



Recent work

Enron plus highlights on other litigation matters

Expanded academic network

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Recent publications and presentations

Subprime and Structured Finance Litigation, speakers: Matthew Long and Karl Snow

Accounting for Fair Value in the Subprime Market Meltdown, published by Boris J. Steffen

FAS 157: Changes to Market Value Accounting as a Result of the "Credit Crunch," speaker: Boris J. Steffen

Upcoming event

Derivatives and Structured Products Litigation, Bates White copresenting with Crowell & Moring

Recent work

Expert analysis results in substantial settlements for Enron Creditors

Over the course of more than three years, Bates White provided extensive consulting and expert services on behalf of Enron Creditors Recovery Corp. (ECRC), which sued Enron's former investment banks for aiding and abetting its insiders to breach their fiduciary duties and perpetuate a massive financial fraud on Enron's creditors. The financial fraud involved a complex series of structured finance transactions designed to disguise Enron's true financial condition from rating agencies, regulators, creditors, and investors.

Counsel for ECRC retained Bates White Partner and Stanford University Professor **Douglas Bernheim** to analyze issues of causation, foreseeability, damages, and apportionment. Based upon extensive financial, statistical, and economic analysis, Dr. Bernheim concluded that if the true economic substance of the challenged transactions had been disclosed, more likely than not, Enron would have been downgraded below investment grade well before November 2001. The loss of investment grade rating would have triggered massive collateral obligations associated with Enron's commodity trading operations, and this would have forced Enron to confront its financial problems earlier—through bankruptcy or otherwise—saving Enron's creditors and the estate billions of dollars in further losses.

Bates White staff deconstructed each of the 85 challenged structured finance transactions, analyzed contemporaneous financial data and credit ratings for thousands of companies, and developed economic models to predict Enron's credit rating if the fraudulently disclosed transactions had been properly reported. Dr. Bernheim employed the econometric models to determine the date by which, more likely than not, Enron would have lost its investment grade rating. Dr. Bernheim then calculated total damages as the amount of incremental losses suffered by the estate thereafter and apportioned damages to each of the challenged transactions in proportion to the expected losses that could have been avoided if the transaction had been properly disclosed.

Working closely with Bates White staff, Dr. Bernheim prepared lengthy affirmative and rebuttal reports detailing his methodologies, provided two days of deposition testimony, and coordinated with counsel to prepare for trial. Ultimately, all defendants settled before trial, but ECRC's total recoveries from Enron's investment banks surpassed \$6 billion in cash payments and foregone bankruptcy claims.

For more detail about the Enron matter, please see our [case study](#).

B. Douglas Bernheim, PhD, Bates White Partner, is the Edward Ames Edmonds Professor of Economics at Stanford University. He is a recognized leader among academicians for his contributions to industrial organization, public finance, and applied econometrics. Dr. Bernheim has provided testimony in numerous high-profile litigation, mergers, and regulatory matters on topics including competitive impact, countervailing efficiencies, predatory pricing, monopolization, antitrust liability, and antitrust damages.

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Recent work spans fair lending and performance valuation to structured finance

- Directed statistical and economic analysis on behalf of a major financial institution with multiple mortgage business units. Provided statistical analysis of pricing disparities between protected and unprotected classes. Evaluated mortgage pricing strategies to examine the relationship between pricing and underlying credit risk. Developed alternate risk-adjusted pricing algorithms to reduce pricing disparities.
- Worked with an outside expert to measure total damages for a policyholder that alleged that its insurance carriers failed to pay for asbestos costs and thereby forced these costs on the company and reduced the value of the entity as an enterprise. Estimated the company's enterprise value, both when its insurance performed properly and when the insurance ceased paying.
- Provided consulting services for outside counsel that represented a special committee formed to evaluate allegations in a shareholder derivative action involving a monoline insurer. Evaluated the insurer's processes and procedures, including its deal origination, underwriting, pricing, cash flow modeling, and surveillance activities. Analysis focused on insurer's policies for underwriting financial guarantees on subprime RMBS, closed-end second and HELOC ABS, and multisector CDO securities.
- Developed expert report for litigation on behalf of prime auto finance company. Report analyzed company's market position, origination strategy, and loss performance. Report also included affirmative estimates of expected credit losses for finance company's securitized portfolio.

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Expanded academic network

Academic affiliates broaden

In our ongoing efforts to meet client needs for litigation support services and expert witness testimony, we continue to expand our network of academic affiliates. We are delighted to be associated with four well-known academics who have deep expertise in various areas of the finance industry.

Ted Gayer, PhD

Dr. Ted Gayer is an Associate Professor of Public Policy at Georgetown University and an expert in financial economics as well as environmental and energy policy economics. His technical areas of expertise include econometrics, cost-benefit analysis, cost-effectiveness analysis, risk assessment and valuation.

Most recently, he served as Deputy Assistant Secretary for Economic Policy at the Department of the Treasury, where he covered a wide range of microeconomic issues related to Social Security, housing markets, credit markets, and insurance markets. He played a key role in generating sound and timely analyses during the turbulent period for housing and credit markets. Among other things, he led an effort to analyze potential measures to address rising subprime mortgage defaults that helped shape Treasury's response to a number of alternative mortgage proposals.

Dr. Gayer has experience working with law firms, businesses, regulatory agencies, trade associations, and multilateral organizations. He has contributed to regulatory proceedings, provided briefings to the highest levels of government, and made presentations on policy responses to mortgage and credit market problems. Professor Gayer's research has been published in many journals including *Science*, the *Review of Economics and Statistics*, the *Journal of Economic Literature*, the *Journal of Risk and Uncertainty*, and *Regulation*. He coedited (with W. Kip Viscusi) the two-volume *Classics in Risk Management* and coauthored (with Harvey Rosen) the textbook *Public Finance, 8th Ed.*

Albert S. "Pete" Kyle, PhD

Dr. Pete Kyle is the Smith Chair Professor of Finance at the Robert H. Smith School of Business, University of Maryland. He is one of the foremost financial theorists in the world and is best known for creating the "Kyle Model," which provides a foundation for the modern theory of market microstructure, a subfield of finance dealing with the process of price formation in financial markets. His research involves mathematical modeling of informed trading in speculative markets, including topics such as insider trader, market manipulation, price volatility, the information content of market prices, and market liquidity. His research has also impacted markets for derivatives, bonds, and global trading mechanisms.

Dr. Kyle has consulted and served as an expert witness for numerous companies, law firms, and government agencies. His testifying work includes antitrust and finance cases involving securities fraud, market and price manipulation, and damages. He has also provided finance consulting services to companies, banks, and stock exchanges on futures trading, risk management, market surveillance and insider trading, portfolio insurance, and derivatives pricing.

Thomas Z. Lys, PhD

Dr. Thomas Lys is the Eric L. Kohler Chair in Accounting, Professor of Accounting Information and Management, and Professor of Law (by courtesy) at the Northwestern School of Law. Professor Lys' research has been published in prominent academic journals, including the *Journal of Accounting and Economics*, *Journal of Financial Economics*, *Journal of Accounting Research*, *Journal of Business*, and the *Journal of Monetary Economics*. His research investigates the stock price consequences that result from alternate financial reporting standards, changes in capital structure, changes in the money supply, and corporate disclosures. He is an editor of the *Journal of Accounting and Economics* and has served on the editorial board of *Accounting Review*.

Dr. Lys has consulted with Cox Communications, Ciba Chemical, General Electric, Guidant Corporation, IBM, Imo Industries, and USX. He recently worked with Bates White as the damages expert in a valuation matter in which a privately held manufacturing company suffered damages and the loss of its enterprise value as a consequence of an insurance company's failure to provide insurance payments for asbestos liability indemnification and defense costs. In addition, on behalf of our client Enron Creditors Recovery Corp., Bates White worked with Dr. Lys, who served as the accounting expert.

Chester S. Spatt, PhD

Dr. Chester Spatt is the Kenneth B. and Pamela R. Dunn Professor of Finance at the Tepper School of Business at Carnegie Mellon University and Director of its Center for Financial Markets. From July 2004 through July 2007, he served as Chief Economist of the U.S. Securities and Exchange Commission and Director of its Office of Economic Analysis. Dr. Spatt is a well-known scholar who specializes in finance and economics and has researched and written extensively on market structure, pricing and valuation, and the impact of information in the marketplace.

Dr. Spatt's consulting efforts and experiences have spanned a broad range of financial market questions, including initial public offerings, mortgage refinancing and contracting, employee stock option valuation, mutual fund market timing, investment arbitrage, and taxation and asset allocation. For example, he has been a leading expert on the design of securities markets in various settings, mortgage valuation, and taxation and investment strategy. His coauthored 2004 paper in the *Journal of Finance* on asset location won TIAA-CREF's Paul Samuelson Award for the Best Publication on Lifelong Financial Security. He has also served as Executive Editor and one of the founding editors of the *Review of Financial Studies*, President and a member of the Founding Committee of the Society for Financial Studies, President of the Western Finance Association, and is currently an Associate Editor of several finance journals. He also is currently a Research Associate of the National Bureau of Economic Research, Senior Economic Adviser to Kalorama Partners, a Member of the Shadow Financial Regulatory Committee as well as the Financial Economists Roundtable and a Fellow of the TIAA—CREF Institute.

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Recent publications and presentations

Subprime and Structured Finance Litigation

International Quality & Productivity Center (IQPC) Conference, November 2008

Bates White's **Matthew Long** and **Karl Snow** both recently participated in IQPC's conference. Dr. Snow spoke during the opening session, and in his presentation, "[Subprime & Structured Finance Litigation: An Economic Overview](#)," he discussed how the problems that began in the subprime mortgage litigation have spilled over into other areas of the mortgage industry and the capital markets.

Dr. Snow and Mr. Long also conducted a postconference workshop in which they explored the subprime mortgage origination market and explained its pricing structures, underwriting systems, and reps and warrants. They also discussed the securitization and resecuritization process, reviewing major features and drivers, economic and mark-to-model issues, and the roles and incentives of major industry players.

Accounting for Fair Value in the Subprime Market Meltdown

Financier Worldwide, November 2008

Boris J. Steffen, Bates White Partner, published the article, "[Accounting for Fair Value in the Subprime Market Meltdown](#)," in the November issue of *Financier Worldwide*. It was also recently reprinted as a featured article in INSOL International's monthly *News Update*.

Near the center of the debate regarding the cause of the global financial crisis is the use of fair value, or "mark-to-market" accounting in markets characterized by a lack of liquidity and pricing transparency. Moreover, in the subprime market collapse, challenges inherent to the application of fair value accounting principles have been blamed by some observers as exacerbating the problem. In his article, Mr. Steffen provides a brief history of the use of fair value accounting and discusses its proper application to financial reporting. He explains how, when applied correctly and as intended under FAS 157, fair value accounting facilitates informed decisions by improving transparency, aiding in the assessment of risk, and strengthening the efficiency of capital markets.

FAS 157: Changes to Market Value Accounting as a Result of the "Credit Crunch"

Association of Insolvency and Restructuring Advisors (AIRA) teleconference, January 6, 2009

Boris J. Steffen, Bates White Partner, participated as a panelist in an Association of Insolvency and Restructuring Advisors' (AIRA) teleconference. His [presentation](#) discussed changes to market value accounting that have resulted

from the global financial crisis and associated credit crunch. AIRA is a nationwide nonprofit organization serving the needs of business turnaround, restructuring and bankruptcy practitioners, recognized as the leading organization in its field.

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Upcoming event

Derivatives and Structured Products Litigation

International Quality & Productivity Center Conference, March 18–19, 2009

Bates White will copresent with attorneys from Crowell & Moring during IQPC's upcoming Derivatives and Structured Products Litigation conference. During our session titled "Effectively Litigating Collateralized Debt Obligations and Credit Default Swaps," we will provide the economist's perspective on valuation issues and legal insights on the various types of allegations. For more information about this conference, please [click here](#).

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Bates White's Finance Practice

Clients depend on Bates White for expert testimony, consulting and litigation support, and other economic analyses in connection with a full range of financial issues. We offer financial strategy and policy advice, including valuations, fairness, and solvency opinions, to assist in resolving capital market, restructuring, and merger and acquisition related disputes. Our services also include subprime lending analysis, structured finance modeling, fair lending and disparate impact analysis, quantitatively driven pricing and marketing strategies, and economic and statistical modeling. Fundamental to our approach is the unique collaboration of senior industry experts with economic and statistical thought leaders. This approach results in a deep understanding of the business challenges facing our clients, while providing the sophistication needed for rigorous analytical solutions.

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