



Cleve B. Tyler, PhD.

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SUMMARY:

Cleve B. Tyler is a Principal in Berkeley Research Group's Washington, DC office. He has analyzed competition, intellectual property, and damages issues in matters that are before federal and state courts, administrative law judges, and regulatory commissions, and in merger investigations. Dr. Tyler has testified at deposition and trial in federal court regarding damages issues. He has developed or analyzed damages models in a range of industries pertaining to various allegations including patent infringement, antitrust, breach of contract, and fraud. Dr. Tyler's work includes evaluation of market definition and competitive effects using regression analysis and economic modeling. He has evaluated horizontal and vertical competition issues in many industries including waste collection and disposal, benefits provided to health insurance plans, video games, battery components, home appliances, enterprise application software, billboard leases, avionics, coffee, and carbonated soft drinks. Dr. Tyler has evaluated the antitrust implications of reverse payment settlements between branded and generic pharmaceutical companies under Hatch-Waxman regulations. He also has analyzed competition and regulation in the electric industry, in particular, including issues related to electric power sales, forward sales, derivative trading, entry conditions, and capacity payments.

Dr. Tyler holds a PhD in economics from Clemson University specializing in industrial organization, finance, and public sector. He is an Adjunct Professor of Economics at Johns Hopkins University, taught economics at Clemson University, and has published papers and made presentations on competition and damages issues. Dr. Tyler is a member of the American Economic Association (AEA) and American Bar Association (ABA).

EDUCATION:

PhD, Economics, Clemson University (1998)
BA, Economics, University of Virginia (1993)

PRESENT POSITIONS:

Berkeley Research Group

Principal (December 2010 to present)

- Antitrust and Competition
- Intellectual Property
- Damages
- Energy

Johns Hopkins University

Adjunct Professor of Economics

- Industrial Organization (Fall 2013)

- Microeconomic Theory and Policy (Fall 2010)

PRIOR PROFESSIONAL EXPERIENCE:

LECG

Senior Managing Economist (2006–10)

Managing Economist (2003–05)

Senior Economist (2001–02)

Economic Analysis LLC

Economist (1998–2000)

Clemson University

Instructor, Principles of Microeconomics and Principles of Macroeconomics (1996–98)

Teaching Assistant, Principles of Microeconomics and Principles of Macroeconomics (1995–96)

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

Electric Lite

Economic Consultant and Director of Business Development (1997)

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

Intern (Summer 1995)

Strategic Analysis Inc.

Analyst (May–August, 1990–93)

EXPERT TESTIMONY:

- *Apotex, Inc. and Apotex Corp. v. UCB, Inc. and Kremers Urban Pharmaceuticals, Inc.*, U.S. District Court, Southern District of Florida, C.A. No. 12-60706 (DMM). Analyzed and opined on a reasonable royalty for a process patent related to the manufacture of pharmaceutical products. (Deposition Testimony, 2013)
- *William Brody v. Village of Port Chester, et al.*, U.S. District Court, Southern District of New York, Case No. 00 CIV 7481 (HB). Estimated damages related to the loss of right to appeal the taking of property pursuant to New York's eminent domain law. (Written, Deposition, and Trial Testimony, 2007)

EXPERT CONSULTING EXPERIENCE:

Intellectual Property and Damages

- Evaluated claims of unfair competition, false advertising, and unfair trade practices in provision of confirmatory urine drug testing for pain management health care practitioners. (2013–14)

- Analyzed reasonable royalties for patent infringement for a technology related to international roaming. (2012)
- Evaluated recoverable profit resulting from insider trading pursuant to Section 16(b) of the SEC Act. (2011–12)
- Developed damages model using event study analyses related to misrepresentation claims in banking industry. (2010–11)
- Evaluated economic implications granting comity to allow for discontinuance of patents of insolvent firm in the semi-conductor industry. (2010–11)
- Evaluated lost profits and reasonable royalty damages associated with patents related to golf ball technology. (2007–10)
- Analyzed claim that the bankruptcy of a regional drug store was caused by a major supplier's change in payment terms. (2006)
- Estimated reasonable royalty for alleged infringement of patents related to liquid crystal display monitors. (2006)
- Estimated damages associated with alleged breach of contract and alleged fraud associated with an agreement to sell fuel injectors for use in diesel engines. (2002–06)
- Assessed the value of a right of first refusal for Cleveland Browns' season ticket holders following the Browns' announcement of their intention to move to Baltimore. (2000)
- Evaluated whether defendants engaged in matched and manipulative stock trading. (2000)
- Analyzed and evaluated damage claims in trademark infringement suit related to goto.com. (1999)
- Evaluated alleged insider trading, including performing an analysis of the trading patterns of defendants. (1999)
- Evaluation of damages resulting from a rogue trader's violation of index arbitrage guidelines. (1998–2000)

Antitrust

- Evaluation of policies and practices related to vertical restrictions between steel producers and steel service centers. (2013-2014)
- Analyzed competitive implications of merger in the avionics industry during DOJ investigation of potential horizontal and vertical effects as well as potential raising rivals costs. (2013)
- Evaluated antitrust issues associated with the use of exclusive contracting in the provision of

fitness benefits to Medicare Advantage plans. (2012-13)

- Analysis of monopolization and abuse of a dominant position in the provision of specialized search advertising during investigations by the FTC and EU Commission. (2011–13)
- Analyzed prevention of competition claims related to merger in the hazardous waste industry in British Columbia. (2011)
- Evaluated potential vertical competitive implications of merger in coffee industry and aided in compliance with Second Request. (2009–10)
- Analyzed claims by FTC regarding consummated merger and monopolization by Daramic in the battery separator industry. (2008–09)
- Evaluated merger of Republic Services and Allied Waste in the waste collection and disposal industries and aided in compliance with Second Request. (2008)
- Analyzed merger in the video game industry; aided in compliance with Second Request. (2008)
- Evaluated several reverse payment settlements between branded pharmaceutical companies and potential generics under Hatch-Waxman regulations, including in the *Schering Plough* matter. (2005-09)
- Analyzed competition related to financial management and human resource management enterprise software products with regard to merger between Oracle and PeopleSoft. (2004)
- Analyzed market definition, evaluation of contractual provisions alleged to violate state antitrust statute, and evaluation of damage claims related to billboard leases. (2003)
- Evaluated damages involving marketing programs in selling genetically modified soybeans and herbicides. (2002)
- Supported evaluation of regulatory oversight of refining joint venture between Texaco Inc. and Shell Oil Company. (2001)
- Evaluated whether Coca-Cola was engaging in anti-competitive practices in its sale of syrup to 7-Eleven franchisees for fountain and Slurpee beverages. (2000)
- Analyzed and evaluated the financial structure of a sports league (MLS) in effort to determine if the single-entity structure of the league had anti-competitive effects for soccer players. (1999–2000)
- Estimated damages resulting from the alleged illegal tying of Flight Management Systems to Flight Control Systems for several regional and corporate aircraft programs. (1998–2000)

Energy

- Analyzed allegations of manipulative trading of energy derivative products. (2007–09)
- Evaluated the reasonableness of wholesale electricity prices resulting from the 2006 Illinois auction. (2007)
- Evaluated claims that an artificial price in electricity forward markets was created through spot market actions and information dissemination. (2004–07)
- Evaluated market definition issues as well as regulatory and market changes affecting the sale of electricity in California and the western U.S. (2004–05)
- Analyzed market power, generator availability, shape of the demand curve, and role of historical capacity levels in support of FERC testimony regarding the proposal for a locational installed capacity market (LICAP) in New England. (2004–05)
- Provided analytical support for testimonies at FERC regarding the California electricity crisis (transmission constraints, calculation of rebates under various scenarios, and trading practices of electric generator during 2000 and 2001). (2001–03)

PUBLICATIONS:

“Measuring Reverse Payments in the Wake of *Actavis*,” *Antitrust*, Fall 2013, (28) 1, 29-35.

“Admissibility of Expert Damages Testimony in IP Cases,” Appendix A in Assets and Finances: Calculating Intellectual Property Damages, 2013 Edition, by Troxel, Richard B. and William O. Kerr, West Publishing, Thomson-Reuters. (also prior editions, 2010, 2011, and 2012)

“Shifting Regulatory Oversight of Utility Mergers” in Innovating for Transformation: The Energy and Utilities Project, Montgomery Research, Inc., 2006, with Cliff W. Hamal.

“Market Power Mitigation or Obviation, That is the Question: FERC’s Pending Decision on New England’s Installed Capacity Market Design,” *The Energy Antitrust News*, Winter 2005.

“Renewed Interest in Coordinated Effects in Merger Analysis: The *UPM* Case,” *Trade Practices Law Journal*, Summer 2004, with David A. Weiskopf.

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

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

PAPERS AND MANUSCRIPTS:

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

"The Intersection of Antitrust and Intellectual Property Law – Reverse Payment Settlements and Impacts on Innovation," with Kelly Lear Nordby, 2014.

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

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

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

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

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

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

"Amtrack: Information on Subsidies in Thruway Bus Operations," General Accounting Office. Resources, Community, and Economic Development Division. May 9, 1995. (major contributor)

PRESENTATIONS

Japanese Intellectual Property Association – Damages expert in patent infringement mock trial; Washington, DC; November 7, 2013, and prior presentations on November 9, 2007; November 13, 2009; and November 11, 2011.

Merger Analysis: The CCS Case; Presentation to Clemson University Economics Department; Clemson, South Carolina; October 18, 2012.

Quantitative Analysis in Consulting Engagements, Presentation to University of Virginia Statistics Department; Charlottesville, VA; September 7, 2012; with Anthony D'Andrea.

Panelist at University of Virginia, Commerce Career Day, September 20, 2011, and also in prior years on September 24, 2009 and September 23, 2010.

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

"Merger Analysis in the Waste Industry – Republic and Allied," presentation to the University of Virginia Economics Club; Charlottesville, VA, October 21, 2010, with Paul Diver.

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

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

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

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

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

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

"Voluntary Redistribution by Predatory Individuals Under Alternative Social Contracts," Workshop in Public Finance, Clemson University, October 1996.

ACTIVITIES, HONORS, and AWARDS:

- American Economic Association (2001 to present)
- American Bar Association (2004 to present)
- United States Association for Energy Economics (2009 to present)
- International Association for Energy Economics (2009 to present)
- Energy Bar Association (2011 to present)
- WCEE (2009-10)
- Close Fellowship (1994–96)
- Macaulay Award for Outstanding Performance by a Graduate Student in Economics (1993–94)
- Earhart Fellowship (1993–94)