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 Sirius XM Radio Inc.  
 8

9 **UNITED STATES DISTRICT COURT**  
 10 **CENTRAL DISTRICT OF CALIFORNIA**

11 FLO & EDDIE, INC., a California  
 corporation, individually and on behalf  
 12 of all others similarly situated,

13 Plaintiff,

14 v.

15 SIRIUS XM RADIO INC., a Delaware  
 corporation, and DOES 1 through 10,

16 Defendants.  
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Case No. CV 13-05693 PSG (RZx)

**DECLARATION OF KEITH R.  
 UGONE IN SUPPORT OF SIRIUS  
 XM'S OPPOSITION TO FLO &  
 EDDIE'S MOTION FOR CLASS  
 CERTIFICATION**

Honorable Philip S. Gutierrez

**Date:** May 18, 2015  
**Time:** 1:30 p.m.  
**Place:** Department 880

**DECLARATION OF KEITH R. UGONE**

I, Keith R. Ugone, declare as follows:

**I. OVERVIEW OF ASSIGNMENT**

1. I have been retained as an economics and damages expert for Sirius XM Radio Inc. (“Sirius XM”) in the matter of *Flo & Eddie, Inc. v. Sirius XM Radio Inc.* It is my understanding that Flo & Eddie, Inc. (“Flo & Eddie” or “Plaintiff”) alleges that Sirius XM has engaged in misappropriation, unfair competition, and conversion related to Sirius XM’s use of sound recordings that were “fixed” (*i.e.*, recorded) prior to February 15, 1972 (“Pre-1972 Recordings”).<sup>1</sup>

2. It is my understanding that Plaintiff initiated this litigation as a class action and seeks to represent a putative class consisting of “owners of Pre-1972 Recordings reproduced, performed, distributed or otherwise exploited by Defendants in California without a license or authorization to do so during the period from August 1, 2009 to the present.”<sup>2</sup> I understand that Plaintiff is seeking monetary damages on behalf of the class.<sup>3</sup>

3. Mr. Michael Wallace submitted a declaration on March 12, 2015 (“Wallace Decl.” or “Wallace Declaration”) in support of Flo & Eddie’s motion for class certification in this matter. Mr. Wallace stated that he was asked to assume “the proper measure of compensatory damages” and “the proper measure of restitution” in this matter is “Sirius XM’s gross revenues attributable to the use of

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<sup>1</sup> Dkt. 1 (Complaint). Generally, Plaintiff alleges that “SiriusXM, without any license or authority, has copied Plaintiff’s and each class Members’ Pre-1972 Recordings onto the Service’s central server(s) and makes such copies available to its subscribers in California” and “Sirius XM publicly performs these recordings in California via streaming audio transmission through the Service for a fee as part of a subscription plan that currently includes up to 72 different music channels.” Dkt. 1 at 2:9-14.

<sup>2</sup> Dkt. 1 at 4:7-10.

<sup>3</sup> Dkt. 1 at 10:19-12:10. According to Plaintiff, “the claims of the Class Members may range from smaller sums to larger sums.” Dkt. 1 at 4:24.

1 [Pre-1972 Recordings], without deduction of costs.”<sup>4</sup> Mr. Wallace opined that  
2 “Class Damages can be reasonably calculated on a class-wide basis by multiplying,  
3 for each period during the damage period, (1) Sirius XM’s Gross Revenues by (2)  
4 the percentage of performances of pre-1972 recordings on its service, and (3)  
5 multiplying the result by the percentage of Sirius XM’s subscribers located in  
6 California.”<sup>5</sup>

7 4. I have been requested by counsel for Sirius XM to evaluate the  
8 opinions presented in the Wallace Declaration. My opinions and the bases for my  
9 opinions are contained in the remainder of this declaration.

## 10 **II. SUMMARY OF OPINIONS<sup>6</sup>**

11 5. Based upon my understanding of Plaintiff’s allegations, documentary  
12 evidence, standard damages quantification techniques, and my economics and  
13 damages quantification training and experience, I have evaluated the opinions  
14 presented in the Wallace Declaration and reached the following conclusions with  
15 respect to Mr. Wallace’s proposed method for calculating claimed damages on a  
16 class-wide basis.

17 a. Mr. Wallace’s Proposed Method Does Not Provide A Reliable  
18 Or Relevant Measure Of Claimed Damages On A Class-Wide Basis. Mr.

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19  
20 <sup>4</sup> Dkt. 185 (Wallace Decl.) at 3:4-11. In other words, Mr. Wallace is providing his  
21 estimate of claimed aggregate damages (using the method he was asked to assume)  
22 for the putative class. However as stated in the Complaint, “the claims of the Class  
23 Members may range from smaller sums to larger sums.” Dkt. 1 at 4. As will be  
24 discussed later in my declaration, Mr. Wallace does not provide an estimate of  
25 claimed damages for putative class members on an individual basis (or even for Flo  
& Eddie). In addition, it is my understanding that Sirius XM disputes the measure  
and quantification of claimed class-wide damages that Mr. Wallace was asked to  
assume.

26 <sup>5</sup> Dkt. 185 at 8:7-11.

27 <sup>6</sup> This Summary of Opinions is intended to be an overview. A full description of  
28 my opinions is contained throughout this declaration and the associated exhibits.

1 Wallace's proposed method does not provide a reliable or relevant measure  
2 of claimed damages on a class-wide basis for at least the following reasons.

3 i. Mr. Wallace has not proposed or created a model that  
4 identifies Sirius XM's revenues *attributable to* the use of Pre-1972  
5 Recordings (as opposed to a mathematical *allocation* using fractions  
6 and percentages).<sup>7</sup>

7 ii. Mr. Wallace has not proposed or created a model that  
8 separates the claimed revenue attributable to Sirius XM's use of Pre-  
9 1972 Recordings from revenues attributable to Sirius XM's own  
10 contributions to its commercial success.

11 iii. Mr. Wallace has not proposed or created a model that  
12 removes (or instructs how to remove) the costs Sirius XM incurs to  
13 generate the claimed revenue attributable to Sirius XM's use of Pre-  
14 1972 Recordings.

15 iv. Mr. Wallace has not proposed or created a model that  
16 addresses (or even acknowledges) the individual inquiry issues present  
17 in this matter.

18 v. Mr. Wallace has not proposed or created a model that  
19 excludes or otherwise accounts for owners of Pre-1972 Recordings for  
20 which Sirius XM has a license, whether express or implied.

21 \_\_\_\_\_  
22 <sup>7</sup> Mr. Wallace presented no more than a mathematical calculation of revenue that he  
23 *allocated* to Sirius XM's performances of Pre-1972 Recordings (and to California  
24 subscribers) using fractions and percentages. Mr. Wallace did not perform an  
25 economic analysis of whether Sirius XM earns revenue *attributable to* its use of  
26 Pre-1972 Recordings, and if so, the amount of such revenue. Consequently, Mr.  
27 Wallace has failed to articulate or establish an economic causal connection or  
28 linkage between his claimed class-wide damages figure and the alleged wrongful  
conduct. Mr. Wallace has performed a mathematical calculation; he has not  
proposed or conducted the economic or damages analysis that would be required in  
this matter.

1           b.     Mr. Wallace Has Not Proposed Or Created A Model For  
2           Allocating Total Claimed Damages To Individual Putative Class Members.

3           i.     The Complaint in this matter stated that “the claims of the  
4           Class Members may range from smaller sums to larger sums.”<sup>8</sup>

5           However, Mr. Wallace has provided no guidance as to how his  
6           proposed class-wide recovery figure could or would be allocated to  
7           individual putative class members or how all putative class members  
8           could reach an agreement regarding a particular allocation method.<sup>9</sup>

9           ii.    Any allocation approach that does not account for  
10          variations in the value contribution of each individual recording (and  
11          each performance of each recording) would cause some putative class  
12          members to be overcompensated and other putative class members to  
13          be undercompensated.

14          iii.   Mr. Wallace’s proposed approach does not include an  
15          allocation method at all, let alone one that provides a rationale for an  
16          allocation method or takes into account the variations in the value  
17          contribution of each individual recording or recording artist.

18          c.     Additional Deficiencies Associated With Mr. Wallace’s  
19          Proposed Method. Mr. Wallace has not proposed or created a model, theory,  
20          or method for determining putative class members’ (i) claimed damages in  
21          the form of lost royalty payments, (ii) claimed actual damages such as lost  
22          sales or reductions in license fees paid by third parties allegedly attributable

23 \_\_\_\_\_  
24 <sup>8</sup> Dkt. 1 at 4.

25 <sup>9</sup> There is no economic reason to assume that each putative class member should be  
26 (or would agree to be) compensated equally. Also, there is no economic reason to  
27 assume that the value to Sirius XM (or the contribution to revenues or profits  
28 included in the total claimed recovery figure) is the same for each recording – or  
each performance of each recording – across all Pre-1972 Recordings owned by all  
putative class members.

1 to Sirius XM's use of Pre-1972 Recordings, or (iii) benefits derived from  
2 Sirius XM's performances of Pre-1972 Recordings (should Sirius XM be  
3 allowed to deduct such benefits as offsets from a claimed damages award).  
4 Each of these determinations requires individualized inquiry and must be  
5 analyzed on an individual putative class member basis.

6 6. My detailed evaluation of the opinions contained in the Wallace  
7 Declaration is contained throughout the remainder of this declaration and exhibits.

### 8 **III. QUALIFICATIONS AND EXPERIENCE**

9 7. I am a Managing Principal at Analysis Group, Inc. ("AG"). AG  
10 provides economic, financial, and business strategy consulting to its clients and  
11 specializes in the interpretation of economic and financial data and the development  
12 of economic and financial models. Internationally, AG consists of approximately  
13 600 professionals who specialize in, among other things, the fields of economics,  
14 accounting, finance, statistics, and strategy consulting.

15 8. My primary responsibility at AG is to provide economic and financial  
16 consulting services. Throughout my career I have provided financial consulting  
17 services in intellectual property cases, antitrust cases, breach of contract cases,  
18 fraud-related cases, business tort cases, business interruption cases, employment /  
19 loss of earnings matters, lender liability cases, and securities-related cases. I have  
20 provided expert testimony in deposition and trial settings numerous times.

21 9. I specialize in the application of economic principles to complex  
22 financial disputes, and I am generally retained in cases requiring economic and  
23 financial analyses. Financial models I have constructed or evaluated in the past  
24 have contained as components revenue analyses, cost analyses, assessments of  
25 capacity, assessments of profitability, assessments of reasonable royalties,  
26 evaluations of disgorgement and unjust enrichment claims, and assessments of the  
27 competitive business environment. I also have evaluated various claims of  
28 economic value using peer group (or benchmark) comparisons and/or discounted

1 cash flow analyses relating to projected future earnings streams. During the course  
2 of my career, I have frequently performed financial analyses using large databases  
3 of information and complex computer models. I also have worked on numerous  
4 entertainment-related cases.

5 10. I received my B.A. in Economics from the University of Notre Dame  
6 in 1977, my M.A. in Economics from the University of Southern California in  
7 1979, and my Ph.D. in Economics from Arizona State University in 1983.  
8 Attached as **Exhibit 1** is a true and correct copy of my current resume. A listing of  
9 publications I have authored is contained in my resume. Attached as **Exhibit 2** is  
10 my trial and deposition testimony experience. My address is Analysis Group, Inc.,  
11 Park Place Center, 2911 Turtle Creek Blvd., Suite 600, Dallas, Texas 75219.

12 11. AG is being compensated based upon hours incurred and the hourly  
13 rates of the personnel involved. Payment to AG is not contingent upon my findings  
14 or the outcome of this matter. AG is being compensated at a rate of \$600 per hour  
15 for my time. Hourly rates for other staff at AG working on this matter range from  
16 \$190 to \$415 per hour, depending upon the person's level and experience.

#### 17 **IV. FACTS AND INFORMATION RECEIVED**

18 12. The facts and information available to me in forming my opinions are  
19 contained in **Exhibit 3** or elsewhere in my declaration (including footnotes).  
20 Examples of the types of information available to me include the following:

- 21 a. legal documents (e.g., the Complaint; various interrogatory  
22 responses; satellite radio royalty rate determinations of the Copyright  
23 Royalty Board);
- 24 b. expert reports (e.g., Wallace Declaration and Report);
- 25 c. deposition transcripts (e.g., Deposition of David Frear taken on  
26 February 18, 2015 and associated exhibits);
- 27 d. documents produced by Flo & Eddie (e.g., tracking data related  
28 to recordings);

1 e. documents produced by Sirius XM (*e.g.*, financial information;  
2 subscriber counts); and

3 f. information independently obtained (*e.g.*, Sirius XM press  
4 releases; SEC filings; various music-related websites).

5 13. In addition, during the preparation of my declaration and expert report,  
6 I had discussions with Mr. David Bird (Sirius XM’s Director of Financial  
7 Reporting), Ms. Catherine Brooker (Sirius XM’s Vice President of Corporate  
8 Finance), and Mr. Steven Blatter (Sirius XM’s Senior Vice President and General  
9 Manager of Music Programming).

10 14. My analyses and opinions are based upon the information I have  
11 considered to date. I reserve the ability to supplement my opinions based upon  
12 review of additional information and analyses, if appropriate. In addition, I reserve  
13 the ability to use demonstrative exhibits and/or other information at trial to explain  
14 and illustrate my opinions.

15 **V. OVERVIEW OF PARTIES**

16 **A. Plaintiff**

17 15. According to the Complaint, the principals of Plaintiff are Mr. Mark  
18 Volman and Mr. Howard Kaylan, who have performed together as The Turtles  
19 since 1965. Plaintiff claims to have owned since approximately 1971 “the entire  
20 catalog of 100 original master recordings by The Turtles, all of which were  
21 recorded prior to February 15, 1972.”<sup>10</sup> The Turtles greatest hits include “She’d  
22 Rather Be With Me” (1967), “Happy Together” (1967), and “Elenore” (1968).  
23 According to Plaintiff, it is “engaged in the business of distributing, selling, and/or  
24 licensing the reproduction, distribution, sale, and performance of its Pre-1972

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<sup>10</sup> Dkt. 1 at 1.



1 Recordings in phonorecords, in audiovisual works, and for streaming (*i.e.*,  
2 performing) and downloading over the Internet.”<sup>11</sup>

3 **B. Sirius XM**

4 16. Sirius XM broadcasts music, sports, entertainment, comedy, talk,  
5 news, traffic, and weather channels in the United States on a subscription fee basis  
6 through its proprietary satellite radio systems. Sirius XM’s primary source of  
7 revenue is subscription fees with most of its customers subscribing on an annual,  
8 semi-annual, quarterly, or monthly basis.<sup>12</sup>

9 17. Sirius XM was formed through the merger of a subsidiary of Sirius  
10 Satellite Radio Inc. (“Sirius”) and XM Satellite Radio Inc. (“XM”) in July 2008.<sup>13</sup>  
11 XM and Sirius originally launched their respective satellite radio services in  
12 September 2001 and February 2002.<sup>14</sup> As of December 2014, Sirius XM operated a  
13 combined fleet of 9 orbiting satellites (including 5 in the Sirius system and 4 in the  
14 XM system) and more than 700 terrestrial repeaters to supplement satellite  
15 coverage.<sup>15</sup> Sirius XM provides services to more than 27 million subscribers.<sup>16</sup>

16 18. Sirius XM became a wholly-owned subsidiary of Sirius XM Holdings  
17 Inc. (“Sirius XM Holdings”) as part of a corporate reorganization completed in  
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19 <sup>11</sup> Dkt. 1 at 3. Mr. Wallace did not use or provide citations to documentary  
20 evidence relating to income or royalties earned from these activities in his  
21 evaluation of claimed damages.

22 <sup>12</sup> Sirius XM Holdings Inc. Form 10-K for the fiscal year ended December 31, 2014  
23 (“Sirius XM 2014 10-K”), at 1. (SXM-F&E\_00011739 – 846 at 742.)

24 <sup>13</sup> “SIRIUS and XM Complete Merger,” Sirius XM press release dated July 29,  
25 2008. (<http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=324858>, viewed  
26 on April 3, 2015.)

27 <sup>14</sup> Dkt. 89 (Declaration of David J. Frear in Support of Sirius XM’s Opposition to  
28 Plaintiff’s Motion for Summary Judgment dated July 28, 2014) at 3.

<sup>15</sup> Sirius XM 2014 10-K at 3. (SXM-F&E\_00011739 – 846 at 744.)

<sup>16</sup> Sirius XM 2014 10-K at 1. (SXM-F&E\_00011739 – 846 at 742.)

1 November 2013. Sirius XM Holdings has “no operations independent of its  
2 subsidiary Sirius XM.”<sup>17</sup>

3 **VI. EVALUATION OF MR. WALLACE’S PROPOSED METHOD FOR**  
4 **CALCULATING CLAIMED DAMAGES ON A CLASS-WIDE BASIS**

5 19. Based upon my understanding of Plaintiff’s allegations, documentary  
6 evidence, standard damages quantification techniques, and my economics and  
7 damages quantification training and experience, I have evaluated the opinions  
8 presented in the Wallace Declaration and reached the following conclusions with  
9 respect to Mr. Wallace’s proposed method for calculating claimed damages on a  
10 class-wide basis.

11 **A. Mr. Wallace’s Proposed Method Does Not Provide A Reliable Or**  
12 **Relevant Measure Of Claimed Damages On A Class-Wide Basis.**

13 20. Mr. Wallace’s proposed method does not provide a reliable or relevant  
14 measure of claimed damages on a class-wide basis for at least the following  
15 reasons: (1) Mr. Wallace’s proposed calculation does not identify Sirius XM’s  
16 revenues *attributable to* the use of Pre-1972 Recordings; and (2) Mr. Wallace’s  
17 proposed calculation does not match the proposed class definition.

18 **1. Mr. Wallace’s Proposed Calculation Does Not Identify**  
19 **Sirius XM’s Revenues Attributable To The Use Of Pre-1972**  
20 **Recordings.**

21 21. Mr. Wallace stated that he was asked to assume “the proper measure of  
22 compensatory damages” and “the proper measure of restitution” in this matter is  
23 “Sirius XM’s gross revenues attributable to the use of [Pre-1972 Recordings],  
24 without deduction of costs.”<sup>18</sup> However, Mr. Wallace did not perform an economic  
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26 <sup>17</sup> Sirius XM 2014 10-K at 1. (SXM-F&E\_00011739 – 846 at 742.)

27 <sup>18</sup> Dkt. 185 at 3. It is my understanding that Sirius XM disputes the measure and  
28 quantification of claimed class-wide damages Mr. Wallace was asked to assume.  
From an economic perspective, it is appropriate to deduct costs from a calculation

1 analysis of whether Sirius XM earns revenue “attributable to” its use of Pre-1972  
2 Recordings, and if so, the amount of such revenue. Mr. Wallace presented no more  
3 than a mathematical calculation of revenue that he allocated to Sirius XM’s  
4 performances of Pre-1972 Recordings (and to California subscribers).<sup>19</sup>  
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6 of Sirius XM’s alleged gained revenues from its use of Pre-1972 Recordings.  
7 Sirius XM has made substantial investments in operations in order to offer its  
8 services to consumers, including but not limited to operating a combined fleet of 9  
9 orbiting satellites and more than 700 terrestrial repeaters to supplement satellite  
10 coverage. (Sirius XM 2014 10-K at 3. (SXM-F&E\_00011739 – 846 at 744.)) It is  
11 my understanding that the cost of placing each satellite in space is approximately  
12 \$300 million, including satellite construction, launch, insurance, capitalized labor,  
13 and new ground equipment to support telemetry, tracking and command, and  
14 uplink. (See Written Direct Testimony of James E. Meyer (On Behalf of Sirius XM  
15 Radio Inc.) dated November 28, 2011 in the matter of *Determination of Rates and  
16 Terms for Preexisting Subscription and Satellite Digital Audio Radio Services*, pp.  
17 23 – 24.) Without such investments, Sirius XM would not be able to provide its  
18 unique delivery platform or its content to subscribers. By failing to deduct costs,  
19 Mr. Wallace’s proposed calculation would overstate significantly the amount of  
20 Sirius XM’s alleged gains from the alleged wrongful conduct. Moreover, as of  
21 December 2014, Sirius XM had an accumulated deficit of approximately \$5.4  
22 billion. (Sirius XM 2014 10-K at F-5. (SXM-F&E\_00011739 – 846 at 794.))  
23 From an economic perspective, the fact that Sirius XM has not yet achieved  
24 profitability on a life-cycle basis (or fully recouped its significant investments in  
25 operations) weighs against Mr. Wallace’s assumption that the appropriate measure  
26 of claimed damages is “Sirius XM’s gross revenues attributable to the use of [Pre-  
27 1972 Recordings], without deduction of costs.” Mr. Wallace does not provide an  
28 analysis of the alleged gains to Sirius XM should the appropriate costs be deducted  
from his allocation of Sirius XM’s gross revenues to Pre-1972 Recordings.

<sup>19</sup> Mr. Wallace opined that “Class Damages can be reasonably calculated on a class-  
wide basis by multiplying, for each period during the damage period, (1) Sirius  
XM’s Gross Revenues by (2) the percentage of performances of pre-1972  
recordings on its service, and (3) multiplying the result by the percentage of Sirius  
XM’s subscribers located in California.” Dkt. 185 at 8:7-11. Mr. Wallace asserts  
that his proposed method is supported by calculations that Sirius XM is required by  
federal statute to perform in determining its royalty obligations for Post-1972  
Recordings. However, it is my understanding that the federal statute is not  
applicable in this case.

1           22. In other words, Mr. Wallace has not established an economic causal  
2 connection (or linkage) between Sirius XM's alleged wrongful conduct and the  
3 claimed class-wide damages figure he claims to calculate.

4           23. To identify revenue "attributable to" Sirius XM's use of Pre-1972  
5 Recordings (*i.e.*, to calculate the revenue that has an economic causal connection or  
6 linkage to Sirius XM's performance of these sound recordings), Mr. Wallace needs  
7 to have proposed a method (or created a model) that establishes the amount of  
8 revenue Sirius XM earns as a direct result of its performances of such recordings  
9 (*i.e.*, the incremental revenues associated with such recordings). For example, with  
10 respect to Pre-1972 Recordings owned by Flo & Eddie, Mr. Wallace could have  
11 attempted to establish whether Sirius XM earned more revenue as a direct result of  
12 performing those recordings, as compared to the revenue Sirius XM would have  
13 earned if it had not performed Pre-1972 Recordings owned by Flo & Eddie. In  
14 particular, Mr. Wallace could have analyzed whether Sirius XM was able, as a  
15 direct result of performing Pre-1972 Recordings owned by Flo & Eddie, to: (a)  
16 charge higher prices for its services, (b) gain additional subscribers, or (c) do both.

17           24. Mr. Wallace has not performed these analyses (or explained how he  
18 could or would perform such analyses) with respect to Pre-1972 Recordings owned  
19 by Flo & Eddie, let alone for all putative class members on a class-wide basis using  
20 common proof. Instead, Mr. Wallace only has proposed a method for allocating  
21 revenue on a mathematical basis without any analysis as to whether that revenue is  
22 actually "attributable to" Sirius XM's performance of those recordings. Mr.  
23 Wallace has failed to articulate or establish an economic causal connection or  
24 linkage between his claimed class-wide damages figure and the alleged wrongful  
25 conduct.

26           25. Mr. Wallace's mathematical approach falsely assumes (and without  
27 support) that: (1) Pre-1972 Recordings have the same impact on Sirius XM's  
28 revenue as recordings fixed post-February 14, 1972; (2) any particular Pre-1972

1 Recording is causally (and equally) responsible for the same amount of revenue as  
2 any other recording; and (3) the playing of a particular Pre-1972 Recording at any  
3 particular time of day has the same impact on Sirius XM's revenue and business as  
4 the playing of a recording at another time of day. Mr. Wallace did not present any  
5 economic bases to support these assumptions. (*See supra* Part VI.B.2.) Mr.  
6 Wallace, for example, does not acknowledge, discuss, or address the fact that many  
7 different genres of music existed in the 1950s and 1960s and that songs (or artists)  
8 within these genre may have different values to Sirius XM (and to Sirius XM's  
9 subscribers).

10 a. 1950s Music Genres. The 1950s' music genres included:

11 Rhythm & Blues; Pre-Rock / Pop; Folk Revival; Doo Wop; Rock & Roll /  
12 Rockabilly; Teen Idols; and Jazz.<sup>20</sup> Key artists in the 1950s included, but are  
13 not limited to: Fats Domino (Rhythm & Blues); Doris Day (Pre-Rock / Pop);  
14 The Kingston Trio (Folk Revival); The Del-Vikings (Doo Wop); Elvis  
15 Presley (Rock & Roll / Rockabilly); Ricky Nelson (Teen Idols); and Louis  
16 Armstrong (Jazz). Contained in **Exhibit 4** are the key artists that comprise  
17 the fifties' genres, the 1950s' Top 100 best-selling singles worldwide, and  
18 the Top 50 music artists of the 1950s.

19 b. 1960s Music Genres. The 1960s' music genres included: Folk

20 Revival; Girl Groups; Brill Building Sound; Phil Spector and the Wall of  
21 Sound; Surf Music; Motown; 60s Soul; British Invasion; Garage Bands;  
22 Psychedelic Rock; Bubblegum Rock; and Hard Rock.<sup>21</sup> Key artists in the  
23 1960s included, but are not limited to: Bob Dylan (Folk Revival); The  
24 Chiffons (Girl Groups); The Righteous Brothers (Brill Building Sound); Ike

25 \_\_\_\_\_  
26 <sup>20</sup> "1950's Decade Overview." (<http://www.rockmusictimeline.com/1950s.html>,  
viewed on April 13, 2015.)

27 <sup>21</sup> "1960's Decade Overview." (<http://www.rockmusictimeline.com/1960s.html>,  
28 viewed on April 13, 2015.)

1 & Tina Turner (Phil Spector and the Wall of Sound); The Beach Boys (Surf  
2 Music); Stevie Wonder (Motown); Otis Redding (60s Soul); The Beatles  
3 (British Invasion); The Standells (Garage Bands); Grateful Dead  
4 (Psychedelic Rock); The Monkees (Bubblegum Rock); and Steppenwolf  
5 (Hard Rock). Contained in **Exhibit 5** are the key artists that comprise the  
6 sixties' genres, the 1960s' Top 100 best-selling albums worldwide, the  
7 1960s' Top 100 best-selling singles worldwide, and the Top 50 music artists  
8 of the 1960s.

9 26. To conduct a reliable analysis from an economic perspective, Mr.  
10 Wallace would have needed to develop (or at least propose) a model that attributed  
11 weights to each Pre-1972 Recording based upon the artist, its popularity, the time  
12 of day it was played, and the channel on which it was played, among other  
13 considerations. Because this analysis is intrinsically individualized, such an  
14 analysis is not amenable to a class-wide approach using common proof.

15 27. The aforementioned observation regarding the need for individualized  
16 inquiry is necessary given Sirius XM's business model. Unlike Apple's iTunes  
17 Music Store, for example, where customers pay for each individual song they buy,  
18 Sirius XM charges a fixed monthly subscriber fee for all of its content (music and  
19 non-music; Pre-1972 Recordings and recordings fixed after February 14, 1972).  
20 Because subscribers pay an undifferentiated amount for all programming, one  
21 would need to develop (or at least propose) a model to demonstrate how the  
22 performance of each Pre-1972 Recording contributes to revenue, if at all.

23 28. For example, I understand that Sirius XM stopped playing Flo &  
24 Eddie's sound recordings as of approximately September 2014.<sup>22</sup> I also understand  
25 that since that date, Sirius XM is not aware of any complaints or subscribers  
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27  
28 <sup>22</sup> See Deposition of David Frear taken on February 18, 2015, pp. 189 – 190.

1 discontinuing their service on that basis.<sup>23</sup> Since that date, Sirius XM’s  
2 subscribership and revenue have both increased.<sup>24</sup> While there are many factors  
3 that affect such increases, this example illustrates that Mr. Wallace cannot simply  
4 assume that all content, no matter its type (music vs. non-music), its genre (Doo  
5 Wop vs. British Invasion), its date (Pre-72 Recordings vs. Post), its popularity (*e.g.*,  
6 “Satisfaction” (1965) by the Rolling Stones vs. “Psychotic Reaction” (1966) by  
7 Count Five), or the time it is played (peak times vs. nonpeak times) has an equal  
8 impact on Sirius XM’s revenues.

9         29. Moreover, Mr. Wallace’s proposed calculation does not separate the  
10 revenue attributable to Sirius XM’s use of Pre-1972 Recordings (as calculated by  
11 Mr. Wallace) from revenues attributable to Sirius XM’s own contributions to its  
12 commercial success, revenues, and profitability unrelated to the alleged wrongful  
13 conduct. Such contributions include Sirius XM’s unique delivery platform,  
14 associated listener reach, marketing and pricing strategy, acceptance of significant  
15 business risks, limited commercials, exclusive Town Hall series<sup>25</sup>, and established

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16 <sup>23</sup> Based upon a discussion with Mr. Steven Blatter, Senior Vice President and  
17 General Manager of Music Programming.

18 <sup>24</sup> See Sirius XM 2014 10-K, at 22, F-35 (SXM-F&E\_00011739 – 846 at 763 and  
19 826) and Sirius XM Holdings Inc. Form 10-Q for the quarterly period ended  
20 September 30, 2014, p. 25. See also “Sirius XM Summary of Revenue and  
Subscriber Data – 5PM 4 14 15.xlsx.”

21 <sup>25</sup> Sirius XM hosts and broadcasts an exclusive “Town Hall” series of “intimate  
22 gatherings with iconic musicians, entertainers and figures and a studio audience of  
23 SiriusXM listeners.” Sirius XM’s Town Hall specials have featured artists such as  
24 Bruce Springsteen, Barbra Streisand, Tony Bennett, Neil Diamond, Ringo Starr,  
25 Gregg Allman, and Crosby, Stills, and Nash, among others. (“Tony Bennett to Sit  
26 Down with Alec Baldwin during Fan Q&A Session for SiriusXM’s ‘Town Hall’  
27 Series,” Sirius XM Press Release dated February 6, 2013. (<http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=738498>, viewed on April 11, 2015.)) For  
28 example, when Sirius XM launched a Neil Diamond Radio channel in 2014, Cousin  
Brucie moderated a Town Hall event in which Mr. Diamond “answer[ed] questions  
from an intimate audience of SiriusXM subscribers about his life, career and [recent  
album] Melody Road.” (“Neil Diamond Radio is coming to SiriusXM!” Sirius XM

1 disc jockeys and guest hosts (*e.g.*, Cousin Bruce and Peter Noone), *inter alia*,  
2 which contribute to Sirius XM’s subscribership beyond the playing of Pre-1972  
3 Recordings.<sup>26</sup> Failing to account for the impact of Sirius XM’s contributions would  
4

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5 Blog dated October 9, 2014. ([http://blog.siriusxm.com/2014/10/09/neil-diamond-  
6 radio-is-coming-to-siriusxm-lets-celebrate-with-5-essential-neil-diamond-songs/](http://blog.siriusxm.com/2014/10/09/neil-diamond-radio-is-coming-to-siriusxm-lets-celebrate-with-5-essential-neil-diamond-songs/),  
7 viewed on April 11, 2015.) (Bracketed text added for clarification.) Similarly,  
8 when Sirius XM launched a Barbra Streisand Channel in 2014, it featured an  
9 exclusive Town Hall special in which Ms. Streisand answered questions from Sirius  
10 XM listeners. Ms. Streisand’s Town Hall special, in which she recounted the story  
11 of when she first met Elvis Presley, was listed among Sirius XM’s “Best of 2014”  
12 Town Hall events. (“The Best of 2014: Town Halls – On Demand,” Sirius XM  
13 Blog dated December 13, 2014 ([http://blog.siriusxm.com/2014/12/13/the-best-of-  
14 2014-town-halls-on-demand/](http://blog.siriusxm.com/2014/12/13/the-best-of-2014-town-halls-on-demand/), viewed on April 11, 2015) and “Barbra Streisand to  
15 Launch Exclusive SiriusXM Channel,” Sirius XM Press Release dated September  
16 8, 2014 (<http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=869601>, viewed  
17 on April 11, 2015.))

18 <sup>26</sup> Sirius XM’s significant contributions to its commercial success, revenues, and  
19 profitability are discussed further in my rebuttal expert report. As one example,  
20 with respect to Sirius XM’s own contributions, Cousin Bruce (*i.e.*, Mr. Bruce  
21 Morrow) brings a unique historical perspective to Pre-1972 Recordings – having  
22 been an established American radio personality since the very early 1960’s. Upon  
23 the recent death of Ms. Lesley Gore (*e.g.*, “It’s My Party” (1963) and “You Don’t  
24 Own Me” (1963)), Sirius XM broadcast an interview Mr. Morrow had had with Ms.  
25 Gore. Sirius XM also recently broadcasted an interview Mr. Morrow had with Mr.  
26 Neil Diamond (*e.g.*, “Cherry, Cherry” (1966), “Solitary Man” (1966), and  
27 “Kentucky Woman” (1967)). Mr. Peter Noone is an English singer-songwriter who  
28 was a member of the 1960’s group Herman’s Hermits (*e.g.*, “I’m Into Something  
Good” (1964), “I’m Henry The Eighth, I Am” (1965), and Silhouettes (1965)). Mr.  
Noone often provides first hand commentary, background, and insights relating to  
the Pre-1972 Recordings played on Sirius XM. As an additional example  
(commercial-free music), Mr. Wallace’s proposed calculation does not attribute any  
portion of Sirius XM’s revenue to Sirius XM’s commercial-free music business  
model – which has value to subscribers beyond the music that is played. For the  
purpose of an illustrative comparison only, I understand that Pandora offers Internet  
radio with commercials for free and Internet radio without commercials for  
\$4.99/month. (“Pandora One.” (<http://www.pandora.com/one>, viewed on April 6,  
2015.))



1 result in the incorrect inclusion of value derived from these contributions in the  
2 calculation of gains attributed to the alleged wrongful conduct.

3 30. Mr. Wallace's purely mathematical calculation does not identify Sirius  
4 XM's revenues "attributable to" the use of Pre-1972 Recordings because it does not  
5 establish an economic causal connection (or linkage) between Sirius XM's use of  
6 Pre-1972 Recordings and its revenues, not to mention accounting for the impact on  
7 revenues of content or conduct (e.g., Sirius XM's own contributions to its  
8 commercial success) separate and apart from Sirius XM's use of Pre-1972  
9 Recordings.<sup>27</sup>

10 31. Mr. Wallace's proposed calculation also does nothing to distinguish  
11 between those Pre-1972 Recordings that may have had a larger actual revenue  
12 impact (e.g., by attracting additional subscribers) and those that had little-to-no  
13 impact on Sirius XM's revenues (either through prices or subscribership).

14 32. In addition, Mr. Wallace did not test (or propose to test) the  
15 reasonableness of his proposed calculation in light of other potential indications of  
16 value. For example, Mr. Wallace did not evaluate (or propose to evaluate) a  
17 reasonable royalty damages remedy. Such a comparison demonstrates the  
18 unreasonableness of Mr. Wallace's proposed calculations when his calculations are  
19 not properly adjusted for costs incurred by Sirius XM and when the business  
20 contributions of Sirius XM are not deducted, *inter alia*. While I understand that the  
21 federal statute applicable to Post-1972 Recordings is not applicable to Pre-1972  
22 Recordings, even the royalty rates imposed under that compensation structure  
23 (which is likely higher than a royalty rate compensation structure applied to Pre-  
24 1972 Recordings) demonstrate the unreasonableness of Mr. Wallace's calculations.

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25  
26 <sup>27</sup> From an economic perspective, this comparison calls into question the  
27 reasonableness of Mr. Wallace's calculations, especially given that royalty rates  
28 paid for intellectual property rights can be informative as to the relative  
contributions of the licensor and licensee to the revenue at issue.

1           33. The federal statute specified royalty rates of 6.5% to 10% during the  
2 relevant claimed damages time period as compensation for owners of Post-1972  
3 Recordings.<sup>28</sup> According to Mr. Wallace’s calculations, his proposed method of  
4 compensation (*i.e.*, calculating revenue claimed to be “attributable to” the use of  
5 Pre-1972 Recordings) yields a claimed damages figure of \$166 million<sup>29</sup> – nearly  
6 *12 times higher* than the compensation that would result from an application of  
7 those statutory royalty rates here. From an economic perspective, this comparison  
8 calls into question the reasonableness of Mr. Wallace’s proposed method of  
9 calculating claimed damages for the use of Pre-1972 Recordings, especially given  
10 that royalty rates paid for intellectual property rights can be informative as to the  
11 relative contributions of the licensor and licensee to the revenue at issue.<sup>30</sup>

12                   **2. Mr. Wallace’s Proposed Calculation Does Not Match The**  
13                   **Proposed Class Definition.**

14           34. I understand that Plaintiff seeks to represent a putative class consisting  
15 of “owners of Pre-1972 Recordings reproduced, performed, distributed or otherwise  
16 exploited by Defendants in California without a license or authorization to do so  
17 during the period from August 1, 2009 to the present.”<sup>31</sup> However, Mr. Wallace’s  
18 proposed calculation does not exclude or otherwise account for owners of Pre-1972  
19 Recordings to which Sirius XM has a direct or implied license.<sup>32, 33</sup> Hence, Mr.

20 \_\_\_\_\_  
21 <sup>28</sup> CRB Determination I at 4084 and Determination of Rates and Terms for  
22 Preexisting Subscription Services and Satellite Digital Audio Radio Services, 78  
23 Fed. Reg. 23054-23100 (Apr. 17, 2013) (“CRB Determination II”) at 23071.

24 <sup>29</sup> See Expert Report of Michael J. Wallace dated March 13, 2015, p. 6.

25 <sup>30</sup> Mr. Wallace did not propose (or present) any alternative claimed damages  
26 quantification method (such as a reasonable royalty analysis) – should it be  
27 determined that disgorgement is not an appropriate and/or available remedy here.

28 <sup>31</sup> Dkt. 1 at 4. (Emphasis added.)

<sup>32</sup> See, e.g., Sound Recording Catalog License between Sirius XM Radio Inc. and  
Naxos of America, Inc. dated January 1, 2015; Sound Recording Catalog License  
between Sirius XM Radio Inc. and Dangerbird Records, LLC dated January 1,

1 Wallace's proposed calculation is over-inclusive and does not match the proposed  
2 class definition.

3 35. Even under Mr. Wallace's proposed method (which is flawed for the  
4 reasons discussed above, among others<sup>34</sup>), to calculate a total recovery figure for  
5 the putative class, Mr. Wallace would need to provide a method for allocating his  
6 proposed revenue calculation between the many different owners of Pre-1972  
7 Recordings. In particular, Mr. Wallace would need to provide a method for

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8  
9 2015; Sound Recording Catalog License between Sirius XM Radio Inc. and No Big  
10 Deal Records dated April 1, 2015; Sound Recording Catalog License between  
11 Sirius XM Radio Inc. and It's Time Child Records dated April 1, 2015; Sound  
12 Recording Catalog License between Sirius XM Radio Inc. and Kitchenware  
13 Records Ltd. dated April 1, 2015; Sound Recording Catalog License between Sirius  
14 XM Radio Inc. and Mamou Playboy Records dated April 1, 2015; and Sound  
15 Recording Catalog License between Sirius XM Radio Inc. and The End Records  
16 dated April 1, 2015. (SXM-F&E\_00012132 – 216.))

17 <sup>33</sup> Sirius XM has entered into a number of agreements with owners of Pre-1972  
18 Recordings in which the parties agreed that Sirius XM would create and distribute  
19 channels consisting of specific programming (*e.g.*, an "Elvis channel"), including  
20 Pre-1972 Recordings. Sirius XM generally received certain licenses and other  
21 benefits relating to such channels in exchange for creating and distributing them  
22 and in exchange for certain financial consideration. Examples of such "channel  
23 agreements" include agreements relating to the recordings of Elvis Presley; Frank  
24 Sinatra; Grateful Dead; Bruce Springsteen; Pink Floyd; and Jimmy  
25 Buffet/Margaritaville. (*See* Various Sirius XM channel agreements. (SXM-  
26 F&E\_00007277 – 285, 302 – 313, 328 – 348, 416 – 425, 439 – 446, and 487 –  
27 496.)) Mr. Wallace has not explained how he would account for any direct or  
28 implied licenses to Pre-1972 Recordings that may exist in such channel agreements.  
Mr. Wallace also has not explained (a) whether the amounts paid by Sirius XM for  
such licenses should be deducted as offsets from his claimed damages figures or, if  
so, how those amounts could or would be allocated to California subscribers or (b)  
whether the Pre-1972 Recordings themselves which are covered under such  
agreements should be somehow removed from the calculation base.

<sup>34</sup> In my rebuttal expert report, I discuss additional flaws in Mr. Wallace's proposed  
method. For example, Mr. Wallace failed to exclude revenues related to non-music  
content (*e.g.*, sports, entertainment, comedy, talk, news, traffic, and weather  
content) in his calculation of Sirius XM's revenues related to Pre-1972 Recordings.

1 allocating his proposed revenue calculation between putative class members and  
2 owners of Pre-1972 Recordings to which Sirius XM has a direct or implied license  
3 (which are excluded from the proposed class definition).

4 **B. Mr. Wallace Provided No Method For Allocating Total Claimed**  
5 **Damages Among Putative Class Members.**

6 36. Mr. Wallace provided no method for allocating total claimed damages  
7 among putative class members. Mr. Wallace's proposed calculation at best would  
8 yield a total claimed recovery figure with no explanation or guidance as to how the  
9 total could be allocated to individual putative class members. Allocating total  
10 claimed damages among putative class members without overcompensating some  
11 putative class members and undercompensating others would require an economic  
12 analysis that is based upon more than a mathematical division of numbers.

13 **1. Mr. Wallace Provided No Guidance As To How Putative**  
14 **Class Members Could Reach An Agreement Regarding An**  
15 **Allocation Method.**

16 37. It is my understanding that at some point, the Court will need to  
17 determine a way to allocate any class-wide damages remedy among the class  
18 members. Mr. Wallace has offered no method for doing so, much less proposed a  
19 method that would not require individualized inquiry.<sup>35</sup>

20 38. There are a number of ways that such an allocation could be  
21 accomplished. For example, total claimed damages could be allocated according to  
22 one of the following criteria, *inter alia*, or a combination of them, with some to-be-  
23 determined weight to be given each criterion (which, here too, Mr. Wallace has not  
24 identified or acknowledged):

25  
26 \_\_\_\_\_  
27 <sup>35</sup> In a consumer class action, for example, putative class members may possess  
28 receipts showing the amount paid for a challenged product and the quantities  
purchased. An analogous concept does not exist here.

- 1 a. the number of putative class members (*i.e.*, an equal share for
- 2 each class member);
- 3 b. the number of Pre-1972 Recordings owned by each putative
- 4 class member;
- 5 c. the number of “Top 40” or “Top 100” Pre-1972 Recordings
- 6 owned by each putative class member;
- 7 d. the number of Pre-1972 Recordings owned by each putative
- 8 class member weighted by the number of weeks the recordings were “on the
- 9 charts” (*i.e.*, “Top 40” or “Top 100”);
- 10 e. the number of times Sirius XM performed each putative class
- 11 member’s Pre-1972 Recordings;
- 12 f. the number of performances weighted by the time of day and/or
- 13 popularity of the channel on which each performance occurred;
- 14 g. the past and/or present relative sales performance of each
- 15 putative class member’s Pre-1972 Recordings; or
- 16 h. the past and/or present popularity of each putative class
- 17 member’s Pre-1972 Recordings (potentially measurable in a variety of ways).

18 39. If one assumes, as we must, that each class member is a rational  
19 economic actor, then each class member will favor the formula that produces the  
20 largest dollar amount for that class member’s recordings.

21 a. Class members who own popular recordings will want an  
22 allocation method to take into account popularity. (*E.g.*, artists with the Top  
23 100 best-selling albums worldwide or artists with the Top 100 best-selling  
24 singles worldwide.)

25 b. Class members who own less popular recordings would favor a  
26 pro rata method of allocation. (*E.g.*, artists with recordings that did not make  
27 the “Top 40” or “Top 100” charts or artists with songs that received critical  
28

1           praise but did not achieve commercial success – such as “Carolina In My  
2           Mind” (1968) by James Taylor.<sup>36</sup>)

3           c.       Class members with highly influential recordings would favor a  
4           method of allocation taking into account the influential nature of the  
5           recordings. (E.g., “Psychotic Reaction” (1965/1966) by Count Five was  
6           included as one of the “500 most influential rock 'n' roll records of all time”  
7           by The Rock and Roll Hall of Fame in Cleveland and the song placed  
8           seventh on *Paste Magazine*’s 2014 list of the “50 Best Garage Rock Songs of  
9           All Time.”<sup>37</sup>)

10          40.       These conflicts between class members are not insubstantial and the  
11         ultimate decisions as to allocating any damages award would benefit some class  
12         members at the expense of others. Mr. Wallace has failed to address this issue.

13                   **2.     Mr. Wallace Failed To Consider Factors Influencing The**  
14                   **Relative Value Contributions Of Pre-1972 Recordings And**  
15                   **Performances Of Those Recordings.**

16          41.       As discussed above, one cannot assume that the value to Sirius XM (or  
17         the contribution to revenues or profits included in the total recovery figure) is the  
18         same for each recording—or each performance of each recording—across all Pre-  
19         1972 Recordings owned by all putative class members.

20          42.       Mr. Wallace asserted that “[p]opular recordings may be performed  
21         more often, but the revenue per performance remains constant.”<sup>38</sup> However, Sirius  
22         XM does not earn or record revenue on a per-performance basis. Mr. Wallace does  
23         not address that when he makes this assertion. He performed no economically

24                   \_\_\_\_\_

25         <sup>36</sup> “Carolina In My Mind.” ([http://en.wikipedia.org/wiki/Carolina\\_In\\_My\\_Mind](http://en.wikipedia.org/wiki/Carolina_In_My_Mind),  
viewed on April 12, 2015.)

26         <sup>37</sup> “Psychotic Reaction.” ([http://en.wikipedia.org/wiki/Psychotic\\_Reaction](http://en.wikipedia.org/wiki/Psychotic_Reaction), viewed  
27         on April 12, 2015.)

28         <sup>38</sup> Dkt. 185 at 6.

1 meaningful analysis of whether the revenue impact (if any) of performances of Pre-  
2 1972 Recordings varies across such recordings and/or performances.

3 a. Mr. Wallace did not perform (or propose) an economic analysis  
4 of whether there is a correlation between the number of performances of a  
5 Pre-1972 Recording and its past and/or present popularity with listeners (*e.g.*,  
6 as measured by weeks “on the charts”).

7 b. Mr. Wallace did not perform (or propose) an economic analysis  
8 of whether the revenue impact (if any) of a performance of a “popular”  
9 recording is the same as that of a performance of a less popular recording.

10 c. Mr. Wallace did not perform (or propose) an economic analysis  
11 of whether even a single performance of a “popular” recording may  
12 contribute more to consumer demand for (and/or customer satisfaction with)  
13 Sirius XM’s programming compared to a less popular recording.

14 d. Mr. Wallace did not consider (or discuss) whether Sirius XM  
15 may have a relatively larger number of alternatives (*i.e.*, substitutes) for less  
16 popular recordings compared to more popular recordings, affecting their  
17 respective value contributions to Sirius XM.

18 e. Mr. Wallace did not consider (or discuss) whether the value  
19 contribution of a particular recording might depend in part upon whether the  
20 recording was considered a “one-hit wonder” (*e.g.*, The Murmaids’  
21 “Popsicles and Icicles” (1963) or Norman Greenbaum’s “Spirit in the Sky”  
22 (1969)) or whether there might be value-based complementarities between  
23 multiple hit songs from a single artist.

24 43. In addition, Mr. Wallace did not consider (or propose) an economic  
25 analysis of whether the value to Sirius XM of individual performances of Pre-1972  
26 Recordings may vary when those performances occur:

27 a. at different times of day (*e.g.*, peak listening hours vs. middle of  
28 the night);

1           b.     on different channels (*e.g.*, more popular channels vs. less  
2 popular channels); or

3           c.     individually or as part of predetermined disc jockey  
4 programming (*e.g.*, the Cousin Brucie or Peter Noone shows).

5         44.    Mr. Wallace failed to consider whether different putative class  
6 members' recordings may be performed more or less often than others during peak  
7 listening hours, on more popular channels, and/or as part of certain disc jockey  
8 shows, all of which affect the relative value and contribution of each performance  
9 and the resulting revenue that could be "attributed" to it.

10        45.    Any allocation approach that does not account for variations in the  
11 value contribution of each individual recording (and each performance of each  
12 recording) would cause some putative class members to be overcompensated and  
13 other putative class members to be undercompensated. Mr. Wallace did not explain  
14 (or propose) how he would overcome this impediment to evaluating and  
15 quantifying claimed damages on a class-wide basis using common proof.

16           **C.     Additional Deficiencies Associated With Mr. Wallace's Proposed**  
17           **Method.**

18         46.    Mr. Wallace did not proffer any theory or method for determining on a  
19 class-wide basis putative class members' claimed damages in the form of lost  
20 royalty payments; claimed actual damages such as lost sales or reductions in license  
21 fees paid by third parties allegedly attributable to Sirius XM's use of Pre-1972  
22 Recordings; or benefits derived from Sirius XM's performances of Pre-1972  
23 Recordings (should Sirius XM be allowed to deduct such benefits as offsets from a  
24 claimed damages award). Each of these determinations requires individualized  
25 inquiry and must be analyzed on an individual putative class member basis.

26         47.    **Lost Royalty Payments.** Should Plaintiff proffer a claimed damages  
27 theory based upon putative class members' claimed lost royalty payments (which it  
28 has not done), such a claimed damages theory would not be amenable to calculation



1 on a class-wide basis using common proof. Rather, individualized inquiry and  
2 analysis would be required to determine the royalty rates that would have been  
3 negotiated by Sirius XM and each putative class member. (This is true and  
4 supported for many of the reasons I have discussed earlier in my declaration as to  
5 why the value of individual songs to Sirius XM may differ.) There is no *a priori*  
6 economic reason to assume that negotiated royalties between Sirius XM and each  
7 individual putative class member relating to Pre-1972 Recordings would be the  
8 same across all such recordings or across all such putative class members.  
9 Similarly, the amount each putative class member would be willing to accept as  
10 compensation for such performances would vary across putative class members.  
11 Hence, claimed lost royalty payments are not amenable to calculation on a class-  
12 wide basis using common proof.

13 48. **Actual Damages, Such As Lost Sales.** I understand Plaintiff alleges  
14 that Sirius XM's conduct has "impaired [putative class members'] ability to sell,  
15 lawfully exploit, or otherwise control their Pre-1972 Recordings."<sup>39</sup> Should the  
16 trier of fact determine that Plaintiff and other putative class members are entitled to  
17 recover claimed actual damages such as lost sales or reductions in license fees paid  
18 by third parties, Mr. Wallace has not proffered a method by which he would  
19 quantify such claimed actual damages, if any, either individually or on a class-wide  
20 basis.<sup>40</sup> Assuming *arguendo* that Sirius XM's alleged wrongful conduct could  
21 cause lost sales or reductions in license fees paid by third parties (which Plaintiff  
22 has not demonstrated), such claimed damages, if any, likely would vary  
23  
24

25 \_\_\_\_\_  
26 <sup>39</sup> Dkt. 1 at 2.

27 <sup>40</sup> To my knowledge, Plaintiff has not presented economic evidence demonstrating  
28 that it (or any other class member) has suffered lost sales or reductions in license  
fees paid by third parties as a result of Sirius XM's alleged wrongful conduct.

1 substantially across putative class members.<sup>41</sup> Hence, such claimed damages would  
2 not be amenable to calculation on a class-wide basis using common proof.

3 49. **Benefits to Class Members From The Performances.** Mr. Wallace  
4 did not proffer any theory or method for determining benefits that putative class  
5 members may have derived from Sirius XM's performances of Pre-1972  
6 Recordings either individually or on a class-wide basis. Should Sirius XM be  
7 allowed to deduct such benefits (or related measures) as offsets from a claimed  
8 damages award, Mr. Wallace has not explained how he would account for such  
9 offsets on a class-wide basis using common proof.

10 50. For example, Mr. Wallace has not proffered a method for determining  
11 the net impact of Sirius XM's performances of Pre-1972 Recordings on sales of  
12 each putative class members' recordings. Individual inquiry and analysis would be  
13 required to determine whether Sirius XM's conduct served to promote sales of each  
14 putative class member's recordings (*i.e.*, a *promotional* effect) or as a substitute for  
15 such sales (*i.e.*, a *substitution* effect) – or some combination of the two that may  
16 yield a net effect in one direction or the other. In particular, some putative class  
17 members may have benefitted from Sirius XM's performances of Pre-1972  
18 Recordings, while other putative class members may not have.<sup>42</sup>

19 51. Determining the benefits that putative class members may have  
20 derived from Sirius XM's performances of their Pre-1972 Recordings requires  
21 individualized inquiry and analysis. Such benefits (and related offsets to claimed  
22

23 \_\_\_\_\_  
24 <sup>41</sup> Plaintiff has acknowledged that “the claims of the Class Members may range  
from smaller sums to larger sums.” Dkt. 1 at 4.

25 <sup>42</sup> For example, Mr. Steven Blatter has testified regarding how airplay leads to  
26 increased record sales. (*See, e.g.*, Written Direct Testimony of Steven Blatter (On  
27 Behalf of Sirius XM Radio Inc.) dated November 28, 2011 in the matter of  
28 *Determination of Rates and Terms for Preexisting Subscription and Satellite  
Digital Audio Radio Services*, pp. 23 – 30.)

1 damages, if allowed) are not amenable to calculation on a class-wide basis using  
2 common proof.

3 52. My analyses and opinions contained in this declaration are based upon  
4 information available to date. I reserve the ability to review documents, deposition  
5 transcripts, or other information still to be produced by the Parties to this dispute  
6 and to supplement my opinions based upon that review.

7 I declare under penalty of perjury under the laws of the United States that the  
8 foregoing is true and correct and that this declaration is executed this 15<sup>th</sup> day of  
9 April 2015 at Dallas, Texas.

10   
11 Keith R. Ugone, Ph.D.

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# **EXHIBIT 1**



**KEITH R. UGONE, PH.D.**

**Managing Principal**

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Dr. Keith R. Ugone has provided economic and damages consulting services in antitrust cases, breach of contract cases, business interruption cases, employment / loss of earnings cases, intellectual property cases, lender liability cases, professional negligence cases, and securities-related cases, among others. He specializes in the application of economic principles to complex business disputes and is generally retained in cases requiring economic analyses and/or damages-related analyses. Damage models constructed or evaluated by Dr. Ugone have had as components revenue analyses, lost sales analyses, cost analyses, assessments of the capacity to produce additional units, assessments of profitability, the competitive business environment in which the damages claim was being made, claimed lost profits, claimed lost business value, and claimed reasonable royalties. During the course of Dr. Ugone's career, he has frequently evaluated lost profits and valuation-related damages using large databases of information and complex computer models. Dr. Ugone also has performed economic liability analyses in antitrust matters including defining relevant markets, assessing market power, and evaluating alleged anticompetitive behavior. Dr. Ugone has testified at trial and in deposition over 300 times.

Dr. Ugone has a PhD in Economics from Arizona State University, an MA in Economics from the University of Southern California, and a BA in Economics from the University of Notre Dame. Subject areas of expertise include microeconomics, macroeconomics, industrial organization, antitrust/regulation, and econometrics. He is a member of the American Economic Association, the American Statistical Association, the National Association of Forensic Economists, and the Western Economics Association.

**EDUCATION**

1983 Ph.D., Economics, Arizona State University.  
1979 M.A., Economics, University of Southern California.  
1977 B.A., Economics, University of Notre Dame.

**PROFESSIONAL EXPERIENCE**

2004 - Present Analysis Group, Dallas, Texas – Managing Principal.  
1985 – 2003 PricewaterhouseCoopers LLP (and legacy firms) – Partner (Principal) 1992 – 2003; Senior Manager 1989 – 1992; Manager 1987 – 1989; Senior Consultant 1985 – 1987. Member of United States Admissions Committee (2003). Chairman of PricewaterhouseCoopers Intellectual Property Leadership Forum (2000 – 2003).  
1983 – 1985 California State University, Northridge - Assistant Professor/Lecturer in Department of Economics, Full-time: 1983 – 1985, Part-time: 1986 – 1992.  
1979 – 1983 Arizona State University - Faculty Associate/Teaching Assistant in Department of Economics.  
1977 – 1979 Jet Propulsion Laboratory - Economic/Energy Analyst.

## PROFESSIONAL AND BUSINESS AFFILIATIONS

American Economic Association  
American Statistical Association  
National Association of Forensic Economists  
Western Economics Association

## SELECTED LITIGATION CONSULTING EXPERIENCE (by Nature of Suit)

### Securities: 10b-5 / Section 11 Cases

- Evaluated the economic damages being asserted by shareholders and debt holders of a bankrupt energy trading company against a brokerage firm. Plaintiffs alleged the brokerage firm recommended the stock and debt securities associated with the company even though it knew or should have known the deteriorating pre-bankruptcy financial condition of the company. Analyzed the trading patterns of the brokerage account customers and the stock price movements of the company upon issuance of analyst reports, and researched confounding events contributing to investors' trading of the securities-in-question. Demonstrated an economic causal link did not exist between the alleged wrongful conduct and the claimed trading patterns. Also evaluated the event study conducted by Plaintiffs' damages expert and the claimed inflation component embedded in the company's stock price. Demonstrated Plaintiffs' damages expert failed to remove the economic impact of confounding events. Performed an alternative damages evaluation.
- Evaluated shareholder and debt holder claimed damages against a major accounting firm relating to the issuance of allegedly false and misleading financial statements that did not identify certain assets of a communications company as impaired. Researched industry reports and analyst reports regarding the company's common stock and debt securities, evaluated an event study conducted by Plaintiff's damages expert, analyzed loss causation in accordance with *Dura*, studied the company's stock price movements before and during the claimed class period, and analyzed the company's stock price movement on the day of the alleged corrective disclosure. Demonstrated Plaintiffs' event study did not appropriately isolate the stock price movement associated solely with the alleged corrective disclosure as confounding events were not removed from the analysis. Performed an alternative damages calculation.
- Evaluated Plaintiffs' damages claim in a shareholder suit relating to the manufacturer of decoding equipment used in the wireless cable industry. Analysis demonstrated Plaintiffs' financial expert did not consider market speculation related to the wireless cable industry or Defendant's higher-than-expected earnings when calculating claimed damages. Additional errors included aggregating into claimed damages stock price increases unrelated to Plaintiffs' allegations and on "no announcement days".
- Evaluated damages claim against a major investment banking/underwriting firm relating to an aborted initial public offering in the temporary staffing industry. Analysis demonstrated methodological and conceptual errors in Plaintiff's econometrically-based claim that the projected post-IPO stock price of the company justified proceeding with the IPO. Also evaluated various components of Plaintiff's damages claim, including the profitability of Plaintiff's business, projected use of funds raised, ownership percentages in the company, and the funds that would have inured to the original owners of the company.
- Evaluated Plaintiffs' damages claim in a shareholder suit involving an international airline carrier. At issue were alleged misrepresentations concerning the airline's ability to reduce its maintenance costs. Demonstrated that the fifty percent decline in the company's stock price over a one-month period was for reasons unrelated to corrective disclosures concerning maintenance costs. Also reconstructed Plaintiffs' trading history, comparing the trading pattern to public announcements concerning the airline, and demonstrating a trading pattern inconsistent with Plaintiffs' theory of reliance on the alleged misrepresentations.

- **General Overview.** Performed an “event study” and/or evaluated claimed damages in various securities litigation cases involving firms in industries such as: airlines, biotechnology, computer software, commodities, banking, real estate development, life insurance, entertainment, communications, energy trading, investment banking, computer printers, health care, medical equipment, hotels, non-traditional automotive insurance, information technology services, workmen’s compensation insurance, computer hardware, camera and photo finishing, intelligent disk drives, market research, trucking, temporary staffing, real estate investment trusts, computer networking, specialty stores, skilled nursing facilities, wireless cable encoding devices, the provision of software computer services to insurance companies, and the provision of professional services to power plants and large scale industrial facilities. Analyses included development of an appropriate peer group and isolation of economy-wide, industry-specific, and company-specific factors impacting the particular firm’s stock price. Company-specific events often included unfavorable news announcements unrelated to the alleged misrepresentations and the ending of potential takeover bids. Also involved was a comparison of the firm’s actual stock price to its “true value” line, the construction of a matrix to track ins-and-outs traders and retention shareholders, and an evaluation of damages under Section 10b-5 and Section 11 claims.

**Securities: Merger/Takeover Related Cases**

- Evaluated claimed damages against a major accounting firm by a transportation company that acquired another transportation company in alleged reliance upon the audited financial statements of the acquired company and its Mexican subsidiary. Plaintiff wrote down its investment in the Mexican subsidiary after the acquisition and based its damages claim on a subsequent decline in its stock price. Analyses included researching competing transportation companies, considerations associated with consummating the merger, analyst reports regarding the merger announcement and the investment write-down announcement, and earnings announcements from comparable companies. Demonstrated Plaintiff’s damages expert did not establish an economic causal link between the alleged wrongful conduct of the Defendant and the claimed economic damages suffered by the Plaintiff and that confounding events were not taken into account appropriately.
- Evaluated Plaintiffs’ damages claim relating to a merger in the banking industry. At issue was whether material adverse changes regarding loan loss reserves had occurred but were not disclosed. Analyzed whether the complained of events were related to conditions and circumstances in the banking industry. Also analyzed the value of alternative offers for the target bank and the pre-merger volatility in the acquiring bank’s stock price.
- Evaluated Plaintiffs’ claimed damages in a breach of contract matter involving the aborted sale of assisted living facilities. Analyzed current trends in the assisted living industry, the financial condition of the target company, the projected financial results of certain to-be-constructed properties, and the target company’s performance relative to projections. Also at issue was whether a material adverse change had occurred in the target company’s operations and business. Lost profit damages, interest-related damages, lost contract fees, and diminution-in-value damages were evaluated.
- Evaluated Plaintiffs’ damages claim in a merger/acquisition-for-stock litigation in the information technology services industry. At issue was whether material adverse changes had occurred in the business condition of the acquiring company prior to the closing of the merger. Damages issues included investigating the nature of the agreed upon warranties and representations contained in the merger agreement, the stock price performance of similarly-situated firms, the length of the alleged damages period, the appropriate length of certain event windows, industry downturns, and the failure to account for the proper mitigation of damages.
- Analyzed a major entertainment company’s stock price movement to determine the takeover premium paid by an acquiring company. Involved was quantifying the impact of takeover rumors prior to the takeover announcement to isolate that portion of the company’s pre-acquisition increase in stock price due to takeover speculation as opposed to general industry trends.

- Served as financial advisor to a Special Litigation Committee (“SLC”) investigating a shareholder approved merger vote in the telecommunications industry. The merger was not consummated, but the vote triggered the acceleration of vesting of options owned by the officers and directors of the target company. Assisted the SLC in analyzing the acceleration of options and various alternative settlement strategies.

**Securities/Commodities: Other Cases**

- Evaluated Plaintiff’s claimed lost enterprise value damages relating to Defendants’ allegedly fraudulent conduct resulting in an artificial acceleration of income, restatement of income, and ultimate bankruptcy of a food distribution company. Analyses included isolating the dollar magnitude of the alleged artificial acceleration of income allegedly created by Defendant’s actions compared to other artificial accelerations of income, an assessment of alternative reasons for Plaintiff’s business decline and ultimate bankruptcy, and evaluation of Plaintiff’s valuation approaches.
- Evaluated the spot price of a base metal in a major commodities-related market manipulation matter. Developed an econometric model to explain the spot price movements of the base metal in an unimpacted period. Used the econometric model to evaluate what the spot price of the base metal would have been in the absence of the alleged manipulation.
- Calculated short-swing trading profits under Section 16(b) of the Securities Exchange Act of 1934 relating to the stock trading activities of an officer of a long distance telecommunications company. Issues analyzed included allocating stock purchases to stock sales of differing numbers of shares and accounting for a 3-for-1 reverse stock split during the period under consideration.
- Evaluated damages in an alleged lack of suitability, lack of supervision, and failure to execute matter in the securities industry. At issue was an investment strategy of selling short the same stock in which a restricted long position was also held. Demonstrated errors in Plaintiff’s damages claim, including the failure to recognize that the financial objectives stated at the time of the development of the investment strategy were in fact met.
- Evaluated the stock price performance of a major distiller over a forty-year period. At issue was whether a portion of the increase in the stock price could be attributed to the efforts of one senior official in the corporation. Company-specific, industry-specific, and economy-wide factors were investigated to determine the reasons for the stock price performance of the distilling company.

**Antitrust: Monopolization/Attempted Monopolization Cases**

- Evaluated claimed antitrust damages asserted by a major airline company against a global distribution system (“GDS”) operator for alleged anticompetitive behavior relating to the provision of booking services to travel agencies. Evaluated Plaintiff’s claimed damages relating to claimed lost profits resulting from the Defendant’s alleged actions to impede the rollout of a competing technology for booking services, contractual restrictions allegedly preventing the airline from offering targeted discounts to price-sensitive customers, allegedly imposing retaliatory booking fee increases, and allegedly biasing fare search results displayed to travel agencies.
- Analyzed Plaintiff’s allegations that Defendant monopolized or attempted to monopolize the market for magnetic brakes for amusement park rides. Evaluated Plaintiff’s assessment of the relevant product market, allegations of market power, and the impact of Defendant’s alleged anti-competitive conduct. Also evaluated claimed damages, including assumptions underlying Plaintiff’s claimed damages model and economic causal connection between the alleged wrongful conduct and claimed losses. Determined that Plaintiff’s expert failed to account for alternative explanations for Plaintiff’s claimed losses. Also demonstrated that Plaintiff’s expert made inappropriate assumptions regarding growth in the claimed relevant product market and whether Plaintiff was damaged in perpetuity.



- Evaluated Plaintiff's economic liability arguments in an antitrust matter relating to a restriction on the registration of cloned American Quarter Horses with the American Quarter Horse Association. Evaluated Plaintiff's expert's theoretical economic model. Demonstrated that there was no economic harm to the market as a result of the at-issue registration restriction. Also identified numerous flaws in Plaintiff's expert's assumptions regarding the supply and demand of high quality American Quarter horses (including excess breeding capacity). Evaluated Plaintiff's damages claim relating to lost sales of cloned American Quarter horses and lost breeding opportunities.
- Evaluated the claimed anticompetitive impact of an alleged conspiracy by a major oil and gas exploration company to monopolize the market for Helicopter Underwater Egress Training ("HUET"). Evaluated the relevant product and geographic markets and the alleged market power of the Defendant. Demonstrated that the Defendant lacked the market power necessary to monopolize the relevant market. Also demonstrated the flaws in Plaintiffs' damages claim, including but not limited to, loss of Plaintiffs' market share for reasons other than the alleged anticompetitive acts (e.g., self-imposed price increases and the loss of a large customer unrelated to the alleged wrongful conduct), failure to take into account the general economic downturn in the U.S. economy during the relevant period, the use of an inappropriate discount rate for quantifying claimed future damages, and the use of an inappropriate assumption relating to future claimed market shares in the absence of the alleged wrongful conduct.
- Evaluated the competitive impact of certain covenants not to compete associated with restricted stock unit awards issued to operations management employees by a major dairy processor. Evaluated the relevant product and geographic markets. Concluded that the covenants not to compete were overly broad and restrictive, outweighing any precompetitive benefits associated with the covenants. Concluded that the covenants did not contain reasonable limitations as to time frame and scope of activity. The covenants effectively restricted competition and raised rivals' costs in the relevant market.
- Evaluated Plaintiff's damages claim associated with the assertion that certain freight forwarders engaged in bid rigging, price fixing, group boycott, and illegal tying arrangements in a traffic channel for transporting military household goods. Demonstrated the flaws in Plaintiff's damages claim, including but not limited to, declines in revenues and profits prior to the alleged conspiracy period, alternative reasons for the Plaintiff's poor performance during the claimed damages period (e.g., the closing of military bases and increased competition in one leg of the channel), and the use of an inappropriate benchmark period for quantifying claimed damages.
- Evaluated the anticompetitive impact of an alleged conspiracy between a distributor and manufacturer whereby the manufacturer refused to ship certain aftermarket automotive exhaust systems and catalytic converters to a competing distributor in Washington and Oregon. Analyses included evaluating the relevant product and geographic markets for aftermarket automotive exhaust products and the damages suffered by the competing distributor. Also evaluated the competing distributor's direct and indirect price discrimination claims (including differential discounts in areas where shipments did occur) and associated claimed damages.
- Analyzed various monopolization allegations in an antitrust counterclaim to a patent infringement matter in the home lighting control systems industry. Analyzed the trade practices of the home lighting control system manufacturers (e.g., sales channels, advertising and promotion, etc.), product and geographical markets, and the potential substitutes to the products at issue. Analyses demonstrated counterclaim Defendant did not possess the ability to monopolize the relevant market for home lighting control products given the channels through which manufacturers made sales and the availability of close substitute products.

- Evaluated Plaintiff's economic liability arguments in an antitrust counterclaim relating to a supply agreement for an ingredient (i.e., larch arabinogalactan) contained in certain patented dietary and nutritional supplements for the promotion and maintenance of good health. Concluded that (a) the sales agreement in question did not constitute an unreasonable restraint on trade, (b) the Defendant did not possess monopoly power, and (c) the Defendant did not engaged in anticompetitive behavior in any properly defined relevant market. Observed that the prices of dietary supplements containing arabinogalactan did not increase since the signing of the sales agreement, the output of dietary supplements containing arabinogalactan did not decline since the signing of the sales agreement, (c) the capacity to produce additional arabinogalactan had been increasing, and (d) Plaintiff did not face a dangerous probability of being harmed by the supply agreement.
- Evaluated claimed antitrust damages asserted by the holder of certain common packet channel ("CPCH") technology patents against a group of handheld mobile device hardware and infrastructure manufacturers for an alleged conspiracy to deprive the patent holder of the value of its patented technology in the third generation partnership project ("3GPP"). The patent holder's technology had been removed as an optional standard. Damages-related analyses included conducting a *Georgia-Pacific* analysis and analyzing the licenses identified by Plaintiff's expert as comparable to the patents at issue. Also determined that Plaintiff's expert had not established an economic causal link between the alleged wrongful conduct and the damages being claimed.
- Evaluated the claimed anticompetitive activities of Defendant hospital's alleged exclusionary arrangements and practices relating to managed care contracts. Evaluated the relevant antitrust markets (product and geographic) for primary care services provided by physicians to managed care-covered patients in Smith County, Texas. Also evaluated the volume of commerce impacted by the claimed exclusionary practices and the impact of these claimed exclusionary practices on competition in the relevant markets. In addition, evaluated the economic damages suffered by the Plaintiff hospital as a result of Defendant's alleged anticompetitive activities.
- Evaluated Plaintiff's claim of antitrust injury in the markets for orthodontic brackets and orthodontic services allegedly due to the advertising guidelines promulgated by a national orthodontic trade association. Analysis demonstrated the advertising guidelines were efficiency enhancing (by lowering consumer search costs), promoted competition, and did not stifle innovation in the relevant markets. Also empirically demonstrated that legitimate advertising through a variety of media was not impacted by the advertising guidelines.
- Evaluated distributors' claims of past lost profits, future lost profits, and reductions in franchise values in a carbonated soft drink antitrust litigation. Defendants allegedly entered into a series of anti-competitive marketing agreements with retailers relative to the promotion and sale of national brand carbonated beverages. Analysis demonstrated Plaintiffs' expert did not take into account the brand composition of Plaintiffs' case sales, underestimated variable costs of distribution, did not adjust for increased competition from private-label brands and other drinks, and failed to account for the lack of advertising and other promotional support from the distributors' parent company.
- Analyzed the impact of a proposed merger of two insurance companies on the long term care and medicare supplement insurance markets in the state of Oklahoma. Evaluated whether the merger would substantially lessen competition or have a tendency to create a monopoly. Evaluated the number of competitors, the reasonable interchangeability of the insurance products offered, insurance company sizes, ease of entry, the impact of regulation, and the ability of consumers to acquire price information in a low-cost manner.
- Analyzed the alleged anticompetitive impact of an exclusive provider arrangement between a hospital and a group of anesthesiologists on the market for anesthesia services. Analyses included determining inpatient services market shares, anesthesia procedures market shares, and recent entry into the hospital service area. Also evaluated the damages claims being alleged by a group of Certified Registered Nurse Anesthetists.

- Conducted an economic analysis in a vertical non-price (advertising) restraint antitrust case dealing with tennis ball throwing machines. Analysis demonstrated the pro-competitive nature of the advertising restraint and that the termination of a non-complying dealer did not substantially reduce competition in the relevant market.
- General Overview. Provided economic analyses and developed damages models and/or critiqued the opposition's damages models in various antitrust cases involving the following industries and/or markets: anesthesia services, printed circuit boards, nutritional supplements, carbonated soft drinks, aftermarket automotive exhaust systems, telecommunications switching equipment, dairy processing, radio control model airplanes, local area networks, entertainment lighting, integrated casino bonusing software, home lighting control systems, medicare supplement/long term care insurance, commercial air conditioning units, disposable dust/mist respirators, immunodiagnostic tests, in-patient hospital services and managed care contracts, PBX systems, military freight forwarding, underground storage tanks, long distance telephone lines, tennis ball throwing machines, check processing readers/sorters, local television advertising, personal watercraft, automobile refinishing paint, Christian music, subsea horizontal extraction wells, orthodontic braces, DRAM microcomputer chips, women's designer clothes, single point of contact telecommunication services, non-prescription reading glasses, and the provision of temporary electrical services to convention centers. Damages models were constructed or critiqued that involved lost sales analyses, incremental cost analyses, and assessments of capacity increases. Also investigated were economic forces external to the company that may have impacted the company's performance. Economic analyses included defining the relevant market, assessing the presence or absence of market power, evaluating whether a business activity was pro-competitive or anti-competitive, and/or evaluating the level of competition in a particular market.

#### **Antitrust: Price Fixing Cases**

- Evaluated Plaintiffs' claimed damages relating to allegations of an industry-wide price fixing conspiracy among the defendant manufacturers of polyether polyol products. At issue were the alleged overcharges relating to sales of TDI, MDI, and polyether polyols during the alleged conspiracy period. Analyses included evaluating Direct Action Plaintiffs' and Class Plaintiffs' econometric pricing models which purported to show alleged overcharges (and the unreasonableness of the claimed overcharges in light of existing profitability levels). Also assessed indicators of competition in the relevant market, including evidence of supplier switching by Plaintiffs, changes in defendants' market shares, and pricing patterns of the at-issue products.
- Evaluated allegations of price-fixing among freight companies relating to bids to ship the household goods of U.S. Armed Forces' members and civilian employees of the U.S. Department of Defense between Germany and the U.S. Analyses included an investigation of the efficiency-enhancing economic benefits provided by the at-issue "landed rate" pricing system. Also evaluated Plaintiff's claimed damages allegedly associated with elevated rates and alternative factors contributing to claimed elevated rates unrelated to claimed conspiracy. Evaluated Plaintiff's econometric model used to purportedly identify claimed overcharges.

#### **Antitrust: Predatory Pricing/Price Discrimination Cases**

- Evaluated differences in prices paid by a plaintiff distributor relative to those paid by a competitor in a price discrimination case involving the distribution of aftermarket exhaust systems. Analyses included an evaluation of the relevant product and geographic market for the at-issue products as well as damages caused by the alleged anticompetitive behavior.
- Evaluated the relevant product and geographic markets and impact on competition in a price discrimination case involving a manufacturer of lighting products and the prices charged to various distributors. Analyses included an investigation of the primary-line market (i.e., competition among manufacturers of lighting products) and the secondary-line market (i.e., competition among distributors). The impact on competition among the distributors of lighting products was investigated (and whether a substantial lessening of competition occurred) given the pricing policies of the manufacturer.

- Reviewed the newly proposed pricing structure of a major magazine distributor to identify the efficiency enhancing attributes of the proposed pricing structure as well as potential discriminatory effects. The proposed pricing structure was a major change from industry practices and included per copy distribution fees and excess return fees.
- Evaluated the economic and damages-related claims made in a major price discrimination case in the pharmaceutical industry. At issue were the additional sales and profits that would have been made by grocery drug stores and retail drug chains in the absence of the alleged price discrimination.
- Conducted various industry and firm-specific analyses in a major wholesale bread predatory pricing case. Bread industry studies included analyses of industry profitability rates, the changing size distribution of firms in the industry, and general trends in wholesale bread prices. Firm-specific studies included analyses of advertising rates, “cripple” (i.e., reject) rates, and “stale” (i.e., return) rates. Also involved was a critique of Plaintiff’s calculation of Defendant’s average variable cost of producing and distributing a loaf of bread.
- Calculated the average cost of servicing a three-yard bin of trash in a solid waste disposal predatory pricing case. Also included was an analysis of number of routes and bin pickups per route.

#### **Antitrust: Tying Cases**

- Evaluated certain economic and damages claims made by a local television station against a television program syndicator. At issue was an alleged unlawful tying arrangement relating to the claimed requirement to license *Becker* in order to license *Judge Judy* and *Judge Joe Brown*. Demonstrated the syndicator did not possess market power in a properly defined market since substitution existed between different genre of television programs, between different syndicators, between different demographic groups, and between different types of syndicated programming (i.e., first-run, off-network, and evergreen programming). Also demonstrated that the pricing patterns of the syndicator were inconsistent with the antitrust claims being made.
- Evaluated an unlawful tying claim brought by a pizza franchisee against its franchisor. Franchisees were required to purchase equipment and supplies from an approved supplier owned by the pizza franchisor. Plaintiff alleged the claimed unlawful tying arrangement was enforced through threats of termination of the franchise agreement. Demonstrated that the pizza franchisor did not possess market power in the consumer market for pizza, in the provision of equipment and supplies to franchisees, or in the market for pizza franchises. Also demonstrated the economic justifications for the requirement (i.e., maintaining quality standards, uniformity of operations, and protection of brand name).
- Critiqued Plaintiff’s damage model in an alleged tying case dealing with automotive CAD/CAM design software (the “tying” good) and mainframe timesharing (the “tied” good). At issue was the total size of the market, the likelihood of entry, and the market share of the Plaintiff in the absence of the alleged tie. Also investigated was the likelihood that design vendors would place the software on their own mainframes rather than timeshare.
- Analyzed the fast food point-of-sale (“POS”) equipment and software industry in an alleged tying case. Demonstrated that a particular POS product was not a relevant market based on the reasonable interchangeability of various brands of fast food POS equipment from the perspective of the consumer (fast food restaurants). Also analyzed the degree of price competition, non-price competition, ease of entry, and relative market shares of fast food POS equipment manufacturers.

#### **Business Interruption/Interference Cases**

- Evaluated Plaintiffs’ claimed damages in a tortious interference, business disparagement, and breach of contract matter dealing with the licensing of testing equipment in the petrochemical piping inspection industry. Demonstrated Plaintiff’s expert committed errors relating to the duration of the contracts in dispute, system license fees, cost of replacement systems, pricing of services, utilization of the test systems, and mitigation of future damages.

- Evaluated Plaintiff's claimed damages from a lost bid to retrofit a refinery in Pakistan. Analyzed Plaintiff's allegations that Defendants made untrue statements to the bid evaluation team concerning Plaintiff's net worth, working capital, and profitability trends. Evaluated Plaintiff's claimed damages using as a benchmark prior engineering projects completed by Plaintiff.
- Calculated damages suffered by the owner of numerous mobile home parks due to the actions of a Defendant in a case involving alleged intentional interference with contractual relations. Involved was an analysis of occupancy rates, a projection of park revenues in the absence of the alleged interference, and an analysis of mobile home park incremental profitability rates.
- Evaluated the damages sustained by a cosmetic company as a result of defective decorated glass containers being furnished for its new therapy products. Evaluated and/or verified product retrieval costs, retrieval program administration costs, customer goodwill replacement gift costs, waste disposal costs, and lost profits on the therapy products. The lost profits analysis included assessing the life cycle sales pattern of new cosmetic products introduced by the company.
- Evaluated damages relating to the introduction of a new popcorn product line in a business interruption dispute. The introduction of the new popcorn product line was aborted due to defective containers. Analyses undertaken included determining the cost of popcorn, the cost of popcorn bags, freight costs, as well as the projected revenues associated with popcorn sales. An assessment was also made of the supermarket outlets and territories in which the popcorn would have been sold.
- Evaluated Plaintiffs' damages claim relating to the installation of an allegedly defective computer software system at an automobile dealership. Plaintiffs contended the software had defects adversely affecting the accounting system and day-to-day operations of the dealership, and submitted an "increased cost" damages claim. Analysis demonstrated Plaintiffs' expert used an inappropriate methodology for measuring damages and submitted cost increases unrelated to the allegedly defective software.
- Other Matters. Provided deposition questions, economic analyses, and a critique of opposing economists' damage models in various business interruption cases resulting from (e.g.) fires, "lockouts", electrical outages, defective products, and/or injuries to key personnel. Businesses evaluated included a workout facility (gym), a pediatric practice, a balloon manufacturing plant, a radiology practice, and a packaging machine manufacturer.

#### **Intellectual Property: Patent Infringement and Patent-Related Cases**

- Evaluated the claimed royalty damages the owners of a patent related to the processing of documents with arbitrary XML elements were asserting against a major software manufacturer for allegedly incorporating the patented technology into its software applications. Based upon an evaluation of the historical financial performance of the Plaintiffs before and after the time of the hypothetical negotiation, market demand for and supply of products similar to the allegedly embodying products, the respective economic contributions of the Parties to the successful commercialization of the accused products, and the *Georgia-Pacific* factors, opined to an alternative royalty damages estimate. Also evaluated the four factors outlined in *eBay Inc. v. Mercexchange L.L.C.* and opined that based upon economic considerations an injunction against the accused products was not warranted.
- Analyzed Plaintiff's lost profits and reasonable royalty damages in two separate patent infringement matters relating to scanning, counting, and counterfeit detection technologies in currency discriminators. In both matters, analyzed the *Panduit* and *Georgia-Pacific* factors, constructed a hypothetical negotiation framework, conducted market and industry research, and compiled an accused product sales database. With respect to Plaintiff's lost profits-related damages, performed incremental profit analyses on lost unit sales and ancillary sales. Evaluated Plaintiff's reasonable royalty-related damages taking into account the economics associated with currency discriminator sales. Evaluated damages under a variety of scenarios based upon potential findings of infringement on patents and claims contained in these patents.

- Evaluated the claimed damages of a foam ear sleeve manufacturer who brought suit against a high-performance professional and personal audio earphone manufacturer alleging patent infringement relating to ear pieces having disposable compressible polymeric foam sleeves. Evaluated Plaintiff claimed royalty damages using market and industry data, a *Georgia-Pacific* factor analysis, and the changing licensing policies of the patent holder over time. Provided an alternative royalty damages analysis. Also analyzed from an economic perspective Defendant's countersuit of alleged patent misuse. Reviewed the patent holder's licensing strategy and certain provisions contained in the licenses into which the patent holder entered. Analyses demonstrated the patent holder's licensing strategy and the provisions contained in its licenses were consistent with the allegation of patent misuse.
- Evaluated Plaintiffs' claimed royalty damages in two separate patent infringement matters relating to video game controllers. The first matter related to six degrees of freedom video controller technology; the second matter related to controller-to-processor voltage technology. In both matters, conducted market and industry research, performed a *Georgia-Pacific* analysis, and evaluated company-specific and controller-related licenses. Also evaluated the key drivers of Defendant's sales including its brand name, innovative products and games, and installed base of gaming console owners. Provided an alternative royalty damages figure.
- Evaluated Plaintiff's lost profits and price erosion damages in a patent infringement matter relating to a method for delivering internet content from a network of content delivery network ("CDN") servers. The suit was brought by a CDN services provider. Evaluated Plaintiff's lost profits-related damages using market share data, adjusting for customer and market segment differences and the likelihood of supplemental sales. Evaluated Plaintiff's price erosion-related damages for selected customers for whom Plaintiff was required to lower rates and/or renegotiate contracts based upon the alleged unlawful competition of the Defendant.
- Analyzed Plaintiff's lost profits and reasonable royalty damages in two separate patent infringement matters relating to status feedback in home lighting control systems. Performed analyses on a large database of invoices relating to sales of the accused products, analyzed end-user surveys, and identified ancillary sales based upon consumer purchasing patterns. Conducted *Panduit* and *Georgia-Pacific* analyses. Calculated Plaintiff's lost sales based upon market share data reflected in industry surveys. Calculated Plaintiff's royalty damages based upon comparable license analyses.
- In a patent infringement matter relating to the air interface protocol of UMTS/WCDMA cellular phone technology, evaluated whether the Plaintiff had offered Defendant a license to the patents-in-suit on fair, reasonable, and non-discriminatory ("FRAND") terms (as required by the European Telecommunications Standards Institute's intellectual property rights policy). Analyzed the economic benefits associated with patents, the economic benefits associated with standard setting organizations, and the economic evidence related to the FRAND principles. Concluded that none of Plaintiff's licensing offers comported with FRAND principles.
- Evaluated Plaintiff's claimed lost profits in a patent infringement suit against a medical device manufacturer producing trocars with floating septum seals. Analyzed market data relating to trocar products, competitors, and market share information. Also analyzed hospital data with respect to product use and conversion between different manufacturers. Demonstrated that Plaintiff had not demonstrated Defendant would have lost sales and Plaintiff would have gained sales in the absence of the alleged infringement. Concluded a claim for lost profits was not warranted.
- Evaluated Plaintiff's claimed royalty damages asserted against a major software manufacturer in a patent infringement matter relating to a pre-fetch concept allowing for the faster loading of operating systems and software applications. Analyzed the financial performance of the patent holder at the time of the hypothetical negotiation, the drivers of demand for the products allegedly embodying the patent-in-suit, the Parties' respective contributions to the successful commercialization of the accused products, the Parties patent licensing approaches, and the relevant *Georgia-Pacific* factors. Opined to an alternative royalty damages estimate.

- Evaluated the joint venture lost profits and reasonable royalty damages in a patent infringement suit brought by a natural gas producer against an energy producer relating to a system for producing natural gas from unconventional reservoirs. Constructed an economic model incorporating complex technical and economic relationships to determine the value of the natural gas likely to be captured from the reservoirs in question. Conducted a *Panduit* factor and a *Georgia-Pacific* factor analysis.
- Evaluated claimed royalty damages in a patent infringement suit against a nutritional supplement manufacturer and distributor for the alleged infringement of two patents relating to hydrosoluble organic salts and certain compositions and methods for enhancing muscle performance and recovery from fatigue in humans. Concluded Plaintiff's expert inappropriately constructed the hypothetical negotiation framework, failed to consider non-infringing alternative compositions, and overstated the claimed reasonable royalty rate in light of licensing evidence.
- Evaluated claimed damages in a patent infringement matter relating to course management system ("CSM") products and services using the Internet to facilitate the interaction of students and instructors. Conducted a *Panduit* and a *Georgia-Pacific* factor analysis. Calculated lost profits and reasonable royalty damages. Also analyzed Plaintiff's business model and revenue types, Defendant's infringing sales based upon customer licensing agreements and contracts, Plaintiff's prior relationship with Defendant's customers, and Plaintiff's incremental profitability.
- Evaluated Plaintiff's royalty damages claim in a suit brought by a patent holding company against a major software manufacturer relating to certain pivot table functionalities in software. Opined to an alternative royalty damages figure based upon an analysis of the *Georgia-Pacific* factors, the demand for the products allegedly embodying the patent-in-suit, the failed licensing attempts by the former owners of the patent-in-suit, and the relative contributions of the Parties to the commercialization of the accused products.
- Evaluated the royalty damages allegedly suffered by a patent holder against a major internet services provider relating to a method for streaming media over the internet (which facilitated the transmission of real-time, high-quality audio information over a communications network to multiple users simultaneously). Demonstrated that the patent holder's economic expert overstated the claimed reasonable royalty rate, overstated the claimed royalty base, and reached conclusions that failed numerous reliability tests. Also demonstrated that the patent holder's economic expert failed to properly recognize the economics associated with internet radio, leading to an incorrect conclusion as to the proper royalty base that would have been agreed upon at the hypothetical negotiation.
- Evaluated claimed damages in a patent infringement matter filed by an operator of a web-based market place against a competing company relating to the submission of automobile purchase requests over the internet. Analyzed market and industry data relating to Plaintiff's line of business, Plaintiff's and Defendant's financial performance, and Plaintiff's and Defendant's respective market shares. Estimated Plaintiff's lost profits damages.
- Evaluated claimed reasonable royalty damages in a patent infringement matter involving 5 defendants relating to congestion management in ATM networks. Analysis included an assessment of sales of ATM network products allegedly containing the patented feature, an analysis of the price of the integrated circuits embodying the accused functionality relative to the price of the entire ATM product, and a review of industry license agreements. Provided alternative reasonable royalty damages based upon the *Georgia-Pacific* factors in addition to a determining the important negotiating points in a hypothetical licensor / licensee negotiation.
- Evaluated claimed reasonable royalty damages in a patent infringement matter relating to implantable rate responsive pacemakers and implantable cardioverter devices ("ICDs"). Analysis included an assessment of alleged infringing sales of pacemakers and ICDs, a review of license agreements, and an analysis of the defendant's cost savings associated with the allegedly infringing technology as compared to its next best alternative. Determined reasonable royalty damages based upon the *Georgia-Pacific* factors, and the important negotiating points in a hypothetical licensor / licensee negotiation.

- Evaluated Plaintiff's lost profits and reasonable royalty damages in a patent infringement matter relating to DVR technology. Analysis included an assessment of Plaintiff's sales of DVR products and monthly subscriptions in the absence of the alleged infringement and an incremental revenue and cost analysis. Determined reasonable royalty damages based upon the *Georgia-Pacific* factors and a determination of important negotiating points in a hypothetical licensor / licensee negotiation.
- Evaluated lost profit damages in a patent infringement matter involving blasting hole drilling rigs. At issue were the lost profits stemming from lost rig sales and lost replacement part sales. With respect to lost rig sales, evaluated the model types, geographic sales coverage, and model prices of the entities involved. Also evaluated the capacity of the Plaintiff to make the additional claimed sales. With respect to lost replacement part damages, evaluated the likely stream of replacement part sales over the life of the drilling rig. Royalty calculations were performed on sales not subject to lost profit calculations.

#### **Intellectual Property: Theft of Trade Secrets Cases**

- Evaluated Plaintiff's claimed damages in a trade secret theft case in the golf equipment industry. Plaintiff claimed disgorgement of global profits and other unjust enrichment due to the alleged misappropriation of certain golf club design trade secrets through the Defendant's sale of the company and assets to a large sporting goods company. Analysis included calculating net profits from the sale of the accused golf clubs and evaluating claimed reasonable royalty damages.
- Evaluated Defendant's assessment of the incremental costs associated with a contract to provide integrated bonusing software to a casino. The contract allegedly was won through the use of misappropriated trade secrets from the Plaintiff. At issue was the allocation of development and common costs to the contract in dispute. Also evaluated Plaintiff's antitrust counterclaim to Defendant's patent infringement suit relating to the technology used as a foundation for the integrated bonusing software.
- Evaluated damages in a theft of trade secrets matter dealing with next generation switching equipment in the telecommunications industry. At issue was the alleged theft of trade secrets when the Defendant firm hired nine employees of the Plaintiff firm. Analyzed Plaintiff's claimed inability to maintain its projected market share, the alleged accelerated entry of the Defendant firm into the next generation switching equipment market, disgorgement measures of damages, and reasonable royalty measures of damages.
- Evaluated damages suffered by a Plaintiff in the business of installing systems delivering ultra-high purity air, water, gas and chemicals to companies manufacturing integrated circuits. Plaintiff alleged a former managerial employee breached his fiduciary duty by engaging in wrongful use of trade secrets, wrongful solicitation of employees and customers, and unfair competition with the original employer. Analysis involved estimating the lost sales and lost profits to the original employer by estimating the number of bid opportunities missed because of the alleged actions of the former employee, adjusting for changing industry conditions.
- Critiqued Plaintiff's damage model in a trade secrets case in the printed circuit board industry. Plaintiff was claiming lost profits due to the misappropriation of trade secrets through Defendant's hiring of four key management personnel from the Plaintiff's company. Issues evaluated included the appropriateness of the "proxy/yardstick" approach undertaken to estimate lost revenues, and the incremental profit rates used to translate lost revenues into lost profits.

#### **Intellectual Property: Copyright/Trademark/Trade Dress Infringement/False Advertising Cases**

- Evaluated Plaintiff's claimed damages relating to the alleged failure of a TV station to deliver contracted gross rating points over a 6-year period. Plaintiff was claiming lost sales and lost profits based upon a regression analysis used to isolate a relationship between sales revenues and advertising. Demonstrated Plaintiff's regression omitted important explanatory variables (e.g., consumer income, promotions, discounts, competitors' prices, and other print and TV advertising conducted by the Plaintiff). Also demonstrated a failure to account for diminishing returns to advertising. Each of these errors served to increase the magnitude of the claimed relationship between sales revenues and advertising.



- Evaluated Plaintiff's unjust enrichment damages claims in a copyright infringement matter brought against a hospital and a construction company relating to a medical building design. Compared budgeted construction costs to actual construction costs and analyzed the revenues received by the construction company associated with the copyrighted attributes of the building design as opposed to unrelated construction costs. Also analyzed the likely demand-related reasons for revenues that would accrue to the hospital unrelated to the design of the hospital.
- Evaluated claimed damages in a false advertising matter involving tooth-whitening products between two large consumer product companies. At issue were allegedly false, misleading, and disparaging statements about Plaintiff's tooth-whitening products in comparative advertisements shown on television. Plaintiff sought to recover lost profits damages associated with reduced sales resulting from the alleged false advertising. Analyses included an evaluation and critique of Plaintiff's expert's claimed damages model including analysis of A.C. Nielsen scanner data and CMR media data. Analysis demonstrated that Plaintiff's expert did not measure properly the impact of the alleged misleading content, failed to account for alternative reasons for Plaintiff's sales declines, and implemented an incorrectly specified econometric model.
- Provided economic analysis relating to claims of unfair competition and misleading advertising in the pizza industry. Using economic indicia such as dollar sales revenue, trends in market share, growth in number of stores opened, same-store sales data, and store closure rates, evaluated whether the commercial success of a particular pizza company was due to customer acceptance of its pizza product or allegedly deceptive advertising. Also investigated the buying patterns of pizza consumers with respect to cross-chain patronage.
- Critiqued Plaintiff's damage claim in a matter involving alleged tortious interference with business relations and allegations of trade dress infringement. At issue was the projected sales and profitability of Plaintiff's tape dispensing machines during a period of alleged tortious interference by the Defendant and Plaintiff's simultaneous alleged trade dress infringement.
- Analyzed the lost profits of a Plaintiff in a trademark infringement case involving a law enforcement product sold through a mail-order catalog. Also analyzed the profits of the alleged infringer and the cost of remedial advertising.
- Assessed damages resulting from the alleged infringement of copyrighted training manuals. Analysis included identifying the corporate clients of the Plaintiff and Defendant firms and the reasons for customer switching unrelated to the use of the proprietary training manuals.

#### **Intellectual Property: Commercial Success Cases**

- Evaluated indicators of commercial success relating to a surgical hernia mesh fixation device employing a patented helical tacker design. Demonstrated that the patented device had achieved significant and sustained sales and sales growth. Also demonstrated that the sales of the patented device had grown faster than the sales of other hernia mesh fixation devices and achieved a majority share of sales when compared to staplers and other hernia mesh fixation products.
- Submitted a rebuttal declaration to the U.S. Patent and Trademark Office relating to the claimed commercial success of intrusion prevention system ("IPS") products asserted to practice a patent undergoing an *Inter Partes* reexamination. Opined that an economic nexus had not been established between the claimed teachings of the patent and the commercial success of stand-alone IPS products. The patent holder had not demonstrated that the claimed teachings of the patent were commercially successful separate and apart from (a) features not claimed by the patent, (b) economic factors extraneous to the claimed invention, or (c) features covered by other patents present in the IPS products.

- Evaluated Plaintiff's analysis regarding the claimed nexus between a patented technology and the commercial success of the accused devices in this patent infringement matter relating to text messaging using a limited keypad such as those found on cell phones. Analyses demonstrated Plaintiff's failed to consider many factors that lead to the commercial success of the accused devices unrelated to the patent in dispute.

**Breach of Contract / Breach of Fiduciary Duty Cases**

- Evaluated Counter-Plaintiff's claimed damages arising from Counter-Defendant's failure to honor a most-favored licensee provision in a licensing agreement relating to a semiconductor patent portfolio. Opined as to the economic interpretation of certain licensing terms and the differences and similarities between lump sum, per unit, and percentage of revenue royalty payments. Compared the licensing terms between the Counter-Defendant and another party with the licensing terms between Counter-Defendant and Counter-Plaintiff.
- Evaluated Plaintiffs' claimed damages arising from an alleged breach of contract related to the sale of a community club house and other recreational facilities in an age-restricted residential neighborhood. Plaintiffs' claimed that since they were not given the opportunity to exercise their right-of-first refusal to purchase the contested real estate assets, they lost the value of the equity associated with the real estate assets and they were required to make excessive operating expense payments. Determined that Plaintiffs' expert failed to properly consider the economic factors driving the value of the real estate assets in question.
- Evaluated Plaintiff's breach of contract damages claim relating to the use of a national brand name and other support for the development of a time share resort. Concluded Plaintiff had not demonstrated an economic causal link between Plaintiff's allegations and the quantum of damages being claimed. Adjusted Plaintiff's claimed damages for various conceptual and computational errors, including alternative actions that might have been undertaken by the Plaintiff in the absence of the alleged wrongful conduct.
- Evaluated claimed damages in an alleged breach of fiduciary duty matter between a franchisee and a major fast food franchisor relating to the development and managing of fast-food franchises. Plaintiff claimed economic harm due to franchisor's refusal to grant certain additional franchisees to Plaintiff that Plaintiff claimed would otherwise be in competition with the Plaintiff's existing franchises. Concluded Plaintiff's impact analysis failed to take into account many factors affecting the performance of the Plaintiff's existing franchises that were unrelated to the alleged wrongful conduct.
- Evaluated claimed breach of contract and misrepresentation damages in a suit brought by a global information technology company against a global professional services company relating to a joint venture agreement under which a human resources outsourcing company was formed. Analysis included conducting a client-by-client analysis regarding the specific wrongful conduct associated with each client of the joint venture and estimated the associated economic damages. Based upon certain parameters contained in the contract, also calculated the purchase price overpayment had certain performance issues come to light prior to the closing of the joint venture agreement.
- Evaluated a developer's/franchisee's damages claim against a major sandwich franchisor for the alleged breach of a five-state area development agreement. Reviewed the area development agreement, analyzed the revenues, costs, and profitability associated with franchised outlets, and estimated the Plaintiff's lost franchise fees and lost royalty income based upon various alternative scenarios discussed by the Parties.
- Evaluated the claimed damages of a calling card distribution company due to Defendant's alleged breach of a contract relating to the servicing of the calling cards. Conducted market research on the calling card industry, analyzed alternative reasons for the alleged decline in calling card sales, and evaluated Plaintiff's damages expert's report.

- Evaluated Plaintiff's damages claim concerning the alleged failure of a call center to properly process inquiries relating to the newspaper and television marketing of a collectible doll in the likeness of a recently deceased public figure. Analyzed advertising expenditures, response rates across cities, major news announcements related to the marketing of such merchandise, and contributing problems caused by Plaintiff's actions. Estimated damages by comparing sales in an unimpacted period with sales in the alleged impacted period.
- Evaluated Plaintiffs' damages claim relating to the underwriting and loan servicing of subprime automobile loans. Plaintiffs' contended the servicing company did not properly administer the portfolio of subprime automobile loans thereby causing excessive loan losses. Analysis demonstrated that Plaintiffs' financial experts failed to take into account alternative reasons for Plaintiffs' performance. Analysis of Plaintiffs' loan volume, interest income, loan loss rate, and deteriorating industry conditions also demonstrated that Plaintiffs' business plan did not provide a reasonable basis from which to calculate claimed damages.
- Evaluated Plaintiff's claim of lost profits relating to the collection of ballots for a Mexican telecommunication company in Mexico's Equal Access program. Analyzed a database of telephone customers, including statistics such as the length of service, average monthly consumption patterns, current billing status, and differences between residential and commercial customers. Developed an alternative claimed damages model taking into account consumption patterns and the turnover rate of customers, among other factors.
- Evaluated Plaintiffs' claim of lost success fees, lost closing fees, and underpayment of value relating to Defendant's acquisition of an oncology laboratory and the alleged failure to consummate additional acquisitions. Analysis demonstrated Plaintiffs' projections regarding the profitability of the proposed acquisitions were not reasonable given the historical financial performance of the targets. Also demonstrated Plaintiffs were not underpaid for the assets of the acquired laboratory since no investor or buyer was willing to provide funds to Plaintiffs pre-acquisition and since Plaintiffs in their valuation approach inappropriately assigned all post-acquisition synergies and gains to the Plaintiffs.
- Evaluated Plaintiff's damage claim arising from an alleged misappropriated opportunity to develop a computer superstore franchise in Mexico based on the equivalent U. S. concept. Demonstrated Plaintiffs overstated per store revenue, understated store-level costs, and used inappropriate financial and strategic assumptions regarding the number of stores opened, the amount of capital required, outside investor contribution, equity shares, and strategic acquisitions. Plaintiffs also conducted a valuation based on companies bearing little or no resemblance to a computer superstore.
- Evaluated Plaintiff's claim of lost profits arising from an alleged breach of contract involving two tubular inspection equipment manufacturing companies. Analyses demonstrated that Plaintiff's expert overstated the projected utilization rate of the company's equipment and associated revenue and understated the projected incremental costs that would have been incurred by Plaintiff. Analyses demonstrated market demand would not support the equipment utilization rate projected by Plaintiff's expert.
- Evaluated Plaintiff's claim of damages in a breach of contract matter in the magazine publishing and distribution industry. Plaintiff claimed Defendants breached a distribution agreement by suspending distribution pending the resolution of a trademark infringement dispute. Plaintiff abandoned the magazine, claiming lost profits and the estimated lost value of the magazine had it been sold after its fourth year of publication. Analysis demonstrated Plaintiff's expert overstated subscription-based revenues, distorted the cost/revenue structure that would have existed for the magazine, and overstated the likelihood of success by ignoring the failure of similar genre magazines.

- Evaluated the damages sustained by the public safety division of an information technology services firm due to the early termination a ten-year services agreement to provide enhanced 9-1-1 services to a governmental agency. One-time up-front implementation costs in setting up the 9-1-1 system and ongoing operational costs were compiled in constructing a cost reimbursement damage claim. Also evaluated the reasonableness of an early termination charge schedule designed to represent the one-time buyout total if the governmental entity opted to terminate the contract before the ten-year term expired.
- Evaluated the damage claim of a bank arising from an allegedly defective conversion of the bank's data processing system. Areas investigated included the softening macroeconomic environment surrounding the bank during the relevant time period, the changing financial services market, internal bank ratios, and technical flaws contained in Plaintiff's damage calculations.
- Estimated lost sales and lost royalty payments to a "thick" potato chip producer due to a breach of contract. Involved was the construction of a damage model, analyses of the market for potato chips and per capita potato chip consumption, and projecting the rate of introduction of a new potato chip into regional markets.
- Calculated damages and provided other economic analyses in a "lack of best efforts" breach of contract case in the carbonated soft drink industry. At issue was the impact on sales due to the "lack of best efforts" vs. the impact on sales from contemporaneous new entrants into the market.
- Calculated damages in a breach of contract matter involving an association of nephrologists and a management company operating 12 kidney dialysis clinics. Areas of investigation included the "profitability available for distribution" from the clinics, the projected rate of growth in patients, the rate of introduction of new clinics, and the costs associated with running the clinics. A damage model was developed which projected the profits that would have been distributed to the management company over the life of the contract in the absence of the breach.
- Evaluated claimed damages against a hospital for allegedly breaching a contract allowing hyperbaric oxygen services on hospital premises. Investigations included assessing the local market for hyperbaric services, evaluating Plaintiff's business growth potential given the physical space constraints at the hospital, and demonstrating Plaintiff had fully mitigated claimed future damages through the establishment of an alter ego firm at a nearby local hospital.

### **Class Certification Engagements**

- Evaluated Plaintiff's position that the claimed economic injury suffered by putative Class members could be quantified on a Class-wide basis in a class action matter relating to anti-aging skin care products marketed as preventing and repairing signs of aging "in just one week." Demonstrated that the approaches proposed by the opposing expert to calculate Class-wide damages would not yield reliable or relevant estimates of the alleged harm suffered by individual Class members. Arguments presented included that the large number of repeat buyers, the wide variations in the retail prices associated with the accused products, and the wide variations in the retail price differences relative to other anti-aging products would prevent a reliable calculation of putative Class members' damages on a Class-wide basis.
- Evaluated Plaintiffs' position that the claimed economic injury allegedly suffered by putative Class members could be quantified on a Class-wide basis in a matter brought by an institutional investor against a bank associated with the bank's securities lending program. Demonstrated that a class-wide approach would obfuscate important differences among putative Class members' individual investment expectations and tolerances. Differences requiring individualized inquiry included the variability in maturity guidelines, credit-quality guidelines, prohibited investments, and diversification requirements.

- Evaluated Plaintiffs’ position that the claimed economic injury allegedly suffered by putative Class members could be quantified on a Class-wide basis in a matter where a beverages company marketed certain beverages as containing beneficial vitamins and allegedly failed to disclose the sugar content of the beverages. Evaluated the wide variations in the beverages’ retail prices across distribution outlets, across geographic areas, and across the time periods considered. A comparison of the average retail prices of the at-issue beverages relative to identified benchmark products did not support the allegation that the at-issue beverages possessed a systematic price premium as a result of the company’s allegedly misleading marketing campaign.
- Evaluated Plaintiffs’ position that the claimed economic injury allegedly suffered by putative Class members could be quantified on a class-wide basis in a matter where an automobile company allegedly did not inform purchasers that actual vehicle miles per gallon performance could vary from the 40 miles per gallon EPA estimated fuel efficiency. Demonstrated that individualized inquiry would be required to ascertain consumers’ valuation of vehicle characteristics (including their expected fuel economy) when purchasing an accused vehicle, actual prices paid, driving patterns, driving conditions, and whether putative Class members’ expectations were influenced by the company’s alleged wrongful conduct. Evaluated Plaintiffs’ class certification expert’s opinion that alleged damages could be evaluated on a class-wide basis using a hedonic regression methodology.
- Evaluated Plaintiffs’ position that the claimed economic injury allegedly suffered by putative Class members could be quantified on a class-wide basis in a matter relating to the issuance of a special assessment fee by a timeshare vacation club. Demonstrated that potential damages-related conflicts were likely to arise among putative Class members (including among the Named Plaintiffs) – making Class-wide proof an unreliable measure of economic injury for each putative Class member. Also demonstrated that evaluating claimed damages on a Class-wide basis would result in potentially awarding damages to putative Class members who suffered no injury.
- Evaluated Plaintiffs’ position that the economic injury allegedly suffered by putative class members could be quantified on a class-wide basis in a matter where a beverages company marketed certain beverages as “All Natural” when they contained high fructose corn syrup (“HFCS”). Demonstrated that wide variations existed in the beverages’ retail prices across distribution outlets, across geographic areas, and across the time periods considered. Also demonstrated that wide variations existed in the beverages’ retail prices because of promotional discounts and coupons and because the company did not sell directly to consumers. Consequently, whether consumers paid a price premium because of the “All Natural” labeling (and how much, if any) could not be determined by proof common to the proposed class. A comparison of the average retail prices of the “All Natural” beverages in dispute to identified benchmark products did not support the allegation that the “All Natural” beverages possessed a systematic price premium as a result of the “All Natural” labeling.
- Evaluated the commonality of purchasing circumstances of proposed Class members in a class action matter against a national quick service restaurant (“QSR”) chain. Plaintiffs alleged the QSR misrepresented the trans fat levels contained in the QSR’s french fries. Plaintiffs also alleged the proposed Class paid a price premium for certain food products based upon the alleged misrepresentations. After reviewing survey data, marketing materials, and pricing data, concluded that individual inquiries were required to establish different customer’s awareness of the alleged misrepresentations, different customer’s reliance upon the alleged misrepresentations in their purchasing decisions, and other important economic factors impacting each customer’s purchase decision.

- Evaluated Plaintiffs' claim that Class members' alleged damages could be "mechanically calculated" in a class action matter against a payphone company's auditor. The payphone company had filed bankruptcy and the Class members alleged the auditor misrepresented the company's financial statements, upon which the Class members allegedly relied. Conducted economic and market research and identified factors that caused a general decline in the payphone industry which contributed to the bankruptcy of the company. Analyzed the claimholders' database and identified issues relating to the database that precluded Plaintiffs' expert from mechanically calculating the damages allegedly suffered by class members.

### **Lender Liability Cases**

- Evaluated Plaintiff's allegations that it was capital constrained and consequently economically damaged as a result of its loans being placed into the special assets department of its lender. Analyzed the Plaintiff's unused cash, credit, and other available funds. Also analyzed Plaintiff's successful access to the capital markets, acquisition spending, R & D spending, sales performance, and profitability relative to peer companies.
- Analyzed Plaintiffs' damage claim in a lender liability suit relating to Defendant's alleged failure to fund certain residential housing development and construction loans. Evaluated Plaintiffs' changing five-year business plan projections, including revenue growth, geographic expansion, market share, salesmen coverage, cost structure, and profitability assumptions. Also evaluated Plaintiffs' strategy for "exiting" the business and the alleged value of their ownership at that time.
- Evaluated damages in a lender liability case involving the bankruptcy of a gear manufacturing company. The bankruptcy was allegedly due to the failure of a bank to fully fund a previously committed loan. Investigations included researching alternative market-related reasons for the decline in the gear manufacturer's business as well as evidence of internal mismanagement on the part of the company's owners.
- Other Matters. Evaluated damages, causation issues, and liability issues in various lender liability cases involving the calling in of loans, the failure to fund previously committed loans, the failure to release collateral, and the misappropriation of loan payments. Cases involved firms in the wire and cable, drywall/construction, PVC piping, and auto dealership industries, among others.

### **Professional Negligence (Non-Securities / Non-Merger) Cases**

- In an alleged professional negligence matter, a lender to distressed companies sought \$40 million in damages from an auditor in connection with a \$130 million credit facility extended to an HDTV company. The lender failed to collect when the borrower filed for bankruptcy. The auditor was alleged to have made negligent misrepresentations associated with the borrower's financial statements; the lender asserted it had relied upon the borrower's financial statements when entering into the credit facility. Performed economic causation and damages-related analyses. Identified the known or knowable risks associated with providing a credit facility to the borrower, including certain accounts receivable collection risks and market softness risks. Opined that it was the materialization of these known and knowable risks that caused the lender's claimed losses.
- Evaluated claimed damages against a major law firm for alleged professional negligence when filing a patent for the treatment of septic shock. Researched (among other things) the FDA approval process, associated statistics regarding the product category allegedly covered by Plaintiff's patent, and various industry projections regarding the category growth. Performed a discounted cash flow analysis, an incremental profitability analysis, a licensing analysis, and provided an alternative calculation of claimed damages.

- Evaluated Plaintiffs' claimed damages relating to an alleged failure by a law firm to properly file certain patent applications relating to a video processor recorder. Plaintiffs' business opportunities and licensing fees in the United States and Europe were allegedly lost due to the ensuing delays. Analyzed Plaintiffs' causation linkages to claimed damages, length of the claimed damages period, forecasted units sold, forecasted market share, forecasted costs of production, and claimed licensing rate.
- Evaluated claims by a Department of Insurance appointed liquidator that alleged the auditor of a bankrupt insurance company breached its fiduciary duty, resulting in a \$100 million deficit on the insurance company's books. Conducted various analyses of a claims register database, including a comparison of indemnity payments and reserves per claim before and after the appointed liquidator took control of the liquidation process. Analyses demonstrated both the indemnity payments and reserves per claim were higher after the appointed liquidator took over the liquidation process, implying the liquidator over-paid and over-reserved claims.

### **Entertainment/Sports-Related Engagements**

- Evaluated the claimed damages of a movie production company against a major home video rental company. At issue was the claim that the refusal of the home video rental company to commit to carry a particular movie in its stores caused the movie production company to suffer lost profits when its distributor then refused to release the movie theatrically. Demonstrated that Plaintiff's methodology for estimating lost box office revenues was inappropriate and failed to account for important determinants of movie attendance.
- Analyzed Plaintiffs' lost profits and reasonable royalty damages in a patent infringement matter relating to offset head lacrosse sticks. Analysis included an assessment of Plaintiffs' sales in the absence of the infringement, the distribution of the lost sales to the models that would have been sold in the absence of the infringement, and an incremental revenue and cost analysis. Also analyzed Plaintiffs' competitors, pricing patterns, productive capacity, and geographic coverage in support of the lost profits claim. Reasonable royalty damages were assessed using the *Georgia-Pacific* factors and a determination of important negotiating points in a hypothetical licensor / licensee negotiation.
- Estimated the diminished box office revenues suffered by a theatrical release due to the breach of a quick service restaurant promotional tie-in arrangement with a major pizza chain. Developed a database of recently released films and related film characteristics such as genre, rating, critics review, box office revenues, media spending, production budget, season of release, and talent. A regression model was then developed to quantify the relationship between media spending and box office revenue. An industry review of quick service restaurant promotional tie-in arrangements was also conducted.
- Evaluated Plaintiffs' claimed damages in a breach of contract matter involving the sale of certain minority interests in a National Basketball Association team. At issue were Plaintiffs' tag-along rights whereby limited partnership interests could be included in any sale by the general partner on the same terms and conditions. Damages were calculated as the difference between the formulaic value of the minority interests versus the market value of the minority interests when sold separately. Discounts for lack of control and reduced marketability were analyzed.
- Evaluated Plaintiff's damages claim relating to a NASCAR racing team sponsorship agreement. Plaintiff contended the Internet service provider sponsor interfered with the racing team's ability to sell advertising banners that were part of the sponsorship agreement. Analyses included assessing the appropriate methodology for valuing a NASCAR race team and assessing comparable transactions. Also analyzed the financial performance of the race team, the economic terms of the sponsorship agreement, and the risks associated with a barter arrangement.
- Estimated damages arising from a breach of contract claim between an electronic retailer and a local television station. At issue was the lost profits to the electronic retailer when the local television station discontinued broadcasting the electronic retailer's programming.

- Analyzed the market and evaluated damages on behalf of a television station denied access to a cable system. At issue was whether the cable operator was attempting to monopolize the market for local television advertising. Analysis included an estimation of the advertising revenues that would have been received by the local television station had it been allocated a channel on the cable system.
- Estimated damages arising from a breach of contract claim between a video-cassette manufacture/distributor and a theatrical motion picture producer/distributor. At issue was whether the motion picture distributor manipulated the theatrical release of certain titles distorting the films the video-cassette producer could distribute under the terms of the agreement.

### **Tax-Related Engagements**

- Participated in an analysis of the impact on tax revenues to the State of Texas from a change in tax laws relating to pension fund managers. Helped demonstrate that changing the apportionment rule from “location in which the investment services were performed” to “residence of the investment beneficiaries” would not result in a negative fiscal impact.
- Served as consulting partner on an engagement estimating qualifying research and expenditure costs in response to certain expenses disallowed by the IRS. Analysis included developing a methodology to estimate qualifying hours and qualifying costs for groupings of employees with missing data.
- Analyzed whether the salaries paid to the owners/managers of a heavy and highway construction company were reasonable in a matter before the IRS. Areas investigated included the cyclical nature of the construction industry, the resulting cyclical nature of compensation paid to construction industry executives, and the 50<sup>th</sup> and 75<sup>th</sup> percentile salaries paid to various types of executives in the construction industry.
- Participated in an analysis of the tax benefit versus detriment to a Plaintiff as a result of ownership in certain partnership interests over the 1982-1998 time period. Also involved was an analysis of cumulative suspended tax losses, partnership income available for distribution, and changing tax rates over time.
- Quantified the net out-of-pocket cash position of investors who purchased limited partnership interests in nine real estate partnerships in an alleged non-disclosure matter. Also quantified the impact caused by changes in the Federal income tax laws. Supporting analyses included comparing the actual and projected performance of the partnerships taking into account restructurings, refinancings, and dissolutions.

### **Personal Injury and Wrongful Death Cases**

- General Overview (Personal Injury). Assessed damages and lost earnings in various personal injury cases involving movie production workers, management consultants, financial consultants, nurses, medical doctors, chiropractors, secretaries, truck drivers, airline stewardesses, mechanics, engineers, maintenance personnel, carpenters, masonry workers, crane operators, machine operators, actresses, military aircraft production workers, tankermen, teachers, film editors, portfolio managers, hair stylists, automobile assemblers, landscape architects, sole proprietors, and real estate agents (among others). In each case, issues investigated included an assessment of the projected undamaged income, damaged income, expected work life of the individual, and appropriate discount rate to use. Assistance to the attorney included the preparation of deposition questions, economic analyses, and a critique of the opposing economist’s damage model.
- General Overview (Wrongful Death). Developed numerous damage models in wrongful death cases. Issues investigated included the projection of lost earnings, the projected personal consumption expenditures of the decedent, and projected lost pension benefits. Professions of the decedents included various types of entrepreneurs (e.g., boat store owners, etc.), white-collar workers (e.g. attorneys, architects, etc.), and blue-collar workers (e.g., demolition contractors, grocery store clerks, etc.). Ages of the decedents ranged from adults to teenagers to children.



- Evaluated claims of damages submitted by the family members of 88 decedents from an airplane crash. Family members were seeking damages in state and federal courts against the airline and certain parts manufacturers. Most of the decedents resided and worked in Asian countries. Researched various data sources for information regarding social security benefits, interest rates, and the relevant economic statistics for workers in these countries. Evaluated four Plaintiff damages experts' reports and testimonies, summarized our evaluation of these damage models, and calculated alternative damages figures. Analysis included evaluating lost earnings, lost business value, lost non-salary benefits, lost retirement funds, and lost savings.

### **Wrongful Termination Cases**

- Evaluated Plaintiff's alleged lost earnings and lost future earnings capacity in a matter against a major shipping company in which the Plaintiff claimed to have resigned his legal counsel position due to the Defendant's alleged criminal conduct and its refusal to conduct an independent investigation. Analyzed various employee benefits offered by the Defendant including but not limited to the salaries of similarly-situated employees, long term incentive plans, 401(k) plan, paid vacation, stock options, and retirement benefits. Also analyzed promotion criteria, similar benefits received by the Plaintiff at alternative employment, and the lower cost of living associated with the geographical location of the alternative employment.
- Evaluated Plaintiff's claimed economic harm in a wrongful termination / negligent misrepresentation matter. Plaintiff claimed that pre-termination certain representations by the company dissuaded him from resigning and selling his stock holdings, thereby causing economic harm from the subsequent decline in the company's stock price. Analysis included quantifying the salary, bonuses, pension benefits, and severance pay the Plaintiff received during the additional time spent with the company as compared to the stock price declines that formed the basis of Plaintiff's damages claim.
- Evaluated Plaintiff's loss of earnings claim in an alleged wrongful termination matter in the long distance telecommunications industry. Plaintiff was an independent representative with a "downline" working for a company using a multilevel marketing sales approach. Analyzed the Plaintiff's historical earnings, business expenses, and the earnings of Plaintiff's peers to evaluate Plaintiff's net earnings in the absence of the alleged wrongful termination.
- Evaluated Plaintiff's damage claim in a wrongful termination matter involving an insurance broker/branch manager. Evaluated Plaintiff's alleged damage period, earnings in the absence of the termination, fringe benefits, business expenses, and offsetting earnings. The sales patterns of the relevant insurance products at the state and national level were incorporated into the analysis. Also analyzed trends within the company with respect to branch manager positions.
- Evaluated the damages suffered by the manager of an over-the-counter trading department in an alleged wrongful termination action. Since the compensation of the manager was based on the profitability of the department, one issue investigated was the reason for the decline in the post-termination performance of the department.
- Other Matters. Assessed damages and lost earnings in other wrongful termination cases involving internal medicine specialists, neurosurgeons, anesthesiologists, entertainment company executives, brokers/traders, secretaries, accountants, attorneys, quality assurance managers, company presidents, real estate brokers, property managers, insurance brokers/managers, and military aircraft production workers. Areas investigated include many of the same items as described in personal injury cases.

### **Other Economic Engagements**

- Conducted an economic analysis of historical and projected lost revenues due to SEC-related independence constraints for an information technology consulting entity. The analysis demonstrated that SEC rules requiring SEC registrants to disclose the amount of non-audit fees paid to its auditor, as well as constraints on the consulting entity's ability to perform outsourcing or managed application services for audit clients significantly impacted business growth relative to the market and its closest competitors. The analysis also demonstrated that certain revenue projections assuming independence relief were appropriate in light of market conditions and the independence constraints.
- Conducted an economic cost/benefit analysis of the SEC's proposed rule changes relating to non-audit services performed by auditing firms for audit clients. Analyses demonstrated that public accounting firms have an incentive to protect their brand name capital and that purchasers of non-audit services have an incentive to maintain investor confidence in the reliability of the audited financial statements.
- Performed an economic impact analysis on behalf of a major pipeline corporation seeking to gain regulatory approval for the construction of an oil pipeline in the Pacific Northwest. Evaluated the net economic impact of the project on employment, income, and consumer expenditures in the region. New employment opportunities resulting from construction and maintenance of the pipeline were compared to the potential lost jobs associated with the alternative means of transporting the petroleum.
- Participated in a major antitrust risk assessment exercise for a large industrial corporation. Work performed included evaluating the major litigation risks in the areas of monopolization, price discrimination, price fixing, illegal tying, and exclusive dealing. A detailed questionnaire designed to collect relevant economic data and identify potential risks was constructed and sent to the corporation's division managers.
- Evaluated revenue projections relating to an electronic toll collection system. The system was designed to recover lost toll revenue and other administrative fees from toll violators traveling along a consortium of tollways in New York, New Jersey, and Delaware. Analyzed four critical revenue drivers in the projections (number of transactions, violation rates, citation rates, and collections rates) and the potential variability of certain components of the projections by compiling comparative data through interviews with industry participants. Analysis was used in assisting lenders evaluating the economic viability of the project.
- In a bankruptcy matter, analyzed the expected rate of return that could be earned on a portfolio of assets. Included in the analysis was determining the investment portfolio of a prudent pension fund manager and the historical risk premiums earned on each category of assets in the portfolio. The assets were being held to meet future pension plan liabilities.
- Conducted an analysis of low-cost housing in Los Angeles County (CA) to determine whether sufficient housing was available to house the County's general relief recipient population. In separate engagements, conducted similar studies for San Bernardino County (CA) and Alameda County (CA). The Alameda County study also analyzed earned income incentives and food stamp allotments as a source of income in addition to the County's monthly general relief assistance. An affordable housing analysis was also conducted for the State of New Jersey's Department of Health relating to the state's child exclusion policy and AFDC recipients.
- Conducted an economic analysis on behalf of the California Public Utilities Commission. Tasks included incorporating elasticities into alternative rate design and pricing models, analyzing subsidies accruing to various residential consumer groups under alternative rate designs, and estimating the relative welfare loss associated with each alternative rate design.

### **Fraud/Criminal-Related Engagements**

- Evaluated claimed damages in a suit brought by Plaintiff relators against a major information technology company for allegedly submitting false and fraudulent claims to the U.S. government under a Medicaid program providing health-cost reimbursements to school districts. Conducted various benchmarking analyses including analyzing a “claimed amount” versus “paid” pattern analysis and a reimbursement rate analysis across Defendant-administered school districts and non-Defendant-administered school districts. Also conducted a reimbursement rate benchmarking analysis associated with school districts before and after administration by the Defendant. Concluded there was no economic evidence of a systematic effort to defraud the U.S. government.
- Evaluated Plaintiff’s claim of damages stemming from the alleged embezzlement of funds and falsification of income statements by a bank official relating to a mortgage lending division of a bank. Analysis identified errors made by the bank in specifying the length of the damage period and not properly accounting for accounts receivable collections made post-discovery of the alleged illegal acts.
- Analyzed skilled nursing facility nursing ratios in a criminal health care fraud matter relating to Medicare reimbursements. At issue was Defendant’s ratio of skilled nursing costs to unskilled nursing costs alleged to be outside of governmental guidelines. Analyzed facility-level ratios by establishing peer groups of facilities based upon size of facility, number of participating beds, skilled utilization percentage, state location, average length of stay, and facilities with similar levels of acuteness.
- Estimated freight overcharge damages on behalf of a major multinational information technology services firm. Analysis required the utilization of a database of all freight shipments made over a five-year period, including incorporating subsequent credit memos, discounts, and dimensional weight charges. Analysis compared actual freight charges to rates charged by alternative carriers for shipments of identical ship method (e.g., ground, next day, two day), weight, and destination.
- Performed economic analysis relating to a health care criminal matter in which a group of doctors and a hospital were alleged to have conspired to receive remuneration in return for the referral of Medicare-eligible patients. Analyze included evaluating the savings from reduced admissions rates and from reduced average length of stays. Also analyzed the profitability of certain laboratory-related work.

### **TEACHING EXPERIENCE**

#### **Macroeconomic Principles and Intermediate Macroeconomics**

Topics covered included unemployment/full employment, inflation/price stability, economic growth/gross domestic product, determination of national income, and monetary and fiscal policies.

#### **Microeconomic Principles and Intermediate Price Theory**

Topics covered included functioning of markets (demand and supply analysis), elasticities, theory of the firm (profit maximization), industry performance, allocation of resources, and government regulation.

#### **Companies In Crisis**

Topics covered included companies, markets, and industries in contemporary crisis situations from external or internal changes in the operating environment or significant conflict. Topics included case studies focusing on solutions for companies facing competitive issues, management issues, or litigation-related issues.

### **PUBLICATIONS**

“An Economic Framework for Analyzing Covenants Not to Compete” (with Elaine Fleming and Steven Herscovici), Expert Witnesses, ABA Section of Litigation, Spring/Summer 2011, Vol. 7 No. 1.

“Financial Expert Witness Challenges and Exclusions: Results and Trends in Federal and State Cases Since Kumho Tire” (with Lawrence F. Ranallo), Accountants’ Handbook, Tenth Edition 2004 Supplement, *forthcoming*, edited by D.R. Carmichael, New York: John Wiley & Jones, Inc., 2004.

“Accounting for Damages in Intellectual Property Litigation” (with Tony Samuel and John Davis), *Building and Enforcing Intellectual Property Value – an International Guide for the Boardroom 2003*.

“Challenges to the Admissibility of Financial Expert Witness Testimony” (with Lawrence F. Ranallo), *Litigation Services Handbook, 2002 Supplement*, edited by Roman L. Weil, Michael J. Wagner, and Peter B. Frank, 2A.1 – 2A.17, New York: John Wiley & Sons, Inc., 2001.

“Calculation of Lost Earnings” (with Carlyn R. Taylor and Randi L. Firus), *Litigation Services Handbook*, edited by Roman L. Weil, Michael J. Wagner, and Peter B. Frank, 11.1 – 11.16, New York: John Wiley & Sons, Inc., 2001.

“Preparing the Financial Expert or Economist” (with George G. Strong, Jr.), *Witness Preparation*, V. Hale Starr, 13.4 – 13.4.1, New York: Aspen Law & Business, A Division of Aspen Publishers, Inc., 1998.

“The Effect of Institutional Setting on Behavior in Public Enterprises: Irrigation Districts in the Western States” (with John M. McDowell), *Arizona State Law Journal*, Vol. 1982, No. 2, 453 – 496.

### **SELECTED CLIENTS OVER THE PAST FIVE YEARS**

Selected clients over approximately the past five years include but are not limited to: Abbott Laboratories; Akamai Technologies, Inc.; America Online, Inc.; Apple Inc; Autobyte Inc.; Blackboard Inc.; Blackstone Group; Blockbuster Inc.; Bioengineered Supplements & Nutrition, Inc.; CDX Gas; Chrysler; Cigna; Coca Cola Company; Covidien; Crane Co.; Cummins-Allison Corp.; DirecTV, Inc.; Dow Chemical Company; Electronic Data Systems; Ernst & Young LLP; GoDaddy.com, Inc.; Google; Gorlick Distribution Centers; Haggar; Halliburton; Hyundai Motor America; Idearc; Ingenico Inc.; Juniper; LG Electronics, Inc.; Lutron Electronics Co., Inc.; McDonald’s Corporation; Medtronic, Inc.; Merial Limited; Microsoft Corporation; National Dairy Holdings, L.P.; New York Times, Company; Nike, Inc.; Nintendo; Nortel Networks Inc.; Research in Motion; Rohm Co. Ltd.; Sabre Inc.; Samsung; Shure, Inc.; Shell Exploration & Production Company; SIGA Technologies; Snapple Beverage Corporation; St. Jude Medical, Inc.; Stolt Nielson; TiVo Inc; T-Mobile USA, Inc.; Tyco Healthcare; UBS; United States Surgical Corporation; VeriFone Systems, Corp.; Verizon; Versata (f/n/a Trilogy); Volkswagen Group of America, Inc.; Waste Management; Wachovia Corporation; Wells Fargo & Company; Wendy’s; Wyndham International, Inc.; Yahoo!

# **EXHIBIT 2**

Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.

**KEITH R. UGONE, PH.D.**  
**TRIAL, HEARING, AND ARBITRATION TESTIMONY<sup>1</sup>**

**Georgetown Rail Equipment Company** vs. Holland L.P. (United States District Court, Eastern District Of Texas, Tyler Division, Case No. 6:13-cv-366-MHS-JDL) (2015)

**Bombardier Recreational Products Inc.** vs. Arctic Cat, Inc. and Arctic Cat Sales, Inc. (Federal Court, Montreal, Canada, Court File No.: T-2025-11) (2015)

Masakazu Ushijima vs. **Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.** (In The United States District Court For The Western District Of Texas, Austin Division, Civil Action No. 1:12-CV00318-LY) (2015)

Jean Melchior vs. **Hilite International, Inc.** (United States District Court For The Northern District Of Texas, Dallas Division, Civil Action No.: 3:11-CV-03094-M) (2015)

Kawasaki Heavy Industries, Ltd., a/k/a Kawasaki Jukogyo Kabushiki Kaisha and Kawasaki Motors Manufacturing Corp., U.S.A. vs. **Bombardier Recreational Products, Inc., BRP U.S., Inc., and BRP-Rotax GmbH & Co. KG a/k/a BRP-Powertrain GmbH & Co.** (Private Arbitration, Case No. 26220 CAMG) (2015)

**Texas Advanced Optoelectronic Solutions, Inc.** vs. Intersil Corporation (In The United States District Court For The Eastern District Of Texas, Sherman Division, Civil Action No. 4:08-cv-451) (2015)

Ultratec, Inc. and CapTel, Inc. vs. **Sorenson Communications, Inc. and CaptionCall, LLC** (United States District Court, Western District Of Wisconsin, Case No.:3:13-cv-00346) (2014)

Personal Audio, LLC vs. **CBS Corporation** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:13-cv-00270-JRG-RSP) (2014)

United States of America *ex rel.* Kurt Bunk and Daniel Heuser v. Birkart Globistics GMBH & Co. Logistik Und Service KG, et al. and United States of America *ex rel.* Ray Ammons v. The Pasha Group, **Gosselin World Wide Moving, N.V., and Gosselin Group, N.V.** (In The United States District Court For The Eastern District Of Virginia, Alexandria Division, No. 1.02cv1168 (AJT/TRJ)) (2014)

NuVasive, Inc. vs. **Laura Lewis** (In The United States District Court For the Western District Of Texas, Austin Division, Civil Action No. 1:12-CV-01156) (2014)

**Magnum Oil Tools International, Ltd.** vs. Tony D. McClinton, JayCar Energy Group. L.L.C., Surf Frac Wellhead Equipment Company, Inc., McClinton Energy Group, L.L.C., Motors Mills Snubbing, L.L.C., and Stan Keeling (In The United States District Court For The Southern

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<sup>1</sup> Trial, hearing, and arbitration testimony over the 1990-2015 time period. Case citations and dates subject to verification. **Clients bolded.** Deposition testimony begins on page 10.

**Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.**

District Of Texas, Corpus Christi Division, Civil Action No: 2-12-cv-00099) (2014: preliminary injunction hearing)

NXP B.V. vs. **Research In Motion, Ltd. and Research In Motion, Corp.** (United States District Court For The Middle District Of Florida, Orlando Division, Case 6:12-cv-498-ORL-22GJK) (2014)

In The Matter Of Certain Wireless Devices With 3G And/Or 4G Capabilities And Components Thereof (InterDigital Communications, Inc., InterDigital Technology Corporation, et al. vs. **Samsung Electronics Co., Ltd., Samsung Electronics American, Inc., and Samsung Telecommunications America, LLC**; United States International Trade Commission, Washington, D.C., Investigation No. 337-TA-868) (2014)

Sabatino Bianco, M.D. vs. **Globus Medical, Inc.** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:12-cv-147-JRG) (two testimonies: trial (2014) and evidentiary hearing on on-going royalties (2014))

SimpleAir, Inc. vs. Microsoft Corporation, **Motorola Mobility, Inc., Google Inc.**, et al. (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:11-cv-00416) (two trials; 2014)

PharmAthene, Inc. vs. **SIGA Technologies, Inc.** (In The Court Of Chancery In The State Of Delaware, Civil Action No. 2627-VCP) (2013)

Brightstar Corp. and Flipswap Services, LLC vs. **Flipswap, Inc.** (Judicial Arbitration And Mediation Services, Case No. 1460000526) (2013)

Lake Cherokee Hard Drive Technologies, L.L.C. vs. Bass Computers, Inc., LSI Corporation, **Marvell Semiconductor, Inc.**, Samsung Semiconductor, Inc., and Tech Data Corporation (In The United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:10-cv-216 (TJW-CE)) (2013)

Abraham & Veneklasen Joint Venture, Abraham Equine, Inc. and Jason Abraham vs. **American Quarter Horse Association** (In The United States District Court For The Northern District Of Texas, Amarillo Division, Civil Action No. 02:12-cv-00103-J) (2013)

Hitachi Consumer Electronics Co., Ltd. and Hitachi Advanced Digital, Inc. vs. **Top Victory Electronics (Taiwan) Co. Ltd., TPV Int'l (USA), Inc., Envision Peripherals, Inc., Top Victory Electronics (Fujian) Co. Ltd., TPV Electronics (Fujian) Co. Ltd., TPV Technology Ltd., and VIZIO, Inc.** (United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:10-CV-260) (2013)

**ePlus Inc.**, vs. Lawson Software, Inc. (In The United States District Court For The Eastern District Of Virginia, Richmond Division, Civil Action No. 3:09-CV-620 (RFP)) (2013)

Alexsam, Inc. vs. **IDT Corporation** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:11-CV-362-RSP) (2013)

**Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.**

In Re: Urethanes Antitrust Litigation (Class) – Seegott Holdings, Inc., et al. vs. **The Dow Chemical Company** (In The United States District Court For The District Of Kansas, MDL-04-1616 (JWL/JPO), No. 05-2265-JWL) (2013)

**FLIR Systems, Inc.** vs. Sierra Media, Inc. and Fluke Corporation (The United States District Court, District Of Oregon, Portland Division, Case No. 3:10-CV-971-HU) (2012) (two trial testimonies: affirmative case and counterclaim)

I/P Engine, Inc. vs. **AOL, Inc., Google Inc., IAC Search & Media, Inc., Gannett Company, Inc., and Target Corporation** (In The United States District Court For The Eastern District Of Virginia, Norfolk Division, Civil Action No. 2:11-cv-512-RAJ) (2012)

DDR Holdings, LLC vs. **Hotels.com, L.P.; Expedia, Inc.; Travelocity.com, L.P.; Site59.com, LLC; Internetnetwork Publishing Corporation d/b/a Lodging.com; Neat Group Corporation; Orbitz Worldwide, LLC; International Cruise & Excursion Gallery, Inc.; OurVacationStore.com, Inc.; National Leisure Group, Inc. / World Travel Holdings, Inc.; and Digital River, Inc.** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:06-CV-42-JRG) (2012)

**Tyco Healthcare Group LP and United States Surgical Corporation** vs. Ethicon Endo-Surgery, Inc. (In The United States District Court For The District Of Connecticut, Civil Action No: 3:10-cv-00060 (JBA)) (2012)

CardSoft, Inc. and CardSoft (Assignment For The Benefit Of Creditors), LLC vs. **VeriFone Systems Corporation; Hypercom Corporation; Ingenico S.A.; Ingenico Corp.; Ingenico Inc.;** Shera International Ltd.; and Blue Bamboo (UUSA), Inc. (United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:08-cv-00098) (2012)

**Merial Limited and Merial SAS** vs. Cipla Limited, Velcera, Inc., and FidoPharm, Inc. (In The United States District Court For The Middle District Of Georgia, Athens Division, Case No. 3:07-CV-125 (CDL)) (2012; injunction hearing)

Geoffrey L. Berman, Trustee of the SB Liquidation Trust vs. **Ernst & Young LLP** (International Institute For Conflict Prevention & Resolution, New York, NY) (2012)

CEATS, Inc. vs. **Continental Airlines, Inc.; Ticketmaster, L.L.C.; Tickets.com, Inc.; TicketNetwork, Inc.; TicketsNow.com, Inc.; AirTran Airways, Inc.; Alaska Airlines, Inc.; Delta Air Lines, Inc.; Jet Blue Airways Corporation; United Air Lines, Inc.; US Airways, Inc.; and Virgin America, Inc.** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Case No. 6:10-cv-120 LED) (2012)

**Halliburton Energy Services, Inc.** vs. Weatherford International, Inc. and BJ Services Company (In The United States District Court For The Northern District Of Texas, Dallas Division, Civil Action No. 307-cv-2144-K) (2012)

Convolve, Inc. vs. Dell, Inc., Western Digital Corporation, **Hitachi Global Storage Technologies, Inc., and Hitachi, Ltd.** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:08-cv-244) (2011)



**Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.**

Personal Audio, LLC vs. **Apple Inc.**; Sirius XM Radio, Inc.; XM Satellite Radio, Inc.; Coby Electronics, Corp.; Archos, Inc. (United States District Court For The Eastern District Of Texas, Lufkin Division, Case 9:09-cv-00111-RC) (2011)

Bedrock Computer Technologies LLC vs. **Yahoo! Inc.** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Case No. 6:09-cv-269) (2011)

Bedrock Computer Technologies LLC vs. **Google Inc.** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Case No. 6:09-cv-269) (2011)

Cheetah Omni LLC vs. **Verizon Services Corporation, Verizon Business Network Services Inc., and Verizon Enterprise Delivery LLC** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:09-cv-260-LED) (2011)

Alexsam, Inc. vs. **IDT Corporation** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:07-CV-420-TJW) (2011)

PharmAthene, Inc. vs. **SIGA Technologies, Inc.** (In The Court Of Chancery In The State Of Delaware, Civil Action No. 2627-VCP) (2011)

**St. Jude Medical, Inc. and St. Jude Medical Puerto Rico LLC** vs. Access Closure, Inc. (In The United States District Court For The Western District Of Arkansas, Texarkana Division, Case No. 4:08-cv-04101-HFB) (2010)

Affinity Labs of Texas, LLC vs. BMW North America, LLC; BMW Manufacturing Co., LLC; Hyundai Motor America, Inc.; Hyundai Motor Manufacturing Alabama, LLC; Kia Motors America, Inc.; Mercedes-Benz USA, LLC; Mercedes-Benz U.S. International, Inc.; **Volkswagen Group of America, Inc.** (In The United States District Court For The Eastern District Of Texas, Lufkin Division, Civil Action No. 9:08-cv-164-RC) (2010)

Mirror Worlds, LLC vs. **Apple, Inc.** (United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:08-CV-88-LED) (2010)

VirnetX Inc. and Science Applications International Corporation vs. **Microsoft Corporation** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 607CV80 (LED)) (2010)

Carpathia Hosting, Inc., Carpathia Hosting, Inc. as nominee and trustee, for Triumviri, Inc., and Triumviri, Inc. vs. **Electronic Data Systems, LLC** (JAMS Arbitration, Washington, D.C., No. 1410005118) (2010)

**Cummins-Allison Corp.** vs. Shinwoo Information & Telecommunications Co., Ltd., n/k/a SBM Co., Ltd., and Amro-Asian Trade, Inc. (In The United States District Court For The Eastern District Of Texas, Lufkin Division, Civil Action No. 9:07cv196 and Civil Action No. 9:07cv228, Consolidated) (2009)

**Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.**

i4i Limited Partnership and Infrastructures for Information Inc. vs. **Microsoft Corporation** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:07-CV-113-LED) (2009)

**Paradox Security Systems, Ltd., Shmuel Hershkovitz, and Pinhas Shpater** vs. ADT Security Services, Inc., Digital Security Controls, Ltd., Monitronics International, Inc., and Protection One, Inc. (In The United States District Court For The Eastern District Of Texas, Marshall Division, C. A. No. 2:06-CV-462 (TJW)) (2009)

Hearing Components, Inc. vs. **Shure, Inc.** (In The United States District Court For The Eastern District of Texas, Lufkin Division, Civil Action No. 9:07-cv-104 (RHC)) (2009)

Rambus, Inc. vs. **Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, L.P.** (United States District Court, Northern District Of California – San Jose Division, Case No. 05 02298 RMW) (2008)

**Abbott Laboratories and TheraSense, Inc.** vs. Becton, Dickinson and Company and Nova Biomedical Corp. (In The United States District Court, Northern District of California, Civil Action No. C04-2123 WHA) (2008)

In the Matter of Certain 3G Wideband Code Division Multiple Access (WCDMA) Handsets and Components Thereof (InterDigital Communications Corporation and InterDigital Technology Corporation vs. **Samsung Electronics Co., Ltd, Samsung Electronics America, Inc., and Samsung Telecommunications America LLC**; The United States International Trade Commission, Washington, D.C., Investigation No. 337-TA-601) (2008)

**Bueno Conato, LLC** vs. Bajio LLC, Bajio National LLC, Bajio Franchising LLC, and Doctor's Associates, Inc. (American Arbitration Association, Western Case Management Center, Case No. 77 114 Y 00254 06 WYGI) (2008)

**Akamai Technologies, Inc. and Massachusetts Institute of Technology** vs. Limelight Networks, Inc. (In The United States District Court, District of Massachusetts, Civil Action No. 06 CA 11109 RWZ and Civil Action No. 06 CA 11585 RWZ) (2008)

**Blackboard Inc.** vs. Desire2Learn Inc. (In The United States District Court For The Eastern District of Texas, Lufkin Division, Case No 9:06CV155) (2008; trial and injunction hearing)

Applied Medical Resources Corp. vs. **United States Surgical Corporation** (In The United States District Court For The Central District Of California, Southern Division, Case No. SACV 03-1267 CJC (MLGx)) (2008)

**Electronic Data Systems Corporation** vs. Towers, Perrin, Forster & Crosby, Inc. (American Arbitration Association Northeast Case Management Center, Case No. 13 489 Y 00146 07) (2007)

**Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.**

Computer Acceleration Corporation vs. **Microsoft Corporation** (In the United States District Court for the Eastern District of Texas, Lufkin Division, Civil Action No. 9:06-CV-140-RHC) (2007)

YC Partners, LTD. d/b/a Yantis Company vs. Zach Hall; **Rodman Excavation, Inc. d/b/a Rodman Companies, San Antonio Division; Rodman Utilities, L.P.; Rodman Power & Communications, LLC; Rodman Natural Resources, Inc.; Rodman Paving, Inc.** (In The District Court, Bexar County, Texas, 285<sup>th</sup> Judicial District, No. 2007-CI-03027). (2007; hearing regarding Motion to Compel Plaintiff's Documents)

QPSX Developments 5 Pty Ltd vs. **Nortel Networks Inc.** (In the United States District Court for the Eastern District of Texas, Marshall Division, Civil Action No. 2:05CV-268) (2007)

**AVID Identification Systems, Inc.** vs. Philips Electronics North America Corporation, Koninklijke Philips Electronics N.V., The Crystal Import Corporation, Medical Management International, Inc., and Datamars SA (In The Eastern District of Texas, Marshall Division, Case No. 2:04-CV-183) (2006)

**TiVo Inc.** vs. EchoStar Communications Corporation, EchoStar DBS Corporation, EchoStar Technologies, and Echosphere Limited Liability Company (United States District Court for the Eastern District of Texas, Marshall Division, Case No. 2 – 04CV01 DF) (2006)

William Ziegler and DenLou, Inc. vs. **Synergistic International, LLC** (American Arbitration Association, Dallas, Case No.: 71 114 E 00733 04) (2005)

Dr. Phillips, Inc. vs. **Control Laser Corporation and Excel Technology, Inc.** (In the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, Case No. 02-CA-000075, Division: 32, Business Court) (2005)

**William A. Wise** vs. El Paso Corporation (American Arbitration Association, Houston, Case No. 70-Y-116-00327-04) (2005)

**Aviall Services, Inc.** vs. Honeywell International, Inc. and Kelly Aerospace, Inc. (American Arbitration Association, Los Angeles, Arbitration No. 71 Y 181 00717 03) (2005)

**MCI Worldcom Network Services, Inc.** vs. Twister Communications Network, Inc. (In the District Court of Montgomery County, Texas, 221<sup>st</sup> Judicial District, Civil Action No. 00-05-03124CV) (2005)

Kathleen C. Cailloux, Kenneth F. Cailloux, Paula L. Heilman, and Robert Stephen Andresakis vs. **Baker Botts, L.L.P.**, Wells Fargo Bank Texas, N.A., William R. Goertz, S. Stacy Eastland, and Stephen T. Dyer (In the 198<sup>th</sup> Judicial District Court of Kerr County, Texas, Civil Action No. 03-603-B) (2005)

**Brooktrout, Inc.** vs. Eicon Networks Corporation, Eicon Networks, Inc. (In the United States District Court for the Eastern District of Texas, Marshall Division, Case Number 03-CV-59) (2004)

**Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.**

Colgate-Palmolive Company vs. **The Procter & Gamble Company** (In the United States District Court for the Southern District of New York, 03 Civ. 9348 (LLS) (DFE)) (2004)

**Electronic Data Systems Corp.** vs. Aspect Communications Corp. (American Arbitration Association, San Francisco, Case No. 74 Y 117 00586 03 GAP) (2004)

**PK Ventures, Inc. and Subsidiaries, PK Ventures Limited Partnership, and Robert M. Rose and Alice N. Rose** vs. Commissioner of Internal Revenue (United States Tax Court, Jacksonville, Florida, Docket Nos. 005836-99, 006395-99, and 10154-99) (2004)

**Brine, Inc. and Sports Licensing, Inc.** vs. STX, Inc. and STX, LLC (In the United States District Court for the District Massachusetts, Worcester Division, Civil Action No. 99-40167) (2003)

Teleplus, Inc., vs. **Avantel, S.A.** (In the United States District Court Western District of Texas, San Antonio Division, Civil Action No. SA-98-CA-0849 FB) (2003)

Cavalry Investments, L.L.C. vs. **Sunstar Acceptance Corporation and NationsCredit Commercial Corporation** (County Court at Law, Number 4, Dallas County, Texas, Cause No. 99-02296-D) (2003)

Steven R. Keene d/b/a Pagers Plus vs. **AT&T Wireless, Inc., a/k/a AWS National Accounts, L.L.C., and First Cellular Group of Shreveport, Inc. d/b/a AT&T Wireless Services** (Judicial Arbitration and Administration Services, Inc.) (2003)

**Poly-America, Inc.** vs. Serrot International, Inc. (In the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3:00CV1457-D) (2002)

Morgan Howard, L.L.C. vs. **Immedient, Inc.** (In the County Court at Law No. 3, Dallas County, Texas, Cause No. 01-899-C) (2002)

Andrew Cumming vs. **J. C. Penney Company, Inc.** (In the District Court of Dallas County, Texas, 160<sup>th</sup> Judicial District, Civil Action No. 71-160-00077-01) (2002)

Inter-Tel, Incorporated vs. **Bank of America, Arizona** (In the Superior Court of the State of Arizona in and for the County of Maricopa, Case No. CV 96-00867) (2002)

COC Services, Ltd. vs. **CompUSA, Inc., Grupo Carso S.A. de C.V., Grupo Sanborns S.A. de C.V., TPC Acquisition Corp., Carlos Slim Helu and James Halpin** (In the District Court 116<sup>th</sup> Judicial District of Dallas County, Texas, Case No. 0000023) (2001)

United States of America vs. **Dan Anderson** (In the United States District Court for the District of Kansas, Civil Action No. 2:99mc205 and 2:99mc207) (2000)

Scott K. Ginsburg vs. **Goldman, Sachs & Co.** (Before the National Association of Securities Dealers, Inc., Dallas) (2000)

**Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.**

**TCP Holdings, LLC, Robert Neely, and David Thomas** vs. Tim Kirk (Before the American Arbitration Association, Dallas, Case No. 71 18000564 98) (2000)

United States of America vs. **Dan Anderson and Baptist Medical Center** (In the United States District Court for the District of Kansas, Civil Action No. 2:99mc205 and 2:99mc207) (1999; Sentencing Hearing)

In the Matter of Application No. 96-1, **Olympic Pipe Line Company**: Cross Cascade Pipeline Project (Before the State of Washington Energy Facility Site Evaluation Council) (1999)

Magnetic Technologies, S.P.R.L. vs. **Connectware, Inc.** (In the District Court Dallas County, Texas, 68<sup>th</sup> Judicial District) (1998; Daubert/Robinson Hearing Testimony and Trial Testimony)

Jeannean Heller, CRNA; Joanne Lewis, CRNA; Harold Newsom, CRNA; and Lola H. Wright, CRNA vs. **Raymond M. Dunning, Jr. and Columbia Medical Center of Lewisville Subsidiary L.P., d/b/a Columbia Medical Center of Lewisville, Dallas, Texas** (American Arbitration Association, Dallas, Texas Region) (1998)

Proposed Form A Acquisition of Control of Universal Fidelity Life Insurance Company, an Oklahoma Domestic stock insurer, by **Conseco, Inc.**, A Delaware Corporation (Before the Insurance Commissioner of the State of Oklahoma, Case No. 97-207-TRN) (1998)

Sledge W. Killion vs. **Metropolitan Life Insurance Company**, et al. (Before the National Association of Securities Dealers, Inc., Dallas, NASD Arbitration No. 95-05997) (1997)

**Reedrill Corporation** vs. Driltech, Inc. (U.S. District Court for the Eastern District of Texas, Sherman Division, Civil Action No. 4:95CV189) (1997)

Robert Tuck vs. **Westec Security, Inc.** (Superior Court of the State of California for the County of Los Angeles, Case No. BC131221) (1996)

Exar Corporation vs. **SGS-Thomson Microelectronics Srl** (Court of International Arbitration of the International Chamber of Commerce, New York) (1996)

Nationwide Business Telephones and Team Centrex vs. **Introlink Communications System, Inc. and Pacific Bell, Inc.** (Superior Court of the State of California for the County of Los Angeles, Case No. BC009783) (1996)

TriCom, Inc. vs. **Electronic Data Systems Corporation** (U.S. District Court for the Eastern District of Michigan, Southern Division, Civil Action No. 2:92CV76374) (1995)

**Rauscher, Pierce, Refsnes, Inc.** vs. Alfred W. Anderson, Jr. (Before the National Association of Securities Dealers, Inc., Dallas) (1995)

**Ivy Goth** vs. City of Los Angeles and Department of Water and Power (Superior Court of the State of California for the County of Los Angeles, Case No. SC013502) (1995)

**Trial, Hearing, and Arbitration Testimony of Keith R. Ugone, Ph.D.**

**Bio-Medical Applications Management Company, Inc.** vs. Dallas Nephrology Associates (U.S. District Court for the Eastern District of Texas, Sherman Division, Civil Action No. 4:94CV37) (1995)

Cybor Corporation vs. **FAS Technologies, Inc.** (U.S. District Court for the Northern District of California, San Jose, Civil Action No. 5:93CV20712) (1995)

Phillips Petroleum Company vs. **Rexene Corporation** (U.S. District Court for the District of Delaware, Civil Action No. 1:90CV208) (1994)

**Donald J. Dougher**, et al. vs. Gerard J. Dougher, Sr., et al. (Superior Court of the State of California for the County of Orange, Case No. 677451) (1994)

Texas State Bank, et al. vs. **Electronic Data Systems Corporation** (206<sup>th</sup> District Court of Hidalgo County, Texas) (1994)

**Union Oil Company of California** vs. International Insurance Company, et al. (Superior Court of the State of California) (1993)

Chroma Lighting and Charles T. Von Der Ahe vs. **GTE Products Corporation and Sylvania Lighting Services Corporation** (U.S. District Court for the Central District of California, Civil Case No. 2:91CV6424) (1993)

Arley Del Gado vs. **County of Los Angeles** (Superior Court of the State of California for the County of Los Angeles) (1993)

**Villarreal** vs. East Union High School District (Superior Court of the State of California) (1993)

**Sunbelt Television, Inc.** vs. Jones Intercable, Inc. (U.S. District Court for the Central District of California, Civil Case No. 2:91CV3506) (1992)

**Clayton Jacobson** vs. Kawasaki Heavy Industries, Ltd., Japan; Kawasaki Motors Corporation, USA; and Kawasaki Motors Manufacturing Corporation, USA (U.S. District Court for the Central District of California) (1991)

Advanced Building Maintenance, Inc. vs. **Premier Ventures, Inc., dba Premier Building Maintenance** (Superior Court of the State of California for the County of Los Angeles) (1990)

**Southwest Tank Liners** vs. Joor Manufacturing, Inc. (U.S. District Court for the Central District of California) (1990)

Deposition Testimony of Keith R. Ugone, Ph.D.

**KEITH R. UGONE, PH.D.**  
**DEPOSITION TESTIMONY<sup>2</sup>**

Commonwealth Scientific and Industrial Research Organisation vs. Mediatek, Inc.; Mediatek USA Inc.; Ralink Technology Corp. (USA); Ralink Technology Corp. (Taiwan); Realtek Semiconductor Corp.; Texas Instruments Inc.; Amazon.com, Inc.; **Barnes & Noble, Inc.**; Nokia Corp.; Nokia, Inc.; Samsung Electronics Co. Ltd.; Samsung Electronics America, LLC; Samsung Telecommunications America, LLC (In The United States District Court For The Eastern District Of Texas, Tyler Division, Case No. 6:12-cv-00578) (2015)

Audatex North America, Inc. vs. **Mitchell International, Inc.** (In The United States District Court For The Southern District Of California, Civil Action No. 3:13-cv-01523) (2015)

Invensys Systems, Inc. vs. **Emerson Electric Co. and Micro Motion, Inc.** (United States District Court, Eastern District Of Texas, Tyler Division, Case No.: 6:12-cv-00799-LED) (2015)

National Oilwell Varco, L.P. vs. **Omron Oilfield and Marine, Inc.** (In The United States District Court For The Western District Of Texas, Austin Division, Civil Action No. 1:12-cv-00773) (2014)

Kawasaki Heavy Industries, Ltd., a/k/a Kawasaki Jukogyo Kabushiki Kaisha and Kawasaki Motors Manufacturing Corp., U.S.A. vs. **Bombardier Recreational Products, Inc., BRP U.S., Inc., and BRP-Rotax GmbH & Co. KG a/k/a BRP-Powertrain GmbH & Co.** (Private Arbitration, Case No. 26220 CAMG) (2014)

Spherix Incorporated vs. **Verizon Services Corp.; Verizon South Inc.; Verizon Virginia LLC; Verizon Communications Inc.; Verizon Federal Inc.; Verizon Business Network Services Inc.; and MCI Communications Services, Inc.** (In The United States District Court For The Eastern District Of Virginia, Alexandria Division, Civil Action No. 1:14-cv-721-GBL-TCB) (2014)

Invue Security Products, Inc. vs. **Hangzhou Langhong Technology Co., Ltd. and Langhong Technology USA, Inc.** (In The United States District Court For The Northern District Of Texas, Fort Worth Division, Civil Action No.: 4:13-cv-457) (2014)

Smartflash LLC and Smartflash Technologies Limited vs. Apple Inc., Robot Entertainment, Inc., KingsIsle Entertainment, Inc., HTC Corporation, and **Game Circus LLC** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:13-CV-447); Smartflash LLC and Smartflash Technologies Limited vs. **Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC**, HTC Corporation, HTC America, Inc., Exedea, Inc., and **Game Circus LLC** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:13-CV-448) (2014)

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<sup>2</sup> Deposition testimony over the 1990-2015 time period. Case citations and dates are subject to verification. **Clients bolded.**

**Deposition Testimony of Keith R. Ugone, Ph.D.**

Adaptix, Inc. vs, Alcatel-Lucent USA, Inc. and **Cellco Partnership d/b/a Verizon Wireless** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:12-cv-00122) (2014)

Adaptix, Inc. vs, Apple Inc. and **Cellco Partnership d/b/a Verizon Wireless** (In The United States District Court For The Northern District Of California, San Jose Division, Civil Action No. 5:13-cv-01776-PSG); Adaptix, Inc. vs, HTC Corporation, HTC America, Inc., and **Cellco Partnership d/b/a Verizon Wireless** (In The United States District Court For The Northern District Of California, San Jose Division, Civil Action No. 5:13-cv-01844-(PSG)); Adaptix, Inc. vs, LG Electronics, Inc., LG Electronics USA, Inc., and **Cellco Partnership d/b/a Verizon Wireless** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:13-cv-00120); Adaptix, Inc. vs, Pantech Wireless, Inc. and **Cellco Partnership d/b/a Verizon Wireless** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:13-cv-00020) (2014)

Transcenic, Inc. vs. **Google Inc.**, Microsoft Corporation, America Online, Inc., MapQuest, Inc. (In The United States District Court For The District Of Delaware, C.A. No. 11-582-LPS) (2014)

**Georgetown Rail Equipment Company** vs. Holland L.P. (United States District Court, Eastern District Of Texas, Tyler Division, Case No. 6:13-cv-366-MHS-JDL) (2014)

Uniloc USA, Inc. and Uniloc Luxembourg S.A. vs. **Activision Blizzard, Inc.** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:13-cv-00256) (2014)

Ultratec, Inc. and CapTel, Inc. vs. **Sorenson Communications, Inc. and CaptionCall, LLC** (United States District Court, Western District Of Wisconsin, Case No.:3:13-cv-00346) (2014)

Personal Audio, LLC vs. **CBS Corporation, NBCUniversal Media, LLC, FOX Broadcasting Company, FOX Networks Group, Inc., Lotzi Digital, Inc. et al.** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:13-cv-00270-JRG-RSP, 2:13-cv-00271-JRG-RSP, 2:13-cv-577-JRG-RSP, 2:13-cv-00014-JRG-RSP) (2014)

In Re **ConAgra Foods, Inc.** (Wesson Oil) (United States District Court, Central District Of California, Western District, Case No. CV 11-05379-MMM, MDL No. 2291) (2014: two depositions)

Optimize Technology Solutions, LLC vs. Staples, Inc., Dillard's, Inc., HSN, Inc., J.C.Penney Corporation, Inc., and **Recreational Equipment, Inc.** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:11-CV-00419-JRG) (2014)

NuVasive, Inc. vs. **Laura Lewis** (In The United States District Court For the Western District Of Texas, Austin Division, Civil Action No. 1:12-CV-01156) (2014)

Connecticut Ironworkers Employers Association, Inc., et al. vs. **New England Regional Council of Carpenters** (United States District Court, District Of Connecticut, Docket No. 3:10-CV-165-SRU) (2014)



**Deposition Testimony of Keith R. Ugone, Ph.D.**

**United Services Automobile Association** vs. Mitek Systems, Inc. (In The United States District Court For The Western District Of Texas, San Antonio Division, Case No. 5:12-cv-00282-FB) (2014)

Florida Atlantic University Research Corporation and Domaine Associates, LLC vs. **Acer Inc, ASUS Computer International, and TPV Technology Limited**, et al. (United States District Court, Southern District Of Florida, Case No.: 9:12-cv-80694-PAS, Case No.: 9:12-cv-80697, and Case No.: 9:12-cv-80701-PAS, respectively) (2014)

In Re: Urethanes Antitrust Litigation (Direct Action) – Carpenter Co., Woodbridge Foam Corporation, Dash Multi-Corp, Inc., et al. vs. Bayer AG, **The Dow Chemical Company**, Huntsman International LLC, Lyondell Chemical Company, BASF Corporation, et al. (In The United States District Court For The District Of Kansas, 04-MD-1616 (JWL), No. 08-2617, No. 09-2026, No. 10-2077) (2014)

Brightstar Corp. and Brightstar, US, Inc. vs. **e-Recycling, LLC** (In The Circuit Of The 11<sup>th</sup> Judicial Circuit In And For Miami-Dade County, Florida, Case No. 12-08985 CA 40) (2014)

US Airways, Inc. vs. **Sabre Holdings Corporation, Sabre Inc., and Sabre Travel International Limited** (United States District Court, Southern District Of New York, Civil Action No. 1:11-cv-02725-MGC) (2014)

**ASUS Computer International** vs. Round Rock Research, LLC (United States District Court, Northern District Of California, Civil Action No. 3:12-CV-02099-JST) (2014)

Yanira Algarin and Patsy Murdock, on behalf of themselves and all others similarly situated vs. **Maybelline, LLC d/b/a Maybelline New York** (United States District Court, Southern District of California, Case No. 12CV3000 AJB DHB) (2014)

Jean Melchior vs. **Hilite International, Inc.** (United States District Court For The Northern District Of Texas, Dallas Division, Civil Action No.: 3:11-CV-03094-M) (2014)

Becton, Dickinson and Company vs. **Insulet Corporation** (In The United States District Court For The District Of New Jersey, Case No. 2:10-cv-04371-PGS-ES) (2014)

NuVasive, Inc. vs. **Globus Medical, Inc.** (In The District Court Of Travis County, Texas, Cause No. D-1-GN-11-002134) (2013)

PharmAthene, Inc. vs. **SIGA Technologies, Inc.** (In The Court Of Chancery In The State Of Delaware, Civil Action No. 2627-VCP) (2013)

SimpleAir, Inc. vs. Microsoft Corporation, **Motorola Mobility, Inc., Google Inc.**, et al. (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:11-cv-00416) (2013)

Ethicon Endo-Surgery, Inc. and Ethicon Endo-Surgery, LLC vs. **Covidien, Inc. and Covidien, LP** (In The United States District Court For The Southern District Of Ohio, Western Division, Civil Case No.: 1:11-cv-871) (2013)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

Applied Medical Resources Corporation vs. **Tyco Healthcare Group LP d/b/a Covidien** (In The United States District Court For The Central District of California, Southern Division, Civil Action No.: SACV11-01406JVS (ANx)) (2013)

**Microsoft Corporation** vs. LBS Innovations LLC and LBS Innovations LLC, a Texas LLC (In the United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:12-cv-759-JRG) (2013)

**Magnum Oil Tools International, Ltd.** vs. Tony D. McClinton, JayCar Energy Group. L.L.C., Surf Frac Wellhead Equipment Company, Inc., McClinton Energy Group, L.L.C., Motors Mills Snubbing, L.L.C., and Stan Keeling (In The United States District Court For The Southern District Of Texas, Corpus Christi Division, Civil Action No: 2-12-cv-00099) (2013: two damages depositions; 2014: preliminary injunction deposition and damages deposition)

NeuStar, Inc. and Quova, Inc. vs. **F5 Networks, Inc.** (In The United States District Court For The Northern District Of California, San Jose Division, Case No. CV12-02574) (2013)

Sabatino Bianco, M.D. vs. **Globus Medical, Inc.** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:12-cv-147-JRG) (2013)

**Swivelpole Group Pty Ltd. and Swivelpole Patent Pty Ltd** vs. Swivelpole USA, Ltd., Swivelpole Holdings, LLC, Swivelpole Canada Holdings, Inc., ILS Products, LLC, ILS Products Holdings, LLC, ILS Manufacturing, LLC, and Andrew Grant (In The District Court Of Harris County, Texas, 164<sup>th</sup> Judicial District, Cause No. 2012-42402) (2013)

In The Matter Of Certain Wireless Devices With 3G And/Or 4G Capabilities And Components Thereof (InterDigital Communications, Inc., InterDigital Technology Corporation, et al. vs. **Samsung Electronics Co., Ltd., Samsung Electronics American, Inc., and Samsung Telecommunications America, LLC**; United States International Trade Commission, Washington, D.C., Investigation No. 337-TA-868) (2013)

Lodsys, LLC, et al. vs. **Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Telecommunications America, LLC**, et al. (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No.: 2:11-CV-90) (2013)

**One Technologies, L.P.** vs. Profinity, LLC and Chad D. Ertel (In The District Court Dallas County, Texas, 14<sup>th</sup> Judicial District, Cause No. 12-03980-A) (2013)

Eidos Display, LLC and Eidos III, LLC vs. AuOptronics Corporation, AU Optronics Corporation America, **Chimei Innolux Corporation, Chi Mei Optoelectronics USA, Inc.**, Chunghwa Picture Tubes, Ltd., Hannstar Display Corporation, and Hannspree North America, Inc. (United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:11-cv-201) (2013)

Brightstar Corp. and Flipswap Services, LLC vs. **Flipswap, Inc.** (Judicial Arbitration And Mediation Services, Case No. 1460000526) (2013; three depositions)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

SFA Systems, LLC vs. **Amazon.com, Inc.** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:11-cv-00052) (2013)

Palomar Medical Technologies, Inc. and The General Hospital Corporation vs. **TRIA Beauty, Inc.** (In The United States District Court, District Of Massachusetts, Civil Action No. 09-CV-11081-RWZ) (2013)

Maureen Stewart, Kelly Lamicella, and Nicole Bello vs. **Beam Global Spirits & Wine, Inc., Jim Beam Brands Co., SGC Global, L.L.C., Skinny Girl Cocktails, L.L.C., and Bethenny Frankel** (United States District Court For The District Of New Jersey, Civil Action No. 1:11-cv-05149 (NLH) (KMW) (2013)

Securities and Exchange Commission vs. **Life Partners Holdings, Inc.**, Brian Pardo, R. Scott Peden, and David M. Martin (The United States District Court For The Western District of Texas, Austin Division, Civil Action No.: 1-12-cv-00033-JRN) (2013)

**St. Jude Medical, Cardiology Division, Inc., St. Jude Medical Systems AB, and St. Jude Medical S.C., Inc.** vs. Volcano Corporation (In The United States District Court For The District Of Delaware, C.A. No. 10-631-RGA) (2013)

In Re **Dial Complete** Marketing and Sales Litigation (MDL No. 2263) (United States District Court, District of New Hampshire, MDL Docket No. 11-md-2263-SM ALL CASES) (2013)

**Sound Design Technologies, Ltd.** vs. Oticon, Inc., SeboTech Hearing Systems, LLC, and Gennum Corp. (The United States District Court For The District Of Arizona, No. CV11-1375-PHX-SRB) (2013)

Lake Cherokee Hard Drive Technologies, L.L.C. vs. Bass Computers, Inc., LSI Corporation, **Marvell Semiconductor, Inc.**, Samsung Semiconductor, Inc., and Tech Data Corporation (In The United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:10-cv-216 (TJW-CE)) (2013)

Abraham & Veneklasen Joint Venture, Abraham Equine, Inc. and Jason Abraham vs. **American Quarter Horse Association** (In The United States District Court For The Northern District Of Texas, Amarillo Division, Civil Action No. 02:12-cv-00103-J) (2013)

Hitachi Consumer Electronics Co., Ltd. and Hitachi Advanced Digital, Inc. vs. **Top Victory Electronics (Taiwan) Co. Ltd., TPV Int'l (USA), Inc., Envision Peripherals, Inc., Top Victory Electronics (Fujian) Co. Ltd., TPV Electronics (Fujian) Co. Ltd., TPV Technology Ltd., and VIZIO, Inc.** (United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:10-CV-260) (2013)

SmartPhone Technologies, LLC vs. Research In Motion, Corp., **Apple, Inc.**, et al. (The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:10-CV-74-LED) (2013)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

**Lutron Electronics Co., Inc.** vs. Crestron Electronics, Inc., Face Group, Inc. d/b/a Lifestyle Electronics, Lava Corp., Audio Vision Systems, LLC (In The United States District Court, District Of Utah, Central Division, Case: 2:09-cv-707) (2012)

Oasis Research, LLC vs. AT&T Corp., **Carbonite, Inc., EMC Corp., Decho Corp., IOMEGA Corp., GoDaddy.com, Inc., Iron Mountain Incorporated, Iron Mountain Information Management, Inc., Pro Softnet Corp.**, et al. (In The United States District Court For The Eastern District Of Texas, Sherman Division, Civil Action No. 4:10-cv-00435-MHS-ALM) (2012)

Secure Access, LLC vs. Bank of America Corp., **Arvest Bank, Bank of the Ozarks, Inc., Compass Bancshares, Inc., First National Bank Texas, First National Bank of Omaha, Zions Bancorporation**, et al. (In The United States District Court For The Eastern District Of Texas, Tyler Division, Case No. 6:10-cv-00670) (2012)

Kehlie R. Espinosa, Lillian E. Levoff, Thomas Ganin, and Daniel Baldeschi vs. **Hyundai Motor America** (United States District Court, Central District Of California, Case No. 2:12-cv-00800 GW (FFMx)) (2012)

Access International, Inc. vs. **Savi Technology, Inc.** (In The United States District Court For The Northern District Of Texas, Dallas Division, Case No. 3:10-cv-01033-F) (2012)

American Airlines, Inc. vs. **Sabre Inc.**, et al. (In The Judicial District Of Tarrant County, Texas, 67<sup>th</sup> Judicial District, No. 067-249214-10) (2012)

I/P Engine, Inc. vs. AOL, Inc.; **Google Inc.**; IAC Search & Media, Inc.; Gannett Company, Inc.; and Target Corporation (In The United States District Court For The Eastern District Of Virginia, Norfolk Division, Civil Action No. 2:11-cv-512-RAJ) (2012)

Realtime Data, LLC d/b/a IXO vs. MetroPCS Texas, LLC; MetroPCS Communications, Inc.; MetroPCS Wireless, Inc.; AT&T, Inc.; AT&T Mobility LLC; **Cellco Partnership d/b/a Verizon Wireless International, Inc.**; Leap Wireless International, Inc.; Cricket Communications, Inc. a/k/a Cricket Wireless, Inc.; Sprint Nextel Corp.; and T-Mobile USA, Inc. (United States District Court, Eastern District of Texas, Tyler Division, Case No. 6:10-cv-00493-LED) (2012)

Realtime Data, LLC d/b/a IXO vs. MetroPCS Texas, LLC; MetroPCS Communications, Inc.; MetroPCS Wireless, Inc.; AT&T, Inc.; AT&T Mobility LLC; Cellco Partnership d/b/a Verizon Wireless International, Inc.; Leap Wireless International, Inc.; Cricket Communications, Inc. a/k/a Cricket Wireless, Inc.; Sprint Nextel Corp.; and **T-Mobile USA, Inc.** (United States District Court, Eastern District of Texas, Tyler Division, Case No. 6:10-cv-00493-LED) (two depositions: 2012 and 2013)

Technical Resource Services, Inc., et al. vs. **Shell Exploration & Production, Company** (In The United States District Court For The Eastern District Of Louisiana, Civil Action No. 09-7339) (2012)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

U.S. Bank National Association, Litigation Trustee of the Idearc Inc. et al. Litigation Trust vs. **Verizon Communications Inc., Verizon Financial Services, LLC, GTE Corporation**, and John W. Diercksen (In The United States District Court For The Northern District Of Texas, No. 3:10-CV-1842-G) (2012)

Eon Corp. IP Holdings, LLC vs. T-Mobile USA, Inc., Research In Motion Corporation, **Cellco Partnership d/b/a Verizon Wireless**, et al. (United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:10-cv-00379-LED) (2012)

My485, Inc. vs. **Riverside Partners, LLC, d/b/a The Riverside Company and HealthcareFirst, Inc.** (In The District Court, 67<sup>th</sup> Judicial District, Tarrant County, Texas, Cause No. 067 251767 11) (2012)

In Re Glaceau Vitamin Water Marketing and Sales Practice Litigation (No. II): **The Coca Cola Company and Energy Brands, Inc.** (In The United States District Court, Eastern District Of New York, Case No. 1:11-md-02215-DLI-RML) (2012)

**FLIR Systems, Inc.** vs. Sierra Media, Inc. and Fluke Corporation (The United States District Court, District of Oregon, Portland Division, Case No. 3:10-CV-971-HU) (2012; two depositions)

In Re: Urethanes Antitrust Litigation (Direct Action) – Carpenter Co., Woodbridge Foam Corporation, Dash Multi-Corp, Inc., et al. vs. Bayer AG, **The Dow Chemical Company, Huntsman International LLC, Lyondell Chemical Company, BASF Corporation**, et al. (In The United States District Court For The District Of Kansas, 04-MD-1616 (JWL), No. 08-2617, No. 09-2026, No. 10-2077) (2012)

In Re: Urethanes Antitrust Litigation (Class) – Seegott Holdings, Inc., et al. vs. Bayer AG, **The Dow Chemical Company, Huntsman International LLC, Lyondell Chemical Company, BASF Corporation**, et al. (In The United States District Court For The District Of Kansas, MDL-04-1616 (JWL/JPO), No. 05-2265-JWL) (2012)

LSQ Funding Group, L.C. vs. **EDS Field Services n/k/a HP Enterprise Services, LLC** (United States District Court, Middle District Of Florida, Orlando Division, Case No.: 6:10-CV-1246-ORL-ACC-DAB) (2012)

**ePlus Inc.**, vs. Lawson Software, Inc. (In The United States District Court For The Eastern District Of Virginia, Richmond Division, Civil Action No. 3:09-CV-620 (RFP)) (2012)

CardSoft, Inc. and CardSoft (Assignment For The Benefit Of Creditors), LLC vs. **VeriFone Systems Corporation; Hypercom Corporation; Ingenico S.A.; Ingenico Corp.; Ingenico Inc.**; Shera International Ltd.; and Blue Bamboo (UUSA), Inc. (United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:08-cv-00098) (2012)

**Mitsubishi Heavy Industries, Ltd.** vs. General Electric Co. (In The United States District Court, Middle District Of Florida, Orlando Division, Civil Action No. 6:10-cv-812) (2012)

Deposition Testimony of Keith R. Ugone, Ph.D.

CEATS, Inc. vs. **Continental Airlines, Inc.; Ticketmaster, L.L.C.; Tickets.com, Inc.; TicketNetwork, Inc.; TicketsNow.com, Inc.; AirTran Airways, Inc.; Alaska Airlines, Inc.; Delta Air Lines, Inc.; Jet Blue Airways Corporation; United Air Lines, Inc.; US Airways, Inc.; and Virgin America, Inc.** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Case No. 6:10-cv-120 LED) (2012)

W.L. Gore & Associates, Inc. vs. **GI Dynamics, Inc.** (United States District Court, District Of Arizona, No. CV 10-8088 PCT GMS) (2011)

LML Patent Corp. vs. JPMorgan Chase & Co.; **Wells Fargo Bank, N.A.; Wachovia Bank, N.A.;** Citigroup, Inc.; HSBC Bank USA, N.A.; Capital One National Association; Northern Trust Company; Deutsche Bank Trust Company; PayPal, Inc. (In The United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:08-cv-448 DF) (2011)

**Halliburton Energy Services, Inc.** vs. Weatherford International, Inc. and BJ Services Company (In The United States District Court For The Northern District Of Texas, Dallas Division, Civil Action No. 307-cv-2144-K) (2011; two depositions)

**Tyco Healthcare Group LP and United States Surgical Corporation** vs. Ethicon Endo-Surgery, Inc. (In The United States District Court For The District Of Connecticut, Civil Action No: 3:10-cv-00060 (JBA)) (2011 and 2012; two depositions)

Curtis Berrien; Rose Huerta; Tina Musharbash; Fern Prosnitz; Michael Andler; Marcus Boness; Timothy Bonnell; Richard Buford; Elaine Cefola; Kenneth Davis; Jerome Garoutte vs. **New Raintree Resorts International, LLC; RVC Members, LLC; Douglas Y. Bech** (In The United States District Court For The Northern District Of California, Oakland Division, Case No. CV10-3125 CW) (2011)

Convolve, Inc. vs. Dell, Inc., Western Digital Corporation, **Hitachi Global Storage Technologies, Inc., and Hitachi, Ltd.** (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2:08-cv-244) (2011)

United States of America *ex rel.* Kurt Bunk and Daniel Heuser v. Birkart Globistics GMBH & Co. Logistik Und Service KG, et al. and United States of America *ex rel.* Ray Ammons v. The Pasha Group, **Gosselin World Wide Moving, N.V., and Gosselin Group, N.V.** (In The United States District Court For The Eastern District Of Virginia, Alexandria Division, No. 1.02cv1168 (AJT/TRJ)) (2011)

Cheetah Omni LLC vs. **Verizon Services Corporation, Verizon Business Network Services Inc., and Verizon Enterprise Delivery LLC** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:09-cv-260-LED) (2011)

Eon Corp. IP Holdings, LLC vs. **Sensus USA Inc.** (United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:09-cv-00116) (2011)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

Bedrock Computer Technologies LLC vs. **SoftLayer Technologies, Inc.; CitiWare Technology Solutions, LLC; Google Inc.; Yahoo! Inc.; MySpace Inc.; Amazon.com Inc.; PayPal Inc.; Match.com, LLC; and AOL Inc.** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Case No. 6:09-cv-269) (2011)

Personal Audio, LLC vs. **Apple Inc.**; Sirius XM Radio, Inc.; XM Satellite Radio, Inc.; Coby Electronics, Corp.; Archos, Inc. (United States District Court For The Eastern District Of Texas, Lufkin Division, Case 9:09-cv-00111-RC) (2011)

Beneficial Innovations, Inc. vs. Blockdot, Inc.; CareerBuilder, LLC; CNET Networks, Inc.; Digg, Inc.; Ebaums's World, Inc.; Jabez Network, Inc.; **The New York Times Company**; The Washington Post Company; and The Weather Channel Interactive, Inc. (United States District Court For The Eastern District Of Texas, Marshall Division, Case No. 2:07-CV-263-TJW-CE) (2010)

**St. Jude Medical, Inc. and St. Jude Medical Puerto Rico LLC** vs. Access Closure, Inc. (In The United States District Court For The Western District Of Arkansas, Texarkana Division, Case No. 4:08-cv-04101-HFB) (2010)

Eon Corp. IP Holdings, LLC vs. **Verizon Clinton Center Drive Corp.** (United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:08-cv-00385) (2010)

**Tyco Healthcare Group LP** vs. C.R. Bard, Inc. and Davol, Inc. (In The United States District Court For The District Of Delaware, C.A. No. 09-264 (SLR)(MPT)) (2010)

Affinity Labs of Texas, LLC vs. BMW North America, LLC; BMW Manufacturing Co., LLC; Hyundai Motor America, Inc.; Hyundai Motor Manufacturing Alabama, LLC; Kia Motors America, Inc.; Mercedes-Benz USA, LLC; Mercedes-Benz U.S. International, Inc.; and **Volkswagen Group of America, Inc.** (In The United States District Court For The Eastern District Of Texas, Lufkin Division, Civil Action No. 9:08-cv-164-RC) (2010)

Mirror Worlds, LLC vs. **Apple Inc.** (United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:08-CV-88-LED) (2010)

SP Syntax LLC and SP3 Syntax LLC vs. James Ching Hua Li, Man Kit (Thomas) Chow, Michael K. Chan, Vincent F. Sollitto, Jr, Wayne A. Pratt, John S. Hodgson, David P. Chavoustie, Christopher C. L. Liu, Alice Phang, **Ernst & Young LLP**, and Grobstein, Horwath & Company LLP (Superior Court Of The State Of California, County Of Los Angeles, Case No. BC402910) (2010)

**Gorlick Distribution Centers, LLC** vs. Car Sound Exhaust System, Inc. and Allied Exhaust Systems, Inc. (United States District Court, Western District of Washington at Seattle, Case No. C07-1076 RAJ) (2010)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

Stacy Holk, on behalf of Herself and all others similarly situated vs. **Snapple Beverage Corporation** (United States District Court, District of New Jersey, Civil Action No. 3:07-cv-03018-MJC-JJH) and Evan Weiner and Timothy McCausland on behalf of themselves and all others similarly situated vs. Snapple Beverage Corporation (United States District Court For The Southern District Of New York, Civil Action No. 07-cv-08742) (2010)

PharmAthene, Inc. vs. **SIGA Technologies, Inc.** (In The Court Of Chancery In The State Of Delaware, Civil Action No. 2627-VCP) (2010; two depositions)

Good Sportsman Marketing, LLC and IP Holdings, Inc. vs. **Non Typical, Inc., Mark Cuddeback, and Richard Scales Advertising Associates, Inc.** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Case No. 06:07-cv-00177-LED) (2010)

DataTreasury Corporation vs. **Wachovia Corporation, Wachovia Bank National Association,** et al. (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2-06CV-072) (2009)

DataTreasury Corporation vs. **Wells Fargo & Company, Wells Fargo Bank, National Association,** et al. (In The United States District Court For The Eastern District Of Texas, Marshall Division, Civil Action No. 2-06CV-072) (2009)

Carpathia Hosting, Inc., Carpathia Hosting, Inc. as nominee and trustee, for Triumviri, Inc., and Triumviri, Inc. vs. Brookshire Enterprises, LLC, Custom Computer Cable, Inc., Jackson Browne, LLC, Courtney Matthews, and **Electronic Data Systems, LLC** (Virginia: In The Circuit Court For Loudoun County, Civil Case No. CL 46964) (2009)

MHL Tek, LLC vs. Nissan Motor Co., Nissan North America, Inc., Nissan Technical Center North America, Inc., Hyundai Motor Co., Hyundai Motor America, Hyundai Motor Manufacturing Alabama, LLC, Kia Motors Corporation, Kia Motors America, Inc., Dr. Ing. H.C.F. Porsche AG, Porsche Cars North America, Inc., Bayerische Motoren Werke AG, BMW of North America LLC, BMW Manufacturing Co., LLC, Isuzu Motors Ltd., Isuzu Motors America, Inc., Subaru of America, Inc., Subaru of Indiana Automotive, Inc., **Audi AG, Volkswagen AG, and Volkswagen Group of America, Inc.** (In The United States District Court For The Eastern District of Texas, Marshall Division, Civil Action No. 2:07-cv-289-TJW) (2009)

**Crane Co. and Dixie-Narco Inc.** vs. SandenVendo America, Inc. and Royal Vendors, Inc. (In The United States District Court For The Eastern District of Texas, Marshall Division, Civil Action No. 2:07-cv-42) (2009)

**LG Electronics Inc.** vs. Hitachi, Ltd., Hitachi Automotive Products (USA), Inc., Clarion Co. Ltd., Clarion Corporation of America and Xanavi Informatics Corporation. (In The United States District Court, Eastern District Of Texas, Texarkana Division, Civil Action No. 5:07-CV-90) (2009)



**Deposition Testimony of Keith R. Ugone, Ph.D.**

**Paradox Security Systems, Ltd., Shmuel Hershkovitz, and Pinhas Shpater** vs. ADT Security Services, Inc., Digital Security Controls, Ltd., Monitronics International, Inc., and Protection One, Inc. (In The United States District Court For The Eastern District Of Texas, Marshall Division, C. A. No. 2:06-CV-462 (TJW)) (2009)

i4i Limited Partnership and Infrastructures for Information Inc. vs. **Microsoft Corporation** (In The United States District Court For The Eastern District Of Texas, Tyler Division, Civil Action No. 6:07-CV-113-LED) (2009)

**The Compliance Source, Inc. and Digital Docs, Inc.** vs. GreenPoint Mortgage Funding, Inc. (In The United States District Court, Northern District Of Texas, Dallas Division, Civil Action No. 3-06-cv1057-L (ECF)) (2008)

Hearing Components, Inc. vs. **Shure, Inc.** (In The United States District Court For The Eastern District of Texas, Lufkin Division, Civil Action No. 9:07-cv-104 (RHC)) (2008)

**Lutron Electronics Co. Inc.** vs. Control4 Corporation (In The United States District Court For The District Of Utah, Central Division, Civil Action No. 2-03-CV-00401 DAK) (2008)

ELB Enterprises of Dallas, L.P. and Bai-Mac, Inc. vs. **McDonald's Corporation, McDonald's USA, LLC, and Golden Arch of Texas, Inc., and Ricardo Colon** (In The Court At Law, Court No. 4, Dallas County, Texas, Cause No. CC-06-17226-D) (2008)

Rambus, Inc. vs. **Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, L.P.** (United States District Court, Northern District Of California – San Jose Division, Case No. 05 02298 RMW) (2008)

**TiVo Inc.** vs. EchoStar Communications Corporation, EchoStar DBS Corporation, EchoStar Technologies, and Echosphere Limited Liability Company (United States District Court for the Eastern District of Texas, Marshall Division, Case No. 2 – 04CV01 DF) (2008)

Iovate Health Sciences, Inc., University of Florida Research Foundation, Inc. and Flamma SpA vs. **Bio-Engineered Supplements & Nutrition, Inc., d/b/a BSN, Inc.** and Medical Research Institute (In The United States District Court For The Eastern District Of Texas, Lufkin Division, Case No. 9:07-cv-46) (2008)

Ronald A. Katz Technology Licensing, L.P. vs. **The DIRECTV Group, Inc., DIRECTV, Inc., DIRECTV Holdings, LLC, DIRECTV Enterprises, LLC, and DIRECTV Customer Services, Inc.** (In The United States District Court, Central District of California, Case No. 2:07-CV2322 RGK (FFMx) and Case No. 2:07-ML-1816-B RGK (FFMx), originally filed in the Eastern District of Texas as Case No. 9:06-CV-00193-RHC) (2008)

Quantum Unlimited, LLC, Quantum of Troon North, LLC, and Redsky Resorts of Troon North, LLC n/k/a Redsky Resorts, LLC vs. **Wyndham International, Inc.,** Tempus Resorts International, Ltd, **The Blackstone Group L.P.,** et al. (In The District Court Of Dallas County, Texas, 298th Judicial District) (2008)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

In the Matter of Certain 3G Wideband Code Division Multiple Access (WCDMA) Handsets and Components Thereof (InterDigital Communications Corporation and InterDigital Technology Corporation vs. **Samsung Electronics Co., Ltd, Samsung Electronics America, Inc., and Samsung Telecommunications America LLC**; The United States International Trade Commission, Washington, D.C., Investigation No. 337-TA-601) (2008; two depositions)

**Bueno Conato, LLC** vs. Bajio LLC, Bajio National LLC, Bajio Franchising LLC, and Doctor's Associates, Inc. (American Arbitration Association, Western Case Management Center, Case No. 77 114 Y 00254 06 WYGI) (2008)

O<sub>2</sub>Micro International Limited vs. **Rohm Co. Ltd.**, Sony Corporation, Sony EMCS Corporation, Sony Corporation of America, and Sony Electronics Inc. (In The United States District Court For The Eastern District of Texas, Marshall Division, Case No. 2-05-CV-00211-TJW) (2008)

**Blackboard Inc.** vs. Desire2Learn Inc. (In The United States District Court For The Eastern District of Texas, Lufkin Division, Case No 9:06CV155) (2008)

**Abbott Laboratories and Abbott Diabetes Care Inc.** vs. Roche Diagnostics Corporation, Roche Diagnostics Operations, Inc., and Bayer Healthcare LLC; Abbott Laboratories and TheraSense, Inc. vs. Becton, Dickinson and Company and Nova Biomedical Corp. (In The United States District Court, Northern District of California, Civil Action No. C04-2123 MJJ, Civil Action No. C04-3327 MJJ, Civil Action No. C04-3732 MJJ, and Civil Action No. C05-3117 MJJ) (2008; two depositions)

United States of America, ex rel Toni R. Barron and Vicky J. Scheel vs. Deloitte & Touche, LLP, Deloitte Touche Consulting Group, LLC, Deloitte & Touche Consulting Group Holding, LLC, Medicaid Solutions of Texas, and **National Heritage Insurance Company** (In The United States District Court, Western District of Texas, Civil Action No. SA-99-CV-1093FB) (2007)

**Akamai Technologies, Inc. and Massachusetts Institute of Technology** vs. Limelight Networks, Inc. (In The United States District Court, District of Massachusetts, Civil Action No. 06 CA 11109 RWZ and Civil Action No. 06 CA 11585 RWZ) (2007)

**Electronic Data Systems Corporation** vs. Towers, Perrin, Forster & Crosby, Inc. (American Arbitration Association Northeast Case Management Center, Case No. 13 489 Y 00146 07) (2007)

Computer Acceleration Corporation vs. **Microsoft Corporation** (In The United States District Court For The Eastern District of Texas, Lufkin Division, Civil Action No. 9:06CV140-RHC) (2007)

**Tinkers & Chance** vs. LeapFrog Enterprises, Inc. (In The United States District Court, Eastern District of Texas, Marshall Division, Civil Action No. 2-05cv-349-TJW) (2007)

**DEJ Productions, Inc., Blockbuster Inc., and First Look Studios, Inc.** vs. Media 8 Entertainment and MDP Distribution, Inc. (In The District Court of Dallas County, Texas, M-298<sup>th</sup> Judicial District, Cause No. 06-01887) (2007)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

Art International Forwarding, Inc. vs. **The Pasha Group and Gosselin Worldwide Moving, N.V.** (In The United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:05-CV-01410-RWS) (2007)

Applied Medical Resources Corp. vs. **United States Surgical Corporation** (In The United States District Court For The Central District Of California, Southern Division, Case No. SACV 03-1267 CJC (MLGx)) (2007)

**Nike, Inc.** vs. adidas Salomon North America, Inc., adidas America Inc. d/b/a adidas International, and adidas Promotional Retail Operations Inc. (In The United States District Court For The Eastern District of Texas, Lufkin Division, Case No. 9:06-cv-43-RHC) (2007)

**BIAX Corporation** vs. Intel Corporation and Analog Devices, Inc. (In The United States District Court For The Eastern District of Texas, Marshall Division, Civil Action No. 2-05cv-184-TJW) (2007)

Two-Way Media, LLC vs. **America Online, Inc.** (In The United States District Court For The Southern District of Texas, Corpus Christi Division, Civil Action No. C-04-089) (2007)

In re Enron Corporation Securities Litigation; Kevin Lamkin, Janice Schuette, Robert Ferrell and Stephen Miller vs. **UBS Financial Services, Inc. and UBS Securities LLC** (Civil Action No. H:02-CV-0851; Consolidated MDL) and Samuel Giancarlo vs. **UBS Financial Services, Inc., UBS Securities LLC., and UBS AG** (Civil Action No. H-03-4359; Consolidated MDL) (In The United States District Court For The Southern District of Texas, Houston Division) (2007)

O<sub>2</sub>Micro International Limited vs. **Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc.** (In The United States District Court For The Eastern District of Texas, Marshall Division, Case No. 2:04-CV-323 (Ward)) (2007)

CNX Gas Corporation and CNX Gas Company LLC vs. **CDX Gas Company LLC** vs. CONSOL Energy, Inc. (In The United States District Court For The Western District of Pennsylvania, Civil Action No. 05-CV-1574) (2007)

**Parkade Center, Inc.** vs. Simon Property Group (Texas), L.P. and Simon Property Group (Delaware), Inc. (In The District Court 398<sup>th</sup> Judicial District of Hildalgo County, Texas, Cause No. C-2584-06-1) (2007)

The Post Confirmation Trust (The Fleming Companies) vs. **Digital Exchange Systems, Inc.** (In The United States District Court for the Eastern District of Texas, Texarkana Division, No. 5:05-CV-165(TJW)) (2007)

Golden Bridge Technology, Inc. vs. **Nokia, Inc., Motorola, Inc., T-Mobile USA, Inc., Ericsson, Inc., Qualcomm Incorporated, and Lucent Technologies, Inc.** (In The United States District Court for the Eastern District of Texas, Tyler Division, Civil Action No: 6:06-cv-00163-LED) (2006)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

John P. Rochon, Nick G. Bouras, Nu-Kote International, Inc., J.R. Investment Corporation, Richmond Corporation and Nu-Kote Acquisition Corporation vs. **Akin Gump Strauss Hauer & Feld, LLP and Alan Feld** (In The District Court of Dallas County, Texas, 192<sup>nd</sup> Judicial District, Cause No. 04-03311-K) (2006)

**Autobytel Inc.** vs. Dealix Corporation (United States District Court Eastern District of Texas, Marshall Division, Case No. 2:04-cv-338-LED) (2006)

**Electronic Data Systems Corporation and EDS Information Systems, L.L.C.** vs. MCI Communications Services, Inc. (Before the American Arbitration Association, Arbitration No. 13 181 00976 06) (2006)

Jeffrey A. Kozak vs. **Medtronic Sofamor Danek** (In The United States District Court for the Southern District of Texas, Houston Division, Civil Action Number H-03-4400) (2006)

Alcon Manufacturing, Ltd. and Alcon Laboratories, Inc. v. **Advanced Medical Optics, Inc.** (In The United States District Court for the Northern District of Texas, Fort Worth Division, Civil Action No. 4-05CV-496-A) (2006)

Eckhard U. Alt, MD vs. **Medtronic, Inc.** (In The United States District Court for the Eastern District of Texas, Marshall Division, Civil Action No. 2:04CV370) (2006)

**AVID Identification Systems, Inc.** vs. Philips Electronics North America Corporation, Koninklijke Philips Electronics N.V., The Crystal Import Corporation, Medical Management International, Inc., and Datamars SA (In The Eastern District of Texas, Marshall Division, Case No. 2:04-CV-183) (2006)

In re: **Williams** Securities Litigation (WCG Subclass) (In The United States District Court for the Northern District of Oklahoma, Case No. 02-CV-72H(M)) (2006)

Immunocept, LLC, Patrice Anne Lee, and James Reese Matson vs. **Fulbright & Jaworski, LLP** (United States District Court Western District of Texas, Austin Division, Cause No. A 05 CA 334 SS) (2006)

Children's Medical Center of Dallas vs. **Columbia Hospital at Medical Center Dallas Subsidiary L.P.** (In The United States District Court Northern District Of Texas, Dallas Division, Civil Action No. 3:04-CV-2436-BD) (2006)

Vantage Controls, Inc. vs. **Lutron Electronics Co., Inc.** (In The United States District Court for the District of Utah, Central Division, Case No. 2:03-CV-00488TC) (2006)

Blueberry Sales, L.P., f/k/a Blueberry Confections, Inc. vs. **ED&F Man Sugar, Inc.** (United States District Court for the Western District of Texas, El Paso Division, EP-04-CA0193) (2005)

**Cummins-Allison Corp.** vs. Glory LTD., Glory Shoji Co., LTD., and Glory (U.S.A.), Inc. (United States District Court for the Eastern District of Texas, Marshall Division, Civil Action No. 2-03-CV-358 (TJW)) (2005)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

Gilbert R. Sada and Victor L. Hernandez vs. **Jack In The Box Inc.** (United States District Court for the Western District of Texas, San Antonio Division. Civil Action No. SA04CA0541 (OG)) (2005)

Trinity Mother Frances Health System and Mother Frances Hospital vs. **East Texas Medical Center Regional Healthcare System and East Texas Medical Center** (United States District Court for the Eastern District of Texas, Marshall Division, Civil Action No. 2:03CV464) (2005)

**TiVo Inc.** vs. EchoStar Communications Corporation, EchoStar DBS Corporation, EchoStar Technologies, and Echosphere Limited Liability Company (United States District Court for the Eastern District of Texas, Marshall Division, Case No. 2 – 04CV01 DF) (2005; two depositions)

William Rutledge Scott, Individually and as Independent Executor of the Estate of Mozelle Rutledge Scott, Deceased vs. **Hughes & Luce, L.L.P., Kathryn G. Henkel, and Laurel Stephenson** (In the County Court of Tom Green County, Texas, Cause No. 02P211-L) (2005)

Junitha Bee, et al. vs. Kavilico Corporation, ITT Neodyne, **Parker Hannifin**, and the Boeing Company (Superior Court of the State of California, County of Los Angeles, Case No. C99-589C) (2005)

**William A. Wise** vs. El Paso Corporation (American Arbitration Association, Houston, Case No. 70-Y-116-00327-04) (2005)

Dr. Phillips, Inc. vs. **Control Laser Corporation and Excel Technology, Inc.** (In the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida, Case No. 02-CA-000075, Division: 32, Business Court) (2005)

MOSAID Technologies Incorporated vs. **Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., Samsung Semiconductor, Inc., and Samsung Austin Semiconductor, L.P.** (In the United States District Court for the District of New Jersey, Civil Action No. 01-4340 (WJM)) (2004)

Kathleen C. Cailloux, Kenneth F. Cailloux, Paula L. Heilman, and Robert Stephen Andresakis vs. **Baker Botts, L.L.P.**, Wells Fargo Bank Texas, N.A., William R. Goertz, S. Stacy Eastland, and Stephen T. Dyer (In the 198<sup>th</sup> Judicial District Court of Kerr County, Texas, Civil Action No. 03-603-B) (2004)

**Brooktrout, Inc.** vs. Eicon Networks Corporation, Eicon Networks, Inc. (In the United States District Court for the Eastern District of Texas, Marshall Division, Case Number 03-CV-59) (2004)

**MCI Worldcom Network Services, Inc.** vs. Twister Communications Network, Inc. (In the District Court of Montgomery County, Texas, 221<sup>st</sup> Judicial District, Civil Action No. 00-05-03124CV) (2004)

Colgate-Palmolive Company vs. **The Procter & Gamble Company** (In the United States District Court for the Southern District of New York, 03 Civ. 9348 (LLS) (DFE)) (2004)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

Airbel Wireless, Inc. and JAVS Telecom, Inc. vs. **AT&T Wireless Services, Inc.** (American Arbitration Association, New York, Case No. 13 Y 199 00709 03) (2004)

**Electronic Data Systems Corp.** vs. Aspect Communications Corp. (American Arbitration Association, San Francisco, Case No. 74 Y 117 00586 03 GAP) (2003 and 2004; two depositions)

Anthony Stella and Mary S. Stella, Individually and on Behalf of all Persons Similarly Situated in the State of Texas vs. **Grant Thornton, L.L.P.** (In the District Court of Galveston County, 212th Judicial District) (2003)

Administaff, Inc. and Administaff of Texas, Inc. vs. **Aetna Life Insurance Company** (In the United States District Court for the Southern District of Texas, Houston Division, Civil Action No. 4:01CV3802) (2003)

GATT Trading, Inc. vs. **Sears, Roebuck and Co.** (In the United States District Court for the Eastern District of Texas, Marshall Division, Civil Action No. 2:01CV260) (2003)

**IEX Corporation** vs. Blue Pumpkin Software, Inc. (In the United States District Court for the Eastern District of Texas, Sherman Division, Civil Action No. 4:01CV16) (2003 and 2005; two depositions)

Steven R. Keene d/b/a Pagers Plus vs. **AT&T Wireless, Inc., a/k/a AWS National Accounts, L.L.C., and First Cellular Group of Shreveport, Inc. d/b/a AT&T Wireless Services** (Judicial Arbitration and Administration Services, Inc.) (2003)

Teleplus, Inc., vs. **MCI Telecommunications Corporation, MCI International Telecommunications Corporation, MCI International Inc., MCI Communications Corporation, MCI Worldcom, Inc., MCI Global Support Corporation, MCI Global Access Corporation, and Avantel, S.A.** (In the United States District Court Western District of Texas, San Antonio Division, Civil Action No. SA-98-CA-0849 FB) (2003)

Cavalry Investments, L.L.C. vs. **Sunstar Acceptance Corporation and NationsCredit Commercial Corporation** (County Court at Law, Number 4, Dallas County, Texas, Cause No. 99-02296-D) (2002)

Customedia Technologies, LLC and William H. Lewis vs. Joby Hughes, Felsman, Bradley, Gunter & Dillon, Stephen Perkins, **Sidley & Austin**, Litigation Risk Management, Inc., and Granite Ventures, Inc. (In the District Court of Harris County, Texas, 125<sup>th</sup> Judicial District, Case No. 2000-26667) (2002 and 2003; two depositions)

Edward Ahearn vs. **Ernst & Young, L.L.P.** (Before the American Arbitration Association, Case No. 13-107-00136-01) (2002)

John H. Houser and Frederick A. Raffa vs. **Wachovia Corporation** (In the United States District Court, Middle District of Florida, Tampa Division, Case No. 8:01-CV1041-T-17MSS) (2002)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

**Brine, Inc. and Sports Licensing, Inc.** vs. STX, Inc. and STX, LLC (In the United States District Court for the District Massachusetts, Worcester Division, Civil Action No. 99-40167) (2002 and 2003; two depositions)

Morgan Howard, L.L.C. vs. **Immediant, Inc.** (In the County Court at Law No. 3, Dallas County, Texas, Cause No. 01-899-C) (2002)

**Poly-America, Inc.** vs. Serrot International, Inc. (In the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3:00CV1457-D) (2002)

Andrew Cumming vs. **J. C. Penney Company, Inc.** (In the District Court of Dallas County, Texas, 160<sup>th</sup> Judicial District, Civil Action No. 71-160-00077-01) (2002)

Inter-Tel, Incorporated vs. **Bank of America, Arizona** (In the Superior Court of the State of Arizona in and for the County of Maricopa, Case No. CV 96-00867) (2002)

Tyler Jet, L.L.C., TeamXtreme Racing, L.L.C., and Burl Outlaw vs. **Lycos, Inc.** (In the United States District Court for the Eastern District of Texas, Lufkin Division, Civil Action No. 9:00CV-179) (2001)

EPI Environmental Products, Inc. vs. **In-Line Plastics, L.C.** (In the United States District Court for the Southern District of Texas, Houston Division, Civil Action No. 4:98CV4209) (2001)

Health Laboratories of North America, Inc., et al. vs. **Neodata Services, Inc.** (In the Superior Court of the State of Arizona In and For the County of Maricopa, Civil Action No. CV1998-008143) (2001)

Acres Gaming Inc. vs. Mikohn Gaming Corporation and **Casino Data Systems** (In the United States District Court District of Nevada, Civil Action No. CV-S-01462-PMP (RJJ)) (2000)

COC Services, Ltd. vs. **CompUSA, Inc., Grupo Carso S.A. de C.V., Grupo Sanborns S.A. de C.V.**, et. al. (In the District Court 116<sup>th</sup> Judicial District of Dallas County, Texas, Case No. 0000023) (2000)

Healthtech Diagnostics, Corporation and Oncogenetics, Inc. vs. **Impath, Inc. and Impath-HDC, Inc.** (In the District Court of Dallas County, Texas, L-193<sup>rd</sup> Judicial District, Case No. 97-08552) (2000)

Pacific Southwest Bank and NAFCO Holding Company, LLC vs. **Electronic Data Systems Corporation** (In the District Court of Dallas County, Texas, 191<sup>st</sup> Judicial District, Cause No. 98-5954) (2000)

Anthony D. Viazis, et. al. vs. **American Association of Orthodontists**, et. al. (In the United States District Court for the Eastern District of Texas, Sherman Division, Civil Action No. 4:98-CV-245) (2000)

**Kvaerner Oilfield Products, Inc.** vs. Cooper Cameron Corp. (In the United States District Court for the Southern District of Texas, Houston Division, Civil Action No. H-98-3369) (2000)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

J.V. Smith, et al. vs. Randy Louis Harrell, **Enterprise Products Company**, et. al. (In the District Court of Liberty County, Texas, 75<sup>th</sup> Judicial District) (2000)

Norman Yourish, et. al. vs. **California Amplifier**, et. al. (Superior Court of the State of California for the County of Ventura, Civil Action No. CIV173569) (2000)

David Kimberly Hackett, individually and Samuel G. Swope, individually and as Assignees of Courtesy Auto Group, Inc. vs. **Electronic Data Systems, Inc.** (In the United States District Court for the Northern District of Illinois, Eastern Division, Civil Action No. 98-1065-CIV-19-A) (2000)

County Council of Northampton County vs. **SHL Systemhouse Corp.** vs. Northampton County (In the United States District Court for the Eastern District of Pennsylvania, Civil Action No. 98-CV-0088) (1999)

**Natural Reserves Group, Inc.** vs. Baker Hughes, Inc., et. al. (In the United States District Court for the Southern District of Texas, Harris County Division, Civil Action No. 96-31380) (1999)

**BeautiControl, Inc.** vs. Ryco Packaging Corp. vs. Arrowpak, Inc. and Custom Decorative Systems, Inc. (In the United States District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3-98CV1775-H) (1999)

Peoples National Bank, Peoples National Mortgage Corp., and Texas Peoples National Bancshares, Inc. vs. Russell A. McClendon, **St. Paul Mercury Insurance Company**, Smith-Reagan Life and Health Insurance Agency, Inc. and Gary Robertson (In the District Court Lamar County, Texas, 62<sup>nd</sup> Judicial District) (1999)

In the Matter of Application No. 96-1, **Olympic Pipe Line Company**: Cross Cascade Pipeline Project (Before the State of Washington Energy Facility Site Evaluation Council) (1999)

Petrofac, Inc. and Petrofac International, Ltd. vs. **Howe-Baker Engineers, Inc. and Omar J. Ghalayini** (In the County Court at Law; Smith County, Texas, Cause No. 39,839) (1998)

L & S Concrete Company, Inc., Gilliam Brothers, Inc., Webco, Inc., Charles T. Weaver, Gus Blass, III, Bob Townsell, Alex Lieblong, and Dr. Thomas Robinson vs. **Trans World Airlines, Inc.** (In the United States District Court for the Eastern District of Arkansas Western Division, Case No. Civ-97-378) (1998)

Magnetic Technologies, S.P.R.L. vs. **Connectware, Inc.** (In the District Court Dallas County, Texas, 68<sup>th</sup> Judicial District) (1998)

Jeannean Heller, CRNA; Joanne Lewis, CRNA; Harold Newsom, CRNA; and Lola H. Wright, CRNA vs. **Raymond M. Dunning, Jr. and Columbia Medical Center of Lewisville Subsidiary L.P., d/b/a Columbia Medical Center of Lewisville, Dallas, Texas** (American Arbitration Association, Dallas, Texas Region) (1998)



**Deposition Testimony of Keith R. Ugone, Ph.D.**

Proposed Form A Acquisition of Control of Universal Fidelity Life Insurance Company, an Oklahoma Domestic stock insurer, by **Conseco, Inc.**, A Delaware Corporation (Before the Insurance Commissioner of the State of Oklahoma, Case No. 97-207-TRN) (1997)

**Excel Telecommunications, Inc., Excel Communications, Inc., Steve Smith, and Kenny Troutt** vs. Linden Wood, Brad Campbell, Candy Campbell, Jerry Szeszulski, and Team Excel of Independent Representatives (American Arbitration Association, Dallas, Texas Region) (1997)

**Gourmet Award Foods** vs. Continental Extrusion, Genpak Corporation, and Heartland Packaging Corporation (Judicial District Court of Dallas County, Texas, D-95<sup>th</sup> Judicial District) (1997)

L. Anne H. Frazier vs. **Owsley Brown Frazier** (Jefferson Family Court, Division Eight; Louisville, Kentucky, Case No. 94-FD-01957) (1997)

Dodee Frost Crockett vs. **Randy Miller and Gina Kaiser** (In the District Court of Dallas County, Texas; 192<sup>nd</sup> Judicial District) (1996)

**Reedrill Corporation** vs. Driltech, Inc. (U.S. District Court for the Eastern District of Texas, Sherman Division, Civil Action No. 4:95CV189) (1996)

Robert Tuck vs. **Westec Security, Inc.** (Superior Court of the State of California for the County of Los Angeles, Case No. BC131221) (1996)

James Hylsky and Terri Hylsky vs. **Fruehauf Trailer Corporation**, et. al. (In the Circuit Court Twentieth Judicial Circuit St. Clair County, Illinois) (1996)

In Re: **CSC Industries, Inc.** and In Re: **Copperweld Steel Company** (In the United States Bankruptcy Court for the Northern District of Ohio, Eastern Division, Civil Case No. 4:93bk41898) (1996)

Nationwide Business Telephones and Team Centrex vs. **Introlink Communications System, Inc. and Pacific Bell, Inc.** (Superior Court of the State of California for the County of Los Angeles, Case No. BC009783) (1996)

TriCom, Inc. vs. **Electronic Data Systems Corporation** (U.S. District Court for the Eastern District of Michigan, Southern Division, Civil Action No. 2:92CV76374) (1995)

Lacerta Enterprises, Inc. dba Frontline Systems, Inc. vs. **Geac Computers, Inc. and Fasfax Corporation** (U.S. District Court for the District of Arizona, Case No. CIV 95-0649 PHX (ROS)) (1995)

Bluebonnet Savings Bank, et. al. vs. **Federal Deposit Insurance Corporation**, et. al. (U.S. District Court for the Northern District of Texas, Dallas, Civil Action No. 3:91CV1066) (1995)

Circo Craft Company, Inc. vs. **AMP-AKZO Corporation**, et. al. (Superior Court of the State of California for the County of San Diego, North County District) (1995)

**Deposition Testimony of Keith R. Ugone, Ph.D.**

BancTec USA, Inc. vs. **Advanced Financial Solutions**, et. al. (U.S. District Court for the Northern District of Texas, Dallas Division, Civil Action No. 3:93CV1277) (1994)

**Ivy Goth** vs. Datsun-Nissan Motor Company, Ltd., et. al. (Superior Court of the State of California for the County of Los Angeles, Case No. SC013502) (1994)

Cybor Corporation vs. **FAS Technologies and FAStar Ltd.** (U.S. District Court for the Northern District of California, San Jose, Civil Action No. 5:93CV20712) (1994)

Texas State Bank, et. al. vs. **Electronic Data Systems Corporation** (206<sup>th</sup> District Court of Hidalgo County, Texas) (1994; two depositions)

Auto Color Specialists, Inc. and Polly Chen vs. **BASF** (Superior Court of the State of California for the County of Orange, Case No. 677861) (1994)

**Tactical Edge, Inc.** vs. Gall's, Inc. (District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada) (1994)

Arley Del Gado vs. **County of Los Angeles** (Superior Court of the State of California for the County of Los Angeles) (1993)

Dominquez vs. **Holy Cross Hospital** (Superior Court of the State of California for the County of Los Angeles) (1993)

**Union Oil Company of California** vs. International Insurance Company, et. al. (Superior Court of the State of California) (1993)

Maranatha Music! vs. **Capital Cities, Inc./ABC, Inc., and Word, Inc.** (U.S. District Court for the Western District of Texas, Waco Division) (1993)

**Villarreal** vs. East Side Union High School District (Superior Court of the State of California) (1993)

Official Committee of Creditors Holding Unsecured Claims on behalf of First Capital Holdings Corporation vs. **Shearson Lehman Brothers Holdings Inc.**, et. al. (U.S. District Court for the Central District of California) (1993)

Chroma Lighting and Charles T. Von Der Ahe vs. **GTE Products Corporation and Sylvania Lighting Services Corporation** (U.S. District Court for the Central District of California, Civil Case No. 2:91CV6424) (1993; three depositions)

**Sunbelt Television, Inc.** vs. Jones Intercable, Inc. (U.S. District Court for the Central District of California, Civil Case No. 2:91CV3506) (1992)

Holabird Sports Discounters vs. **Tennis Tutor, Inc.** (U.S. District Court for the District of Maryland, Civil Action No. 1:91CV2208) (1992)

Expo-Tech Electrical & Plumbing Services vs. **Greyhound Exposition Services** (1992)

Deposition Testimony of Keith R. Ugone, Ph.D.

**De Laurentiis Entertainment Group, Inc.** Securities Litigation; **De Laurentiis Film Partners** Securities Litigation (U.S. District Court for the Central District of California) (1991; two depositions)

James T. Ryan vs. **Crowley Towing and Transportation and Shell Oil Company** (Superior Court of the State of California for the County of Los Angeles) (1991)

**Clayton Jacobson** vs. Kawasaki Heavy Industries, Ltd., Japan; Kawasaki Motors Corporation, USA; and Kawasaki Motors Manufacturing Corporation, USA (U.S. District Court for the Central District of California) (1991)

Advanced Building Maintenance, Inc., vs. **Premier Ventures, Inc., dba Premier Building Maintenance** (Superior Court of the State of California for the County of Los Angeles) (1990)

Frank V. and Gloria Lumbert vs. **Robert C. Skinner and Lillian R. Skinner**, et. al. (Superior Court of the State of California for the County of Los Angeles) (1990)

Plaintiff vs. **Valley Hunt Club**, Tournament of Roses, et. al. (Superior Court of the State of California) (1990)

Kippy Thomas vs. **Mary Lendo and Circle K**, (Superior Court of the State of California for the County of Riverside) (1990)

# **EXHIBIT 3**

## Facts, Data, and Other Information Received

Description	Bates Prefix	Start	End
<b><u>Legal Documents</u></b>			
Amended Class Action Complaint in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Class Action Complaint for Misappropriation, Unfair Competition and Conversion in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Class Action Complaint in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Complaint in the matter of SoundExchange, Inc. v. Sirius XM Radio Inc. (D. Columbia Case No. 1:13-cv-01290-RJL)			
Corrected Written Rebuttal Testimony of Dr. Michael A. Salinger dated August 9, 2012 in the matter of Determination of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services			
Declaration of Daniel Lifschitz In Support of Flo & Eddie, Inc.'s Motion for Class Certification dated March 16, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Declaration of David J. Frear in Support of Sirius XM's Opposition to Plaintiff's Motion for Summary Judgment dated July 28, 2014 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Declaration of Elliot Goldman In Support of Sirius XM's Opposition to Flo & Eddie's Motion for Class Certification dated April 15, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Declaration of Harvey Geller In Support of Flo & Eddie, Inc.'s Motion for Class Certification dated March 15, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Declaration of Henry Gradstein In Support of Flo & Eddie, Inc.'s Motion for Class Certification dated March 16, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Declaration of Jonathan Bender In Support of Flo & Eddie, Inc.'s Motion for Class Certification dated March 11, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Declaration of Mark Volman In Support of Flo & Eddie, Inc.'s Motion for Class Certification dated March 16, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Declaration of Steven Blatter In Support of Sirius XM's Opposition to Flo & Eddie's Motion for Class Certification dated April 14, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Defendant Sirius XM Radio Inc.'s Answer to the Amended Class Action Complaint in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Defendant Sirius XM Radio Inc.'s Local Rule 56-2 Statement of Genuine Issues of Material Fact in Opposition to Plaintiff's Motion for Summary Judgment in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Defendant Sirius XM Radio Inc.'s Memorandum of Law in Support of Its Motion to Dismiss in the matter of SoundExchange, Inc. v. Sirius XM Radio Inc. (D. Columbia Case No. 1:13-cv-01290-RJL)			
Defendant Sirius XM Radio Inc.'s Reply Memorandum of Law in Further Support of Its Motion to Dismiss in the matter of SoundExchange, Inc. v. Sirius XM Radio Inc. (D. Columbia Case No. 1:13-cv-01290-RJL)			
Defendant Sirius XM Radio Inc.'s Responses to Plaintiff's First Set of Interrogatories in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			

## Facts, Data, and Other Information Received

Description	Bates Prefix	Start	End
Defendant Sirius XM Radio Inc.'s Responses to Plaintiff's Second Set of Interrogatories in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion for Summary Judgment in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 73 Fed. Reg. 4080-4104 (Jan. 24, 2008)			
Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services, 78 Fed. Reg. 23054-23100 (Apr. 17, 2013)			
Flo & Eddie, Inc.'s Notice of Motion and Motion for Class Certification in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Flo & Eddie, Inc.'s Responses and Objections to Sirius XM Radio, Inc.'s First Set of Special Interrogatories in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Memorandum of Law in Support of Sirius XM's Motion for Summary Judgment in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. New York Case No. 13-CV-5784 (CM) (HBP))			
Notice of Motion and Motion of Plaintiff Flo & Eddie, Inc.'s for Summary Judgment in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Order Granting Plaintiff's Motion for Summary Judgment dated September 22, 2014 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Plaintiff Flo & Eddie, Inc.'s First Set of Interrogatories to Defendant Sirius XM Radio in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Plaintiff Flo & Eddie, Inc.'s Second Set of Interrogatories to Defendant Sirius XM Radio in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Plaintiff Flo & Eddie, Inc.'s Second Set of Requests for Production of Documents in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Plaintiff Flo & Eddie, Inc.'s Separate Statement of Uncontroverted Facts and Conclusions of Law in Support of Plaintiff's Motion for Summary Judgment in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Plaintiff Flo & Eddie's Disclosure of Expert Witness Michael J. Wallace and Accompanying Expert Report in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Plaintiff SoundExchange's Memorandum of Points and Authorities in Opposition to Defendant Sirius XM's Motion to Dismiss in the matter of SoundExchange, Inc. v. Sirius XM Radio Inc. (D. Columbia Case No. 1:13-cv-01290-RJL)			
Plaintiff's Further Responses to Defendant's First Set of Interrogatories Numbers 11 and 12 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Plaintiff's Responses and Objections to Defendant's First Set of Interrogatories in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Revised Amended Written Direct Testimony of Roger G. Noll dated May 17, 2012 in the matter of Determination of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services			

# Facts, Data, and Other Information Received

Description	Bates Prefix	Start	End
Sirius XM Radio Inc.'s Statement of Uncontested Material Facts Pursuant to Local Rule 56.1 in Support of Its Motion for Summary Judgment in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. New York Case No. 13-CV-5784 (CM) (HBP))			
Sirius XM Radio Inc.'s Supplemental Responses and Objections to Flo & Eddie, Inc.'s Second Set of Interrogatories in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Third Corrected and Amended Testimony of Janusz Ordoover dated June 13, 2012 in the matter of Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services			
Written Direct Statement of Sirius XM Radio Inc. dated November 29, 2011 (Public Version) in the matter of Determination of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services			
<b><u>Deposition Transcripts and Associated Exhibits</u></b>			
30(b)(6) Deposition of Flo & Eddie, Inc. by Evan S. Cohen (Volume I) and also in his individual capacity (Volume II) taken on February 13, 2015 and Associated Exhibits			
30(b)(6) Deposition of Flo & Eddie, Inc. by Mark Volman (Volume I) and also in his individual capacity (Volume II) taken on February 28, 2015 and Associated Exhibits			
Deposition of David Frear taken February 18, 2015 and Associated Exhibits			
Deposition of Scott Greenstein taken on February 27, 2015 and Associated Exhibits			
Deposition of Steven Blatter taken on February 11, 2015			
<b><u>Expert Reports and Associated Documentation</u></b>			
Declaration of Michael Wallace In Support of Flo & Eddie, Inc.'s Motion for Class Certification dated March 12, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
Expert Report of Michael J. Wallace dated June 24, 2014 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (S.D. Florida Case No. 13-CV-23182)			
Expert Report of Michael J. Wallace dated March 13, 2015 in the matter of Flo & Eddie, Inc. v. Sirius XM Radio Inc. (C.D. California Case No. 13-CV-5693 PSG (RZx))			
<b><u>Documents Produced by Flo &amp; Eddie</u></b>			
FLO 0000602.xls	FLO	0000602	0000602
FLO 0000603.xls	FLO	0000603	0000603
FLO 0000604.xls	FLO	0000604	0000604
FLO 0000606.xls	FLO	0000606	0000606
FLO 0000607.xls	FLO	0000607	0000607
FLO 0000608.xls	FLO	0000608	0000608
FLO 0000609.xls	FLO	0000609	0000609

## Facts, Data, and Other Information Received

Description	Bates Prefix	Start	End
FLO 0000652.xlsb	FLO	0000652	0000652
FLO 0000653.xlsb	FLO	0000653	0000653
Evan S. Cohen, Esq. Publisher Administration: Flo & Eddie, Inc. CCPA Bank Account Register for January 1, 2009 through December 31, 2011	FLO	0002875	0002880
Cohen Music Administration: Flo & Eddie, Inc. Main Account Bank Account Register for January 1, 2012 through March 3, 2014	FLO	0002881	0002884

### Documents Produced by Sirius XM

Back to Table 3.xls

Sirius XM Summary of Financial Data - 5PM 4.10.15.xlsx

Sirius XM Summary of Financial Data - 7.15.14.xlsx

Sirius XM Summary of Revenue and Subscriber Data - 5PM 4.14.15.xlsx

Sirius XM Summary of Revenue and Subscriber Data - 5PM 4.14.15.xlsx

SXM Detailed Financial Costs.xls

SXM Financial Costs.xls

Table 3 SXM Unique Cost Allocation.xls

Table 4 Channel mix.xls

SXM PD % for SDARS

Song Information

Contract Approval Form dated June 16, 2010 between Sirius XM and Elvis Presley Enterprises

Contract Approval Form dated March 2, 2010 between Sirius XM and Frank Sinatra Enterprises

Contract Approval Form dated July 14, 2011 between Sirius XM and Margaritaville Holdings, LLC (Radio Margaritaville Channel)

Contract Approval Form dated July 8, 2010 between Sirius XM and Rhino Entertainment (Grateful Dead Channel)

Contract Approval Form dated September 14, 2007 between Sirius Staelite Radio and Sony - BMG/Bruce Springsteen Channel

Contract Approval Form dated August 16, 2011 between Sirius XM and Capital Records (Pink Floyd Channel)

Sirius XM Holdings Inc. Form 10-K for the Year Ended December 31, 2014

Written Direct Testimony of Roger G. Noll in the Determination of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services Matter (U.S. Copyright Royalty Judges, Washington, D.C., 2011-1, CRB PSS/Satellite II)

Testimony of Janusz Ordoover in the Determination of Rates and Terms for Preexisting Subscription Services and Satellite Digital Audio Radio Services Matter (U.S. Copyright Royalty Judges, Washington, D.C., 2011-1, CRB PSS/Satellite II)

Written Rebuttal Testimony of Dr. Michael A. Salinger in the Determination of Rates and Terms for Preexisting Subscription and Satellite Digital Audio Radio Services, U.S. Copyright Royalty Judges, Washington, D.C., 2011-1, CRB PSS/Stellite II)

SXM-F&E	00004553	00004553
SXM-F&E	00006834	00007246
SXM-F&E	00007277	00007285
SXM-F&E	00007302	00007313
SXM-F&E	00007328	00007348
SXM-F&E	00007416	00007425
SXM-F&E	00007439	00007446
SXM-F&E	00007487	00007496
SXM-F&E	00011739	00011846
SXM-F&E	00011847	00012018
SXM-F&E	00012019	00012067
SXM-F&E	00012068	00012125



## Facts, Data, and Other Information Received

Description	Bates Prefix	Start	End
Sirius XM Results of Operations 2009 - 2014	SXM-F&E	00012126	00012131
Sound Recording Catalog License dated April 1, 2015 between Sirius XM Radio Inc. and Broadway Records LLC	SXM-F&E	00012132	00012143
Sound Recording Catalog License dated January 1, 2015 between Sirius XM Radio Inc. and Naxos of America, Inc.	SXM-F&E	00012144	00012155
Sound Recording Catalog License dated April 1, 2015 between Sirius XM Radio Inc. and No Big Deal Records	SXM-F&E	00012156	00012167
Sound Recording Catalog License dated January 1, 2015 between Sirius XM Radio Inc. and Dangerbird Records, LLC	SXM-F&E	00012168	00012179
Sound Recording Catalog License dated April 1, 2015 between Sirius XM Radio Inc. and It's Time Child Records	SXM-F&E	00012180	00012191
Sound Recording Catalog License dated April 1, 2015 between Sirius XM Radio Inc. and Kitchenware Records Ltd.	SXM-F&E	00012192	00012203
Sound Recording Catalog License dated April 1, 2015 between Sirius XM Radio Inc. and Mamou Playboy Records	SXM-F&E	00012204	00012215
Sound Recording Catalog License dated April 1, 2015 between Sirius XM Radio Inc. and The End Records	SXM-F&E	00012216	00012227

### Documents Independently Obtained

- "60s Pop Hits with Cousin Brucie" (<http://www.siriusxm.com/60son6>, viewed on April 8, 2015)
- "1950's Decade Overview" (<http://www.rockmusictimeline.com/1950s.html>, viewed on April 13, 2015)
- "1960's Decade Overview" (<http://www.rockmusictimeline.com/1950s.html>, viewed on April 13, 2015)
- "Age and Sex Composition: 2010," U.S. Census Brief (<http://www.census.gov/prod/cen2010/briefs/c2010br-03.pdf>, viewed on April 13, 2015)
- "Age: 2000," U.S. Census Brief (<http://www.census.gov/prod/2001pubs/c2kbr01-12.pdf>, viewed on April 13, 2015)
- "Barbra Streisand to Launch Exclusive SiriusXM Channel," Sirius XM Press Release dated September 8, 2014 (<http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=869601>, viewed on April 11, 2015)
- "Carolina In My Mind" ([http://en.wikipedia.org/wiki/Carolina\\_In\\_My\\_Mind](http://en.wikipedia.org/wiki/Carolina_In_My_Mind), viewed on April 12, 2015)
- "Legendary Radio Personality 'Cousin Brucie' Renews Multi-Year Deal Exclusively With SIRIUS Satellite Radio," Sirius Press Release dated September 26, 2007 (<http://investor.sirius.com/releasedetail.cfm?releaseid=265879>, viewed on April 8, 2015)
- "National Radio Hall of Fame: Bruce Morrow" ([http://www.radiohof.org/bruce\\_morrow.htm](http://www.radiohof.org/bruce_morrow.htm), viewed on April 8, 2015)
- "Neil Diamond Radio is coming to SiriusXM!" Sirius XM Blog dated October 9, 2014 (<http://blog.siriusxm.com/2014/10/09/neil-diamond-radio-is-coming-to-siriusxm-lets-celebrate-with-5-essential-neil-diamond-songs/>, viewed on April 11, 2015)
- "Our Most Popular Packages" (<http://www.siriusxm.com/ourmostpopularpackages>, viewed on April 10, 2015)
- "Pandora One" (<http://www.pandora.com/one>, viewed on April 6, 2015)
- "Psychotic Reaction" ([http://en.wikipedia.org/wiki/Psychotic\\_Reaction](http://en.wikipedia.org/wiki/Psychotic_Reaction), viewed on April 12, 2015)
- "SIRIUS and XM Complete Merger," Sirius XM press release dated July 29, 2008 (<http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=324858>, viewed on April 3, 2015)
- "SiriusXM Select Channel Lineup" (<http://www.siriusxm.com/channellineup/siriusxmselect>, viewed on April 7, 2015)

## Facts, Data, and Other Information Received

Description	Bates Prefix	Start	End
"The Best of 2014: Town Halls – On Demand," Sirius XM Blog dated December 13, 2014 ( <a href="http://blog.siriusxm.com/2014/12/13/the-best-of-2014-town-halls-on-demand/">http://blog.siriusxm.com/2014/12/13/the-best-of-2014-town-halls-on-demand/</a> , viewed on April 11, 2015)			
"Tony Bennett to Sit Down with Alec Baldwin during Fan Q&A Session for SiriusXM's 'Town Hall' Series," Sirius XM Press Release dated February 6, 2013 ( <a href="http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=738498">http://investor.siriusxm.com/releasedetail.cfm?ReleaseID=738498</a> , viewed on April 11, 2015)			
"Weekly Schedule - '60s on 6 - SiriusXM Radio" ( <a href="http://www.siriusxm.com/60son6/weeklyschedule">http://www.siriusxm.com/60son6/weeklyschedule</a> , viewed on April 6, 2015)			
"What is SiriusXM?" ( <a href="http://www.siriusxm.com/whatissiriusxm">http://www.siriusxm.com/whatissiriusxm</a> , viewed on April 8, 2015)			
Detailed Tables for the National Vital Statistics Report: "Deaths: Final Data for 2013" ( <a href="http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_02.pdf">http://www.cdc.gov/nchs/data/nvsr/nvsr64/nvsr64_02.pdf</a> , viewed on April 14, 2015)			
Sirius Satellite Radio Inc. Form 10-K for the fiscal year ended December 31, 2007			
Sirius XM Holdings Inc. Form 10-K for the fiscal year ended December 31, 2013			
Sirius XM Holdings Inc. Form 10-Q for the quarterly period ended September 30, 2014			
Sirius XM Radio Inc. Form 10-K for the fiscal year ended December 31, 2009			
Sirius XM Radio Inc. Form 10-K for the fiscal year ended December 31, 2011			

# **EXHIBIT 4**

4/13/2015

1950's Music Decade Overview



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- 1950's
- 1960's
- 1970's
- 1980's
- 1990's
- Blog
- About

- Rock Roots
- 1955
- 1956
- 1957
- 1958
- 1959

1950's Decade Overview



Left to Right: '50s rock n' roll pioneers The Everly Brothers, Buddy Holly, Chuck Berry, Elvis Presley, Little Richard, and Jerry Lee Lewis.

Rock Music in the Fifties:

In the early 1950's the American Pop Charts are dominated by the remnants of the big band era including vocalists such as Doris Day, Frankie Lane, Frank Sinatra, Rosemary Clooney and Nat King Cole, along with band leaders Mitch Miller, Percy Faith and others. The Rhythm & Blues Charts feature African-American artists playing to a predominately African-American audience in urban centers and the south. Cleveland, Ohio radio Disc Jockey Alan Freed is an exception with his "Moondog Show" where he spins up-tempo rhythm & blues hits, but aims his



radio to African-American audience for R&B and gains a wide audience of both white and black teenagers. Freed eventually names this cross-current of musical styles and influences - electric blues, boogie, jazz, gospel, R&B vocal groups and country - "Rock and Roll".

The solid body electric guitar becomes commercially available in the early fifties and is quickly adapted by R&B artists, as well as Pop artists. The 78 RPM record is replaced by the LP (long playing) vinyl album and the 45 RPM single is introduced.

In 1953, Bill Haley and His Comets are the first to hit the pop charts with a true rock and roll song, taking their single "Crazy Man Crazy" to #12. Black R&B artists such as Doo Wop group the Orioles achieve crossover success on the Pop Charts in 1953 with their R&B hit "Crying In The Chapel".



More cross-over hits from black R&B artists such as Fats Domino and The Platters climb the pop charts. White artists such as Pat Boone, The Crewcuts and Georgia Gibbs find success covering R&B hits and turning them into hits on the pop charts.

Independent record labels such as Sun (Memphis), Ace (Jackson, MS), Vee-Jay (Gary, IN), Chess (Chicago), Specialty Records (Los Angeles) and many other labels are quick to pick up on the opportunity and begin to release Rock and Roll records from newly signed artists.

In 1955 rock and roll has it's first nationwide #1 hit when Bill Haley's "Rock Around The Clock" tops the Pop Charts. Although considered a novelty or fad by most, rock proves it's staying power. In 1955 black R&B artists Little Richard and Chuck Berry score significant Pop hits. Scouts from RCA records, looking to sign their own rock

1950's Top 100 Best Selling Singles Worldwide:

- 1 Bill Haley & his Comets - Rock Around the Clock - 1955
- 2 Elvis Presley - Jailhouse Rock - 1957
- 3 Jo Stafford - You Belong to Me - 1952
- 4 Doris Day  
Que sera sera (Whatever will be will be) - 1956
- 5 Rocco Granata - Marina - 1959
- 6 The Kingston Trio - Tom Dooley - 1958
- 7 Anton Karas - Third Man Theme - 1950
- 8 Bobby Darin - Mack the Knife - 1959
- 9 Al Martino - Here in My Heart - 1952
- 10 Nat King Cole - Mona Lisa - 1950
- 11 Teresa Brewer  
(Put Another Nickel In) Music! Music! Music! - 1950
- 12 Patti Page - Tennessee Waltz - 1950
- 13 Les Paul & Mary Ford  
Vaya Con Dios (may God Be With You) - 1953
- 14 Fats Domino - Blueberry Hill - 1956
- 15 Jerry Lee Lewis - Great Balls of Fire - 1957
- 16 The Chordettes - Mister Sandman - 1954
- 17 Nat King Cole - Too Young - 1951
- 18 Vera Lynn - Auf Wiederseh'n Sweetheart - 1952
- 19 Doris Day - Secret Love - 1954
- 20 Elvis Presley - Hound Dog - 1956
- 21 Tennessee Ernie Ford - Sixteen Tons - 1955
- 22 Nat King Cole - Unforgettable - 1951
- 23 The Crew-Cuts  
Sh-Boom (Life Could Be a Dream) - 1954
- 24 The Platters - Only You (And You Alone) - 1955
- 25 Paul Anka - Diana - 1957
- 26 Tony Bennett - Stranger in Paradise - 1953
- 27 The Platters - Smoke Gets in Your Eyes - 1959
- 28 Elvis Presley - Heartbreak Hotel - 1956
- 29 Johnnie Ray - Cry - 1951
- 30 Perez Prado  
Cherry Pink & Apple Blossom White - 1955
- 31 Perry Como  
Don't Let the Stars Get in Your Eyes - 1953
- 32 Harry Belafonte - Banana Boat Song - 1957
- 33 Elvis Presley - Don't Be Cruel - 1956
- 34 Domenico Modugno - Volare - 1958
- 35 Elvis Presley - All Shook Up - 1957
- 36 Kitty Kallen - Little Things Mean a Lot - 1954
- 37 Pat Boone - Love Letters in the Sand - 1957
- 38 Dean Martin - Memories Are Made of This - 1956
- 39 The Kalin Twins - When - 1958
- 40 Frankie Avalon - Venus - 1959
- 41 The Platters - The Great Pretender - 1956
- 42 Doris Day - Bewitched (bothered & bewildered) - 1950
- 43 Phil Harris - The Thing - 1950
- 44 Four Aces - Love is a Many Splendoured Thing - 1955
- 45 Rosemary Clooney - Hey There - 1954
- 46 The Diamonds - Little Darlin' - 1957
- 47 Patti Page  
How Much is That Doggy in the Window? - 1953
- 48 Eddie Fisher - I'm Walking Behind You - 1953
- 49 Guy Mitchell - Singing The Blues - 1956
- 50 Elvis Presley

1950's Timelines By Year:

- [Pre-Rock Timeline](#)
- [1955 Rock Timeline](#)
- [1956 Rock Timeline](#)
- [1957 Rock Timeline](#)
- [1958 Rock Timeline](#)
- [1959 Rock Timeline](#)

50's Photo Galleries By Year:

- [48-54 Photo Gallery](#)
- [1955 Photo Gallery](#)
- [1956 Photo Gallery](#)
- [1957 Photo Gallery](#)
- [1958 Photo Gallery](#)
- [1959 Photo Gallery](#)

What's included on this website:

[Rock Music by Decade](#) (main navigation at the top of each page) includes the following info:

- Key music events by decade
- Top 100 Songs of the decade
- Top 100 Albums of the decade
- Top Artists of the decade
- Music genres by decade

[Yearly Music Timelines](#) (secondary navigation at top of each decade page) include the following information:

- Key music events by Month/Year
- Yearly Jukebox from Rdio
- Top Songs by Year
- Top Albums by Year
- Links to more detailed info
- Links to #1 Songs US & UK
- Links to #1 Albums US & UK

[Yearly Photo Galleries](#): (access with the link below or on the left navigation from each Yearly Timeline)

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and roll performer, buy out the contract of Memphis singer Elvis Presley from regional label Sun Records.

In April 1956 Elvis Presley tops the Pop Charts with his first RCA single release "Heartbreak Hotel". By the end of the year he would be the first artist ever to have



100 songs in one. By 1957 rock and roll artists appear regularly on the popular music charts and by 1959 rock and roll records account for 43% of all records sold.

The end of the decade is marked by tragedy as a February 1959 plane crash takes the lives of rock and roll stars Buddy Holly, The Big Bopper and Ritchie Valens.

#### Fifties Genres / Key Artists:



**Rhythm & Blues:** Fats Domino, Little Richard, Professor Longhair, Johnny Otis, Hank Ballard, Ruth Brown, Big Joe Turner, The Clovers, The Platters, Bo Diddley, Chuck Berry, Ray Charles, Lloyd Price, The Dominoes, Bill Black, Johnny Ace, BB King, The Drifters



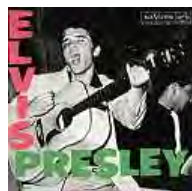
**Pre-Rock / Pop:** Doris Day, Mitch Miller, Percy Faith, Nat King Cole, Frankie Laine, Rosemary Clooney, Frank Sinatra, Tony Bennett, Perry Como, Johnny Mathis, Eddie Fisher, The Four Aces, Patti Page, Rosemary Clooney, Jo Stafford, Kay Starr, Dean Martin, Pat Boone



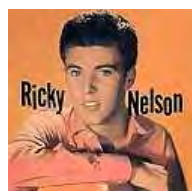
**Folk Revival:** Pete Seeger, The Weavers, The Kingston Trio, Guy Mitchell, Odetta, Harry Belafonte, The Brothers Four, Chad Mitchell Trio



**Doo Wop:** The Orioles, The Charms, The Clovers, The Penguins, The Crows, The Five Satins, The Moonglows, The Del-Vikings, The Diamonds, Frankie Lymon & The Teenagers



**Rock & Roll / Rockabilly:** Elvis Presley, Gene Vincent, Carl Perkins, Eddie Cochran, Bill Haley & His Comets, Buddy Holly, The Everly Brothers, Jerry Lee Lewis, Johnny Burnette & The Rock n' Roll Trio, Wanda Jackson, Ritchie Valens, Johnny Cash



**Teen Idols:** Ricky Nelson, Frankie Avalon, Fabian, Paul Anka, Dion, Annette Funicello

- (Now & then There's) A Fool Such As I - 1959
- 51 The Everly Brothers - Bird Dog - 1958
- 52 Dean Martin - That's Amore - 1953
- 53 Perez Prado - Patricia - 1958
- 54 Don Cornell - Hold My Hand - 1954
- 55 Les Paul & Mary Ford - How High the Moon - 1951
- 56 The Crickets - That'll Be the Day - 1957
- 57 Rosemary Clooney - Mambo Italiano - 1954
- 58 Percy Faith
  - The Song From Moulin Rouge (Where Is Your Heart)
- 59 Frankie Laine - I Believe - 1953
- 60 Gordon Jenkins & The Weavers - Goodnight, Irene - 1950
- 61 Les Paul & Mary Ford - Mockin' Bird Hill - 1951
- 62 Champs - Tequila - 1958
- 63 Chuck Berry - Johnny B Goode - 1958
- 64 Jimmy Boyd - I Saw Mommy Kissing Santa Claus - 1952
- 65 Percy Faith - Delicado - 1952
- 66 Johnnie Ray - Just Walkin' in the Rain - 1956
- 67 Four Aces - Three Coins in the Fountain - 1954
- 68 Al Hibbler - Unchained Melody - 1955
- 69 Perry Como - Wanted - 1954
- 70 The Everly Brothers - All I Have to Do is Dream - 1958
- 71 Tony Bennett - Because of You - 1951
- 72 Conway Twitty - It's Only Make Believe - 1958
- 73 Eddie Fisher - I Need You Now - 1954
- 74 Eddie Fisher - Oh My Papa (O Mein Papa) - 1954
- 75 Kay Starr - Wheel of Fortune - 1952
- 76 The Platters - My Prayer - 1956
- 77 Mario Lanza - Be My Love - 1951
- 78 Debbie Reynolds - Tammy - 1957
- 79 Cliff Richard - Living Doll - 1959
- 80 Tony Bennett - Rags to Riches - 1953
- 81 Johnny Horton - Battle of New Orleans - 1959
- 82 Paul Anka - Lonely Boy - 1959
- 83 Rosemary Clooney - Half As Much - 1952
- 84 The Andrews Sisters - I Can Dream, Can't I? - 1950
- 85 Perry Como - If (They Made Me a King) - 1951
- 86 Elvis Presley - Love Me Tender - 1956
- 87 Billy Eckstine - My Foolish Heart - 1950
- 88 Little Richard - Long Tall Sally - 1956
- 89 Jerry Lee Lewis - Whole Lotta Shakin' Goin' On - 1957
- 90 Billy Vaughn - Sail Along Silvery Moon - 1958
- 91 The Everly Brothers - Bye Bye Love - 1957
- 92 Neil Sedaka - Oh Carol - 1959
- 93 Nat King Cole - Pretend - 1953
- 94 Four Aces - Mister Sandman - 1955
- 95 Tony Bennett - Cold, Cold Heart - 1951
- 96 Tommy Edwards - It's All in the Game - 1958
- 97 Rosemary Clooney - This Ole House - 1954
- 98 Frankie Lymon & The Teenagers
  - Why Do Fools Fall in Love? - 1956
- 99 Elvis Presley - (Let Me Be Your) Teddy Bear - 1957
- 100 Mel Blanc - I Taut I Taw A Puddy Tat - 1951

#### Top 50 Music Artists of the 1950's

Based on Worldwide Sales of Singles and Albums

- |                            |                          |
|----------------------------|--------------------------|
| 1: Elvis Presley           | 26: Sonny Rollins        |
| 2: Frank Sinatra           | 27: Art Blakey           |
| 3: Nat King Cole           | 28: Johnnie Ray          |
| 4: Miles Davis             | 29: Duke Ellington       |
| 5: Perry Como              | 30: Sarah Vaughan        |
| 6: Harry Belafonte         | 31: Mitch Miller         |
| 7: Bill Haley & his Comets | 32: Hank Williams        |
| 8: Johnny Mathis           | 33: Mantovani            |
| 9: Thelonious Monk         | 34: Bing Crosby          |
| 10: Frankie Laine          | 35: Rosemary Clooney     |
| 11: Doris Day              | 36: Mario Lanza          |
| 12: Pat Boone              | 37: The Everly Brothers  |
| 13: Fats Domino            | 38: Guy Mitchell         |
| 14: Eddie Fisher           | 39: Charles Mingus       |
| 15: Ella Fitzgerald        | 40: Chet Baker           |
| 16: Patti Page             | 41: Paul Anka            |
| 17: Louis Armstrong        | 42: Les Paul & Mary Ford |
| 18: The Platters           | 43: Buddy Holly          |
| 19: Dean Martin            | 44: Jo Stafford          |
| 20: Dave Brubeck           | 45: Jackie Gleason       |
| 21: Tony Bennett           | 46: Ray Charles          |
| 22: The Kingston Trio      | 47: Ricky Nelson         |

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**Jazz:** Miles Davis, Dave Brubeck, Thelonious Monk, Ella Fitzgerald, Louis Armstrong, Sonny Rollins, Art Blakey, Duke Ellington, Sarah Vaughan, Charles Mingus

23: Four Aces  
24: Little Richard  
25: Chuck Berry

48: Tennessee Ernie Ford  
49: Claudio Villa  
50: Kay Starr

The lists above are based on worldwide sales. The worldwide sales information is from [T-sort](#) and uses a formula based on splitting the world into four regions based on sales, the USA (about 35%), other English speaking countries (about 20%), the rest of Europe (about 25%) and the rest of the world (about 20%). We feel this is the best methodology available to show the global impact of a song or album. More detailed chart info is available on the [T-sort](#) website. Actual US & UK charts are linked at the bottom of each year timeline on this site.

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What's included on this website:

Rock Music by Decade (main navigation at the top of each page) includes the following info:

- Key music events by decade
- Top 100 Songs of the decade
- Top 100 Albums of the decade
- Top Artists of the decade
- Music genres by decade

Yearly Music Timelines (secondary navigation at top of each decade page) include the following information:

- Key music events by Month/Year
- Yearly Jukebox from Rdio
- Top Songs by Year
- Top Albums by Year
- Links to more detailed info
- Links to #1 Songs US & UK
- Links to #1 Albums US & UK

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1960's Decade Overview



Left to Right: '60's rock icons The Supremes, The Beatles, The Rolling Stones, Jimi Hendrix, and Jim Morrison of The Doors.

Rock Music in the Sixties:

In the sixties rock music comes of age and dominates the popular music charts. Elvis Presley continues to score hits in the early part of the decade, but the music continues to diversify with the folk revival, the Brill Building sound, Phil Spector's wall of sound, girl groups and surf music, all impacting the early part of the decade. The Motown, Stax and Atlantic labels bring more african-american artists back to the forefront of the pop charts. By 1964 American artists are sharing the top of the charts with U.K. bands led by the Beatles and The Rolling Stones. In the U.S. garage bands emerge, inspired by the British Invasion sound.



Sixties songwriting moves beyond pop love songs and begins to include social consciousness and political statements. In the latter half of the decade psychedelic music reflects the growing hippie culture. Bubblegum music is created to generate radio friendly pop singles. Album sales begin to gain importance, as a harder rock sound emerges and sows the seeds for heavy metal.

In the sixties, television becomes a major force in rock music as networks try to attract a younger audience. American Bandstand continues with it's afternoon, clean-cut, teen idol format, while the Ed Sullivan Show and other TV variety shows begin showcasing rock bands in prime time. The networks also add the weekly prime time shows Shindig and Hullabaloo featuring dancers and new music for teenage fans.

In the late sixties outdoor rock music festivals begin. First with 1967's Monterey Pop Festival which attracts 55,000 fans per day to a three day concert. In the summer of 1969 the Woodstock Music and Art Fair draws 500,000 people to a three day concert in Bethel, New York.

The Beatles dominate the sixties record charts with 6 of the top 10 albums of the decade and 21 of the decades' top 100 singles. Their nearest competitor is Elvis Presley with 9 of the decades' top 100 singles and 4 of the decades' top 100 albums.

Sixties Genres / Key Artists:



Folk Revival: Bob Dylan, Joan Baez, Peter Paul & Mary, Phil Ochs, The Kingston Trio, Tom Rush, Judy Collins, Gordon Lightfoot, Arlo Guthrie, John Denver

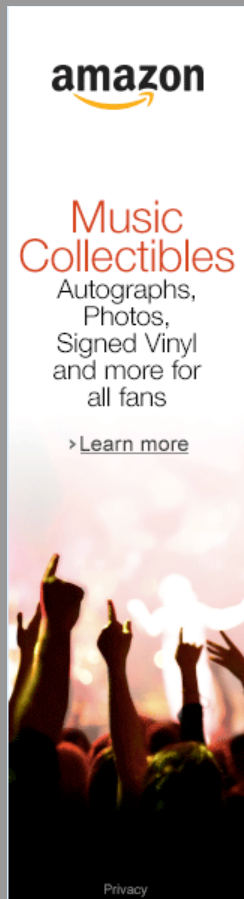
1960's Top 100 Best Selling Albums Worldwide:

- 1 The Beatles - Sgt Pepper's Lonely Hearts Club Band - 1967
2 The Beatles - Abbey Road - 1969
3 The Beatles - Revolver - 1966
4 The Beatles - The Beatles (The White Album) - 1968
5 Led Zeppelin - Led Zeppelin 2 - 1969
6 The Beatles - Rubber Soul - 1965
7 The Beatles - A Hard Day's Night - 1964
8 Leonard Bernstein - West Side Story - 1962
9 The Doors - The Doors - 1967
10 The Rolling Stones - Let It Bleed - 1969
11 The Beatles - Help! - 1965
12 Jimi Hendrix - Are You Experienced? - 1967
13 Bob Dylan - Highway 61 Revisited - 1965
14 Richard Rodgers - The Sound Of Music - 1965
15 The Beach Boys - Pet Sounds - 1966
16 Jimi Hendrix - Electric Ladyland - 1968
17 Bob Dylan - Blonde On Blonde - 1966
18 Original Cast - Hair - 1969
19 Cream - Disraeli Gears - 1967
20 The Rolling Stones - Beggars Banquet - 1968
21 The Beatles - Beatles For Sale - 1965
22 Bob Newhart The Button-Down Mind Of Bob Newhart - 1960
23 Ray Charles Modern Sounds In Country & Western Music - 1962
24 Maurice Jarre - Doctor Zhivago - 1966
25 The Rolling Stones - Aftermath - 1966
26 Stan Getz & Joao Gilberto - Getz & Gilberto - 1964
27 The Beatles - With The Beatles - 1963
28 The Beatles - Magical Mystery Tour - 1968
29 Bob Dylan - Bringing It All Back Home - 1965
30 The Beatles - Meet The Beatles! - 1964
31 Led Zeppelin - Led Zeppelin - 1969
32 John Coltrane - Love Supreme - 1964
33 The Who - Tommy - 1969
34 Bob Dylan - The Freewheelin' Bob Dylan - 1963
35 Herb Alpert - Going Places - 1966
36 Simon & Garfunkel - The Graduate - 1968
37 The Monkees - More Of The Monkees - 1967
38 Judy Garland - Judy At Carnegie Hall - 1961
39 The Rolling Stones - The Rolling Stones - 1964
40 Bob Dylan - John Wesley Harding - 1968
41 Blood Sweat & Tears - Blood, Sweat & Tears - 1969
42 Elvis Presley - Blue Hawaii - 1961
43 The Monkees - The Monkees - 1967
44 Cream - Wheels of Fire - 1968
45 Disney - Mary Poppins - 1965
46 Herb Alpert - What Now My Love - 1966
47 Johnny Cash - Johnny Cash At San Quentin - 1969
48 The Doors - Waiting For The Sun - 1968
49 The Band - The Band - 1969
50 The Velvet Underground The Velvet Underground & Nico 1967
51 Original Cast - The Sound Of Music - 1960
52 Jimi Hendrix - Axis: Bold As Love - 1967
53 Blind Faith - Blind Faith - 1969
54 The Rolling Stones - Between The Buttons - 1967



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Girl Groups: The Shirelles, The Chiffons, The Shangri-Las, The Ronettes, The Dixie Cups, The Cyrstals, The Exciters, The Supremes



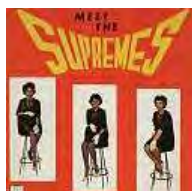
Brill Building Sound: Ben E. King, Bobby Darin, Connie Francis, The Righteous Brothers, Neil Diamond, Gene Pitney and many of the girl groups above.



Phil Spector and the Wall of Sound: The Ronettes, The Cyrstals, Ike & Tina Turner, The Righteous Brothers, and later The Beatles and The Ramones.



Surf Music: Dick Dale, The Ventures, The Trashmen, The Chantays, The Surfaris, The Beach Boys, Jan & Dean, The Rivas



Motown: The Miracles, The Marvellettes, The Supremes, Stevie Wonder, Marvin Gaye, The Four Tops, The Jackson Five, Rare Earth, The Temptations, The Spinners, Martha Reeves & The Vandellas



60's Soul - Stax/Atlantic: Otis Redding, Booker T & The MG's, Carla Thomas, The Mar-Keys, Issaac Hayes, Sam & Dave, The Bar-Kays, Wilson Pickett, Aretha Franklin, Albert King, Johnnie Taylor



British Invasion: The Beatles, The Rolling Stones, The Animals, The Dave Clark Five, Herman's Hermits, The Yardbirds, The Hollies, The Kinks, The Troggs



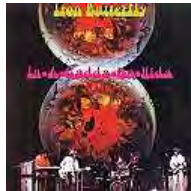
Garage Bands: The Standells, The Kingsmen, The Seeds, The Knickerbockers, The Sonics, Paul Revere & The Raiders, The Leaves, Shadows of Knight, The Castaways, The Leaves, Count Five, ? & The Mysterians

Psychedelic Rock: 13th Floor Elevators, Grateful Dead, The Charlatans, Pink Floyd, Love,

- 55 Crosby, Stills & Nash - Crosby, Stills & Nash - 1969
- 56 Van Morrison - Astral Weeks - 1968
- 57 Stan Getz & Charlie Byrd - Jazz Samba - 1962
- 58 LOVE - Forever Changes - 1967
- 59 James Brown - Live at the Apollo - 1963
- 60 Otis Redding - Otis Blue - 1965
- 61 Bob Dylan - Nashville Skyline - 1969
- 62 The Beatles - Yellow Submarine - 1969
- 63 The Rolling Stones - Out Of Our Heads - 1965
- 64 Iron Butterfly - In-a-gadda-da-vida - 1969
- 65 The Beatles - Please Please Me - 1963
- 66 Frank Sinatra - Nice 'N' Easy - 1960
- 67 Elvis Presley - Elvis Is Back! - 1960
- 68 Simon & Garfunkel - Bookends - 1968
- 69 Creedence Clearwater Revival - Green River - 1969
- 70 Elvis Presley - GI Blues - 1960
- 71 Simon & Garfunkel Parsley, Sage, Rosemary & Thyme - 1966
- 72 Original Cast - Camelot - 1961
- 73 Miles Davis - Sketches of Spain - 1960
- 74 Jefferson Airplane - Surrealistic Pillow - 1967
- 75 Barbra Streisand - The Barbra Streisand Album - 1963
- 76 Henry Mancini - Breakfast At Tiffany's - 1962
- 77 The Rolling Stones Their Satanic Majesties Request - 1968
- 78 Herb Alpert - Whipped Cream & Other Delights - 1966
- 79 Otis Redding - Dock Of The Bay - 1968
- 80 Chicago - Chicago Transit Authority - 1969
- 81 Aretha Franklin I Never Loved a Man the Way I Love You - 1967
- 82 Elvis Presley - From Elvis In Memphis - 1969
- 83 Vaughan Meader - The First Family - 1962
- 84 Barbra Streisand - Funny Girl - 1969
- 85 Joan Baez - Joan Baez - 1960
- 86 Peter, Paul & Mary - Peter, Paul & Mary - 1963
- 87 Louis Armstrong - Hello Dolly! - 1964
- 88 John Coltrane - Giant Steps - 1960
- 89 Frank Sinatra - Strangers In The Night - 1966
- 90 Johnny Cash - At Folsom Prison - 1968
- 91 Bob Dylan - Bob Dylan's Greatest Hits - 1967
- 92 Henry Mancini - The Pink Panther - 1964
- 93 Jimi Hendrix - Smash Hits - 1968
- 94 Bee Gees - Best Of The Bee Gees - 1969
- 95 The Beatles - 'Yesterday' ... & Today - 1966
- 96 The Moody Blues - Days Of Future Passed - 1968
- 97 Cream - Goodbye - 1969
- 98 Original Cast - West Side Story - 1962
- 99 The Monkees - Headquarters - 1967
- 100 Simon & Garfunkel - Sounds Of Silence - 1966

1960's Top 100 Best Selling Singles Worldwide:

- 1 The Beatles - Hey Jude - 1968
- 2 The Rolling Stones - (I Can't Get No) Satisfaction - 1965
- 3 Procol Harum - A Whiter Shade of Pale - 1967
- 4 Roy Orbison - Oh, Pretty Woman - 1964
- 5 The Beatles - I Want to Hold Your Hand - 1964
- 6 Elvis Presley - Are You Lonesome Tonight? - 1960
- 7 The Righteous Brothers - Unchained Melody - 1965
- 8 The Beatles - Help! - 1965
- 9 The Beatles - Yesterday - 1965
- 10 Elvis Presley - It's Now Or Never - 1960
- 11 Frank Sinatra - Strangers in the Night - 1966
- 12 Chubby Checker - Let's Twist Again - 1961
- 13 Pat Boone - Speedy Gonzales - 1962
- 14 The Beatles - All You Need is Love - 1967
- 15 The Monkees - I'm a Believer - 1967
- 16 The Beatles - Hello, Goodbye - 1967
- 17 The Animals - House of the Rising Sun - 1964
- 18 The Beatles - Get Back - 1969
- 19 Bee Gees - Massachusetts - 1967
- 20 Ray Charles - I Can't Stop Loving You - 1962
- 21 Ben E King - Stand By Me - 1961
- 22 Petula Clark - Downtown - 1965
- 23 Nancy Sinatra These Boots Are Made For Walking - 1966
- 24 The Beatles - I Feel Fine - 1964
- 25 Archies - Sugar Sugar - 1969
- 26 The Beatles - She Loves You - 1964
- 27 The Tomados - Telstar - 1962
- 28 The Beach Boys - Good Vibrations - 1966



Spirit, The Electric Blues, Strawberry Alarm Clock, Traffic, Soft Machine, Eric Burdon, Jefferson Airplane

**Bubblegum Rock:** The Archies, 1910 Fruitgum Company, The Ohio Express, Tommy Roe, Tommy James & The Shondells, The Monkees, The Lemon Pipers

**Hard Rock:** Iron Butterfly, Cream, Led Zeppelin, Vanilla Fudge, Jimi Hendrix Experience, Blue Cheer, Steppenwolf, MC5, Deep Purple, Blind Faith, Ten Years After, The Doors

- 29 Zager & Evans - In the Year 2525 - 1969
- 30 The Beatles - Yellow Submarine - 1966
- 31 The Beatles - A Hard Day's Night - 1964
- 32 The Beatles - Paperback Writer - 1966
- 33 Mary Hopkin - Those Were the Days - 1968
- 34 The Beatles - Penny Lane - 1967
- 35 Chubby Checker - The Twist - 1960
- 36 The Rolling Stones - Paint it Black - 1966
- 37 Scott McKenzie  
San Francisco (Wear Some Flowers in Your Hair) 1967
- 38 Trini Lopez - If I Had a Hammer - 1963
- 39 The Beatles - Ticket to Ride - 1965
- 40 The Byrds - Mr Tambourine Man - 1965
- 41 Elvis Presley - Return to Sender - 1962
- 42 The Rolling Stones - Honky Tonk Woman - 1969
- 43 Elvis Presley - Suspicious Minds - 1969
- 44 Sam The Sham & The Pharaohs - Woolly Bully - 1965
- 45 The Beatles - We Can Work it Out - 1965
- 46 Simon & Garfunkel - The Sounds of Silence - 1966
- 47 Elvis Presley - In the Ghetto - 1969
- 48 The Beatles - The Ballad of John & Yoko - 1969
- 49 The Drifters - Save the Last Dance For Me - 1960
- 50 The Rolling Stones - Jumpin' Jack Flash - 1968
- 51 Sandie Shaw - Puppet On a String - 1967
- 52 Del Shannon - Runaway - 1961
- 53 Elvis Presley - Good Luck Charm - 1962
- 54 The Beatles - Come Together - 1969
- 55 Sam Cooke - Wonderful World - 1960
- 56 Barry Ryan - Eloise - 1968
- 57 Elvis Presley - Surrender - 1961
- 58 Percy Faith - Theme From 'A Summer Place' - 1960
- 59 Tommy James & the Shondells  
Crimson & Clover - 1969
- 60 Tom Jones - Delilah - 1968
- 61 The Rolling Stones - Get Off of My Cloud - 1965
- 62 The Mamas & The Papas - Monday Monday - 1966
- 63 Elvis Presley - (You're The) Devil in Disguise - 1963
- 64 Paul & Paula - Hey Paula - 1963
- 65 Chris Montez - Let's Dance - 1962
- 66 The Monkees - Daydream Believer - 1967
- 67 The Beatles - Lady Madonna - 1968
- 68 Edwin Hawkins Singers - Oh Happy Day - 1969
- 69 Elvis Presley - Wooden Heart - 1961
- 70 The Beatles - Strawberry Fields Forever - 1967
- 71 The Righteous Brothers  
You've Lost That Lovin' Feelin' - 1964
- 72 Otis Redding - (Sittin' On) the Dock of the Bay - 1968
- 73 Nini Rosso - Il Silenzio - 1965
- 74 The Box Tops - The Letter - 1967
- 75 The Doors - Light My Fire - 1967
- 76 Conny Froeboss - Zwei kleine Italiener - 1962
- 77 Roy Orbison - Only The Lonely - 1960
- 78 The Beatles - Michelle - 1966
- 79 Little Eva - The Loco-Motion - 1962
- 80 John Fred & The Playboy Band  
Judy in Disguise (With Glasses) - 1968
- 81 The Beatles - Day Tripper - 1965
- 82 Bobby Vinton - Roses Are Red - 1962
- 83 Ricky Nelson - Hello Mary Lou - 1961
- 84 Creedence Clearwater Revival - Proud Mary - 1969
- 85 Tom Jones - The Green Green Grass of Home - 1967
- 86 The Marcells - Blue Moon - 1961
- 87 Jane Birkin & Serge Gainsbourg  
Je T'Aime (Moi Non Plus) - 1969
- 88 The Supremes - Where Did Our Love Go - 1964
- 89 The Everly Brothers - Cathy's Clown - 1960
- 90 Bob Dylan - Like a Rolling Stone - 1965
- 91 Elvis Presley - Can't Help Falling in Love - 1962
- 92 Edith Piaf - Milord - 1960
- 93 Fifth Dimension - Aquarius/Let The Sunshine In - 1969
- 94 The Beach Boys - Sloop John B - 1966
- 95 Nancy Sinatra & Frank Sinatra  
Somethin' Stupid - 1967
- 96 The Rolling Stones - The Last Time - 1965
- 97 Louis Armstrong - (What A) Wonderful World - 1968
- 98 The Rolling Stones - 19th Nervous Breakdown - 1966
- 99 The Ronettes - Be My Baby - 1963
- 100 Tommy Roe - Dizzy - 1969

**Top 50 Music Artists of the 1960's**

Based on Worldwide Sales of Singles and Albums

- 1: The Beatles
- 2: Elvis Presley
- 3: The Rolling Stones
- 4: Bob Dylan
- 5: The Beach Boys
- 6: Frank Sinatra
- 7: Cliff Richard
- 8: Ray Charles
- 9: Herb Alpert
- 10: Jimi Hendrix
- 11: The Monkees
- 12: John Coltrane
- 13: Jim Reeves
- 14: The Kinks
- 15: Roy Orbison
- 16: Simon & Garfunkel
- 17: The Doors
- 18: The Shadows
- 19: Otis Redding
- 20: Andy Williams
- 21: Tom Jones
- 22: Barbra Streisand
- 23: The Supremes
- 24: Cream
- 25: Led Zeppelin
- 26: Bee Gees
- 27: The Who
- 28: The Byrds
- 29: Aretha Franklin
- 30: Johnny Cash
- 31: The Hollies
- 32: Henry Mancini
- 33: Peter, Paul & Mary
- 34: The Temptations
- 35: Petula Clark
- 36: Connie Francis
- 37: The Animals
- 38: James Brown
- 39: Herman's Hermits
- 40: Chubby Checker
- 41: Ray Conniff
- 42: Joan Baez
- 43: Manfred Mann
- 44: Donovan
- 45: The Four Tops
- 46: The Seekers
- 47: The Everly Brothers
- 48: Dave Clark Five
- 49: Dean Martin
- 50: The Searchers

The lists above and at right are based on worldwide sales. The worldwide sales information is from Tsort and uses a formula based on splitting the world into four regions based on sales, the USA (about 35%), other English speaking countries (about 20%), the rest of Europe (about 25%) and the rest of the world (about 20%). We feel this is the best methodology available to show the global impact of a song or album. More detailed chart info is available on the Tsort website. Actual US & UK charts are linked at the bottom of each year timeline on this site.

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