

FTI CONSULTING

ISSUE 4 | FEBRUARY 2019

INSIGHTS

TOP DISPUTES AND INVESTIGATIONS

Dispute Advisory Services

EXPERTS WITH IMPACT

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Insights 2019

Words of Welcome



Recent years have seen rapid social, political and economic change – with new risks and novel opportunities. In a shifting environment, many firms turned to FTI Consulting to help them navigate these dynamic changes.

In this newsletter, we highlight some of our most fascinating and challenging recent engagements. These excerpts illustrate both the scope of the changes roiling the business landscape and the breadth of experience and expertise our multi-disciplinary teams can bring to bear – often under enormous time pressure – to assist our clients.

Our consultants regularly leverage our data and analytical skills for our clients in conflicts that involve money laundering, patent disputes, employment matters, cross-border trading, arbitration, big data and complex commercial disputes. We deploy our deep courtroom experience to help resolve contractual issues and other matters in M&A, cross-border trading and regulatory compliance while providing counsel with expert advice and witness testimony. We assist clients in sectors ranging from financial services to defense to life sciences.

And we keep expanding our abilities. As we gain insights from each engagement, we use them to develop new processes and strategies for ever more demanding and diverse challenges.

We look forward to helping you – our existing clients and our new clients – in the coming years.


Yours truly,

A handwritten signature in cursive script that reads "Basil Imburgia".

Basil Imburgia

Senior Managing Director

North America Leader, Forensic & Litigation Consulting



Securities, Accounting, & Regulatory Enforcement

Ten years after the collapse of Lehman Brothers, market participants operate in a markedly changed regulatory enforcement environment. Regulators expect more from companies, compliance costs can be punishing, and the political and geopolitical environment is both fragile and uncertain. In this section, we highlight several recent engagements.

ANALYZING A PUMP-AND-DUMP SCHEME FOR THE SEC

The SEC retained FTI Consulting to provide expert witness testimony in an alleged pump-and-dump scheme that generated millions in illicit proceeds. The SEC alleged that the defendants – citizens from around the globe – opened a network of offshore shell companies and bank accounts in financial secrecy havens through which they manipulated the price of an unregistered offering.



Financial havens – in places such as the British Virgin Islands, Seychelles, Panama and the Marshall Islands – have been shown to allow the use of instruments or mechanisms that obscure the identity of the true owners (i.e., the beneficial owners) of a company. Ownership and control can be masked, for example, by using bearer shares, nominee shareholders, and nominee officers and directors. While these instruments or mechanisms can serve legitimate purposes, they can also be misused by fraudsters and money-launderers.

We used our extensive anti-money laundering experience with offshore financial havens to identify the characteristics that differentiate shell companies from ordinary businesses. Shell companies often, for example, do not have a functional website, a company phone number or logo on company-related documents, a physical presence, or full-time employees. We also analyzed company formation documents, banking (“Know Your Customer”) and due diligence documents, bank statements, trading activity and email communications in order to reach our conclusions.

We advised the SEC as to the extent which offshore entities acted in a way that was consistent with legitimate activity and which had the markers of illicit activity.

Subject Matter Experts



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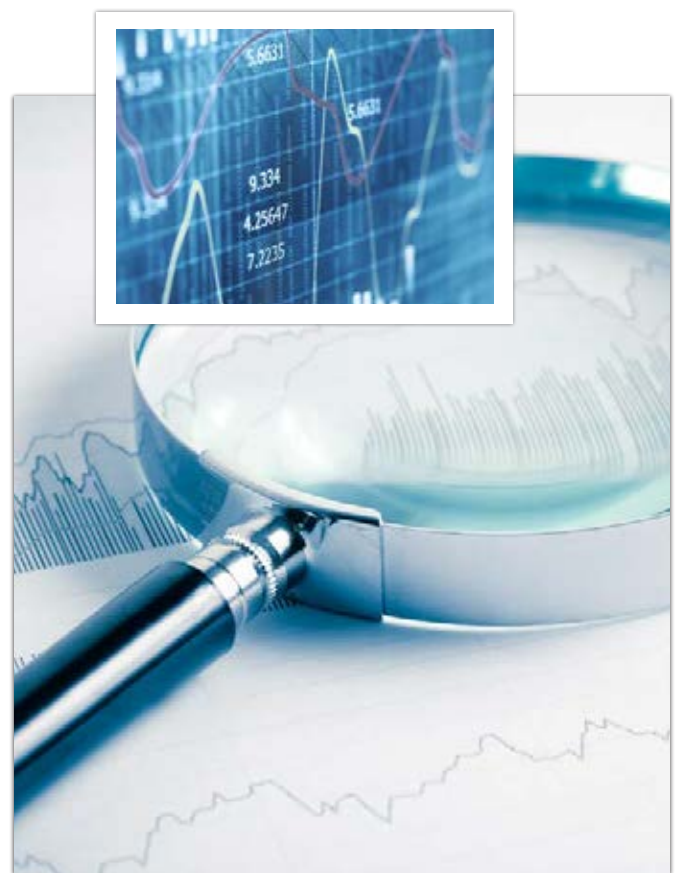
MONITORING A FINANCIAL SERVICES COMPANY FOR ONGOING COMPLIANCE

FTI Consulting was recently retained as the independent compliance monitor in an FTC settlement with a financial services company. We have been asked to conduct extensive, bi-annual reviews of the company's operations for the next 10 years. This settlement came after a lengthy investigation into the company's alleged misconduct, including claims that the company had used illegal tactics to service and collect consumers' loans, such as:

- Misrepresenting fees consumers owed in collection calls, monthly statements, pay-off notices and bankruptcy filings;
- Making unsubstantiated claims about the amount consumers owed;
- Improperly assessing and collecting fees or other amounts;
- Unilaterally modifying contracts by increasing principal balances;
- Failing to disclose the financial impact of loan extensions;
- Misrepresenting payment methods that required service fees; and
- Misrepresenting that the company's audits verified consumer account balances.

The order settling the charges required the company to change its business practices and comply with appropriate laws. In addition, the

company is required to establish and maintain a comprehensive data-integrity program to ensure the accuracy, integrity and completeness of its loan-servicing processes, data and other information the company collects or sells. FTI provides the FTC with independent, periodic assessments of the company's compliance with the settlement, and investigates ongoing complaints received by the FTC, the Consumer Financial Protection Bureau, the Better Business Bureau and other federal and state agencies.



Subject Matter Experts



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SENIOR MANAGING DIRECTOR



LAURA DERIAN
SENIOR CONSULTANT

HELPING A BANKING CLIENT SATISFY REGULATORS

The Financial Industry Regulatory Authority (FINRA) alleged that customers of a major U.S. bank did not receive mutual fund shares at net asset value (NAV) pursuant to available NAV Transfer Programs during a specific time period. The bank retained FTI Consulting to assess its NAV Transfer Program's remediation process and to report to FINRA. Under the NAV Transfer Programs, certain customers were eligible for reductions or waivers of the sales charges incurred in connection with their mutual fund transactions.

We completed a thorough review of the company's processes, including all relevant business procedures, and analyzed the associated



supporting databases to identify harmed customers and any amounts they were owed. The bank identified and rendered payment to all customers who were determined to be entitled to restitution.

FINRA accepted FTI's report and findings and no further action was required by the bank. We successfully completed this review under budget in the agreed-upon time.

Subject Matter Experts



DAVID ALFARO
SENIOR MANAGING DIRECTOR

INVESTIGATING CROSS-BORDER EQUITY TRADING

FTI Consulting was retained to provide financial analysis for investment funds involved in a regulatory proceeding with a foreign government. The government's taxing authority was investigating whether the funds had violated any laws when executing structured transactions involving the acquisition of equities around dividend dates.

FTI assisted counsel at an early stage to analyze the funds' trading activity, and to assess the economic substance of the trades. We also performed financial research to help counsel establish the prevalence of such trades in cross-border equity markets. In preparation for potential litigation, FTI identified and partnered with a global authority in equities finance to assist with analyzing the trades, advise counsel on industry practices and support other experts, should they be needed.

Subject Matter Experts



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MICAH TRILLING
MANAGING DIRECTOR



TIKO SHAH
MANAGING DIRECTOR



ALOK KHARE
MANAGING DIRECTOR



ROBERT MIS
DIRECTOR

ADVISING A SILICON VALLEY FINTECH STARTUP IN AN SEC INVESTIGATION

FTI Consulting was retained by counsel for a fintech startup headquartered in Silicon Valley that was being investigated by the SEC for its accounting practices and certain international financial transactions. The company was backed by prominent venture capital firms and was a participant in a prestigious seed accelerator program.

The SEC inquired about the company's multiple domestic and foreign bank accounts and the transfers of funds between those accounts and personal accounts associated with the company's founders. The SEC also wanted to know about certain accounting transactions involving compensation and expense reimbursements for the company's founders.



At the same time, the company was in the process of completing a new funding round. The SEC inquiries had the potential to delay that process and jeopardize the company's future. FTI gathered and analyzed large volumes of raw banking records, as well as the company's accounting books and records, to understand the transactions at issue and to advise counsel and the company in its response to the government's inquiries.

Subject Matter Experts



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KERRY PAPPAS
DIRECTOR

Have you ever needed to find a certain type of expert in a specific location — or wondered how many experts have a certain expertise in your city?

The **FTI Expert App** displays an interactive map that provides instant access to experts, locations and short biographies. Based on your search criteria, a designated FTI Consulting representative will be made available to assist in your search.

Use the app to search criteria that include:

- Location
- Type (academic, consultant, former regulator and industry experts)
- Profession
- Expertise
- Industry



Now Available



The FTI Expert App can be found on Apple's App Store on any iPhone by searching "FTI Experts"

FTI ORION Has Launched

FTI Orion is FTI Consulting's proprietary Endpoint Detection and Response Tool developed by the FTI Cybersecurity Team. It facilitates advanced threat-hunting and rapid incident response throughout your network environment.



Transform your enterprise cybersecurity capabilities by:

-  Discovering and mitigating threats in real time
-  Managing incidents on your entire network through a single dashboard
-  Providing real time protection against new and evolving threats through active intelligence correlation



Labor & Employment

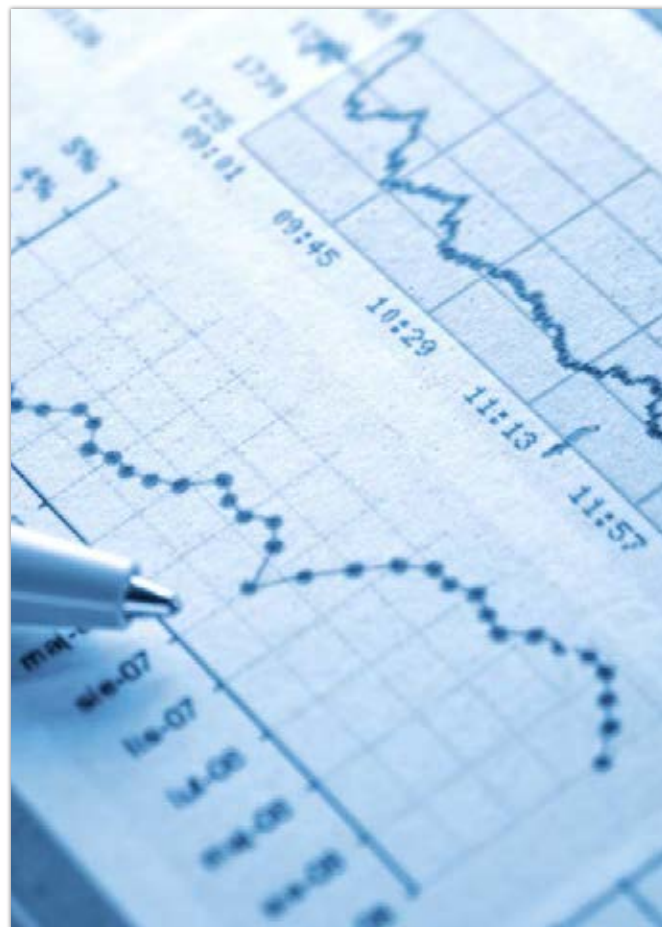
This has been an eventful 18 months in the labor and employment arena under the new Administration. Pay equity issues are becoming more prominent, and the Equal Pay Act has been reinvigorated by recent political and legislative initiatives as well as social media. A number of states have enacted robust pay equality statutes, with more legislation on the horizon.

We highlight a sample of recent engagements in this section, including two that highlight our sophisticated abilities with economic and statistical analysis, which has become an important part of many labor and employment disputes.

DETERMINING FINANCIAL DAMAGES IN A CASE OF SEXUAL ASSAULT

FTI Consulting was retained to analyze damages suffered by a client who alleged she had been sexually assaulted. We accepted this case on a *pro bono* basis.

Our client had significantly changed her career plans after the assault. We researched and calculated likely career and compensation trajectories for someone with her educational and employment history and compared them to the new trajectory she was facing. Using data culled from the Bureau of Labor Statistics, SEC filings, the business press, and industry and alumnae resources, we calculated the salary, bonus and equity compensation our client would likely have earned had the alleged assault not occurred and compared it to her projected earnings.



The difference represented the financial damages she had suffered, before medical costs, pain and suffering and punitive damages. We presented our calculations across a range of timeframes so the jury could determine the most appropriate period of damages.

The case settled on the eve of trial.

Subject Matter Experts



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JIMMY MCCUTCHEON
DIRECTOR

APPLYING DATA TO AN ALLEGATION OF DISCRIMINATORY HIRING PRACTICES

FTI Consulting was retained by an outdoor and sporting goods retailer to provide economic and statistical analysis of its hiring practices, which were the focus of an investigation by the Equal Employment Opportunity Commission (EEOC). The EEOC had alleged that the retailer engaged in discriminatory hiring against minority job applicants.

We assisted counsel by assembling and analyzing data from the company's nationwide human resources system. We organized the data to create a detailed work history for each employee, including information such as date of hire, race, job title, job location, job departments and date of termination. Ultimately, the data provided counsel with an overview of the hiring rates for minority employees within each store location. Additionally, we compared each store location's applicant pool to a proxy applicant pool based on labor force data obtained from the Bureau of Labor Statistics.

Our analysis was critical in helping the retailer reach a settlement with the EEOC in July 2017.

Subject Matter Experts



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DIRECTOR

ANALYZING THE NUMBERS IN A CLASS ACTION ON PROMOTION DISCRIMINATION

FTI Consulting was retained by counsel for a leading social media technology company to provide consulting services in a class action alleging discrimination in promotion.

FTI reviewed and rebutted analyses put forth by plaintiffs' expert. We used statistical techniques to analyze the alleged adverse impact on the class, and analyzed several different metrics including selection rate, promotion rate and time to promotion. Additionally, we reviewed human resources data and identified discovery data responsive to the plaintiffs' request.

Recently, the court denied the plaintiffs' motion for class certification.

Subject Matter Experts



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SREEVIDHYA DEVARAJAN
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.

Intellectual Property

As we go print with this publication, clients are grappling with the implications of several important trade secrets decisions. Traditionally, courts have allowed actual losses caused by the trade secret theft to be recovered such as the trade secret owner's lost profit or the misappropriator's unjust enrichment. But can a trade secret owner also recover the costs the competitor avoided by not having to develop the stolen trade secret? The recent New York Court of Appeals decision in *E.J. Brooks v. Cambridge* said "no." In a different decision – a federal circuit decision in *Texas Advanced Optoelectronic Solutions, Inc. v. Renesas Electronics America, Inc.* – the court held that unjust enrichment damages are to be determined by the court and not a jury. At FTI, we are closely watching to see if these and other decisions are part of a wider shift in how damages in trade secrets cases should be calculated or merely minor adjustments in the rules.

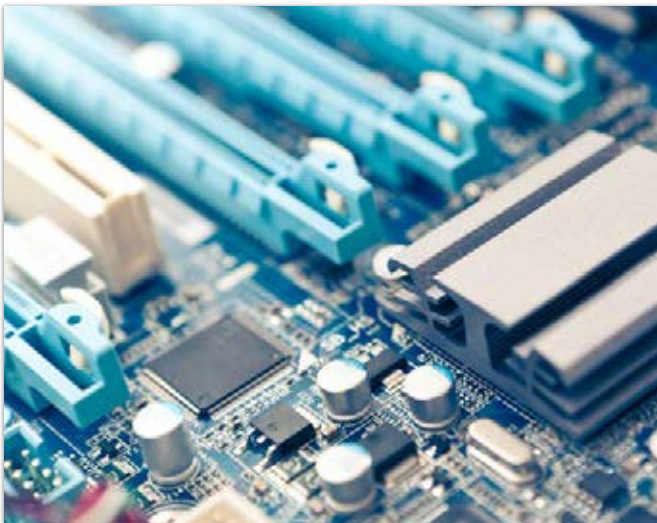
We highlight in this publication two engagements, one where we were asked to assess the economic damages of the infringement of certain patents, and a second, where we were asked to analyze economic issues in a long-running dispute involving check-scanning technology.

DEMONSTRATING IRREPARABLE HARM FROM PATENT INFRINGEMENT

FTI Consulting was retained by Ropes & Gray, who was representing Veeco Instruments, Inc. (Veeco) in a 2017 patent infringement case against SGL Carbon, LLC, to assess the economic damages that the infringement of certain patents would have on Veeco's business. Veeco designs, manufactures and markets thin film process equipment that enables global high-tech electronic device production and development.

At question was whether wafer carriers sold by SGL Carbon, infringed Veeco's patents covering certain features of its metal organic chemical vapor deposition (MOCVD) reactors.

Our expert's economic analysis demonstrated that Veeco suffered and would continue to suffer various economic injuries as a result of the patent infringement, including loss of customers, market share, business opportunities, price erosion and reputational damage.



Our analysis established that in the absence of a preliminary injunction, Veeco would need (among other things) to lower prices on its MOCVD reactors to compete with one of its major competitors in China which had purchased the infringing products from SGL Carbon, and that Veeco would suffer irreparable economic damage and might never be able to achieve pre-infringement price levels.

Our expert testimony and analysis were key factors in the Eastern District of NY court's granting of a preliminary injunction.

Subject Matter Experts



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SENIOR MANAGING DIRECTOR



HONG QIAO
SENIOR DIRECTOR

SUPPORTING JPMORGAN CHASE IN A PATENT LITIGATION CASE

FTI Consulting has assisted in a series of disputes spanning 16 years between DataTreasury Corp. (DTC) and JPMorgan Chase. DTC initially filed a patent infringement lawsuit against JPMorgan Chase and, separately, Bank One, who merged with JPMorgan Chase (collectively JPMC), accusing the banks of using its patented check processing technology.

In 2002, FTI was engaged by JPMC. The analysis the FTI team performed focused on understanding the technology resources, including check processing, imaging, archiving methods and software employed by the banks to process checks and other bank documents, and the associated economics of such systems. FTI determined the appropriate royalty base through an analysis of micro-transactions.

In 2005, prior to the issuance of expert damages reports, JPMC settled with DTC, agreeing to a \$70 million lump sum payment for the unlimited use of DTC's check imaging intellectual property. The 2005 DTC/JPMC settlement agreement contained a clause that guaranteed that if the patents were licensed to anyone else, JPMC would be entitled to "any more favorable terms" within those agreements (the maximum foreseeable loss, or MFL provision).

Six years later, in 2011-2012, JPMC sued DTC for breach of the MFL provision after JPMC learned DTC had licensed the patent to Cathay General Bancorp for \$250,000. FTI was retained by JPMC to provide an expert opinion on the

appropriate damages it was owed, namely that JPMC was owed a refund of the difference between the \$250,000 deal Cathay received from DTC and the \$70 million it had paid.

JPMC prevailed at District Court and won a split Fifth Circuit decision affirming a refund of \$69 million it paid to license DTC's check scanning technology when the court found JPMC's MFL provisions applied retroactively. DTC appealed to the U.S. Supreme Court, which declined to hear the matter.

In January 2018, JPMC sued the directors of DTC in Delaware Chancery Court, alleging that they had deliberately planned "to drain the company of revenue" to foil the collection of the \$69 million patent royalty refund, thereby disregarding and violating "their corporate responsibilities to JPMC and other creditors similarly situated" to reserve and make available funds "to satisfy JPMC's claim and other legitimate debts of the company."

FTI has been retained in this matter as well.

Subject Matter Experts



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DAWN HALL
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SCOTT FRIEDLAND
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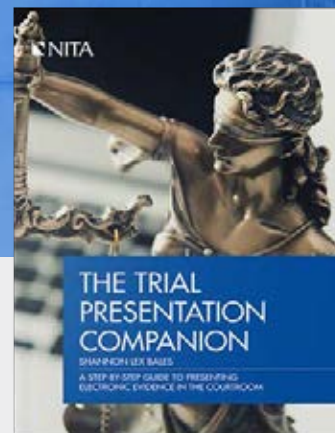
JENNY CHEN
SENIOR DIRECTOR

THE TRIAL PRESENTATION COMPANION

A Step-By-Step Guide to Presenting Electronic Evidence in the Courtroom.

The Trial Presentation Companion: A Step-by-Step Guide to Presenting Electronic Evidence in the Courtroom, written by award-winning legal technologist Shannon Lex Bales, is NITA's first-ever, comprehensive "how-to" manual on running electronic evidence in the courtroom. This face-saving guide will help you and your firm expand your comfort zone in working with all the bits and pieces—laptops, trial presentation software, document cameras, audio-visual components, the puzzling array of cords and cables—that are increasingly essential when presenting electronic evidence in court in the modern era. Part One explains in plain (and often tongue-in-cheek) English why expert trial technologists do what they do during pretrial and in court, while Part Two shows you, step by illustrated step, how you, too, can bring that same game to your own legal team as you huddle for trial. Included as a free bonus are ready-to-use forms and checklists to download and use to help you mind the details of your case.

The Trial Presentation Companion is available for purchase at: <https://bit.ly/2OUoRnb>



Shannon Lex Bales

Shannon Lex Bales is a Managing Director at FTI Consulting and is based in Los Angeles. As a member of the Trial Services group, he is responsible for building a technical environment for legal teams to present their case in a way that maximizes decision-maker understanding and minimizes downtime and security risk.

Data & Analytics

As technology improves, we are gaining greater capabilities to analyze large, complex datasets. In a variety of assignments, we have shown that 20-30 years of financial transactions, residing in vast, chaotic and un-coded datasets, can be ordered and queried, and used to assess litigation claims.

Each of the matters described in this section involved large amounts of data, which we often find spread across multiple, incompatible systems and broad geographies. FTI's Data & Analytics team is expert at efficiently collecting, coordinating, and analyzing such diverse data sets.

ASSISTING A MULTIBILLION DOLLAR REVERSE MORTGAGE SERVICER'S RESPONSE TO A REGULATORY INQUIRY

Our client was subject to a regulatory inquiry seeking to find out whether it was complying with certain regulations concerning its mortgage servicing operations. Regulators had found that the company lacked consistent processes and controls and was struggling to file its financial statements in a timely fashion. In addition, the company required assistance with its interest curtailment reserve calculations. FTI Consulting was asked to assist client's counsel in computing the interest exposure calculation under the False Claims Act and help the client in responding to its auditors by analyzing its data, processes and interest curtailment reserve model.

We took custody of the client's entire servicing system database and restored that data in an FTI database environment. We relied upon our ability to analyze large amounts of data as well as our extensive experience in mortgage servicing and modeling to:

- Review the code the bank used to derive key data points to measure whether the bank was in conformity with regulatory guidelines and calculating its data accurately;
- Assess and improve the company's quality control function;

- Validate the company's interest curtailment reserve models, create data validation procedures and exception reporting and suggest improvements; and
- Assist counsel in estimating interest curtailment exposure in response to regulatory inquiries.

During our analysis, we performed detailed loan-level reviews of statistically valid samples to evaluate the bank's adherence to various regulatory requirements and developed a custom web application to capture the key requirements, data points and supporting documents. We also calculated under-curtailment exposure of debenture interest for a statistical sample of loans and extrapolated the results to the entire population. Lastly, we provided recommendations to improve the bank's processes and assisted with implementing those recommendations.

We prepared a report, presented our findings to the regulators and assisted the client's attorneys in their communications and negotiations with regulators. The client agreed to a settlement with the Department of Justice of more than \$89 million to resolve allegations that it violated the False Claims Act and FIRREA.

Subject Matter Experts



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SCOTT CARNAHAN
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ANALYZING PROMOTION POLICY IN THE AGE OF #TIMESUP

FTI Consulting was retained by counsel for a leading social media technology company to examine the effectiveness of its promotion policies.

FTI analyzed complex data obtained from disparate sources (multiple third-party vendors that maintained data on behalf of the company) with extensive data validation and formulaic approaches supplemented by manual reviews.

FTI performed several statistical analyses, including those of differences in male and female promotion rates according to job groups, differences in average days to promotion for both male and female employees, and differences in the rates at which male and female employees were promoted to management roles.

Subject Matter Experts



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DIGGING DEEP TO DETERMINE THE DEGREE OF UNAUTHORIZED AND EXCESSIVE FEES FOR CREDIT/ DEBIT CARD PAYMENTS

FTI Consulting was retained by counsel for a major payment processor in a class action that alleged it was assessing and collecting unauthorized and excessive credit and debit card payment-processing fees and charges.

FTI analyzed the company's payment processing using internal company databases and monthly statements issued to merchant clients. We calculated historical payment card transaction fees and markups based on the officially published rates. Based on this detailed analysis, we calculated potential class-wide damages under various liability theories to assist counsel in mediation and settlement resolutions. With this information, defense counsel was able to settle the matter successfully.



Subject Matter Experts



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REVIEWING THE PBGC'S PENSION MODELS IN LIGHT OF GLOBALIZATION, AUTOMATION AND MORE

On behalf of the Social Security Administration, FTI Consulting and The Terry Group conducted an 18-month review of the Pension Benefit Guaranty Corporation's (PBGC's) econometric modeling of its obligations over a 20-year forecasting period. Our review focused on key economic, capital market, actuarial and demographic factors.

Like most economic/financial forecasting models, the PBGC's depends on continuously evolving economic factors. Therefore, the models must be reevaluated regularly. It is also important to balance historically-based assumptions with expert judgment and analysis of changing economic realities – in this case, globalization, automation and regulatory changes – to determine the solvency of pension plan sponsors (in the case of single-employer plans) and the future number of active plan participants (in the case of multi-employer plans).

Applying the findings of the most recent financial and actuarial research, we developed recommendations for updating the PBGC's models and the ways in which their results are tracked and communicated to the public.

Subject Matter Experts



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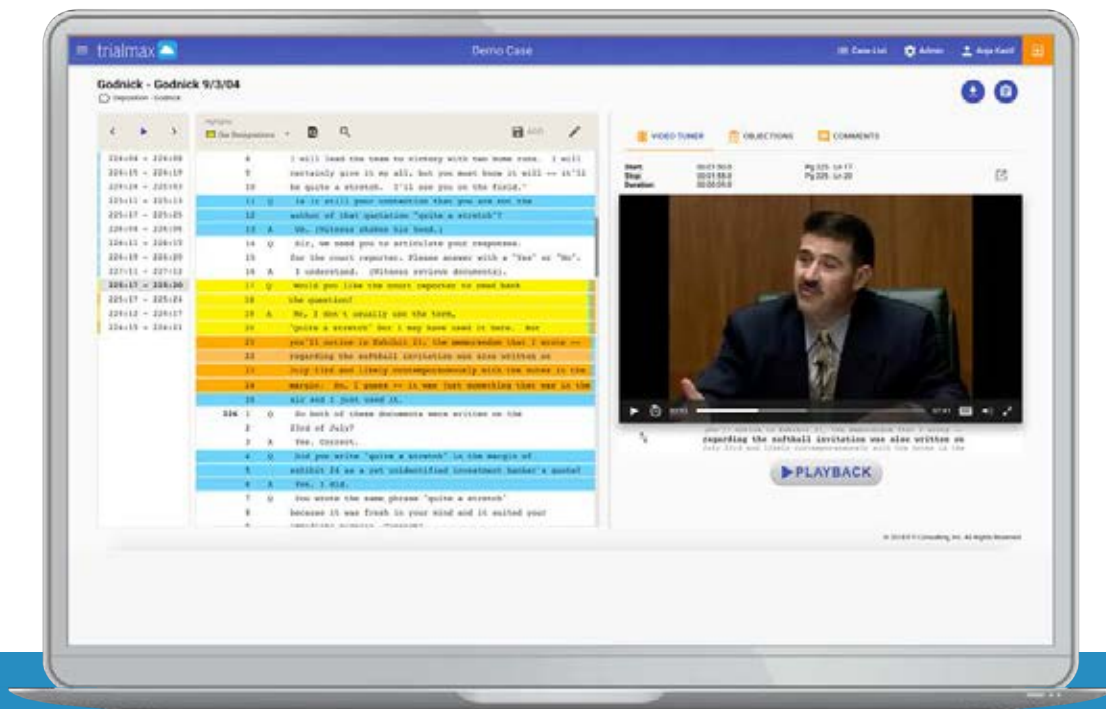


ALEX ARNOTE
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 Collaborative Environment

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 Highly Customizable

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Forensic Accounting

The past year has seen the introduction of many new accounting rules. Among the most significant are the new revenue recognition rules (ASC 606) that outline a single, comprehensive model for accounting for revenue from customer contracts for both public and private companies. One of the engagements we highlight includes our work for a large global technology firm to investigate revenue recognition and other accounting issues. We also describe one of our largest recent engagements, the analysis of Wells Fargo's sales practices.

INVESTIGATING COMPLEX SALES PRACTICES

On September 8, 2016, the Consumer Financial Protection Bureau (CFPB) imposed a fine of \$100 million — the largest in its history — against Wells Fargo & Company for secretly opening accounts without its customers' knowledge or permission. The Independent Board of Directors of Wells Fargo & Company launched an investigation to understand the causes of this improper and illegal practice and to identify the best ways to rebuild customer confidence. To conduct the investigation, the Board retained Shearman & Sterling, who retained FTI Consulting.

For years, Wells Fargo had emphasized selling as many products to consumer households as possible (e.g. checking accounts, savings accounts, credit cards, home equity lines of credit, etc.). Wells Fargo's Community Bank pressured employees to meet aggressive sales goals. Because of this top-down pressure, employees sold unnecessary accounts to customers and even their own families. For example, one branch manager had a teenage daughter with 24 accounts, an adult daughter with 18, a husband with 21, a brother with 14 and a father with four.

To get around account opening procedures, employees had used, for example, "simulated funding" to meet minimum opening deposit amounts, transferring customer funds from one account to another surreptitiously. These allegedly improper practices were extensive and complex, and a formidable amount of data — hundreds of terabytes — had to be analyzed.

FTI assembled a team of industry and functional experts, examined voluminous account, transaction and financial data, and participated in interviews of bank personnel.

We also prepared comprehensive analytics to identify trends over time and the geographic distribution of allegations of sales-integrity violations and related terminations/resignations. In addition, we analyzed account data to determine, for example, which accounts were funded (i.e., a sufficient amount was deposited into the account at the time of opening) and which were not.

Based upon the findings of Shearman & Sterling and FTI, the Independent Directors of the Board of Wells Fargo & Company released a 113-page Sales Practices Investigation Report on April 10, 2017, referencing the assistance FTI provided Shearman & Sterling and the various analyses performed. Based on the report's findings, the Board clawed back \$75 million in past payments to two former executives.

Subject Matter Experts



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ACHIEVING A FAVORABLE OUTCOME IN THE DEFENSE OF A PUBLIC COMPANY CFO

FTI Consulting was retained by counsel for a former C-suite executive of a prominent manufacturing company to provide support in response to SEC fraud allegations. The SEC alleged the executive had improperly inflated operating income by misapplying U.S. GAAP and sought to bar him from the industry, recover his profits and apply civil penalties.

FTI assisted counsel with a forensic accounting assessment. We reviewed and analyzed technical accounting guidance, public company filing requirements, industry and market data, case materials, SEC analyses and external auditor working papers. After our initial assessment, it was clear that the SEC's allegations pertained to a highly subjective and judgmental area of accounting which we analyzed in conjunction with contemporaneous case materials and key witness testimony.



As a result of this work, FTI was able to help counsel develop an informed and effective defense strategy.

We also assisted counsel in finding a preeminent expert, a former FASB staff member, who had helped set the relevant accounting standards. We supported the expert with research and report drafting. The matter was settled favorably.

Subject Matter Experts



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DIRECTOR

INVESTIGATING REVENUE RECOGNITION AND OTHER ACCOUNTING ISSUES

FTI Consulting forensic accountants were engaged by counsel for a large global technology firm to investigate revenue recognition and other accounting issues.

We compiled and analyzed thousands of transactional data points to discern any unusual trends and identify atypical revenue transactions with certain distributors. We analyzed shipping information, reviewed the associated email communications and other records, and conducted interviews of sales, operational and accounting personnel. As a result of the investigation, the company's audit committee and management concluded that its previously issued financials were materially misstated.

FTI also assisted counsel in developing recommendations and remedial measures resulting from the investigation. The company's audit committee ultimately adopted these recommendations. Furthermore, we assisted counsel in the presentation of the investigative results to the company's independent auditors and to the SEC.

Subject Matter Experts



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JEANNE GEE
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ZACH BRUMBELOW
SENIOR DIRECTOR

INVESTIGATING AN EMBEZZLEMENT SCHEME

FTI Consulting was engaged to perform an investigation of financial irregularities on a construction project. FTI forensic accountants and data experts organized the data, interviewed company personnel and industry experts, conducted a forensic evaluation of the underlying accounting records and associated email evidence and identified the embezzlement of a substantial amount of funds. We assisted counsel in reporting the results to management and regulatory authorities. We also assisted in the preparation of the company's insurance claim.

Subject Matter Experts



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RAMSEY PACE
SENIOR DIRECTOR



INVESTIGATING HIGH-PROFILE WRONGDOING UNDER TIME AND MEDIA PRESSURE

FTI Consulting was engaged by the independent Board of Directors of a global company to conduct a thorough, firm-wide forensic investigation into alleged acts of misconduct perpetrated by certain company officers and related parties. The case involved allegations of improprieties committed by the founding CEO that were widely reported in the *Wall Street Journal*, *Bloomberg*, and *Businessweek*. The investigation entailed reviewing over six million documents, and 11 million accounting, expense, and payroll records, and conducting over 50 interviews.

FTI's work began shortly after the Board very publicly suspended its founding CEO, alleging a long list of failures and malfeasances, ranging from financial mismanagement to gross sexual misconduct spanning up to 10 years.



Shortly thereafter, the Board announced a formal investigation into the CEO's behavior. We were chosen to help based on our prior work and our investigative capabilities, including our ability to quickly assemble the resources needed to conduct an in-depth, complex investigation.

FTI rapidly assembled a team of over 60 forensic accounting, technology and corporate finance experts who worked together for more than 10,000 hours over an intense three months. We presented our results to the Board and to various governmental agencies, and the Board ultimately decided to terminate the CEO for cause.



Subject Matter Experts



DAVID ALFARO
SENIOR MANAGING DIRECTOR



BRENTON CHUCK
DIRECTOR



ANDREW LAM
SENIOR CONSULTANT

Where Experts go for Expert Advice

76

Cities

27

Countries

4,600+

Employees

8/10

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the world's top
10 bank holdings
companies

480+

Senior
Managing
Directors

96/100

Advisor to 96 of
the world's top
100 law firms

THE **RECORDER**

Forbes

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#3

Jury/Trial
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FTI Consulting is an independent global business advisory firm dedicated to helping organizations manage change, mitigate risk and resolve disputes. Due to our unique mix of expertise, culture, breadth of services and industry experience, we have a tangible impact on our clients' most complex opportunities and challenges.



The Deal

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International Arbitration

China's economic growth has attracted significant foreign investment in recent years. However, as commercial ties between mainland China and the rest of the world broaden and deepen, the number of China-related commercial disputes has also increased. Arbitration is sometimes used to resolve disputes. We highlight one of our recent engagements in which FTI Consulting's expert had extensive knowledge of audit and attest standards, strong industry experience and a deep understanding of the Chinese market, and helped resolve an international arbitration dispute.

ANALYZING PROCEDURES PERFORMED BY AN INTERNATIONAL ACCOUNTING FIRM IN A MULTI-JURISDICTION INTERNATIONAL ARBITRATION

FTI Consulting was retained by counsel for a global social media technology firm that had formed a joint venture with another firm. We were asked to provide an expert opinion on whether records had been adequately maintained and whether licensing payments between the joint venture partners had been calculated correctly.

Our client, a social networking software firm, provided technology to a joint venture (JV) it had formed with a Chinese social media firm. Our client claimed that the Chinese partner violated the joint venture agreement by permitting its affiliated entities and subsidiaries to use our client's software without paying for it. The JV engaged a major international accounting firm to recalculate the payments it was owed and FTI was engaged to evaluate the accounting firm's analysis.



We reviewed the report and testing procedures for conformity with professional standards and industry best practices. FTI's expert had extensive knowledge of audit and attest standards, strong industry experience and a deep understanding of the Chinese market. Our expert demonstrated that the accounting firm's report could not be relied upon, that the audit records had not been properly maintained and may, indeed, have been intentionally designed to deceive.

Subject Matter Experts



JEAN CHOW-CALLAM
SENIOR MANAGING DIRECTOR



TIM SHERMAN
SENIOR DIRECTOR





Commercial Disputes

This year's highlighted disputes include post-acquisition purchase price adjustments, breach of contract, fraud claims, the use of statistics to defend an insurance company in a class action, and calculation of complex damages. Among the most high-profile commercial disputes FTI Consulting has handled in 2018 is the matter for Dow Chemical involving a complex damages assessment that resulted in a judgment of more than \$1 billion.

ACHIEVING A FAVORABLE DOWNWARD PURCHASE PRICE ADJUSTMENT

In October 2016, one international beverage company purchased another international beverage company for more than \$100 billion. As part of the transaction, the target company sold its interest in one of its divisions and all associated trademarks, contracts and other assets for more than \$10 billion to our client. Our client and the target company had a dispute about the purchase price adjustment. At issue was how much the purchase price should be reduced based on lower-than-expected reported operating results.

FTI Consulting was retained by counsel to provide strategic insight and other assistance with respect to both parties' initial and rebuttal submissions to the Arbiter, as well as affidavits submitted by subject matter experts. Our M&A Dispute Resolution experts worked with our client's legal and acquisition diligence advisors on multiple rounds of written submissions and Arbiter communications to help analyze the purchase price adjustment.



Our experts had extensive experience advising on purchase price disputes and in serving as neutral accounting arbitrators. We worked closely with in-house counsel, external counsel, in-house M&A, tax, finance, accounting and acquisition diligence professionals to show that a \$328 million downward price adjustment was appropriate.

The parties agreed to that adjustment, an amount 2.73% less than the agreed-upon purchase price.

Subject Matter Experts



EDWARD WESTERMAN
SENIOR MANAGING DIRECTOR



BRETT KUMM
SENIOR MANAGING DIRECTOR

CORRECTING THE CALCULATIONS IN A DEFENSE INDUSTRY BREACH-OF-CONTRACT SUIT

FTI Consulting was retained by counsel to provide rebuttal reports and expert testimony for a strike fighter aircraft ejection seat manufacturer accused of fraud, breach of contract, tortious interference, unfair business competition and trade secret misappropriation by one of its suppliers. The supplier alleged tens of millions of dollars in lost profits over a period of 45 years.

FTI's experts analyzed the lost profits calculations of the plaintiff's expert and issued a rebuttal report for the manufacturer explaining that plaintiff's calculations improperly assessed risk, under-allocated costs, and overestimated unit sales levels.

We provided a corrected version of the plaintiff's expert's model, reducing the lost-profits calculation to less than \$1 million.

Our expert testified in trial and used her knowledge of finance and accounting to explain to the jury how to allocate avoidable costs properly in a lost-profits calculation and correctly discount the amounts.

Subject Matter Experts



JILL KENNEDY
MANAGING DIRECTOR



STEVEN HAZEL
SENIOR MANAGING DIRECTOR



MELINDA GAGYOR
DIRECTOR



TIM SHERMAN
SENIOR DIRECTOR



ARA DEMIRJIAN
DIRECTOR



SUPPORTING AN INVESTMENT FUND IN ITS FRAUD CLAIM

FTI Consulting was retained by counsel for an investment fund to provide expert opinions related to claims of breach of contract, breach of fiduciary duty and fraud against a debt fund that had invested in subprime, unsecured consumer debt.

Our client invested hundreds of millions of dollars in a debt fund that provided credit facilities to lenders who, in turn, loaned alternative subprime funds to consumers. The debt fund was required to share information on each new lender credit line with our client and, when it did not, our client attempted to redeem its investment. The debt fund refused to honor the redemption request, claiming that other investors would be harmed by such a large redemption. Subsequently, the debt fund experienced substantial losses.



FTI's expert, a former audit partner at a Big 4 accounting firm with experience in consumer finance, prepared a report analyzing the various credit lines and the underlying consumer loans financed by the debt fund, and analyzed whether the fund had had the ability to honor our client's redemption request. He also developed an alternative, longer redemption schedule. In his subsequent testimony, he explained what level of information is customarily provided to investors and why the limited information provided may have been misleading and inadequate.

Our expert presented his analysis to the arbitration panel and helped demonstrate that the debt fund's explanation for holding onto our client's investment was incorrect and that the fund held our client's investment for the purpose of continuing to pay fees to related parties and to overstate the size of the investment fund in the hopes of attracting new investors.

Subject Matter Experts



SCOTT CARNAHAN
SENIOR MANAGING DIRECTOR



BRENT MILLER
MANAGING DIRECTOR



TIM SHERMAN
SENIOR DIRECTOR



USING STATISTICS TO DEFEND AN INSURANCE COMPANY IN A CLASS ACTION

FTI Consulting was retained by an insurance company facing allegations from two classes of automobile field adjusters regarding uncompensated overtime and inadequate wage statements.

We submitted two declarations that criticized both the plaintiffs' expert's proposed sample sizes and sampling methodologies, demonstrating that the expert's conclusions were flawed and unreliable.

The court accepted our statistical analysis and concluded that a trial involving over 500 witnesses that would take five or six months to conclude was unmanageable. In December 2017, the Court of Appeals of California decertified both classes of hourly employees due to the plaintiffs' failure to provide a manageable trial plan.

Subject Matter Experts



DANIEL SLOTTJE
SENIOR MANAGING DIRECTOR



BRENDAN ROGERS
MANAGING DIRECTOR



APPLYING DATA TO BREACH OF CONTRACT DAMAGES LEADING TO A MULTI-MILLION DOLLAR AWARD

FTI Consulting was retained by counsel for Wellstat Therapeutics Corporation (Wellstat) after it sued BTG for breach of contract. Wellstat develops innovative therapeutics for oncology, metabolic diseases and neurologic diseases. Its primary products are Xuriden® and Vistogard®, life-saving antidotes to toxic reactions caused by certain chemotherapy medications.

FTI was retained by Quinn Emanuel and Susman Godfrey to assess the economic damages that the breach of contract by BTG had on Wellstat's future sales of Vistogard.

The trial proved that BTG had misled Wellstat about its marketing efforts by (among other things) not properly funding them and presenting manipulated projections of sales to Wellstat. FTI performed and verified multiple damage calculations related to Vistogard's future sales potential.

On September 19, 2017, the Delaware Chancery Court awarded Wellstat \$55.8 million in damages (consistent with FTI's expert's testimony) plus pre- and post-judgment interest and other costs.

Subject Matter Experts



CHRIS GERARDI
SENIOR MANAGING DIRECTOR



DANA HAYES
MANAGING DIRECTOR



CALCULATING COMPLEX DAMAGES IN A CHEMICAL COMPANY DISPUTE

FTI Consulting was engaged by Dow Chemical Company to testify in a matter involving a complex damages assessment in a dispute with Nova Chemicals. During almost four days of testimony, an FTI expert with deep expertise in the chemical industry explained practices in the petrochemical industry and how to calculate damages.

Dow Chemical was awarded a judgment of more than \$1 billion (including interest but excluding future determinations) for damages through 2012 and additional damages through the date of judgment. On June 20, the Court of Queen's Bench of Alberta, Canada, released a lengthy opinion finding that Nova Chemicals had wrongfully taken products from Dow Chemical and failed to run the jointly owned Joffre Ethylene-3 plant as contractually required.

The decision will increase Dow Chemical's access to its share of cost-advantaged Alberta ethylene from this jointly owned asset.

Nova's counterclaim against Dow Chemical also was dismissed.

Subject Matter Experts



CHARLES MIKULKA
SENIOR MANAGING DIRECTOR



QUINCY J. JONES
MANAGING DIRECTOR

RICHARD M. WINN
MANAGING DIRECTOR



SALMAN SIDDIQUI
SENIOR DIRECTOR



NIDHI AGGARWAL
SENIOR DIRECTOR



SARAH LEMERISE
DIRECTOR

Trial Services

FTI Consulting offers nationwide trial services, including jury research, presentation graphics, and complete in-court technology services. Whether creating a single graphic or supporting a multi-district litigation, our goal is making our client's argument more persuasive and leveraging our long experience to ease the challenges of litigation.

Our clients continue to seek our help presenting their arguments in a wide range of settings, including class certification hearings, mediations, IPR presentations, presentations to government regulators, and domestic and international arbitrations.

The example that follows demonstrates the critical contributions of thoughtful graphics and sophisticated, experienced technology in achieving a favorable outcome at trial.

HELPING PRESENT SCIENTIFIC EVIDENCE TO A JUDGE AND JURY IN A CANCER LITIGATION

FTI Consulting Trial Services was retained by counsel to assist with in-court presentation, war-room logistics and graphics support at the trial of a pharmaceutical company whose product plaintiffs claimed caused cancer. Prior to FTI's involvement, our client had lost several high-profile trials with damages in excess of \$100 million. Our team coordinated the technical and graphic design efforts for the defense team, consisting of five law firms and nearly 40 lawyers and support staff.

The science was complex, and a major challenge at trial was to explain clearly our client's contention that its product did not cause the plaintiff's cancer. Our graphics team helped craft a clear and persuasive counter to the plaintiff's claims, striking a balance between electronic and traditional methods of presenting evidence.



We supported the trial team in various ways, ranging from presentation advice to printing and exhibit management. We created and supported multiple war rooms for use during trial. We optimized the bandwidth and equipment, installed backup systems, and ensured that our client's legal team would not encounter any technical problems. Indeed, when a power outage during a key trial preparation night knocked out some equipment, the backup system enabled attorneys to continue working.

Ultimately, the judge found the evidence presented by the plaintiffs was "insufficient as to causation."

Subject Matter Experts



JAMEY JOHNSON
SENIOR MANAGING DIRECTOR



SHANNON BALES
MANAGING DIRECTOR



JOHN WHITNEY
MANAGING DIRECTOR

Global Insurance Services

Competitive market pressures have forced industry players to seek out opportunities for more effective capital deployment, leading to a surge in M&A activity among insurance carriers and brokers. Insurtech investments are driving a rapid industry transformation by using complex data mining techniques that provide unprecedented insight, while the industry faces emerging risks from sources such as cybercrime. As the insurance market continues to transform, companies will need to anticipate and respond to global shifts in the marketplace. The following pages highlight our expertise on behalf of the insurance industry.

HELPING A MANUFACTURER DEBUNK INSURANCE-BASED LITIGATION

FTI Consulting was retained by counsel for a large plastic pipe manufacturer that produced product used in several municipalities. Years after completion of these projects, some municipalities brought litigation against the firm for allegedly producing pipe that did not meet certain pressure testing thresholds. Since no pipe failures had occurred at the time of the litigation, these municipalities claimed that their test results amounted to increased risk and sought damages related to the possibility of future failures.

To quantify this alleged risk, the plaintiffs proposed a “hypothetical insurance policy” that would cover the hypothetical pipe failure from manufacturing defects or shortcomings, and damages were set equal to the premium for this hypothetical policy. Plaintiffs used a methodology that assumed if a pipe did not meet a certain stress threshold, failure over decades of use was a certainty, even though no data exists on the likelihood of pipe failure based on pressure testing results.

FTI’s expertise was needed to evaluate whether damages as calculated via the plaintiff’s hypothetical insurance policy premium was credible or reasonable. FTI showed that the hypothetical policy argument lacked scientific rigor because there was no evidence or precedent that lab tests are directly related to pipe longevity. The hypothetical policy itself also did not reflect realistic market conditions: it was written to cover pipe failure for up to 100 years — no such policy exists, and FTI was able to demonstrate that no insurer would reasonably write such a policy. Without a real-world market price, damages based on such an unrealistic measure were without merit. FTI’s expert testimony prevailed at trial, resulting in no damages being paid by the pipe manufacturer.

Subject Matter Experts



PAUL BRAITHWAITE
SENIOR MANAGING DIRECTOR



LAUREN CAVANAUGH
MANAGING DIRECTOR



MATT STAHL
SENIOR DIRECTOR



RESOLVING LITIGATION AND RECOVERING COMPENSATION DUE TO MISMANAGEMENT AND NEGLIGENCE

Due to deteriorating finances and general mismanagement, an insurance carrier specializing in construction risk and workers' compensation fell into insolvency and was placed into receivership by the state insurance department. As part of its duty to policyholders, the Special Deputy Receiver sued the company's former management and administrators, seeking the recovery of assets as compensation for the defendants' misconduct. FTI Consulting was retained by the Receiver to provide expert testimony experience relating to claims handling and managing general agency roles and responsibilities.



FTI assisted counsel in performing a root-cause analysis to determine the contributing basis for the insurer's failure. FTI's expansive insurance industry experience identified significant mismanagement by the claims third-party administrator (TPA) and coverage counsel as it related to the handling of four large losses that ultimately crippled the company. An analysis of document production also uncovered reinsurance notification failures, anomalies in accounting for subrogation recoveries, and other actionable issues. FTI's analysis was used by both counsel and other experts to drive strategy, support expert opinions, and increase the potential recovery by the Receiver.

After settling with the claims TPA, counsel focused its efforts on mismanagement by the company's defense counsel. At the same time, a reinsurer was brought into the lawsuit that denied the reinsurance claim brought by the Receiver for the four large losses. FTI issued an expert report and gave deposition testimony regarding what the reserves should have been as of a certain point in time, and why the claims were subject to reinsurance coverage under the agreement.

Ultimately, FTI's expert report greatly contributed to settlements with all parties, resulting in a total recovery of about \$30 million, far exceeding the client's expectations.

Subject Matter Experts



WENDY SHAPSS
SENIOR MANAGING DIRECTOR



MIKE FLAHARTY
MANAGING DIRECTOR



KELLY NICKERSON
SENIOR DIRECTOR

ADDING DEEP INSURANCE INDUSTRY EXPERIENCE TO AN M&A DUE DILIGENCE

In the high-stakes world of mergers and acquisitions (M&A) in the insurance market, a full, deep-dive due diligence of the target ranks as the highest priority to a potential acquirer. A comprehensive due diligence helps uncover hidden issues that might compromise the ability to meet desired objectives for the deal, such as underachieving cost savings from projected operational efficiencies.

FTI Consulting was engaged by an acquirer of a global insurance company. The acquirer had a deep due diligence team including representatives from the Big 4 firms and management consultants.



However, management of the acquirer felt it necessary to retain an advisor to directly assist management in understanding some of the more complex, insurance-focused considerations involved in the transaction.

Our team assisted the acquirer's management by participating in meetings with the target, reviewing diligence documents, and providing insights into complex insurance and reinsurance financial and operational issues. By bringing our deep insurance experience to bear, our team identified areas that required further diligence and a heightened focus, resulting in a more effective due diligence effort.

Subject Matter Experts



FRED DONNER
SENIOR MANAGING DIRECTOR



ANDREW MUNZBERG
SENIOR DIRECTOR

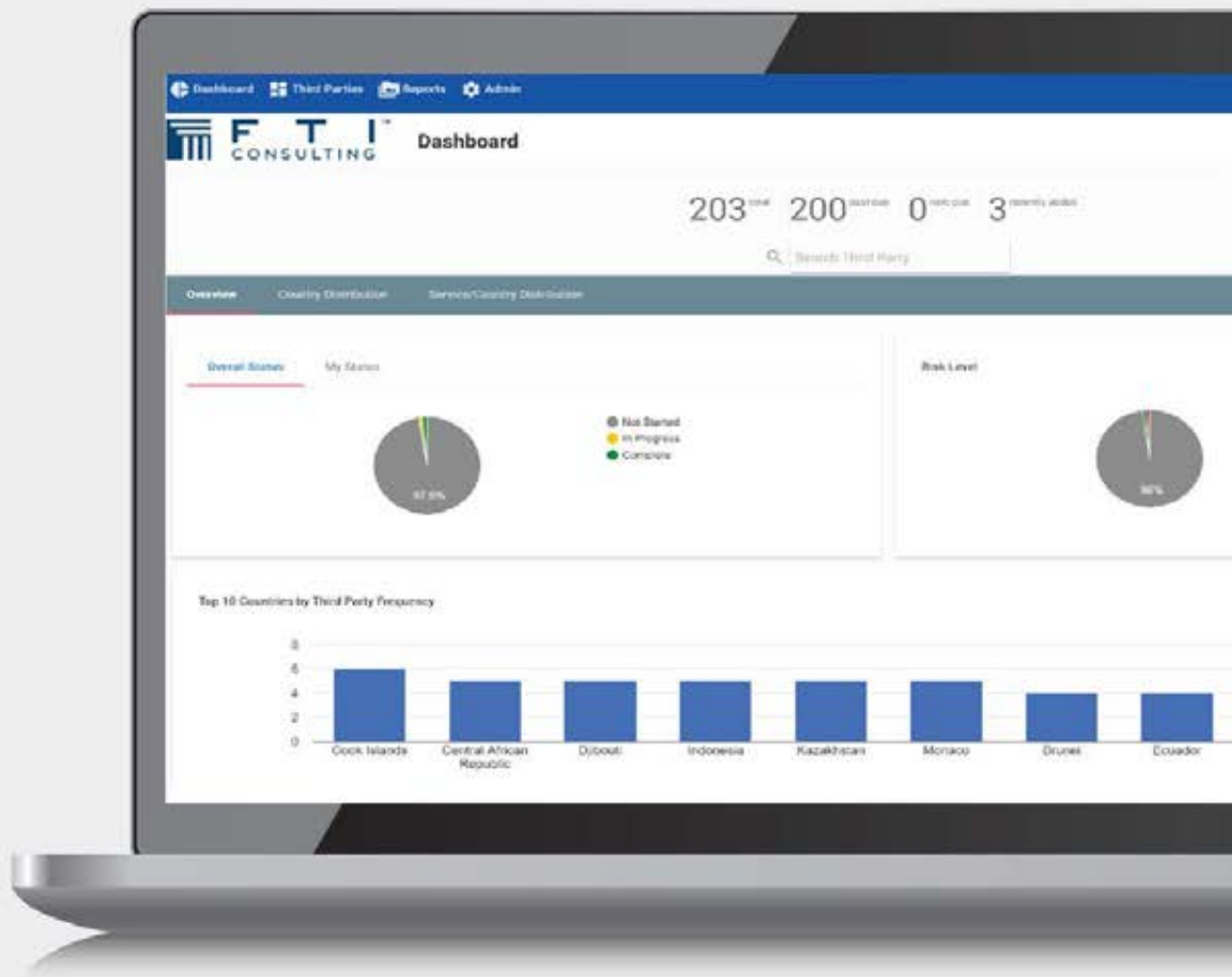


RORY O'BRIEN
SENIOR MANAGING DIRECTOR



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Dispute Advisory Services

Practice Leaders



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As a nationally recognized consultant and expert witness, Mr. Gerardi focuses on applied economic and damages analyses as they relate to patent infringement, theft of trade secrets, trademark and copyright infringement, domestic industry and public interest factors, irreparable harm, antitrust, breach of contract, business interruption, tortious interference, business valuation, commercial and post-acquisition dispute, and royalty compliance matters.



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Mr. Thomas specializes in matters involving various types of intellectual property including patents, trade secrets, trademarks and copyrights. He has analyzed economic and financial issues in hundreds of disputes and has provided expert testimony in state and federal courts across the country as well the International Trade Commission. Such testimony has focused on valuation and damages issues in several industries including computer technology, electronics, telecommunications, retail, manufacturing and life sciences.



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Mr. Poer is the co-leader of FTI's Securities, Accounting and Regulatory Enforcement practice, Labor & Employment practice and the western leader of FTI's North American Disputes practice. Mr. Poer uses his experience in accounting, finance and various industries to lead dispute consulting and forensic investigatory engagements mainly related to complex financial, employment and accounting litigation matters.

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EXPERTS WITH IMPACT

About FTI Consulting

FTI Consulting, Inc. is an independent global business advisory firm dedicated to helping organizations manage change and mitigate risk: financial, legal, operational, political & regulatory, reputational and transactional. FTI Consulting professionals, located in all major business centers throughout the world, work closely with clients to anticipate, illuminate and overcome complex business challenges and opportunities. Connect with us on Twitter (@FTIConsulting), Facebook and LinkedIn.

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