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Compass Lexecon Annual Newsletter

“The thing I like most about Compass Lexecon is that it is a constant reminder, amidst all the marketing and branding focus and the staggering amount of money and time devoted to it, that unalloyed excellence still matters, and still sells. You can post my comment on your website.”

The above quote graciously forwarded by one of our clients exemplifies the type of firm we aspire to be every day. We pride ourselves on the high quality of our work. We spend virtually no time or resources on marketing; we simply try to report on our previous year’s experiences and successes. And the past year was no different than previous ones in terms of the magnitude and importance of the matters on which we were retained, the results our clients achieved, and the quality of the experts and staff we attracted.

We continue to be hired on the biggest, most complex cases and mergers around the globe. For example, we worked (or are working) on the most important mergers: Aetna/Humana; Sysco/US Foods; Orbitz/Expedia; Dell/EMC; AT&T/DIRECTV; Siemens/Dresser-Rand; and BT/EE. In antitrust litigation, we worked (or are working) on a wide variety of major price-fixing and class action matters, such as *In re Wellbutrin XL Antitrust Litigation*, the *Southeastern Milk Antitrust Litigation*, and we continue to be involved in LCD and CRT litigation. In addition, in early 2016, Compass Lexecon was named the Competition Economist Firm of the Year by *Who’s Who Legal*; Compass Lexecon has won that award every year it has been presented. *Who’s Who Legal* identified 30 Compass Lexecon experts from seven different countries in its *Who’s Who of Competition Economists*, including naming Janusz Ordover as Competition Economist of the Year. We were excited that one of our rising stars – Neil Dryden – was named the 2016 Economist of the Year by *Global Competition Review* for his work on the Ball/Rexam and BT/EE mergers.

Our finance, general litigation, and regulatory practices enjoyed similar successes. To name just a few examples, we worked for Hewlett Packard in its breach of contract case against Oracle where HP prevailed and was awarded \$3 billion in damages; for the United States Department of Justice in successfully responding to Hank Greenberg’s \$40 billion damage claim allegedly resulting from the government rescue of AIG; for iHeart and other clients in obtaining a successful outcome in an industry-wide ratemaking proceeding before the Copyright Royalty Board; for Citigroup, Bank of New York Mellon, and other bank trustees in getting multi-billion dollar RMBS settlements approved; for Best Buy and other defendants in defeating class certification; for MetLife in getting its designation as a “Systemically Important Financial Institution” removed; and for Steven Cohen in successfully resolving his Securities and Exchange Commission administrative proceeding. We also have been heavily involved in complex litigation and settlement proceedings related to claims brought against British Petroleum, General Motors, Volkswagen, and others for various alleged product defects,

misrepresentations, and environmental harm claims. In addition, we've expanded our presence and involvement in intellectual property litigation and continued our dominant role as experts in the largest securities fraud, insider trading and manipulation/spoofing cases as well as in appraisal, valuation and corporate governance matters in Delaware and elsewhere.

In the international arbitration arena, our clients won significant victories in a range of cases including investments in the Buenos Aires water concession, Venezuela's expropriation of a metallurgical complex, and most significantly, in the \$1.4 billion award rendered for Claimants in the expropriation of a gold mine in Venezuela. In a survey of general counsel and private practice lawyers globally, 15 experts from Compass Lexecon – from three continents – were listed among the top economic experts in the world. People on our international arbitration team were described as having “great gravitas,” “one of the very best,” a “big name,” a “pre-eminent figure,” and “hugely impressive.”

We also continued to add to our roster of world-renowned experts. We added Damien Neven, a former Chief Competition Economist of the European Commission and a Professor of Economics at The Graduate Institute, Geneva; Miguel de la Mano, the former Head of Economic Analysis of Financial Markets at the European Commission; Philip Haile, the Ford Foundation Professor of Economics at Yale University and a leading industrial organization economist; Tomas Philipson, the Daniel Levin Chair of Public Policy at the University of Chicago and a world-renowned pharmaceutical and healthcare expert; Derek Ritzmann, the former Chief Economist at the Competition Commission of Hong Kong who has opened our new Hong Kong office expanding our geographical presence to the Far East; Elizabeth Wang, an expert on competition economics issues in China; Wei Jiang, the Arthur F. Burns Professor of Free and Competitive Enterprise in the Finance and Economics Division at Columbia Business School and a leading hedge fund activism and corporate governance expert; and Thomas Varner, a leading expert in intellectual property.

The highlights of our litigation and merger work since our last annual newsletter are described below.¹

GENERAL LITIGATION MATTERS

HP Breach of Contract Litigation

After a five-week trial in which Compass Lexecon expert Jon Orszag testified twice, a California jury provided Hewlett Packard (HP) what the *Wall Street Journal* called a “resounding victory,” deciding that Oracle must pay HP \$3 billion for breach of contract. The damage award was the precise amount calculated by Mr. Orszag, a Senior Managing Director at Compass Lexecon and a member of the firm's Executive Committee, and is the largest verdict in the United States so far this year, according to *Bloomberg*. The dispute between Oracle and HP began in March 2011 when Oracle announced that it had discontinued database software development for HP's mission-critical, Itanium servers. HP's counsel – Jeff Thomas and Sam Liversidge of Gibson, Dunn & Crutcher LLP – retained Mr. Orszag and Compass Lexecon to calculate damages associated with Oracle's breach of contract, as well as potential damages associated with Oracle's counter-claim that HP had made false and misleading statements.

Mr. Orszag testified at the jury trial in the Superior Court of California County of Santa Clara in San Jose, California. He showed that Oracle's conduct caused a substantial decline in HP's Itanium business and that over a ten-year period HP had lost, and was expected to lose, a

¹ To find copies of our previous Newsletters, go to: <http://www.compasslexecon.com/highlights/newsletter/>.

total of \$3 billion in profits. Mr. Orszag presented alternative estimates of damages based on both HP business plans and econometric analyses that produced damage amounts in the range of his preferred approach. Mr. Orszag also testified at trial about the flaws in the arguments put forward by the economic and technical experts for Oracle, as well as the fundamental problems with the damage estimate put forward by Oracle's expert in its counter-claim relating to HP's alleged false and misleading statements. In the end, the jury completely accepted Mr. Orszag's \$3 billion damage estimate in its award to HP.

The Los Angeles-based Compass Lexecon team was led by Kevin Green, Mike Smith, and Steve Stanis, and included Aren Megerdichian and Shuting Zhang. They supported Mr. Orszag and assisted HP's trial team, that was led by Gibson Dunn and included Robert Frank of Choate Hall & Stewart LLP; Mark Ferguson and Mike Valaik of Bartlit Beck Herman Palenchar & Scott LLP; and Camille Olson of Seyfarth Shaw LLP.

Copyright Royalty Board Ratemaking Proceeding

In a December 2015 decision, the Copyright Royalty Board (CRB) concluded its multi-year process to determine the statutory royalty rate paid by non-interactive internet radio webcasting services such as iHeartRadio (formerly Clear Channel) and Pandora to copyright holders for performance of sound recordings from 2016-2020. Compass Lexecon was retained in this case by counsel for iHeartMedia, Inc. to assist in developing their rate proposal and to provide expert testimony. Compass Lexecon was separately retained by the National Association of Broadcasters (NAB) for the same purposes, and also by Pandora Media, Inc. In what industry observers described as a "big win" for the webcasters, the CRB set the commercial non-subscription webcasting rate for 2016-2020 32% below the rate that iHeartMedia and NAB members paid in 2015 and far below the rate proposed by copyright holder consortium SoundExchange. Before this decision, the rate for commercial webcasters had never before declined. Moreover, unlike rates set in past proceedings, which included pre-set increases throughout the rate period, the CRB rate for 2016-2020 will remain constant apart from annual adjustments for general inflation or deflation.

Compass Lexecon's President Professor Daniel Fischel and Compass Lexecon Senior Consultant Professor Douglas Lichtman were retained by iHeartMedia. Testimony from Professors Fischel and Lichtman was key to the CRB's determination of appropriate benchmark agreements, and the ultimate rate decision relied heavily on a benchmark agreement Professor Fischel identified in his testimony. The CRB also relied heavily on the rebuttal testimony of Professors Fischel and Lichtman in rejecting SoundExchange's proposal for non-subscription webcasting royalty rates. Compass Lexecon expert Dr. Todd Kendall also testified at the hearing on behalf of iHeartMedia. Dr. Kendall's testimony focused on his empirical study further rebutting the opposing expert's model by demonstrating that webcast listening promotes music purchases more than listening to on-demand services. Separately, Compass Lexecon Senior Consultant Professor Michael Katz testified on behalf of NAB, demonstrating that the appropriate royalty rate structure would be "workably competitive," with rates reflecting competition among copyright holders. The CRB adopted Professor Katz's economic framework in setting rates. Finally, Compass Lexecon expert Steven Peterson was retained on behalf of NAB and Pandora Media, Inc. Dr. Peterson demonstrated that opposing expert testimony regarding consumer willingness to pay for online music inappropriately masked substantial heterogeneity across those listeners, a finding that the CRB agreed with. Dr. Peterson also concluded that opposing expert testimony claiming that webcasting firms could be healthy and profitable at current rates was flawed and unsound.

iHeartMedia, Inc. was successfully represented in the proceedings by attorneys from Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC, including Mark Hansen, John Thorne, Evan Leo, Kevin Miller, Leslie Pope and Caitlin Hall. The National Association of Broadcasters was successfully represented by attorneys from Wiley Rein LLP, including Bruce Joseph and Karyn Ablin. Pandora Media, Inc. was successfully represented by attorneys from Weil, Gotshal & Manges LLP, including Bruce Rich, Benjamin Marks, Todd Larson and Jacob Ebin. Compass Lexecon testifying experts were supported by teams including Rajiv Gokhale, Theresa Sullivan, Erika Morris, Clifford Ang, Avisheh Mohsenin and Ron Laschever.

SIFMA v. Self-Regulatory Organizations

In June 2016, Chief Administrative Law Judge Brenda P. Murray of the Securities and Exchange Commission ruled in favor of Nasdaq Stock Market LLC (Nasdaq) and NYSE Arca, Inc. (NYSE Arca) on a challenge to the prices charged by Nasdaq and NYSE Arca for their proprietary “depth-of-book data” products. The Securities Industry and Financial Markets Association (SIFMA) challenged these prices, claiming, in part, that neither exchange “was subject to significant competitive forces in setting the terms” of its fees. This issue has been litigated since 2006 with Compass Lexecon’s Gustavo Bamberger and Compass Lexecon Senior Consultant Professor Janusz Ordovery filing statements on behalf of Nasdaq in 2008, 2010 and 2011, in which they proposed proper economic foundations for the assessment of competitive conditions in the provision of proprietary information regarding cash equities transactions. The last round was a response to SIFMA’s challenges to prior rule changes by Nasdaq and NYSE Arca that implemented price changes for these data products. Professor Ordovery submitted an expert report and testified at a hearing on behalf of Nasdaq, showing that the existence of alternative sources of depth-of-book data, as well as competition between exchanges for “order flow” constrain Nasdaq’s prices for depth-of-book data. Professor Ordovery also explained that marginal-cost pricing is not sustainable in the exchange industry, and that a market-based approach to pricing is likely to lead to greater efficiency and enhanced consumer welfare. SIFMA presented testimony that challenged Professor Ordovery’s conclusions as well as the conclusions of witnesses for NYSE Arca. Judge Murray closely analyzed various criticisms levied against Professor Ordovery and ultimately concluded that Nasdaq’s pricing satisfied the test laid out by the D.C. Circuit Court in a prior ruling for gauging whether Nasdaq’s pricing was subject to competitive forces. Nasdaq was represented by Daniel Swanson, Eugene Scalia, Joshua Lipton, Amir Tayrani and Thomas Johnson, Jr. of Gibson, Dunn & Crutcher LLP and Stephen Susman and Jacob Buchdahl of Susman Godfrey LLP. Compass Lexecon also worked closely with Nasdaq’s Jeff Davis, Frank Hatheway and John Yetter. The Compass Lexecon consulting team included Gustavo Bamberger and Ron Laschever.

Gold Mining Arbitration

Compass Lexecon’s Manuel Abdala and Pablo Spiller served as experts for Claimant Crystallex Corporation, which on April 4, 2016 obtained an arbitration award of \$1.39 billion (including pre-award interest) against the Bolivarian Republic of Venezuela (Venezuela). The tribunal found that Venezuela breached the Canada-Venezuela bilateral investment treaty by unlawfully expropriating Crystallex’s investments in the Las Cristinas gold mining project (Las Cristinas) and by failing to accord Crystallex’s investments fair and equitable treatment. Las Cristinas is among the 20 largest gold deposits in the world, as measured by its in-situ reserves.

The tribunal relied on Dr. Abdala and Professor Spiller’s submission to determine the fair market value of Las Cristinas on the date Venezuela denied Crystallex an environmental permit,

which the tribunal found to be a breach of the fair and equitable treatment provisions in the Canada-Venezuela bilateral investment treaty and the first important act giving rise to creeping expropriation. The tribunal's decision on damages was based on two methodologies: the stock market approach and multiples from publicly-traded gold mining companies in developing countries. In particular, the tribunal endorsed Dr. Abdala and Professor Spiller's assessment that the market capitalization of Crystallex would have to be adjusted after June 14, 2007, the last date of actual stock price performance unaffected by Venezuela's actions, and that such adjustment should follow the performance of an industry index. The tribunal discarded Respondent's expert's cost approach, choosing instead to focus on "forward looking methodologies." Dr. Abdala and Professor Spiller's Compass Lexecon team was led by Santiago Dellepiane and included Mark Sheiness, Jonathan Bowater, Carla Chavich and Nancy Cherashore. Claimants were represented by Nigel Blackaby, Caroline Richard, Alex Wilbraham, Carlos Ramos-Mrosovsky, Guadalupe Lopez and others of Freshfields Bruckhaus Deringer LLP and Alex Yanos of Hughes Hubbard & Reed LLP.

Best Buy Securities Litigation

In April 2016, the Eighth Circuit Court of Appeals reversed a district court ruling certifying a securities class action against Best Buy and three of its executives regarding certain allegedly false and misleading statements. The Court, relying in part on analysis from Compass Lexecon Senior Consultant Professor Kenneth Lehn, held that the lower court had misapplied the U.S. Supreme Court's *Halliburton II* decision because Defendants had provided evidence that the alleged misstatements did not impact Best Buy's stock price, thereby rebutting the fraud on the market presumption of reliance Plaintiffs used to support their motion for class certification.

Plaintiffs in this matter were a putative class of purchasers of Best Buy common stock who alleged that the Defendants made false and misleading statements in a conference call following an earnings release in violation of federal securities laws. In support of Plaintiffs' reliance claim, they submitted expert analysis that concluded that the alleged misstatements had a positive price impact based on a statistical "event study" analysis. In response, Professor Lehn explained that Plaintiffs' expert's analysis was fundamentally flawed and unreliable because the event study analyzed daily stock price changes and therefore did not distinguish the price effects of the non-actionable statements in the press release from the actionable statements in the conference call. Because the press release and conference call occurred at different times on the same date, Professor Lehn performed his own event study analysis and found that Best Buy's stock price change was statistically significant prior to the conference call but was not statistically significant afterward. He thus concluded that the economic evidence contradicted Plaintiffs' and their expert's claim that the alleged misstatements had a positive price impact on Best Buy's stock.

Professor Lehn was supported by a team at Compass Lexecon led by Michael Keable that included Anne Marie Yale, David Strahlberg, Eugenia Vinogradsky and Elizabeth Stone in our Chicago office. Joseph McLaughlin, George Wang and Daniel Stujenske of Simpson Thacher & Bartlett LLP and Eric Magnuson, Stephen Safranski and Jeffrey Gleason of Robins Kaplan LLP successfully represented Best Buy in the case.

In re: Wellbutrin XL Antitrust Litigation

Compass Lexecon's clients, SmithKline Beecham Corporation d/b/a GlaxoSmithKline and GlaxoSmithKline plc (collectively, GSK), prevailed in a major pay-for-delay settlement decision captioned *In re: Wellbutrin XL Antitrust Litigation*. Judge Mary McLaughlin's summary

judgment ruling was based on guidance from the United States Supreme Court's decision in *FTC v. Actavis*. In this case, direct and indirect purchasers of the drug Wellbutrin XL claimed that Defendants GSK entered into anticompetitive patent settlements with generic drug companies, delaying the entry of generic versions of Wellbutrin XL and agreeing not to launch an authorized generic. Plaintiffs submitted expert economic testimony that there was an implicit large payment to the generic entrants that was greater than any avoided litigation costs and that demonstrated the presence of anticompetitive effects, i.e., pay-for-delay. Plaintiffs also claimed that the agreement not to launch an authorized generic was itself anticompetitive.

Compass Lexecon Affiliate Professor Robert Willig submitted testimony on behalf of GSK evaluating the economics of the antitrust allegations and reviewing and critiquing the claims of Plaintiffs' economic expert. Professor Willig testified that there should be no presumption that a reverse payment indicates anticompetitive effects or the possibility of an alternative settlement with earlier generic entry. He demonstrated that the claimed implicit reverse payment was significantly overstated and that the claimed litigation costs were significantly understated. Professor Willig analyzed the evidence on the timing of the various regulatory, litigation and business contingencies with and without the challenged settlement agreements and concluded that there was no likely anticompetitive delay to entry, and that taking into account its various interdependent parts, the totality of the settlement was procompetitive.

In September 2015, Judge McLaughlin granted summary judgment for GSK on all claims. Consistent with Professor Willig's opinions, the Court held that Plaintiffs had not established that the settlement delayed the launch of a generic product and that the settlement viewed as a whole was procompetitive. Judge McLaughlin further held that, even if one assumed that there were anticompetitive effects, procompetitive benefits from important elements of the settlement would outweigh them. Judge McLaughlin excluded Plaintiffs' economic expert's testimony under *Daubert* because he failed to reliably address the critical issue of when entry would have occurred absent the settlement and did not evaluate possible procompetitive justifications stemming from portions of the settlement that fostered generic entry and to which Plaintiffs did not object. The Compass Lexecon team assisting counsel and supporting Professor Willig included Allan Shampine, Bret Dickey, Kirupakaran Ramaiah, Deborah Healy and Alice Kaminski. Compass Lexecon worked closely with outside counsel for GSK, including Edward Rogers, Jason Leckerman and Leslie John of Ballard Spahr LLP.

Dodona I, LLC v. Goldman, Sachs & Co. et al.

In 2006 and early 2007, Plaintiffs in this case purchased collateralized debt obligations (CDOs) structured by Goldman Sachs that were backed by RMBS. After the CDOs lost value during the housing crisis and recession, Plaintiffs brought a class action alleging that Goldman knew the CDOs did not have a realistic chance of being profitable at the time it structured them and that Goldman did not adequately disclose those beliefs. Plaintiffs' expert claimed that Goldman structured the CDOs to hedge its subprime position and that this implied Goldman could not have reasonably believed that the CDOs would likely be profitable for purchasers. Plaintiffs also alleged that Goldman selected weak RMBS as collateral for the CDOs. Counsel for Goldman retained Compass Lexecon Senior Consultant Bradford Cornell who submitted an expert report and was deposed. Professor Cornell opined that the mere fact that the CDOs helped Goldman hedge its subprime risk does not imply Goldman believed the CDOs would not be profitable. He explained that hedging can be beneficial even if one has no more information than the rest of the market because it can reduce the risk of a cash shortfall and that hedging is a pervasive practice among firms. Professor Cornell also showed that the performance of the CDOs and the RMBS backing them was in line with similar investments.

In September 2015, Judge Victor Marrero of the Southern District of New York granted Goldman Sachs's motion for summary judgment, dismissing all claims against the firm. Goldman Sachs was successfully represented by Richard Klapper, Theodore Edelman, Stephanie Wheeler, Michael Tomaino Jr., Christopher Dunne and others from Sullivan & Cromwell LLP. Professor Cornell was supported by Jerry Lumer, Peter Clayburgh, Elizabeth Wall, Laura Yergesheva, Erika Morris and others in Compass Lexecon's Chicago and Pasadena offices.

Southeastern Milk Antitrust Litigation

In January 2016, Judge J. Ronnie Greer of the U.S. District Court for the Eastern District of Tennessee issued an order denying class certification for retail milk sellers (including Food Lion) who had alleged that Dean Foods had conspired with dairy cooperative Dairy Farmers of America (DFA) and milk processor National Dairy Holdings, LP to lessen competition for processed milk in the southeastern part of the United States. In finding that Plaintiffs failed to demonstrate that common issues predominate over individual ones, Judge Greer relied extensively on the analyses of Compass Lexecon expert Professor Joseph Kalt. In both written and oral hearing testimony, Professor Kalt presented numerous analyses and tests of Plaintiffs' expert's damage model and related analyses. Professor Kalt concluded that Plaintiffs' expert had not provided a reliable method of proof of class wide impact and that, in fact, the data were inconsistent with claims of such impact.

Compass Lexecon and Professor Kalt had worked on this matter since 2010, working closely with counsel representing Defendants including Paul Friedman and Carolyn Hazard of Dechert LLP for Dean Foods; Steven Kuney and Carl Metz of Williams & Connolly LLP for DFA; Todd Miller of Baker & Miller PLLC, also for DFA; and Kay Lynn Brumbaugh of Andrews Kurth LLP for National Dairy Holdings. Professor Kalt was supported by a Compass Lexecon team including Charles Augustine and David Reishus in our Boston office.

Household Securities Fraud Litigation \$1.58 Billion Settlement

Compass Lexecon's President Professor Daniel Fischel was retained by the Plaintiff class to analyze the economic evidence in connection with their allegations of securities fraud against Household International. In an earlier trial, a federal court jury in Chicago adopted Professor Fischel's analysis and a \$2.46 billion judgment was entered for the Plaintiff class. On appeal, the Seventh Circuit Court of Appeals affirmed the judgment in substantial part but ordered a retrial on causation and damages. After extensive pretrial proceedings, the parties entered into a \$1.58 billion settlement on the eve of the retrial, the largest settlement ever following a securities fraud class action trial and the seventh-largest settlement ever in a post-PSLRA securities fraud case. Commentators reported that this historic settlement "hinged" on Professor Fischel's "gravitas" and the strength of his expert reports and testimony. Professor Fischel was supported by Michael Keable, Jessica Mandel, Peter Clayburgh, Jerry Lumer, Clifford Ang, David Strahlberg, Shawn Chen and many others in our Chicago and Pasadena offices. We worked with Mike Dowd, Spence Burkholz, Dan Drosman and Luke Brooks of Robbins Geller Rudman & Dowd LLP who successfully represented the Plaintiff class.

Magazine Publisher Antitrust Litigation

In this case, single-copy magazine wholesaler Anderson News claimed that a group of magazine publishers and national distributors conspired to put it out of business. In particular, as a result of Anderson's financial distress, it demanded higher prices from publishers, threatening

that if the publishers did not agree to Anderson's terms, it would stop distributing their magazines to retailers. No major publishers agreed to Anderson's terms. Anderson shut down its business and filed suit claiming that the publishers' refusal to accept Anderson's terms was not in the publishers' unilateral interests and instead was the result of a conspiracy.

The Defendant publishers and national distributors hired Compass Lexecon Senior Consultant Professor Janusz Ordover and Compass Lexecon to analyze Anderson's claims. Professor Ordover found it was in the publishers' unilateral interests to stop using Anderson and to switch to other wholesalers in response to Anderson's large price increase and that Plaintiffs' claim did not properly take into account the retailers incentives to fill their shelves and the publishers' ability to bear a short-term disruption in order to avoid Anderson's higher prices. U.S. District Judge Paul Crotty found that rather than being motivated by conspiracy, a "far more plausible explanation for Defendants' conduct is that each Defendant was independently unwilling to accept the Anderson proposal, because acceptance would result in a substantial increase in costs." Compass Lexecon worked with David Keyko of Pillsbury Winthrop Shaw Pittman LLP, Barry Brett of Troutman Sanders LLP, George Gordon of Dechert LLP, Kristen Hauser and Eva Saketkoo of Hearst Corporation, I. Michael Bayda of McElroy, Deutsch, Mulvaney & Carpenter LLP, John Hadlock of Rosenberg & Estis, P.C., and Rowan Wilson of Cravath, Swaine & Moore LLP. Professor Ordover was supported by a team at Compass Lexecon's Boston office led by Dr. Steven Peterson that also included Andrew Lemon, David Molin and many others.

World Trade Center Litigation

Following the 9/11 terrorist attacks on the World Trade Center, leaseholder Larry Silverstein and associated business entities (Silverstein) filed suit against various airline Defendants including American Airlines, United Airlines and Boeing seeking tort damages for losses sustained as a result of destruction of the buildings. Prior court rulings had established that the maximum tort damages recoverable were approximately \$3.5 billion. The issue in the current case was whether Silverstein could proceed with his tort damage claim, even though he had already recovered approximately \$5 billion in business interruption and replacement cost insurance proceeds. The airline Defendants argued that the \$5 billion in insurance payments already received "corresponded" to the \$3.5 billion of potential tort damages because they were both for the same economic loss and, therefore, Silverstein was entitled to no further compensation. Silverstein, by contrast, claimed that there was no correspondence because of his obligation to rebuild the destroyed buildings and, therefore, he should be allowed to proceed to trial to recover tort damages of billions of dollars against the airlines, in addition to the \$5 billion in insurance recoveries.

Judge Alvin K. Hellerstein of the United States District Court, Southern District of New York ruled in favor of the airline Defendants and held that the \$5 billion in insurance recoveries corresponded to and "completely offset" potential tort damages against the airline Defendants and, therefore, Silverstein was entitled to no further compensation. Later, the United States Court of Appeals for the Second Circuit reversed and remanded on certain issues but unanimously agreed with the district court regarding correspondence and offset to potential tort damages. Compass Lexecon's President, Professor Daniel Fischel, testified for the airline Defendants at trial, and his testimony was heavily relied upon by both Judge Hellerstein (who found Professor Fischel's testimony "more credible" than the opposing expert) and the Second Circuit panel which favorably discussed Professor Fischel's analysis at length. During earlier phases of the case, Professor Fischel made numerous oral and written presentations discussing the proper valuation methodology for calculating losses caused by the terrorist attacks. We worked with

lead counsel Roger Podesta of Debevoise & Plimpton LLP, Maura Kathleen Monaghan and Erica Weisgerber of Debevoise & Plimpton LLP, Desmond Barry, Jr. and Evan Kwarta of Condon & Forsyth LLP, Brian Fraser and Rowan Gaither of Richards Kibbe & Orbe LLP, Jeffrey Ellis of Quirk and Bakalor, P.C., and Ann Taylor and T. Patrick Byrnes of Locke Lord LLP. The Compass Lexecon team included Rajiv Gokhale (who also filed several declarations), Todd Kendall and Erika Morris in our Chicago office.

Sasol Chemical Industries v. The Competition Commission (South Africa)

In June 2015, the Competition Appeal Court of South Africa (the CAC) absolved Sasol Chemical Industries of the excessive pricing complaint against it. In doing so, the CAC overturned the decision of the Competition Tribunal. Compass Lexecon initially advised Sasol in the context of the South African Competition Commission's excessive pricing investigation into Sasol's pricing practices in propylene and polypropylene, preparing four expert reports responding to the Competition Commission's arguments, and setting out our own assessment, including a theoretical framework to directly estimate the products' economic value against which actual prices were compared. We also estimated economic value indirectly using price and cost benchmarks and assessed whether any differences between actual prices and economic value were unreasonable. Compass Lexecon Senior Managing Director, Dr. Jorge Padilla, testified in front of the Competition Tribunal of South Africa. The Tribunal ruled against Sasol, however that decision was overturned by the June 2015 CAC decision. The CAC held that returns above economic value are not per se unreasonable, stating that "[a] price which is significantly less than 20% of the figure employed to determine economic value falls short of justifying judicial interference in this complex area." The Compass Lexecon team included Segye Shin, Ilaria Masiero, Neil Dryden, Kirsten Edwards-Warren and Jorge Padilla. They worked with Tim Frazer from Arnold & Porter (UK) LLP and with Anthony Norton and Michelle Rawlinson from Nortons, Inc. in South Africa.

Confidential Arbitration Involving Alleged Financial Misconduct

Compass Lexecon and its President Professor Daniel Fischel, were retained in this matter to analyze claims of financial misconduct. Professor Fischel wrote a report analyzing the claims, responded to the opposing expert, and subsequently testified at the hearing. The panel ruled for Compass Lexecon's client in a lengthy opinion in which it heavily relied upon and quoted from Professor Fischel's testimony at the hearing. A team from Compass Lexecon's Chicago office led by Jessica Mandel that included Clifford Ang and Samuel Hollander assisted Professor Fischel in the matter.

Litigation Over MetLife's "Systemically Important Financial Institution" Designation

In March 2016, Washington, DC Federal District Court Judge Rosemary M. Collyer rescinded the designation of MetLife, Inc. as a "systemically important financial institution" (SIFI) that had been applied to the company by the Financial Stability Oversight Council (FSOC) in December 2014. MetLife was the third insurance conglomerate to receive such a SIFI designation. Counsel for MetLife, Gibson, Dunn & Crutcher LLP, engaged Compass Lexecon to assist in its response to the proposed FSOC designation. Compass Lexecon Senior Affiliate Professor Christopher Culp and University of Chicago Booth School of Business Roman Family Professor of Finance and Robert King Steel Faculty Fellow Pietro Veronesi (who regularly collaborates with Professor Culp and Compass Lexecon) submitted a report to the FSOC that

analyzed MetLife’s potential systemic risk arising from the firm’s derivatives activities. In their report, Professors Culp and Veronesi addressed whether the evidence indicated that the nature, size and scope of MetLife’s derivatives activities were sources of any significant systemic risks.

MetLife filed suit against the FSOC, arguing that the designation of MetLife as a SIFI was “arbitrary and capricious, conflicts with the [FSOC’s] statutory obligations under the Dodd-Frank Act and the rules and guidance that the [FSOC] promulgated for designating nonbank financial companies, and was reached through a procedure that denied MetLife its due process rights and violated the constitutional separation of powers.” The Court agreed and rescinded the designation. Professors Culp and Veronesi were supported by a Compass Lexecon team including Peter Clayburgh, Rajiv Gokhale, Andria van der Merwe, Andrea Neves (a Compass Lexecon affiliate consultant), Jonathan Williams and others. MetLife was successfully represented by Eugene Scalia, Amir Tayrani, Ashley Boizelle and Indraneel Sur of Gibson, Dunn & Crutcher LLP.

The Dial Corporation, et al., v. News Corporation, New America Inc., et al.

Compass Lexecon was retained by Paul, Weiss, Rifkind, Wharton & Garrison LLP on behalf of News Corporation and its subsidiary News America Inc. to analyze damages stemming from an alleged monopolization of the market for the provision of third-party in-store promotion (ISP) services. News America operates as an intermediary between consumer packaged goods (CPG) companies and retailers by selling ISP services to CPG companies seeking to place advertisements in retail stores. Plaintiffs, a class of CPG companies that purchase ISP services from News America, alleged that News America monopolized a relevant market for ISP services through the use of long-term overlapping contracts with retailers and through other allegedly anti-competitive conduct. Plaintiffs claimed damages from supra-competitive prices for third-party ISP services. Compass Lexecon Senior Managing Director Professor Dennis Carlton submitted an expert report responding to Plaintiffs’ expert’s damages claims and was deposed. The case settled in early March 2016 as the trial commenced. Professor Carlton was assisted by Bradley Reiff, Joseph Goodman, Ron Laschever and Heather Spang in Compass Lexecon’s Chicago office. We worked with attorneys from Paul Weiss, including Kenneth Gallo, Geoffrey Chepiga, William Michael and Brette Tannenbaum.

Citigroup RMBS Settlement Approval

Compass Lexecon Senior Consultant Professor Bradford Cornell was retained by Michael Kraut, Rollin Chippey, II, and Benjamin Smith of Morgan, Lewis & Bockius LLP, Jean-Marie Atamian of Mayer Brown LLP, and Thomas Ross Hooper of Seward & Kissel LLP, to advise Deutsche Bank, HSBC, Law Debenture Trust Company of New York, and U.S. Bank (the Trustees), on a \$1.125 billion offer by Citigroup to settle claims relating to representations, warranties and documentation on mortgages conveyed to 68 RMBS Trusts. Professor Cornell provided a report to the Trustees advising them on the reasonableness and adequacy of the proposed settlement for each of the 206 loan groups within the 68 Trusts. He subsequently submitted three supplemental reports to reflect new developments after the submission of his original report. The Trustees acted in accordance with Professor Cornell’s recommendations and accepted the settlement for 199 loan groups.

The Trustees then asked the New York State Supreme Court to approve the settlement for those loan groups. No objections were filed. Justice Marcy Friedman found Professor Cornell to be a highly regarded specialist and that the Trustees’ reliance on his report and advice (along with that of three subject matter experts) was “significantly probative of the Trustees’ prudence.”

Justice Friedman ruled that each of the Trustees acted within the bounds of its discretion, reasonably and in good faith. She barred Certificateholders, Noteholders, and any other parties claiming rights in any settling Trust from asserting claims against any Trustee with respect to its evaluation of the settlement. Professor Cornell was supported by a team including Jerry Lumer, Neal Lenhoff, Kevin Hartt and Donnie Hong, in Compass Lexecon's Chicago office, and many others.

Dole Entire Fairness and Appraisal Litigation

Compass Lexecon was retained by Stuart Grant of Grant & Eisenhofer P.A., Randall Baron of Robbins, Geller, Rudman & Dowd LLP, and Michael Wagner of Kessler Topaz Meltzer & Check, LLP on behalf of a Plaintiff class in litigation before the Delaware Chancery Court challenging the fairness of the sale of Dole Food Company, Inc. (Dole) to its controlling shareholder David H. Murdock (Murdock) for \$13.50 per share. Compass Lexecon was also retained by Kevin Abrams of Abrams & Bayliss LLP on behalf of Merion Capital Group and Magnetar Capital and Mr. Grant on behalf of Hudson Bay Capital Management and Fortress Investment Group, LLC in a statutory appraisal proceeding also before the Delaware Chancery Court. The combined appraisal and entire fairness action was tried before Vice Chancellor J. Travis Laster. Compass Lexecon expert Kevin Dages submitted opening and rebuttal reports and testified before Vice Chancellor Laster at trial regarding the fair value of Dole and the reasonableness of the financial projections prepared by Dole management. In ruling for the Plaintiffs, Vice Chancellor Laster found that Mr. Dages was "more helpful because his work demonstrated how different assumptions and inputs affected Dole's value" while the defense expert "did little more than provide a second fairness opinion using pro-defendant assumptions." The court further ruled that Murdock and Michael Carter, Dole's COO and General Counsel, had deprived the Special Committee of the ability to negotiate on a fully informed basis by, among other things "provid[ing] the Committee with lowball management projections" and found them jointly and severally liable for damages of \$148 million representing an incremental value of \$2.74 per share. Mr. Dages was supported by a team in Compass Lexecon's Chicago office that included George Hickey, Tim McAnally, Jennifer Milliron, Clifford Ang and Ed Crane.

Litigation Regarding Venezuela's Expropriation of Metallurgical Complex

Tenaris S.A. and Talta-Trading E Marketing Sociedade Unipessoal LDA retained Dr. Manuel Abdala and Professor Pablo Spiller to provide expert testimony on the economic impact of Venezuela's expropriation of Matesi, a major producer of hot briquetted iron. Dr. Abdala and Professor Spiller rebutted Respondent's contention that the existence of an intercompany off-take agreement for Matesi's production implied that the expropriated company had no value. The Tribunal sided with Compass Lexecon's analysis of the off-take agreement and awarded total compensation of \$172.8 million (inclusive of pre-award interest at 9% per year). The dispute also included a pre-expropriation claim related to a discriminatory allotment of pellet inputs produced by the state-owned company CVG FMO. The Tribunal found that Compass Lexecon's analysis accurately reflected the impact of the discriminatory treatment, albeit concluding that Venezuela was not liable for CVG FMO's actions. Dr. Abdala and Professor Spiller were assisted by a team of professionals including Andres Casserly, Pablo Lopez Zadicoff and Marcelo Schoeters. Compass Lexecon worked with a legal team led by Nigel Blackaby, Caroline Richard and Jeffery Commission of Freshfields Bruckhaus Deringer LLP and Alex Yanos of Hughes Hubbard & Reed LLP.

Steven Cohen Administrating Proceeding

In this matter, Compass Lexecon was retained by counsel for Steven Cohen to evaluate the economic evidence in a Securities and Exchange Commission (SEC) administrative action against him claiming that he failed to reasonably supervise two SAC Capital employees who allegedly committed insider trading offenses. In October 2015, prosecutors dismissed charges against Michael Steinberg, one of the SAC employees who the SEC claimed Mr. Cohen failed to reasonably supervise. Subsequently, in a January 2016 settlement considered a major victory for Mr. Cohen after years of investigation, he neither admitted nor denied any wrongdoing. The SEC settlement cleared the way for Cohen to manage outside investors' money in 2018 and did not include monetary penalties. The Compass Lexecon team included Daniel Fischel, David Gross, Jessica Mandel, Kevin Hartt, Samuel Hollander and others in Compass Lexecon's Chicago office. Compass Lexecon worked with Daniel Kramer and Marc Falcone of Paul, Weiss, Rifkind, Wharton & Garrison LLP, Martin Klotz of Willkie Farr & Gallagher LLP and David Nelson of Boies, Schiller & Flexner LLP. We also worked with Barry Berke of Kramer Levin Naftalis & Frankel LLP who successfully represented Michael Steinberg.

Insys Therapeutics Valuation Litigation

Compass Lexecon was retained by Matthew Kipp of Skadden, Arps, Slate, Meagher & Flom LLP on behalf of his client Insys Therapeutics in litigation before the Superior Court of Arizona in Maricopa County. The litigation initially arose as a result of a reverse stock split effected by Insys on June 2, 2009. The litigation was subsequently expanded and Plaintiff sought, among other relief, the fair value of his Insys common stock as of June 2, 2009, compensatory and punitive damages and rescission of all assignments to Insys of his interest in certain patent applications, as well as attorneys' fees, costs and interest. In total, Plaintiff claimed more than \$400 million in damages plus fees, costs and interest and proffered expert testimony that Insys was worth \$1.1 billion in June 2009. Compass Lexecon expert Kevin Dages submitted opening and rebuttal reports and testified at trial that the fair value of Insys as of June 2009 was much lower, in the range of \$23.8 to \$26.8 million. In June 2015 the Court found in favor of Insys on all claims except one and awarded Plaintiffs only \$7.3 million in damages, a tiny fraction of the more than \$400 million damages sought. Compass Lexecon also worked with Nicole Lerescu, Charles Andrewsavage, Edward Welch, and Sarah Runnells Martin of Skadden and Joel Hoxie, James Condo and Kelly Kszywienski of Snell & Wilmer LLP. Mr. Dages was supported by a team in Compass Lexecon's Chicago office that included Tim McAnally, Jennifer Milliron, George Hickey and Ed Crane.

Private Equity Monitoring Fees

In recent years, the Securities and Exchange Commission (SEC) has been investigating practices surrounding fees charged in the private equity industry. In this case involving private equity sponsor Thomas H. Lee Partners (THL), the SEC alleged that "monitoring" fees charged by THL to the companies it invests in were insufficiently disclosed to limited partners. In particular, when one of THL's companies is sold or has an IPO, THL sometimes charges a termination fee for its monitoring agreements, and the SEC alleged that these termination fees were not covered in the discussion of monitoring fees in THL's contracts with its limited partners. Compass Lexecon Senior Consultant Professor Robert Daines was asked to submit a white paper to the SEC discussing the economics of these fees and their disclosure. Professor Daines applied results from academic literature indicating that open-ended contract terms like

those between THL and its limited partners are not instances of opportunism, but instead reflect economic efficiency that provide flexibility to the contracting partners to take mutually-beneficial actions under different circumstances. Professor Daines showed that this is particularly so when, as is the case with THL and its limited partners, the contracting parties' incentives are well-aligned and there are repeated interactions in which reputation is important. Professor Daines was assisted by Todd Kendall and Jonathan Polonsky in Compass Lexecon's Chicago office. Compass Lexecon was retained by and worked with Mark Hansen and Daniel Guarnera of Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC.

CDS investigation (European Commission)

In the context of an investigation by the European Commission (EC) regarding allegedly collusive practices of a number of investment banks relating to the potential on-exchange trading of Credit Default Swaps (CDS), a Compass Lexecon team in the Paris office (David Sevy, Frédéric Palomino and Jérémie Juts) was retained by BNP Paribas (BNPP), a major French bank, to produce a number of economic analyses in response to the Commission's Statement of Objections. We analyzed whether the outcome of credit event auctions could be an indisputable market price reference and what alternatives to this mechanism could be considered; whether tradable price fixings were indispensable for on-exchange trading; whether CDS could be considered standardized enough to be traded on-exchange; and the individual incentives of banks to shift trading from OTC to an exchange venue. These reports were submitted to the EC and Compass Lexecon experts also appeared on behalf of BNPP at a hearing before the EC. After the hearing, the case was dropped without sanction. The case received the GCR "Behavioural Matter of the Year" award for Europe. The Compass Lexecon team supported BNPP (Alison Kellett and Marie-Pascale Heusse) and its advisors (Florence Ninane, John Terzaken and Romain Maulin of Allen & Overy LLP).

In re: North Sea Brent Crude Oil Futures Litigation

In March 2016, Judge Andrew L. Carter, Jr. of the Southern District of New York issued an opinion granting Statoil ASA's motion to dismiss claims brought against the company under the Foreign Sovereign Immunities Act (FSIA) relying on the opinions set forth in a declaration and deposition testimony of Compass Lexecon Senior Affiliate Professor Christopher Culp, expert for Defendant Statoil. Plaintiffs in this matter were a putative class of futures and derivatives traders, who contended that Statoil and other major oil producers and traders conspired to manipulate prices of physical Brent crude oil cargos in the North Sea and prices of related crude oil futures contracts. Plaintiffs claimed they sustained damages through reduced crude oil futures trading income and/or reduced revenues from their U.S. mineral interests.

Under the FSIA, a sovereign entity like Statoil (which is two-thirds owned by the Government of Norway) is immune from the jurisdiction of U.S. courts under a "commercial activity exception" if the alleged misconduct does not cause a direct effect in the United States. Counsel for Statoil, Wilmer Cutler Pickering Hale and Dorr LLP engaged Professor Culp to analyze whether the alleged misconduct would have had a direct impact on U.S. and other crude oil futures markets, U.S. physical crude markets, and/or values of U.S. land-related oil interests. Plaintiffs contended that allegedly manipulated prices of physical North Sea Brent crude oil cargos were reflected in Platts' price assessments of physical Brent crude cargos, which in turn translated into distorted prices for Brent futures contracts traded on the Intercontinental Exchange. Professor Culp concluded from his analyses that the Plaintiffs' alleged cause-and-effect chain was complex and indirect, and that there was no demonstrable direct impact of the

alleged misconduct on U.S. crude oil futures markets, U.S. physical crude markets, or related U.S. mineral interests.

Plaintiffs' *Daubert* motion to exclude Professor Culp's opinion was rejected by Judge Carter who wrote that Plaintiffs' "argument is puzzling...[because] Culp replicated the economic analyses put forth by the Plaintiff...and examined the resulting data at different intervals than Plaintiffs had...and concluded that Plaintiffs' assertions were not substantiated by their own method of analysis." Statoil was successfully represented by Robert Trenchard and Perry Lange of Wilmer Hale. Professor Culp was supported by Neal Lenhoff, Hans-Jürgen Petersen, Laura Yergesheva and Christopher Fiore, among others.

NY State Department of Financial Services Investigation of Promontory Financial Group

In this case, the New York State Department of Financial Services (NYDFS) claimed that Promontory Financial Group, Inc. (Promontory), consultant to UK bank Standard Chartered Bank (SCB), did not meet the NYDFS standard for independent consultants when it performed its work for SCB. Compass Lexecon President, Professor Daniel Fischel and Compass Lexecon were hired to analyze the economic evidence as it related to the NYDFS claims. Professor Fischel opined that interaction between consultants and their clients is common; that such interaction/cooperation is not inconsistent with good industry practice, and in fact can enhance the consultants' ability to reach independent conclusions; and that professional services firms have strong incentives to protect their reputations. Professor Fischel further opined that the economic evidence he reviewed did support the NYDFS assertion that Promontory failed to exercise its independent judgment. NYDFS and Promontory reached a minimal settlement, far more favorable than that reached by other defendants. In settling, the firm did not acknowledge it lacked independence. Compass Lexecon worked with counsel for Promontory including Judge Richard Holwell and Vincent Levy of Holwell Shuster & Goldberg LLP and Paul Shechtman of Zuckerman Spaeder LLP. A Compass Lexecon team in our Chicago and Oakland offices including Jessica Mandel, Andrew Roper and Avisheh Mohsenin supported Professor Fischel.

AIG Financial Rescue Takings Litigation

In this case, Maurice "Hank" Greenberg and Starr International challenged the United States Government's financial rescue of American International Group, Inc. (AIG). Plaintiffs asserted both Fifth Amendment taking and illegal exaction claims on behalf of two classes of AIG shareholders. Plaintiffs sought approximately \$40 billion in damages. Compass Lexecon was retained as consulting experts early in the case and also supported two testifying experts, Dr. David K.A. Mordecai and Compass Lexecon Affiliate Professor Robert Daines, both of whom submitted reports and testified at deposition and trial. Dr. Mordecai opined, among other things, that AIG's shareholders did not suffer an economic loss from the Government's rescue, that Plaintiffs' expert's damage calculations were fundamentally flawed, and that based on his study of recoveries in large bankruptcies, it was unlikely that AIG's shareholders would have recovered anything if the company had filed for bankruptcy protection. This study was cited prominently by Court of Claims Judge Thomas C. Wheeler in concluding that no damages should be awarded to Plaintiffs despite prevailing on their illegal exaction claim. Professor Daines opined, among other things, that Plaintiffs' expert's analysis of the reverse stock split was fundamentally flawed because the primary purpose of the reverse stock split was to increase AIG's trading price and thus avoid delisting, many other companies conducted similar reverse stock splits, and common shareholders including named Plaintiffs voted in favor of the reverse stock split. The Court agreed and denied Starr's reverse stock split claim entirely.

Compass Lexecon worked closely with attorneys at the United States Department of Justice including Kenneth Dintzer, Scott Austin, Brian Mizoguchi, John Roberson, Mariana Acevedo, Renee Gerber and Vince Phillips; John Sturc of the U.S. Treasury Department; Kit Wheatley of the Federal Reserve Board of Governors; and outside counsel including John Kiernan and Nick Tompkins of Debevoise & Plimpton LLP and Lynn Earl Busath, Jonathan Martin, Matt Kelly and Alan Tabak of Davis Polk & Wardwell LLP. A Compass Lexecon team led by Peter Clayburgh, Jessica Mandel and David Ross, that included Shawn Chen, Quinn Johnson, Todd Kendall, Michael Kwak, Tim McAnally, James Tam and many others in Compass Lexecon's Chicago, New York and Pasadena offices provided consulting support to counsel and expert support to Dr. Mordecai and Professor Daines.

Perrigo PLC Hostile Takeover

In July 2015, Mylan N.V. announced an unsolicited tender offer to acquire Perrigo Company plc. Mylan claimed in its offering materials that the acquisition of Perrigo would generate large operational synergies, and that these synergies would be equally realizable, regardless of whether the tender offer succeeded in providing Mylan with 100 percent of Perrigo's shares, or whether Mylan only managed to become a majority shareholder. Perrigo filed a motion in U.S. District Court rejecting Mylan's unsupported claim that, whatever synergies might exist with a wholly-owned Perrigo, they could be equally realized if Mylan was only a majority shareholder. Perrigo sought an injunction to block the tender offer pending Mylan's correction of public shareholder materials containing this claim. Mylan filed a counterclaim, alleging that Perrigo's statements in connection with the tender offer were false and/or misleading.

Compass Lexecon President Professor Daniel Fischel submitted testimony on behalf of Perrigo evaluating Mylan's claims regarding synergies against the existing economic literature on partial acquisitions and the experiences of relevant benchmark firms, including Mylan's own prior acquisitions. Professor Fischel demonstrated that there was no basis in the economic evidence to conclude that Mylan could, as it claimed, achieve the same synergies with a partial acquisition as it could if it were able to own all the outstanding shares of Perrigo. U.S. District Judge Naomi Reice Buchwald agreed with the key finding of Professor Fischel's testimony, writing in her order that "[o]ur reading of Fischel's expert report leads us to believe that at least some reduction in operational synergies should be anticipated." Nevertheless, the Court ruled that Mylan's statements regarding synergies did not violate public disclosure laws, and consequently denied both Mylan's and Perrigo's motions. After Mylan's claims about synergies were highlighted in this way, Perrigo shareholders convincingly rejected Mylan's takeover bid, with less than 40 percent tendering shares to Mylan. In announcing the news, two Wall Street Journal articles stated, "Perrigo Co. wasn't supposed to be able to defeat Mylan NV's hostile takeover bid. The Irish takeover rules favor bidders in hostile deals," and "Perrigo, meanwhile, joins a small club of companies that have successfully beaten back a tender offer on persuasion alone, without traditional corporate defenses."

The Compass Lexecon team supporting Professor Fischel included Andrew Roper and Clifford Ang in our Oakland office, and Todd Kendall, Jonathan Polonsky and Gregory Pelnar in our Chicago office. Compass Lexecon worked closely with William Savitt, Bradley Wilson and Charles Cording of Wachtell, Lipton, Rosen & Katz who successfully represented Perrigo.

The Valspar Corporation, et al. v. E.I. DuPont De Nemours and Co., et al.

Compass Lexecon Senior Consultants Professors Robert Willig and Daniel Rubinfeld served as experts on behalf of the four Defendants (DuPont, Huntsman, Kronos and Millennium) in Valspar's antitrust suit alleging price fixing in the sale of titanium dioxide (TiO₂). Professors Willig and Rubinfeld submitted expert reports addressing liability and damages, respectively, examining and empirically analyzing the companies' business conduct in detail and finding it more consistent with competition than with collusion. They also provided extensive econometric analyses that demonstrated that actual prices were not higher than but-for prices during the alleged collusive period. DuPont won its summary judgment motion in January 2016. The other three Defendants settled with Valspar thereafter. Professor Willig was supported by a Compass Lexecon team including Mary Coleman, David Weiskopf, Nauman Ilias, Dan Churette, Mihir Narain, Rob Oandasan, Prerana Nanda and Laura Schiemichen, and Professor Rubinfeld was supported by a Compass Lexecon team including Aren Megerdichian, Matt Krietzberg and Trevor Incerti. Compass Lexecon worked closely with a number of attorneys on this matter, including Shari Lahlou and Joshua Stokes of Crowell & Moring LLP; Anne Davis, Ryan Watts and James Cooper of Arnold & Porter LLP; Paul Coggins, Kelly Vickers and Amanda Cottrell of Locke Lord LLP; and James Reeder, Erica Krennerich and Kathleen Spangler of Vinson & Elkins LLP.

Computer Sciences Corporation ERISA Litigation

In April 2016, United States District Judge T.S. Ellis III denied Plaintiffs' motion for class certification and granted Defendants' motion for summary judgment in an ERISA case brought against Computer Sciences Corporation (CSC). Plaintiffs in this matter were former executives and current participants in a deferred compensation plan for key executives, who sought to invalidate an amendment to the plan that they allege harmed their interests. Plaintiffs moved to certify a class action including all similarly situated former employees of CSC whom the challenged amendment affected.

In reaching its decision on Plaintiffs' motion for class certification, the Court quoted and relied on Compass Lexecon Affiliate Professor Kenneth Lehn's analysis, which showed that at least some members of the proposed class had benefited financially from the amendment to date, and that it would not be possible to determine whether a particular participant would receive more or less under the amendment than under the prior plan because of the uncertainty of the performance of participants' investment choices. The Court also granted summary judgment to CSC. Professor Lehn was supported by a Compass Lexecon team led by David Ross that included Joseph Goodman and Eugenia Vinogradsky in our Chicago office. CSC was successfully represented by Deborah Davidson, Christopher Weals, Andrew Sakallaris and Matthew Russell from Morgan, Lewis & Bockius LLP.

FHFA and NCUA Litigation

Compass Lexecon has been actively involved as consulting experts in a series of cases over the last several years on behalf of the Federal Housing Finance Agency (FHFA) and National Credit Union Administration (NCUA) in litigation relating to alleged false representations in the offering documents of residential mortgage-backed securitizations (RMBS), including the origination and underwriting characteristics of the loans in the supporting loan groups of the RMBS. Our firm has also continued to provide support for testifying experts Professor G. William Schwert, Professor Anthony Saunders and Professor James Barth, who

have been retained in various capacities as experts on issues of materiality and loss causation. Over the last year, several cases have settled, while others are ongoing. We continue to work with counsel for FHFA from Quinn Emanuel Urquhart & Sullivan, LLP (Philippe Selendy, Sascha Rand, Rick Werder, Jonathan Oblak, Jordan Goldstein and Toby Futter) and counsel for NCUA from Kellogg, Huber, Hansen, Todd, Evans & Figel, PLLC (David Frederick, Andrew Goldsmith, Andrew Shen, Andrew Heatherington, Daniel Dorris, Matthew Huppert and Peter Ratner) and Korein Tillery, LLC (John Craig, Randall Ewing, Jr. and Stephen Tillery). The Compass Lexecon team is headed by David Ross, and includes Kevin Hartt, Erika Morris, Yoad Shefi, Elizabeth Wall, Ron Laschever, Peter Marlantes and Yili Wang.

SEC v. Fannie Mae Executives

In this case, the Securities and Exchange Commission (SEC) filed action against three former officers of the Federal National Mortgage Association (Fannie Mae) alleging that they made or assisted in making false and misleading statements about the company's exposure to subprime and Alt-A mortgages in the period leading up to the financial crisis. Specifically, the SEC alleged that Fannie Mae should have classified loans from two programs as subprime, and should have classified all loans with reduced documentation as Alt-A loans. Professor Bradford Cornell was retained by Andrew Levander and Hector Gonzales of Dechert LLP on behalf of former Fannie Mae executive Enrico Dallavecchia to analyze the economic evidence, and rebut the testimony of the SEC's experts. He opined that there was no accepted definition of Alt-A or subprime at the time, and that the event study performed by the SEC's expert was flawed and should not be relied upon.

In September 2015 Mr. Dallavecchia settled for \$25,000, to be paid to the U.S. Treasury "Gifts to the United States" Fund (payable by Fannie Mae on behalf of the executive). The settlement agreement stated that during the period at issue in the case, "there were no universally accepted definitions of subprime" mortgages. The settlement also involved no admission of wrongdoing, no civil penalties, no disgorgement and no bar on serving as an officer or director of a public company, all penalties that the SEC originally sought. The Compass Lexecon team included Elisabeth Browne and others in our Pasadena office.

CNH America LLC v. Quinlan's Equipment, Inc.

Compass Lexecon was retained by Quarles & Brady LLP on behalf of CNH America LLC (CNH) which manufactures agricultural equipment under the brand Case IH. CNH filed a complaint against Quinlan's Equipment, Inc. (Quinlan), a distributor of Case IH products, seeking a declaratory judgment that CNH's termination of its Case IH Sales & Service Agreement with Quinlan did not violate the Wisconsin Fair Dealership Law. An important economic issue in the case was whether a manufacturer's wholesale price discounting policies that reward distributors who increase sales unfairly harms distributors that lag behind in sales. Compass Lexecon was retained to perform a statistical analysis of Case IH's sales data to determine whether its discounting programs offered to distributors of Case IH products caused Quinlan to fail to make sufficient sales, triggering a default of the Case IH Sales & Service Agreement. Compass Lexecon Executive Vice President Bradley Reiff authored an expert report and was deposed. The case settled before trial. Dr. Reiff was assisted by Lynette Neumann and Lauren Gumbiner. We worked with attorneys Keith Bruett and Steve Berryman at Quarles & Brady.

Australian Consumer and Competition Commission v. Informed Sources

Compass Lexecon Senior Consultant Robert Willig was retained by counsel for Informed Sources (Australia) Pty Ltd., BP Australia Pty Ltd., Caltex Australia Petroleum Pty Ltd., Woolworths Ltd., and 7-Eleven Stores Pty Ltd. (Respondents), to analyze allegations by the Australian Competition and Consumer Commission (ACCC) that an information sharing service provided by Informed Sources to Respondents, all of whom sell retail gasoline in the metropolitan Melbourne area, had the likely effect of substantially lessening competition for the sale of gasoline in the metropolitan Melbourne area. Average retail gasoline prices in the relevant area regularly oscillate up and down with a wave length of about one week. The service that the ACCC challenged electronically collects retail gasoline prices from Respondents' stations by location, grade, date and time, and redistributes the data and reports based on the data to Respondents at fifteen minute intervals. The expert economist for the ACCC concluded that the challenged service improved the ability and reduced the cost to the Respondents of effectively communicating with one another about price increases via strategic price changes at selected stations around Melbourne, and, consequently, had lessened or would be likely to lessen competition. Professor Willig showed that the opposing expert's opinion was unreliable because it omitted any analysis of the information's hastening of the downward phase of the price cycles and focused only on the upward phase. Professor Willig's report also concluded that competition in both upward and downward phases was robust, and that the opposing expert's analysis of the substantial size of the putatively anticompetitive effects was unreliable.

Within a month of receiving Professor Willig's report, the ACCC settled with the Respondents on terms that imposed no fines or penalties, required no halt or change in the services Informed Sources provides to Respondents, and included no order as to cost. The only concession made by the Respondents was a five year commitment to provide Informed Sources' data to consumers via a free platform, and to make the data available to third party commercial entities on reasonable terms. Professor Willig was supported by a Compass Lexecon team from the Princeton office that included John Bigelow, Jason Wu, Tamsen deRaaf and others. We worked primarily with teams of counsel led by Mark McCowan of Corrs Chambers Westgarth and Stephen Ridgeway of King & Wood Mallesons.

Patent Infringement Case Involving Square

In 2014, payment provider Square was sued by Robert Morley in the U.S. District Court for the Eastern District of Missouri, Eastern Division for patent infringement and breach of fiduciary duty. Morley claimed that he had worked with Square's co-founders, Jack Dorsey and James McKelvey, Jr., in 2009 to develop a method for accepting credit card transactions using a mobile phone and that he had invented the hardware device that Square used as its credit card reader. Compass Lexecon was retained on behalf of Square and Square's co-founders to evaluate Plaintiff's claims regarding liability and potential damages. Compass Lexecon President Professor Daniel Fischel filed a report and testified at deposition that the economic evidence did not support Plaintiffs' claims that Dr. Morley was entitled to hundreds of millions of dollars in Square stock and that damages, if any, should be minimal. The case was settled prior to trial. Square and the firm's co-founders were represented by Orin Snyder and Brian Ascher of Gibson, Dunn & Crutcher LLP and Professor Fischel was supported by a Compass Lexecon team headed by David Gross, Rahul Sekhar and Tim McAnally.

In re the Marriage of Kenneth C. Griffin and Anne Dias Griffin

Compass Lexecon Senior Consultant Professor Bradford Cornell was retained by counsel for Kenneth Griffin to address key valuation issues in Mr. Griffin's divorce proceeding. Professor Cornell's analyses involved, among other things, the estimation of Ken Griffin's net worth, including the value of his majority stake in the hedge fund, Citadel. Professor Cornell submitted two expert reports and testified twice by deposition. The case settled on the eve of the trial. Compass Lexecon worked with Sean Gallagher and J.B. Heaton of Bartlit Beck Herman Palenchar & Scott LLP and Chad Schafer of Sidley Austin LLP. Professor Cornell was supported by a team in our Pasadena office that included Peter Clayburgh, Marc Huntley and Keming Liang.

Recent Patent Litigation

Compass Lexecon experts have provided testimony in a wide range of patent related litigation recently, including disputes over patent licensing, damages from infringement, economic evidence on patent validity, and economic analysis of licensing commitments. For example, Compass Lexecon experts Professor Dennis Carlton and Dr. Allan Shampine were separately retained in recent confidential arbitrations concerning alleged wrongdoing involving patents. Those matters ended favorably for our clients. Separately, Professor Janusz Ordovery provided testimony on the licensing of standard essential patents subject to commitments to license on fair, reasonable and non-discriminatory (FRAND) terms in ongoing district court litigation. Also, Dr. Shampine testified in ongoing *inter partes* reviews before the United States Patent and Trademark Office Patent Trial and Appeal Board in which he analyzed secondary considerations of non-obviousness and responded to opposing expert testimony.

Federal Home Loan Mortgage Corp. v. Deloitte & Touche LLP

In January 2016, Plaintiff Freddie Mac settled its \$1.3 billion lawsuit against Compass Lexecon's client, Deloitte & Touche LLP (Deloitte). Freddie Mac filed the lawsuit in Florida state court alleging that Deloitte had been negligent in its auditing of the financials of the now-defunct mortgage lender Taylor Bean & Whitaker (TBW). Plaintiff claimed that Deloitte should have uncovered the collusive mortgage banking and wire fraud orchestrated by individuals at TBW and Colonial Bank. Compass Lexecon supported structured finance expert Christopher Culp, who wrote a report and testified at deposition about the structure and operations of TBW's asset backed commercial paper conduit known as Ocala Funding and the roles and responsibilities of various entities involved in that structure. We worked with Peter Prieto, Matthew Weinshall and others of Podhurst Orseck, PA, Christopher Turner and others of Latham & Watkins LLP, as well as Jeffrey Cole, Karen Schwindt and George Phillips from Deloitte. The Compass Lexecon team that supported Christopher Culp included Peter Clayburgh, May Huang, Cathy Pang and others in our Pasadena office.

Natural Blue SEC Administrative Proceeding

This case involved Securities and Exchange Commission (SEC) allegations that James Cohen and Joseph Corazzi acted as *de facto* officers of Natural Blue Resources, Inc. In doing so they were alleged to have orchestrated a fraudulent scheme to control the company and conceal details of their past disciplinary histories. Compass Lexecon Affiliate Professor Robert Daines was retained by Mayeti Gametchu of the SEC to explain typical public company structures and

processes and evaluate the actions of the Defendants from a corporate governance perspective. Professor Daines submitted direct testimony and appeared for cross examination at the trial. The administrative judge ruled for the SEC, granting their request for a lifetime bar, a cease-and-desist order, and imposing a financial penalty on Cohen and Corazzi. Professor Daines was supported by Jessica Mandel, Avisheh Mohsenin and others in Compass Lexecon's Chicago office.

Citizen Potawatomi Nation v. The State of Oklahoma

This matter involved an arbitration on behalf of the Citizen Potawatomi Nation heard by Arbitrator Daniel J. Boudreau (former Justice of the Oklahoma Supreme Court). The case involved the State of Oklahoma's contention that it had the right to collect certain sales taxes from a range of transactions conducted at tribal enterprises on tribal land. Compass Lexecon Senior Consultant Professor Joseph Kalt submitted written and oral testimony in the proceeding, including at the arbitration. In his work, Professor Kalt analyzed the weight of the interests in taxation for the federal, state, and tribal governments. Professor Kalt's analysis established that federal and tribal interests outweighed those of the State of Oklahoma, and Justice Boudreau agreed. In April 2016, Justice Boudreau ruled in favor of the Citizen Potawatomi Nation. Professor Kalt was supported by Eric Henson and Sam Greenblatt from Compass Lexecon's Boston office. In developing our analysis, the Compass Lexecon team worked closely with counsel representing the Citizen Potawatomi Nation, primarily Jimmy Goodman and Harvey Ellis of Crowe & Dunlevy in Oklahoma City.

HUK Coburg v. Car Glass Manufacturers (Asahi, Saint-Gobain Sekurit, Pilkington)

Following an Article 101 infringement decision by the European Commission relating to car glass manufacturers, insurance company HUK Coburg claimed compensation for alleged damages before the Dusseldorf Regional Court, on the ground that HUK allegedly incurred excessive costs upon reimbursing for car glass that was replaced, because the prices of the replacement glass was inflated by the practices under investigation. Compass Lexecon provided economic analyses that rebutted Plaintiff's claim that economic theory demonstrated that the practices necessarily caused damage to car glass (direct) purchasers, and that any overcharge on prices charged by car glass manufacturers would be passed on in replacement products reimbursed by insurers. Compass Lexecon economists addressed the shortcomings of the price comparisons put forward by Plaintiff in support of its claim. In particular, we addressed the competitive process of awarding car glass procurement contracts, what implications could be drawn from auction theory, and the mechanism by which any hypothetical price increase experienced by direct purchasers could or could not be passed on to indirect purchasers of replacement products. The Dusseldorf Regional Court (Landgericht Düsseldorf) rejected HUK Coburg's claim because it had not demonstrated that it suffered damage. The CL team included David Sevy, Frédéric Palomino and Jérémiah Juts. We provided support to a Linklaters team advising Saint Gobain that included Rupert Bellinghausen, Bernd Meyring, Julia Grothaus and Anke Krause.

In re Public Storage Limited Partnership Litigation

This matter involved a series of mergers in which Public Storage, the largest publicly traded storage facilities REIT, acquired the partnership interests in multiple California limited partnerships that owned storage facilities throughout the United States. Plaintiffs alleged that

Defendants breached their fiduciary duties owed to limited partners in effecting the sale to Public Storage. The case ultimately went to trial and resulted in a complete victory for Compass Lexecon's clients. Compass Lexecon expert Dr. Drew Roper testified at deposition and trial. Dr. Roper analyzed the fairness opinion associated with the mergers and rebutted Plaintiff's expert who opined that the fairness opinion was biased and should not be presumed to provide an independent assessment of the merger considerations because of its reliance on information provided by interested parties. Dr. Roper explained that fairness opinions routinely rely on information provided by interested parties and provide multiple indications of value typically resulting in a range of value. The Honorable Jane L. Johnson agreed noting that the reliance on information provided by interested parties did not result in bias in the fairness opinion and quoted Dr. Roper's testimony that "the question is does the merger consideration lie within the range, not does it exceed the highest number provided." Compass Lexecon worked with Craig Varnen and Bruce Wessel of Irell & Manella LLP who successfully represented Defendants at trial.

Italian Bondholder Claims Against Argentina

Compass Lexecon expert Dr. Pablo Guidotti was retained by counsel for Task Force Argentina (TFA), a group of 50,000 Italian individuals who held sovereign bonds on which the Argentine Republic defaulted in 2001. Dr. Guidotti assisted in determining the market conditions, government policies, and regulatory framework under which the bonds were issued, and the assurances given to foreign investors by the Argentine government, all key elements in forming investors' risk expectations. Claims relating to bonds with \$900 million face value were brought to arbitration under ICSID in 2007, and were recently settled for \$1.35 billion. The Compass Lexecon team supporting Dr. Guidotti included Sebastian Zuccon and others in our Buenos Aires office. The team worked with Jonathan Hamilton and Carolyn Lamm of White & Case LLP.

Boeing Satellite Litigation

In May 2016, Judge Andre Birotte Jr. of the United States District Court for the Central District of California ruled in favor of The Boeing Company and Boeing Commercial Space Company and found S.P. Korolev Rocket and Space Corporation, Energia (with subsidiaries and affiliates, Energia) and KB Yuzhnoye (with subsidiaries and affiliates, collectively Yuzhnoye) were liable for repayment of their share of loans made by Boeing to Sea Launch. Sea Launch was a joint venture between Boeing, Energia and Yuzhnoye to launch satellites from a mobile sea platform, which failed and filed for bankruptcy protection in 2009. Boeing sued Defendants in 2013 alleging that it financed the joint venture and that at inception, Defendants agreed to repay portions of loans made by Boeing to Sea Launch. Energia and Yuzhnoye subsequently alleged that Boeing was the cause of the failure of Sea Launch. Compass Lexecon served as consulting experts and provided support for testifying expert Senior Consultant Professor Bradford Cornell who testified as rebuttal expert. Professor Cornell testified that even under Defendants' assumptions, Sea Launch would not have been able to avoid bankruptcy. The Court agreed with Professor Cornell, ruling that "there is no conclusive evidence demonstrating that Sea Launch would have avoided bankruptcy [under Defendants' assumptions]." We worked closely with Michael Slade and Alec Solotorovsky of Kirkland & Ellis LLP. Professor Cornell was supported by a Compass Lexecon team that included Rahul Sekhar, Rajiv Gokhale, Robin Stahl and Jonathan Polonsky, among others.

EDF/ERDF v. Nexans and Prysmian

The French competition authority sanctioned power cable manufacturers in 2007 for bid rigging practices infringing Article 420.1 of the French code de commerce/EU Article 101, in the context of two successive tenders organized by EDF. EDF claimed damages before a French tribunal de commerce. Compass Lexecon was retained on behalf of Nexans, one of the manufacturers. EDF's claim was initially rejected by the tribunal de commerce and EDF appealed. In July 2015, the Paris court of appeal again rejected EDF's claim, on the basis that its damage was not demonstrated to the appropriate standard. The Court of appeal adopted and cited evidence developed by Compass Lexecon and submitted to the Court during the appeals process that identified numerous shortcomings of EDF's alleged damage analysis. The Compass Lexecon team included David Sevy and Frédéric Palomino. We supported Nexans' external legal team of Vatie & Associés (Arnaud Mocquin and Anne Laure Leynon) and the internal legal team (Nexans General Counsel Patrick Noonan and Florence Carterot).

Supreme Court Ruling on Wholesale Electricity Market Prices

In April 2016 the Supreme Court of the United States affirmed the judgment of the Court of Appeals for the Fourth Circuit in holding that an order by Maryland's Public Service Commission (PSC) impermissibly intrudes upon the wholesale electricity market, a domain Congress reserved to FERC alone. The prior U.S. District Court for the District of Maryland decision had found that the Maryland PSC order directing the state's electric utilities to enter into long-term contracts with a power plant developer was unconstitutional because the long-term contracts required payment of PSC-set prices for the sales of capacity and energy from a new power plant to be constructed by a state-chosen developer.

The PSC mandated contracts for differences (CFD) would have required the developer successfully to bid its new capacity and energy into the federally-regulated regional wholesale power markets of the PJM Interconnect, while the utilities would have been required to pay the developer the differences between the PJM market prices and the contract price – an out-of-market price set by the PSC. The Court found that the PSC's order unconstitutionally dictated, through the CFD, wholesale prices in interstate power markets where the doctrine of field preemption forecloses state regulation since it is a field that by law (the Federal Power Act) is occupied entirely by the federal government. The Supreme Court affirmed the decision finding that “[b]y adjusting an interstate wholesale rate, Maryland's program contravenes the FPA's division of authority between state and federal regulators.”

This ruling favored Compass Lexecon clients PPL EnergyPlus, LLC (now Talen Energy), PSEG Power, LLC and the other Plaintiffs. In connection with this Supreme Court case, Compass Lexecon Senior Consultant Professor Robert Willig led the development of the Brief of Leading Economists as Amici Curiae in Support of Respondents (Plaintiffs in the district court case), and among the other signatories on the brief were Compass Lexecon's Joseph Cavicchi and Senior Consultants Professors Richard Gilbert, Joseph Kalt and Janusz Ordovery.

Top Online Real Estate Companies' Trade Secret Litigation

In this matter, Compass Lexecon was retained by Jenner & Block LLP on behalf of Move, Inc. (owned by News Corp) in its suit against Zillow and former Move employees Errol Samuelson and Curt Beardsley. Plaintiffs alleged that Samuelson and Beardsley left Move to join Zillow in March 2014, taking with them dozens of trade secrets as well as confidential information about Move's plans to merge with online real estate firm Trulia. Compass Lexecon

Senior Consultant Professor Bradford Cornell and accounting expert Gordon Klein were retained as experts in the case. Both were deposed and between them issued five expert reports in the case. Compass Lexecon also assisted attorneys in two mediations and in responding to the claims of Defendants' 11 opposing experts.

Professor Cornell computed damages under several possible theories of lost profits and unjust enrichment, including an unjust enrichment analysis based on anticipated merger synergies in the Zillow/Trulia merger, as well as damages from interference with Move's plans to create an industry-standard real estate platform. Accounting expert Gordon Klein analyzed and rebutted Defendants' claims about disclosure obligations under GAAP and SEC rules. The case settled on the first day of trial for \$130 million. Professor Cornell was supported by a Compass Lexecon team from our Pasadena office led by Elisabeth Browne that included May Huang, James Tam, Marc Huntley, Cathy Pang and others. Gordon Klein was supported by another Compass Lexecon Pasadena team also led by Elisabeth Browne that included Eric Madsen. Compass Lexecon worked with Move's attorneys, Rick Richmond, Richard Stone, Brent Caslin and Daniel Rozansky of Jenner & Block LLP.

Corre Opportunities Fund et al. v. Emmis Communications Corporation

To enhance the value of its common stock, rationalize its capital structure and reduce its leverage ratio, Compass Lexecon's client, Emmis Communications Corporation (Emmis), determined that it would be in the best interests of its shareholders to undertake a program to provide Emmis with flexibility to amend the terms of its preferred stock. After Emmis repurchased two thirds of the preferred stock, common and remaining preferred shareholders voted to amend the rights of the preferred stock, cancelling all unpaid preferred stock dividends to date, changing the designation of the preferred stock from cumulative to non-cumulative, and allowing Emmis to pay common stock dividends and other distributions prior to paying unpaid preferred stock dividends. Plaintiffs retained an expert to assess damages sustained as a result of the amendments. Compass Lexecon's President Professor Daniel Fischel submitted a report and testified at deposition on behalf of Emmis, criticizing the damages methodology of Plaintiffs' expert. Specifically, Professor Fischel opined that Plaintiffs' expert's analysis of the value of the preferred stock with and without the rights was unscientific, fundamentally flawed, and unreliable. Professor Fischel also demonstrated that the damages analysis of Plaintiffs' expert was contradicted by market evidence. In February 2014, Judge Sarah Evans Barker of the Southern District of Indiana granted Emmis' motion for summary judgment. In July 2015, the United States Court of Appeals for the 7th Circuit affirmed the U.S. District Court's decision. Professor Fischel was supported by a Compass Lexecon team led by Ralph Scholten in our Washington, DC office. The Compass Lexecon team worked closely with Rich Kempf and others of Taft Stettinius & Hollister LLP, who successfully represented Emmis.

Dell Appraisal Litigation

Compass Lexecon was retained by Stuart Grant of Grant & Eisenhofer P.A. on behalf of petitioners in a statutory appraisal proceeding in the Delaware Court of Chancery related to the 2013 buyout of Dell Inc. Compass Lexecon Senior Consultant Professor Bradford Cornell submitted opening and rebuttal reports and testified before Vice Chancellor J. Travis Laster at trial regarding the fair value of Dell. After trial, Vice Chancellor Laster found in an extensive and widely discussed opinion that the fair value of Dell was \$17.62 per share, \$3.87 per share more than the merger consideration of \$13.75 and \$6.8 billion more than the equity consideration of \$24.2 billion. In arriving at his opinion, Vice Chancellor Laster rejected Dell and its experts'

arguments that the fair value of Dell was \$12.52 per share and that the merger consideration represented the ceiling for a fair value estimate. Vice Chancellor Laster adopted Professor Cornell's selection of a lower tax rate and eliminated Dell's expert's reductions for deferred tax liabilities. Professor Cornell was supported by a team in Compass Lexecon's Pasadena and Chicago offices that included Jennifer Milliron, John Haut, Tim McAnally, Ed Crane and Neil Matthews.

Commercial Dispute Involving Fortune 100 Firm and Its Local Partners in Latin America

This case was an ICC arbitration involving a breach of contract dispute between Respondent, a Fortune 100 company, and Claimants, its local partners in Ecuador and Colombia. The action related to Respondent's termination of their partnership. Claimants alleged that the termination was not in accordance with contractual terms and local regulations, and claimed damages of \$20 million in nine distinct categories. Pablo López Zadicoff acted as expert for Respondent and presented written and oral testimony explaining why many of the claims were duplicative, not covered by contractual rights, and/or grossly overestimated. In a preliminary ruling, the arbitrator rejected eight of the nine claims. In a second 2015 ruling, the arbitrator substantially reduced the amount awarded for the remaining claim, while sustaining Respondent's counterclaim for commercial debts (which had been neglected by Claimants), resulting in net positive compensation for Respondent. The Compass Lexecon team, which also included Andres Casserly, worked closely with Grant Hanessian, Salvador Fonseca-Gonzalez and Michael Duffy from Baker & McKenzie.

Media24 Predatory Pricing Action

In September 2015, the Competition Tribunal of South Africa concluded that media firm Media24 had engaged in exclusionary behavior as it priced below the average total costs of its newspaper and in addition, had a plan of predation, thereby foreclosing one of its rival newspapers from the market. The decision of the Tribunal followed an initial investigation by the South African Competition Commission (SACC) which alleged that Media24 had been engaging in predatory behavior in a market for local newspapers by keeping a loss-making newspaper in the market to drive competitors out of that market. According to SACC, this amounted to an abuse of a dominant position. Compass Lexecon was retained by the SACC and provided an expert report that assessed whether Media24 was incurring a loss by keeping the newspaper in the market, and whether keeping the newspaper in the market could exclude other newspapers from the market. Compass Lexecon also provided expert testimony before the South African Competition Tribunal, analyzed Media24's economic submissions, and assisted the SACC legal team with cross examination of Media24's witnesses. The Compass Lexecon team advising SACC included Jorge Padilla, Segye Shin and Neil Dryden.

Deepwater Horizon Oil Spill Phase III Litigation

Compass Lexecon was retained by counsel for British Petroleum (BP) to analyze corporate governance issues and the economic implications of the magnitude of BP's fines under the Clean Water Act (CWA) relating to the Deepwater Horizon oil spill. Compass Lexecon affiliate Robert Daines testified at trial in the United States District Court in the Eastern District of Louisiana regarding the corporate structure and governance practices of BP's wholly-owned subsidiary BP Exploration and Production, Inc. and about the economic impact and incentives resulting from increasing the penalty under the CWA. BP later settled with the United States.

Compass Lexecon worked closely with Matthew Regan and Mark Nomellini of Kirkland & Ellis LLP and David Pinsky and Megan Rodgers of Covington & Burling LLP. Professor Daines was supported by a Compass Lexecon team that included Rahul Sekhar, Jessica Mandel, Ralph Scholten and Avisheh Mohsenin, among others.

Fossil Fuel Divestment Papers

Colleges and universities across the country are being pressured by student groups and political organizations to divest fossil fuel stocks from their endowments. Last year, Compass Lexecon was retained by the Independent Petroleum Association of America (IPAA) to analyze the effect of these proposals on the value of college and university endowments, and Compass Lexecon's President Professor Daniel Fischel released a study showing that divestment would likely cost an endowment 0.5 percentage points of its total equity value per year on average due to lower risk-adjusted returns. Professor Fischel also published an op-ed in the *Wall Street Journal* summarizing these findings. This year, IPAA asked Compass Lexecon experts to perform two additional studies of divestment.

First, in September 2015, Compass Lexecon Senior Consultant Professor Bradford Cornell released a study providing tailored estimates of the cost of divestment for five universities with large endowments: Columbia University, Harvard University, MIT, New York University, and Yale University. Professor Cornell's study constructed over 2,000 benchmark portfolios for each university and determined that, across the five universities, 90 percent of these portfolios would experience a shortfall in risk-adjusted endowment returns due to fossil fuel divestment, with an average annual shortfall over 0.23 percent per year and more than 12 percent over a 50-year time frame. Professor Cornell also published an op-ed in *USA Today* summarizing his findings. Professor Cornell was supported by a team in Compass Lexecon's Chicago and New York offices that included Todd Kendall and Chris Fiore.

Then, in June 2016, Compass Lexecon Senior Consultant Professor Hendrik Bessembinder released another study focusing on the "frictional" costs of divestment, including transaction costs of selling fossil fuel securities and compliance costs associated with maintaining compliance with a "fossil free" standard. Professor Bessembinder analyzed a sample of 30 U.S. college and university endowments, and based on the financial literature and market evidence regarding these frictional costs, concluded that the value of a typical endowment would be reduced by between an additional two and 12 percent over a 20-year period due to divestment, on top of the reductions in returns identified by Professors Fischel and Cornell. Professor Bessembinder was supported by a team in Compass Lexecon's Chicago and New York offices that included David Gross, Todd Kendall and Chris Fiore. Professors Fischel, Cornell and Bessembinder, as well as Compass Lexecon staff members Todd Kendall and Chris Fiore, presented the results of this research widely in many academic and policy forums, and were also interviewed and cited in many newspaper, radio, and television reports regarding divestment.

Pro Bono ATS Matter

As widely reported in the press, in June 2016, a Florida jury found a former Chilean army officer liable in the torture and killing of Victor Jara in 1973. A Compass Lexecon team led by Santiago Dellepiane assisted, *pro bono*, Christina Hioureas of Foley Hoag LLP, co-counsel for the family of Victor Jara in their successful lawsuit against Pedro Pablo Barrientos Nuñez. The Court awarded plaintiffs \$6 million in compensatory damages and \$22 million in punitive damages under the Alien Tort Statute (ATS). In addition to Christina Hioureas, Jara's family was successfully represented by Almudena Bernabeu of the Center for Justice & Accountability.

MERGERS

Sysco/US Foods Merger

In June 2015, Judge Amit P. Mehta of the U.S. District Court for the District of Columbia granted a preliminary injunction enjoining the merger of the two largest broadline foodservice distributors in the United States, Sysco and U.S. Foods (USF). The Court's decision relied heavily on the work of two Compass Lexecon experts, Dr. Mark Israel and Rajiv Gokhale. Dr. Israel submitted multiple reports and provided deposition and trial testimony over several days on behalf of Plaintiff U.S. Federal Trade Commission (FTC). The court relied heavily on Dr. Israel's reports and testimony in concluding that the merger of Sysco and USF would likely cause anticompetitive harm to customers in the national and local broadline markets. The Court cited Dr. Israel in support of nearly every aspect of the opinion including, product market definition, local market definition, competitive effects for national customers, competitive effects for local customers, and the inadequacy of the proposed divestiture. Rajiv Gokhale also submitted expert reports and provided deposition and courtroom testimony on behalf of the FTC. Mr. Gokhale's work which was cited by the Court, illuminated key flaws in the analysis of the Defendants' expert with regard to merger efficiencies. He demonstrated that a large proportion of the merger efficiencies claimed by the Defendants were not merger-specific.

Dr. Israel was supported by a Compass Lexecon team led by Loren Smith in our Washington, DC office that included Yair Eilat, Jonathan Bowater, Jeff Raileanu, Wei Tan, Maria Stoyadinova, Ka Hei Tse, Bo Bourke, Bich Ly, Rohini Sadarangani, Piyal Hyder, Phil Wolf, Rob Oandasan, Gloriana Alvarez, Andrea Ortu and Alex Asanchev. The Compass Lexecon team worked closely with FTC attorneys Stephen Mohr and Sophia Vandergrift and FTC economist Dan Hanner. Mr. Gokhale was supported by a Compass Lexecon team including Paul Anderson and Margaret Hlebowitsh. His team worked closely with FTC attorneys Krishna Cerilli and Kristian Rogers and FTC financial analyst Deepak Chandra.

Expedia/Orbitz Merger

A Compass Lexecon team including Dennis Carlton, Gustavo Bamberger, Lynette Neumann, Bryan Keating and Jon Orszag assisted Thomas Barnett, Anne Lee, Ross Demain and Kate Mitchell-Tombras of Covington & Burling LLP; and Franco Castelli of Wachtell, Lipton, Rosen & Katz, outside counsel to Expedia, Inc., and Joshua Holian, Amanda Reeves and Kory Wilmot of Latham & Watkins LLP, outside counsel to Orbitz Worldwide Inc. in seeking U.S. Department of Justice (DOJ) approval of Expedia's proposed acquisition of Orbitz.

The DOJ was presented with numerous third-party complaints claiming that Expedia's acquisition of Orbitz would harm competition by allowing the merged firm to increase commission rates to travel suppliers, such as hotels. The Compass Lexecon team performed numerous theoretical and econometric analyses, and joined counsel in presenting economic evidence to the DOJ in meetings and white paper materials showing that the transaction was unlikely to cause significant harm to competition. After several months of review, the DOJ was ultimately persuaded by the analyses presented by Compass Lexecon and counsel. The DOJ stated that "The Antitrust Division investigated the concerns that have been expressed about this transaction. We took those concerns seriously and factored into our analysis all of the information provided by third parties. At the end of this process, however, we concluded that the acquisition is unlikely to harm competition and consumers."

Dell-EMC Merger

Compass Lexecon Senior Consultant Professor Daniel Rubinfeld and Compass Lexecon economists assisted Dell in securing regulatory approval of its acquisition of EMC for \$67 billion. Compass Lexecon and Professor Rubinfeld were retained by the parties to analyze potential competitive effects arising from the merger, recognized to be the largest transaction in the technology industry to date. Professor Rubinfeld was supported by Duncan Cameron and Aren Megerdichian in developing a multi-period vertical foreclosure model to assess Dell's post-merger incentive to close off access to VMware server virtualization software (partially owned by EMC) to its hardware rivals. The model captured the dynamics of customer switching over time in response to the hypothetical non-openness of the software after the merger. Their analysis showed that the share of lost server sales that would have to divert from Dell's rivals to Dell as a result of the foreclosure strategy would have to be impossibly or implausibly high for the foreclosure strategy to be profitable. A presentation and paper were submitted to the Federal Trade Commission reflecting Compass Lexecon's findings, and were also provided to the European Commission's Directorate-General for Competition. Additional follow-up was prepared and submitted to the Commission addressing further inquiries related to the modeling, which continued to show little-to-no incentive for Dell to foreclose or otherwise disadvantage its hardware rivals. Professor Rubinfeld and his team worked with Dell's counsel, including John Harkrider, Michael Keeley and Russell Steinthal of Axinn, Veltrop & Harkrider LLP, who noted that Compass Lexecon's foreclosure analysis played an important role in securing unconditional approval of the transaction from the Federal Trade Commission and the European Commission.

Additionally, Christopher Fasel, Matt Krietzberg, Trevor Incerti and Jessica Stauffer in Compass Lexecon's Pasadena office worked extensively with Dell/EMC's domestic and international counsel to secure regulatory approval through numerous filings to competition agencies in nearly 20 jurisdictions, including the United States, Canada, Europe, Japan, Brazil and over a dozen other countries. This Compass Lexecon team worked with Daniel Bitton, Cagla Boylu, Alexander Bergersen, Michael O'Mara, Luis Nagalli and Kail Jethmalani of Axinn, Veltrop & Harkrider LLP; Paul McGeown and Aude Barthelemy of Wilson, Sonsini, Goodrich & Rosati; and Clifford Aronson, Michael Sheerin, Stephane Dionnet, Nick Wolfe and Amaury Sibon of Skadden, Arps, Slate, Meagher & Flom.

AT&T-DirecTV Merger

Compass Lexecon experts and economists assisted AT&T in securing regulatory approval of its acquisition of DirecTV. Professors Michael Katz of the University of California, Berkeley, and Philip Haile and Steven Berry of Yale University were supported by a Compass Lexecon team led by Theresa Sullivan and Andres Lerner that included Eugene Orlov, Ka Hei Tse, Emmett Dacey, Aren Megerdichian, Joel Papke, Alice Kaminski and many others in Compass Lexecon's Washington, Chicago and Los Angeles offices. Compass Lexecon worked closely with AT&T's counsel Wm. Randolph Smith of Crowell & Moring LLP and Richard Rosen of Arnold & Porter, LLP to secure DOJ and FCC approval of the \$48.5 billion deal.

The Compass Lexecon team used state-of-the-art merger simulation techniques bolstered by extensive data collection (including a consumer survey designed by Professor Ravi Dhar of Yale University) to model the likely impact of the merger on consumers of video and broadband Internet services (both on a standalone and bundled basis). The analysis showed that even if cost efficiencies that the parties expect in the form of reduced programming payments do not materialize, and even though AT&T and DirecTV were pre-merger competitors in some geographic areas in video services, consumers would benefit from the merger due to the

complementarity of certain of the AT&T and DirecTV services. In its order approving the transaction, the Commission found that “the economic analysis ... demonstrates that the consumer surplus would increase slightly without accounting for programming payment reductions and would increase more substantially when programming payment reductions are included.” The Commission described the merger simulation submitted by Professors Haile and Berry and Compass Lexecon as “sophisticated” and “a very fine example of a merger simulation.” The Commission adopted the framework of the Berry-Haile analysis, noting that “the underlying approach is accepted as persuasive and as representing current best practice in merger simulation.”

Siemens Acquisition of Dresser-Rand

In June 2015, the European Commission unconditionally approved the \$7.8 billion acquisition by Siemens of Dresser-Rand after an in-depth (Phase-II) investigation. The transaction between one of the world’s largest industrial firms (Siemens) and one of the leading manufacturers of rotating equipment (Dresser-Rand) had already been cleared by several competition agencies around the world, including among others the U.S. Department of Justice and the Chinese MOFCOM. The antitrust agencies focused their attention on the potential competitive effects of combining the parties’ supply of turbo compressors and aero-derivative gas turbines (ADGTs) used in the oil and gas industry. In particular, the antitrust agencies were concerned that the transaction would reduce the number of competitors from three main suppliers (market leader General Electric, Siemens/Rolls-Royce and Dresser-Rand) to two. Compass Lexecon submitted various empirical and theoretical analyses of horizontal effects and vertical foreclosure, as well as several analyses of bidding data, showing, among other things that the parties catered to different segments of the oil and gas industry and therefore did not often bid directly against each other. A transatlantic Compass Lexecon team led by Jorge Padilla, Thilo Klein and Enrique Andreu in Europe and Jon Orszag, Guillermo Israilevich and Wei Tan in the United States supported Siemens during the multi-jurisdictional filing. Compass Lexecon worked with Michael Egge, Lars Kjølbye, Sven Völcker and Héctor Armengod of Latham & Watkins LLP; Frank Montag and Sascha Schubert of Freshfields Bruckhaus Deringer LLP; and Sean Boland and Paul Lugard of Baker Botts LLP.

BT Group Acquisition of EE Limited

In January 2016, the UK’s Competition and Markets Authority (CMA) unconditionally cleared the acquisition by BT Group plc (BT) of EE Limited (EE). The £12.5 billion acquisition combined the UK’s largest fixed telecommunications business and the UK’s largest mobile telecommunications business and was the most significant change to the UK telecommunications landscape in 15 years. The CMA considered ten separate theories of competitive harm relating to the supply of mobile and fixed telecommunications services. The CMA also had to consider the implications of the regulatory framework within which the merged entity would operate. The CMA received a large volume of evidence during its inquiry, including approximately 50 submissions from third parties providing their views on the merger. It also held ten hearings with a range of interested third parties and received 18 responses to its provisional findings.

Compass Lexecon expert Neil Dryden provided testimony at BT’s hearing. Compass Lexecon experts Neil Dryden and Jorge Padilla also submitted multiple reports on the vertical theories of harm in the case, concerning BT’s supply of backhaul to mobile network operators (MNOs) and EE’s supply of wholesale mobile input to mobile virtual network operators

(MVNOs). These reports modelled the complex theories of harm, and explained that the theories of harm depended on multiple necessary conditions that were unlikely to be satisfied.

BT was advised by Freshfields Bruckhaus Deringer LLP, led by Rod Carlton in London, Peter Niggemann in Düsseldorf and Thomas Janssens in Brussels, assisted by Olivia Hagger, Devin Anderson, Tadeusz Gielas, Anna Huttenlauch and Matthew Sinclair-Thomson. EE was advised by Clifford Chance, led by Jenine Hulsmann in London, assisted by Samuel Bright and Chris Chapman, and also by Mark Simpson at Norton Rose Fulbright in London. EE shareholder Orange SA was represented by Stéphane Hautbourg of Gide Loyrette Nouel. Compass Lexecon experts were supported by a team including Peter Caradonna, Valérie Meunier, Lau Nilausen, Keshav Parthasarathy, Laura Phaff, Stefano Trento and Antoine Victoria.

Nokia and Alcatel-Lucent Merger

In June 2015, the U.S. Department of Justice (DOJ) granted early termination of the waiting period applicable to the Nokia/Alcatel-Lucent transaction. Although sales shares were relatively concentrated in the United States, Compass Lexecon Senior Managing Director Professor Dennis Carlton explained in meetings and correspondence with the DOJ that shares were not indicative of a competitive concern because bidding for contracts was largely concluded for the current technology, bidding data demonstrated a substantial number of competitors, and the transaction would enable the combined firm to be a more effective competitor in the development of the next generation of telecommunications standards and equipment. The DOJ apparently agreed and granted early termination. The Compass Lexecon team supporting Professor Carlton included Bryan Keating, Allan Shampine, Kirupakaran Ramaiah and Deborah Healy. Compass Lexecon worked closely with outside counsel for Nokia, including Steven Sunshine, Matthew Hendrickson and Joseph Rancour of Skadden, Arps, Slate, Meagher & Flom LLP.

U.S. Renal Care, Inc. Acquisition of DSI Renal

In August 2015, U.S. Renal Care, Inc. announced a \$640 million acquisition of DSI Renal. Both companies provide life-sustaining hemodialysis and peritoneal dialysis services for end-stage renal disease. A Compass Lexecon team including Jon Orszag, Eugene Orlov, Otto Hansen and Ben Xiao was retained by Marc Williamson, Amanda Reeves and Kory Wilmot from Latham & Watkins LLP, outside counsel for U.S. Renal Care, to analyze the competitive effects of the proposed merger. We helped counsel present empirical evidence to the Federal Trade Commission (FTC) demonstrating the limited scope of potential anticompetitive harm from the merger. In December 2015, the companies reached a favorable settlement with the FTC, requiring minimal divestitures in only one local market. The combined company will serve approximately 23,000 patients across 33 states and the Territory of Guam. The Compass Lexecon team also worked with Gorav Jindal and Konstantin Medvedovsky from Dechert LLP.

Mann+Hummel Acquisition of Filter Manufacturer

German-based industrial filter manufacturer Mann+Hummel announced its planned acquisition of the global filtration operations (excluding South America operations) of Affinia Group in August 2015. The two companies both supply on- and off-road filter products, such as air, oil and gas filters for passenger cars, as well as other filter products. Mann + Hummel is known for its Purolator and Mann Filter brands, while Affinia is known for Wix and Filtron brands of filters. While the two companies manufacture some of the most well-known brands of

filters, evidence was brought to show the importance of private label brands and intense global competition for the supply of filters in the U.S. In addition, evidence demonstrated the complementary focus of the two companies' businesses.

A Compass Lexecon team of Janusz Ordovery, Rick Flyer and Colleen Loughlin assisted Lisl Dunlop of Manatt, Phelps & Phillips, LLP and her client Mann + Hummel in developing economic arguments and evidence in support of the U.S. aspects of the transaction, which were presented to the Federal Trade Commission. The result was termination of HSR review at the end of the initial waiting period in October 2015. The Compass Lexecon team also worked with Joseph Krauss of Hogan Lovells US LLP and his client Affinia Group.

Grupo FerroAtlántica/Globe Specialty Metals Merger

Compass Lexecon teams in Washington, DC and Madrid supported Cravath, Swaine & Moore LLP, Uría Menéndez and Bowman Gilfillan, outside counsel for Grupo FerroAtlántica, and Latham & Watkins LLP, outside counsel for Globe Specialty Metals in seeking approval of Grupo FerroAtlántica's proposed acquisition of Globe Specialty Metals from the U.S. Department of Justice (DOJ), the Competition Commission of South Africa and the German Bundeskartellamt. The Compass Lexecon team performed numerous empirical analyses and joined counsel in presenting economic evidence to the DOJ and the Competition Commission of South Africa in meetings and in conference calls. After several months of review, the DOJ and other regulators concluded that the proposed merger would not harm competition in any relevant market and the merger was completed on December 23, 2015.

Compass Lexecon worked with Christine Varney, Julie North, Daniel Slifkin, Lillian Grossbard and Sue Lin of Cravath, Swaine & Moore LLP, Edurne Navarro of Uría Menéndez, Jean Meijer of Bowman Gilfillan, and Hanno Kaiser of Latham & Watkins LLP. The Compass Lexecon team in Washington, DC included Jon Orszag, Jay Ezrielev and Michael Sabor, and our team in Madrid included Jorge Padilla, Elena Zoido, Soledad Pereiras and Carolina Ortega.

Ball Acquisition of Rexam

In January 2016, the European Commission cleared the proposed acquisition of beverage can manufacturer Rexam by its competitor Ball, subject to the divestment of 12 plants in the European Economic Area. In June 2016, the FTC cleared the proposed acquisition subject to the divestment of eight plants in the United States. Compass Lexecon advised the beverage can manufacturer Ball throughout the investigation of the transaction, both in Europe and in the United States. We provided several economic analyses aimed at assessing the potential effects of Ball's acquisition of Rexam. The European Commission and the FTC had concerns related to the competitive constraints remaining post-merger in the can manufacturing segment. Our work mainly related to the calculation of market shares, the assessment of the geographic closeness of competition between the parties, the calculation of freight cost efficiencies arising after the merger and the evaluation of market concentration pre- and post-merger. We also assessed the effect of the different divestment alternatives on each of these analyses. The Compass Lexecon team in Europe consisted of Daniel Westrik, Catalina Campillo, Enrique Andreu, Scott Holbrook and Neil Dryden, who assisted Ball's legal advisers Claire Jeffs, John Boyce and Jordan Ellison of Slaughter and May. The team in the U.S. consisted of Dennis Carlton, Chip Bamberger, Lynette Neumann and Lauren Gumbiner, who assisted Ball's legal advisers John Harkrider, Nicholas Gaglio and Mark Alexander of Axinn, Veltrop & Harkrider LLP.

Proposed Joint Venture Between TeliaSonera and Telenor in Denmark

Compass Lexecon advised mobile network operator (MNO) Hi3G Denmark during the European Commission's investigation of the proposed joint venture between the Danish MNOs TeliaSonera and Telenor. Following the transaction, the new entity and telecommunications incumbent TDC would have formed a symmetric duopoly accounting for more than 80% of the retail mobile telecommunications market. Hi3G was a third party to the proceedings. Compass Lexecon produced several economic analyses assessing, among other things, the likely implications of Hi3G's lack of scale for its ability to compete and quantifying the effect of Hi3G's capacity constraints on the pricing incentives of the merged entity. In September 2015, TeliaSonera and Telenor abandoned the proposed transaction, as they failed to agree with the Commission on commitments that would have addressed the Commission's competition concerns. The Compass Lexecon team included Jorge Padilla, Thilo Klein, Valérie Meunier and Krishna Nandakumar, who worked closely with Thomas Wessely, Michael Bo Jaspers and Angeline Woods of Freshfields Bruckhaus Deringer LLP.

Sonoco/Weidenhammer Acquisition

In July 2015 the UK Competition and Markets Authority (CMA) cleared the completed acquisition by Sonoco Products Company of Weidenhammer Packaging Group. Both parties are active in the manufacturing of composite cans, which are used for packaging food and non-food products. Sonoco (US) and Weidenhammer (Germany) both have UK subsidiaries with domestic production plants. The clearance came after the CMA referred the case for an in-depth Phase II investigation in January 2015. Compass Lexecon provided advice on the competitive effects of the transaction. This advice included assessing the counterfactual based on the current financial performance of the merging parties, defining the relevant markets and analyzing the closeness of competition between the parties by comparing prices and margins between products where the parties did and did not overlap. The Compass Lexecon team of Justin Coombs and Segye Shin worked with Marjorie Holmes, Hannah Kong, Laura-May Scott and Emma Jones of Reed Smith LLP.

TransCanada's Acquisition of Columbia Pipeline Group

Mary Anne Mason of Crowell & Moring LLP retained Compass Lexecon economists Professor Janusz Ordover, Steven Peterson, Charles Augustine and Stephen Makowka to analyze the competitive effects of the proposed acquisition of Columbia Pipeline Group (CPG) by TransCanada Corporation (TransCanada). TransCanada and CPG are two of the largest providers of natural gas pipeline and related natural gas storage services in the United States. The proposed transaction appeared to raise a number of horizontal concerns, such as increased concentration in the provision of gas transmission or storage services in certain areas where the CPG and TransCanada systems are geographically co-located. Working with the legal team at Crowell & Moring LLP, Compass Lexecon's economic analyses of the competitive effects of the proposed transaction showed that these concerns were unwarranted. In particular, our analyses showed that TransCanada's storage and pipeline assets in the United States do not constrain the pricing of CPG's assets, and vice versa, even in areas where the pipeline systems overlap. In May 2016, the FTC terminated its investigation into the merger prior to issuing a second request, allowing the merger to proceed without conditions and ahead of anticipated timelines. In addition to Mary Anne Mason, Compass Lexecon worked closely with Olivier Antoine, Megan Wolf and Daniel Leff of Crowell & Moring LLP and CPG's counsel Joseph Matelis of Sullivan & Cromwell LLP.

Federal Trade Commission and Commonwealth of Pennsylvania v. Penn State Hershey Medical Center and PinnacleHealth

In May 2016, the U.S. District Court for Central Pennsylvania denied the preliminary injunction sought by the Federal Trade Commission in *Federal Trade Commission and Commonwealth of Pennsylvania v. Penn State Hershey Medical Center and PinnacleHealth System*. Compass Lexecon Senior Consultant Professor Robert Willig was the sole economic expert for the defense in the matter, the result of which marked the FTC's first loss in a hospital merger challenge in more than a decade. Professor Willig's expert report and trial testimony were central to the Court's Opinion, for example, providing the support for "salient facts controvert the FTC's assertion that GAC services are 'inherently local,' and strongly indicate that the FTC has created a geographic market that is too narrow because it does not appropriately account for where the Hospitals, particularly Hershey, draw their business[]" and for "Th[e] FTC's] line of reasoning defies logic. . . . [C]onstruction [of a new facility] would undoubtedly strain Hershey's financial resources, resulting in either increased charges for services or less investment in quality improvements." Professor Willig was supported by a Washington-based team led by Bryan Keating and Loren Smith that included Jeff Raileanu, Ka Hei Tse, Piyal Hyder, Mihir Narain, Genaro Marquez, Andrea Ortu, Linh Dinh, Sahdia Kahn, Laura Schiemichen and Anh Dao. Compass Lexecon worked closely with the Jones Day legal team led by Julie McEvoy, Toby Singer, Michael Gleason, Joseph Cardosi and Alisha Crovetto.

Greene King Acquisition of Spirit

In June 2015, the UK Competition and Markets Authority (CMA) accepted a plan for the proposed combined group to sell 16 pubs to pave the way for the anticipated acquisition by Greene King plc of Spirit Pub Company plc, both pub companies in the UK. The CMA indicated that these undertakings would satisfy its concerns about a potential substantial lessening of competition in 16 areas, and that as a result it would not refer the transaction to an in-depth phase II investigation. Compass Lexecon provided economic insight on the risk assessment of the publicly announced proposed acquisition by Greene King of Spirit. Our analyses included market definition, local overlap analysis, survey analysis and the assessment of various remedies. The analysis was complicated by the lack of recent precedents, the unique nature of the pub market, and an unclear market definition which needed to be informed by survey evidence. The Compass Lexecon team including Scott Holbrook, Manuel Mertel Morillo, Hyung-Joong Kim and Neil Dryden worked with Bertrand Louveaux from Slaughter and May (counsel to Spirit) and with Paula Riedel from Linklaters (counsel to Greene King).

Iron Mountain Acquisition of Recall Holdings

Compass Lexecon was retained by counsel for Iron Mountain to analyze the competitive effects of its proposed acquisition of Recall Holdings Limited. Iron Mountain was the largest records management company in the U.S. and Canada, providing document storage and related services throughout both countries, while Recall was the second largest company providing these services both in the U.S. and Canada. Compass Lexecon performed extensive economic analyses of the competitive effects of the proposed merger, and presented these analyses to the U.S. Department of Justice and the Canadian Competition Bureau to assist counsel in crafting a small divestiture package to ultimately win the U.S. and Canadian governments' approval of the merger. The Compass Lexecon team was led by Rick Flyer and Kirupakaran Ramaiah, assisted

by Ben Xiao, Narsid Golic, Pat McQuillan and Sam Murray. The team worked closely with Iron Mountain's outside counsel led by Steve Newborn, John Scribner, Laura Wilkinson and Alexis Brown-Reilly of Weil, Gotshal, and Manges LLP.

Leslie's Pool Supplies Acquisition of Warehouse Pool Supplies

In late 2014, the Texas Attorney General (AG) office opened an investigation of possible anticompetitive effects from the previously consummated acquisition by Leslie's Pool Supplies of the Texas-based chain Warehouse Pool Supplies. The Texas AG office claimed that prices of pool supplies had increased in the areas where both chains operated stores before the merger. A Compass Lexecon team including Jon Orszag, Eugene Orlov, Dan Stone and others in our Chicago office was retained by Sean Royal and Joshua Soven of Gibson, Dunn & Crutcher LLP to analyze the competitive effects of the merger. We performed numerous econometric analyses. These analyses showed a lack of any significant price effects from the transaction, and illustrated the presence of significant competition in the relevant areas. We presented these empirical results to the Texas AG office, which closed its investigation immediately following our presentation.

Ex-Post Evaluation of Austrian Mobile Merger

Alina Goad, Thilo Klein and Jorge Padilla prepared an ex-post evaluation of the impact of the 2012 horizontal merger between H3G Austria and Orange Austria on competition in the Austrian mobile telecommunications market ("Case Study: Effects of the H3A/Orange Austria Transaction," October 2015). The study uses a before-and-after methodology to assess the merger effects on prices, investment, network quality, and consumer welfare and finds that the transaction had no discernible impact on prices but led to more network investment and better quality of service and was therefore overall pro-competitive. The report was presented to the European Commission and various national competition and telecommunications regulators and circulated among the investment community and press.

HONORS, PUBLICATIONS AND PRESENTATIONS

- Manuel Abdala authored "The Use of Economic Analysis in Latin America Competition Policy", (with Quesada, L.), in Peña, J. and Calliari, M. eds. *Competition Law in Latin America: A Practical Guide*, Kluwer Law International, 2016.
- Amy Affelt writes "The Accidental Data Scientist," a thrice-yearly column on Big Data in EContent *Magazine*. Affelt also presented "Taxonomy, Curation, and Digital Products" at the Internet Librarian Conference, Monterey, CA., October 2015; "From the Bench to the Bedside: Cutting-Edge Big Data Initiatives in Pharma and Healthcare" at the Pharmaceutical and Health Technology Division of the Special Libraries Association Spring Meeting, April 2016; "Data, Big or Otherwise: What Is It Good For?" at Reaching Across Illinois Library System, April 2016; and served as a panelist for "Better Together: Libraries in the Sharing Economy," Illinois Library Association Annual Conference, October 2015, and "Automated Wisdom: Achieving Value from Big Content," Special Libraries Association Annual Conference, June 2016.
- Clifford Ang authored the financial modeling textbook, *Analyzing Financial Data and Implementing Financial Models Using R*, Springer, 2015.

- Ang and Andrew Lin published “Understatement of the Valuation Impact of Future Stock-Based Compensation Grants: Implications from the Ancestry.com Opinion,” in *The Value Examiner*, September/October 2015.
- Jonathan Baker published “Taking the Error Out of ‘Error Cost’ Analysis: What’s Wrong with Antitrust’s Right” in *Antitrust Law Journal*, 2015, which won the American Antitrust Institute’s 2016 Jerry S. Cohen Award for Antitrust Writings. He also published “Overlapping Financial Investor Ownership, Market Power, and Antitrust Enforcement: My Qualified Agreement with Professor Elhauge,” in *Harvard Law Review Forum*, March 2016; “Evaluating Appropriability Defenses for the Exclusionary Conduct of Dominant Firms in Innovative Industries,” in *Antitrust Law Journal*, 2016; “Exclusionary Conduct of Dominant Firms, R&D Competition, and Innovation,” in *Review of Industrial Organization*, May 2016; and “Antitrust, Competition Policy, and Inequality,” (with Stephen C. Salop), in *The Georgetown Law Journal Online*, 2015.
- Hendrik Bessembinder published “Market Making Contracts, Firm Value, and the IPO Decision,” (with Jia Hao and Kuncheng Zheng), in *Journal of Finance*, October 2015 and “Predictable ETF Order Flows and Market Quality,” in *Journal of Trading*, Fall 2015.
- Dennis Carlton and Bryan Keating’s article, “Rethinking Antitrust in the Presence of Transaction Costs: Coasian Implications,” in *Review of Industrial Organization*, June 2015, won the 2016 Antitrust Writing Award for Best Academic Economics article from Concurrences Review and the George Washington University Law School Competition Law Center.
- Carlton, Mark Israel and Mary Coleman authored “Buyer Power in Merger Review,” in *The Oxford Handbook of International Antitrust Economics*, Volume 1, Roger D. Blair and D. Daniel Sokol, eds, Oxford University Press, 2015
- Carlton gave a keynote address, “Auto Distribution: Current Issues and Future Trends,” to the Federal Trade Commission, January 2016. His talk highlighted the misuse of the state action doctrine to protect certain industries including auto dealers, and he also discussed the consequences of the dramatic increase in state licensing activities as well as the link between state action and political corruption.
- Bradford Cornell published “The Self-Fulfilling Prophecy of Popular Asset Pricing Models,” (with Jason Hsu), in *Journal of Investment Management*, 2016; “Information and the Oil Price Collapse,” in *Journal of Portfolio Management Invited Article*, 2015; “Capital Budgeting: A General Equilibrium Analysis,” in *Journal of Financial Perspectives*, 2015; and “Using Dividend Discount Models to Estimate Expected Returns, in *Journal of Investing*, 2015.
- Christopher Culp published “Have Pre-Crisis Levels of Risk Returned in U.S. Structured Products? Evidence from U.S. Subprime Auto ABS, CLOs, and Insurance-Linked Securities Markets,” (with J. Paul Forrester), in *Journal of Structured Finance*, Spring 2015; “Post-Crisis Developments in U.S. Leverage Loans and CLOs,” (with J. Paul Forrester), in *BNA’s Banking Report*, August 2015; “Risks to Investors in Senior CLO Tranches, (with J. Paul Forrester), in *BNA’s Banking Report*, August, 2015; “Potential Regulatory Impacts on CLOs,” (with J. Paul Forrester), in *BNA’s Banking Report*, September 2015; and “Interest Rate Derivatives Products and Recent Market Activity in the New Regulatory Framework,” in *Handbook of Fixed-Income Securities*, Wiley 2016. Additionally, his paper “Option-Based Credit Spreads” (with Yoshio Nozawa and Pietro Veronesi) was one of two first-prize winners of the AQR Insight Award, sponsored by AQR Capital Management, which “recognizes important, unpublished papers that provide the most significant, new practical insights for tax-exempt institutional or taxable investor portfolios.”

- Christopher Culp presented “Credit Derivatives and Collateralized Loan Obligations,” a guest lecture to the “Derivatives: Uses, Abuses, and Regulation” class of Northwestern University School of Law, November 2015.
- Culp and Andria van der Merwe presented “Market Liquidity and Liquidity Risks: Post-Crisis Developments, Hazards, and Opportunities,” at the Swiss Finance Institute Wealth Management Retreat, April 2016.
- Santiago Dellepiane spoke at the International Chamber of Commerce Panama (ICC PANARB) and the Latin American Arbitration Association (ALARB) Annual Conference, March 2016, and at the Institute for Transnational Arbitration (ITA) Annual Workshop, June 2016.
- Allen Ferrell and Andrew Roper published, “Price Impact, Materiality, and Halliburton II” in *Washington Law Review* 2016.
- Urs Haegler published “Mergers and Market Definition: Does a Focus on ‘Value Added’ Add Value?” (with Peter Davis) in *Journal of European Competition Law and Practice*, 2016.
- Urs Haegler and Krishna Nandakumar published “Efficiencies Under 101(3) TFEU-Did the Commission Go Far Enough in A++?” in *Competition Law and Policy Debate*, March 2016.
- Mark Israel published “Antitrust in a Mobile World,” (with Yonatan Even, Jonathan M. Jacobson, Scott Martin, and Dr. Helen Weeds), in *International Antitrust Law & Policy: Fordham Competition Law 2015*, edited by James Keyte, Juris Publishing, Inc., 2016.
- Israel was a panelist at American Bar Association Section of Antitrust Law, “Economic Issues Raised In The Comcast – Time Warner Cable Merger,” February 2016; Fordham Competition Law Institute, 42nd Annual Conference on International Antitrust Law and Policy, Panel: Antitrust in a Mobile World, October 2015; Searle Center Conference on Antitrust Economics and Competition Policy, Panel on Recent Transactions in the Telecom Industry, September 2015; and National Bureau of Economic Research, Summer Institute 2015, Industrial Organization Meetings, “Panel Discussion of the Comcast-Time Warner Merger,” July 2015. Israel was a Faculty Member at the American Bar Association Section of Antitrust Law, “Merger Practice Workshop,” October 2015.
- Jith Jayaratne and Wei Tan published “Cross Border Merger Controls and Notifications in the Asean Context,” (with Laurence Idot), in *Concurrences Review*, February 2016.
- Bryan Keating presented “Et tu?: Where are private cartel actions in Europe headed?” at Global Competition Review Live Cartels, April 2016.
- Darin Lee and Ethan Singer published “Product Unbundling in the Travel Industry: The Economics of Airline Bag Fees” (with Jan K. Brueckner and Pierre Picard) in *Journal of Economic Management & Strategy*, Fall 2015.
- Janusz Ordoover and Jith Jayaratne authored “Coordinated Effects: Evolution of Practice and Theory,” in R.D. Blair and D.D. Sokol (eds.), *The Oxford Handbook of International Antitrust Economics*, Oxford University Press, 2015.
- Eugene Orlov published “The Effect of the Internet on Performance and Quality: Evidence from the Airline Industry,” (with Itai Ater), in *Review of Economics and Statistics*, March 2015.
- Jonathan Orszag authored “State Involvement in a Market Economy: Principles to Guide Interventions and a Discussion about Network Industries,” in *Antitrust in Emerging and Developing Countries*, edited by Eleanor Fox, Harry First, Nicolas Charbit, and Elisa Ramundo, *Concurrences Review*, 2016.

- Orszag was a panelist at “Setting the Stage: State Involvement in A Market Economy,” Concurrences Review and New York University School of Law Conference on “Antitrust in Emerging and Developing Economies: Africa, Brazil, China, India, Mexico...,” October 2015.
- Jorge Padilla published “The Role of Economics in EU Competition Law: From Monti’s Reform to the State Aid Modernization Package,” in *Concurrences Review*, May 2016; “Revisiting the Controversy Over IIEEE’s New Patent Policy,” as part of “Standard Setting Organizations and Processes: Challenges and Opportunities for Competition and Innovation,” (with Josef Drewxl, Sangwoo Kim, and James Killick), *New Frontiers of Antitrust, Concurrences Journal 6th International Conference*, June 2015; “The Intel Controversy: An Introduction,” (with Lars Kjolbye and Robbert Snelders), in *Competition Law and Policy Debate*, February 2015; and “Efficiencies in Antitrust and Merger Control,” in *Competition Law and Policy Debate*, March 2016.
- Padilla and Valerie Meunier published “Should Reverse Payment Patent Settlements be Prohibited Per Se?” in *Ian S. Forrester, A Scot without Borders - Liber Amicorum - Volume II, Concurrences*, September 2015.
- Jorge Padilla and Damien Neven published “Antitrust, Regulatory Capture, and Economic Integration,” (with Mario Mariniello), in *Bruegel*, July 2015.
- Padilla, Enrique Andreu, Nadine Watson, and Elena Zoido published “Estimating Cartel Damages in the European Union,” in *The Private Competition Enforcement Review*, 2016 and “The Economics of the UPS/TNT Case Revisited: Implications for the Future,” in *Competition Policy International*, July 2015.
- Jorge Padilla spoke on a panel, “Is Territoriality Still Meaningful?” at the 7th International Concurrences Review Conference, June 2016, Paris, France. His viewpoints were discussed in an article, “Padilla: Territoriality Is Over,” in *Global Competition Review*, June 2016. He also presented “Advanced Topics in the Economics of IP Licensing - Choosing the Right Royalty Base, Licensing Level, and Bundling Scope,” GCR’s Live Conference, May 2016; “Calculating FRAND Royalty Payments in Practice” , J&A Garrigues SLP, June 2016; “Innovation, Competition and Economic Growth – An Economist’s Viewpoint,” The Association of European Competition Law Judges (AECLJ), June 2016; and “Extraterritorial Competition Law Enforcement and Trade Liberalisation - On the strategic use of competition law enforcement as a trade tool,” *New Frontiers of Antitrust, Concurrences Journal 7th International Conference*, June 2016.
- Frederic Palomino was interviewed by France Info (a news radio network) on CEO compensation and corporate governance and appeared in the TV Program “les decodeurs de l’eco” on BFMTV (a news TV network) in a debate on CEO compensation.
- Daniel Rubinfeld published “The Hidden Costs of Free Goods: Implications for Antitrust Enforcement,” (with Michal Gal), in *Antitrust Law Journal*, 2016, and “Improving Antitrust Sanctions,” in *Global Antitrust Economics: Current Issues in Antitrust Law and Economics*, March 2016.
- David Sevy presented at the Concurrences Law & Economics workshop in Paris, “Competition in the transport section – What’s new since the liberalization?” October 2015.
- Loren Smith published “Can Entry or Exit Event Studies Inform Horizontal Merger Analysis? Evidence from Grocery Retailing” (with Daniel S. Hosken and Luke M. Olson) in *Economic Inquiry*, January 2016.

- Smith and Maria Stoyadinova published “The Prominence of Market Definition in Antitrust Evaluation and Litigation” in *Global Antitrust Economics: Current Issues in Antitrust Law and Economics*, March 2016.
- Smith was a panelist at the Global Antitrust Economics Conference, George Mason School of Law, May 2015, and at the Global Competition Review Live Second Annual Antitrust Litigation USA, June 2016.
- Wei Tan published “A Simple Estimator for Dynamic Models with Serially Correlated Unobservables,” (with Yingyao Hu, Matthew Shum, and Ruli Xiao), in *Journal of Econometric Methods*, November 2015; “Which competition policy for China?” (with Zhan Hao and Angela Zhang), in *Concurrences Review*, September 2015; and “China’s Antitrust Policy: Recent Developments and Decision Patterns,” (with Su Sun and Sebastien Evrard), in *Emerging Markets Finance and Trade*, April 2015.
- Tan was a panelist for “IP Roundtable, The Application of Antitrust Law to the Internet and Intellectual Property,” at the Application of Antitrust Law to the Internet and Intellectual Property Conference, Beijing, China, December 2015; “Workshop on Non-Practicing Entities,” Renmin University of China, Beijing, December 2015; and “Private Antitrust Enforcement in China,” New Frontiers of Antitrust, Paris, France, June 2015.
- Andria van der Merwe published, *Market Liquidity Risk: Implications for Asset Pricing, Risk Management, and Financial Regulation*, Palgrave Macmillan, June 2015. She was also appointed as a Research Fellow at the Johns Hopkins Institute for Applied Economics, Global Health, and Study of Business Enterprise.
- David Weiskopf and Georgi Giozov published “Hicks-Marshall Conditions and Defining Antitrust Markets for Intermediate Goods,” (with James Langenfeld, and Jonathan T. Tomlin) in *Economic and Legal Issues in Competition, Intellectual Property, Bankruptcy, and the Cost of Raising Children (Research in Law and Economics)*, 2015.
- Weiskopf and Mary Coleman presented “Economic Analysis of Retail Mergers,” to the Antitrust Practice Group of Arnold and Porter, May 2016.
- Weiskopf and Bryan Keating presented at the ABA Antitrust Mock Trial, April 2015, and at the Antitrust Law and Economics Institute for Judges, co-sponsored by the ABA Antitrust Section, George Mason University Law School, and the Federal Judicial Center, October 2015.

If you would like to find out more details about our work or our experts, please feel free to email or call either of us.

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