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Dr. Hess specializes in the application of microeconomic theory and analytical methods in litigation, business, and policy contexts. He has assisted clients in all phases of the litigation process including pretrial discovery, exposure analyses, construction and evaluation of settlement proposals, quantification of damages, and the preparation of expert reports and testimony. He has consulted on commercial disputes, breach of contract, valuation, class action, intellectual property, antitrust, securities, finance, false advertising, employment, environmental, policy, regulatory, and general business related matters. He has served as an expert on breach of contract, valuation, damages, false advertising, intellectual property, class certification, and employment related issues. Dr. Hess's work has included estimation of commercial damages, reasonable royalties, and lost profits; valuation of businesses and business opportunities; evaluation of proposed methods of common proof for class certification; assessment of market definition, predatory pricing, and loss causation; analyses of internet traffic, commercial transaction, demographic, sales, accounting, investment, and insurance claims data; portfolio performance simulation; forecasting; cost-benefit analysis; and policy evaluation. His experience spans the computer hardware and software, electronics, telecommunications, information technology, biotechnology, financial services, health care, consumer goods, and manufacturing industries as well as federal, state, and local issues. Prior to joining Analysis Group, Dr. Hess was a lecturer and post-doctoral fellow at University of California, Berkeley where he taught economics and worked closely with the California Department of Finance and the California Air Resources Board to model the fiscal and economic impacts of legislative and regulatory proposals.

EDUCATION

- Ph.D. Environmental Economics, University of California, Berkeley
Fields of Specialization: Applied Microeconomics, Regional Economics
Dissertation: Hedonic Estimation and Economic Geography
- M.S. Agricultural and Resource Economics, University of California, Berkeley
- A.B. Economics and Public Policy Studies, *Cum Laude*, Duke University
Honors Thesis: Emissions Trading Under the Clean Air Act

PROFESSIONAL EXPERIENCE

- 2009-present Vice President, Analysis Group, Inc., Menlo Park and San Francisco, CA
- 2005-2008 Manager, Analysis Group, Inc., Menlo Park, CA
- 2002-2004 Associate, Analysis Group, Inc., Menlo Park, CA
- 2001-2002 Lecturer and Post-Doctoral Fellow, University of California, Berkeley
- 2001 Independent Consultant, Law and Economics Consulting Group, Emeryville, CA

- 1996-2001 Graduate Student Researcher, University of California, Berkeley, California Department of Finance, California Air Resources Board
- 1993-1995 Paid Intern, National Wildlife Federation, League of Conservation Voters, Washington, D.C.

SELECTED CASEWORK

Commercial Damages/Breach of Contract/Valuation

- **Hasemann et al. v. Gerber Products Co.**
Submitted expert declarations and provided deposition testimony regarding class certification issues; submitted expert report and provided deposition testimony regarding damages in a case of alleged false advertising.
- **Confidential Breach of Contract Case Involving Merger and Acquisition Activity in the Consumer Packaging Industry**
Leading support of development of damage theories and estimates stemming from allegedly false representations and warranties.
- **Confidential Breach of Contract Case Involving an Alleged Material Adverse Event**
Assisted in evaluation of the materiality and valuation implications of allegedly disproportionate impacts of material adverse events.
- **Windstream Holdings, Inc. et al v. Uniti Group Inc. et al.**
Supported testifying experts regarding valuation and sale/leaseback terms of telecommunications network assets.
- **Confidential Marital Dissolution Dispute Involving Crypto Currency Startup Valuation**
Testifying expert on crypto token valuation and allocation between founder and contributing spouse. Provided declaration; consulted at settlement discussions; anticipate testimony at trial.
- **Confidential Breach of Contract Dispute in Beverage Industry**
Testifying expert on damages in breach of contract case between a distributor and a supplier in the craft beer industry. Provided testimony at arbitration.
- **Cedars-Sinai Medical Center v. Quest Diagnostics, Inc.**
Supported development of damages frameworks and estimates in breach of contract and trade secret misappropriation case in the medical diagnostic testing industry.
- **Confidential Marital Dissolution Dispute Involving Technology Industry Compensation**
Opined on historical, present, and reasonably expected level and mix of future compensation for major technology company senior project manager. Provided declarations.
- **Confidential Breach of Contract, Quantum Meruit, and Fraud Dispute**
Testifying expert in a dispute regarding allocation and valuation of ownership stakes in and compensation at a technology consultancy. Provided testimony at mediation.
- **Confidential Breach of Service Contract Arbitration**
Consulting and testifying expert in breach of contract dispute between a professional services firm and IT vendor over loss of a substantial share of core business information. Submitted expert reports and provided deposition testimony.

- **Jada Stringer v. Durham School Services, L.P**
Testifying expert on damages in litigation involving treatment of a handicapped student by a busing contractor in a metropolitan school district. Provided deposition testimony.
- **Confidential Breach of Employment Agreement Arbitration**
Consulted on development and estimation of damages models related to alleged breach of non-solicitation and non-compete agreements in the technology industry.
- **Confidential Joint Venture Dispute**
Analyzed cost accounting, transfer pricing, and corporate governance issues and their impact on the value of a minority ownership stake in a joint venture with a public company competitor.
- **Confidential Appraisal Matter**
Estimated fair value of a major technology firm in anticipation of potential shareholder litigation over M&A activity.
- **Confidential Fraud Dispute Involving a Major Multinational Agricultural Company**
Analyzed symptoms of fraud for liability purposes; estimated damages by tracing actual payments and modeling more appropriate alternative (“but-for”) payments based on market conditions.
- **Confidential Consumer Class Action Litigation Involving a Major Chinese Conglomerate**
Developed research and analyses regarding corporate structure and governance relevant to veil-piercing.
- **Confidential Contract and Trade Secret Dispute Involving a Major Defense Companies**
Consulting expert on potential exposure stemming from alleged breach of contract and theft of trade secrets in the defense industry.
- **Confidential Breach of Contract Dispute Involving Worldwide Supply Chain Disruption**
Consulted on breach of contract damages arising from disruption of the worldwide supply chain of a major international computer peripherals manufacturer.
- **Confidential Auto Dealership Litigation**
Consulted on liability and damages issues in litigation involving national auto dealership sales practices.
- **US Unwired v. Sprint**
Consulted on damages associated with the change in status of Sprint affiliate US Unwired.
- **Class Action v. Health Insurer**
Consulted on liability, exposure, and settlement proposals related to alleged breach of contract by a large health insurance provider.
- **Arthur Stockton v. Fidelity & Deposit**
Consulted on the value of an investment management firm and potential diminution thereto stemming from alleged breach of contract.
- **Her Associates v. Kaiser**
Consulted on damages stemming from breach of contract claims against a major health care provider.
- **Confidential Business Mediation**
Estimated amounts due parties in a contract dispute between former business associates.

- **Confidential Business Valuation**
Analyzed the performance and value of hedge funds and investment management companies.
- **Confidential Municipal Litigation**
Consulted on valuation of unresolved fishing, hydropower, and gaming issues between a Native American Indian tribe and a county government for settlement purposes.

Intellectual Property

- **Citrix Systems, Inc. v. Workspot, Inc.**
Leading support for development of reasonable royalty and lost profit related opinions in patent litigation between enterprise software companies.
- **Automotive Data Solutions, Inc. v. Directed Electronics, Inc. et al.**
Testifying expert on damages for trade secret misappropriation, copyright infringement, and patent infringement in litigation regarding aftermarket automotive electronics.
- **Cedars-Sinai Medical Center v. Quest Diagnostics, Inc.**
Supported development of damages frameworks and estimates in trade secret misappropriation and breach of contract case in medical diagnostic testing industry.
- **Confidential Patent and Trade Secret Dispute In Life Sciences Industry**
Assisted in pretrial discovery, damages theory framing, damages estimation, and expert report development in a case involving allegations of patent infringement, theft of trade secrets, breach of contract, tortious interference, and unfair business practices in the life sciences industry.
- **Confidential Patent Dispute Between Major Microchip Manufacturers**
Supported pretrial discovery, damages theory framing, damages estimation, and development of reasonable royalty damages report in computer hardware industry.
- **Adidas America, Inc. v. Skechers USA, Inc.**
Supported development of expert testimony regarding allegations of irreparable harm in conjunction with a motion for preliminary injunction in a patent infringement case.
- **Apple Inc. v. Samsung Electronics Co., Ltd.**
Supported development of expert testimony regarding consumer demand for patented functionality.
- **Summit Data Systems v. EMC Corp. et al.**
Testifying expert on reasonable royalty for licensing network storage related technology.
- **Avocet Sports Technology, Inc. and Vertical Instruments, Inc. vs. Amer Sports Corporation, Suunto, U.S.A, Inc., Amer Sports U.S.A, and Amer Sports Winter & Outdoor Company**
Testifying expert on reasonable royalty rates for licensing of sport instrument technology.
- **Confidential Patent Infringement Litigation, Computer Industry**
Led support for development of reasonable royalty and damages opinions regarding internet communications technology.
- **In the Matter of Certain Projectors with Controlled-Angle Retarders, Components Thereof, and Products Containing Same, Investigation No. 337-TA-815**
Supported development of expert testimony related to the domestic industry requirement on behalf of respondent Sony Corp.

- **Confidential Trademark Case, Automotive Industry**
Supported development of expert testimony on potential consumer confusion arising from the use of similar key words in online advertising. Analyzed consumer behavior based on web traffic patterns.
- **W.L. Gore & Associates, Inc. v. GI Dynamics, Inc.**
Consulted on reasonable royalties and lost profits related to claimed theft of trade secrets, breach of contract, and misrepresentation that allegedly enabled accelerated market entry by a competitor.
- **Life Technologies Corp. et al. v. Illumina, Inc. and Solexa, Inc.**
Consulted on lost profits due to lost sales and price erosion stemming from alleged infringement of multiple patents for high tech laboratory equipment.
- **Confidential Patent Valuation, Online Music Industry**
Consulted on the value of a patent given prior rulings on validity and infringement of certain claims.
- **Confidential Copyright Infringement Litigation**
Consulted on damages stemming from alleged copyright infringement of source code for social network based games.
- **Intellivision v. Microsoft Corporation**
Consulted on damages regarding alleged misappropriation of intellectual property related to digital and interactive television.
- **Confidential Patent Infringement Litigation**
Consulted on reasonable royalty rates and damages related to industrial machinery.
- **ART v. Riverdeep Arbitration**
Consulted on damages arising from alleged copyright infringement, breach of contract claims, and a distribution dispute between consumer software companies.
- **Capo Inc. v. Dioptics Medical Products, Inc.**
Consulted on damages in trade dress dispute between consumer product companies.
- **Confidential Patent Infringement Litigation**
Performed market research supporting damage claims related to imaging technology.

Securities/Finance

- **Confidential Shareholder Class Action Suit**
Supporting development of expert testimony regarding investment suitability, process, and fees in an ongoing ERISA matter.
- **Confidential Shareholder Class Action Suit**
Supported development of expert testimony regarding whether damage could be modeled on a class-wide basis in a case involving allegedly fraudulent sales and billing practices.
- **Confidential Corporate Restructuring Matter**
Assisted in valuation of a multinational conglomerate under various restructuring and liquidation scenarios.
- **Confidential Shareholder Class Action Suit**
Consulting on liability and damages related to allegedly false and misleading statements to the market regarding company performance and prospects in the computer hardware industry.

- **Confidential Shareholder Class Action Suit**
Consulted on liability and damages related to the issuance of financial guidance allegedly inconsistent with macroeconomic conditions, industry outlook, and internal company forecasts in the software industry.
- **Confidential Banking Litigation**
Analysis of a bank's close-out of foreign currency positions arising from the Continuous Linked Settlement service it provided to a major financial institution during the financial crisis in 2008.
- **Confidential Class Action Securities Litigation**
Supported development of expert testimony addressing insider trading and company performance related allegations in the for profit education space.
- **SEC Investigation, Mutual Fund Industry**
Supported development of expert testimony related to mutual fund structure, portfolio manager responsibilities, portfolio risk, portfolio diversification, and the effects of the financial crisis on fixed income investments.
- **Confidential Fraud and Breach of Contract Litigation, Banking Industry**
Supported development of expert testimony related to the impact of the financial crisis on the valuation of mortgage backed securities and the critique of an opposing expert's model that purported to measure the impact of certain public disclosures on such securities.
- **Confidential Derivative Litigation, Life Sciences Industry**
Consulted on fair valuation and corporate governance issues related to an allegedly non-arm's length M&A deal.
- **Confidential ERISA Litigation**
Estimated potential exposure related to alleged differences in value between lump sum pre-retirement distributions and forecasted retirement benefits.
- **Confidential Securities Litigation, Telecommunications**
Consulted on exposure, liability, and damages analyses related to alleged misstatements and accounting errors by a telecommunications company.
- **Confidential Criminal Securities Litigation**
Consulted on alleged harm to shareholders related to executive officers' misappropriation of funds.
- **In re Oracle Securities Litigation**
Consulted on liability related to the issuance of financial guidance allegedly inconsistent with macroeconomic conditions and internal company forecasts.
- **Enron Related Litigations**
Consulted on damages associated with alleged breach of contract and fraud in syndicated credit facilities.
- **Stock Option Backdating Litigation**
Consulted on liability and damages related to alleged stock option backdating.
- **Confidential Trust Management Litigation**
Consulted on issues related to portfolio diversification.
- **Confidential Mutual Fund Litigation**
Consulted on issues related to market timing in international mutual funds.

- **In re Williams Securities Litigation**
Consulted on liability and damages stemming from 10b5 and Section 11 claims alleging that audit failures led to securities price declines.

Antitrust

- **Confidential Antitrust Litigation**
Consulted on development and estimation of damages models related to alleged tying and predatory pricing in the healthcare industry.
- **SolarCity Corporation v. Salt River Project Agricultural Improvement and Power District**
Supported development of expert testimony related to market definition, liability, and damages regarding monopolization claims in the electric power industry.
- **Solyndra v. Trina et al.**
Supported development of expert testimony regarding market definition and power, liability, and damages related to claims of collusion and predatory pricing in the solar industry.
- **European Commission v. Intel**
Supported development of expert testimony on and damages related to claims of anticompetitive pricing in the computer hardware industry.
- **Class Action v. Noranda and DuPont**
Consulted on liability by analyzing the market for sulfuric acid via assembly and analysis of a 1 million plus observation database of sulfuric acid sales by multiple vendors over multiple years.
- **Sun Microsystems v. Microsoft Corporation**
Led market research modules supporting damages analyses in antitrust litigation.
- **Class Actions v. Microsoft**
Assisted in the estimation of software development and other work around costs, support of damages testimony, and evaluation of settlement terms in a series of price overcharge litigations.
- **Confidential Private Antitrust Litigation**
Consulted on liability and damage issues in the construction industry.

Policy

- **Coalition on Homelessness v. City and County of San Francisco et al.**
Worked with the Lawyers Committee for Civil Rights (LCCR), Bay Area Legal Aid, and Manatt Phelps to analyze the impact of towing policies and related fines on poor and homeless residents of San Francisco. Submitted an expert declaration analyzing towing data. Awarded the Robert G. Sproul Jr. Award for pro bono work by the LCCR.
- **Internet Regulation and Technology Investment**
Worked with Harvard Business School Professor Josh Lerner on white papers estimating the effects of recent regulatory and legal developments on venture capital investment and job creation in the cloud computing and online advertising industries in the U.S. and Europe.
- **Economic Impact of Federal Participation in Terrorism Risk**
Co-authored an article with Professor Glenn Hubbard, Dean of the Columbia Business School and former Chair of the President's Council of Economic Advisers, assessing the market for terrorism insurance, focusing on the economic impacts of the federal Terrorism Risk Insurance Act (TRIA) and its possible expiration; managed related study commissioned by numerous insurance trade

organizations; conducted over 30 stakeholder interviews with insurance and reinsurance industry executives, lenders, policyholders, and trade association professionals.

▪ **Incorporating Uncertainty into Cost-Benefit Analysis**

Co-authored a white paper with Harvard Professor Robert Stavins on the use of simulation analysis to quantify the impacts of uncertain inputs on the results of cost-benefit analyses of regulatory proposals.

LIVE TESTIMONY

Deposition in *Jennifer Hasemann et al. vs. Gerber Products Co*, United States District Court, Eastern District of New York, 1:15-CV-02995-MKB-RER, 1:16-CV-01153-MKB-RER, and Case No. 2:17-CV-00093-MKB-RER, September 2021.

Deposition in *Automotive Data Solutions, Inc. v. Directed Electronics, Inc. et al.*, United States District Court, Central District of California, 2:18-CV-01560-GW-E, August 13, 2019.

Testimony at arbitration regarding damages in a breach of contract dispute, Judicial Dispute Resolution Arbitration, Seattle; January 2019.

Deposition in *Jennifer Hasemann et al. vs. Gerber Products Co*, United States District Court, Eastern District of New York, 1:15-CV-02995-MKB-RER, 1:16-CV-01153-MKB-RER, and Case No. 2:17-CV-00093-MKB-RER, August 2018.

Deposition in a confidential arbitration involving breach of contract, fraud, and gross negligence claims, San Francisco; May 2017.

Testimony at confidential mediation regarding business partnership dispute, JAMS, San Francisco; March 2014.

Deposition in *Avocet Sports Technology, Inc. and Vertical Instruments, Inc. vs. Amer Sports Corporation, Suunto, U.S.A, Inc., Amer Sports U.S.A, and Amer Sports Winter & Outdoor Company*, United States District Court, Northern District of California, San Jose Division, CV-08-4264 (JW); September 2010.

Deposition in *Jada Stringer v. Durham School Services, L.P.*, Superior Court of the State of California, County of Alameda, RG07346954; January 2010.

PUBLICATIONS AND PAPERS

“What Recent Case Law Tells Us About the Importance of Consumer Surveys in Trademark Cases,” with Genna Liu and Hana Dai, *IPWatchdog.com*, September 2021.

“Survey Says: Tips on Getting over the Daubert Hurdle,” with Rebecca Kirk Fair and Vendela Fehrm, *Law Journal Newsletters*, July 2020.

“Lost in the Clouds: The Impact of Copyright Scope on Investment in Cloud Computing Ventures,” with Chris Borek, Laurits R. Christensen, Peter Hess, Josh Lerner, and Greg Rafert, 2012.

“Patent Auctions: How Far Have We Come?” with John Jarosz, Robin Heider, Coleman Bazelon, and Christine Bieri, *les Nouvelles*, March 2010.

“Risk Management and the Economic Impact of Terrorism,” with Bruce Deal, Chapter in *Business Continuity and Homeland Security, Volume 1*, edited by David H. McIntyre and William I. Hancock, Edward Elgar Publishing, September 2008.

“Assessing the Impacts of Large Scale Environmental Regulations in California,” with Peter Berck, Chapter 16 in *The Theory and Practice of Environmental and Resource Economics: Essays in Honour of Karl-Gustaf Löfgren*, edited by Aronsson, Axelsson and Brännlund, Edward Elgar Publishing, 2006.

“The Economic Effects of Federal Participation in Terrorism Risk,” with R. Glenn Hubbard and Bruce Deal, *Risk Management and Insurance Review*, 2005, Vol. 8, No. 2, 177-209.

“Monte Carlo Analysis: An Introduction to and Application of Formal Quantitative Assessment of Uncertainty in Regulatory Impact Analysis,” with Robert Stavins, Judson Jaffe, Edmund Crouch, Laura Green, and Shailesh Sahay, 2004.

“Impacts of Petroleum Reduction Strategies on the California Economy,” with Peter Berck, Section 6 of “Benefits of Reducing Demand for Gasoline and Diesel,” a joint report to the California Air Resources Board and the California Energy Commission, prepared by Arthur D. Little, Inc., March 28, 2002.

“Hedonic Estimation and Economic Geography,” Ph.D. dissertation, University of California at Berkeley, August 2001.

“Developing a Methodology for Assessing the Economic Impacts of Large Scale Environmental Regulations,” with Peter Berck, Working Paper No. 924, University of California at Berkeley, Department of Agricultural and Resource Economics and Policy, February 2000.

“The Role of Transportation Infrastructure in the California Economy: The Dynamic Revenue Effects,” with Peter Berck and Bruce Smith, Working Paper No. 896, University of California at Berkeley, Department of Agricultural and Resource Economics and Policy, February 2000.

“Estimation of Household Demand for Goods and Services in California’s Dynamic Revenue Analysis Model,” with Peter Berck and Bruce Smith, Working Paper No. 923, University of California at Berkeley, Department of Agricultural and Resource Economics and Policy, September 1997.

“Emissions Trading Under the Clean Air Act,” *Duke University Journal of Economics*, Volume 6, 1994.

PRESENTATIONS

“Class Action and Complex Litigation 2019: Effective Strategies and Best Practices,” webinar for The Knowledge Group; June 25, 2019

“Intellectual Property Valuation and Damages: Nuts and Bolts in 2018,” webinar for The Knowledge Group; May 8, 2018.

“Use of Surveys in IP Litigation: Design, Admissibility, and Validation,” with Anjali Oza, webinar for the Intellectual Property Law Section of the State Bar of California; December 6, 2016.

“IP Damages,” with Bruce Deal and Robert Vigil, law firm presentation; February 27, 2013.

“Hedonic Estimation and Economic Geography,” paper presented at the 2002 American Agricultural Economics Association – World Agricultural Economics Association Meeting; Long Beach, CA; July 2002.

“Assessing the Impacts of Large Scale Environmental Regulations in California,” paper presented at the 2002 American Agricultural Economics Association – World Agricultural Economics Association Meeting; Long Beach, CA; July 2002.

“Hedonic Estimation and Economic Geography,” paper presented at the Second World Congress of Environmental and Resource Economists; Monterey, CA; June 2002.

“Economic Impacts of Regulation,” with Peter Berck, presentation to the California Environmental Protection Agency, Air Resources Board; Sacramento, CA; June 2001.

“Amenity Capitalization: Implications for Local Development,” paper presented at the Resources Seminar of the Department of Agricultural and Resource Economics and Policy, University of California at Berkeley; Berkeley, CA; February 1999.

“Lincoln County, Oregon: A Resource Region in Transition,” with Tira Foran, paper presented in the graduate level Advanced Methods in Urban and Regional Analysis class, Department of City and Regional Planning, University of California at Berkeley; Berkeley, CA; May 1998.