



February 2011

Compass Lexecon's 2010 Client Newsletter

Compass Lexecon had a very successful year in 2010. We added new affiliations with several world-class experts including Robert Engle (a professor of finance at NYU and the winner of the 2003 Nobel Prize in Economics), Allen Ferrell (a professor of finance at Harvard Law School), Douglas Lichtman (a professor at UCLA and a nationally recognized expert in intellectual property rights), and Scott Meadow (a professor of private equity and entrepreneurship at the University of Chicago). As a result, our preeminent competition, finance, energy, intellectual property, and general litigation practices are now stronger than ever. We have developed cutting-edge expertise and experience in a range of areas, including credit markets, derivatives and credit default swaps, hedge funds, private equity, the use of innovative econometric techniques to analyze the competitive and synergistic effects of mergers (in particular with regard to hospital and airline mergers), economic analysis of the requirements for class certification, sophisticated tests of the competitive effects and rationales of challenged business practices, and the determinants of energy prices.

In 2010, as in past years, we continued to be retained in a high percentage of the biggest and most complex cases and transactions. Our merger practice was retained on just about every large merger or acquisition including Ticketmaster-Live Nation, Oracle-Sun, Comcast-NBCU, United Airlines-Continental Airlines, Google-AdMob, Microsoft-Yahoo, and Cisco-Tandberg. We are particularly pleased that the *Global Competition Review (GCR)* concluded that “Compass Lexecon reigns supreme once more” in its recent rankings of the best economic consulting firms. We are also proud of the selection of Compass Lexecon expert Janusz Ordover as the *GCR*’s “Economist of the Year.”

Similarly, our finance practice worked on the biggest and most prominent cases in 2010 including Terra Firma v. Citigroup, the Madoff litigation, British Petroleum oil spill litigation, the Lehman and Tribune bankruptcies, high stakes cigarette litigation, major investigations and litigation involving the Securities and Exchange Commission and other regulatory agencies, criminal cases, as well as numerous cutting edge cases in Delaware.

We are also pleased to announce that we have revamped our website for 2011. We hope that you will visit it at www.compasslexecon.com.

The major highlights of our consulting practice since our 2010 newsletter are described below.

LITIGATION AND OTHER MATTERS

Terra Firma v. Citigroup

In November 2010, a federal court jury rejected a multi-billion dollar damage claim brought by Terra Firma, a British private equity firm, and returned a defense verdict on behalf of Citigroup, represented by Ted Wells, Jay Cohen, Jack Baughman, Gary Carney, Dan Levi, George Kroup and others at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison LLP. The trial, which attracted widespread publicity in both the United States and the United Kingdom, was presided over by Judge Jed Rakoff in the Southern District of New York. Terra Firma alleged that it purchased EMI as a result of misrepresentations by Citigroup. Terra Firma originally sought over \$8 billion in damages plus punitive damages and hired three experts who issued reports supporting this claim. Compass Lexecon's Daniel Fischel issued a report in response which strongly criticized plaintiff's three experts and concluded that plaintiff suffered no damages. Both sides then filed Daubert motions. Judge Rakoff excluded two of the three plaintiff's experts and after a hearing, limited the testimony of the third which lowered the potential recoverable damages significantly. At trial, plaintiff's remaining expert testified that Terra Firma suffered \$2 billion in damages. Professor Fischel then testified about the results of various economic studies which exposed the flaws in plaintiff's damage claim and demonstrated that the proper measure of damages was zero. After closing arguments, the jury returned a complete defense verdict. Professor Fischel was assisted by a team in Compass Lexecon's Chicago office including David Gross, Jessica Mandel, Rahul Sekhar, Laurel Van Allen, Jerry Lumer, Tim McAnally, Cliff Ang, David Strahlberg, Otto Hansen and Zach Frankel.

Hammons Hotels Shareholder Litigation

In this recent case, Chancellor William B. Chandler III of the Delaware Chancery Court ruled that the merger consideration and other aspects of the transactions that merged John Q. Hammons Hotels (JQH) into an independent third party acquisition company were fair. Defendants claimed that, among other things, Hammons and other directors breached their fiduciary duties by negotiating a merger that conferred special benefits on Hammons, the controlling shareholder of JQH and that the price paid to public shareholders was inadequate. Professor Kenneth Lehn, now a Compass Lexecon affiliate, was retained by Alan Stone of Milbank Tweed Hadley & McCloy LLP to analyze the valuation claims in the case and testify about these issues at trial. Chancellor Chandler described the valuation evidence as a "battle of the experts" and determined that Lehn's opinion "was far more credible and persuasive than plaintiffs'" expert.

Appellate Class Certification Decision in ERISA Litigation

On January 21, 2011, the United States Court of Appeals for the Seventh Circuit in an important ruling with broad implications vacated the district court's order certifying a class in Beesley et. al, v. International Paper Company, et. al. and remanded the case for further proceedings consistent with its opinion. Among other things, the Court of Appeals found that in the context of a defined contribution plan "a fund that turns out to be an imprudent investment over a particular time period for one participant may be a fine investment for another participant

who invests in the same fund over a slightly different period. If both are included in the same class, a conflict will result and class treatment will become untenable.” Compass Lexecon expert David Ross supported by Laurel Van Allen and Gina Vinogradsky of our Chicago office provided a report concerning class conflicts on behalf of the Defendants, who were represented by Greg Braden and others at Morgan, Lewis & Bockius LLP. Ross has provided a similar analysis in other ERISA cases around the country.

Genetically Modified Rice Cases

Compass Lexecon has been involved in the ongoing litigation related to the release of genetically modified rice into the domestic US rice supply by Bayer CropSciences in 2006. Hundreds of cases have been filed by US rice farmers and millers claiming they were damaged by the release because various countries curtailed rice imports in response to concerns that US rice might contain traces of genetically modified rice. We were retained by Bartlit Beck Herman Palenchar & Scott LLP on behalf of Bayer CropScience to estimate damages to US rice farmers and millers. Compass Lexecon experts and affiliates submitted reports in a number of cases, only one of which has gone to trial at this point. In that case, Compass Lexecon affiliate David K. A. Mordecai testified on behalf of Bayer, and the jury accepted his estimate of damages and rejected plaintiff’s experts’ estimate. Compass Lexecon experts Professor Daniel Fischel and Dr. Gustavo Bamberger have submitted reports in other cases, and Dr. Vincent Warther and Lynette Neumann headed up the support teams in the Chicago office. In connection with our work in these cases, we have worked with Mark Ferguson, Eric Olson, Glen Summers, John Hughes, Les Houtz and others at the Bartlit Beck firm.

Securities and Exchange Commission v. Pattison

A federal court jury in San Francisco found that Compass Lexecon’s client, Michael Pattison, was not liable for alleged securities fraud, aiding and abetting securities fraud, or aiding and abetting the filing of misleading reports in connection with an alleged options backdating scheme. Compass Lexecon expert Professor Kenneth Lehn testified on behalf of Pattison regarding materiality, which jury polling after the trial confirmed was the single largest factor in the jury’s verdict. (The jury did find Pattison liable for books and records violations under rule 13b2-1 and 13b5, which do not have materiality as an element.) Pattison was represented by Patrick J. Richard and James H. Vorhis of Nossaman LLP. The Compass Lexecon team included David Ross, Jessica Mandel, Anne Marie Yale, Peter Clayburgh and Laura Sekhar of our Chicago office.

Northeast Savings v. United States

Compass Lexecon’s Daniel Fischel was retained by the U.S. Department of Justice to rebut a nine figure lost profits damage claim brought by a savings and loan following the decision by the U.S. Supreme Court in U.S. v. Winstar. At trial, Professor Fischel demonstrated that plaintiff’s lost profits damage claim was conceptually flawed because it incorrectly equated increased size with increased profitability when the reverse was more likely to be true under the facts and circumstances of the case. Professor Fischel further demonstrated that the key assumptions underlying plaintiff’s expert’s analysis about size, composition of assets, and the

profitability of those assets were speculative, implausible, and contradicted by the relevant economic evidence. Professor Fischel concluded that Northeast suffered no lost profits damages and, if anything, was benefitted by the government's breach. Judge Mary Ellen Williams of the Federal Court of Claims rejected plaintiff's lost profits damage claim in its entirety and awarded no damages. Judge Williams' decision was based in substantial part on Professor Fischel's trial testimony which she discussed extensively and cited favorably in her opinion. Judge Williams also relied on and quoted from earlier Winstar cases where other courts similarly relied on Professor Fischel's testimony in reaching favorable results for the government. Professor Fischel was assisted by David Ross, Jessica Mandel and others in Compass Lexecon's Chicago office.

Securities and Exchange Commission v. Mozilo

In one of the most prominent cases arising from the financial crisis, the Securities and Exchange Commission sued Angelo Mozilo and other executives for securities fraud and insider trading related to their work running Countrywide Financial and its mortgage businesses. David Siegel, Dan Lefler, and Chad Elder at Irell & Manella LLP engaged Compass Lexecon affiliate Professor Kenneth Lehn to testify about materiality of alleged misstatements and Compass Lexecon affiliate Professor Christopher Culp to testify about the financial crisis and its effect on Countrywide's operations. David Gross supervised a team at Compass Lexecon Chicago office, including Mike Keable, Peter Clayburgh, Andrea Neves, Sam Hollander, Laura Sekhar, Anne Marie Yale, and George Hickey. After depositions, the Defendants settled with the SEC on the eve of trial on favorable terms that were widely described as a "slap on the wrist" in the press.

Med Immune v. PDL BioPharma

We were retained in this case by Gerson Zwifach and Paul Gaffney of Williams & Connolly LLP on behalf of their client, MedImmune. The case involved a suit by MedImmune against PDL claiming that it was overcharged and seeking recoupment of patent royalties previously paid on the respiratory drug Synaxis. Compass Lexecon expert Daniel Rubinfeld filed four separate reports in the case on damages -- ranging from patent infringement to various breach-of-contract claims -- and was also deposed. The case recently settled for \$92.5 million with MedImmune having no further obligation to make royalty payments. Professor Rubinfeld was supported by Daniel Ingberman who was assisted by Vijay Krishnan and Simon Rosen in the Oakland office.

SoundExchange Royalty Rate Setting Proceeding

Compass Lexecon's Janusz Ordovery provided testimony on behalf of SoundExchange in a matter before the Copyright Review Board (CRB) to determine digital performance royalty rates for webcasters for the 2011-2015 period. Professor Ordovery's analysis and testimony focused on the question of whether rates already negotiated and agreed to by SoundExchange and certain webcasters, most notably the National Association of Broadcasters and Sirius-XM, offered probative evidence of the range of rates that would be obtained under the willing buyer-willing seller standard that the CRB, by statute, is required to follow. The CRB judges, citing Professor Ordovery's opinions favorably, determined a rate schedule roughly in-line with the

schedule put forward by SoundExchange, and substantially greater than the rate put forward by the petitioner (Live365). Compass Lexecon was retained by David Handzo of Jenner & Block. Professor Ordoover was assisted by Doug Fontaine and Assaf Eilat in Compass Lexecon's Oakland office.

ESCO Corporation v. Bradken Resources PTY Ltd.

In what started out as a dispute seeking clarification over certain terms of a licensing agreement between U.S.-based ESCO Corporation and its Australian licensee (Bradken Resources), Bradken asserted antitrust violations by ESCO and submitted a claim seeking significant antitrust damages. Compass Lexecon was retained by ESCO and formed a team led by Professors Ben Klein and Kenneth Lehn. Professor Klein addressed liability issues related to Bradken's antitrust claims and portions of Bradken's antitrust damages analysis. Professor Lehn addressed elements of Bradken's antitrust damages in a separate expert report. Following arbitration before the International Chamber of Commerce, the arbitrator rejected Bradken's antitrust claims, affirmed ESCO's contract positions, and awarded ESCO compensation for legal fees and costs. The arbitrator cited favorably the arguments and analyses in Professor Klein's reports and testimony in his decision, and the outcome was a complete victory for ESCO. Compass Lexecon worked with Tim Muris and Christine Wilson of O'Melveny & Myers LLP and Randy Foster of Stoel Rives LLP. Michael Smith led the support teams for Professors Klein and Lehn out of Compass Lexecon's Century City office.

Lehman Auction Rate Securities Arbitration

Compass Lexecon expert Christopher Culp testified regarding the dynamics of the auction rate securities market before, during, and following the financial crisis at a FINRA arbitration hearing on behalf of Lehman Brothers, Inc. and certain of its employees. A former corporate client of Lehman's asserted several causes of action against Lehman, including breach of contract, breach of fiduciary duty, and failure to supervise. Following a two-week hearing in Philadelphia, the three-member panel returned a decision denying Claimant's claims in their entirety and ordering Claimant to pay the entirety of the forum fees. Compass Lexecon worked with Robert Gaffey, Philip Cook, and Sevan Ogulluk of Jones Day and Theodore Krebsbach and Theodore Snyder of Krebsbach & Snyder PC. Professor Culp was supported by Kevin Dages, George Hickey, Laura Sekhar, and Matt Olson of Compass Lexecon's Chicago office.

Wyatt Energy v. Motiva Enterprises

On January 11, 2010, relying heavily on the testimony of Compass Lexecon expert Joseph Kalt, Connecticut Superior Court Judge J. Cremins issued a Memorandum of Decision in Wyatt Energy, Inc. v. Motiva Enterprises, LLC in favor of our client, Motiva. Wyatt had unilaterally terminated a contract by which it leased a petroleum products terminal in New Haven, Connecticut to Motiva. Motiva claimed the termination was a wrongful breach of the contract and that it was entitled to damages. Wyatt claimed the termination was justified by Motiva's alleged violation of antitrust law. Plaintiff's expert testified that Motiva had acquired monopoly power in the market for terminal services in Connecticut as a result of Motiva's acquisition of a petroleum products terminal in New Haven from Cargill. Professor Kalt

provided written and oral testimony at trial explaining that Wyatt's expert had incorrectly defined the relevant market and had improperly ignored the various institutional arrangements that provide competitive discipline in the market. Professor Kalt concluded that Motiva's acquisition of the Cargill terminal did not create market power. After citing extensively from Professor Kalt's testimony, the Memorandum of Decision states: "With respect to the attempted monopolization claim, the court adopts Kalt's testimony ... and finds that Motiva's acquisition of the Cargill terminal did not create a dangerous probability that Motiva would achieve market power in the relevant product and geographic market." Professor Kalt was supported by Charles Augustine and a team in Compass Lexecon's Cambridge office. Compass Lexecon was retained by Paul Sanson of Shipman & Goodwin LLP.

In re ACS Shareholder Litigation

Plaintiff shareholders filed class action suits in both the Court of Chancery of the State of Delaware and in Texas state court challenging the consideration and terms of the merger agreement between Xerox Corporation and Affiliated Computer Services, Inc. (ACS) in Xerox's \$6.4 billion acquisition of ACS. Compass Lexecon expert Daniel R. Fischel submitted an initial expert report and rebuttal report to the Delaware court on behalf of the Special Committee of the ACS board of directors, demonstrating that the economic evidence did not support plaintiffs' claims and rebutting the claims of plaintiffs' expert about the fairness of the consideration. Compass Lexecon expert Charles C. Cox submitted an expert report on behalf of Xerox and ACS to the Texas court rebutting the claims of plaintiffs' expert about the fairness of the deal. On May 19, 2010, Xerox disclosed that it had resolved the Delaware and Texas litigation for a combined settlement equal to a small fraction of the amount sought by Plaintiffs. David Ross, Jessica Mandel, Laurel Van Allen, Jonathan Polonsky, and David Strahlberg of Compass Lexecon's Chicago office assisted in the analysis. We worked with Kevin Abrams and Tom Bayliss of Abrams & Bayliss LLP and Gary Bornstein of Cravath, Swaine & Moore LLP.

Darren Berry, et al. v. Volkswagen of America, et al.

In April 2010, our client Volkswagen settled a class action case involving allegedly defective window regulators (on certain models windows would spontaneously fail, becoming stuck and sometimes slipping down). Plaintiffs demanded approximately \$40 million based on out-of-pocket damages and a "Benefit of the Bargain" theory. Compass Lexecon expert Janusz Ordover testified at deposition that the correct reasonable damages were approximately \$900,000. The parties settled on terms where VW is estimated to pay out an amount less than Professor Ordover's damages estimate. Compass Lexecon worked with Jeffrey Chase and Daniel Gsovski of Herzfeld & Rubin, P.C. Bradley Reiff and Wendy Petropoulos of Compass Lexecon's Chicago office worked with Professor Ordover.

John M. Dewey, et al. v. Volkswagen of America, et al.

In June 2010, Compass Lexecon expert Janusz Ordover testified at deposition on behalf of Volkswagen and Audi on the appropriate valuation of a class action settlement involving alleged defects that led to water ingress in certain vehicles. Professor Ordover testified that plaintiffs' expert overstated the settlement's benefits to class members by double-counting the

cost of Volkswagen's and Audi's repair of vehicles pursuant to the settlement and avoided future costs to class members as a result of the repairs. In a written opinion, Judge Patty Schwartz of the United State District Court of the District of New Jersey agreed, concluding that plaintiffs' experts' valuation included double-counting, among other errors, and dramatically reduced the estimated benefits from the settlement. Compass Lexecon worked with Jeffrey Chase and Daniel Gsovski of Herzfeld & Rubin P.C. Bradley Reiff and Wendy Petropoulos of Compass Lexecon's Chicago office worked with Professor Ordover.

Baxter International Inc. ERISA Litigation

Plaintiffs filed a case under ERISA alleging breaches of fiduciary duties by Baxter and several related defendants. Compass Lexecon expert Daniel Fischel filed reports on behalf of the defendants demonstrating that the economic evidence is inconsistent with plaintiffs' claim that the Baxter Common Stock Fund was an imprudent investment and that plaintiffs' experts' causation and damages analyses were flawed. On May 3, 2010, Judge Gottschall of the U.S. District Court for the Northern District of Illinois Eastern Division granted defendants' motion for summary judgment and denied plaintiffs' motion for partial summary judgment. A team from our Chicago office including Mike Keable, Kevin Dages, Jen Milliron, Gina Vinogradsky, Cliff Ang, and Evan McKay worked on the case. We worked with Matt Kipp, Donna McDevitt, and Andrew Fuchs of Skadden, Arps, Slate, Meagher & Flom LLP.

Cantor Fitzgerald v. American Airlines

Cantor Fitzgerald, a financial services company which had offices in the World Trade Center, sued American Airlines, alleging negligence in permitting hijackers to board and capture one of the airplanes that destroyed the buildings on September 11, 2001. In May 2010, Cantor's economic damages expert filed a report alleging that Cantor suffered lost profits of over \$950 million due to declines in market share after the 9/11 attack. Counsel for American Airlines retained Compass Lexecon expert Professor Daniel Fischel to assess this damages claim. In January 2011, American Airlines won a motion for summary judgment which severely limited Cantor's claim. In his ruling, Judge Alvin Hellerstein rejected Cantor's damages claim, agreeing that Cantor's expert's methodology was unable to distinguish between lost profits caused by deaths and injuries of employees, which are not allowable under New York law, and losses caused by other factors. Professor Fischel was supported by Todd Kendall and others in Compass Lexecon's Chicago office. We worked with Roger Podesta and Maura Kathleen Monaghan of Debevoise & Plimpton LLP, and Desmond T. Barry, Jr. and Michael J. Peterson of Condon & Forsyth LLP.

eBay v. craigslist

In this nationally publicized case, eBay filed suit in Delaware Chancery Court against craigslist and craigslist's directors. eBay sought to require craigslist to rescind its poison pill and a share issuance to craigslist's directors that diluted eBay's ownership interest in the company. Compass Lexecon expert Daniel Fischel testified at deposition and filed an expert report that was admitted at trial demonstrating that the poison pill and share issuance caused disproportionate harm to eBay and disproportionate benefits to the craigslist directors. Chancellor William

Chandler ordered craigslist to rescind the poison pill and share issuance, finding craigslist's directors violated their fiduciary duties to eBay. Jerry Lumer, Rajiv Gokhale and Laurel Van Allen of Compass Lexecon's Chicago office assisted in the analysis. We worked with William Lafferty of Morris, Nichols, Arsht & Tunnell LLP.

Securities and Exchange Commission v. Dell Inc. and Michael Dell

The SEC alleged that Dell did not disclose the effect of discounts Dell received from Intel on the Company's financial results and the effect that Dell's sourcing of processors from AMD would have on these discounts and the Company's future profitability. Compass Lexecon expert Allen Ferrell filed a report demonstrating that there was no systematic relationship between the size of the discounts received from Intel and Dell's profits and that when Dell disclosed that it would begin sourcing processors from AMD, Dell's stock price was not affected. Compass Lexecon experts Daniel Fischel and Kenneth Lehn also filed a report demonstrating that the alleged undisclosed information was publicly available and that additional disclosures of the Intel discounts would not have affected Dell's stock price. The case settled on very favorable terms. Professors Ferrell, Fischel, and Lehn were assisted by David Gross and Mike Keable in Compass Lexecon's Chicago office. We worked with John Savarese and Wayne Carlin of Wachtell, Lipton, Rosen & Katz and David Zornow and Charles Walker of Skadden, Arps, Slate, Meagher & Flom LLP.

Liquified Petroleum Gas Arbitration

Compass Lexecon expert Kenneth Grant was retained by a South American gas processor (Respondent) in an international arbitration matter initiated by an international oil company (Claimant). The dispute focused on the prices paid by Claimant for certain volumes of liquefied petroleum gas (LPG) purchased from Respondent under a long-term contract. Mr. Grant's analysis demonstrated that Claimant's theory of harm and measure of damages were at odds with the economics governing the supply of and demand for LPG, Claimant's own actions, and the *ex ante* information available to market participants. The Tribunal, in finding for the Respondent, relied on the framework put forth by Mr. Grant and the Compass Lexecon team. In so doing, it denied Claimant's harm of \$90.4 million dollars plus interest, while awarding Respondent recovery of its legal costs. Mr. Grant was assisted by a team in our Boston office, including Nancy Bonn as well as others. We worked with Guy Miller Struve, James Kerr and Josh Liston from Davis Polk & Wardwell LLP who successfully defended the Claimant.

CBOE, Dow Jones, and McGraw-Hill v. International Securities Exchange

In this case, the International Securities Exchange sought to offer options based on the Dow Jones Industrial Average and the S&P 500 without a license. Professor Dennis Carlton of Compass Lexecon acted as the economic expert for the CBOE, Dow Jones and McGraw-Hill who opposed this action, and offered testimony on the relevant economics of intellectual property rights. On July 8, 2010, Judge William Maki of the Circuit Court of Cook County granted summary judgment in favor of Compass Lexecon's clients and enjoined the International Securities Exchange from offering such options without a license. We worked with Robert LoBue, Adeel Mangi and Elizabeth Shofner at Patterson Belknap Webb & Tyler LLP; Stacie

Hartman and Paul Dengel at Schiff Hardin LLP; and Mark Fiore and Benjamin Marks at Weil, Gotshal & Manges LLP. David Ross, Allan Shampine and others in Compass Lexecon's Chicago office worked with Professor Carlton on the case.

AIG Securities Litigation

In this securities fraud case, U.S. District Judge Deborah Batts denied class certification for AIG bonds and sharply limited the remainder of plaintiffs' case due to the failure of plaintiffs and their expert to demonstrate loss causation. Moreover, Judge Batts rejected plaintiffs' claim that 10% is the generally accepted level in financial economics for event study statistical significance. Compass Lexecon expert Charles Cox testified on behalf of AIG that the economic evidence did not establish market efficiency for AIG bond markets and rebutted the testimony of plaintiffs' expert on market efficiency, statistical significance, loss causation, and economic methodology. Judge Batts cited Dr. Cox's testimony favorably in her opinion. Dr. Cox was supported by Laurel Van Allen in Compass Lexecon's Chicago office. We worked with Daniel J. Leffell and Daniel J. Kramer of Paul, Weiss, Rifkind, Wharton & Garrison LLP.

Natural Gas Contract Price Review in Western Australia

Compass Lexecon expert Professor Joseph Kalt provided written and oral testimony on behalf of a joint venture of prominent Western Australia natural gas producers in an arbitration to determine the price under a high-volume, long-term natural gas contract. The North West Shelf Joint Venture (NWSJV), consisting of major natural gas producers in Western Australia, invoked the price review clause under its agreement with the region's primary domestic reseller, Alinta. Professor Kalt assessed the fair market value of gas in Western Australia. He found that supply and demand conditions for natural gas in Western Australia were tight and that the price existing under the contract greatly undervalued natural gas compared to contemporaneous transactions in the marketplace. Professor Kalt presented oral testimony before the arbitrator and the arbitrator issued an award reflective of the economics put forth by Professor Kalt. The case was subsequently settled. The settlement provides Compass Lexecon's clients with substantial payments of many millions of dollars in arrears, and with a rising price path going forward under the contract. Compass Lexecon's clients were Woodside Energy, BHP Billiton, BP Developments, Chevron Australia, and Shell Development which were represented by a team of solicitors led by Paul Evans of Freehills and barrister Christopher Zelestis of Francis Burt Chambers. Professor Kalt was primarily assisted by Eric Henson, Sean Small, Diane Lee, and Marc Wiesenberger.

DOJ Investigation of Wireless Messaging Fees

In early 2009, the U.S. Department of Justice began an investigation of alleged collusion between wireless carriers in setting text messaging fees. Compass Lexecon assisted Verizon Wireless in evaluating these claims. Professor Dennis Carlton, supported by a team in Compass Lexecon's Chicago office including Hal Sider, Allan Shampine and Todd Kendall, presented an analysis to the Department of Justice which demonstrated that Verizon Wireless' pricing was inconsistent with collusive behavior. The analysis also showed that average per-text rates had fallen substantially during the alleged conspiracy period and demonstrated the consumer benefits

resulting from Verizon Wireless' pricing practices. The Department of Justice closed its investigation without taking any action. We worked with John Thorne and Rob Griffen, in-house counsel for Verizon.

Seminal Cases on Contract Sanctity in Regulated Industries

In two recent Supreme Court amicus filings, Compass Lexecon experts Professors Joseph Kalt and Robert Willig demonstrated that standards applied by the lower courts regarding regulated industries would inappropriately expose contracts between two parties to additional, extended risk as third parties could bring action against existing contracts without having to meet the rigorous public interest standard mandated by the Mobile-Sierra doctrine. The amicus filings urged the Supreme Court to apply the Mobile-Sierra doctrine and affirm its vital role in protecting contractual commitments in regulated industries. The U.S. Supreme Court agreed and held in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County* that a power sales agreement freely negotiated between two parties was protected by the Mobile-Sierra public interest standard. Similarly, in *NRG Power Marketing, LLC, et al. v. Maine Public Utilities Commission, et al.*, the Supreme Court applied the same logic, stating that "Parties' inability efficiently to allocate risk in the long run will increase prices and stifle necessary investment in needed energy infrastructure."

Merrill & Ring Forestry v. Canada NAFTA Arbitration

Merrill & Ring Forestry, a timberland owner in British Columbia, brought an arbitration seeking damages against Canada for violation of investor protections accorded under Chapter 11 of NAFTA. David Reishus of Compass Lexecon's Boston office testified on behalf of Canada regarding the economic requirements for the determination of damages. In March, the ICSID tribunal split on whether NAFTA had been violated, but unanimously found that there was no demonstration of past or future damages. We worked directly for the Canadian Trade Law Bureau of the Department of Foreign Affairs and International Trade, including Sylvie Tabet, Scott Little, and Rahool Watchmaker.

DMX Rate Setting Litigations: BMI v. DMX and ASCAP v. DMX

Compass Lexecon represented DMX in two separate rate setting litigations in connection with license fees for public performances of music from affiliates of the performing rights organization Broadcast Music Inc. (BMI) and the American Society of Composers, Authors and Publishers (ASCAP). In a decision issued in July 2010, the BMI Rate Court set the blanket license at \$18.91 per location, less than half of the fee that BMI requested, with the ability of DMX to further adjust downward the license fee based on the percentage of performances that are directly licensed. In a second decision issued in December 2010, the ASCAP Rate Court awarded DMX the rates that it sought from ASCAP, setting DMX's blanket license fee at a rate that is substantially lower than the prevailing background music industry rate and providing DMX with an adjustable fee license structure so that DMX can further reduce its rates based on its direct licensing activity. Compass Lexecon expert Amy Candell in the Boston office provided written and oral testimony for DMX in both cases, with support from colleagues Nancy Bonn and Patrick Lavender. We worked with a team from Weil, Gotshal & Manges LLP including Bruce Rich and Benjamin Marks.

Cordis Corp. v. Boston Scientific Corp. and Scimed Life Systems, Inc.

Last February, Boston Scientific agreed to pay \$1.725 billion to our client, a unit of Johnson & Johnson, to settle claims of infringement of patents for coronary stents. As reported in *The New York Times*, this was “the largest sum ever paid to resolve patent litigation over a medical device.” Compass Lexecon’s Daniel Fischel provided two Expert Reports and deposition testimony during the extended dispute, and Rajiv Gokhale issued a Declaration. Professor Fischel estimated Boston Scientific’s profits from infringement and also opined that the benefits of the infringement to Boston Scientific and its executives justified the possibility of an enhanced penalty for willful infringement. Gokhale filed a Declaration focused on Boston Scientific’s financial condition. We were retained by and worked with Greg Diskant and Kim Landsman of Patterson Belknap Webb & Tyler LLP. The Compass Lexecon team in Chicago included Brad Reiff and Tim Guimond.

Dynegy Acquisition Litigation

A motion for a temporary injunction was filed in the District Court of Harris County, Texas, 234th Judicial District, seeking to enjoin Blackstone Group, L.P.’s proposed buyout of Dynegy Inc. Dynegy shareholders claimed that the offer significantly undervalued the company. Compass Lexecon expert, Professor Daniel Fischel, was retained by counsel for Dynegy to analyze Dynegy’s share price movements prior to the announcement of the proposed buyout and whether the offer was beneficial to Dynegy shareholders. Professor Fischel provided deposition testimony and the case subsequently settled on extremely favorable terms prior to the injunction hearing. Rajiv Gokhale, George Hickey, and Peter Clayburgh of Compass Lexecon’s Chicago office assisted in the analysis. We worked with Charles Schwartz, Celso Gonzalez-Falla, Heather Lohman, and Christopher Bellotti of Skadden, Arps, Slate, Meagher & Flom LLP.

State of Alaska v. Mercer

The Alaska Retirement Management Board sued Mercer for malpractice and fraud in its role as actuary to the pension and health care retirement plans for public employees and teachers in Alaska. Alaska alleged that Mercer grossly underestimated Alaska’s pension liabilities. Mercer responded that even if it made mistakes in its actuarial estimates, the Alaska retirement plans suffered no damages because actuarial estimates have no effect on the underlying liabilities of the plans. Lewis Clayton, Eric Stone, and Daniel Levi of Paul, Weiss, Rifkind, Wharton & Garrison LLP hired Compass Lexecon’s Daniel Fischel to testify on damages suffered by the plans. Professor Fischel and a team in Compass Lexecon’s Chicago office including David Gross and George Hickey rebutted Mercer’s arguments and estimated substantial damages from Mercer’s acts. Alaska and Mercer settled the case for \$500 million – the largest settlement ever for a case of its kind.

Todd Pohokura Limited v Shell Exploration NZ Limited and OMV NZ Limited Litigation

Compass Lexecon was retained by solicitor David Goddard of Thorndon Chambers and Tim Stephens of Simpson Grierson in New Zealand on behalf of their client OMV NZ Limited.

OMV and the other two parties are joint venture partners in a gas field off the coast of New Zealand. Todd Pohokura claimed that a contract between the parties was a violation of New Zealand competition law and asked for damages of approximately \$320 million (NZ). Compass Lexecon expert Gustavo Bamberger of our Chicago office prepared a report and testified on behalf of OMV in the High Court of New Zealand. The judge agreed with our client that the contract did not violate New Zealand competition law and rejected Todd Pohokura's damages claim. Lynette Neumann in the Chicago office assisted Dr. Bamberger.

Resource Planning Analysis for Colorado Coal Plants

Compass Lexecon was retained by Russell Rowe of Rowelaw LLC on behalf of Noble Energy, Inc., Chesapeake Energy Corporation, and Encana Oil & Gas (USA) to provide independent analysis and respond to analyses submitted by other parties in a widely publicized proceeding investigating the reduction of emissions from coal fired power plants located in the Colorado Rockies' Front Range. We conducted long-term resource planning analyses to evaluate the economics of future coal plant operations under a variety of input assumptions that tested the impact of coal plant shutdown versus continued plant operations with enhanced pollution emission reduction controls. These analyses assessed the economics of replacing older coal facilities with natural gas fired plants as well as renewable resources. We also analyzed and responded to the analyses submitted by the utility that owns the coal plants, as well as numerous intervenors. Compass Lexecon expert Joseph Cavicchi provided written and oral testimony clearly outlining the costs and benefits of the alternative plans put forth to reduce emissions. The proceeding concluded with a decision favorable to our clients that supported a pre-scheduled phasing out of older coal fired plants relying on natural gas resources for replacement electricity supply. Cavicchi was assisted by a team in the Boston office including David Molin and Daniel Meehan.

Quicksilver Resources Inc. v. BreitBurn Energy Partners L.P., et al.

Quicksilver alleged that BreitBurn made misleading statements and material omissions to induce Quicksilver to exchange its assets for cash and BreitBurn units. After the exchange, BreitBurn adopted an amendment to its partnership agreement that gave its unitholders the right to elect directors of BreitBurn's general partner and placed a cap on the number of BreitBurn units any entity or group could vote. Quicksilver claimed the cap served no rational business purpose and was only adopted to entrench BreitBurn's directors. Compass Lexecon expert Daniel Fischel filed an expert report demonstrating that Quicksilver failed to establish the existence of any damages and that there were legitimate economic reasons for the cap. The case settled on very favorable terms. Fischel was assisted by Jerry Lumer, Vince Warther and Avisheh Mohsenin of Compass Lexecon's Chicago office. We worked with Harry Reasoner and Jennifer Poppe of Vinson & Elkins LLP.

Review of Clearinghouse Margin Models

A key goal of financial regulation is the establishment of centralized clearing platforms for OTC- traded derivatives contracts. Compass Lexecon's Christopher Culp is leading several reviews of the adequacy of the proposed procedures for establishing margins and financial

guarantees for OTC-traded derivatives on behalf of CME Group. Such outside reviews play a key role in the evaluation of proposed clearinghouse procedures by regulators in the U.S and U.K. Professor Culp, together with Pietro Veronesi, Roman Family Professor of Finance at the University of Chicago Booth School of Business, directed an analysis of CME's proposed procedures for clearing OTC-traded interest rate swaps. Professor Culp also led a review of CME's proposed rules for clearing OTC-traded energy derivatives and Credit Default Swaps. Hal Sider has led a team of Compass Lexecon economists that assists in these evaluations.

Russian Federation v. Mikhail B. Khodorkovsky and Platon L. Lebedev

On December 30, 2010, in a decision scrutinized and commented upon by multiple international organizations and government officials, Judge Victor Danilkin of Moscow Khamovnichesky District Court found our clients Mikhail B. Khodorkovsky, once Russia's richest oil businessman, and his partner Platon L. Lebedev, the majority stakeholders in YUKOS, one of the largest Russian oil companies, guilty of embezzlement and money laundering under the Russian Federation Criminal Code. Over the past three years, a Compass Lexecon team, led by Kevin Dages and Laura Sekhar, traveled to Russia and worked alongside an international team of defense attorneys in this matter, the most publicized white collar criminal case in modern Russian history.

The procedural irregularities of the case and the biased nature of the proceedings were widely commented on by major Western and Russian media. As a first hand observer, Kevin Dages was interviewed by the Wall Street Journal, Financial Times, and NPR. We worked with both the defendants' U.S. defense team: Sanford Saunders and John Pappalardo of Greenberg Traurig LLP, Robert Andalman and Jeremy Margolis of Loeb & Loeb LLP, as well as with the defendants' Russian trial attorneys: Konstantin Rivkin and Vadim Klugant. Evan McKay and Jessica Mandel of Compass Lexecon's Chicago office also worked on this matter.

Pfizer Derivative Action

In what has been called one of the largest settlements in a derivative action, Pfizer agreed to set aside \$75 million to fund new compliance efforts at Pfizer, including the creation of a new Board-level committee. Compass Lexecon was retained by Mark Lebovitch of Bernstein Litowitz Berger & Grossmann LLP to support the plaintiffs' corporate governance expert, Professor Bernard Black of Northwestern Law School who analyzed the conduct of Pfizer's Board of Directors in connection with its oversight of the company's improper marketing and sales practices and internal controls. A team in Compass Lexecon's Chicago office including Jessica Mandel, Rahul Sekhar and Alice Kaminski were involved in this matter.

United States v. Frederick Schiff

In a widely publicized criminal action against two former officers of Bristol Myers Squibb (BMS), the U.S. Department of Justice alleged that the defendants' role in alleged channel stuffing caused significant losses for BMS shareholders. Daniel Fischel and Compass Lexecon were retained by David Zornow, Larry Spiegel and others at Skadden Arps to assist in defending Frederick Schiff, the former CFO of BMS. We analyzed the government's allegations and also the valuation consequences of the allegedly false disclosures and the effects on future

profits of allegedly stuffing the wholesale channel with product. Last June, the Justice Department effectively dropped the charges against Schiff and his co-defendant. David Ross, Jessica Mandel, and Laurel Van Allen in Compass Lexecon's Chicago office worked on this matter with Professor Fischel.

Comments on Net Neutrality Rules

Telecommunications markets continue to be the focus of regulatory activity and policy debates. Compass Lexecon's Dennis Carlton and Professor Gary Becker, recipient of the Nobel Memorial Prize in Economics, submitted comments to the Federal Communications Commission as part of the Agency's evaluation of proposed net neutrality rules. The comments, filed on behalf of Verizon, highlighted the potential adverse effect of the proposed regulation on investment and innovation and discussed flaws in net neutrality proponents' arguments about the competitive rationale for new regulation. Carlton and Becker, along with Compass Lexecon economist Hal Sider also published a related paper "Net Neutrality and Consumer Welfare" in the Journal of Competition Law and Economics. Carlton, Sider and Compass Lexecon economist Allan Shampine submitted comments to the FCC as part of the agency's ongoing review of its regulation of special access services. The comments, filed on behalf of AT&T, evaluated the economic principles used by the FCC in identifying areas where service providers should have pricing flexibility.

Other Telecommunications Matters

Compass Lexecon experts Jon Orszag and Dr. Allan Shampine submitted comments to the FCC regarding proposed changes to the regulated rates for so-called pole attachments.

Orszag was also retained by Comcast to submit testimony to the FCC regarding the Tennis Channel's claims that Comcast had discriminated against it by carrying the Tennis Channel on a sports tier, instead of on a more highly penetrated tier.

MERGERS, ACQUISITIONS, AND JOINT VENTURES

Regulatory Approval for Comcast and General Electric Joint Venture

Last month, the Federal Communications Commission and the Department of Justice announced approval of a joint venture through which Comcast and General Electric will combine the broadcast, cable programming, movie studio, theme park, and online content businesses of NBC Universal with the cable programming and certain online content businesses of Comcast. The joint venture, which has been valued at \$30 billion, will be majority owned and managed by Comcast. Compass Lexecon was retained by Comcast--through its counsel, Michael Hammer of Willkie Farr & Gallagher LLP and Arthur Burke of Davis Polk & Wardwell LLP--to provide support for Comcast's efforts to secure regulatory approval for the transaction. Throughout the transaction, we also worked closely with Joe Sims and other attorneys at Jones Day, Deborah Feinstein and other attorneys of Arnold & Porter LLP, and Richard Metzger of Lawler, Metzger, Keeney & Logan, LLC, among others. Compass Lexecon experts Professor Michael Katz and

Dr. Mark Israel submitted three economic reports and numerous memoranda to the FCC to demonstrate the benefits of and lack of competitive harm from the transaction, made several presentations on these topics to the DOJ, participated in an economists' panel at the FCC, and provided economic support and advice to Comcast and outside counsel on the economic issues in the case, including the government agencies' proposed conditions. During the course of Compass Lexecon's involvement in this transaction, we responded to submissions by numerous economists representing parties opposing (or requesting conditions on) the transaction. The Compass Lexecon team supporting Katz and Israel included Bryan Keating, Theresa Sullivan, Nauman Ilias, Antara Dutta, Diane Lee, Jeff Raileanu, Matt Gibb, and Jeff Tucker in D.C.

Pepsi Bottler Acquisition

Compass Lexecon worked on the successful acquisition by Pepsico of its two largest bottlers, Pepsi Bottling Group and Pepsi Americas. After more than six months of intense examination by the FTC, the nearly \$8 billion dollar deal was approved in late February 2010. Compass Lexecon performed extensive theoretical and empirical analyses including modeling a complicated double marginalization problem. Our work was critical in obtaining FTC approval. We worked with Michael Sohn now of Davis Polk & Wardwell LLP and Deborah Feinstein of Arnold & Porter LLP. Compass Lexecon's team included Dennis Carlton, Mark Israel, Nauman Ilias, Jonathan Bowater, and Jeff Tucker of our D.C. office.

Ticketmaster-Live Nation Merger

Compass Lexecon was retained to provide economic analysis in connection with Ticketmaster's recent merger with Live Nation Inc. Dennis Carlton, Kevin Green and Rick Flyer – together with a team of economists from the Chicago and Los Angeles offices – analyzed both the horizontal and vertical issues raised by the acquisition. The team provided analyses in several written submissions to the DOJ and met with DOJ staff to present our empirical analysis which demonstrated that the merger would not harm competition. We worked closely with Steve Sletten and Sean Royall at Gibson Dunn as well as Karen Silverman and Joshua Holian at Latham & Watkins LLP. Other Compass Lexecon staff with substantial involvement on the project included Michael Smith and Dan Adomian of our Los Angeles office and Eugene Orlov and Dzmityr Asinski of our Chicago office.

Cumberland Farms / Exxon Mobil

Compass Lexecon was retained by Tim Walsh of Steptoe & Johnson LLP on behalf of their client, Cumberland Farms, to analyze the potential competitive effects of Cumberland's acquisition of Exxon Mobil's gasoline retail and distribution assets on Long Island. Compass Lexecon's analysis demonstrated that competition in retail gasoline was robust in the overlap areas. Compass Lexecon's analysis was presented to the FTC in support of the transaction and the transaction cleared without a Second Request. A team in Compass Lexecon's Chicago office including Rick Flyer, Colleen Loughlin and Dan Stone performed the economic analysis.

Microsoft-Yahoo! Search Combination

In 2010, the US Department of Justice and the European Commission approved the proposed agreement between Microsoft and Yahoo! to combine their Internet search and paid search advertising businesses. Compass Lexecon teams were retained by both Yahoo! and Microsoft to provide antitrust consulting services before the American and European regulators. Compass Lexecon conducted extensive analyses related to the potential competitive effects of the proposed agreement (including theoretical and empirical analyses of advertiser participation in search advertising auctions), conducted large scale and detailed data processing to comply with requests for information from regulators in the US and Europe, and assisted with the Form CO for submission to the European Commission. We worked with both US- and Europe-based counsel, including Michael Weiner and Alec Chang of Skadden, Arps, Slate, Meagher & Flom LLP, Simon Baxter now also at Skadden, and Frances Dethmers of Clifford Chance LLP for Yahoo!; and Rick Rule, Jonathan Kanter, and Joseph Bial of Cadwalader, Wickersham & Taft LLP and Jonas Koponen of Linklaters LLP for Microsoft. Compass Lexecon's Yahoo! team included Robert Willig, Jon Orszag, Glenn Mitchell, Lacey Plache, Jay Ezrielev, Yair Eilat, YoungBae Moon, and other staff in Los Angeles, D.C., and San Francisco. Our Microsoft team included Dennis Carlton, Rick Flyer, Colleen Loughlin, Eugene Orlov, Todd Kendall, and a team in the Chicago office.

Cisco Acquisition of Tandberg

On March 29, 2010, Cisco Systems, Inc. received approval from the European Commission for its proposed acquisition of Tandberg ASA, the largest provider of videoconferencing equipment in the world. On that same day, the Department of Justice announced that it would not challenge the acquisition in light of commitments Cisco made to the EC to facilitate interoperability between Cisco's telepresence products and those of other companies. Professor Richard Gilbert led Compass Lexecon's efforts to help Cisco gain antitrust approvals for this deal in the US and EU. Professor Gilbert was supported by Jim Ratliff, Bret Dickey, and Kun Huang in the Oakland office. The Compass Lexecon team prepared multiple submissions to both the DOJ and DG Comp stressing the dynamic nature of the video collaboration industry. Indeed it was the "evolving nature of the videoconferencing market" that was primarily cited by the Antitrust Division in support of its conclusion that the deal would not likely be anticompetitive. The transaction closed on April 18, 2010. We worked primarily with Gil Ohana of Cisco, and Sven Voelcker, Hartmut Schneider, Cormac O'Daly, and Jim Lowe at WilmerHale.

Google Acquisition of AdMob

Professor Daniel Rubinfeld led a Compass Lexecon team working on behalf of Google in connection with its proposed acquisition of mobile-advertising network AdMob. Professor Rubinfeld was supported by Jim Ratliff and Sarah Bartlett in the Oakland office. We submitted white papers and Professor Rubinfeld had multiple in-person meetings with top FTC economists and other decision-makers. In May 2010, the Federal Trade Commission voted 5-0 to close its investigation of the proposed acquisition, concluding that the deal "is unlikely to harm competition in the emerging market for mobile advertising networks." The acquisition closed

shortly afterward. Although the Commission believed the deal “raised serious antitrust issues,” these concerns “were overshadowed by recent development in the market,” such as Apple’s acquisition of mobile-advertising network Quattro and its subsequent development of the iAd mobile-advertising platform for the iPhone and iPad. We worked primarily with Dave Gelfand, George Cary, and Leah Brannon from Cleary Gottlieb Steen & Hamilton LLP, and with Bill Kolasky and Ali Stoppelwerth at WilmerHale, both teams representing Google.

Merger of MultiPlan, Inc. and Viant, Inc.

Compass Lexecon advised two of the nation’s largest independent PPO networks, MultiPlan, Inc. and Viant, Inc. in securing approval of their proposed merger. Compass Lexecon conducted extensive analyses of both the competitive effects and the efficiencies of the deal, including efficiencies related to the impact of the merged company’s enhanced bargaining power on the outcome of negotiations with medical providers. Over a period of six months, Compass Lexecon submitted multiple white papers to the government that were critical in securing regulatory approval. The U.S. Department of Justice informed the parties recently that the investigation had been closed. We were retained by both MultiPlan (Marc Williamson and Jennifer Giordano of Latham & Watkins LLP and Joe Sims of Jones Day) and Viant (Mit Spears and John Carroll of Ropes & Gray LLP). The D.C./Boston based Compass Lexecon team included Jon Orszag, Theresa Sullivan, Amy Candell, Antara Dutta, Diane Lee, William Medina, and Katie Milliken.

Equinix Acquisition of Switch & Data

Equinix, Inc., a provider of global data center services, sought to acquire Switch & Data Facilities Company, Inc., a leading provider of data center and Internet exchange services. Equinix and its counsel, Art Burke and Edward Moss of Davis Polk & Wardwell LLP, retained Compass Lexecon to provide economic analysis of the transaction. Janusz Ordoover, Jon Orszag, Kevin Green, and Lacey Plache, along a team from the Los Angeles office, helped the parties receive regulatory clearances from the DOJ. Compass Lexecon performed a wide ranging analysis of the competitive effects of the transaction. We provided analysis in several written submissions to the DOJ and met with DOJ staff to present our empirical analysis. This transaction was one of the first to be approved following the release of the newly revised Horizontal Merger Guidelines.

Approval of oneworld Alliance

On July 20, 2010, the U.S. Department of Transportation issued an order approving “an alliance among five members of ‘oneworld’ – American Airlines, British Airways, Iberia, Finnair, and Royal Jordanian” and granting them “antitrust immunity to implement those agreements.” This broad grant of antitrust immunity had been opposed by the U.S. Department of Justice, which submitted comments in the DOT docket arguing that “DOT should deny the broad requested immunity and instead grant a more limited immunity,” including the “carve-out” of several major routes out from the immunity grant. DOJ based its argument in large part on econometric studies that purported to demonstrate competitive harm and lack of competitive benefit from antitrust immunity. Compass Lexecon was retained by Roger Fones of Morrison &

Foerster LLP on behalf of American Airlines, as well as counsel for American, to evaluate and respond to the DOJ studies. Compass Lexecon's Professor Robert Willig, Mark Israel, and Bryan Keating submitted two econometric studies which refuted DOJ's studies and demonstrated that oneworld antitrust immunity would, on balance, generate substantial pro-competitive benefits that would be largely undone if particular routes were carved out from the immunity grant. In its ruling, DOT "concluded that the joint venture, as well as the overall alliance, is, on balance, pro-competitive and that it is likely to generate substantial public benefits to the traveling and shipping public." Based on this finding, DOT approved the request for antitrust immunity on all routes, with no carve-outs, subject only to a requirement that the parties transfer four takeoff and landing "slot pairs" to other airlines.

Yahoo! Inc. Sale of HotJobs

Compass Lexecon's Janusz Ordovery and Doug Fontaine advised outside counsel for Yahoo! with respect to the acquisition by Monster Worldwide, Inc. of Yahoo!'s online recruitment property, HotJobs. Professor Ordovery and Mr. Fontaine assessed the extent of competition between generalist job boards like HotJobs and Monster and services employing alternative business models, including region specific, position specific, industry specific, and social networking. In gauging the likely effects of the transaction on competition and consumers, Professor Ordovery and Mr. Fontaine specifically studied the inter-relationship between both sides of the market -- recruitment services for employers and tools for job seekers. Monster's acquisition of HotJobs was cleared by the FTC in August 2010. We were retained by Hanno Kaiser of Latham & Watkins LLP.

United Airlines and Continental Airlines Merger and Litigation

Compass Lexecon experts, Professors Dennis Carlton and Daniel Rubinfeld were retained by Katherine Forrest, of Cravath, Swaine & Moore LLP (now at the DOJ) and Paul Yde of Freshfields Bruckhaus Deringer LLP to advise United Airlines and Continental Airlines on their merger. Professors Carlton and Rubinfeld, along with Compass Lexecon's Theresa Sullivan, Steven Peterson, and Bryan Keating, evaluated the competitive effects and consumer benefits arising from the merger, which was cleared by the U.S. Department of Justice. Professor Rubinfeld was also retained in a private antitrust action contesting the airlines' planned merger. Professor Rubinfeld testified in a preliminary injunction hearing in Federal Court in California on the competitive effects and consumer benefits of the merger. The judge refused to issue the preliminary injunction sought by the plaintiffs and the merger was completed on schedule. Professor Rubinfeld was assisted by Theresa Sullivan, Steven Peterson, and Bryan Keating.

Stericycle, Inc.-MedServe, Inc. Transaction

Meg Guerin-Calvert, supported by a Compass Lexecon team including Theresa Sullivan, Jeff Raileanu, Katie Milliken, and Matt Schmitt provided economic analysis in the proposed acquisition of MedServe by Stericycle in the medical waste collection, transportation, and treatment industry. The focus of the work was on relevant geographic markets, competitors, and entry potential in the West and Midwest. Compass Lexecon supported the parties in close

coordination with their counsel throughout the second-request process, contributed analysis to written submissions to the Department of Justice, and participated in presentations before the agency. The deal was cleared subject to the divestiture of certain MedServe assets (a Kansas treatment facility and related assets). Stericycle was represented by David Clanton, David Laing, and Brian Burke of Baker & McKenzie, and MedServe was represented by Sean Boland and Allen Bachman of Howrey LLP.

PPL Acquisition of E.ON US

Compass Lexecon was retained by Don Kaplan of K&L Gates LLP on behalf of PPL Corporation to analyze the anti-trust implications of the PPL Corporation's acquisition of E.ON US. We conducted antitrust analyses and provided support for other related filings to the Federal Energy Regulatory Commission. Compass Lexecon experts Joseph Cavicchi and Professor Joseph P. Kalt filed written testimony presenting our work. The acquisition was approved and closed within the year. The Compass Lexecon team included Howard Hsu in Boston and Patrick Lavender, now in New York.

Commentary on Horizontal Merger Guidelines

Compass Lexecon experts, Professors Dennis Carlton, Richard Gilbert, Daniel Rubinfeld, and Robert Willig submitted comments to the DOJ and the FTC regarding the proposed Horizontal Merger Guidelines. In addition, Meg Guerin-Calvert presented at a panel on entry as part of the DOJ/FTC Horizontal Merger Guidelines Review Project in January 2010. Subsequent to those submissions, the following related articles have been published by Compass Lexecon professionals:

- Dennis Carlton, "Revising the Horizontal Merger Guidelines," *Journal of Competition Law & Economics*, 2010 and *CADE Journal and Law Quarterly* in Brazil (forthcoming).
- Dennis Carlton and Mark Israel, "Will the New Guidelines Clarify or Obscure Antitrust Policy?" *The Antitrust Source*, 2010.
- Dennis Carlton and Mark Israel, "Response to Gopal Das Varma's Market Definition, Upward Pricing Pressure, and the Role of Courts: A Response to Carlton and Israel" *The Antitrust Source*, 2010.
- Jay Ezrielev and Janusz Ordover, "The 2010 Horizontal Merger Guidelines: A Static Compass in a Dynamic World?" *The Antitrust Source*, 2010.
- Daniel Rubinfeld, "Understanding UPP," (with Roy Epstein) *The B.E. Journal of Theoretical Economics*, 2010.
- Frederick Flyer, "Economic Analysis at the Outset of Merger Review: Using Diversion Ratios to Evaluate Unilateral Effects," *The Threshold*, 2010.

HONORS, PRESENTATIONS AND PUBLICATIONS

Doug Lichtman hosts an online radio talk show, the Intellectual Property Colloquium. Recent guests include the Chief Judge of the Federal Circuit and General Counsels of Electronic Arts, Activision, Microsoft, Paramount Pictures, and the New York Times. The program airs

new episodes each month, and lawyers who listen earn free CLE credit in New York, California, Texas, Illinois, and other states. Compass Lexecon is proud to sponsor the colloquium which is available on iTunes and at www.ipcolloquium.com<<http://www.ipcolloquium.com/>.

Compass Lexecon Affiliate, David K. A. Mordecai was invited to join the Advisory Board of the Mathematics in Finance Masters Program at the New York University Courant Institute of Mathematical Sciences.

Compass Lexecon experts have been active in making presentations/speeches to various groups and organizations. Some of the presentations and/or speeches in the past year included:

- In November, Ben Klein presented “Single Entities After *American Needle* and *Dagher*: An Economic Perspective” at the New York State Bar Association Antitrust Forum. In September, Professor Klein presented *Vertical Restraints: A U.S. and EU Perspective on Recent Developments*, at the Georgetown Law School Global Antitrust Enforcement Symposium.
- Christopher Culp gave the following speeches: The Impending Sovereign Debt Crisis, the Return of the Leveraged Loan Market, and Implications for the Cayman Islands, *Seminar Sponsored by Stuarts Walker Hersant and RBC Wealth Management* – April 2010; Lessons from the Financial Crisis (Panel Moderator), *25th Annual General Meeting of the International Swaps and Derivatives Association*, April 2010; Recent Developments in Structured Credit Markets, *University of Chicago Booth School of Business – Management Conference*, April 2010; Wall Street Reform and Its Impact on Derivatives and Securitization Markets, *University of Chicago Booth School of Business – Finance Club*, November 2010; Derivatives In and After the Crisis, *Northwestern University School of Law – Guest Lecture to “Derivatives: Uses, Abuses, and Regulation” Class*, November 2010.
- In March, David K. A. Mordecai was interviewed as an industry expert by Derivatives Week, regarding the issuance of a longevity-linked structured notes, and also served as the lead panelist on topics regarding the economic impact of complex environmental, life, health, and casualty exposures on the insurance industry at the Mealey's 17th Annual Insurance Insolvency and Reinsurance Roundtable. In May, Dr. Mordecai was invited to participate as a subject matter expert, in a discussion co-hosted by Pew Charitable Trusts and United Health, on the economic and financial implications of developing health trends and food security and safety risks from the insurance industry perspective. In September, at *The Reactions Risk and Capital Management in the North American Insurance Industry Conference*, Dr. Mordecai made a presentation entitled “*The Longevity Problem and Long-Tailed Risk Mitigation*” and also moderated a key panel “*How Major Social, Political, and Macroeconomic Uncertainties Could Affect Insurer and Reinsurer Balance Sheets.*” In June and December, Dr. Mordecai chaired two sessions of the International Association of Financial Engineers Liquidity Risk Committee, “*Multi-Agent Models and Network Externalities: The Interconnectedness Underlying Systemic Risks and Episodic Liquidity*” and “*Financial Innovation, Complexity, Fire Sales and Panics.*” Dr. Mordecai also served as an invited discussant at the *Federal Reserve Day Ahead Conference on Financial Markets & Institutions*, where he presented his remarks on governance and executive compensation entitled “*Incentives, Compensation, Risk-Based Leverage and Risk Governance of Financial*

Institutions” related to a paper by Federal Reserve Board researchers entitled “*Stocks or Options: Risk Choices and Compensation Design.*”

- Meg Guerin-Calvert served on the faculty of the Masters Program of the ABA Section of Antitrust Law and presented on “the Role of the Economist as Expert Witness” and in seminars. Meg Guerin-Calvert participated in Section of Antitrust Law activities related to healthcare reform and competition issues, including participation in a working group on healthcare, presenting in a panel discussion on Balancing Health Care Policy and Competition Policy: Provider Consolidation and Organizational Change, and moderating a panel discussion on Hospital Merger Simulation. She also presented on the economics of class certification issues in “Anatomy of Information Exchange Healthcare Antitrust Case” at the 2010 Antitrust in Healthcare Conference co-sponsored by the American Health Lawyers Association and the ABA Section of Antitrust Law.
- Jake Gramlich presented a research paper "Gas Prices, Fuel Efficiency, And Endogenous Product Choice in the U.S. Automobile Industry" at the Quantitative Marketing and Economics Conference in October 2010, and at the Southern Economic Association meetings in November 2010. The paper models firms’ choices of product characteristics in differentiated products oligopolies using auto manufacturers’ choices of fuel efficiency.
- Steven Peterson (with Edward Schwartz and Paula Render) presented “Antitrust Analysis of Aftermarkets,” at the American Bar Association Section of Antitrust Spring 2010 Meeting.
- Brad Reiff gave a guest lecture at the Stephen M. Ross School of Business, University of Michigan, entitled “Limitations on a Firm's Ability to Protect Its Competitive Advantage.”
- Bryan Keating presented a paper on “Airline Network Effects and Consumer Welfare,” at the International Industrial Organization Conference.
- Jon Orszag served as a panelist regarding “Increased Government Intervention: The Good, The Bad, and the Ugly” at the Association of Management Consulting Firms annual meeting in New York in December. Orszag also spoke to RBS Citizens in June about “The Economic Challenges and Trade-Offs Facing the Obama Administration.”

Compass Lexecon experts have also been active in publishing and writing papers in the past year, including:

- Kenneth Lehn published "Sarbanes-Oxley and Corporate Risk Taking," (with Leonce Barger and Chad Zutter), *Journal of Accounting and Economics*, February 2010.
- Chris Culp published the following: The Social Functions of Financial Derivatives. In *Financial Derivatives: Pricing and Risk Management*. R. W. Kolb and J. A. Overdahl, eds. New York: Wiley, 2010; Financial Transaction Taxes: The Issues and the Evidence. *Cayman Financial Review*, 2010Q3; OTC-Cleared Derivatives: Benefits, Costs, and Implications of the “Dodd-Frank Wall Street Reform and Consumer Protection Act.” *Journal of Applied Finance*, 2010; Returns, Risk, and Financial Due Diligence. In *Finance Ethics*. J. R. Boatright, ed. New York: Wiley, 2010 (with J. B. Heaton); Structured Financing Techniques in Oil and Gas Project Finance: Future Flow Securitizations, Prepaids, Volumetric Production Payments, and Project Finance Collateralized Debt Obligations. In *Energy and Environmental Project Finance Law and Taxation: New Investment Techniques*. A. S. Kramer and P. C. Fusaro, eds. London: Oxford University Press, 2010 (with J. Paul Forrester)

- Dennis Carlton published the following: “Externalities in Payment Card Networks: Theory and Evidence: A Commentary,” *The Changing Retail Payments Landscape: What Role for Central Banks?* Federal Reserve Bank of Kansas City, 2010; “Why Tie a Product Consumers Do Not Use?” (with J. Gans and M. Waldman), Recipient of Inaugural Robert F. Lanzilotti Prize, awarded by the International Industrial Organization Society for Best Paper in Antitrust Economics, 2008, *American Economic Journal: Microeconomics*, 2010; “Mergers in Regulated Industries: Electricity,” in *Competition Law and Economics: Advances in Competition Policy Enforcement in the EU and North America*, A. Mateus and T. Moreira editors, 2010; “Financial Issues (Comments on Bankruptcy and Clearing Houses),” Chapter X in *Competition as Public Policy*, American Bar Association, 2010; “Introduction to Stigler’s Theory of Oligopoly,” (with S. Peltzman), Competition Policy International, 2010; “Antitrust and Regulation,” (with R. Picker) in N. Rose ed., *Economics of Deregulation*, NBER, (forthcoming).
- Dennis Carlton, Gary Becker and Hal Sider published “Net Neutrality and Consumer Welfare,” *Journal of Competition Law & Economics*, 2010.
- Benjamin Klein published *Asset Specificity and Holdups*, Peter G. Klein and Michael E. Sykuta eds., in *The Elgar Companion to Transaction Cost Economics*, Edward Elgar Publishing, Ltd. 2010.
- Jon Orszag and Robert Willig authored “Drug Patent Settlements,” *New York Times*, July 19, 2010.
- Bret Dickey and Jon Orszag published “An Economic Assessment of Patent Settlements in the Pharmaceutical Industry, (with Laura Tyson), *Annals of Health Law*, Winter 2010.
- Janusz Ordover and Doug Fontaine published “The Economics of Price Discrimination,” (with Greg Shaffer), in *The Economics of the Internet, The Vodafone Policy Paper Series*, April 2010.
- Steven Peterson and Andrew Lemon co-authored an article published in the forthcoming issue of the *Journal of Competition Law & Economics* entitled “Rigorous Analysis to Bridge the Inference Gap in Class Certification.” The article addresses how economics can help courts determine whether lawsuits satisfy the legal requirements to proceed as a class action.
- Allan Shampine published “Price Indexes, Hedonic Analysis and Patent Damages,” 5 *Journal of Intellectual Property Law & Practice*, 2010.
- Paul Godek published “Does the Tail Wag the Dog? Sixty Years of Government and Private Antitrust in the Federal Courts,” *Antitrust Source*, December 2009; “Reconciling the Opposing Views of Critical Elasticity,” *Global Competition Policy*, September 2009; and “Jobless Numbers Are Worse Than You Think,” *The Wall Street Journal*, July 23, 2010.
- Paul Godek and Janusz Ordover published “Economic Analysis in Antitrust Class Certification: The Hydrogen Peroxide Decision,” *Antitrust*, Fall 2009.
- Meg Guerin-Calvert and Guillermo Israilevich co-authored “A Critique of Recent Publications Claiming Provider Market Power,” commissioned by the American Hospital Association (AHA), which assessed recent papers claiming that hospital leverage or market power explains differences in hospital prices and increased hospital expenditures. Their paper provides a thorough literature review on factors influencing price, costs, and spending differences; this review and their empirical analyses find the papers’ claims to be unsupported, and instead demonstrate that a myriad of factors explain differences.

- Bret Dickey, Jonathan Orszag, and Robert Willig released a paper entitled “A Preliminary Economic Analysis of the Budgetary Effects of Proposed Restrictions on ‘Reverse Payment’ Settlements.”
- Assaf Eilat, Jith Jayaratne, Janusz Ordover, and Greg Shaffer published a paper, “How Loyalty Discounts Can Perversely Discourage Discounting: Comment,” in the *Antitrust Chronicle*, 2010.
- Greg Pelnar published “Competing Single-Entity Tests in *American Needle v. NFL* and Their Implications for Sports Leagues and Other Joint Ventures,” *CPI Antitrust Journal*, March 2010 and “Are Clinically Integrated Physician Networks Candy-Coated Cartels?” *CPI Antitrust Journal*, October 2010.
- Todd Kendall published "Unmarried Fertility, Crime, and Social Stigma", (with Robert Tamura), in the *Journal of Law and Economics*, February 2010.
- Jon Orszag was quoted a number of times in prominent news articles in publications such as the *New York Times* and the *USA Today* regarding the economics of sports. Orszag was also quoted in a number of publications – including *Business Week* – regarding the economics of patent settlements among drug companies.

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

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