

NEWSLETTER

ISSUE 3 | MAY 2017

# INSIGHT

## Forensic & Litigation Consulting

Dispute Advisory Services



EXPERTS WITH IMPACT

 **FTI**  
CONSULTING

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# Insights Newsletter

## Words of Welcome



Welcome to the latest edition of FTI Consulting's Disputes Advisory Services newsletter which we hope will continue to help you manage the pressing business issues you face in an increasingly changing landscape. In this issue we highlight some important FTI Consulting engagements that have been impactful for the industry and some of our clients including IP, international arbitration, valuation, securities, accounting, and regulatory enforcement matters.

We invite you to follow us on Twitter @FTI\_FLC where you'll find two full articles available for free download from the soon-to-be-released *6th Edition Litigation Services Handbook*, more details of which can be found on page 35.

And finally, we are pleased to announce that FTI Consulting professionals recently were named as foremost experts in the *Who's Who Legal: Investigations 2017* list, and that we were ranked a top provider in litigation valuation, litigation dispute advisory services, expert witness, forensic accounting, business accounting, and intellectual property litigation consulting by the *National Law Journal*.

Yours truly,



**Basil Imburgia**

Senior Managing Director

North America Leader, Forensic & Litigation Consulting



# Securities, Accounting and Regulatory Enforcement

**E**conomic damages and class certification-related analyses for securities, antitrust, consumer fraud and other class actions; complex litigation and investigations pertaining to federal securities laws and DOJ/SEC enforcement and compliance; disputes involving financial reporting issues, accounting irregularities, internal controls, insider-trading allegations, market manipulation, broker dealer disputes involving unsuitability, churning and best execution.

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## MUNICIPAL BONDS

FTI Consulting was retained by counsel for a California municipality and an individual employed by the municipality, both of whom were being sued by the SEC for alleged fraud that took place in connection with a municipal bond offering.

The SEC alleged that the projected property tax assessments of several special-use industrial facilities were misstated in the offering document, resulting in an overstatement of property tax revenue used to secure the bonds.

FTI Consulting identified and supported experts in industrial property valuation and municipal finance who provided expert reports and deposition testimony regarding the valuation and county tax assessment process and the economic materiality of the alleged misstatements in the offering documents.

### Subject Matter Experts



**ERIC POER**  
SENIOR MANAGING DIRECTOR



**CHRIS RIPER**  
MANAGING DIRECTOR



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## COMPLEX ACCOUNTING ISSUES

FTI Consulting was retained by counsel in a consulting capacity to provide accounting analysis and litigation support for a Chinese automobile retailer that was the target of a class action securities lawsuit.

The class complaint alleged the company concealed its declining financial condition and cash shortage by raising money through investors in China and by using variable interest entities (“VIEs”) to conceal the financing activities in its SEC filings.

FTI Consulting assisted counsel at a very early stage in the case to understand the intricate technical accounting aspects of VIEs, and to decide which documents were relevant to the case. The parties settled before the motion to dismiss was decided.

### Subject Matter Experts



**ERIC POER**  
SENIOR MANAGING DIRECTOR



**CHRIS RIPER**  
MANAGING DIRECTOR



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## PETROCHEMICAL INVESTIGATION

**FTI Consulting was retained by a petrochemicals producer in Latin America in connection with claims that it paid bribes to one of its suppliers between 2009 and 2014 in order to receive a favorable supply contract.**

Our client and its largest shareholders and its subsidiaries are subject to a series of anti-corruption and anti-bribery laws in the countries in which they operate. Our client purchases the majority of its raw material (naphtha), which is the largest production cost component of its petrochemical products under long-term supply agreements.

FTI Consulting evaluated the commercial reasonableness of the naphtha supply agreement to determine the financial benefit our client received from the contract. We relied on our Petroleum and Chemicals team's extensive industry expertise with contract negotiation and industry performance.

FTI Consulting provided expert industry advice based on three critical factors: (i) the volatility of crude oil prices; (ii) the cyclical nature of petrochemical profitability; and (iii) the importance of vertical integration and margin-sharing contracts to manage volatility. The team provided insight into overall industry performance at the time of the negotiation of the naphtha supply contract as well as after the contract went into effect.

The team interacted closely with internal and external counsel, and interviewed and interacted with client executives and key personnel involved in the negotiation of the naphtha contract. The team conducted a comprehensive analysis of our client's financial performance and margins during the period of the contract term and beyond, and analyzed a wide range of case-related documents, including audited company financials, managerial accounting system documents, relevant contracts, government tax incentives and company databases.

We presented our results to the DOJ and SEC and demonstrated that the naphtha contract as constructed was commercially reasonable and achieved the objectives of both parties to the contract. Based on our expert analysis, our client is now in the final stages of negotiating a satisfactory penalty payment with U.S. and foreign authorities.

### Subject Matter Experts



**KEN STERN**  
SENIOR MANAGING DIRECTOR



**CHARLES MIKULKA**  
SENIOR MANAGING DIRECTOR



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## EXPERT TESTIMONY FOR CONSUMER FRAUD CLASS ACTION

FTI Consulting was retained by counsel for a leading fast food chain in a class action alleging false and misleading advertisements of certain food ingredients.

We identified a well-known academic, who was hired as one of testifying experts by counsel for defendants, and partnered with that expert to evaluate class allegations.

We supported the academic expert and helped him respond to two expert reports, one on class certification issues and another on damages. The expert working with us submitted two rebuttal reports, which proffered evidence regarding the individualized differences across the proposed class members, and provided an event study demonstrating that the alleged misrepresentations had no significant impact on the business prospects of the company.

Our reports also demonstrated severe flaws in the plaintiff's experts' damage reports. The court denied the plaintiff's motion for class certification with prejudice.

### Subject Matter Experts



**ERIC POER**  
SENIOR MANAGING DIRECTOR



**ALOK KHARE**  
MANAGING DIRECTOR



**MIKE GARIBALDI**  
MANAGING DIRECTOR



**JILL KENNEDY**  
SENIOR DIRECTOR





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## EXPERT TESTIMONY IN AUDITOR LIABILITY SUIT

**FTI Consulting was retained by counsel for a foreign affiliate of a “Big 4” audit firm, which was being sued for allegedly failing to adequately perform the annual audit of a large foreign multinational corporation.**

Plaintiffs in this matter, comprising multiple investor groups, alleged that they suffered losses as a result of deficient audit work carried out by the audit firm. We were engaged to respond to allegations that the audit firm’s procedures were not sufficient to identify material misstatements in the financial statements.

Because the audit firm’s work related to a foreign corporation and was performed outside of the U.S., the majority of audit documentation was prepared in a foreign language. FTI Consulting has a broad

range of professionals with foreign language skills, and we were able to provide professionals capable of reviewing three years’ worth of audit workpapers in depth, focusing on specific areas where plaintiffs had alleged that deficiencies were present.

FTI Consulting’s expert leading the matter, a former partner at a leading public accounting firm, prepared a written report regarding the adequacy of the audit firm’s procedures, workpaper documentation and conformance with auditing standards. Trial is scheduled for 2017.

### Subject Matter Experts



**GARY GOOLSBY**  
SENIOR MANAGING DIRECTOR



**AVELINO RODRIGUES**  
SENIOR MANAGING DIRECTOR



**KELLY BOSSARD**  
MANAGING DIRECTOR



## Labor and Employment

Claims related to discrimination, wrongful termination, executive compensation and trade secret theft, including economic and statistical analysis in both class actions and single plaintiff disputes. Wage and hour, employee/independent contractor status cases.

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## ALLEGED EXCESS COMPENSATION

**FTI Consulting was retained by counsel for a former C-suite executive of a technology company to provide forensic accounting and economic litigation support.**

The executive was being sued derivatively by shareholders over the severance compensation that executive had received. The shareholders alleged that the former executive's compensation was improperly granted by the board of directors, and improperly disclosed at termination. The shareholders sought to have the compensation clawed back.

FTI Consulting assisted counsel with a preliminary damages assessment that involved several elements. We reviewed and analyzed our client's employment, separation and severance agreements along with public disclosures regarding his compensation and termination. We also calculated the value of the severance benefits he received, which included accelerated vesting of the cash and equity components (restricted stock, options) of his compensation.

### Subject Matter Experts



**ERIC POER**  
SENIOR MANAGING DIRECTOR



**CHRIS RIPER**  
MANAGING DIRECTOR



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## GENDER DISCRIMINATION AND WRONGFUL TERMINATION

FTI Consulting was retained by counsel for a media technology company that was defending itself against claims by a former executive alleging that she was underpaid, was the victim of gender discrimination, and was improperly terminated.

The plaintiff alleged that she was entitled to lost compensation and equity, and additional amounts for the equity that she sold back to the company at a price she claimed was too low. She also claimed she was forced to accept a lower-paying job after her termination. She sought damages in the tens of millions of dollars.

FTI Consulting worked with two experts. The first was an expert in labor markets and compensation and the second was an expert in valuation. We analyzed whether the plaintiff was underpaid relative to industry benchmarks and compared to other male executives at the company, and, using standard option valuation methods, whether the plaintiff received appropriate value for her equity stake upon leaving the company.

### Subject Matter Experts



**CHRIS RIPER**  
MANAGING DIRECTOR



**TIKO SHAH**  
MANAGING DIRECTOR





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## THEFT OF TRADE SECRETS AND POACHING OF KEY EMPLOYEE

FTI Consulting was retained by a former executive of a high-profile, pre-IPO technology company who resigned and subsequently joined a competitor, to analyze whether the company he left suffered damages in connection with his departure.

The plaintiff (the former employer) sued our client for allegedly breaching the provisions of his employment agreement regarding confidential information and employee solicitation/poaching. The plaintiff also claimed

that our executive was critical to rapidly-growing segments of their business, and caused significant harm upon leaving. We analyzed the job responsibilities of the executive and the claims for lost profits. In the course of our analysis, we evaluated the complex equity compensation packages offered to our client and the employees who replaced him.

### Subject Matter Experts



**MIKE GARIBALDI**  
MANAGING DIRECTOR



**TIKO SHAH**  
MANAGING DIRECTOR

The background of the slide features a blue-tinted image of a financial document. In the upper left, a portion of a black calculator is visible. In the upper right, several silver coins are stacked. The central focus is a line graph with a grid. The y-axis has numerical labels: 6,000, 6,250, 6,500, and 6,750. The word 'Markets' is partially visible at the top of the graph area. The overall aesthetic is professional and financial.

## Financial Products

Investment suitability, fair value, derivatives, mortgage-backed securities, high-frequency trading, mutual fund and hedge fund disputes (brokerage fee and market timing issues) and subprime lending (valuation of subprime portfolios and other structured finance products).



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## CALCULATING DAMAGES OF A FAILED BANK INSTITUTION

**FTI Consulting was retained by counsel representing the Federal Deposit Insurance Corporation (“FDIC”) to calculate damages related to a number of failed banks.**

After the failures, the FDIC either acquired certain assets and liabilities of the failed banks or facilitated the sale of assets and liabilities of the failed banks to an assuming bank, often subject to loss share agreements with the FDIC. The FDIC brought suit alleging that some of the losses it suffered were caused by the gross negligence of the bank’s former loan officers and directors.

We analyzed loans identified by the FDIC and calculated the losses associated with those loans. Our team reviewed and analyzed

thousands of loan documents, and ultimately developed a process that efficiently calculated loan losses, and, subsequently damages, suffered by the FDIC.

Our Trial Graphics segment created charts and other visual aids that explained FTI Consulting’s calculations and analytic process.

Three of these FDIC cases went to trial in federal court and FTI Consulting testified at all three of those trials. The FDIC received a favorable ruling in all three.

### Subject Matter Experts



**DON RAULERSON**  
SENIOR MANAGING DIRECTOR



**SCOTT CARNAHAN**  
SENIOR MANAGING DIRECTOR



**TIM BALLARD**  
DIRECTOR

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## FRAUDULENT TRANSFERS INVESTIGATION

**Counsel representing a private equity firm hired FTI Consulting to investigate and testify about potential fraudulent transfers of assets involving a regional real estate developer.**

Counsel asked FTI to investigate both personal and business banking activity to determine if assets were hidden or transferred to avoid debt payments to the private equity firm. We analyzed thousands of documents including bank statements, trust agreements, financial statements, operating agreements, checks, and wire transfers to trace the developer's assets and created numerous schedules demonstrating the ultimate flow and use of funds.

Our team consisted of a wide range of professionals. We traced assets and transfers of funds spread across various personal and business bank accounts; we assisted with the intake and organization of accounting and banking data; and our Trial Graphics group produced visual aids to help show the flows of funds between accounts. We also utilized Relativity, one of FTI Consulting's proprietary database tools for document management, to review thousands of documents produced during the engagement. The litigation ended with a favorable settlement for our client.

### Subject Matter Experts



**DON RAULERSON**  
SENIOR MANAGING DIRECTOR



**DEAN DRISKELL**  
MANAGING DIRECTOR



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## SECURITIZATION DUE DILIGENCE PRACTICE

A major investment bank issuer of residential mortgage-backed securities was a defendant in multiple securities litigation actions. One of the primary allegations made by securities investors was that the bank, which served as the securities lead underwriter, failed to conduct appropriate due diligence of the securities being offered to investors.

FTI Consulting was retained to analyze due diligence procedures followed by the bank's underwriters, outside counsel and auditors. Teams of FTI Consulting analysts with banking and forensic investigation expertise combed through voluminous documents associated with each securitization, including loan-level data, and constructed detailed timelines to assess the actions of the many participants who underwrote each deal.

Through our extensive network of banking industry and academic experts, we also helped counsel identify a top industry expert who worked on dozens of similar deals in the relevant timeframe and an academic expert who is a leading researcher and authority on securities due diligence practices.

These experts and their FTI Consulting support teams worked closely with counsel to develop comprehensive expert reports and testimony that demonstrated in great detail why, for each of the securitizations at issue, the investment bank's due diligence was thorough, appropriate and consistent with industry standards.

### Subject Matter Experts



**ERIC POER**  
SENIOR MANAGING DIRECTOR



**TIKO SHAH**  
MANAGING DIRECTOR



**MIKE GARIBALDI**  
MANAGING DIRECTOR



**CHRIS RIPER**  
MANAGING DIRECTOR



**MICAH TRILLING**  
MANAGING DIRECTOR



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## TRADING IN ALTERNATIVE TRADING SYSTEMS

**FTI Consulting was retained by a bank that operated an alternative trading system (“ATS”).**

The bank was being sued by a class of investors claiming that the marketing materials issued in connection with the ATS falsely represented the amount of aggressive trading monitoring the bank was doing. FTI Consulting worked with an industry expert (who was also an academic expert) with extensive trading systems experience.

We analyzed the sophistication of the institutional investors that participate in such trading systems, and their ability to detect improper trading, including that of high frequency trading firms.

We assisted in the preparation of an expert report as well as rebuttal report, and helped support the expert’s opinions about (i) the methods sophisticated investors use to analyze their trades, and (ii) the algorithmic trading and other relevant features of the ATS.

### Subject Matter Experts



**ERIC POER**  
SENIOR MANAGING DIRECTOR



**TIKO SHAH**  
MANAGING DIRECTOR



Former C-level  
Executive  
**Industry Expert**

FTI Consulting  
Professional

***“We turn the right expert into a practical solution.”***



Ph.D.  
**Academic  
Expert**

FTI Consulting  
Professional

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With more than 400,000 members, the FTI Expert Partner Program can help you find the exact expert you need. Our experienced staff of in-house professionals provide the investigative depth, data analysis, and broad support needed to turn any independent expert into a practical and effective solution.

A person in a white lab coat is holding a document with a line graph. The graph shows a fluctuating blue line on a white background. The person's hands are visible, and the document is held in front of them. The background is slightly blurred, showing what appears to be a computer screen with some data points.

## Valuation, Solvency and Acquisition Disputes

**A** sset and business, valuation, pre/post-acquisition disputes (working capital, benefit of the bargain, earn-outs, material adverse change), ability to pay, corporate unity/alter ego, fraudulent conveyance and solvency.



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## SHAREHOLDER LITIGATION INVOLVING MERGER AND ACQUISITIONS

**FTI Consulting was retained to assist counsel in understanding and quantifying the valuation issues in a class action lawsuit stemming from an acquisition.**

Our work was completed for purposes of mediation. The class action complaint was made against the former members of the board of directors and other parties involved in the transaction for allegedly pursuing an unfair acquisition process - and setting an unfair price - in connection with the acquisition.

Discovery in the case produced several sets of financial forecasts that were developed by management over the 15-month period preceding the transaction. In preparation for mediation, counsel asked us to review and analyze the financial forecasts and the valuation analyses produced, and to conduct our own independent valuation work.

Through our work, we were able to show that the final valuation used to justify the transaction relied on the most conservative - and least accurate - of the various financial projections. We were able to ascertain the important changes that took place between the various sets of financial projections and to show that the changes conflicted with concurrent comments made by management to the market.

Counsel was successful in mediation and reached a partial settlement which provided for the payment of a favorable settlement for the benefit of eligible Class members.

### Subject Matter Experts



**ERIC POER**  
SENIOR MANAGING DIRECTOR



**LINCOLN ECKHARDT**  
SENIOR DIRECTOR

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## ABILITY TO PAY: DEPARTMENT OF JUSTICE V. AIRLINE COMPANY

FTI Consulting presented before the DOJ on behalf of our client (an airline company) to assist the airline in the settlement of a long-running multi-district litigation, in which our client was alleged to have conspired to fix prices of cargo shipments. We analyzed the ability of our client to pay a fine sought by the DOJ in excess of \$250M. FTI performed:

- An analysis of our client's financial condition, including its solvency and leverage positions.
- A market study of the relevant airline market and our client's projected position in that market.

We determined that our client's ability to pay called for a substantially lower fine. The case settled for approximately \$50M.

### Subject Matter Experts



**JEFF LITVAK**  
SENIOR MANAGING DIRECTOR



**GEOFFREY IHNOW**  
MANAGING DIRECTOR





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## ABILITY TO PAY: DEPARTMENT OF JUSTICE V. AUTO PARTS MANUFACTURER

FTI Consulting represented a Japan-based auto parts manufacturer regarding its participation in anti-competitive practices for parts sold in the U.S.

We performed an extensive ability to pay analysis for our client, taking into account the company's strategic and growth plans, including the non-recurring capital expenditures to be incurred over the next five years.

We analyzed these expenditures as well as the company's overall ability to pay. The DOJ had sought an eight-figure fine; our analysis helped secure a fine that was 78% lower.

### Subject Matter Experts



**JEFF LITVAK**  
SENIOR MANAGING DIRECTOR

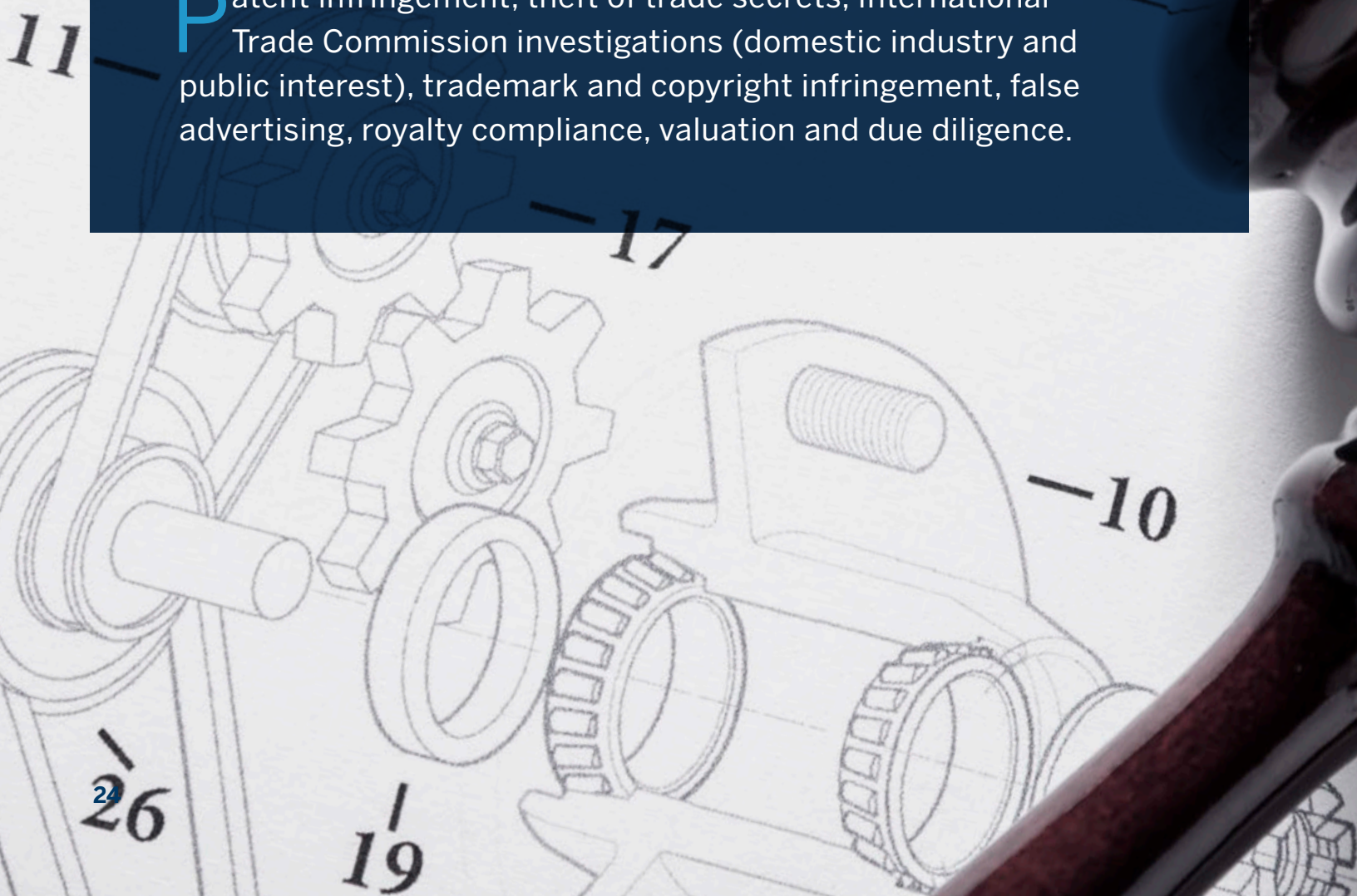


**GEOFFREY IHNOW**  
MANAGING DIRECTOR

UNITED STATES PATENT SHEET 1 of 1

## Intellectual Property

Patent infringement, theft of trade secrets, International Trade Commission investigations (domestic industry and public interest), trademark and copyright infringement, false advertising, royalty compliance, valuation and due diligence.







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## EXPERT TESTIMONY ON PATENT DAMAGES

**FTI Consulting was retained by counsel for a large life sciences company to provide expert testimony and calculate damages related to the infringement of 11 patents.**

The patents covered assays, arrays, and the related readers, reagents, kits and services in the genomics space. The patents-in-suit were exclusively licensed from a university to a for-profit company (the “exclusive licensee”), and then licensed by the exclusive licensee to the industry (including to some competitors).

In order to develop a royalty rate, we analyzed over 20 agreements for the subject patents and comparable technology, assessing and adjusting for certain factors including licensing between a university and a company, competitive licensing situations, use of the subject patents in clinical vs. research applications, among others.

The products and services accused under the asserted patents included almost 2 million transactions on sales of \$3.1B.

Using patent damages case law as guidance, FTI Consulting apportioned the royalty base for the products and services at issue based on a number of factors, including the contribution of the technology in the distinct product or service at issue, geographic coverage of the patents, and patent issue dates.

FTI worked closely with the technical experts in the case, both Ph.D. scientists, to provide a thorough damages report. Trial is expected in July 2017.

### Subject Matter Experts



**BRIAN NAPPER**  
SENIOR MANAGING DIRECTOR



**SHELLY IRVINE**  
MANAGING DIRECTOR

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## IT SECURITY

**FTI Consulting was retained by counsel for a global IT security company headquartered in the United Kingdom, defendant in a patent infringement matter, to provide expert testimony on patent damages.**

FTI Consulting's client was accused of infringing eight patents related to malware detection and computer and network protection. The accused products spanned multiple product families and encompassed hundreds of hardware, software and subscription products.

As part of the engagement, we analyzed the network security market and competition and worked with company personnel and technical experts to analyze the extent to which the company made use of the accused functionality. Another significant area of the matter is related to the analysis and use of comparable license agreements, using patent damages case law as guidance.

FTI Consulting's lead expert on the matter provided expert reports, deposition and trial testimony in the Northern District of California. In addition, FTI Consulting assisted counsel in preparing multiple successful Daubert challenges of the plaintiff's damages expert, significantly reducing plaintiff's damages claims prior to the start of trial.

### Subject Matter Experts

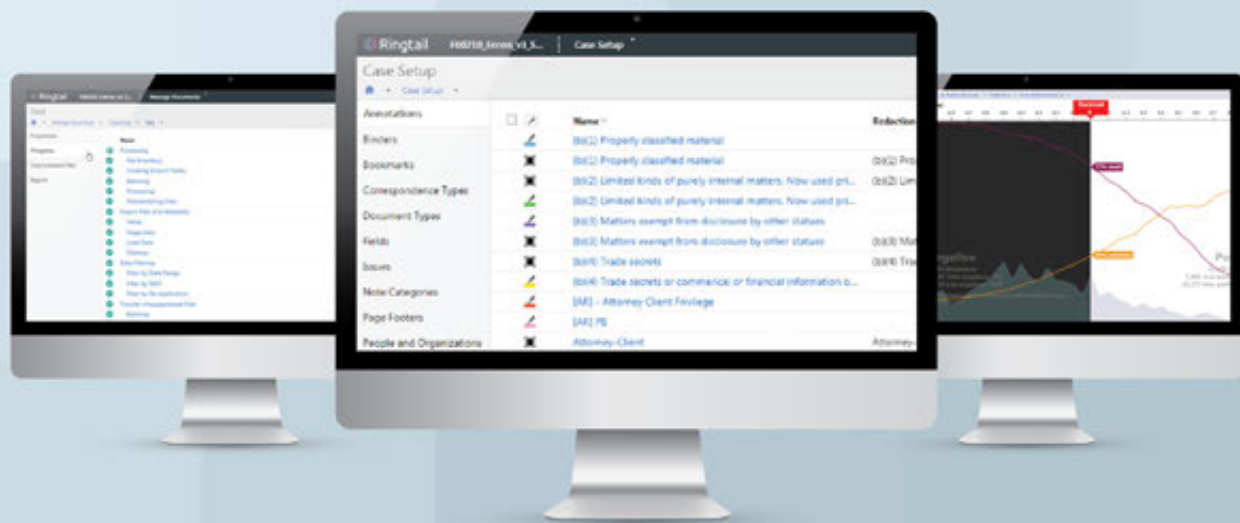


**BRIAN NAPPER**  
SENIOR MANAGING DIRECTOR



**IDA SHEA**  
SENIOR DIRECTOR

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The background of the slide is a blue-tinted image. On the left, a portion of a globe is visible, showing the continents of North and South America. On the right, there is a document with a bar chart. The chart has a vertical axis labeled 'Oct.' and a horizontal axis with several bars of varying heights. The overall aesthetic is professional and global.

# International Arbitration

**V**aluation, damages qualifications, experienced in arbitration process and deep industry expertise.

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## SOLAR PANEL MANUFACTURER

In a solar panel manufacturing industry dispute filed within the International Court of Arbitration of the International Chamber of Commerce, FTI Consulting was hired to assess a number of allegations by the parties (as cross complainants) including breach of contract related to a joint venture agreement, misuse of confidential information, breach of a license agreement, defamation and trade libel.

FTI Consulting professionals performed a number of analyses, including assessing the contribution of each party to the joint venture. These contributions included patents, trade secrets, manufacturing facilities and distribution networks.

We evaluated our client's damages, which included lost profits stemming from loss of share of output from the joint venture and breach of several agreement clauses including non-compete agreements for certain geographic locations.

### Subject Matter Experts



**BRIAN NAPPER**  
SENIOR MANAGING DIRECTOR



**SHELLY IRVINE**  
MANAGING DIRECTOR



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## AMERICAN ARBITRATION ASSOCIATION/ INTERNATIONAL CENTER FOR DISPUTE RESOLUTION MATTER

FTI Consulting was recently retained as a testifying expert for an International Center for Dispute Resolution Arbitration involving a Fair, Reasonable, and Non-Discriminatory (“FRAND”) patent licensing dispute related to standards-essential patents.

The parties had previously entered into a patent cross-license agreement, now expired, which covered previous generation products. A dispute arose as to what royalty rate should be applied to the next generation products. The parties were direct competitors in the market for telecommunications equipment and related products. We were retained to evaluate which party should be the net payer under the amendment to the patent cross-license agreement that would cover current and future sales of next generation products.

We conducted an in-depth review of the standards setting process and identified the relevant standards and contributions to the standards made by the various parties. We engaged a team of engineers to assist in reviewing technical contributions to the standard that would apply to the royalty-bearing products. We also evaluated different release versions

and prepared an interactive financial model that allowed for different assumptions on contribution weighting to be applied to different categories of licensed products.

A three-week binding arbitration hearing was held before a three-member arbitration tribunal panel. An FTI Consulting expert testified before the arbitration tribunal panel as to the appropriate net balancing payment for the license period that would be covered under a license for next-generation products.

### Subject Matter Experts



**BRIAN NAPPER**  
SENIOR MANAGING DIRECTOR



**DREW MOONEY**  
SENIOR DIRECTOR



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## SINGAPORE INTERNATIONAL ARBITRATION CENTER

FTI Consulting currently is providing economic damages consulting services on behalf of an international company that is in a global dispute related to two agreements: 1) a Master Research Agreement and 2) a Licensing Agreement related to developing and commercializing an enhanced delivery method for treatment of a variety of infectious diseases.

The arbitration notices assert breaches of several provisions under the two relevant agreements, fraudulent or negligent misrepresentations, breaches of confidence and/or unjust enrichment in relation to intellectual property and commercial licensing terms, amongst others.

We are conducting an extensive analysis of the relevant applications and estimating the economic impacts associated with each claim.

A cross-segment and geographically dispersed team of FTI Consulting professionals are using the combined skills of forensic accounting, economic damages experience as well as extensive intellectual property expertise to provide multiple perspectives related to the claimed losses of the company.

### Subject Matter Experts



**BRIAN NAPPER**  
SENIOR MANAGING DIRECTOR



**LEIGHA BECKMAN**  
DIRECTOR





# Commercial Disputes

**E**conomic damages (i.e., unjust enrichment, lost profits, royalty, or diminution in value) related to contract, distributor, joint venture and franchise disputes, lender liability, professional malpractice, unfair business practices and tortious interference. Research and analyses of regulatory, organizational and competitive actions on market and firm performance.



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## SOFTWARE IMPLEMENTATION FAILURE CLAIM

**On behalf of counsel for a healthcare insurance company, FTI Consulting searched for industry experts who could opine on liability issues in a litigation matter involving a failed large-scale software implementation.**

Our client was suing another company from which it had acquired a large medical claims administration system and related business. The acquisition occurred just one month before a \$100M+ claims administration contract “went live,” at which time our client discovered major problems with the system, rendering it non-operational. Our client had spent millions of dollars, and thousands of man-hours, to remediate problems with the system, and then brought suit against the seller, alleging it made various fraudulent misrepresentations and breached the contract.

Our client and counsel sought an expert on IT systems project management and implementations who could provide testimony on the key aspects of the case including system design, requirements analysis, testing, defect

resolution, and staffing and resource allocation. FTI Consulting identified such an expert and assisted him in identifying and compiling relevant documents amongst the hundreds of thousands of documents produced, and assisting in the drafting of the expert report. FTI Consulting also provided workproduct consulting assistance on other case issues. As the matter evolved, we also provided a damages expert to analyze compensatory/benefit-of-the-bargain damages, and for damages involving reputational harm.

FTI Consulting provided substantial assistance in the preparation of both expert reports on the liability and damages issues, including rebuttal reports. We also helped prepare the experts for deposition and assisted counsel in preparing for opposing expert depositions. The matter settled on the eve of trial.

### Subject Matter Experts



**ERIC POER**  
SENIOR MANAGING DIRECTOR



**JEFF LITVAK**  
SENIOR MANAGING DIRECTOR



**CHRIS RIPER**  
MANAGING DIRECTOR



**JASON TOLMAIRE**  
SENIOR DIRECTOR



**WILLIAM CROSBY**  
DIRECTOR



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## ALLEGED DAMAGES TO GROCERY CHAIN

**FTI Consulting was retained by counsel for a regional grocery chain that was claiming that, despite having contract provisions protecting it from competition, its landlord had permitted a national retail real estate developer and operator to begin operations in the same retail center.**

Our client also alleged that the defendants improperly allowed new construction that delayed our client's planned remodeling as a way to force it to accept the new developer.

We prepared damage calculations for lost profits and diminution of value. The diminution of value was prepared based on well-accepted valuation techniques, and the data was based on public and private company research. We analyzed detailed records of revenues for the various profits centers of the grocery store, including dairy, produce, deli, meat, frozen, floral, liquor and other categories.

We also conducted extensive industry, real estate and market research. We reviewed data from the store's loyalty card program to determine the customer market area and spending patterns. We analyzed competitor information, both public and private, and determined the possibility of new entry. With assistance from other experts, we analyzed the real estate aspects of the area, including traffic patterns, and visited the site, other company grocery sites, general grocery competitors sites and several sites that were direct competitors of the defendant.

### Subject Matter Experts

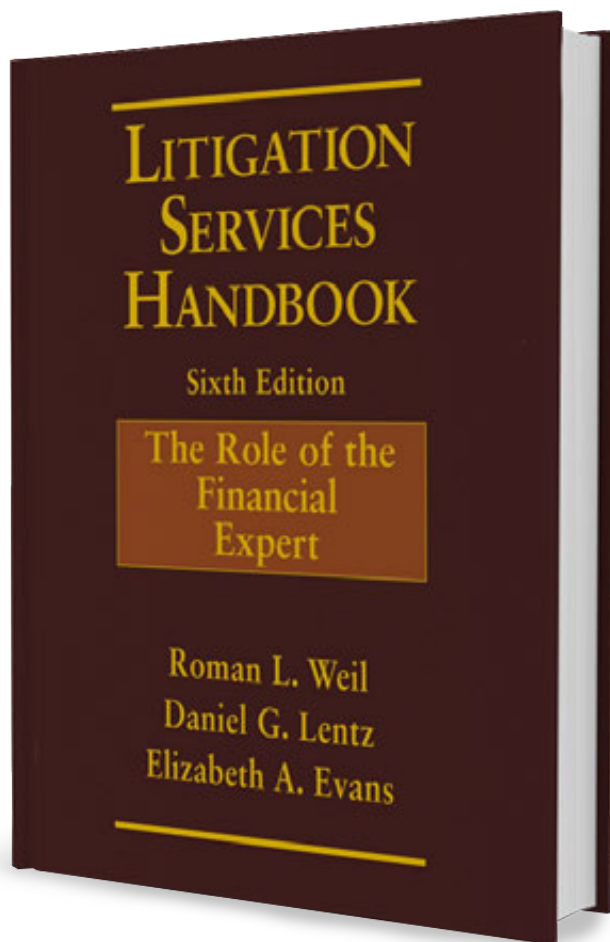


**STEVE HAZEL**  
SENIOR MANAGING DIRECTOR



# LITIGATION SERVICES HANDBOOK

FTI Consulting is, once again, a proud contributor to Wiley's latest *Litigation Services Handbook: The Role of the Financial Expert* – the definitive guide for financial experts in litigation.



## 2017 Edition edited by:

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Senior Managing Director,  
Los Angeles

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Ryan Herrington, Jill Kennedy, Eric  
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Rogers, Tiko Shah, Tim Sherman

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# Business Insurance Claims

**P**roperty & Business Interruption, Contingent Business Interruption, Data Breach/Cyber Risk, Political Risk, Builder's Risk, Product Recall, Fidelity/Fraud, Long-Tail Liabilities, Product Liability and FEMA. Insurance Claims Preparation & Forensic Accounting. Probable Maximum Loss Studies. Liability Insurance Allocations.

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## CYBER-ATTACK/DATA BREACH INSURANCE CLAIM

**Experts at FTI Consulting were retained by a large broker dealer to analyze losses, quantify damages and prepare an insurance claim in connection with a cyber-attack.**

The company's customer accounts were compromised by hackers who conducted an elaborate online fraudulent scheme to steal customer funds via unauthorized trades and wire transfers, resulting in over \$20M in financial losses. We also conducted extensive industry, real estate and market research. We reviewed data from the store's loyalty card program to determine the customer market area and spending patterns. We analyzed competitor information, both public and private, and determined the possibility of new entry. With assistance from other experts, we analyzed the real estate aspects of the area, including traffic patterns, and visited the site, other company grocery sites, general grocery competitors and several sites that were direct competitors of the defendant.

Our multi-disciplinary team of investigators, computer forensic experts, and forensic accountants developed a coordinated approach to analyze the criminal scheme that was orchestrated

through the theft of personal information (e.g., account user IDs and passwords); through the use of Trojan horses, keystroke loggers, phishing, etc.; and the use of that information to access customer accounts in order to directly remove funds from those accounts, or to engage in "Pump and Dump" activities.

Our experts implemented a sophisticated "link analysis" to identify relationships between activities in various compromised accounts (bank account number, IP address, stocks traded), to demonstrate that the scheme was perpetrated by one organization and should be considered only one occurrence for insurance purposes. Over 1,000 accounts were linked and identified as being connected to the scheme. This "main cluster" of accounts was identified using i2 Analyst's Notebook which enables 3-dimensions of relationship analysis.

Our work was critical in demonstrating that the scheme and resulting damages were covered by the Computer Crime Insurance Policy. We quantified lost earnings and prepared a comprehensive insurance claim package including narratives describing the cyber-attack, the losses, and how the losses fit in the insurance policy

Our work was submitted to the insurer and our client reached a favorable settlement.

### Subject Matter Experts



**GREG THALER**  
SENIOR MANAGING DIRECTOR



**CHRIS BROPHY**  
SENIOR MANAGING DIRECTOR



**STEPHEN MOSELEY**  
MANAGING DIRECTOR



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## BUSINESS INTERRUPTION AFTER HURRICANE

**FTI Consulting was retained to provide forensic accounting and insurance claim preparation services for a large resort and casino in the Bahamas that suffered over \$35M in damage caused by Hurricane Matthew.**

Our services included the following:

- Worked with the company and the company's insurance broker to identify all covered loss areas, applicable limits and deductibles;
- Established loss accounting and documentation procedures to facilitate a smooth claims process for both property damage and business interruption losses;
- Prepared preliminary loss calculations to facilitate cash advances and to ensure the insurers set an appropriate reserve;
- Calculated business interruption losses by analyzing historical results, operating forecasts and detailed financial and accounting records. We accounted for all areas of loss including the hotel, casino, convention center, spa, retail shops, restaurants and golf course;
- Analyzed trends of Occupancy Rates, Average Daily Rates and Revenue per Available Room to understand historical experience of

hotel. Reviewed Smith Travel Research (STR) Reports, pace reports of bookings, changes in hospitality market and other data to assess the likely experience of the hotel if the loss had not occurred;

- Assessed the reasonable time to complete repairs to determine and document the period of indemnity;
- Measured extra expenses to mitigate the loss and sustain operations during repair and restoration of the property;
- Prepared the property claim, including working with contractors to prepare replacement cost estimates and document all repair and replacement costs. We submitted the claim with hyperlinks to all supporting documentation making the review process more efficient for the insurers;
- Prepared a logical, well documented insurance claim package for the insurer including concise loss calculations and detailed supporting information.

We responded to information requests from the insurance adjuster and insurer's accountants, and collaborated closely with the company to manage expectations and ensure a smooth path to resolution.

### Subject Matter Experts



**GREG THALER**  
SENIOR MANAGING DIRECTOR



**CHRIS BROPHY**  
SENIOR MANAGING DIRECTOR



**STEPHEN MOSELEY**  
MANAGING DIRECTOR

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## POLITICAL RISK INSURANCE CLAIM

**FTI Consulting was retained by a major insurance company to provide forensic accounting and insurance claim consulting services in connection with a \$150M political risk claim.**

The claim was filed by an international oil exploration and production company that was forced to temporarily abandon its oil production facilities in Libya due to political unrest during Muammar Gaddafi's regime.

We reviewed the insurance coverage and provided an assessment of claimed damages under the policy. We analyzed business interruption losses and made a detailed assessment of lost production and saved expenses resulting from the abandonment of the insured's property. Our energy experts performed various analyses of the company's historical performance, expected production,

pricing, costs and industry metrics to understand and quantify the loss of earnings.

Our insurance claim team met with the insured and assisted the insurer by reviewing all aspects of the loss, and determining the proper methodology to calculate damages under the insurance policy. We worked to manage the expectations of all stakeholders and presented our independent analysis of the business interruption loss.

### Subject Matter Experts



**GREG THALER**  
SENIOR MANAGING DIRECTOR



**CHRIS BROPHY**  
SENIOR MANAGING DIRECTOR



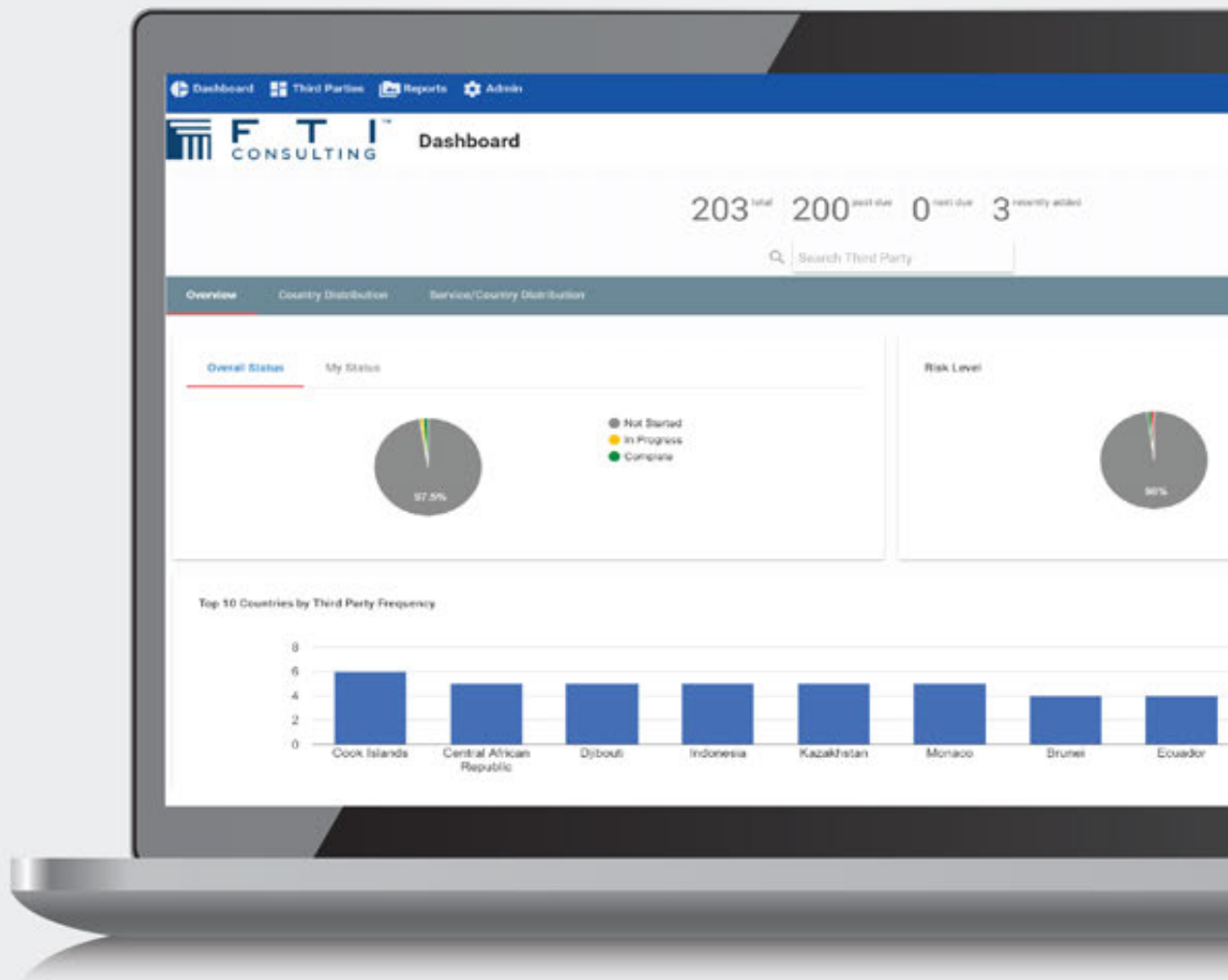
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# FTI COMPLY Version 2.0

## Third-Party Integrity and Sanctions Risk Monitoring



### Contact

For questions about FTI COMPLY, or to schedule a demo, please email us at: [fticomply@fticonsulting.com](mailto:fticomply@fticonsulting.com), or dial US: +1 202 346 8870

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#### About FTI Consulting

FTI Consulting, Inc. is an expertise-led, independent, global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes.

[www.fticonsulting.com](http://www.fticonsulting.com)

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