

## Cleve B. Tyler, PhD

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## SUMMARY

Cleve B. Tyler, PhD, is a managing director at BRG who specializes in applying economic analyses to antitrust, intellectual property, and damages issues. An economic consultant with more than twenty-five years of experience, Dr. Tyler also teaches, writes, and speaks about competition and intellectual property topics. He has testified at deposition and trial in federal court, in state court, in regulatory proceedings, and at arbitration. Dr. Tyler is an adjunct professor of economics in Johns Hopkins University's applied economics program, teaching graduate-level courses in industrial organization and microeconomics.

Dr. Tyler has developed or analyzed damages models for a range of matters including antitrust, unfair competition, patent infringement, trade secret misappropriation, copyright infringement, breach of contract, breach of fiduciary duty, and has evaluated class certification issues. His competition and antitrust work include evaluation of both horizontal and vertical issues and analysis of market definition, market power, and competitive effects using regression analysis and economic modeling. Dr. Tyler has analyzed economic and damages issues in many industries, including data products and services, enterprise software, multi-sided platforms, semiconductors, memory products, cable, pharmaceuticals, biotechnology, waste collection and disposal, construction materials, oil and gas drilling, automotive and automobile components, fashion, food and beverages, and electricity generation and distribution.

Dr. Tyler holds a PhD in economics specializing in industrial organization, finance, and the economics of the public sector. He is an author of the book *Assets and Finance: Calculating Intellectual Property Damages*, published by Thomson-Reuters, and authored a chapter on expert testimony admissibility in prior versions of this book. He has published articles on damages and competition issues, including the publications *Antitrust*, *Antitrust Bulletin*, and *The Handbook of Competition Economics*. Dr. Tyler is recognized as a Thought Leader – Competition by Who's Who Legal and is a member of the American Economic Association and American Bar Association.

## EDUCATION

PhD, Economics  
BA, Economics

Clemson University  
University of Virginia

## PROFESSIONAL EXPERIENCE

### **Berkeley Research Group**

Managing Director (January 2018–present)

Director (December 2014–2017)

Principal (December 2010–2014)

### **Johns Hopkins University**

Adjunct Professor of Economics (2010–present)

### **LECG**

Senior Managing Economist (2006–2010)

Managing Economist (2003–2005)

Senior Economist (2001–2002)

### **Economic Analysis LLC**

Economist (1998–2000)

### **Clemson University**

Instructor, Microeconomics and Macroeconomics (1996–1998)

Teaching Assistant, Microeconomics and Macroeconomics (1995–1996)

Research Assistant for Robert E. McCormick and Michael T. Maloney (Fall 1996)

### **Electric Lite**

Economic Consultant and Director of Business Development (1997)

### **General Accounting Office: Resources, Community, and Economic Development Division**

Intern (Summer 1995)

### **Strategic Analysis Inc.**

Analyst (Summer, 1990–1993)

## TESTIMONY and EXPERT REPORTS

- *Nielsen Holdings Limited (Nielsen), et al. v. Nielsen Consumer, Inc. (NIQ)*, Court of Chancery of the State of Delaware, C.A. No. 2025-0651-NAC. Evaluated whether Nielsen was harmed and, if so, whether a reliable method was available to estimate damages due to alleged breach of contract by NIQ relating to access of systems and data for use in Marketing Mix Modeling product offerings. (Expert Report, Deposition Testimony, and Trial Testimony)
- *In re Distribution of Cable Royalty Funds*, Consolidated Before the Copyright Royalty Judges, No. 19-CRB-0010 CD (2018-2021). Application of methodology for allocation of copyright royalties paid by Cable System Operators for simultaneous retransmission of broadcast television signals to out-of-market

subscribers – hedonic-inspired regression model of royalty rates calculated for subscriber groups as a function of programming minutes. (Written Direct Testimony)

- *Nielsen Consumer, Inc. (NIQ) et al. v. Nielsen Holdings Limited et al.*, Court of Chancery of the State of Delaware, Case No. 2024-1107-NAC. Provided opinions regarding irreparable harm and adequacy of remedies available to NIQ associated with alleged breach of contract associated with offering of CPG Insights Stream, a data service product leveraging proprietary analytic models paired with point-of-sale transactional data. (Expert Report and Deposition Testimony)
- *Copperweld Bimetallics, LLC, v. Cerro Wire, LLC, Southwire Company LLC, et al.*, Northern District of Alabama, C.A. No. 5:21-cv-01310-MHH. Provided opinions on market definition, market power, merits of alleged collusion, harm to competition, harm due to alleged false advertising, and estimation of damages due to alleged conspiracy to block proposal to add 14-gauge copper-clad aluminum wire to the 2023 National Electric Code. (Expert Reports and Deposition Testimony)
- *WellWorx Energy Solutions, LLC, v. Oilify New-Tech Solutions Inc. and Q2 Artificial Lift Services, LLC*, Western District of Texas, C.A. No. 7:22-cv-00059-ADA. Opined regarding claims of breach of commercially reasonable efforts and best-efforts contract clauses; and evaluated damages claims for alleged breach of contract and patent infringement (reasonable royalty and lost profits) related to downhole solutions and artificial lift services used in drilling for oil and natural gas. (Expert Report and Deposition Testimony)
- *Upsher-Smith Laboratories, LLC. v. Zydus Pharmaceuticals (USA) Inc. and Zydus Lifesciences Limited*, District of Delaware, C.A. No. 21-1132-GBW, Evaluation of economic issues and damages related to alleged breach of settlement agreement related to relinquishment of Hatch-Waxman exclusivity by generic manufacturer. (Expert Report and Deposition Testimony)
- *Apple Inc. v. Masimo Corporation and Sound United, LLC.*, District of Delaware, C.A. No. 1:22-cv-01377-MH-JLH and C.A. No. 1:22-cv-01378-MH-JLH. Evaluation of and response to expert opinions presented related to permanent injunction sought. (Expert Report and Deposition Testimony)
- *In the Matter of the Joint Revenue Requirement and Cost of Service Study of Alaska Waste Interior, LLC. d/b/a Alaska Waste, Filed as TA129-667 for the Fairbanks North Star Borough Service Area* (as well as for matters TA149-692, TA107-714, TA107-731, TA65-653, TA54-654, TA52-655, TA60-656, TA59-502), The Regulatory Commission of Alaska. Provided testimony proposing a rate setting model for appropriate operating margins for solid waste collection companies in Alaska. (Pre-filed Direct Testimony)
- *Stragent, LLC v. Volvo Car USA LLC*, District Court, District of Delaware, 1:22-cv-00293-JDW. Opined regarding reasonable royalty for alleged patent infringement

related to deployment and use of AUTOSAR (AUTomotive Open System ARchitecture) in automobiles. (Expert Report and Deposition Testimony)

- *Lucasys, Inc. v. PowerPlan, Inc.*, District Court, Northern District of Georgia, Atlanta Division, 1:20-cv-02987-AT. Opined on relevant antitrust markets, monopoly power, competitive effects, and damages issues regarding allegations that conduct by PowerPlan excluded Lucasys from a utility management software market and a supplemental management services market. (Expert Report and Deposition Testimony)
- *In the Matter of Distribution of Cable Royalty Funds*, Consolidated Proceeding Before the Copyright Royalty Judges, No. 16-CRB-0009 CD (2014-2017). Application of methodology for allocation of copyright royalties paid by Cable System Operators for simultaneous retransmission of broadcast television signals to out-of-market subscribers – hedonic regression model of royalty rates calculated for subscriber groups as a function of programming minutes. (Written Direct Testimony, Written Rebuttal Testimony, Written Supplemental Rebuttal Testimony, and Trial Testimony)
- *BoxCast Inc. v. Resi Media LLC, Pushpay, Inc., and Pushpay Holdings LTD*, District Court, Eastern District of Texas, Marshal Division, Case No.: 2:21-cv-00217-JRG. In case where plaintiff sought preliminary injunction and claimed irreparable harm from patent infringement in provision of livestreaming solutions for churches, evaluated market definition, market participants, whether patented technology drove demand, harm, and claimed increased loss of customers following acquisition. (Written Testimony and Deposition Testimony)
- *Honey Bum, LLC v. Fashion Nova, Inc. et. al.* District Court, Central District of California, Case No.: 20-CV-11233. Evaluated claimed harm and damages due to an alleged group boycott by Fashion Nova and vendors in the fast fashion industry in violation of Section 1 of the Sherman Act and tortious interference with business and/or contracts. (Expert Report and Deposition Testimony)
- *AAA arbitration between chemical companies*. Evaluated claimed harm and damages due to alleged breach of contract regarding testing conducted for a proposed generic drug. (Expert Report, Deposition Testimony, and Arbitration Testimony)
- *Confidential AAA arbitration between software companies*. Evaluated harm and estimated damages in the form of lost business for products due to alleged antitrust violations. Vertically-integrated respondent and co-conspirator were alleged to have colluded to increase input prices and impair functionality for downstream rivals in executing a Raising Rivals' Cost strategy. (Expert Report and Deposition Testimony)
- *Confidential AAA arbitration between pharmaceutical companies*. Evaluated validity and reliability of damages methodology and estimate related to alleged

breach of contract regarding provision of intellectual property and right to develop drug product. (Expert Report and Arbitration Testimony)

- *In the Matter of L&L Site Services dba Grizzly Disposal & Recycling, Application for a Certificate of Public Convenience and Necessity*, Department of Public Services Regulation Before the Public Service Commission of the State of Montana, Regulatory Division Docket No. 2020.12.121. Evaluated “public need” and likely impact on a market for collection of municipal solid waste (MSW) in Missoula County, Montana from hypothetical entry of L&L Services and claims that incumbent Republic Services charges monopolistic prices. (Expert Report and Hearing Testimony)
- *Bobby’s Country Cookin’, LLC. et. al. v. Waitr Holdings, Inc.*, District Court, Western District of Louisiana, 2:19-cv-00552-TAD-KK. Provided opinions regarding whether damages could be evaluated on a class-wide basis for breach of contract, breach of duty of good faith and fair dealing, and unjust enrichment claims related to food ordering and delivery platform. (Expert Report and Deposition Testimony)
- *Kingston Technology Corporation, et. al. v. SPEX Technologies*, District Court, Central District of California, C.A. No. 8:16-CV-01790. Provided opinions related to claimed patent misuse (assertion of allegedly unenforceable patent) in the alleged market for secure portable USB memory products including evaluation of market definition, market power, and competitive effects. (Expert Report and Deposition Testimony)
- *In the Matter of the Joint Revenue Requirement and Cost of Service Study of Alaska Waste Interior, LLC. d/b/a Alaska Waste, Filed as TA115-667 for the Fairbanks North Star Borough Service Area* (as well as for matters TA127-692, TA92-714, TA90-731, TA52-653, TA44-654, TA42-655, TA46-656, TA49-502), The Regulatory Commission of Alaska. Provided testimony proposing a rate setting model for appropriate operating margins for solid waste collection companies in Alaska. (Pre-filed Direct Testimony and Pre-filed Reply Testimony)
- *ChanBond, LLC. v. Atlantic Broadband Group, LLC.*, U.S. District Court, Delaware, C.A. No. 1:15-cv-00842-RGA. In patent infringement matter involving DOCSIS 3.0 and 3.1 modems, opined regarding royalty base (the number of purchased and/or deployed cable modems and number of monthly subscriptions of high-speed data services) as well as the relationship between price and speed (Mbps) using regression analyses. (Expert Reports and Deposition Testimony) Related matters with same plaintiff and scope for the following defendants:
  - *Bright House Networks, LLC.*, District Court, Delaware, C.A. No. 1:15-cv-00843-RGA. (Expert Reports and Deposition Testimony)
  - *Cable ONE, Inc.*, District Court, Delaware, C.A. No. 1:15-cv-00844-RGA. *Cablevision Systems Corporation and CSC Holdings, LLC.*, District Court, Delaware, C.A. No. 1:15-cv-00845-RGA. (Expert Reports and Deposition Testimony)

- *Cequel Communications Holdings I, LLC.*, District Court, Delaware, C.A. No. 1:15-cv-00846-RGA. (Expert Reports and Deposition Testimony)
- *Charter Communications, LLC.*, District Court, Delaware, C.A. No. 1:15-cv-00847-RGA. (Expert Reports and Deposition Testimony)
- *Comcast Corporation and Comcast Communications, LLC.*, District Court, Delaware, C.A. No. 1:15-cv-00848-RGA. (Expert Reports and Deposition Testimony)
- *Cox Communications, Inc.*, District Court, Delaware, C.A. No. 1:15-cv-00849-RGA. (Expert Reports, Deposition Testimony, and Trial Testimony)
- *Mediacom Communications Corporation*, District Court, Delaware, C.A. No. 1:15-cv-00850-RGA. (Expert Reports and Deposition Testimony)
- *RCN Telecom Services, LLC.*, District Court, Delaware, C.A. No. 1:15-cv-00851-RGA. (Expert Reports and Deposition Testimony)
- *Time Warner Cable, Inc.*, District Court, Delaware, C.A. No. 1:15-cv-00852-RGA. (Expert Reports and Deposition Testimony)
- *WaveDivision Holdings, LLC.*, District Court, Delaware, C.A. No. 1:15-cv-00853-RGA. (Expert Reports and Deposition Testimony)
- *WideOpen West Finance, LLC.*, District Court, Delaware, C.A. No. 1:15-cv-00854-RGA. (Expert Reports and Deposition Testimony)
- *Signature Pharmaceuticals, LLC. v. Ranbaxy Pharmaceuticals, Inc.*, American Arbitration Association, Case No. 01 16 004 6534. Estimated damages related to alleged breaches of contract and breach of fiduciary duty regarding sales of liquid metformin and solid metformin pursuant to joint venture agreement. (Expert Report and Arbitration Testimony)
- *MobilizeGreen, Inc. v. The Community Foundation for the National Capital Region, et al.*, Superior Court of the District of Columbia, C.A. No. 14-005764. Evaluated damages related to alleged lost business opportunities for nonprofit organization allegedly due to breach of contract and breach of fiduciary duty, and provided opinions related to reliability of damages estimate. (Expert Reports and Written Testimony)
- *Waste Management of Louisiana, LLC. v. River Birch, Inc. et al.*, U.S. District Court, Eastern District of Louisiana, Case No. 11-2405. Provided rebuttal testimony regarding damages related to RICO allegations and closure of construction and demolition (C&D) landfill used in the clean-up of debris in the aftermath of Hurricane Katrina. Provided rebuttal testimony regarding damages related to RICO



allegations and claimed diverted waste from municipal solid waste (MSW) landfill. (Expert Report, Written Testimony, and Deposition Testimony)

- *Digital Recognition Network, Inc. v. Accurate Adjustments, Inc. et al.*, U.S. District Court, Northern District of Texas, C.A. No. 4:14-CV-00903-A. Opined on relevant antitrust market, monopoly power, competitive effects, and damages issues regarding vertical restraints in sale of Automated License Plate Recognition (ALPR) solutions in case involving trade secret misappropriation. (Expert Report)
- *Apotex, Inc. and Apotex Corp. v. UCB, Inc. and Kremers Urban Pharmaceuticals, Inc.*, U.S. District Court, Southern District of Florida, C.A. No. 12-60706 (DMM). Analyzed and opined on a reasonable royalty for a manufacturing process for pharmaceutical products based on trade secrets. (Expert Report and Deposition Testimony)
- *William Brody v. Village of Port Chester, et al.*, U.S. District Court, Southern District of New York, Case No. 00 CIV 7481 (HB). Estimated damages related to the loss of right to appeal the taking of property pursuant to New York's eminent domain law. (Expert Report, Written Testimony, Deposition Testimony, and Trial Testimony)

## SELECTED EXPERT CONSULTING EXPERIENCE

### Intellectual Property and Damages

- *TQ Delta v. Time Warner Cable, Comcast, Verizon, DISH, and Cox Communications* – Reasonable royalty for patent infringement involving technologies related to MoCA and provision of whole-home DVR (separate cases for each defendant)
- *Genentech v. Amgen* – Reasonable royalty for patent infringement involving manufacturing process and method of treatment for biosimilar products (two cases involving Avastin and separately, Herceptin)
- *Caltech v. Apple and Broadcom* – Reasonable royalty base and valuation of technology related to allegations of patent infringement involving Wi-Fi technology allowing for faster data transmission
- *Acceleration Bay v. Electronic Arts* – Reasonable royalty for patent infringement involving technology related to network architecture and operation of video games
- *Bombardier Recreational Products, et al v. Arctic Cat* – Reasonable royalty for patent infringement involving technology related to snowmobile engines

- *Samsung Electronics v. NVIDIA Corporation, et al.* – Reasonable royalty for patent infringement involving technologies related to the manufacture and operation of semiconductors, including Wi-Fi technology
- *ContentGuard v. Amazon et al.* – Reasonable royalty for patent infringement involving technology related to digital rights management
- *Starhome v. AT&T Mobility, Roamware, and T-Mobile* – Reasonable royalty for patent infringement involving technology related to international cell phone roaming
- *In Re Qimonda AG Bankruptcy Litigation* – Economic implications of allowing discontinuance of patents of insolvent firm in the semiconductor industry
- *Callaway Golf Company v. Acushnet Company* – Lost profits and reasonable royalty associated with patents related to golf ball technology
- *Commissariat a L'Energie Atomique v. Chi Mei Optoelectronics, AUO, et al.* – Reasonable royalty for alleged infringement of patents related to liquid crystal display (LCD) monitors

### **Antitrust - Competition**

- Retained to evaluate market definition, market power, competitive effects, and damages associated with alleged monopolization of server operating systems from alleged collusive agreement.
- *NIPSCO et al., v. Union Pacific Railroad Company, BNSF Railway Company, CSX Transportation, Inc. and Norfolk Southern Railway Company* – Claims of collusion regarding revenue-based fuel surcharges by railroads, including evaluation of merits and estimation of damages for certain shippers including coal, steel, and chemical firms
- Retained to evaluate merits of antitrust claims of collusion and monopolization by a quasi-municipal corporation in collaboration with a downstream firm to deny access to a critical input in pursuing a raising-rivals cost strategy, including assessment of market definition, market participants, market power, injury to competition, and harm
- Retained to estimate price effects using regression analysis related to alleged collusion and bid rigging in the broiler chicken industry
- *In Re: Dealer Management Systems Antitrust Litigation* – Analysis of damages from alleged anticompetitive exercise of market power in data integration services related to provision of software applications to automobile dealerships
- *Quenneville et al. v. Audi, BMW, Mercedes-Benz, Porsche, and Volkswagen* – Evaluation of class certification and damages issues related to alleged conspiracy



by automakers to limit competition in quality of vehicles, and to mislead consumers regarding vehicle quality

- *In Re: Niaspan Antitrust Litigation* – Reverse payment settlement between branded pharmaceutical companies and potential generics under Hatch-Waxman regulations – competitive effects and valuation of ancillary deals including value of a no authorized generic clause (“no-AG clause”)
- *Beltran v. Interexchange, et al.* – Evaluation of class certification, merits, and damages issues related to proposed class of au pairs alleging collusion and unfair labor practices regarding payment of weekly stipend
- *Avnet and BSP Software v. Motio* – Claims of patent misuse in provision of version control for business intelligence software – market definition, monopolization, and competitive effects
- *Masimo v. Mindray* – Claims of patent misuse, exclusive contracts, and tying in alleged markets and submarkets related to pulse oximetry – market definition, market power, vertical restraints and competitive effects
- *Plaza 22 v. Waste Management of Louisiana* – Class certification in markets for small container commercial waste collection – market definition and common impact
- *First Data Merchant Services Corporation v. Security Metrics* – Competitive effects from provision of security standard compliance for merchants in the payment card industry – market definition, market power, and competitive effects
- *Sanger Insurance Agency v. HUB International* – Claims related to contracts between preferred broker and carriers in the provision of professional liability insurance – market definition, market power, competitive effects from vertical restraints, efficiencies, and damages
- *MM Steel v. Reliance Steel & Aluminum* – Claims related to contracts between steel producers and steel service centers – market definition, market power, and competitive effects from vertical restraints
- Litigation related to exclusive contracting in the provision of fitness benefits to Medicare Advantage plans – market definition, monopoly power, and competitive effects related to vertical restraints
- FTC and EU Commission investigations regarding claims of monopolization and abuse of a dominant position in the provision of specialized search advertising – econometric models to investigate competitive effects using big data, survey design, and remedies
- *In Re: K-Dur Antitrust Litigation* – Reverse payment settlement between branded pharmaceutical companies and potential generics under Hatch-Waxman

regulations – market definition, market power, competitive effects, and valuation of ancillary deals

- *Harrill et al. v. Reagan National Advertising of Austin* – Claims related to contractual provisions related to billboard leases – market definition, market power, raising rivals' costs, and damages
- *Coca-Cola v. Sugar Sweet Syrup* – Vertical restrictions related to sales of fountain beverages by retail outlets – market definition, market power, competitive effects, and damages
- *Fraser v. Major League Soccer* – Claims related to single-entity structure of sports league – evaluated the organization's financial structure
- *Universal Avionics v. Rockwell Collins* – Claims involving flight control systems and flight management systems for regional and corporate aircraft – Evaluation of damages from alleged tying behavior

#### **Antitrust – Mergers**

- Merger of companies involved in the provision of customer relations management software and data used in CRM software – market definition, monopolization, and competitive effects including impacts on innovation
- Canadian Competition Bureau investigation into merger of companies selling gasoline at wholesale and retail – market definition and potential unilateral and coordinated competitive effects in 14 alleged markets
- DOJ investigation into merger in the avionics industry – market definition, horizontal and vertical effects, and evaluation of potential for raising rivals' costs
- *Commissioner of Competition v. Tervita* – Merger in the hazardous waste industry in British Columbia (Canadian Bureau of Competition litigation) – market definition, monopoly power, competitive effects using econometric analyses, and efficiencies
- FTC investigation into merger in the coffee industry – market definition (including econometric analysis), market power, vertical competitive effects, and efficiencies
- *FTC v. Polypore* – Consummated merger and monopolization in the battery separator industry (FTC investigation and litigation) – market definition, competitive effects, efficiencies, and remedies
- DOJ investigation into merger in the waste collection and disposal industries – market definition, competitive effects (horizontal and vertical), efficiencies, and remedies

- FTC investigation into merger in the video game industry – market definition and competitive effects
- *DOJ v. Oracle* – Merger involving financial management and human resource management enterprise software products (DOJ litigation) – market definition and competitive effects
- *Texaco v. Dagher; Shell Oil v. Dagher* – Joint venture between oil refiners - evaluation of appropriate competition authority oversight

### **Damages and Finance**

- Assessed reasonableness of bid submitted by waste disposal company for extension of agreement to own and operate transfer station facilities
- Retained to build model to predict municipal solid waste and waste recovery volumes based on demographic variables and trends
- Retained to evaluate host fees paid to municipalities by waste industry companies with disposal assets
- Estimated damages in class action litigations alleging violations of the Employee Retirement Income Security Act (ERISA) due to utilization management policies resulting in underpayment of healthcare providers
- *Blairgowrie Trading v. Allco Finance Group Ltd.* – Syndicated loan availability and cost for company operating on certain relevant sectors, including transportation (aviation, rail, shipping), energy, commercial real estate, and wholesale financial services
- *Ameritox v. Millenium Laboratories* – Evaluated claims of unfair competition, false advertising, and unfair trade practices in provision of confirmatory urine drug testing for pain management health care practitioners
- Retained to analyze length of stay by guests at hotel accused of violating the California Civil Code regulating residential hotels
- *Chechele v. Tom Ward and Sandridge Energy* – Recoverable profit resulting from insider trading pursuant to Section 16(b) of the SEC Act
- *Abu Dhabi Investment Authority v. Citigroup* – Damages model using event study analyses related to misrepresentation claims in banking industry
- *Caterpillar v. Navistar* – Alleged breach of contract and alleged fraud associated with an agreement to sell fuel injectors for use in diesel engines – estimation of damages

- Damages involving marketing programs in selling genetically modified soybeans and herbicides
- Value of a right of first refusal for season ticket holders following relocation of sports team
- Analysis of matched and manipulative stock trading

### **Energy and Regulation**

- Evaluated bid for continued operation of a transfer station and materials recovery facility (MRF) in the waste industry, including comparison of EBITDA, net income, prices, and internal rate of return (IRR) against comparable metrics
- Retained to evaluate regulated rate methodology in the waste collection industry, including update of data and use of regression methodology
- Claimed manipulative trading of energy derivative products – econometric evaluation of electricity prices
- Wholesale electricity prices – evaluation of competitive reasonableness of 2006 Illinois auction
- Claims that an artificial price in electricity forward markets was created through spot market actions and information dissemination
- Claims related to sale of electricity in California and the western US during the California electricity crisis – market definition and competitive effects
- Regulatory proposal for a locational installed capacity market (LICAP) in New England – market power, generator availability, shape of the demand curve, and role of historical capacity levels
- Analyses of California electricity crisis (transmission constraints, calculation of rebates under various scenarios, and trading practices of electric power generators during 2000 and 2001)

### **PUBLICATIONS**

*Assets and Finances: Calculating Intellectual Property Damages*, 2024-2025 edition, with Gregory E. Smith, West Publishing, Thomson-Reuters. (Prior editions: 2023-2024, 2022-2033, 2021-2022 and 2020-2021).

- “Ten Lessons from a Deep Dive into IP Damages,” *Law360*, with Deepa Sundararaman, February 7, 2024.
- “United States: Economist Perspective,” *Global Competition Review, Enforcer Hub*, with Kevin Christensen, December 2023.
- “A Detailed Study of Court Decisions on Admissibility of Intellectual Property Damages Experts,” *Texas Intellectual Property Law Journal*, with Deepa Sundararaman, 32(1), Summer 2023.
- “United States: Economist Perspective,” *Global Competition Review, Enforcer Hub*, with Henry J. Kahwaty, October 11, 2022. (Prior editions: December 18, 2020 and October 28, 2021).
- “Intellectual Property Expert Damages Admissibility,” with Deepa Sundararaman, in *Assets and Finances: Calculating Intellectual Property Damages, 2019-2020 Edition*, by William O. Kerr, and Gregory Smith, West Publishing, Thomson-Reuters. (Prior editions: 2017, authors Richard B. Troxel and William O. Kerr; and 2018).
- “United States Overview,” in *The Handbook of Competition Economics 2020*, Global Competition Review, with Henry J. Kahwaty. (Prior editions: 2016, 2017, 2018, and 2019).
- “Admissibility of Expert Damages Testimony in IP Cases,” in *Assets and Finances: Calculating Intellectual Property Damages, 2016 Edition*, by Troxel, Richard B. and William O. Kerr, West Publishing, Thomson-Reuters. (Prior editions: 2010, 2011, 2012, 2013, 2014, and 2015).
- “Canada High Court Breathes New Life Into M&A Efficiencies,” *Law360*, February 6, 2015, with Henry J. Kahwaty.
- “Market Definition – Achieving an Integrated Analysis,” *The Antitrust Bulletin*, 59(3): 667-685, Fall 2014, with Henry J. Kahwaty.
- “Measuring Reverse Payments in the Wake of *Actavis*,” *Antitrust*, 28 (1): 29-35, Fall 2013, with William O. Kerr.
- “Shifting Regulatory Oversight of Utility Mergers” in *Innovating for Transformation: The Energy and Utilities Project*, Montgomery Research, Inc., 2006, with Cliff W. Hamal.
- “Market Power Mitigation or Obviation, That is the Question: FERC’s Pending Decision on New England’s Installed Capacity Market Design,” *The Energy Antitrust News*, Winter 2005.
- “Renewed Interest in Coordinated Effects in Merger Analysis: The *UPM* Case,” *Trade Practices Law Journal*, Summer 2004, with David A. Weiskopf.

*Issues in the Deregulation of the Electric Industry*. 1998. Clemson University, PhD Dissertation.

"The Wires Charge: Risk and Rates for the Regulated Distributor," *Public Utilities Fortnightly*, September 1997, with Michael T. Maloney and Robert E. McCormick.

## **PAPERS, COMMENTARY, and CONTRIBUTIONS**

"Tip of the Expert: How to Develop Effective Expert Reports," ABA Litigation Section, April 4, 2025.

"BRG Global AI Regulation Report – Executive Perspectives on the Emerging Global and Regional Regulatory Landscape," June 2024, (BRG Contributor).

"Letter from the Editor," *BRG Review*, Winter 2022, Volume 9. (Prior volumes: Winter 2021 (Volume 8), Winter 2018 (Volume 7), Spring 2017 (Volume 6), and Spring 2015 (Volume 5)).

"Written Comments Regarding Recommendation on Methodology for Deriving Operating Ratio for Solid Waste Haulers, Submitted on Behalf of WRRRA," Washington Utilities and Transportation Commission, Docket TG-131255, Inquiry into Methods for Setting Rate for Solid Waste Collection Companies, October 25, 2019, with Paul Diver.

Section of Antitrust Law, Antitrust Law Developments (Eighth), American Bar Association, 2017 (Contributor).

"What Drives Physician Testing for Pain Medication Compliance – Risk or Reward?," Working Paper, December 2014, with Robin Cantor, Shireen Meer, Daniel Boada, and Sandra Wetzel, presented by Robin Cantor at Society for Risk Analysis Annual Meeting, Complex Challenges in Health Policy.

Selected Readings in Antitrust Economics: Game Theory (VI. Vertical Restraints), American Bar Association, Section of Antitrust Law Economics Committee, May 2014 (Contributor).

"Reasonable Royalty Damages: Expert Testimony and Admissibility," 2014.

"An Economic Evaluation of the Competitive Nature of Reverse Payment Settlements," 2013.

"Analysis of Horizontal Market Power in Transactions Under the Federal Power Act: Comments" with Carl Danner, Henry J. Kahwaty, and Keith Reuter, FERC Docket No. RM11-14-000, May 23, 2011.



Comments for Horizontal Merger Guidelines Review Project, “Comments on Questions 2, 4, and 13,” November 9, 2009.

“An Agreement in the Rough: A Modified Cournot Approach to Distribution Agreements,” with Ecer, Kahwaty, Nieberding, and Weiskopf. Winter 2006.

“A Plan for Restructuring the Electric Industry in South Carolina,” Citizens for a Sound Economy. June 30, 1997, with Michael T. Maloney and Robert E. McCormick.

“Redistribution and Retribution: A Positive Theory of Transfers and Police Expenditures,” Public Finance Workshop Paper, Clemson University. December 1996.

“Amtrak: Information on Subsidies in Thruway Bus Operations,” General Accounting Office. Resources, Community, and Economic Development Division. May 9, 1995 (Major Contributor).

## **PRESENTATIONS**

“IP Damages Symposium 2025 - Admissibility of Intellectual Property Damages Experts,” Licensing Executives Society (LES), September 10, 2025.

“Tip of the Expert – Developing Effective Expert Reports,” ABA Business Torts & Unfair Competition Committee, February 18, 2025.

“Antitrust & IP Landscape: Navigating the Challenges of AI and Algorithms,” The Knowledge Group, with Steven Gawthorpe, December 9, 2024.

“Working with Experts and Expert Witness Testimony – Dos and Don’ts,” Panel, ABA Litigation Section 2024 Annual Conference, May 2, 2024.

“Best Practices for Working with IP Damages Experts Based on an Unprecedented Study of Case Outcomes,” Webinar hosted by Mayer Brown, April 24, 2024.

“An Interactive Discussion on the Admissibility of IP Damages Experts,” BRG Webinar, February 29, 2024.

“Somewhere Between Canon and Ipse Dixit: Expert Opinion Admissibility Trends and Challenges,” Plenary Panel, 2024 Environmental & Energy, Mass Torts, and Products Liability Litigation Committees’ 2024 Joint Regional CLE Program, Avon, Colorado, February 2, 2024.

“Navigating Challenges in Patent Damages Analyses: Key Considerations for Litigants and Counsel,” The Knowledge Group, December 13, 2023.

Patent Infringement Mock Trial Damages Expert Testimony - Japanese Intellectual Property Association, Washington, DC, November 3, 2023 (and at previous events on November 12, 2019; November 3, 2017; November 6, 2015;

November 7, 2013; November 11, 2011; November 13, 2009; and November 9, 2007).

“Identifying and Engaging Your Expert and Preparing the Expert Report: How to Avoid Daubert Challenges, Preserve Work Product, and Enhance the Expert’s Effectiveness,” CLE Presentation, DLA Piper, with Mark Waite and Cara Vasquez, June 14, 2022.

“Emerging Trends in Antitrust Enforcement: A Look Ahead,” The Knowledge Group, May 3, 2022.

“Calculating Intellectual Property Damages in 2021: Tools and Techniques,” The Knowledge Group, April 21, 2021.

“Effective Intellectual Property Damages Calculation: A Comprehensive Guide,” The Knowledge Group, September 30, 2020.

Presentation at Washington Utilities and Transportation Commission Technical Conference, “Inquiry into methods for setting rates for solid waste collection companies”, Docket TG-131255, on behalf of Washington Recycling & Refuse Association, with Paul Diver, PhD, October 8, 2019.

“Section 337 Exclusion Orders for New Technology (Mock Hearing on Public Interest for Infringing Biologic Product),” Practitioners’ Think-Tank on ITC Litigation & Enforcement, American Conference Institute, June 27, 2019.

“2019 Antitrust Trends, Developments and Legal Issues,” The Knowledge Group, April 24, 2019.

“Reverse Payment Settlements: Economic Issues Arising in Antitrust Litigation,” The Knowledge Group, August 30, 2018.

“Antitrust Enforcement for Pay-For-Delay Settlements: U.S. and E.U. Perspective,” The Knowledge Group, October 20, 2016.

“Merger Analysis: The CCS Case,” Clemson University; Clemson, South Carolina; October 18, 2012.

“Quantitative Analysis in Consulting Engagements,” University of Virginia; Charlottesville, VA; September 7, 2012; with Anthony D’Andrea.

“A Discussion of the Rolls Royce Decision and Expert Testimony,” BRG – Washington, DC, July 2011 with Keith Reutter.

“Capacity Market Design Fundamentals,” EUCI conference workshop, Baltimore, MD; October 27, 2010, with Cliff Hamal and Julie Carey.

“Merger Analysis in the Waste Industry – Republic and Allied,” University of Virginia; Charlottesville, VA, October 21, 2010, with Paul Diver.

“Critical Elements of Ancillary Services Market Design,” EUCI conference workshop, Minneapolis, MN; June 18, 2010, with Scott M. Harvey.

“An Analysis of Reverse Payments in the Pharmaceutical Industry – An Antitrust Topic,” Charlottesville, VA; September 25, 2008.

“Market Design Choices for Ancillary for Ancillary Services Products,” workshop at EUCI conference, Minneapolis, MN; September 12, 2007, with Cliff Hamal.

“Reliability, Ancillary Service Markets and Scarcity Pricing,” presented at EUCI conference, Minneapolis, MN; September 11, 2007; authored by Scott M. Harvey.

“Daubert and Economic Experts,” Mock Daubert Hearing, LECG Summer Seminar Series, July 9, 2003.

Presentation before the Public Service Commission of South Carolina on behalf of Citizens for a Sound Economy, Hearings on Electricity Deregulation, August 1997.

## ACTIVITIES

- *Antitrust Source* (previously, *Antitrust Magazine Online*) Editorial Board Member (2022-present)
- Steering Committee, BRG Economics, Damages and Investigations, Washington DC (2020-present)
- Artificial Intelligence Task Force, BRG Economics, Damages and Investigations, Washington DC (2024-present)
- Strategic AI Program at the University of Colorado, Colorado Springs, Advisor (2024-present)
- American Bar Association Litigation Section, BRG Liaison (2023-2025)
- Performance Management Leader, BRG Economics and Damages, Washington DC (2018-2024)
- Editor-in-Chief, *BRG Review* (2015–2022)
- Signatory of Panmure House Declaration, at *The New Enlightenment: Reshaping Capitalism and the Global Order in a Neo-Mercantilist World* (2019)
- Co-Office Director for BRG’s Washington DC office (2015–2017)

## **HONORS, and AWARDS**

- Lexology Index (formerly Who's Who Legal): Competition Thought Leader (2023, 2024, and 2025)
- Lexology Index (formerly Who's Who Legal): IP Experts (2025)
- Lexology Index (formerly Who's Who Legal): Competition Leaders, Economists (2020, 2021, 2022, 2023, 2024, and 2025)
- Who's Who Legal: Competition Future Leaders, Economists (2019)
- Close Fellowship (1994–1996)
- Macaulay Award for Outstanding Performance by a Graduate Student in Economics (1993–1994)
- Earhart Fellowship (1993–1994)

## **MEMBERSHIPS**

- American Economic Association (2001–present)
- American Bar Association (2004–present)
- Licensing Executives Society (LES) (2025—present)
- United States Association for Energy Economics (2009–2017)
- International Association for Energy Economics (2009–2017)
- American Health Lawyers Association (2014–2015)
- WCEE (2009–2010)