

MINH P. DOAN
Vice President

Phone: 214 523 1445
Fax: 214 523 1401
minh.doan@analysisgroup.com

Park Place Center
2911 Turtle Creek Boulevard, Suite 600
Dallas, TX 75219

Ms. Doan has more than 15 years of experience in evaluating economic damages and providing expert testimony in complex commercial disputes, including intellectual property (IP), breach of contract, false advertising, class certification, loss of earnings, and antitrust matters. She has submitted numerous expert reports and testified as an expert witness. Her work leading large engagements from strategy to implementation has included developing damages models and determining lost sales, lost profits, unjust enrichment, reasonable royalties, and price erosion damages. In patent infringement matters, Ms. Doan has evaluated claims of irreparable economic injury and other economic criteria relevant to obtaining an injunction. She also has expertise in assessing claims of class-wide economic injury and damages in class certification matters. Ms. Doan has been recognized as among the top economic experts for IP matters by *Intellectual Asset Management* (IAM) in the IAM Patent 1000. She is an associate of the Society of Actuaries. Prior to joining Analysis Group, she worked in pension actuarial consulting.

EDUCATION

2005 M.S., actuarial science, University of Iowa
2003 M.A., economics, Northwestern University
2001 B.A., mathematics and economics (*summa cum laude*), Berea College

PROFESSIONAL EXPERIENCE

2007–Present Analysis Group, Inc.
Vice President (2013–Present)
Manager (2011–2012)
Associate (2008–2010)
Senior Analyst (2007)

2006–2007 Watson Wyatt Worldwide, Retirement Practice
Actuarial Analyst

2004–2005 University of Iowa, Department of Statistics and Actuarial Science
Teaching Assistant

2002–2003 Northwestern University, Department of Economics
Teaching Assistant

PROFESSIONAL AFFILIATIONS

Society of Actuaries
Associate

EXPERT ENGAGEMENTS¹

- **C.R. Bard, Inc. v. Atrium Medical Corp.**
US District Court, District of Arizona, Case No. 21-00284-PHX-DGC
Retained as an economic expert for C.R. Bard, a medical device developer. Calculated the unpaid royalties plus interest that Atrium owed to C.R. Bard under a license agreement involving a minimum royalty provision. Evaluated the opposing expert's opinion on the damages C.R. Bard would owe to Atrium if the court finds in favor of Atrium's counterclaims of breach of contract and negligent and fraudulent misrepresentation. Submitted two expert reports and provided deposition testimony. (2022)
- **California Expanded Metal Products Company and ClarkDietrich Building Systems v. James Klein, BlazeFrame Industries, Ltd., and Safti-Seal, Inc.**
US District Court, Western District of Washington, Case No. C18-0659JLR
Retained as an economic expert for CEMCO and ClarkDietrich to evaluate the damages and monetary remedies available to the plaintiffs from the defendants' breach of a settlement agreement and contempt of a court-ordered injunction to cease selling the infringing products. Submitted two expert reports and provided deposition testimony. (2022)
- **Ryan Struck v. 3M Company, et al.**
US District Court for the Northern District of Florida, Case No. 3:19-md-2885
Retained as an economic expert for 3M Company, the defendant in a personal injury litigation filed by the plaintiff, who claimed that as a result of using allegedly defective earplugs he has developed partial hearing loss and tinnitus. Evaluated the plaintiff's claimed pecuniary losses in the form of claimed lost earnings as a result of allegedly not achieving promotions in the US Army due to his hearing impairment and claimed future medical care expenses. Submitted an expert report and provided deposition testimony. (2022)
- **Wesley Norton v. 3M Company, et al.**
US District Court for the Northern District of Florida, Case No. 3:19-md-2885
Retained as an economic expert for 3M Company, the defendant in a personal injury litigation filed by the plaintiff, who claimed that as a result of using allegedly defective earplugs he has developed partial hearing loss and tinnitus. Evaluated the plaintiff's claimed pecuniary losses in the form of claimed lost earnings (including claimed loss of earnings capacity and diminished worklife expectancy) and claimed future medical care expenses. Submitted an expert report and provided deposition testimony. (2022)
- **Estate of Brieux Dash, et al., v. United States of America**
US District Court for the Northern District of Florida, Case No. 22-80015-CIV-DMM
Retained as an economic expert for the United States of America, the defendant in a wrongful death action filed by the estate and surviving family of the decedent claiming that the VA hospital failed to

¹ Clients are underlined.

properly monitor decedent allowing him to commit suicide. Evaluated claimed lost income and benefits. Submitted an expert report and provided deposition testimony. (2022)

- **PetConnect Rescue, Inc. et al. v. Pet Connect Rescue, Inc., David Salinas, et al.**
US District Court for the Southern District of California, Civil Action No. 3:20-cv-005277-H-KSC
Retained as an economic expert for PetConnect Rescue, which alleged that the defendants have benefited from transporting puppies mislabeled as “rescues” from “Pet Connect Rescue” to pet stores in at least California and Illinois and from selling the puppies to consumers. Evaluated disgorgement of defendants’ profits as a result of the infringement of PetConnect’s trademark. Submitted affirmative report, rebuttal report, and declaration. (2022)
- **R. Greg Leaver. v. United States of America**
US District Court for the District of Colorado, Case No. 1:21-cv-153
Retained as an economic expert for the United States of America, the defendant in a personal injury litigation filed by the plaintiff, who claimed that a car accident with an FBI employee exacerbated his pre-existing medical conditions and caused him not to be able to complete his master’s/Ph.D. Evaluated the plaintiff’s claimed lost earnings, essential/home services losses, and future prescription medication costs. Evaluated an economic causal link between the accident and the plaintiff’s claimed lost earnings. Submitted an expert report. (2022)
- **Confidential Trade Secrets Matter, Pre-Litigation**
Retained as a consulting expert to perform a preliminary evaluation of claimed damages due to the plaintiff in a trade secrets matter related to the enzymatic process of turning supermarket food scraps into petfood and fertilizer. Calculated damages under two approaches: reasonable royalty and the alleged infringer’s gains from an accelerated entry into the market. (2021)
- **GCP Applied Technology Inc. v. AVM Industries, Inc.**
US District Court, Central District of California, Case No. 2:19-cv-07475-MWF-FFM
Retained as an economic expert for GCP, the owner of a patent related to waterproofing membrane technology. Evaluated GCP’s lost profits and reasonable royalty damages. Submitted an expert report and provided deposition testimony. (2021)
- **GoPlus Corporation v. Crown Equipment Corporation, d/b/a Crown Lift Trucks**
US District Court, Southern District of Georgia, Savannah Division, Civil Action No. 4:20-cv-00034-RSB-CLR
Retained as an economic expert to evaluate GoPlus’s monetary damages as a result of Crown’s failure to satisfy its contractual obligations to provide shelving for GoPlus’s Georgia warehouse that met sizing specifications and weight tolerances GoPlus communicated to Crown. Calculated several categories of claimed damages: increased shipping costs for GoPlus products that were diverted from the Georgia warehouse to other GoPlus warehouses, increased labor expenses at the Georgia warehouse, and direct and indirect costs associated with replacing the defective shelving. Submitted an expert report. (2021)
- **Woodard-CM, LLC v. Sunlord Leisure Products, Inc. d/b/a Patio Renaissance, Prestige International Investments Co., Ltd., Albert Lord f/k/a Ai Ping Luo, Sunrise Casual Furniture, Inc., Mark Gorr, Gorr & Associates, Inc., Justin Pthal, and PhafI Enterprises, Inc.**
US District Court, Southern District of Florida, Miami Division, Case No. 1:20-cv-23104-KMW

Retained as an economic expert to rebut Woodard's claimed lost profits damages and disgorgement of the defendants' profits resulting from the breach of a settlement agreement entered into after a trademark infringement lawsuit Woodard filed against Sunlord. Woodard alleged that Sunlord and affiliated companies violated the settlement agreement by selling certain patio furniture products alleged to be substantially similar to Woodard's own product designs. Submitted an expert report. (2021)

▪ ***Acute Medical Services, LLC v. Christian EMS d/b/a North Texas Regional EMS, Jason Jones and James Lampe***

16th Judicial District, Denton County, Texas, Cause No. 16-06836-16

Retained as an economic expert for NTREMS, an emergency medical services company. NTREMS's former management team members were alleged to have misappropriated trade secrets, including client lists, in order to establish NTREMS to directly compete with the plaintiff. Evaluated the plaintiff's claimed lost profits and disgorgement of NTREMS's revenues and profits attributable to the alleged theft of trade secrets. Submitted an expert designation. (2021)

▪ ***Juli Forde v. Nicka & Associates, Inc. and Greg Nicka***

429th Judicial District, Collin County, Texas, Cause No. 429-00062-2019

Retained as an economic expert for a medical coding company to evaluate the plaintiff's claim as to the value of her alleged 5% ownership interest in the company and the plaintiff's calculation of claimed unpaid commissions. Submitted an expert report. (2020)

▪ ***California Expanded Metal Products Company and ClarkDietrich Building Systems v. James Klein, BlazeFrame Industries, Ltd., and Safti-Seal, Inc.***

US District Court, Western District of Washington, Civil Action No. 2:18-cv-00659-JLR

Retained as an economic expert for CEMCO (owner of the asserted patents) and ClarkDietrich (exclusive licensee of the asserted patents) to evaluate the plaintiffs' damages resulting from the defendants' infringement of patents related to head-of-wall fire blocking assemblies used in building construction and breach of a license agreement. Evaluated the plaintiffs' lost profits and reasonable royalty damages. Submitted an expert report and provided deposition testimony. (2019)

SELECTED CONSULTING ENGAGEMENTS

Intellectual Property: Patent Infringement

- Assisted in the evaluation of claimed damages of a water balloon manufacturer who brought suit against a competitor. The competitor started selling the third generation of allegedly infringing products after the first two generations of products were subject to injunctions. Evaluated lost profits damages and reasonable royalty damages in the alternative. Evaluated price erosion damages on the sales that would have been made absent the alleged infringement as well as the sales that were actually made while market prices were influenced by the alleged infringement. Also assessed the plaintiff's claimed damages as a result of the defendant's false advertising of its products.
- Assisted in evaluating from an economic perspective whether a permanent injunction was warranted in a patent infringement lawsuit between two competitors in three-dimensional, machine vision-based railroad tie inspection services. Evaluated whether the plaintiff was likely to suffer significant and long-term economic injury for which monetary damages were inadequate. Determined the plaintiff's claimed lost profits from the projects that had been lost to the defendant.

- Assisted in an economic analysis to determine whether a permanent injunction was appropriate in a patent infringement matter related to the use of drag-reducing agents in heavy crude oil to facilitate the transportation of heavy crude oil through pipelines. Performed assessments of irreparable economic injury, inadequacy of monetary remedies, and balance of hardships under the *eBay* framework. Evaluated a monetary remedy due to the plaintiff absent an injunction.
- Participated in evaluating damages claimed by the plaintiff as a result of the alleged patent infringement by seven defendants regarding a technology that claims to protect Linux-based servers against certain types of denial-of-service attacks. Evaluated the negotiating positions of the plaintiff and the defendants, including factors common across the defendants as well as factors specific to each defendant. Analyses included determining the costs incurred by each defendant associated with implementing non-infringing alternatives. Assisted in evaluating the plaintiff's damages expert report with regard to the claimed royalty payment structure, claimed royalty base, claimed royalty rate, and reasonableness checks performed by the opposing expert.
- Assisted in the evaluation of claimed reasonable royalty damages in a patent infringement matter in which a major e-commerce retailer was accused of infringing patents related to sales force automation by offering automated online product recommendations. Analyses demonstrated that the plaintiffs' damages and marketing experts overstated the defendant's revenues allegedly attributable to the accused recommendation features. Further demonstrated that the plaintiffs' damages expert opined to an incorrect royalty payment structure and overstated the claimed royalty rate.
- Assisted in economic analyses related to the amount to be paid by an enterprise resource planning software company for violating an injunction order prohibiting licensing or servicing of procurement software products that infringed the plaintiff's patent. Analyses included an assessment of the defendant's gains from failing to comply with the injunction. Assisted in evaluating analyses proffered by the defendant's rebuttal damages expert, including rebutting a reasonable royalty analysis and analyses of the appropriate profit margin to be used for disgorgement purposes.
- The plaintiff, a manufacturer of hunting products, sued another manufacturer for the alleged infringement of two patents regarding spinning wing duck decoys. Assisted in evaluating the plaintiff's lost profits, reasonable royalty, and future damages. Analyses included evaluating the *Panduit* conditions, determining the products the plaintiff would have sold in the absence of the alleged infringement, deriving the plaintiff's adjusted market share, determining incremental profitability, and calculating lost profits on lost unit sales. In addition to the patent infringement claims, the plaintiff asserted that defendant falsely marked its products with expired patents. Evaluated the number of false marking-related offenses based upon different scenarios.
- A major search/content provider was alleged to infringe a patent related to a certain method of bid management used in paid search engines. Assisted in performing research regarding the evolution of sponsored search auctions; evaluating the defendant's license agreements related to online advertising technology and their comparability to the hypothetical license in this case; analyzing the indicators of value for the patent-in-suit (such as licensing offers and the plaintiff's sale of membership interest); and assessing the defendant's own innovations regarding its sponsored search business model.
- A major manufacturer of portable digital music and video players was alleged to infringe two patents related to the playlist and podcast features. Assisted in evaluating the plaintiff's apportionment of the

claimed operating profits associated with the accused products to the accused features, including assessing the applicability of various survey results and performing reasonableness tests. Constructed the negotiating positions in a hypothetical licensor/licensee negotiation, including the plaintiff's sale attempts regarding the patents-in-suit, the factors contributing to the commercial success of the accused products unrelated to the patents-in-suit, the incremental benefits of the patents-in-suit over existing technologies, and the product risks and economic uncertainty at the time of the hypothetical negotiation.

- Assisted in evaluating the plaintiff's royalty damages claim against three automobile manufacturers related to two patents that allegedly cover the integration of portable electronic devices (e.g., MP3 players) to a vehicle's sound system. Analyzed company-specific and iPod interface-related license agreements, determined the purchase costs of allegedly infringing vehicle components, and evaluated industry surveys regarding iPod integration. Developed alternative damages estimates under various findings by the trier of fact.
- In a patent infringement matter related to the initiation of virtual private networks, participated in the evaluation of claimed royalty damages asserted against a major software manufacturer for allegedly incorporating the patented technology into its software applications. Analyzed valuations of the patented technology around the time of the hypothetical negotiation, the drivers of demand for the software applications allegedly embodying the patents-in-suit, and the parties' patent licensing approaches. Analyzed the three factors outlined in *Cornell University v. Hewlett-Packard* to determine if the application of the entire market value rule would be warranted. Analyzed the four factors enumerated in *eBay Inc. v. MercExchange* to determine if an injunction against the accused products would be warranted.
- Participated in evaluating damages claimed by the plaintiff as a result of the alleged patent infringement by three defendants (i.e., two major banks and an information technology outsourcing company) of a technology related to check imaging, processing, and storage. Assisted in the development of an alternative damages estimate based on analysis of the plaintiff's financial performance and commercialization efforts around the time of the hypothetical negotiation, the defendants' investments and net benefits associated with image enablement, the respective economic contributions of the parties to the successful commercialization of the accused instrumentalities, and the *Georgia-Pacific* factors. Determined the costs associated with implementing non-infringing alternatives.
- The plaintiff, the owner of a patent related to a technology involving a tire pressure monitoring system (TPMS), sued two automobile manufacturers for alleged patent infringement. Evaluated the claimed historical and future reasonable royalty damages presented by the opposing expert. One of the factors at issue was the federal mandate for vehicles to use TPMS and customer demand for TPMS prior to the federal mandate. Assessed the royalty payment structure proffered by the plaintiff in light of the variations in TPMS purchase costs and the licensing approach generally used in the automobile industry. Analyzed numerous license agreements produced by the defendants in the case.
- A medical device manufacturer brought suit against three medical device manufacturers and a supplier for the alleged infringement of a technology related to blood glucose monitoring devices. Performed incremental profitability analysis, analyzed sales and market share data, and conducted market and industry research. Conducted *Panduit* factor analysis and *Georgia-Pacific* factor analysis. Calculated lost profits and reasonable royalty damages suffered by the plaintiff under different infringement findings.

- Assisted in the evaluation of reasonable royalty damages in a patent infringement matter involving flash drive technology. Analysis included market research, review of license agreements, and calculation of accused product sales under various potential damages scenarios. Assisted in *Georgia-Pacific* factor analysis and determination of important negotiating positions in a hypothetical licensor/licensee negotiation.
- Assisted in evaluating damages suffered by the plaintiff as a result of the alleged infringement of the defendant related to a technology concerning status feedback in home lighting control systems. Analyzed various surveys of home lighting control system manufacturers, dealers, and end users. Used these surveys as inputs into the derivation of alleged infringing sales and market share data. Analyzed the plaintiff's competitors, pricing patterns, productive capacity, and geographic coverage in support of the lost profits claim. Performed data analysis on a large database consisting of sales orders of accused products, identified ancillary sales, and calculated lost profits and royalty damages under multiple potential damages scenarios.
- Assisted in the evaluation of the plaintiff's lost profits and reasonable royalty damages related to DVR technology. Analysis included an assessment of the plaintiff's sales of DVR products and subscriptions in the absence of the infringement during the stay of the permanent injunction. Performed an incremental revenue and cost analysis. Assisted in the determination of a post-verdict royalty rate based upon the evidence and arguments found material to the granting of the injunction and the change in the parties' bargaining positions. Also assisted in the evaluation of the damages the plaintiff sustained from the defendant's failure to comply with the court-mandated injunction.
- The plaintiff, the holder of a patent concerning six-degree-of-freedom control technology in the video game industry, sued a major video game system manufacturer for the alleged infringement of its patent. Assisted in the evaluation of the plaintiff's claimed reasonable royalty damages. Conducted market and industry research, performed *Georgia-Pacific* factor analysis, evaluated the plaintiff's royalty damages analysis, and provided an alternative royalty damages analysis. Also assisted in the evaluation of a post-trial reasonable royalty rate.

Intellectual Property: Trademark Infringement

- Assisted in quantifying economic damages due to the plaintiff in a trademark infringement matter, including the defendant's sales and profits attributable to the wrongful conduct and the plaintiff's corrective advertising expenses to address confusion caused by the trademark infringement.
- Worked with the defendants in a trademark and unfair competition litigation involving transcatheter prosthetic heart valve products. Assisted in the evaluation of claimed damages quantified under different approaches: loss of goodwill and harm to reputation, corrective advertising, and the defendant's sales.

Intellectual Property: Trade Secrets Misappropriation

- The plaintiff claimed that the defendant, a competitor in aerospace extrusion manufacturing, misappropriated certain trade secrets related to the process of manufacturing stretch form spar chords used in constructing wings of airplanes. Assisted in the evaluation of the plaintiff's claimed monetary remedies: lost profits damages associated with lost sales to a major customer, price erosion damages on retained sales, unjust enrichment, and reasonable royalty damages.

- A mortgage origination company alleged that two former employees breached the non-solicitation provisions in their employment agreements and induced dozens of employees to join a competing company. Assisted in quantifying appropriate damages and/or remedies that compensate the plaintiff for the alleged breaches of contract, wrongful solicitation of employees, misappropriation of confidential consumer loan data, and other legal theories.

Intellectual Property: Copyright Infringement

- In a suit brought by a software development and consulting company against a health care technology company for alleged copyright infringement, evaluated the plaintiff's lost profits from the defendant's reverse engineering and disgorgement of the defendant's profits associated with usage of plaintiff's software. Supervised a team of professionals in analyzing numerous software licensing contracts between the plaintiff and its customers as benchmarks to evaluate the reasonableness of the plaintiff's contract with the defendant in the absence of the alleged wrongful conduct. Utilized a number of pricing options that were offered by the plaintiff to the defendant to determine the plaintiff's lost maintenance and consulting revenues.

Intellectual Property: Trade Dress Infringement

- Assisted in the evaluation of compensatory damages suffered by a major mattress manufacturer due to a rival's alleged infringement of its trade dress and design patents. Analyses demonstrated a causal connection between the defendant's alleged infringement and the plaintiff's lost sales and lost profits. Analyses included an assessment of the defendant's profits earned through the infringement and an evaluation of the plaintiff's lost profits and reasonable royalty damages.

Intellectual Property: Commercial Success

- Assisted in preparing a rebuttal declaration to the US Patent and Trademark Office related to the claimed commercial success of intrusion prevention systems (IPS) asserted to practice a patent undergoing an inter partes reexamination. In determining that an economic nexus had not been established between the claimed teachings of the patent and the commercial success of stand-alone IPS products, analyses included evaluating the features not claimed by the patent at issue and the economic factors unrelated to the claimed invention that contribute to the commercial success of stand-alone IPS products.

Antitrust

- Work with a manufacturer of single-serve brewers and coffee pods in antitrust litigation filed by two competitors, a distributor, direct purchasers, and indirect purchasers. The alleged anticompetitive practices include monopoly leveraging, exclusionary conduct, illegal tying, abuse of market power, among other categories of claims. Led a case team in evaluating claimed damages, including alleged overcharges and lost profits damages from lost sales and increased costs of production.
- The plaintiff, a major airline, sued a travel technology company that operates a global distribution system (GDS) for allegedly anticompetitive behavior related to the provision of booking services to travel agencies. Led a case team in evaluating multiple components of the plaintiff's damages claim, including claimed lost profits resulting from the defendant's actions to allegedly impede the rollout of a competing technology for booking services, contractual restrictions that prevent the airline from offering targeted discounts to price sensitive customers, allegedly retaliatory booking fee increases, and the biasing of computer screens of travel agencies. Demonstrated the flaws in the plaintiff's claimed damages models.

- Assisted in evaluating the plaintiff's economic liability arguments an antitrust matter regarding the plaintiff's claim that the defendant monopolized or attempted to monopolize the business of manufacturing, selling, and distributing magnetic brakes, components for magnetic brakes, and magnetic braking systems for amusement park rides. Also assisted in evaluating claimed antitrust damages, including assumptions underlying the opposing expert's damages model and the economic causal connection between the alleged wrongful conduct and claimed losses.

Breach of Contract

- Assisted in evaluating economic damages suffered by a global distribution system operator as a result of a major airline company's breach of the confidentiality provision in its distribution agreement. At issue was the defendant's disclosure of confidential pricing information during the plaintiff's contract negotiations with other major airline customers. Analyses included evaluating the impact of the defendant's disclosure on pricing and other terms negotiated in the affected contracts. Assisted in determining the plaintiff's lost revenues and lost profits due to the defendant's disclosure.
- In a breach of contract matter involving alleged improper use of confidential information, performed an evaluation of the plaintiff's claimed lost income calculation and lost corporate value calculation. Evaluated the claimed comparable company used in the market approach for assessing corporate value.
- Assisted in the evaluation of the plaintiff's economic damages arising from the alleged wrongful termination of a workers' compensation insurance contract. The plaintiff – a provider of integrated workers' compensation insurance and payroll services – contended that its fronting company's alleged wrongful termination of a Managing General Agency Agreement negatively affected its ability to underwrite new business, causing harm to its revenues and business value. Assisted in the development of two approaches to quantify damages: a lost profits approach and a valuation approach. Under the lost profits approach, analyses included conducting research of the workers' compensation insurance market and insurance premium rate trend in California, analyzing customer retention data, and determining the plaintiff's lost profits from lost customers. Under the valuation approach, analyses included identifying comparable companies, evaluating selected financial variables for the relevant comparable companies, and assessing the plaintiff's value in the absence of the defendant's alleged wrongful conduct and comparing it to the plaintiff's actual value.
- Assisted in evaluating the plaintiff's damages claim in a breach of contract matter related to the alleged disruption of a direct-response television campaign. The plaintiff, a golf equipment manufacturing company, claimed that the reserve requirement in a merchant credit card processing contract prevented it from continuing its marketing and advertising objectives. Analysis of various financial metrics and trends demonstrated that the plaintiff's expert failed to take into account alternative reasons for the plaintiff's declining financial performance. Analyses included evaluating the life cycle of direct response television and assessing the growth of comparable golf equipment manufacturing companies during the claimed damage period.

Class Certification

- Assisted in evaluating claimed injury and damages in a class action matter involving 5-hour Energy products. The plaintiffs alleged that the products are misleadingly marketed as providing (five) hours of energy and containing "beneficial ingredients." Performed analyses to demonstrate the lack of an economic causal link between the challenged claims and economic injury as asserted by the plaintiffs

given (a) substantial repeat purchasing activity, (b) a variety of a factors influencing purchasing decision, (c) varying beliefs regarding the challenged claims, and (d) significant variation in actual prices paid for the products. Demonstrated that the plaintiffs' claimed "energy underfill" damages did not have an appropriate nexus to the challenged claims and did not adequately account for the value that putative class members received from the challenged products. Class certification was denied.

- The plaintiffs alleged to have paid a premium for Monster energy drinks as a result of various allegedly misleading on-label statements. Assisted in performing analyses to show the lack of a market-determined price premium, including showing that there was no discernible decrease in wholesale and retail prices of the challenged products following the removal of certain claims at issue. Evaluated the plaintiffs' conjoint survey from an economic perspective and found that the conjoint survey yields willingness-to-pay values that are unreasonably high relative to actual market prices of the challenged products. Class certification was denied.
- In a putative class action lawsuit, a beverages company was alleged to have misled consumers and caused them economic injury by marketing certain beverages as "all natural" when they contained high-fructose corn syrup. Assisted in evaluating the plaintiffs' position that standard economic analyses could be employed to quantify the alleged economic injury on a class-wide basis. Performed analyses of Nielsen retail sales data and demonstrated that wide variations existed in the beverages' retail prices across distribution outlets, across geographic areas, and across the time periods considered. Also demonstrated that promotional discounts and coupons significantly impact the actual prices paid by the putative class members. Reviewed product and marketing materials and assisted in the identification of benchmark products. A comparison of the average retail prices of the "all natural" beverages to identified benchmark products did not provide economic evidence that the "all natural" beverages possessed a systematic price premium as a result of the "all natural" labeling. Class certification was denied.
- Led a case team in evaluating the plaintiffs' use of a conjoint analysis and a hedonic regression to calculation claimed price premium in a consumer class action matter involving ovens equipped with a self-cleaning feature. Class certification was denied, citing reasons consistent with the team's analyses that the plaintiffs' conjoint analysis failed to adequately address supply-side considerations and the plaintiffs' regression could not economically isolate the price impact of the challenged feature from certain non-challenged features and benefits of at-issue ovens.
- Assisted in evaluating the plaintiffs' position that the alleged economic injury suffered by putative class members could be quantified on a class-wide basis for claimed false advertising related to label statements that sunscreen ingredients were naturally sourced. Analyses demonstrated that the plaintiffs' expert's proposed hedonic regression model used an improperly defined market, miscategorized relevant product claims, and used an incomplete list of relevant control attributes for sunscreen products. Analyses further demonstrated that the plaintiffs' proposed damages models could not isolate a claimed price premium attributable to the alleged wrongful conduct from a price premium that may have existed for a correct interpretation of the challenged label statements. Class certification was denied.
- Assisted in evaluating the plaintiffs' position that the claimed economic injury suffered by putative class members could be quantified on a class-wide basis for claimed under-filling of canned tuna products. Analyses of the plaintiffs' historical testing records over the putative class period

demonstrated both the lack of under-filling in numerous testing samples from the putative class period, as well as variation in the amount of under-filling in particular testing samples from the putative class period, demonstrating the lack of economic injury and the lack of ability to quantify economic injury using common proof.

- Assisted in evaluating the plaintiffs' position that claimed economic injury suffered by putative class members could be quantified on a class-wide basis for claimed false advertising related to label statements on baby shampoo products claiming to use a natural oat formula. Assisted in performing before-and-after comparisons and benchmark product comparisons to demonstrate the likely lack of claimed price premiums associated with the challenged claims. Also assisted in evaluating the plaintiffs' damages expert's proposed hedonic regression. Analyses demonstrated that the proposed regression suffered from numerous flaws, including miscategorization of relevant product attributes, omission of relevant product attributes, and incomplete or inaccurate data.
- Assisted in evaluating the plaintiffs' position that the claimed economic injury suffered by putative class members could be quantified on a class-wide basis in a matter related to anti-aging skin care products marketed as preventing and repairing signs of aging "in just one week." Assisted in demonstrating that the approaches proposed by the opposing expert to calculate class-wide damages would not yield reliable or relevant estimates of the alleged harm suffered by individual putative class members. Arguments presented included that the large number of repeat buyers, the wide variations in the retail prices associated with the accused products, and the wide variations in the retail price differences relative to other anti-aging products would prevent a reliable calculation of putative class members' damages on a class-wide basis. Class certification was denied.
- In a putative class action lawsuit involving a food company, three products are alleged to be mislabeled: cooking sprays, canned tomato products, and hot cocoa products. Assisted in evaluating the common proof approaches proposed by the opposing expert to calculate a class-wide monetary recovery, including restitution, restitutionary disgorgement, benefit of the bargain rule, and proportion of sales allegedly attributable to challenged claims. Assisted in demonstrating that calculation of monetary recovery for putative class members absent individualized analyses into (a) reasons for purchase, (b) the specific prices paid for the Challenged Products, (c) the specific prices of the alternative products, and (d) whether the Challenged Product purchased bore the Challenged Claims would not be reliable from an economic perspective. Class certification was denied.
- Assisted in evaluating the plaintiff's position that the claimed economic injury suffered by putative class members could be quantified on a class-wide basis in a matter related to margarita products marketed as "all natural" when they contained the preservative sodium benzoate. Assisted in demonstrating that the "price premium" approach proposed by the opposing expert to calculate class-wide damages would not yield a reliable or relevant estimate of the alleged harm suffered by individual putative class members. Arguments presented included that the wide variations in the retail prices associated with the accused products, variations in putative class members' reasons for purchase, and variations in putative class members' opinions regarding sodium benzoate would prevent a reliable calculation of putative class members' damages on a class-wide basis. Class certification was denied.
- Assisted in evaluating the plaintiffs' position that the claimed economic injury allegedly suffered by putative class members could be quantified on a class-wide basis in a matter related to the issuance of a special assessment fee by a timeshare vacation club. Assisted in demonstrating that potential

damages-related conflicts were likely to arise among putative class members (including among the named plaintiffs) – making class-wide proof an unreliable measure of economic injury for each putative class member. Also assisted in demonstrating that evaluating claimed damages on a class-wide basis would result in potentially awarding damages to putative class members who suffered no injury.

- **Other matters:** Evaluated the plaintiffs’ position that the economic injury allegedly suffered by putative class members could be quantified on a class-wide basis in class action lawsuits involving other consumer products, including (a) antibacterial hand soaps, (b) automobiles, (c) cereals, (d) colon health probiotic capsules, (e) orange juice products, (f) soft drinks, (g) pest control solutions, (h) complimentary services associated with eyeglass purchases, (i) tires, and (j) wet wipes.

Loss of Earnings

- Evaluated the plaintiffs’ claim that the alleged wrongful conduct of the defendants caused the plaintiffs to lose their medical privileges in pediatric neurosurgery at a hospital and sustain past and future reduction in earnings. Analyzed financial data of the doctors’ medical practice, the earnings life cycle of physicians, and other potentially mitigating factors.
- Evaluated the claimed lost earnings suffered by a cardiologist as a result of the alleged wrongful termination of his privileges at a hospital. Analysis included evaluating the revenue growth of the plaintiff’s medical practice relative to claimed lost earnings, preparing critiques of the plaintiff’s expert’s lost earnings damages model, and calculating alternative damages figures.

PRESENTATIONS

“Tying Damages to Theory of Liability in Price-Premium Class Actions” (as part of “Consumer Class Action Litigation: Tips & Strategies for Your Firm in 2020 and Beyond” panel), The Knowledge Group, September 15, 2020

HONORS

2021, 2022 IAM Patent 1000: The World’s Leading Patent Professionals