on the timing of facts leading up to a decline in a company's stock price, are also typically required in shareholder lawsuits, such as ERISA "stock drop" and securities fraud suits. A biostatistician can opine on the reasonableness of the drug company's statistical analyses in light of accepted statistical standards. Relating the nature and timing of disclosures by drug companies to the clinical evidence available contemporaneously is often a critical element in shareholder suits, as plaintiffs often claim delays in corporate disclosures. ■

Case in Point: Major Pharmaceutical Mass Tort and Securities Matters

Analysis Group was retained on behalf of the defendants in a mass tort case in which plaintiffs alleged that pain therapies caused serious adverse cardiovascular events, including death. We assisted Professor **Lee-Jen Wei** in conducting a meta-analysis to combine the results of the clinical trials of the drugs at issue and worked with cardiologists to develop a clinically appropriate measure of a "heart attack." We found that results varied across trials and were dose-specific: At the label dosages, we detected no elevated cardiovascular risk.

Plaintiffs ignored the totality of evidence and sought to discard from the meta-analysis those trials in which no patient suffered a heart attack, but the judge allowed analysis of all trials. At a subsequent scientific hearing on the evidence, the judge determined that there was no statistical evidence of elevated heart attack risk with low dosage use; since 85% of the patients had taken the low dosage, most of the purported class was not considered to have been affected, and class certification was not granted.

In two related securities-fraud class actions, we worked on behalf of a pharmaceutical manufacturer and several individuals. The first suit alleged that our client concealed pertinent clinical evidence about the cardiovascular safety of the drug that, when made public, led to a drop in the company's stock price. The second suit alleged misrepresentation of the results from a clinical trial designed to assess specific safety aspects of a drug. The plaintiffs claimed that the company made materially false and misleading statements about the drug's relative safety, resulting in an artificially inflated stock price. A core issue was how patients who dropped out of the clinical trial factored into the reported results and whether those results omitted key findings. Analysis Group supported Professor **Daniel Scharfstein**, a biostatistician and expert in evaluating missing data in clinical trials, who used existing methodologies, some of which he helped develop, to evaluate whether bias was present in the published trial data. He determined that the company's publication of results from the first six months of the trial did not misrepresent the totality of the trial results.

*Managing Principal **Pierre Cremieux**, Principal **Almudena Arcelus**, and Vice President **Nikita Piankov** worked with Dr. Wei on the analysis; Dr. Cremieux and Manager **Sara Eapen** supported Dr. Scharfstein.*

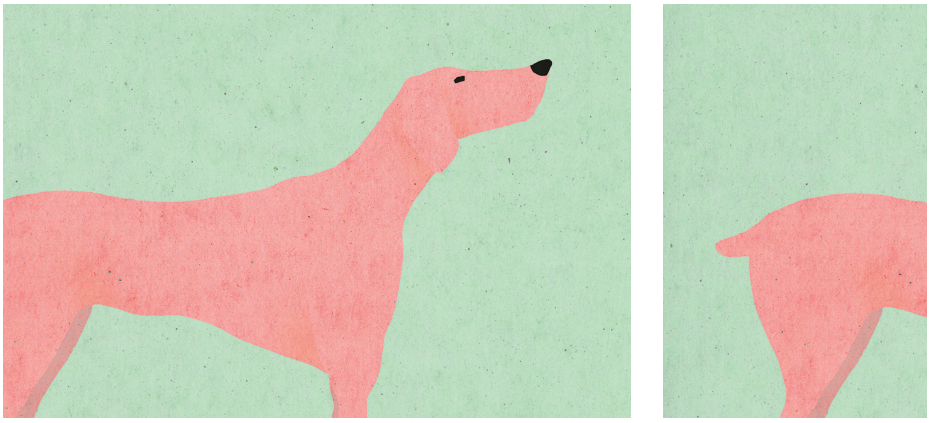
Reconsidering the Hypothetical Negotiation: Is the Tail Wagging the Dog?

Reasonable royalty damages are the predominant form of relief awarded in patent infringement cases and, of late, have been a lightning rod for assertions that the patent protection system is out of control.

The primary tool used to assess reasonable royalty damages is the hypothetical negotiation construct, which emanated from the seminal *Georgia-Pacific Corp. v. United States Plywood Corp*. decision in 1970. The construct provides that a reasonable royalty should be determined by hypothesizing an imaginary negotiation between a patent holder and an infringer over the use of a patented invention at the time of first infringement.

In our article, "The Hypothetical Negotiation and Reasonable Royalty Damages: The Tail Wagging the Dog" (*Stanford Technology Law Review*, September 2013), we examine the wisdom and efficacy of the historically heavy reliance on the construct. In particular, we question whether it is likely to achieve the ultimate goal of reasonable royalty damages, which is to provide the patent holder with fair and adequate compensation for the unauthorized use of a patented invention. In our analysis of this topic, we considered the origins of and initial motivations for the measurement of reasonable royalty damages and found that the logic for using the hypothetical negotiation construct is tenuous. Its use actually introduces unnecessary and unproductive questions and conflict into the determination of reasonable royalty damages.

In the paper, we explain that prevailing concerns about the "proper" application and implementation of the construct – regarding the timing of the negotiation, for example, or the relative bargaining positions and power of the negotiating parties – often overshadow a more fundamental question: Do the proposed damages adequately compensate the patent holder? We conclude that reliance on the hypothetical negotiation often does not provide a sound or reliable basis for properly determining reasonable royalty damages. As an alternative, we propose that the determination of reasonable royalty damages be based on a direct and objective assessment of a patent's incremental benefits, licensing comparables, and design-around costs.



An *incremental benefits analysis* examines the gains the infringer enjoys that can be attributed to use of the patent. It focuses on the difference between the benefits the infringer gains from using the patent and the benefits it would gain from using a non-infringing, next-best alternative. A *licensing-comparables analysis* examines actual licensing agreements that involve patents similar to the ones at issue to determine whether, and the extent to which, arms-length negotiations can provide useful insights into the amount of compensation that is appropriate. And a *design-around cost analysis* examines the costs the infringer would have incurred by adopting the non-infringing, next-best alternative in order to determine whether there is a limit to the amount an infringer might have been willing to pay to use the patented technology.

Experts can balance and weight the results of these different assessments to determine the amount of compensation that should be paid to the patent holder in light of the specific unauthorized use of the patented technology – without introducing artificial bargaining drama or modeling complications into the analysis. ■

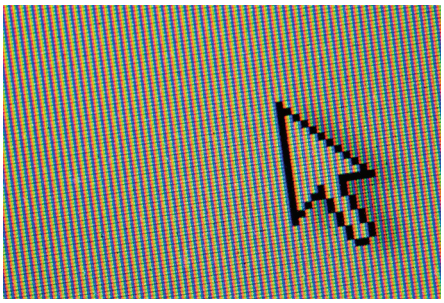
BY MANAGING PRINCIPAL **JOHN JAROSZ** AND VICE PRESIDENT **MICHAEL CHAPMAN**, BOTH IN THE WASHINGTON, D.C. OFFICE OF ANALYSIS GROUP.

In two high-profile civil and criminal antitrust matters, Analysis Group clients received favorable trial outcomes involving the alleged price-fixing of thin-film-transistor liquid-crystal display (TFT-LCD) panels.

Toshiba and HannStar Receive Favorable Decisions in Civil Price-Fixing Matter

After a six-week trial and a day of deliberation, a California federal jury found Analysis Group client Toshiba Corporation not liable for conspiracy to fix the prices of TFT-LCD panels. HannStar Display Corporation, also an Analysis Group client, had previously acknowledged its participation in a conspiracy to fix the prices of certain TFT-LCD panels; however, the same jury awarded only $7.4 million in direct damages, based on figures calculated and presented by Analysis Group affiliate and testifying expert **Edward Snyder**. Based on Professor Snyder's testimony about the pass-through of overcharges to consumers, the jury awarded no damages on indirect purchases. The Best Buy plaintiffs had asked for $770 million in damages.

Best Buy's lawsuit stems from a long-running U.S. investigation of an alleged global conspiracy to set artificially high prices for, and restrict the supply of, various sizes of TFT-LCD



panels. The plaintiffs claimed that the defendants had engaged in price-fixing behaviors since 1998, resulting in overcharges to direct purchasers of TFT-LCD panels and finished products containing those panels (such as televisions and computer monitors) and to indirect purchasers of finished products.

Professor Snyder, dean of Yale School of Management, and an Analysis Group team led by Managing Principal **Pierre Cremieux**, Principal **Almudena Arcelus**, Vice President **Aaron Yeater**, and Manager **Wayne Huang**, were retained by a joint defense group to assess issues related to damages and class certification. Professor Snyder filed reports and delivered testimony rebutting the plaintiffs' damages experts on the efficacy of price-fixing cartels, and calculated damages on direct and indirect purchases.

Taiwanese Electronics Executive Acquitted of Criminal Charges

After a three-week federal trial, a San Francisco jury needed only a day and a half to deliberate before acquitting Richard Bai, an executive at Taiwan-based AU Optronics (AUO), of criminal price-fixing charges. The trial was one of several criminal matters instigated by the U.S. Department of Justice (DOJ) as part of a larger, ongoing antitrust investigation of the manufacturers of TFT-LCD panels found in various electronic products.

The DOJ accused Mr. Bai, head of AUO's notebook division, of colluding to set prices of TFT-LCD panels with several manufacturers. Mr. Bai attended one of more than 60 meetings that the DOJ claimed involved discussions of price-fixing. He was represented by Shearman & Sterling LLP and the Law Offices of Brian H. Getz, who retained a team from Analysis Group, led by Managing Principal **Bruce Deal** and Manager **Asta Sendonaris**, to assess economic issues raised in the case. Mr. Deal provided economic testimony at trial on AUO's market share among major customers, as well as the growth and volume of AUO's notebook sales during the specified period.

With the acquittal – which is rare in white collar criminal matters – Mr. Bai is free to return to Taiwan; he came to the United States voluntarily to face these charges.

In class-related matters, micro- and macroeconomic tests can be used to explore issues of commonality across groups of individuals who may have been injured by an alleged behavior. These analyses help determine whether the effects of such behaviors are predominant, and whether a common method of proof could be applied to assess the impact of those behaviors.

Class Certification Denied in Life Settlements Case

Class certification was denied in *Sean Turnbow et al. v. Life Partners Inc. et al.,* a securities-related matter in which a putative class of about 13,000 investors alleged violations of federal and local law relating to the sale or transfer of ownership of life insurance policies. The case was heard in the U.S. District Court for the Northern District of Texas, Dallas Division.

Life Partners Inc. is an intermediary for sellers and purchasers in life insurance settlement transactions. These transactions involve the sale of a previously issued life insurance policy to a purchaser, who takes an ownership interest in the policy, assumes the obligation to pay premiums, and receives payment of the policy's death benefit when the policy matures. Among other claims, the plaintiffs alleged that Life Partners breached its fiduciary duty and its implied contractual duty by providing grossly inaccurate life-expectancy assessments.

An Analysis Group team led by Vice President **Bruce Blacker** was retained by counsel on behalf of the defendants to address issues related to class certification and potential damages. Mr. Blacker provided expert testimony, concluding that a classwide formula could not be used to reasonably estimate the actual damages allegedly suffered by individual purchasers in the purported class. Without a single formula, the computation of damages would be a highly individualized task, he said. District Court Judge Barbara M.G. Lynn denied certification of the putative class.

Classwide Economic Harm Not Shown in "vitaminwater" Case

In the matter *Batsheva Ackerman et al. v. The Coca-Cola Company and Energy Brands Inc.*, the named plaintiffs alleged that defendants had misled consumers and caused economic injury through deceptive labeling associated with "vitaminwater." The plaintiffs sought to have classes certified in New York and California.

A team from Analysis Group was retained by Shook, Hardy & Bacon LLP, counsel for the defendants, to evaluate the named plaintiffs' position that standard economic analyses could be used to quantify the economic injury allegedly suffered by the putative class members. The team, led by Managing Principal **Keith Ugone** and Vice President **Na Dawson,** examined Nielsen retail sales data associated with vitaminwater and reached the opinion that the putative class members' economic injury (if any) could not be determined on a classwide basis using common proof.

The team demonstrated that wide variations existed in the retail price of vitaminwater. Additionally, a comparison of the average retail prices of vitaminwater to an identified benchmark product did not provide economic evidence that vitaminwater possessed a systematic price premium as a result of the alleged deceptive labeling and marketing. Dr. Ugone issued an expert report and provided deposition testimony in the matter.

New York District Court Judge John Gleeson certified the proposed classes as injunctive classes, but denied class certification for all other aspects of the named plaintiffs' claims.

Judge Orders Disgorgements, Fines in Naked Short Selling Matter

A U.S. Securities and Exchange Commission (SEC) judge ruled against optionsXpress Inc., former optionsXpress chief financial officer Thomas Stern, and former Maryland banker Jonathan Feldman in an alleged short selling scheme.

The SEC accused Mr. Feldman of using optionsXpress to engage in so-called "naked short selling," a process of selling stock short without following through to borrow or deliver the shares in question. The agency claimed that Mr. Feldman perpetuated the "fail to deliver" of stock by continuously engaging in a series of deep in-the-money "buy-writes" in which the calls generally would be assigned immediately given that the stocks were hard to borrow. The SEC also claimed that optionsXpress, a brokerage firm owned by Charles Schwab Corporation, failed to satisfy its closeout obligations in these transactions.

An Analysis Group team led by Vice Presidents **Lauren Kindler** and **Eric Dufresne** was retained by the SEC to support options trading expert **Brendan Sheehy**, who filed a report in this proceeding. Mr. Sheehy examined trading records, evaluated and described trading strategies, and discussed the economic aspects of the transactions at issue. Chief Administrative Law Judge Brenda Murray accepted as valid Mr. Sheehy's analysis of data "for the period September 16, 2009, through March 21, 2010, which shows Feldman engaged in huge transactions that followed the same pattern and resulted in consistent assignments and buy-writes." Judge Murray ruled in favor of the SEC on all counts. She ordered Mr. Feldman to disgorge $2.7 million in profits and pay a $2 million civil fine; optionsXpress to disgorge $1.6 million and pay a $2 million civil fine; and Mr. Stern to pay a $75,000 civil fine and be barred from participation in the securities industry.

Statewide Audit of Medicaid Matching Funds Program for Washington Hospitals

Analysis Group was retained by the Washington State Hospital Association, and all Washington hospitals, to conduct an audit of the supplemental Medicaid matching funds program, a program in which the state imposes a supplemental assessment on hospitals, then combines the funds with federal matching funds to provide additional Medicaid hospital payments.

An Analysis Group team, led by Managing Principal **Bruce Deal** and Vice President **Mark Gustafson**, analyzed the financial performance of the existing program, including a secondary redistribution program, and helped the association design solutions to remedy an inequitable distribution. The Washington State Hospital Association also asked the team to perform financial modeling and implementation in support of newly passed legislation to avoid the problems in the original program while also providing substantial benefits to the hospitals.

Recent Publishing

"Pay-for-Delay" Settlements

The U.S. Supreme Court's decision earlier this year on reverse payment, or pay-for-delay, patent settlements may have unintended consequences for manufacturers of branded and generic drugs, and, ultimately, consumers, say Managing Principal **Paul Greenberg** and Leslie John and Jason Leckerman of Ballard Spahr LLP, the coauthors of "Little Guidance for Lower Courts In *FTC v. Actavis*" (*Today's General Counsel*, August/September 2013).

Vertical Contracts and Competition

In their coauthored article for *CPI Antitrust Chronicle,* "Vertical Practices and the Exclusion of Rivals Post *Eaton*" (July 2013), Vice President **Shannon Seitz** and New York University Associate Professor John Asker explore the economics of vertical agreements from the perspectives of upstream suppliers, downstream retailers, and their rivals in the marketplace. They also provide a series of screens through which to assess the pro- and anticompetitive effects of vertical agreements.

Auto Defect Suits

Vice President **Mark Gustafson** and Managing Principal **Bruce Strombom** offer a basic overview of the analytical approaches that may be used to assess depreciation rates in matters alleging harm from automobile defects in their article "Use the Right Model for Auto Defect Suits" (*Law360*, July 9, 2013). Experts need to properly specify the regressions they perform, the authors say, otherwise their analysis may support an incorrect damages conclusion.

Spotlight on Analysis Group

Analysis Group Announces Senior Staff Promotion and New Affiliates

New Managing Principal

Adam Decter

Analysis Group is pleased to announce the promotion of Adam Decter to Managing Principal. Mr. Decter specializes in the application of microeconomics, finance, and data analysis to complex business litigation and business strategy cases, most notably in matters related to residential mortgage-backed securities, residential mortgage lending, mortgage reinsurance, commercial insurance, private equity, and payment cards.

New Affiliates

Larry Gerbrandt

Mr. Gerbrandt is a founder and principal of Media Valuation Partners and a managing director of Janas Consulting. He is a leading media and entertainment executive, research analyst, and valuation expert.

William McGivney

Dr. McGivney, a principal at McGivney Global Advisors, is a widely recognized expert in health care coverage policy, and drug and medical device regulatory policy.

Russell Peppet

Mr. Peppet, a partner at Park Avenue Equity Partners, has more than 43 years of experience in finance and equity investment. He is an expert in cost accounting in the manufacturing, financial institution, and mutual fund industries.

Affiliate News

John Hauser Receives Weaver Award for Marketing Science

The MIT Sloan School of Management honored Professor John Hauser with the Buck Weaver Award at the INFORMS Society for Marketing Science Conference. The award recognizes Professor Hauser's lifetime contributions to the theory and practice of marketing science. It is given in memory of Buck Weaver, an innovator in the field of marketing research.

Barry Goodwin Elected President of Agricultural Economics Group

North Carolina State University professor Barry Goodwin was elected president of the Agricultural & Applied Economics Association (AAEA). He is a William Neal Reynolds Distinguished Professor of Agricultural and Resource Economics, and an expert in applied econometrics, international trade, and agricultural markets.

Walter Thurman's Colony Collapse Disorder Research Recognized

North Carolina State University professor Walter Thurman received the Outstanding *American Journal of Agricultural Economics* Article Award at the 2013 AAEA annual meeting. The award was given for his coauthored paper, "Honey Bee Pollination Markets and the Internalization of Reciprocal Benefits" (with Professors Randal Rucker and Michael Burgett).

Analysis Group Repeats #1 Ranking in Large Company Category of *Boston Globe* Top Places to Work Poll

For the second year in a row, Analysis Group was ranked first in the "large company" category of the *Boston Globe*'s Top Places to Work poll. The firm has consistently appeared in these rankings for the past six years. The annual survey recognizes the most progressive companies in Massachusetts, based on employees' opinions about the leadership, appreciation, career opportunities, compensation, and management practices in their organizations. "This honor goes to all our employees, across all our offices," said Analysis Group President and CEO **Martha S. Samuelson**. "We have worked hard to create a rigorous yet supportive environment in which people feel they can do their best work."

Earlier this year, Analysis Group was ranked among the top 15 workplaces in Vault.com's survey of the best consulting firms in the country, for the third year in a row.

Selected Academic Affiliates & Experts

Dennis J. Aigner
UC Irvine Merage School of Business

John Asker
NYU Stern School of Business

Laurence C. Baker
Stanford University School of Medicine

Ray Ball
The University of Chicago
Booth School of Business

Arnold I. Barnett
MIT Sloan School of Management

Ernst R. Berndt
MIT Sloan School of Management

Hendrik Bessembinder
David Eccles School of Business,
University of Utah

Robert C. Blattberg
Kellogg School of Management,
Northwestern University; Tepper School
of Business, Carnegie Mellon University

Marshall E. Blume
The Wharton School,
University of Pennsylvania

Marcel Boyer
University of Montreal

Roberts W. Brokaw III
Roberts Brokaw LLC

Erik Brynjolfsson
MIT Sloan School of Management

Randolph Bucklin
UCLA Anderson School of Management

Karl E. Case
Wellesley College

Patricia Chadwick
Ravengate Partners LLC

John M.R. Chalmers
Lundquist College of Business,
University of Oregon

William J. Chambers
Boston University

Judith A. Chevalier
Yale School of Management

Iain M. Cockburn
School of Management,
Boston University

Delores A. Conway
Simon Graduate School of Business,
University of Rochester

Robin Cooper
Consensius LLC

Dwight B. Crane
Harvard Business School

Sanjiv R. Das
Leavey School of Business,
Santa Clara University

Lorraine A. Eden
Mays Business School,
Texas A&M University

Sebastian Edwards
UCLA Anderson School of Management

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In This Issue

ENERGY/ENVIRONMENTAL RESOURCES

Utilities Look for Ways to Assess the Value of Water

"Contrary to popular belief, drinking water is not the largest or even the most expensive use of water in the United States. The power and energy sector accounts for half of all water withdrawals from U.S. streams, lakes, and rivers."

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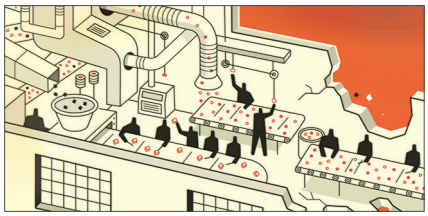
PATENT LITIGATION

An Overview of ITC Efforts to Fast Track Certain Cases



"The fees associated with an expedited investigation into just one issue would be much lower than those associated with conducting a full investigation that could last a year or two. Some have estimated potential savings in the millions of dollars."

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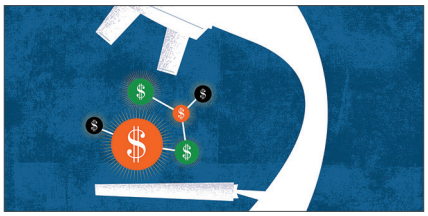
DRUG SAFETY LITIGATION

Using Clinical Trial Results in Mass Torts, Related Suits



"A key question is whether, and to what extent, illnesses and deaths are related to exposure to the drug at issue. The results from clinical trials offer an effective vehicle for establishing or debunking causal relationships."

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A Distinctive Business Model Analysis Group's focus on shared responsibility and mutual respect enables employee growth and firm success. See and hear from our employees and academic affiliates as they describe the principles that underlie the firm's unique business model, and what it means for our clients, affiliates, and employees when responsibility is distributed across the firm.

Rethinking Electric Utility Regulation In "Results-Based Regulation: A Modern Approach to Modernize the Grid," Analysis Group Vice President Paul Centolella and GE Digital Energy Director of Government Affairs and Policy David Malkin explore the challenges that electric utilities face as they plan for the future of the power grid. The authors also outline the benefits of modernizing electrical infrastructure and suggest moving to a results-driven regulatory model.

Changes Affecting the Music-Streaming Industry The impact on webcasters of a landmark decision to increase online royalty payments is the subject of "The Music Streaming Industry in the U.S. and EU: The Effects of the 2007 Copyright Royalty Board Decision on Venture Capital Investment," a research paper by Harvard Business School professor Josh Lerner and Analysis Group Manager Greg Rafert.

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