



# Insights: Top Disputes & Investigations



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Welcome to the latest edition of Insights, a showcase of FTI Consulting's client engagements by the Forensic and Litigation Consulting segment over the past year. I sincerely hope that this message finds you, your family and community in good health and spirits.

As I write this, we are in the midst of a global disruption to the human and business ecosystem that has cost thousands of lives and immeasurable economic damage. How companies recover and adapt to this unknown post-pandemic reality will define success and failure for years to come.

Although the sample of work in this Insights issue predates the pandemic, it illuminates the breadth and depth of our experience with industry-defining matters, highlighting our capability and resilience to assist with critical business issues affecting our most trusted relationships. We value the trust you have placed in us and continue to place in us to assist you today and in the future. However moving forward is defined, we will do so together to support you and your business objectives.

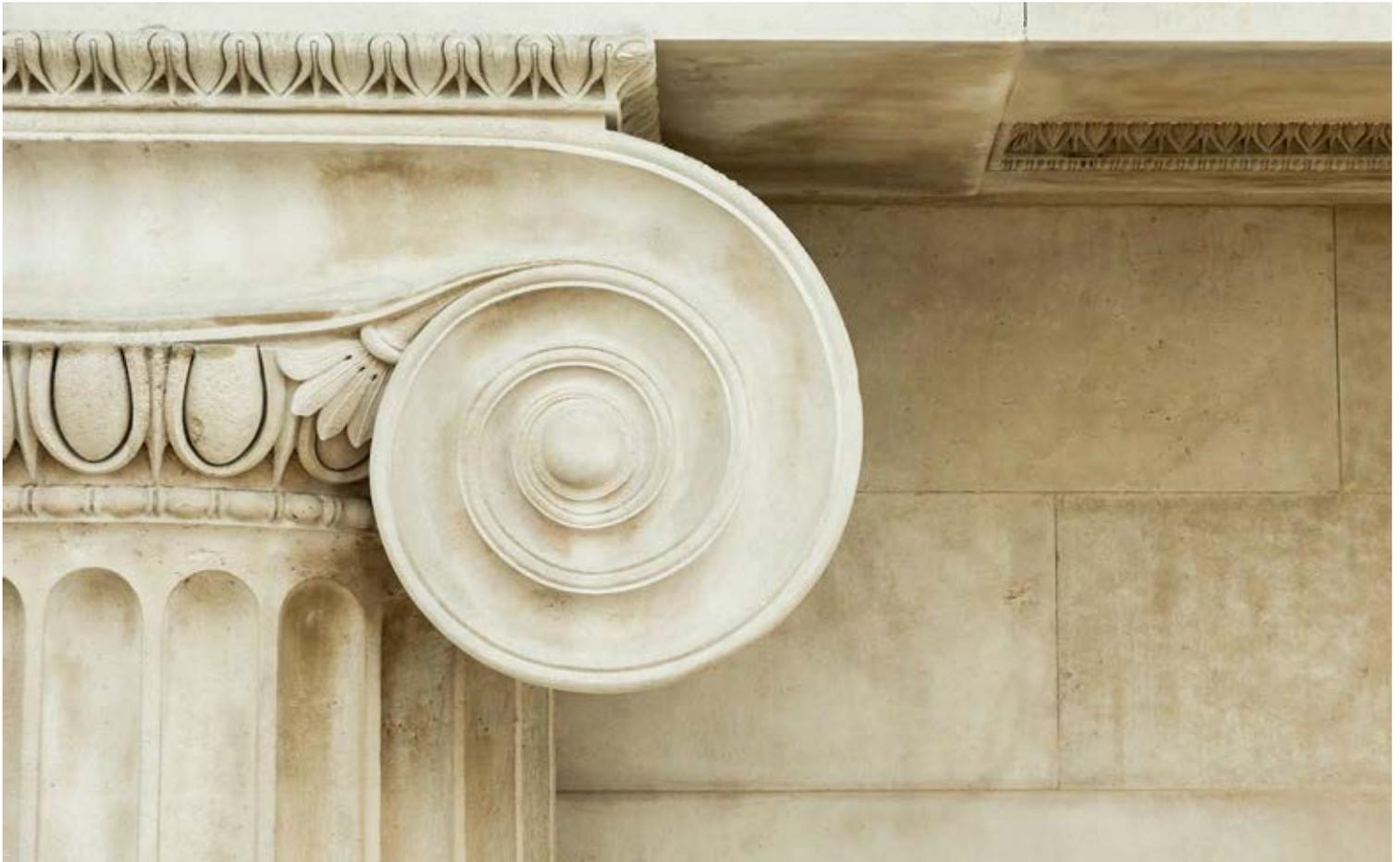
Yours truly,

A handwritten signature in black ink that reads "Basil Imburgia". The signature is written in a cursive, flowing style.

**Basil Imburgia**

Senior Managing Director

North America Leader, Forensic & Litigation Consulting



## — Securities, Accounting and Regulatory Enforcement

We expect the global pandemic to affect securities, accounting and regulatory enforcement in a variety of complex ways. In the U.S., share prices may have been affected by the impact of COVID-19; economic stimulus efforts like the CARES Act may require firms to show they complied with the terms of the legislation; and accounting authorities will likely offer new interpretations of accounting rules. These issues – and others – will also play out internationally in different ways.

We stand ready to meet the new challenges of the post-pandemic economy. We have deep expertise in a wide range of securities, accounting, and regulatory environments around the world. In this section, we highlight several recent engagements touching on these experiences.



# Investigating Global Profitability for Engineering Company

A large international engineering and manufacturing company was facing regulatory investigations and litigation in several countries. Counsel retained FTI Consulting based on our robust knowledge of the business's structure and operations from prior engagements.

Because the investigation had an extremely limited timeline, FTI rapidly assembled a team of forensic accountants and data & analytics professionals. We analyzed and calculated the client's global profitability of the products under investigation across a variety of attributes, providing a level of granularity not previously available to the client.

We also interviewed accounting and sales personnel across the business's various entities. From these conversations, FTI was able to identify additional data sources, including production data, division-level financial data, and external market data, to create a complex model allocating global revenue and costs to the appropriate products. Through this structured, repeatable approach, FTI was able to successfully calculate the profitability of the products under investigation.

Ultimately, FTI developed a dynamic deliverable that allowed counsel to evaluate hundreds of different profitability scenarios which proved essential during negotiations with regulatory agencies. FTI's work helped reduce the company's penalties to less than half the amount initially estimated.

## Subject Matter Experts



**Adam Berry**  
Senior Managing Director



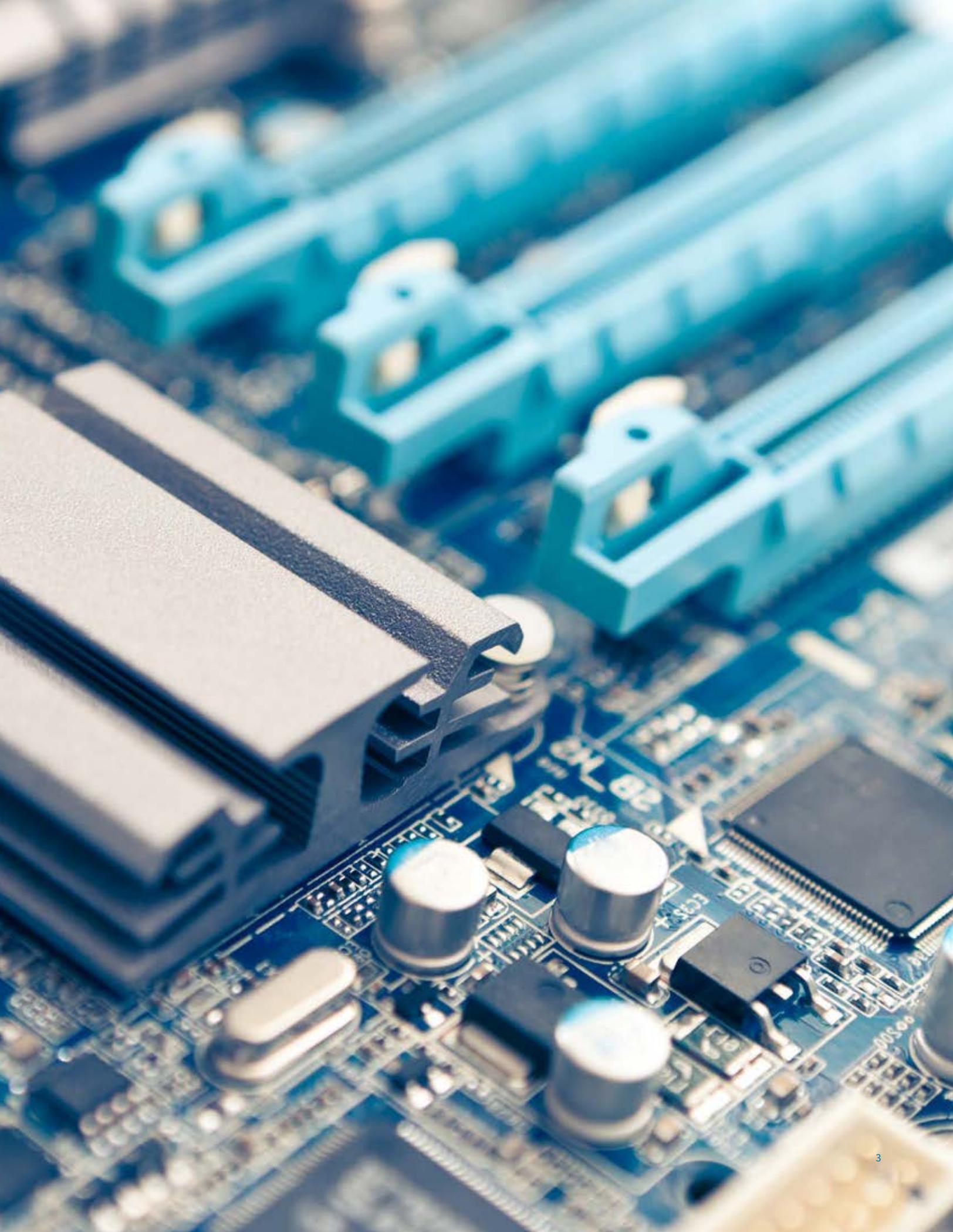
**Nicole Wells**  
Senior Managing Director



**Alex Tully**  
Director



**Audrey O'Connor**  
Senior Consultant



# Calculating Damages in Antitrust Class Action

A leading producer of electrical circuit components became involved in a Direct Purchaser Plaintiff (DPP) class action lawsuit alleging participation in a global price-fixing conspiracy. The company was accused of being a key member of a multi-year, international cartel of Japanese firms controlling the market for electrolytic capacitors. The alleged cartel was accused of raising and sustaining prices to an anti-competitive level, thereby imposing billions of dollars of purported overcharges on capacitors purchased by DPPs such as U.S.-based distributors, original equipment manufacturers (OEMs), and electronics manufacturing services (EMS) providers.

Legal counsel retained FTI Consulting to review and rebut analyses put forth by the Plaintiffs' expert, a well-known academic statistician. Using sophisticated econometric models that distinguished dynamics in the prices paid by different types of purchasers – distributors vs. OEMs vs. EMS – we demonstrated that the purported overcharges on our client's sales were orders of magnitude lower than the Plaintiffs' calculations and/or statistically insignificant.

Our analysis was critical to our client settling with DPPs for a fraction of the damages estimated by the DPPs' expert.

## Subject Matter Experts



**Alok Khare**  
Senior Managing Director



**Sreevidhya Devarajan**  
Senior Director



**Ara Demirjian**  
Director



**George Derpanopoulos**  
Director

# Analysis of Post-IPO Stock Price Decline

A tech company ran into legal trouble when it saw its stock price decline following an IPO. The company was sued in state court by a class of investors under Section 11 of the Federal Securities Act, who alleged that the company's registration statement at the time of the IPO was materially incorrect and incomplete. There has been a sharp increase in the number of Section 11 cases since 2018 when the Supreme Court ruled in *Cyan, Inc. v. Beaver County Employees Retirement Fund* that Section 11 cases can be heard in state courts.

Under the law, a defendant will prevail if it can show "negative loss causation," that is, the alleged misrepresentation or omission did not lead to a decline in the share price. To assist counsel, FTI Consulting identified several prominent testifying experts and performed several types of analyses relating to the company's stock price. We analyzed the efficiency of the market and traditional valuation metrics. We developed event studies and analyzed these in the context of the registration statement. Our analysis was used by the client to settle the case favorably.

## Subject Matter Experts



**Eric Poer**  
Senior Managing Director



**Alok Khare**  
Senior Managing Director



**Paul Wazzan**  
Senior Managing Director



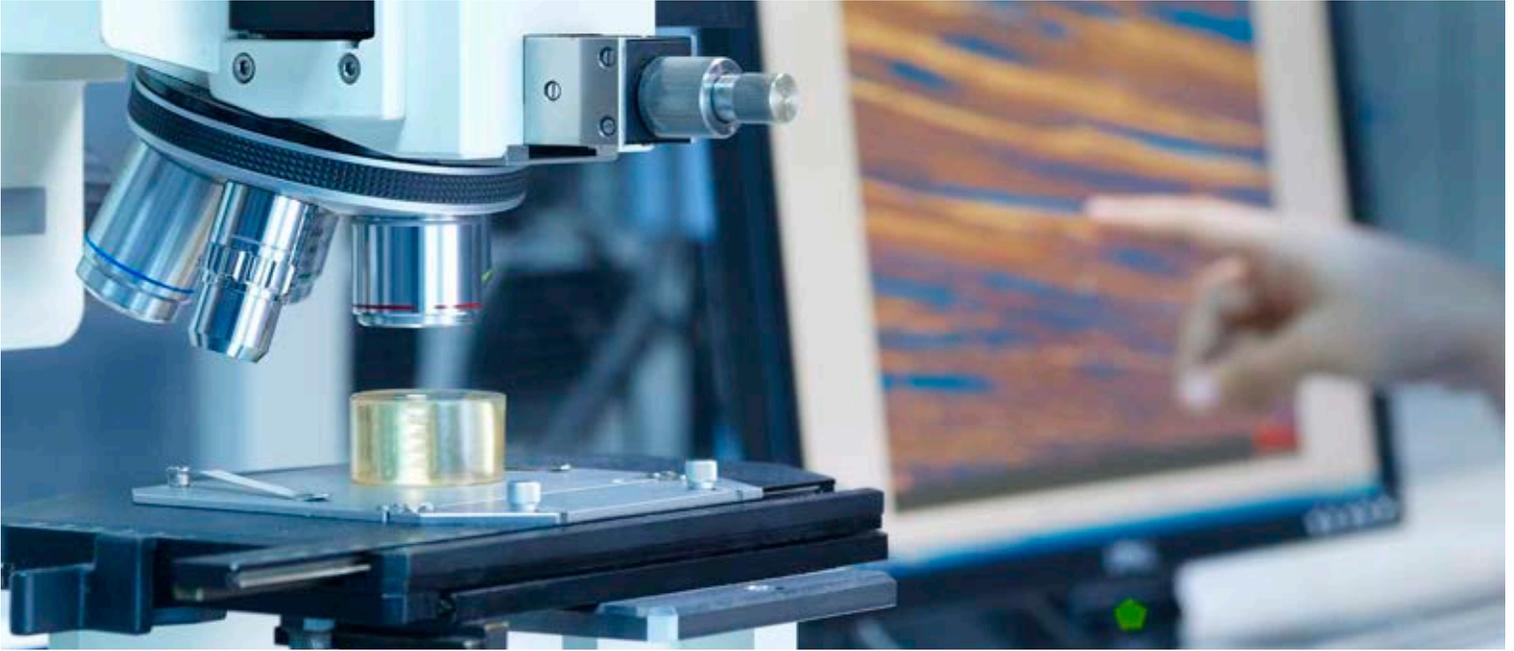
**Tiko Shah**  
Managing Director



**Erica Rose**  
Senior Director



**Joe Tanimura**  
Senior Director



# Mitigating Fraud Risk at Minerals Laboratory

A bribery allegations probe into a global minerals laboratory led to FTI Consulting being engaged as an independent compliance expert over a five-year period. Several lab employees were accused of fraudulently changing laboratory results in exchange for monetary compensation. FTI provided annual assessments of the internal controls and compliance procedures related to the company's domestic and international operations.

Our efforts included:

- A holistic review of physical procedures;
- Interviews with key and/or representative personnel;
- A detailed walkthrough of each domestic and international facility;
- An assessment of system and physical security as well as any potential exposure to FCPA violations;
- Reporting on material exceptions detected during the execution of the evaluation;
- Suggestions for addressing such exceptions; and,
- Recommendations for improvements.

At the end of each audit, we provided a detailed procedures and findings report to the company and to the Board of Directors.

## Subject Matter Experts



**David Alfaro**  
Senior Managing Director



**Mike Wei**  
Managing Director





# Program Fees Overcharges: Getting Ahead of the Problem

A domestic financial services firm learned that it incorrectly charged program fees to customer accounts associated with certain investment advisor programs. However, it did not know the full extent of how and why the assessed program fees varied from the disclosure documents. In response, and in advance of disclosing the problem to the SEC, the firm decided to retain FTI Consulting to identify and reimburse any clients that had been inadvertently overcharged and resolve the underlying issue.

Our scope of work included:

- Identifying all customers and customer accounts that were harmed;
- Identifying and collecting historical data for all factors that contributed to the program fee calculation;
- Proposing guidelines and assumptions to handle inconsistent or missing historical information;
- Recalculating historical program fees to determine the amount each customer account was overcharged;
- Preparing the proper documentation to support the revised calculations as well as any client refunds; and,
- Identifying programmatic and process issues that contributed to the original miscalculation.

FTI successfully completed the remediation analysis for the company and our results were presented to the SEC.

## Subject Matter Experts



**David Alfaro**  
Senior Managing Director



**Mike Wei**  
Managing Director



**Chris Kahnke**  
Senior Director



# SEC Share Class Selection Disclosure Initiative

Over the past several years, the SEC has filed numerous actions in which an investment adviser failed to make required disclosures relating to its selection of mutual fund share classes that paid the adviser a fee pursuant to Rule 12b-1 of the Investment Company Act of 1940 (when a lower-cost share class for the same fund was available to clients). More recently, the SEC has presented the Share Class Selection Disclosure (SCSD) Initiative to identify and promptly remedy potential violations of these disclosure requirements. Under the SCSD Initiative, the SEC's Division of Enforcement can recommend that the SEC accept favorable settlement terms for investment advisers that self-report their failure to make necessary disclosures concerning mutual fund share class selection.

In response to the SCSD Initiative, FTI Consulting was engaged by a financial advisor network to independently assess the firm's exposure to potentially overcharged 12b-1 fees by gathering a broad set of information across their network:

- Relevant fund names, ticker symbol, and CUSIP;
- Amount of year-end assets held by the company;
- Total amount of fund-level 12b-1 fees incurred by the company's clients (for each share class of a mutual fund held by advisory clients);
- Amount of 12b-1 fees (if any) incurred by the company's clients had the assets been invested instead in the lowest-cost share class available to the company's clients;
- Amount of 12b-1 fees in excess of the lowest-cost share class;
- Total 12b-1 fees received by 1) the company, 2) the company's supervised person, 3) its affiliated broker-dealer, and 4) its affiliated broker-dealer's registered representatives; and,
- 12b-1 fees that the company plans to disgorge.

Using this information, we helped our client to prepare a remediation plan to refund any charges deemed inappropriate, minimizing the potential impact of any SCSD Initiative enforcement.

## Subject Matter Experts



**David Alfaro**  
Senior Managing Director



**Mike Wei**  
Managing Director



**Chris Kahnke**  
Senior Director



**Laura Derian**  
Director

# ECONOMICS

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2535 +134.09 +2.4%  
878  $\triangle$

MARKET 428

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# Analyzing Insider Trading: Coffee Company Stock

FTI Consulting was retained on behalf of an individual Defendant who was alleged to have engaged in insider trading in the stock of a company that produces and sells coffee, teas, and other beverages. To prove that the Defendant improperly made use of material, non-public information, the SEC had to demonstrate that: 1) the Defendant breached a fiduciary duty or other relationship of trust and confidence; 2) the information was non-public and material; and 3) that the Defendant entered into transactions based on this information. In this particular case, the SEC was able to document that the Defendant had access to insider information but could not demonstrate that he had acted on that information. In order to fill this gap in its case, the SEC asserted that the Defendant’s illegal actions could be “inferred” from direct observation of his trades (i.e., the Defendant had repeatedly taken winning positions in advance of earnings announcements).

In particular, the Defendant had entered into call and put option transactions wherein he was betting that the stock price would move up or down by a large amount. This type of trading strategy, commonly known as a “Strangle,” is neutral as to which direction the stock price moves, as long as the move is a large one. Importantly, this type of trading strategy is often used when the underlying stock price is highly volatile (i.e., subject to large movements). Over the relevant time period, the company’s stock price was indeed highly volatile.

FTI and counsel for the Defendant determined that it would be illuminating to ascertain whether other, non-insider, investors had engaged in Strangle transactions similar to those placed by the Defendant. To conduct this analysis, we reviewed all company stock and option transactions for the period November 12, 2010 through May 9, 2013. This transactional data, commonly referred to as “Blue Sheet” data, included trading and account holder information. Our analysis focused on three different types of Strangles, as summarized in the table below.

Type of Strangle	Description of Strangle	Traders (Approx.)	Unique Traders (Approx.)
Type A	Traders purchased both out-of-the-money call and put options on the same trading date; the options can have different expiration dates and the number of call and put options can be different.	4,600	2,700
Type B	Traders purchased both out-of-the-money call and put options - with the same expiration date - on the same trading date.	4,300	2,600
Type C	Traders purchased both out-of-the-money and put options - with the same expiration date - on the same trading date. In addition, these traders purchased the same number of call and put options.	2,000	1,700

Our analysis conclusively showed that thousands of non-insider investors were taking the same types of positions as the Defendant during the relevant time period. We showed that it was not possible to “infer” the use of material, non-public information simply by direct observation of the Defendant’s trades. At trial, the jury relied on the testimony of FTI’s expert and ultimately found in favor of the Defendant on all charges.

## Subject Matter Experts



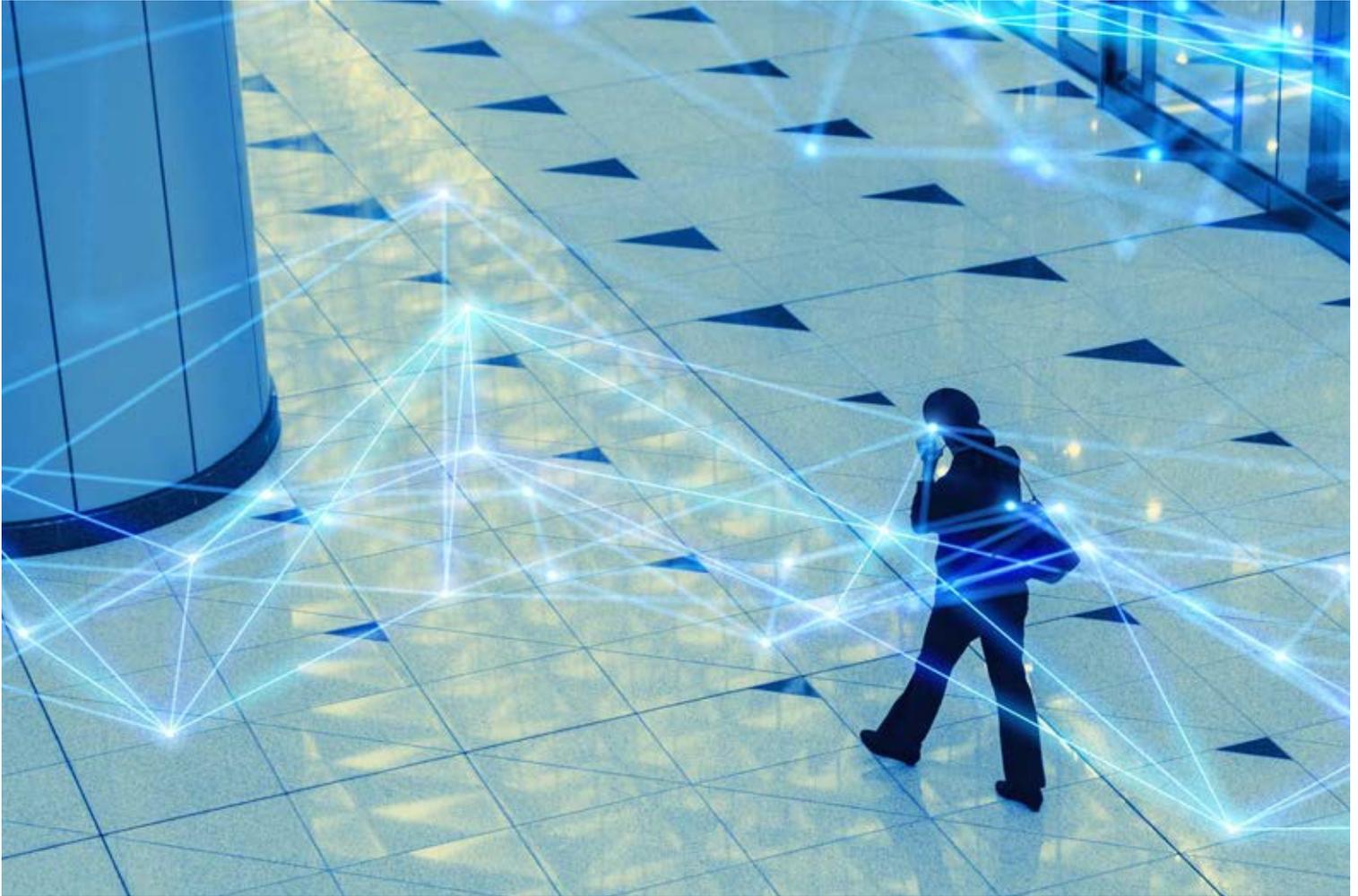
**Paul Wazzan**  
Senior Managing Director



**Joe Tanimura**  
Senior Director



**George Derpanopoulos**  
Director



## Analyzing Phone Records in TCPA Cases

A major cable operator became involved in a Telephone Consumer Protection Act (TCPA) class action lawsuit alleging, among other things, that unsolicited calls were made to cellular telephones without consent.

FTI Consulting was retained by counsel to provide complex data and statistical analyses on a large data set involving more than 700 million call records to assess the merits of Plaintiffs' claims. We also assisted counsel in reviewing and rebutting the analyses that the Plaintiffs presented to support class certification. The judge denied class certification, agreeing with several arguments that FTI had assisted counsel in developing.

Counsel was pleased with our work and retained us for another TCPA litigation case for the same client. In that matter, FTI provided a team of more than 20 consultants to analyze another large dataset in a very short amount of time. That matter recently settled.

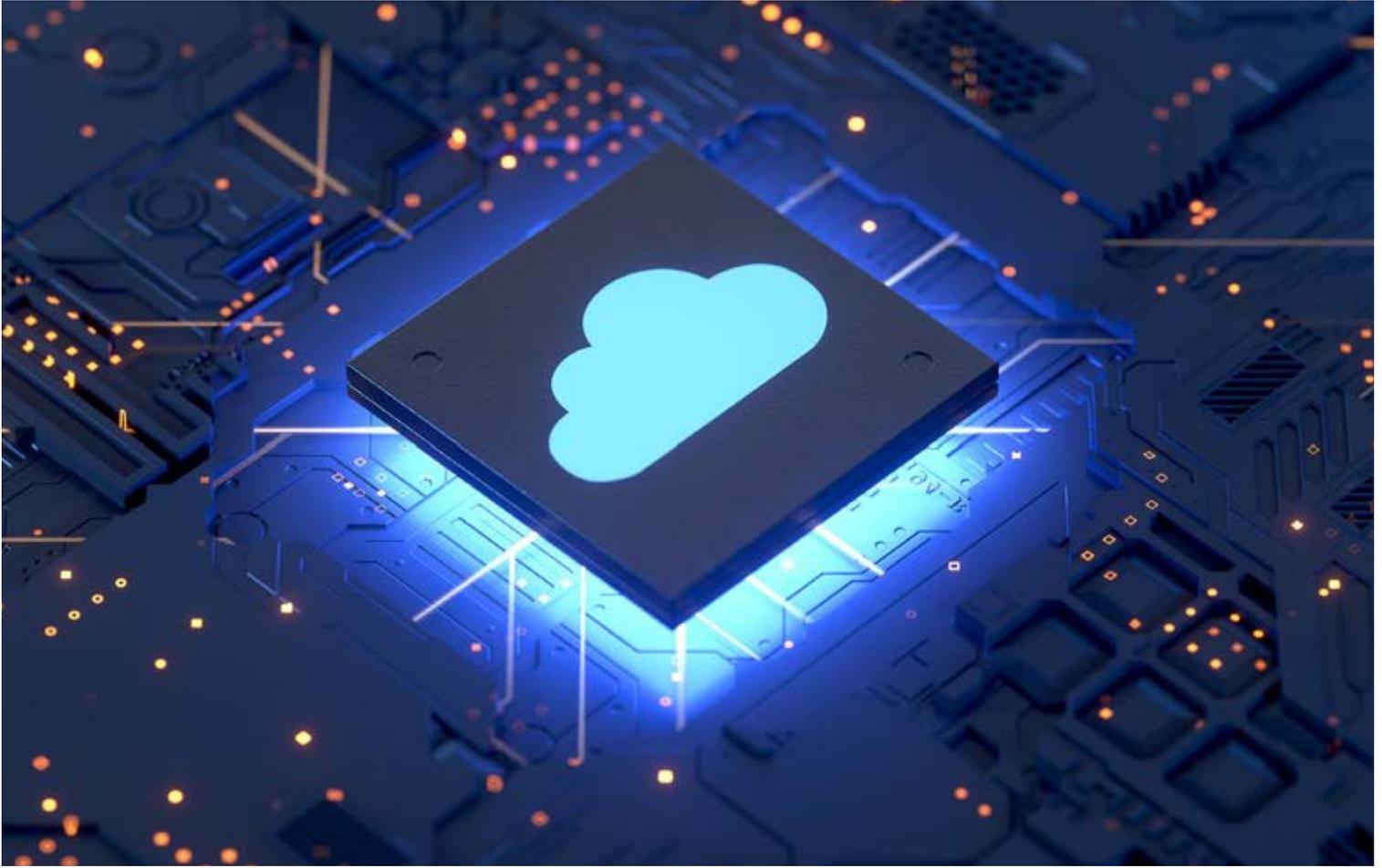
### Subject Matter Experts



**Alok Khare**  
Senior Managing Director



**Bilal Shah**  
Director



# Correcting the Calculations in a Financial Software Fee Dispute

An investment fund administrator was accused by a former vendor of failing to pay sufficient software license fees. In pending litigation, counsel retained FTI Consulting to rebut the software provider's expert's claims of nearly \$80 million in damages based on 10 years of alleged underpaid fees.

FTI's team, led by a former Big 4 forensic partner and experienced royalty auditor, critically analyzed the opposing experts' damage calculations and the underlying software royalty audit findings. Our rebuttal report detailed how the software provider's calculations contradicted explicit provisions of the software distribution agreement, failed to consider crucial case evidence, and contained a myriad of other errors.

Our analysis refuted the entire amount of alleged underpaid fees and substantiated that the investment fund administrator actually overpaid license fees by approximately \$150,000 for the relevant period.

## Subject Matter Experts



**Gary Kleinrichert**  
Senior Managing Director



**Micah Trilling**  
Managing Director



**Jimmy McCutcheon**  
Senior Director



# FTI COMPLY

## Third-Party Compliance and Due Diligence Management

With FTI COMPLY, our clients can:

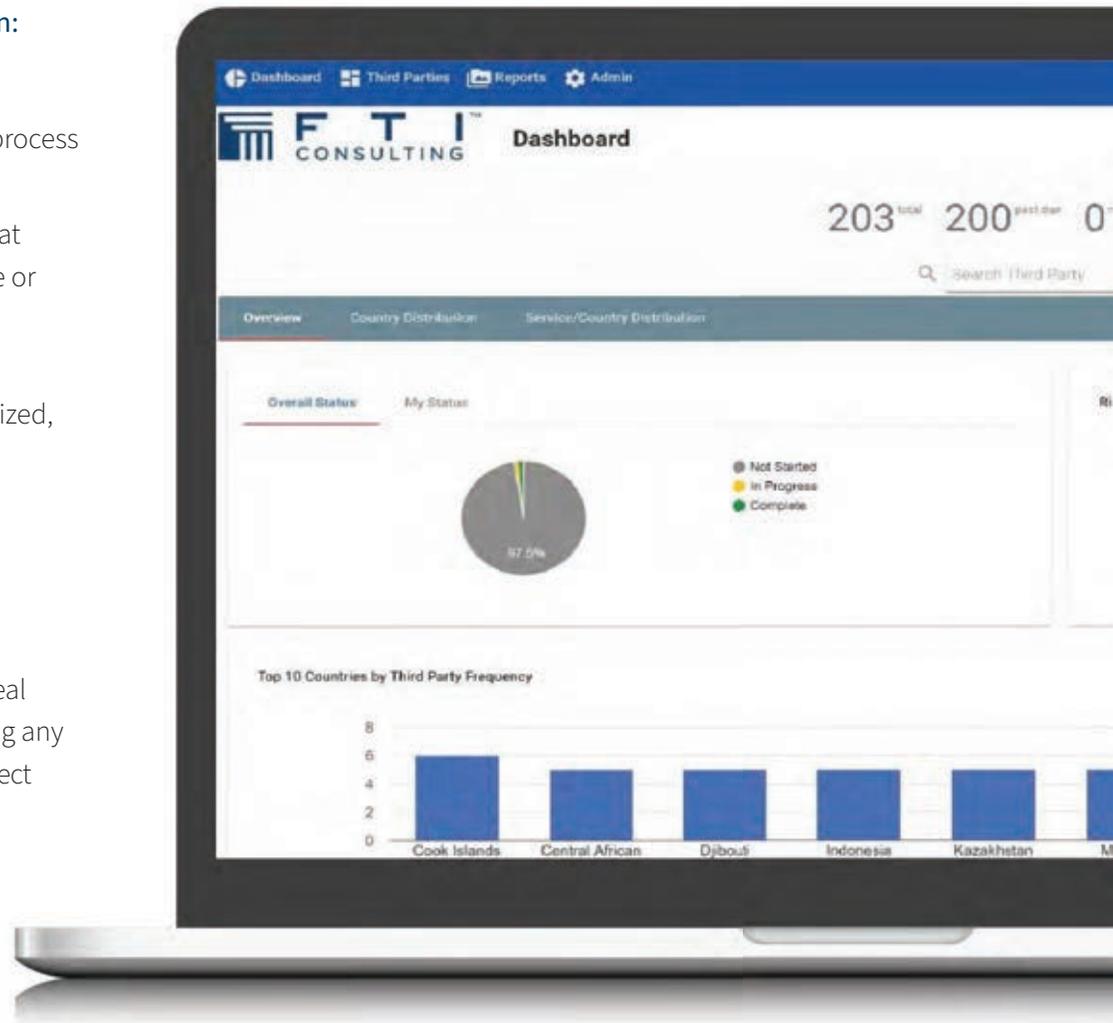
**Streamline** the third-party risk management and due diligence process

**Create** a customized workflow that is consistent across the enterprise or tailored by business unit

**Retain** all documents in a centralized, easily accessible location

**Conduct** due diligence directly in the application

**Monitor** extensive databases in real time, on an ongoing basis, flagging any significant changes that might affect the integrity of business partners



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

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

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## Valuation, Solvency and Acquisition Disputes

We expect the recent economic downturn to have wide-ranging impacts on M&A and valuation disputes. Share prices have fallen dramatically, particularly in certain industries, and parties will seek to nullify purchase agreements. We also expect that many companies will examine options to remain solvent in the face of the pandemic.

We have professionals with a proven track record of helping our clients navigate complex valuation issues. We combine a deep expertise in valuation with the ability to evaluate specific company, industry, and economic factors. In this section, we highlight some matters we have recently worked on in this space.



## Accounting Arbitrator in a Working Capital Dispute

FTI Consulting served as the Accounting Arbitrator in a working capital dispute in which more than \$40 million was in dispute. The dispute involved the appropriate accounting treatment under U.S. GAAP of certain items such as the valuation of inventory, the calculation of inventory reserves, appropriateness of accruals, and cutoff issues for accounts payable and accounts receivable.

We assisted the parties in determining the timeline and framework for the arbitration considering discovery, interrogatories, and other submissions of critical information made by the parties. After analyzing the company's historical financial and transactional data and researching authoritative guidance, in addition to other industry-specific research, we issued a detailed written determination that successfully resolved all disputed items.

### Subject Matter Experts



**Gary Kleinrichert**  
Senior Managing Director



**Jeremy McGannon**  
Managing Director



# Assessing Damages from Alleged Breach of Stock Purchase Agreement

FTI Consulting was retained on behalf of a private equity fund to provide expert testimony in Delaware Chancery Court in response to a purchase price adjustment calculation based on an alleged breach of representations in the Stock Purchase Agreement (SPA). The opposing expert calculated net damages of \$18 million due to the failure to disclose information regarding five customers, who either materially changed or terminated their service contracts after the closing date of the SPA.

FTI's rebuttal analysis demonstrated how the opposing expert failed to consider crucial information around the customer contracts as well as information regarding what was communicated about customers prior to the SPA. FTI demonstrated that the net damages were essentially zero, as calculated damages did not exceed the threshold (the "Basket") established by the SPA.

In November 2018, the Delaware Chancery Court ruled in favor of our client, finding that there was no breach of the SPA and even if there had been, the Plaintiff failed to prove its damages. The Court further commented that the methodology used by the opposing expert to measure damages based on an EBITDA multiple was not appropriate as Plaintiff did not show that a permanent diminution in the value of the business post-acquisition had occurred. The Delaware Chancery Court further noted that FTI's damage expert "proffered three credible damages scenarios, each tied to the evidence, proving that the realized damages would not exceed the Basket."

## Subject Matter Experts



**Gary Kleinrichert**  
Senior Managing Director



**Jason Tolmaire**  
Senior Director

# Performing a Solvency Analysis Based on Large Contingent Liabilities

Counsel for a non-operating subsidiary with contingent liabilities from past loan originations retained FTI Consulting to perform a solvency analysis. After selling its operations, the subsidiary paid some of the proceeds to the parent company as a dividend. Recently, the subsidiary lost a lawsuit and, with its bankruptcy imminent, creditors alleged that the dividend was fraudulent because it caused the subsidiary to become insolvent at the time.

At the direction of counsel, FTI was tasked with performing a contemporaneous fair value solvency analysis. We assembled a team, including a former Big 4 banking audit partner and experts in mortgage finance and bankruptcy/solvency valuation, and performed an independent analysis based on what was known and knowable at the time of the dividend. Our solvency analysis included industry research of loan breach rates and other analytics in securitization databases and complex data modeling. We also performed probabilistic analysis of decision trees based on the stages of multiple litigation matters pending at the time of the dividend. Counsel ultimately utilized our findings as a basis for settlement discussions.

## Subject Matter Experts



**Scott Carnahan**  
Senior Managing Director



**Steve Hazel**  
Senior Managing Director



**Micah Trilling**  
Managing Director



**Garrett Wilson**  
Managing Director



**Tim Sherman**  
Senior Director





# Ability to Pay: Department of Justice v. Health Care Provider

A health care provider was under investigation by the U.S. Department of Justice for potential violations of the False Claims Act. Based on its preliminary investigation, the DOJ proposed a fine that exceeded the company's market capitalization and would have jeopardized the company's continued viability.

FTI Consulting was retained and we assembled a multi-disciplinary team of healthcare and ability-to-pay experts to demonstrate the excessiveness of the DOJ's proposal and calculate a more reasonable fine under the DOJ's new guidelines. We performed an extensive ability-to-pay analysis for our client after considering the company's competitive challenges, strategic plans, and cost-cutting initiatives. We modeled future financial performance and incorporated the limitations of the company's borrowing capabilities through both its acquisition line and revolving credit facility. FTI's team presented its findings to the DOJ attorneys and financial analysts demonstrating that the proposed fine was beyond our client's ability to pay.

With the aid of FTI's compensation experts, we provided additional support that resulted in a favorable settlement for our client. While the DOJ sought an eight-figure fine, our analysis helped secure a fine that was 62 percent lower.

## Subject Matter Experts



**Basil Imburgia**  
Senior Managing Director



**Kevin DeLuise**  
Managing Director



**Geoffrey Innow**  
Managing Director



**Jason Tolmaire**  
Senior Director

# Defense of Parent-Sub Veil-Piercing Claim

FTI Consulting was engaged by counsel to analyze a U.S.-based subsidiary of a global food distributor, focusing on the characteristics of financial separateness considered by courts when evaluating alleged alter ego and corporate veil piercing over a multi-year period. FTI's analysis centered on the issues of separateness of assets and resources, adequacy of capital, and solvency.

As part of its work, FTI reviewed operating agreements, corporate records, loan documents, historical financial statements, budgets, operating forecasts, transfer pricing studies, and myriad other financial records to assess certain financial indicia of separateness, adequacy of capital independent of the subsidiary's parent company and affiliates, and its solvency during the relevant period.

Based on our analysis, FTI was able to demonstrate that the subsidiary maintained assets and resources separate and distinct from its parent, was adequately capitalized for the business in which it was engaged and had no indication of distress or insolvency.

## Subject Matter Experts



**Gary Kleinrichert**  
Senior Managing Director



**Jack Schwager**  
Managing Director



**Jason Tolmaire**  
Senior Director



## Forensic Investigations

The COVID-19 global pandemic is provoking vast regulatory, economic and legal changes. These changes will create more opportunities for malfeasance as well as increased interest on the part of companies to control and detect wrongdoing.

At FTI, we have extensive experience in conducting investigations. Whether it is investigating complicated Ponzi schemes, improper stock trading practices or billing fraud, our forensic investigations team of accountants, economists, statisticians, and business experts can smartly and efficiently sift through complex data to support legal strategy or act as an independent investigator. In this section, we highlight case studies that illustrate some of our expertise and highlight presentations we have made to the SEC, FINRA and the U.S. Department of Energy.

# Theft of Trade Secrets

A global engineering, procurement, construction and installation company was accused of using stolen trade secrets to win a \$2 billion contract. The company asked FTI Consulting to help resolve the complaint.

The Plaintiff accused our client of stealing trade secrets by recruiting an executive from within the Plaintiff's ranks. The Plaintiff believed that our client was provided with the Plaintiff's bid strategy and pricing for a significant contract that both the Plaintiff and our client were bidding on.

Our forensic accountants and engineering experts verified that the client's cost estimation system and bidding procedures for the contract followed internal controls that conform to industry best practices and that there was no evidence that any theft occurred, or that it was even necessary to steal the trade secrets. Major bid price changes that occurred during bid development were traced to their sources and determined to be legitimate cost-saving strategies resulting from better vendor pricing and cost-savvy business decisions, not the illicit use of trade secrets. The Plaintiff's bid price changes were also traced to their internal email communications which showed the Plaintiff's pricing decisions were focused on narrowly undercutting our client's bid, rather than true project costs.

Two expert reports were issued; both experts were deposed. The case settled favorably for our client on the eve of trial.

## Subject Matter Experts



**Gary Goolsby**  
Senior Managing Director



**Christopher Larkin**  
Senior Managing Director



**Joshua Sullivan**  
Senior Director

# SEC Whistleblower Inquiry

A whistleblower at a public company reported alleged irregularities in revenue recognition to the SEC. The alleged scheme overcharged customers to earn higher personal sales commissions and hid the overcharges in the company's bundled services billings through a loophole in the company's internal controls. The overcharges resulted in alleged misstatements of revenue, sales commission expenses, and net income by the company.

To help the company respond to the SEC, FTI Consulting's team of forensic accountants designed and performed complex sample-based tests of the sales transactions across several years preceding and following the company's IPO. Over the course of nearly a year, our engagement gave us a deep understanding of the company's sales transaction processing and its revenue cycle, and we were able to report the results from our sample testing design with extremely high confidence and precision. Our work led to several successful meetings with the SEC, the company's audit committee, and its auditor to help resolve the complaint.

## Subject Matter Experts



**David Lasater**  
Senior Managing Director



**Joshua Sullivan**  
Senior Director



# Investigation to Remediate Defrauded Investors in Ponzi Scheme

A brokerage firm was accused of orchestrating a Ponzi scheme to defraud investors and FTI Consulting was brought in to assess the situation and perform an analysis on the transaction inflows and outflows as a precursor to recovering defrauded investors' funds and paying out claims.

A team of FTI's forensic accountants created a detailed flow of funds analysis using data collected directly from the related financial institutions involving cash transfers in the U.S. and abroad. The analysis showed each investor's activity over a period of several years, including individual deposits, dividends, income, trading gains and withdrawals. This intricate analysis assessed losses sustained by investors who had never made withdrawals and identified specific accounts where withdrawals exceeded deposits by millions of dollars.

These findings prompted further investigation by FTI, ultimately uncovering an additional scheme in which certain parties related to the brokerage firm were benefiting directly from the Ponzi scheme. This discovery led to an additional dispute involving FINRA for which FTI provided expert witness analysis and testimony.

## Subject Matter Experts



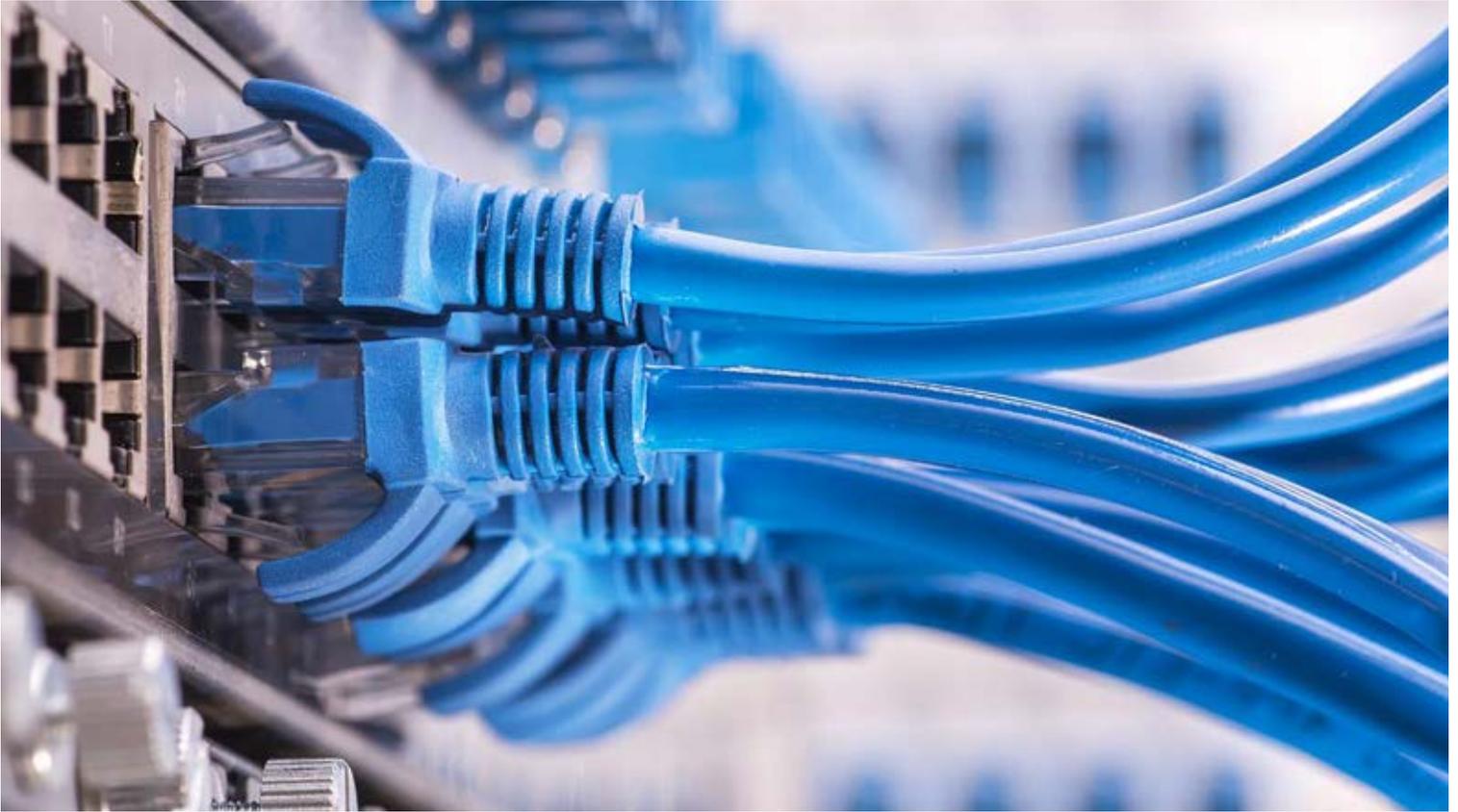
**Matt Greenblatt**  
Senior Managing Director



**Jeremy McGannon**  
Managing Director



**Brian Clutter**  
Senior Director



## Improper Stock Options Practices

The Board of Directors of a global telecommunications company retained FTI Consulting as an independent forensic accounting firm to investigate certain stock-option practices and to ensure such practices were compliant with federal and state laws. During the course of our investigation, we discovered that the former stock option administrator had been embezzling millions of dollars from the company over a period of several years.

FTI uncovered the scheme after exhaustive discovery and forensic analysis of terabytes of data sourced from the company's stock option databases; back-up tapes; human resources databases; and transfer agent records provided by the company's transfer agent. In order to unravel the scheme, the engagement team searched for, identified, and extracted information from multiple sources of information – which was used to expose the intricate steps used to successfully mislead internal and external auditors. FTI's work concluded with testimony to the SEC and was ultimately used to support a criminal conviction.

In the end, the former stock option administrator admitted to using his position to fraudulently issue hundreds of thousands of shares of the company's stock to a brokerage account he controlled and then selling them for a net gain of millions of dollars. Faced with the evidence provided by FTI, he pleaded guilty in U.S. District Court to one count of wire fraud and one count of tax evasion.

### Subject Matter Experts



**David Alfaro**  
Senior Managing Director



## When the DOE Comes Knocking at Your Door

FTI Consulting was engaged by a global engineering company to independently investigate and respond to the Department of Energy's (DOE) inquiries regarding historical and current billing practices associated with their government contract. More specifically, FTI assisted the company in assessing whether it charged the DOE the premium portion of the labor costs for training on overtime in violation of Federal Acquisition Regulation-specific unallowable costs (FAR 31.205-44).

FTI was tasked to develop and subsequently execute upon a response plan to the DOE's inquiry, which included designing a methodology to identify and quantify the premium portion paid for such training through a combination of comprehensive data analytics and inferences drawn from statistically meaningful samples (i.e., where manual review of time and training records was impractical and/or unreasonable). Upon completion of our work, FTI prepared a Procedures and Findings Report to thoroughly document the implementation of the plan. Our report addressed:

- The data supporting the plan's execution;
- The assumptions employed to interpret the data;
- The methodology followed to analyze the data; and,
- The specific findings discovered upon the completion of our work.

The purpose of our report was to provide the DOE with an auditable record of our work, which could be independently replicated and verified if desired.

After thoroughly comparing the company's formal training records with the company's timekeeping records, FTI identified the maximum number of premium hours of training that could have possibly been conducted during overtime. FTI's work concluded with a presentation to the DOE regarding our procedures and findings.

### Subject Matter Experts



**David Alfaro**  
Senior Managing Director

# DIRECT RELIEF

## FTI Consulting's Dispute Advisory Services

In today's challenging environment, it is important that we honor our core values – not only to provide the assistance and expertise expected by our trusted clients and business partners, but to also acknowledge the extraordinary effort and dedication of healthcare professionals who are committed to our collective health, safety and well-being.

To show our appreciation, we are donating to Direct Relief, a humanitarian aid organization ensuring the courage of our health workers on the front lines are honored with meaningful support and caring for some of the people most at risk in this pandemic.

As the world unites to overcome this unprecedented event, we hope our contribution helps to show our admiration and appreciation for these heroic healthcare professionals.

Sincerely,

*Basil Imburgia, Eric Poer and Vince Thomas*



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## Intellectual Property

IP disputes are likely to be affected by COVID-19 in complex and currently difficult-to-predict ways, from force majeure provisions that firms may use to justify failure to perform under licensing agreements, to the impact of work-at-home practices on the protection of trade secrets, to the novel and complex issues that will arise from the protection of intellectual property surrounding treatments and vaccines.

We have broad expertise in a wide range of issues that arise in IP litigation. In this section, we highlight some of these recent matters.

# Infringement Dispute on Solar Power Technology

A dispute over solar power technology led to a lawsuit where our client was sued for allegedly misappropriating the technology underlying the design and development of a solar panel. FTI Consulting was brought in by Defendant's counsel to contest Plaintiff's allegations.

FTI identified technical experts and worked with them to develop their testimony. We conducted extensive research of existing patents, product literature and documents produced in the case. We were able to show that the technology was already in the public domain and the critical features of the technology resided not in the patents and any alleged trade secrets but in the business know-how that had already been widely disseminated across equipment manufacturers. The case settled prior to trial.

## Subject Matter Experts



**Eric Poer**  
Senior Managing Director



**Alok Khare**  
Senior Managing Director



**Lincoln Eckhardt**  
Managing Director



**Tiko Shah**  
Managing Director



**Bing Lei**  
Senior Consultant

# ITC Section 337 Investigations

FTI Consulting was retained by Alston & Bird, who was representing Honeywell International, Inc. against The Code Corporation in a patent infringement case that Honeywell had filed at the International Trade Commission. Honeywell and Code compete fiercely in the barcode scanner market and Honeywell alleged that Code infringed on some of its patents.

We assessed the economic prong of a domestic industry related to the asserted patents. We also assessed whether Code maintains a commercially significant inventory of the accused barcode scanners and opined on the amount of bond that would be enough to protect Honeywell from any injury during the Presidential Review period.

Our expert testimony and analyses were instrumental to Honeywell's negotiations. On the eve of the scheduled hearing, the parties reached an extremely favorable settlement to Honeywell. Code agreed to make a significant lump sum payment to Honeywell and pay an annual royalty to license certain Honeywell patents. Code also agreed to redesign a portion of its products and not to revert back to certain designs of the products that were alleged to have infringed Honeywell patents.

## Subject Matter Experts



**Ryan Herrington**  
Senior Managing Director



**Rachel Leos**  
Senior Director



# Proving Damages Stemming from Intentional Underpayment of Royalties

A panel of arbitrators needed to determine breach of contract and fraud damages as a result of the Defendant's failure to pay royalties pursuant to a license agreement. The Plaintiff, a leading, publicly-traded biopharmaceutical company, had entered into the agreement, which covered patents and trade secrets used for research and in vitro diagnostic (IVD) purposes. FTI Consulting was brought into the case by the law firm representing the Plaintiff.

The exclusive licensing agreement covered world-wide sales and provided two different royalty forms dependent on whether the product was to be used for research or diagnostic purposes. After eight years into the license agreement, the Defendant performed an internal review of its licensing policies and procedures, discovering millions of dollars in unpaid royalties to Plaintiff on products that were not flagged as royalty-bearing in its internal systems. Rather than settling the underpayment, the Defendant booked an accrual for the unpaid royalties, but did not pay the Plaintiff the royalties owed.

Months after the discovery, the parties entered into an amendment to the license agreement (without the Plaintiff's knowledge of the unpaid royalties) that changed the royalty payment and structure of many royalty-bearing products that were accrued but not paid – effectively reducing the royalties owed for the products in its accrual. The Defendant instituted a protocol under which new research products were added to the royalty reports and paid, but new products used by IVD manufacturers were added to the accrual and not disclosed or paid. This protocol lasted for more than six years. Unprovoked, after the accrual reached into the tens of millions of dollars, the Defendant paid the Plaintiff a fraction of the amount owed in hopes to settle the total amount of unpaid royalties that were not disclosed to the Plaintiff. The Plaintiff eventually learned that the small payment from the Defendant was a net payment calculated by applying a series of retroactive deductions that were never previously taken or claimed appropriate by the Defendant.

FTI's testifying expert analyzed the record and provided a damages opinion for the breach of contract claims covering the royalties owed and the fraud claims stemming from concealed information during renegotiation of the license agreement. Our expert gained a detailed understanding of the technology at issue, the timeline of wrongdoing, and calculated damages based on alleged breach of the license agreement (royalties owed plus interest) and fraud (additional royalties and interest owed but for the fraudulent amendment).

After direct and cross-examination testimony at arbitration and even before the defense called its damages expert, the matter settled mid-arbitration at an amount greater than FTI's client had initially set out to collect when filing its lawsuit.

## Subject Matter Experts



**Vince Thomas**  
Senior Managing Director



**Mike Stubbs**  
Managing Director



## Commercial Disputes

Commercial disputes are likely to be significantly affected by COVID-19 in the coming years. Already, there has been a surge in new filings stemming from COVID-19.

FTI Consulting's Dispute Advisory Services practice is built around authoritative, experienced and independent functional and industry experts who analyze complex situations and formulate concise and persuasive opinions and conclusions. In this issue's highlighted cases, FTI Consulting experts assisted clients and legal counsel in their successful arguments involving a liquified petroleum gas supply agreement and calculating damages in a real estate breach-of-contract suit.



## LPG Distributor v. Multinational Refiner

A multinational hydrocarbons refiner brought in FTI Consulting to assist in a dispute involving its Liquefied Petroleum Gas (LPG) production supply agreement with an LPG distributor. The LPG distributor claimed damages arising from the fact that it did not receive the monthly base quantity of LPG products, which could be solely LPG or a combination of LPG and either butane and/or propane.

FTI reviewed refinery optimization with regard to existing hardware configuration and existing operating conditions. We examined existing refinery configuration, logistics, product grades and the overall refining process, including production optimization of fuel versus LPG. FTI further analyzed crude selection, blending and commercial optimization with regard to crude quality (API, sulfur, TAN, etc.) and yields.

Of the two claims for damages made, one was dismissed in favor of our client and the other resulted in minimal damages awarded.

### Subject Matter Experts



**Ken Stern**  
Senior Managing Director



**Quincy Jones**  
Managing Director



**Richard Winn**  
Managing Director



**Nidhi Aggarwal**  
Senior Director



# Calculating Damages in a Real Estate Breach-of-Contract Suit

Counsel for a major luxury home developer needed FTI Consulting's assistance with damages analysis and expert testimony in connection with a breach of contract dispute. The developer had acquired property in Orange County, California, including an agreement with the Defendant, an oil field operator, to plug and abandon the wells that it was operating once the Plaintiff was ready to develop the parcel. When the developer was ready to build homes, the Defendant failed to cease oil operations per the agreement, which resulted in a significant project delay.

FTI was engaged to provide damages analyses regarding the alleged contract breach, and to calculate damages resulting from the delayed housing development. FTI staff supported the testimony of a UCLA professor with extensive experience with real estate investment and calculating economic damages. In this case, he relied upon the Plaintiff's financial projections for lot development and market statistics based on comparable single-family homes near the relevant parcel in order to calculate damages. The professor was deposed and testified in a jury trial where he explained that the Plaintiff was entitled to economic damages associated with the project delay.

FTI's testifying expert calculated the unjust gains that Defendant received by operating the oil wells that it was contractually required to plug and abandon. Our expert also performed a detailed review of the contractual agreement and the performance it required of the Defendant. Our expert was also tasked with quantifying the impact to the Plaintiff of the Defendant's continued trespass and nuisance. At trial, our expert effectively explained that the Plaintiff was entitled to revenues associated with unjust enrichment from its oil operations on the land at issue.

The jury relied on the testimony of FTI's two experts and ultimately found in favor of the Plaintiff, who was awarded \$27 million in compensatory damages and \$10 million in punitive damages.

## Subject Matter Experts



**Paul Wazzan**  
Senior Managing Director



**John McBeath**  
Senior Managing Director



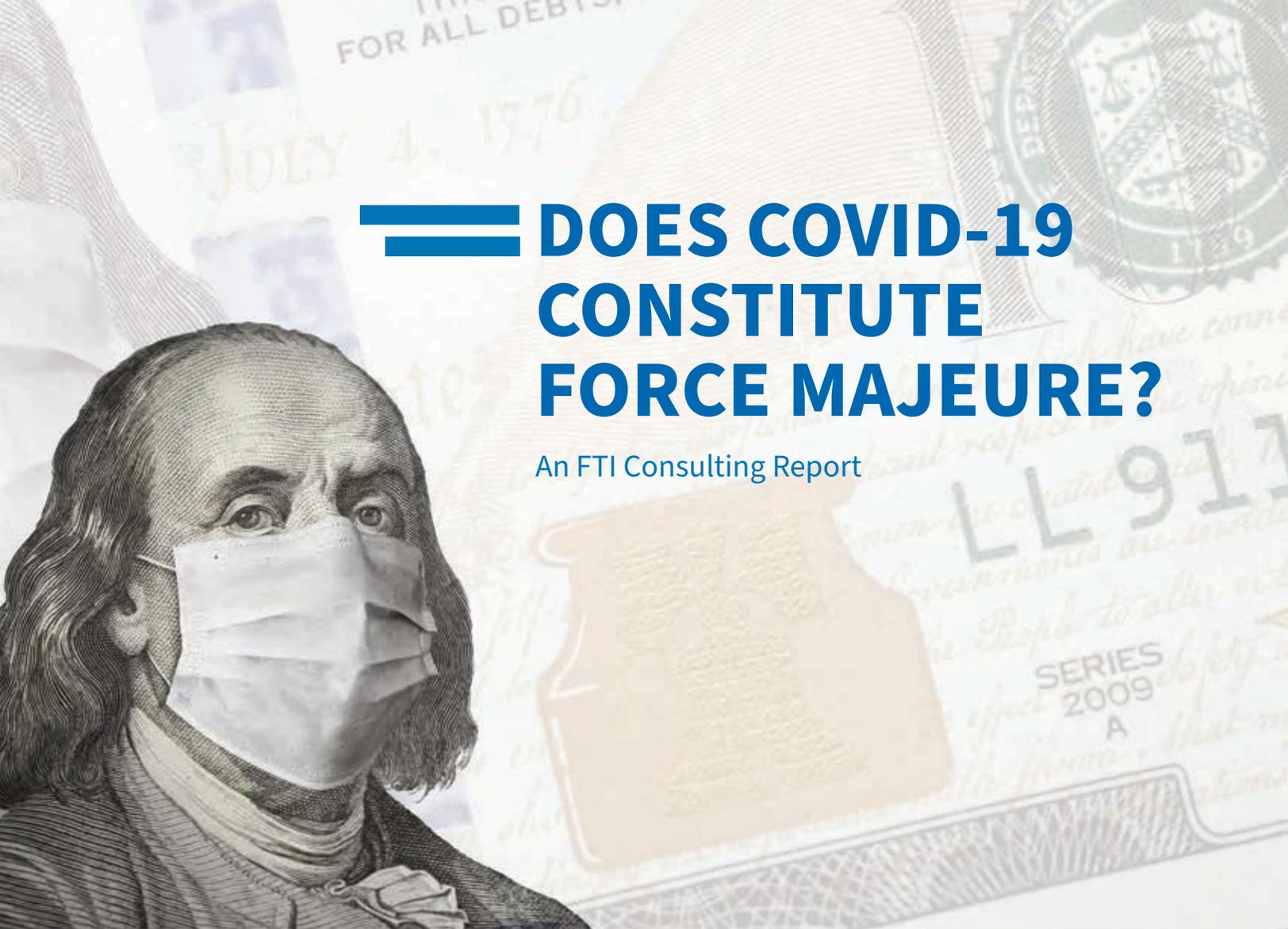
**Lisa Marovich**  
Senior Director



**Ara Demirjian**  
Director



**Roxanne Wren**  
Senior Consultant



# DOES COVID-19 CONSTITUTE FORCE MAJEURE?

An FTI Consulting Report

A pressing business question as economic activity resumes is whether the COVID-19 pandemic constitutes a “force majeure” event that could trigger various contractual clauses. M&A advisory firms also debate whether economic disruptions due to COVID-19 will trigger Material Adverse Change or Material Adverse Effect (collectively known as “MAC”) clauses that could affect transactions.

A new FTI Consulting report reviews MAC clauses in M&A Securities & Exchange Commission filings over a recent six-month period and catalogues references to force majeure, acts of God, epidemic, pandemic and other similar terms, as well as terms related to hostilities and natural disasters.

This report highlights potential considerations in damages analyses and raises important issues that will likely influence contractual language in the future.

**Download a free copy of the full report at:**

<https://www.fticonsulting.com/insights/reports/covid-19-force-majeure-material-adverse-change-clauses>

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

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## Forensic Accounting & Advisory Services

Accounting policies and practices are routinely subjected to scrutiny by regulators, law enforcement officials, business counterparties and whistleblowers. We expect that COVID-19 will bring an additional set of challenges for companies, including new forms of scrutiny. According to the SEC, the pandemic may raise risks to investors because it exposes pre-existing accounting or disclosure improprieties, leads issuers to engage in improper conduct, or permits companies to disguise previously undisclosed problems.

We stand ready to help. We specialize in forensic accounting investigations, financial record reconstruction, interview techniques, computer forensics and electronic data retrieval, enterprise-wide complex data modeling and analysis, quantifying damages, providing expert witness testimony at trial, and designing and implementing robust internal controls. Our professionals are among the industry's top practitioners and include former "Big Four" audit firm partners, former prosecutors, law enforcement officials and regulators from key agencies, including the SEC, the Financial Accounting Standards Board and the Public Company Accounting Oversight Board.

In this section, we highlight some recent matters.



# Investigating Fraudulent Digital Marketing Campaigns

A large national advertising and marketing services company acquired an entity focused on executing digital marketing campaigns for customers. After allegations that the digital marketing campaign results presented by the acquired entity were not being reported accurately to customers, we were retained – along with outside counsel – to conduct an internal investigation.

We assembled a multi-faceted team to assist the Audit Committee and outside counsel:

- FTI’s technology professionals collected, processed, and hosted the electronic evidence and coordinated the electronic data review so that outside counsel could efficiently and effectively review and identify the relevant electronic communications and documents.
- FTI’s forensic accounting experts reviewed business records underlying the marketing campaign transactions and participated (with outside counsel) in interviews of company personnel.
- FTI’s data analytics professionals evaluated the underlying systems of the acquired entity and the voluminous electronic data related to the subsidiary’s marketing campaigns to independently assess the accuracy of the results that the subsidiary reported to its customers.
- FTI business intelligence professionals conducted background research on the acquired entity’s co-founders and related parties.
- FTI’s strategic communications professionals assisted the company and counsel with devising a communications plan to notify impacted customers, inform employees and respond to media inquiries.
- FTI’s technical accountants worked with the company to assess financial reporting impacts, including contingent liabilities, materiality, and internal control implications.

Once the fraud was exposed, the parent company self-reported to government regulators, shut down the acquired entity, initiated legal action against the subsidiary’s co-founders and took steps to protect its reputation.

## Subject Matter Experts



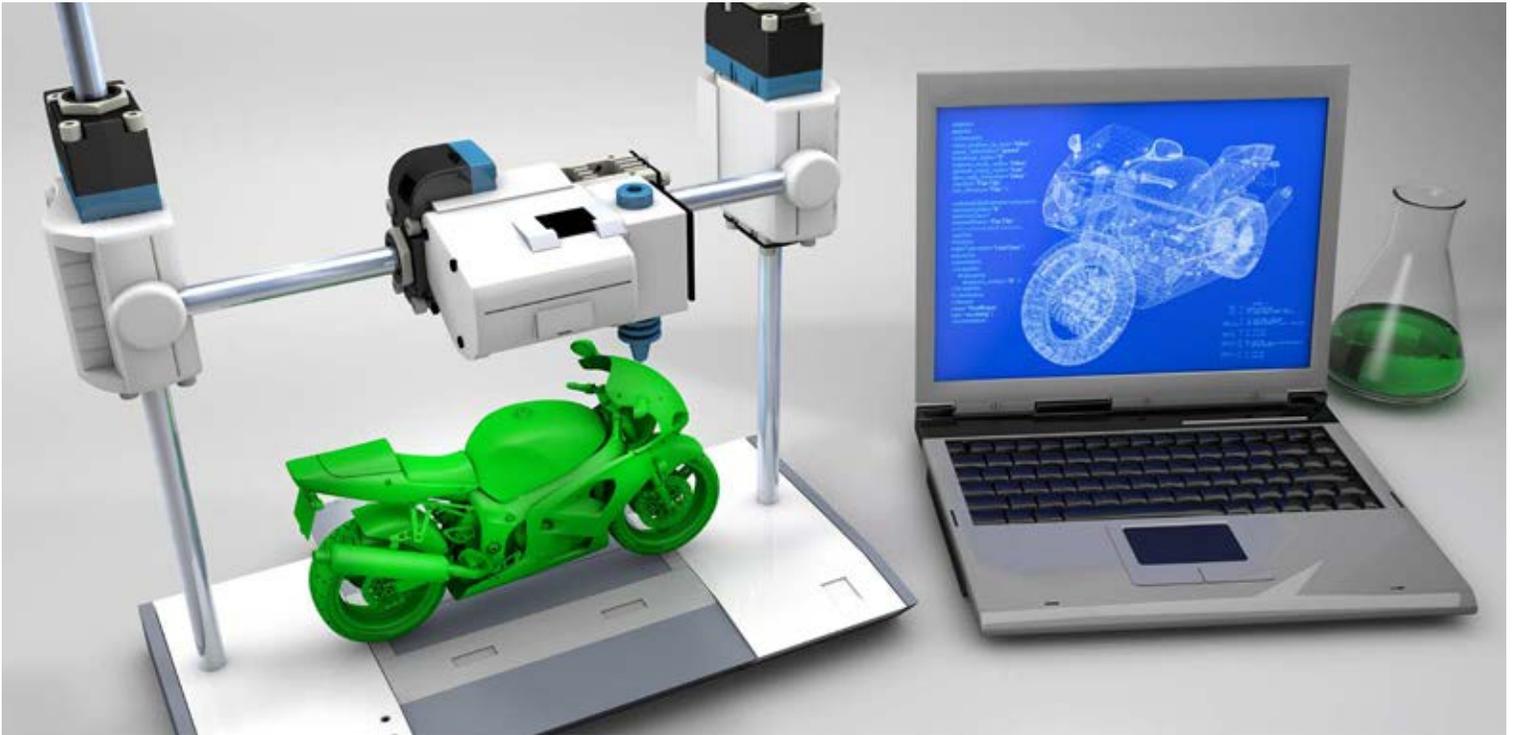
**Edward Westerman**  
Senior Managing Director



**Jeanne Gee**  
Managing Director



**Jeff Rhodes**  
Managing Director



# Mattel Investigation: Investigating a Whistleblower Complaint

Mattel is a leading global children’s entertainment company that specializes in the design and production of toys and consumer products. Recently, it received a whistleblower letter questioning whether there were accounting errors in its financial statements and whether Mattel’s outside auditor was independent. The Audit Committee for Mattel retained FTI Consulting and O’Melveny & Myers (as independent counsel) to investigate these allegations.

The Audit Committee, together with independent counsel and forensic accountants from FTI Consulting thoroughly investigated the allegations in the whistleblower letter. The investigation identified failures to properly consider and disclose errors to the then-Chief Executive Officer and Audit Committee once they become known, and also found violations of the auditor independence rules. The investigation found other allegations made by the whistleblower to be unfounded or immaterial.

As a result of the investigation, Mattel’s Audit Committee determined that the reported net loss of \$603.3 million for a previously reported quarter was understated by \$109 million due to an error in calculating its tax valuation allowance and there were material weaknesses in its internal control over financial reporting. The current CEO agreed with the Audit Committee’s conclusions and agreed to implement remedial measures to Mattel’s financial controls and auditor independence.

## Subject Matter Experts



**Ed Westerman**  
Senior Managing Director



**Brett Kumm**  
Senior Managing Director



**Chris Brown**  
Senior Managing Director



**Logan Stultz**  
Senior Director



# Investigation of Reported Accounting Irregularities at a U.S. Registrant

The Audit Committee of a global manufacturer of consumer products received several anonymous complaints alleging inappropriate sales transactions with a third-party vendor. We were retained as the independent forensic accounting advisor to assess these complaints.

We worked closely with outside counsel to interview witnesses and to review and analyze the relevant accounting data and information from disparate systems, including email and text communications, to identify and understand the facts and circumstances surrounding the alleged inappropriate sales transactions. As the investigation continued, we were also asked to review a parallel set of allegations surrounding inappropriate expense reimbursements to certain company employees and payments from third parties.

We conducted a thorough review of the Company's accounting data and documentation and were able to quickly isolate the allegations to a small number of select transactions. Based on the information obtained through the course of the investigation, the Audit Committee and the Company concluded a restatement was necessary. Following this determination, FTI Consulting assisted counsel in reporting the results of the investigation to the Company's auditors, U.S. regulators, and other regulatory bodies outside of the U.S.

## Subject Matter Experts



**Ed Westerman**  
Senior Managing Director



**Nicole Wells**  
Senior Managing Director



**Brett Kumm**  
Senior Managing Director



## Environmental Solutions

Managing and resolving environmental issues such as complex contamination, toxic tort, product liability and insurance disputes can be challenging for public and private entities. FTI's Environmental Solutions Group provides essential expertise and services through strategic consulting, communications, and litigation support to help deal with specific issues or ongoing challenges.

Currently, it appears that entities subject to EPA regulation, at least, will continue to face regulatory enforcement as they have in the past, despite COVID-19. We will continue to monitor this space closely in the weeks and months ahead.

In this section, we highlight some of the recent matters in which we have been engaged.



## Cost Allocation at a Superfund Site

A Cooperating Party Group retained FTI Consulting to provide responsible party identification and cost allocation services at a waterway CERCLA (Superfund) site. In this role, FTI Consulting served as a neutral fact-finder and mediator for an Alternative Dispute Resolution (ADR) process that allowed participants to avoid litigation.

FTI conducted a rigorous investigation based largely on publicly-available records to identify additional potentially responsible parties whose operations may have contributed contaminants to the Superfund site. Such parties historically or currently have a nexus to the Superfund site through direct discharges of process waste or other materials, indirect discharges via the sewer system, or other pathways. FTI worked with the existing Group members and the Environmental Protection Agency (EPA) to add new members to the Group, which ultimately spread cost and reduced the required contribution from any given participant.

Concurrently, FTI cost allocation experts collected and analyzed thousands of documents covering a wide range of subject areas including public records, industrial process research, business records, environmental chemistry, toxicity and risk assessment data, and remedial design and cost estimates. These documents were organized in an online repository for ease of access and review by both FTI and Group members. Current and historical site chemistry data were standardized and compiled into a database for use in statistical, tabular and graphical analyses. Further, geographic information such as historical aerial photographs, sewer maps, and site boundaries was organized and made accessible to Group members through an innovative web-based Geographic Information System for spatial analyses.

FTI also managed the advocacy process through which Group members submitted position papers detailing factual and legal arguments as part of the ADR process.

FTI evaluated member site operations, chemical usage, waste handling practices, and potential pathways to the proposed cleanup area over time in the context of EPA's proposed cleanup plan for the Superfund site, where cleanup costs were estimated in excess of \$100 million. This information, in conjunction with Group member advocacy submissions, were relied on to develop a final recommendation for equitable allocation of investigation and cleanup costs that accounted for factual, technical, and legal issues. FTI's recommendation formed the basis for negotiation of a final settlement among the Group members and with the EPA.

### Subject Matter Experts



**William Hengemihle**  
Senior Managing Director



**Kim Desrosiers**  
Managing Director



**Clayton Undercofler**  
Senior Director



**Jennifer Wollenberg**  
Senior Director



## Global Insurance Services

Perhaps no other industry will feel the after-effects of COVID-19 as extensively as the worldwide insurance and reinsurance industries. As companies sort through an expected avalanche of business interruption claims and disputes, they will need to navigate any changes in legislation and evolving court decisions to determine their exposure to COVID-19.

FTI's Global Insurance Services experts are ready to help. In this section, we profile recent examples of client success with valuations, M&A and post-acquisition disputes in the insurance industry.



# Guiding a Global Insurer Through Large-Scale Acquisition

FTI Consulting's client, a global property & casualty insurer and reinsurer, was about to embark on a sizable acquisition of a complementary business but did not have the in-house experience to organize and manage such a large-scale acquisition. We provided M&A support, program management, and strategic advisory expertise to help them through the process of acquisition and integration.

FTI mobilized a team of experienced M&A consultants and project/program managers to assist the client. The team built a project plan to cover all the tasks until the deal was signed and then a plan to execute on integration. In addition to shepherding the acquisition process, we provided input on disposing of a back book of insurance business, advice on dealing with the insurance regulator and support on optimizing the organization structure.

The deal was signed and all key pre-signing tasks were adequately covered. The client now seeks to involve FTI in post-acquisition initiatives, such as a developing a longer-term Target Operating Model and delivering the synergies.

## Subject Matter Experts



**Rory O'Brien**  
Senior Managing Director



**Jeremy Riley**  
Managing Director



**Andrew Munzberg**  
Senior Director



**Alex Vardy**  
Senior Consultant



**Andre Frazao**  
Contractor



# Business Valuation in Litigation

FTI Consulting was hired by counsel representing an estate in a purchase price dispute regarding the sale of a 50 percent ownership interest in an insurance company to its surviving founding partner. After executing the sale agreement, the founding partner refused to honor the payment terms, alleging that the agreed upon purchase price was overstated because of an inappropriate valuation report used in the original negotiations. Our client, the estate, pursued an action to compel the founding partner to adhere to the original terms of the agreement.

FTI's Global Insurance Services and Forensic Accounting & Advisory Services teams, were asked to provide an expert report on the reasonableness of the valuation report. We reviewed whether it met appropriate valuation standards and practices and whether a potential overstatement of the valuation could have contributed to an unfair purchase price. Our experts evaluated and provided opinions on the quality of the valuations, in addition to acting as advisors to counsel on the intricacies of the insurance accounting model and valuation guidelines.

In support of our client, we issued a joint expert report, were deposed and assisted counsel in taking depositions.

Summary judgement was reached in January 2020 in favor of our client.

## Subject Matter Experts



**Fred Donner**  
Senior Managing Director



**Steve Hazel**  
Senior Managing Director



**Wendy Shapss**  
Senior Managing Director



**Garrett Wilson**  
Managing Director



**Thomas Eversmann**  
Senior Director



**Jeremy Stein**  
Senior Consultant

# Forensic Accounting and Actuarial Analysis in an International Post-Acquisition Dispute

A five-party group consisting of international life insurance and holding companies, investment groups, and an individual retained FTI Consulting to aid in a dispute between our client (Plaintiff) and an international insurer (Defendant) that went before international arbitration.

Following its acquisition of Defendant, Plaintiff discovered that Defendant had inflated its reported value using fraudulent loan transactions and accounting schemes. The financial regulator of Defendant's home country commenced an investigation into the loans and discovered a fraudulent scheme involving borrowers, related parties and employees of financial institutions (including Defendant). The regulator's investigation led to the criminal indictment of nearly 50 people, including at least one former employee of Defendant.

Our client claimed that the purchase price was inflated and sought to change the terms of the purchase. FTI was engaged to provide analysis and expert opinions on the accounting treatment and actuarial impact of the fraud to the value of Defendant. FTI's team of accounting and actuarial professionals drew from our offices in Asia and the U.S.

FTI analyzed Defendant's financial status on a reported basis and on an adjusted basis, which considered the impact of the fraudulent activity. The analysis was from both an accounting perspective, where damages were assessed according to various legal theories, and an actuarial perspective via the determination of an Actuarial Appraisal Value. FTI issued an expert report and provided deposition testimony.

## Subject Matter Experts



**Jim Toole**  
Senior Managing Director



**Braden Billiet**  
Managing Director



**Marco Shek**  
Senior Director



**Matt Stahl**  
Senior Director





Cybercrime is growing rapidly as a result of the global pandemic: cyber-criminals prey on individuals and companies who may be less guarded as they cope with this global pandemic.

FTI Cybersecurity has some of the industry’s most prominent experts on cybersecurity, digital forensics and remediation. The team has been engaged in several high-profile cases and disputes involving cybercrime and malware that affect all types of companies and organizations. In this section, we profile recent matters in this area.



# BuzzFeed Wins Dossier Defamation Lawsuit

The “Steele Dossier,” also commonly known as the “Trump Dossier,” was a private intelligence report developed by Christopher Steele, a former head of the Russia desk for British Intelligence. The dossier was a collection of memos Steele prepared in 2016 that became part of political opposition research efforts during the 2016 U.S. presidential election. BuzzFeed was the first news organization to publish the dossier. However, the company was later sued by a Russian billionaire and technology executive, who was mentioned in the dossier, for alleged defamation. Facing litigation, BuzzFeed retained FTI Cybersecurity to assess whether the statements in the dossier were valid – that the Plaintiff’s infrastructure was used in the cyberattacks on Democratic Party leadership.

Anthony J. Ferrante served as an expert witness in the case. FTI Cybersecurity’s forensic analysis discovered that the Plaintiff’s businesses and its affiliated web hosting companies were used as gateways to the Internet for cyber criminals and Russian state-sponsored actors to launch and control large-scale malware campaigns over the past decade without fear of repercussion. For example, FTI Cybersecurity’s analysis determined that “Russian cyber espionage groups” used the Plaintiff’s platform to “support malicious spear phishing campaigns against the Democratic Party leadership.”

The FTI Cybersecurity team determined that, based on documentation produced during discovery and deposition transcripts, the Plaintiff and associated executives did not appear to actively prevent cyber criminals from using their infrastructure. Minimal, if any, investigations were performed by the Plaintiff when their infrastructure was cited in high profile government or private security firm reports.

The investigative findings were reflected in Ferrante’s expert report and described within his testimony.

In December 2018, BuzzFeed won the case on summary judgment. The ruling judge dismissed the lawsuit deeming BuzzFeed’s publishing of the dossier was “fair and true.” Although our report did not factor into the judge’s analysis, FTI Cybersecurity confirmed that the Plaintiff’s infrastructure was used in an attempt to hack the Democratic National Committee.

## Subject Matter Experts



**Anthony J. Ferrante**  
Senior Managing Director



**Katie Donnelly**  
Managing Director



**Joe Knight**  
Managing Director

# FTI CYBERSECURITY



**FTI Cybersecurity** takes an intelligence-led, expert-driven, strategic approach to global cybersecurity challenges affecting your organization – your people, your operations, and your reputation.

**We help build a resilient future for our clients.**

Learn more at [fticybersecurity.com](https://fticybersecurity.com)

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## Interim vCISO Steps in After Breach

One of the largest distributors of Caterpillar equipment in the Middle East and North Africa fell victim to a business email compromise and cybersecurity breach that resulted in over \$10 million in wire transfer fraud.

In response, we deployed a dedicated expert to immediately act as the interim virtual Chief Information Security Officer (vCISO). The vCISO helped build the Company's cybersecurity strategy and align cybersecurity policies and practices with industry standards. We also implemented an incident response plan and introduced various tools, procedures, and capabilities. We seamlessly transitioned the work to an in-house leader by onboarding a new, dedicated CISO. Additionally, we trained new staff on proper cybersecurity policies and procedures.

With a new in-house CISO, plans and procedures in place, the Company is now able to better protect itself from risk exposure from the cyber threat landscape.

### Subject Matter Experts



**Anthony J. Ferrante**  
Senior Managing Director



**Ron Yearwood**  
Senior Managing Director



**Praveen Madhavankutty**  
Managing Director



**David Dunn**  
Managing Director



## Dark Web Research and Breach Recovery for a Major Online Fashion Retailer

A major online fashion retailer that ships to more than 80 countries experienced a security breach that affected more than six million customers. The sophisticated cyber attack on the company's computer network initially went undetected, allowing the attackers to move freely through the company's systems for months.

FTI Cybersecurity was hired to provide intelligence services to identify whether any customer data from the breach was posted on the dark web and if so, what data was exposed. Using FTI Cybersecurity's proprietary dark web threat intelligence tool, our team was able to quickly determine that customer data was posted in two locations, auctioned for sale, and ultimately exchanged between criminal actors.

FTI Cybersecurity also verified the exact number of affected customers and determined that the stolen information posted and sold on the dark web was limited to email addresses and encrypted passwords.

Our team was able to minimize the distribution of the data that was posted on public and semi-public dark web forums, but the work did not stop there. Partnering with FTI's Strategic Communications experts, an inbound call center was up and running in less than a week with scripts in multiple languages developed for servicing affected customers.

### Subject Matter Experts



**Jordan Rae Kelly**  
Senior Managing Director



**Ron Yearwood**  
Senior Managing Director



**Myron Marlin**  
Senior Managing Director



**Elizabeth Cholis**  
Managing Director



# Ransomware Response for a Provider of Billing and Finance Software

At about 3 a.m. on a Saturday morning, FTI Cybersecurity's client (a billing and finance software company) began receiving critical alerts related to its network. The company was hit by a sophisticated ransomware attack that encrypted all of its servers and halted critical business operations, leaving it in a race against the clock to save the company.

Within hours of approval, FTI Cybersecurity's team boarded a flight to the company's office. Immediately upon arrival, the team started hardware imaging and analysis to determine the strain of ransomware and available options. Given the risks, FTI Cybersecurity established the deadline for defeating the ransomware as 3 a.m. Tuesday morning (72 hours from attack), when negotiations with the malicious actor would begin. Unfortunately, although the ransomware was quickly identified, there was no known way to quickly decrypt the files, so negotiations began with the malicious actor. Although the client was prepared to pay the full ransom demand, FTI brought in a Strategic Communications team to craft a communications plan to negotiate a lower fee.

Our team successfully negotiated a reduced ransom, resulting in significant savings for the client. The FTI teams worked on this engagement around the clock for close to three days, until the decryptor was obtained and the servers were once again successfully online.

## Subject Matter Experts



**Anthony J. Ferrante**  
Senior Managing Director



**Jordan Rae Kelly**  
Senior Managing Director



**Brian Kennedy**  
Senior Managing Director



## Data and Analytics

In our Data and Analytics practice, we solve complex operational, regulatory and financial problems involving large databases consisting of structured, semi-structured and unstructured data. We assist our clients in a variety of industries and we expect our assistance to be increasingly needed as the reaction to the pandemic evolves.

One specific area we are watching closely is the financial services sector. With the rapid and large injection of capital into the credit market, we are expecting clients to ask us to help solve new issues arising from the increased credit activity. We have assisted financial firms extensively and are constantly searching for and developing new technologies. We have recently used machine learning algorithms, for example, to evaluate loan portfolios to predict their value and assess their underlying risk.

The matters described in this section showcase some recent engagements.



## Assisting with a Sales Practices Investigation

A global financial services company was investigating allegations of improper sales practices, specifically related to pricing of foreign exchange transactions. The allegations, which received regulatory scrutiny and coverage in a major business publication, centered around whether clients received pricing promises, and if so, whether those promises were fulfilled.

FTI Consulting was engaged to assist counsel by using data analytics to identify potential instances of improper sales practices by evaluating the pricing and client communications for thousands of clients. This analysis was completed by mining data from disparate systems – the company’s entire transactional data warehouse and its CRM system – so counsel could easily review individual client’s specific facts and circumstances. FTI married customer experience records to the transactional data for each client of interest, creating a chronology of transaction history, communication/correspondence with the client and rate changes received. It was ultimately determined that some clients’ purported pricing promises went unfulfilled.

Following this determination and report-out to U.S. regulators, the company further engaged FTI to assist with the remediation calculation for the affected clients. This involved recreating thousands of transactions based on specific pricing communicated to each client, and ultimately resulted in the affected clients receiving repayments, including interest. This repayment was also reported in the major business publication. Our analysis has helped the company remediate the impacts and issues during 2019.

### Subject Matter Experts



**Eric Poer**  
Senior Managing Director



**Chris Riper**  
Senior Managing Director



**David Turner**  
Senior Managing Director



**Michael Busen**  
Senior Managing Director



**Zach Brumbelow**  
Managing Director

# Implementing Streamlined Reporting for Private Equity Portfolio Company

A leading independent provider of civil and criminal justice technology solutions for public safety, investigation, corrections and monitoring was recently acquired by a private equity fund. The new owners defined a need for centralized, efficient and actionable reporting that could be updated and distributed in a repeatable, automated manner and enable timely delivery of critical information to key business stakeholders. FTI Consulting was retained to advise on and develop reporting for the following areas:

- Automating several management operating and financial decks, totaling more than 250 pages of reporting;
- Creating a mobile tool to distribute newly centralized account information to sales reps in the field, enabling deeper, timelier and more comprehensive insight into account status prior to site visits; and,
- Advising in-house development of dashboards to track IT project budgets and resource allocation, giving executives visibility into where and how productive work hours were spent.

Utilizing a SQL database, Excel inputs, VBA scripting and Tableau Server, the FTI team automated the refresh and distribution of four existing monthly and weekly reports, saving client resources approximately 130 hours of manual work per month. Additionally, report automation enabled the client team of eight full-time employees to focus on value-added work, thus reducing the need for increased staffing related to company growth. The automated process improved the timeliness of the data, prevented errors from manual data manipulation and centralized additional data sources in the data warehouse.

To create the mobile sales tool, FTI leveraged the client's newly created sales data warehouse. FTI designed and built a suite of mobile format dashboards in Tableau that contained summary account information such as revenue and product usage volume as well as detailed information such as product configurations, incident tickets and Salesforce contact notes. FTI assisted the client in expanding its Tableau Server license to enable dashboard deployment to the entire Sales organization on a real-time basis.

Finally, FTI advised the client's IT team on the development of a suite of dashboards to track IT project budgets and resource allocation. The FTI team worked alongside the client to design cost and schedule tracking metrics that clearly stated variance to budget and provided visibility into at-risk projects and resource groups.

For each workstream, FTI worked closely with the client's Business Intelligence team, training resources on new skills and providing technical assistance. At the conclusion of each workstream, FTI seamlessly transitioned ownership of all processes to the client for continued usage and enhancement.

## Subject Matter Experts



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Senior Consultant



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Consultant



# Data Analytics Technology Drives Record Number of Recoveries from Ponzi Scheme

In August 2012, the Securities and Exchange Commission (SEC) shut down ZeekRewards.com (“Zeek”), exposing one of the largest Ponzi schemes in U.S. history. Zeek was a multi-level marketing business that ran a penny auction website incentivizing participants to give away “Sample” or “VIP” bids to attract new customers to its site and share a percentage of the company’s daily profits. Zeek defrauded hundreds of thousands of people worldwide, with more than \$822 million in victim losses. When the Receiver was appointed, he found boxes of cashier’s checks without accompanying books or records, so he turned to FTI Consulting for help.

FTI established two primary workstreams: 1) recreating the books and records and 2) re-engineering how the program worked using available enterprise database records (1.5 billion rows of transactional data) to identify lists of net winners and net losers. As part of those workstreams, FTI provided the following assistance to the Receiver:

- Authored an expert report (leading to summary judgement for the Receiver) citing evidence that Zeek operated as a Ponzi scheme, which was used as the backbone of the U.S. net winner clawback action, as well as numerous foreign clawback actions
- Performed asset tracing, which resulted in the identification of tens of millions of dollars in offshore funds not previously identified
- Determined accurate payments received by Zeek participants to issue correct IRS tax forms

- Assisted in the development of an online claims portal to allow Zeek participants to assert claims for funds lost in the scheme (online portal maintained by Garden City Group)
- Developed automated claims reconciliation tool to allow for efficient claims validation
- Compiled quarterly check distributions and re-issuances (for checks returned or lost) to claimants and will continue to do so until all funds have been distributed

To date, approximately 175,000 claims have been filed, far more than in any other investigated Ponzi scheme. FTI has issued approximately 349,000 checks to victims, bringing overall recovery to 75 percent. The Receiver anticipates that after the final distribution is made, victims with allowed claims will have recovered more than 80 percent of their investment.

## Subject Matter Experts



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**David Turner**  
Senior Managing Director



## Labor and Employment

Even before COVID-19, the legal landscape for labor and employment was changing rapidly. Pay equity, non-discrimination, anti-harassment and employee vs. contractor classification, amongst others, had all become important issues. Now, with COVID-19 and the record levels of unemployment and upheaval to labor markets it has created, the range of labor and employment issues subject to litigation is likely to increase significantly.

In this section, we present some recent engagements that showcase our expertise.

# Statistical Analysis in a Wage and Hour Class Action

An insurance company that was facing allegations of unpaid overtime and missed meal periods and rest breaks from a California class of more than 1,000 claims adjusters. Legal counsel retained FTI Consulting to provide a testifying expert, who submitted multiple declarations that challenged the Plaintiffs' proposed trial plan and the use of their expert's survey results as statistical evidence of class-wide liability and damages.

In May 2019, the Court agreed with FTI's argument that (1) Plaintiffs' expert failed to show that the survey responses are representative of the entire class, and (2) the survey responses are inaccurate and biased, making them unreliable. The Court excluded all evidence related to the survey provided by the Plaintiffs' expert. The case settled favorably for FTI's client.

## Subject Matter Experts



**Daniel Slottje**  
Senior Managing Director



**Brendan Rogers**  
Managing Director

# Calculating Profit Sharing in Alleged Wrongful Termination

Counsel for a large private telecommunications company retained FTI Consulting in a dispute with a former employee. The former employee, who had a profit-sharing agreement with the company, alleged that he was wrongfully terminated and was owed profits pursuant to that agreement.

FTI analyzed the company's financial records and assisted the company in preparing financial statements that would help calculate what the employee was owed under his agreement with the company. This was more challenging than usual because the profit-sharing agreement contained terms not ordinarily used in GAAP accounting and the company did not keep its business records in the same format that the terms of the agreement specified.

While completing this work, FTI provided additional value by assisting the company through a delinquent audit. FTI provided analysis and worked with the company's third-party auditors to help satisfy audit requirements.

## Subject Matter Experts



**Eric Poer**  
Senior Managing Director



**Chris Brown**  
Senior Managing Director



**Kerry Pappas**  
Senior Director



**Tom O'Connor**  
Senior Director



## Construction Solutions

The construction industry has faced mixed reactions to the pandemic: some locales are allowing construction projects to continue as an “essential service” and others are shutting down construction altogether. As we emerge from quarantine in the coming months, the activity in the construction industry will likely increase rapidly and significantly. Owners and contractors will need assistance with navigating force majeure contract clauses, calculating schedule delays, loss of productivity, and damages, and responding to disputes stemming from work stoppages.

The Construction Solutions experts of FTI offer experienced industry perspectives and collaborative solutions that achieve positive outcomes for our clients. In this section, we highlight our work helping clients resolve disputes on major construction projects.



# Narrowing Claim Amounts with Forensic Accounting

Counsel engaged FTI Consulting on behalf of a prime contractor on a building project in Florida related to a transportation terminal and office building. The steel fabrication and erection subcontractor on the project made a claim against FTI's client for various additional costs it allegedly incurred to address impacts due to design and project management issues by our client (the contractor) and the owner and designer.

FTI's team provided an assessment of the damages and offered two expert reports that addressed the subcontractor's individual claims. This review revealed significant deficiencies with all of the claims, which forced the subcontractor to revise its claims and approach to the dispute on several different occasions.

In addition, we analyzed the detailed accounting and job cost records of the subcontractor to determine the value of its actual costs associated with the project. Based on the detailed review, our experts opined that the cost records, and a reasonable profit, did not even come close to approaching the total amount of the claims that had been submitted by the subcontractor. The claiming subcontractor then attempted to modify the historically-recorded costs to include additional allocations and adjustments of costs, with the aim of inflating costs in response to our opinion on the issue.

FTI identified and presented a number of reasons the subcontractor's revised approach should be rejected and our expert conclusions in this regard were accepted into evidence. In the view of our client, this represented the only amounts in evidence on this point and were not successfully challenged on cross examination by the subcontractor's counsel. This testimony alone resulted in the subcontractor's claim being reduced by nearly 60 percent.

After the testimony of FTI and other experts, the case settled favorably for FTI's client.

## Subject Matter Experts



**Patrick McGeehin**  
Senior Managing Director



# Total Cost Under Breach of Contract and Termination

The subcontractor on a high-end residential project in Chicago was suing the prime contractor for breach of contract and termination damages associated with its performance under the project. The subcontractor had previously submitted certain discrete delay and other extra work claims to the prime contractor which were then passed onto the owner as part of a previous lawsuit and arbitration filings and decisions.

The subcontractor's counsel retained FTI Consulting to assess the damages. We recommended submitting the total costs incurred by the subcontractor as the damages approach, since the contract had been terminated by the prime contractor due to the owner's breach. Legal issues arose as to whether the subcontract had been terminated and that issue was also put to the Court for a decision.

FTI analyzed and tested the actual direct costs incurred by the subcontractor and we provided an expert to testify as to those amounts and the propriety of using a total cost method when a contract is terminated, breached or canceled.

The Court found that our client's subcontract had, indeed, been terminated, and that it was entitled to the total cost that it had incurred. The Court adopted 100 percent of the direct costs that were presented by FTI's expert, despite opposing expert testimony challenging many of the cost amounts.

## Subject Matter Experts



**Patrick McGeehin**  
Senior Managing Director



**Margie Collins**  
Senior Director

# Expert Services for Mega-Project Dispute

A multi-billion dollar project involving one of the world's largest engineering, procurement, and construction management (EPCM) contractors spawned a significant dispute. The project owner had accused the EPCM contractor of failing to manage virtually every aspect of the project, which resulted in the delayed delivery of the project and at a significantly increased cost as compared to the owner's original estimates.

FTI Consulting was engaged by outside counsel to provide an opinion on the performance of the EPCM contractor and whether it met the required standard of care. Providing an opinion on whether the EPCM had met its standard of care required FTI to provide an assessment of every facet of the EPCM's performance on the project. This included evaluating its execution of work related to engineering, procurement of equipment and materials, execution of an extensive off-site modularization program, procurement and administration of contracts for installation works on site, construction management, and project controls (including tracking progress, productivity, and cost; scheduling; forecasting and reporting).

The course of these investigations required that we also review the Front-End Engineering and Design (FEED) performed by another contractor, as well as provide an opinion on the factors resulting in the cost increases and schedule delays on the project.

Our experts provided testimony in dispute proceedings, using their extensive experience in the execution of megaprojects to explain their opinions on all aspects of the EPCM performance.

## Subject Matter Experts



**Christopher Larkin**  
Senior Managing Director



**Andrew Pratt**  
Senior Director





## Trial Services

Once courts open in the wake of the shutdown induced by the COVID-19 pandemic, FTI Consulting will be ready to assist litigants with nationwide trial services, including jury research, presentation graphics, and complete in-court technology services. Whether by creating a single graphic or supporting a multi-jurisdictional litigation, we help make arguments more persuasive and ease the challenges of litigation by leveraging our extensive litigation support experience. Our clients engage us for our expertise 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.



## Pharmaceutical Patent Error Leads to Infringement Trial

FTI's Trial Services was retained to assist with all presentation logistics at an IPR proceeding at the U.S. Patent and Trademark Office. Our client, a research lab financed by a large pharmaceutical company, owned a patent being challenged by a competitor. The dispute hinged on a typographical error in a DNA sequence that was a key part of the invention. Our client submitted a correction, but when the patent office made the correction, an additional typo was introduced, taking more time to correct. The Defendant's position in this dispute was that it did not infringe the patent until the typo was finally corrected four years after it issued.

Our client won the IPR argument, the patent was reaffirmed to be valid and the dispute between the two companies proceeded to trial. FTI, working closely with two law firms representing the plaintiff, assisted with a technology tutorial, a markman hearing, a Daubert motion, a Motion for Summary judgment hearing, a focus group, and mock trial and trial presentation. Over a three-week period, FTI handled all presentation logistics at trial, working closely with experts and witnesses, creating 3-D animations, and other presentations to help the jury better understand our client's position. The jury deliberated for two days and returned a full verdict for our client. They also found that the Defendant infringed willfully and a few months later, the judge doubled the amount of owed damages. The case is currently being reviewed by the Federal Circuit.

### Subject Matter Experts



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# Conduct Remote Hearings, Depositions and Investigative Interviews with FTI Consulting

Real-time Transcript  
& File Access View



Real-time Exhibit View



**Easy to Set Up, Secure and Locked Down** per FTI Consulting's  
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## BEFORE THE PROCEEDING

- Training for all key participants
- FTI's "remote system in a box" – option of a virus-free, secure, remotely managed, multi-screen system
- TrialMax Cloud® – FTI's online portal to review, manage and collaborate on exhibits and video depositions

## DURING THE PROCEEDING

- FTI Technical Manager to ensure reliability and security
- Optional FTI Evidence Display Professional for real-time display of evidence, video and other media
- Active participants, seen and heard at all times
- Private and secure gallery for observation by invited parties
- Optional Court Reporter for real-time transcript

# Dispute Advisory Services Practice Leaders



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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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Dr. Prowse provides economic, financial, statistical and valuation analysis to clients involved in litigation and other business disputes. Dr. Prowse has a Ph.D. in economics from UCLA and is a CFA Charterholder. He specializes in providing advisory and expert witness services to clients involved in intellectual property, antitrust, securities-related, lost profits and lost earnings disputes. He has offered expert testimony in all of these areas.



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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 cross 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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Countries

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