

NIAL H. MACMENAMIN

CONTACT

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EDUCATION

MBA in Finance and Marketing, Kilts Scholar for quantitative marketing, Honors, University of Chicago, Booth School of Business, Chicago, IL
MS in Applied Economics and Statistics, University Fellow, Magna cum Laude, University of Minnesota, Minneapolis, MN
BA in Economics and Environmental Studies, Cum Laude, Macalester College, St. Paul, MN

PROFESSIONAL EXPERIENCE

2022 - Present, *Executive Vice President*, Compass Lexecon, Los Angeles, CA
2021, *Senior Vice President*, Compass Lexecon, Los Angeles, CA
2001 - 2003, 2005 - 2021, *Vice President, Manager, Associate, Senior Analyst, Analyst*, Analysis Group, Los Angeles, CA
2004, *Product Manager*, Progressive Auto Insurance, Cleveland, OH
2000 - 2001, *Product Manager*, Business.com, Santa Monica, CA
1999 - 2000, *Legislative Aid*, State Senator Ellen R. Anderson, St. Paul, MN
1997 - 1998, *Manager*, CCI Triad Software, Minneapolis, MN

AREAS OF SPECIALIZATION

Quantitative marketing, digital marketing and digital economy, antitrust and competition, unfair competition, class certification, intellectual property, damages, finance and securities

SELECTED PUBLICATIONS

“Use of Conjoint Analysis in Litigation: Challenges, Best Practices, and Common Mistakes,” *The Cambridge Handbook of Marketing and the Law*, Publisher: Cambridge University Press, 2023, Edited by Jacob E. Gersen and Joel H. Steckel (with Rene Befurt and Aylar Pour Mohammad).

“Cigar Association of America et al. v. United States Food and Drug Administration,” *Food and Drug Law Institute (FLDI), Top Food and Drug Cases, 2020, & Cases to Watch, 2021*, Edited by August T. Horvath (with Rene Befurt and Genna Liu).

“Evaluating Section 230 Liability in the Sharing Economy,” *Law360*, September 3, 2019 (with Michael Williams, Andrew Myers of Wheeler Trigg O'Donnell LLP, Diego Focanti, Haimin Zhang and Janos Zsiros).

“How Natural Experiments Can Help In Estimating Damages,” *Law360*, February 15, 2018.

“Four Considerations For Residential Mass Appraisal Valuation,” *Law360*, May 23, 2016 (with Hristina Bojadzieva); reprinted in *AVM News Vol. 15, No. 07-08, July-August 2016*.

"Analysis of California's Proposition 79 prescription drug discounts," authored by Laurence Baker, Ed Tuttle, Mark Gustafson, Niall MacMenamin, Justin Works, and Greg Snyders, 2005.

SELECTED PRESENTATIONS

"Best Practices in Evaluating Section 230 Liability in the Sharing Economy," Webinar Presentation, Knowledge Group, January 14, 2020 (with Michael Williams of Wheeler Trigg O'Donnell LLP, and Diego Focanti).

"A Careful Look at Damages in Class Actions," 2020 Consumer Class Action Litigation Conference, Bridgeport Continuing Education, Costa Mesa, CA, January 10, 2020 (with Bo Phillips of Alston & Bird, and Jack Fitzgerald of The Law Office of Jack Fitzgerald, PC).

"Quantifying Lost Profits in Commercial Litigation," Webinar Presentation, Knowledge Group, April 15, 2019.

"Lost Profits Damages Calculations: Framework, Principles and Legal Aspects," Webinar Presentation, Knowledge Group, September 25, 2018.

"Land Use in Los Angeles: Discussion about Open Space," Presentation to UCLA Graduate Students of Color for Public Health, February 20, 2013.

AWARDS AND HONORS

Kilts Scholar, University of Chicago, Booth School of Business

University of Minnesota Applied Economics Fellow

United States Department of Agriculture Fellow

Elected University of Minnesota Graduate School Council

Elected Vice President of Palms Neighborhood Council, Los Angeles City Government

Passed Ph.D. comprehensive exam in Microeconomics

EXPERT DESIGNATIONS

- **Alex Hormozi v. Neist Media, et al.**
United States District Court, District of Minnesota
Retained by counsel from Maslon LLP on behalf of Neist Media to rebut Plaintiff expert's survey of consumer confusion relating to product packaging. Filed report.
- **Slaughter, Watts, et al. v. Bass Pro**
United States District Court, W.D. Missouri
Retained by counsel from Singleton Schreiber, LLP on behalf of Slaughter, Watts, et al. to provide a methodology for estimating classwide damages, and estimating materiality to consumers of the alleged claim; dispute was about an alleged misrepresentation. Filed report and was deposed.
- **Raju v. Medtronic**
United States District Court, S.D. Mississippi
Retained by counsel from Maslon LLP on behalf of Medtronic to rebut quantification of trade secrets and copyright damages. Filed report.
- **Tharwani v. Saha**
Superior Court of the State of California, County of Alameda
Retained by counsel from Lewis Brisbois on behalf of Saha to quantify economic damages in a contract dispute.
- **Syson v. Bank of America and Nationstar**
Superior Court of the State of California, County of Los Angeles
Retained by counsel from McGuire Woods on behalf of Bank of America, and Green & Hall on behalf of Nationstar to quantify economic damages in a contract dispute involving financial products.
- **Wells Fargo Bank v. Warren and New Faze Holdings, LLC**
Superior Court of the State of California, County of Sacramento
Retained by counsel from Lewis Brisbois on behalf of Wells Fargo, plaintiff and defendant in cross-complaint, to quantify economic damages in a contract dispute involving financial products.
- **Warren and New Faze Holdings, LLC v. Wells Fargo Bank and Wells Fargo Advisors**
Arbitration before the American Arbitration Association, Sacramento, California
Retained by counsel from Pillsbury Winthrop on behalf of Wells Fargo to quantify economic damages in a contract dispute. Filed report and testified in AAA arbitration hearing with panel of three arbitrators.
- **Benjamin v. IMS Health, Inc.**
Superior Court of the State of California, County of Alameda
Retained by counsel from Pillsbury Winthrop on behalf of IMS Health to quantify damages for loss of earnings.

SELECTED CONSULTING ASSIGNMENTS

Antitrust

- **United States of America v. Google, LLC.**
United States District Court, Eastern District of Virginia, Alexandria Division
Led team in support of academic expert who assessed substitution between digital advertising formats and properties, and summarized advertiser and publisher industry trends and evolution.
- **In re. Keurig Green Mountain Single-Serve Coffee Antitrust Litigation**
United States District Court, Southern District of New York
Led team in support of academic expert assessing false advertising claims within an antitrust matter. Conduct statistical analysis and survey research to determine impact of claims and rebut plaintiffs' analyses. Provide support to counsel.
- **Retractable Technologies, Inc. v. Becton, Dickinson & Co.**
United States District Court, Eastern District of Texas
Managed team that calculated damages to a syringe manufacturer caused by alleged monopolization. Analyzed exclusive dealing and false claims. Conducted statistical analysis to determine damages and causation.
- **Advanced Micro Devices, Inc. v. Intel Corp**
United States District Court, District of Delaware
Managed project team in analysis of claims that Intel engaged in anticompetitive behavior. Analyzed technology leadership associated with patented technology in microchips. Supported academic expert.
- **United States v. Microsoft Corporation**
United States Court of Appeals for the District of Columbia Circuit
Team member providing support to academic experts and counsel related to alleged overcharges from anticompetitive conduct in markets for PC operating system and application software.

Product Defect

- **Justin O'Connor, et al. v. Ford Motor Company**
United States District Court, Northern District of Illinois
Led team in damages assessment of alleged auto defect involving a ten-speed transmission. Assessed plaintiffs' damages methodologies, including a conjoint survey and market simulation. Supported academic expert.
- **In Re. General Motors Corp. Air Conditioning Marketing and Sales Practices Litigation**
United States District Court, Eastern District of Michigan, Southern Division
Led team in damages assessment of alleged auto defect that causes the AC Systems to malfunction. Assessed plaintiffs' damages methodologies, including a conjoint survey and market simulation. Supported academic expert.
- **In Re. Rock 'N Play Sleeper Marketing, Sales Practices, and Products Liability Litigation**
United States District Court, Western District of New York
Led team in damages assessment of alleged defect that causes the infant sleeper product to malfunction. Assessed plaintiffs' damages methodologies, including a conjoint survey and market simulation. Supported academic expert.

Data Privacy

- **Angela Hogan, et al. v. Amazon.com, Inc.**
United States District Court, Northern District of Illinois
Led team in alleged violation of BIPA facial recognition biometric data. Assessed damages methodologies, including heterogeneity in consumers and benefits of features. Supported academic expert.
- **Anibal Rodriguez, et al. v. Google, LLC.**
United States District Court, Northern District of California, San Jose Division
Led team in assessment of actual damages arising from alleged misrepresentations and improper collection of consumer web and app activity. Considered the heterogeneity of consumer perceptions and benefits of the features supported by data collection. Supported academic expert.

False Advertising

- **Yates and Jones, et al. v. Traeger Pellet Grills**
United States District Court, District of Utah
Led team in class action alleging deceptive statements on Traeger packaging. Supported academic expert on surveys and damages.
- **Health Supplement Matters**
United States District Court, Northern District of California
Led team in class actions alleging deceptive advertising of human health supplement. Worked on behalf of defendant. Supported three academic experts on surveys, damages and product efficacy.
- **False Advertising Matters - Confidential**
Led survey projects to assess the effects of allegedly false advertising claims on consumer perceptions and purchasing decisions. Analyzed price premium damages based on conjoint analysis, and full refund damages. Provide all aspects of support to academic experts and counsel.
- **Herbicide False Advertising Matters**
Assessed putative class members' perceptions, materiality, and purchase drivers for consumer herbicide products that allegedly contain false and misleading advertising, and omission of warning statements using affirmative survey research. Conducted assessment of plaintiffs' proposed damages methodology. Responded to plaintiff's consumer survey research and damages analyses.
- **Beverage Product Matters**
Led team in a class action alleging deceptive advertising, including all natural and naturally flavored claims on beverage products. Worked on behalf of defendant corporations. Supported academic experts on surveys and damages.
- **Defined Contribution Plan Excessive Fees Litigation - Confidential**
Led a team in preparation of a conjoint survey regarding participants' investment decisions and sensitivity to fees in an employer sponsored direct contribution 401(k) retirement plan. Managed the support of an expert witness.

Intellectual Property

- **Barry v. DePuy Synthesis Products**
United States District Court, Eastern District of Pennsylvania
Led project in support of academic affiliate in patent dispute matter involving spinal deformity surgery devices.
- **Barry v. Stryker Corporation**
United States District Court, District of Delaware
Led project in support of academic affiliate in patent dispute matter involving spinal deformity surgery devices.
- **Intellectual Property Cases Involving Smartphone and Tablet Technologies**
Managed projects in support of academic affiliates in patent dispute matters involving smart phone and tablet features; designed, developed, and analyzed conjoint surveys evaluating consumer valuation of product attributes; rebutted opposing experts' surveys.
- **Patent Infringement Matters - Confidential**
Led projects and teams supporting academic affiliates in several patent dispute matters; projects involved hedonic regression and consumer surveys.
- **Trademark Infringement Matters**
Managed survey projects to assess confusion in the marketplace relating to alleged trademark infringement. Created Eveready and Squirt surveys to assess confusion among consumers.
- **ALS Scan v Cloudflare**
Federal District Court, ND of California
Managed project to value allegations of copyright violation by internet service provider.
- **Tamarack Scientific Co. Inc., v. Ultratech, Inc.**
Court of Appeal of California, Fourth Appellate District, Division Two
Led a case team in support of an expert witness analyzing damages suffered by defendant in a patent infringement suit and by plaintiff in a countersuit for malicious prosecution and abuse of process.
- **Trimble Navigation Ltd. v. RHS et al.**
United States District Court, District of Nebraska
Managed project team that analyzed alleged lost profits and reasonable royalty for precision agriculture tractor guidance systems in a patent dispute.

Commercial and Contract

- **In Re Upstream Addicks and Baker (Texas) Flood-Control Reservoirs**
In the United States Court of Federal Claims
Led team in support of expert who valued properties damaged or destroyed by flood waters during Hurricane Harvey.

- **Bay Parc Plaza (Aimco) v. Airbnb**
Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida
Led team in support of academic expert who assessed Airbnb's liability for short term rental activity in Aimco properties. Involved survey research and systematic analysis of Airbnb user reviews. Client received favorable settlement after jury selection in the first trial.
- **International Arbitration Involving Swiss Multinational**
ICC Rules of Arbitration (London)
Led team in support of academic expert on international arbitration on behalf of a Swiss multinational client. Conducted analysis of the market to determine the effect of alleged interference on sales and business performance. Client prevailed on liability and damages in both the claim and counterclaim following a two-week evidentiary hearing.
- **In re September 11 Litigation**
United States District Court, Southern District of New York
Managed team supporting an academic affiliate in valuing the cost to reconstruct World Trade Center Towers pursuant to 99-year master leasehold interests held by Silverstein Properties.
- **Vergara v. State of California**
Court of Appeal of the State of California
Managed survey generation for a non-profit organization in an education matter; supported expert in survey design, respondent identification, sample size analysis, survey administration, data collection and analysis of survey results.
- **Carmel Development Company v. Monterra Ranch Properties, LLC, et al.**
Superior Court of California, County of Monterey
Managed team supporting an expert witness in financial analysis related to a failed residential real estate development; evaluated the amounts claimed under mechanics liens relating to construction costs.
- **State Pipe and Supply, Inc. v. Coutinho & Ferrostal Inc.**
United States District Court, Central District of California
Led team that supported economic expert witness to calculate damages to the plaintiff from non-delivery of steel products as contracted and to the defendant under a counter-claim assuming proper mitigation.

Securities and Finance

- **Homeward Residential v. Sand Canyon Corporation**
United States District Court, Southern District of New York
Led team in analysis of damages attributable to the claims regarding loans. Client prevailed on summary judgment.
- **RMBS Investor Matters**
Managed projects examining damages, statistical sampling, re-underwriting, appraisal and due diligence issues in MBS investor cases that allege breaches and misstatements.
- **Securities Fraud Projects**
Managed projects on numerous stock and bond price analyses, including valuations, event studies, loss causation analyses, market efficiency, and investor knowledge studies.

- **Mutual Fund Fees Projects**
Managed projects supporting industry affiliates in disputes relating to mutual fund fees. Analyzed investment management processes, management styles, and the economics of mutual fund products.
- **Board of Trustees of the AFTRA Retirement Fund v. JPMorgan Chase Bank, N.A.**
United States District Court, Southern District of New York
Managed a project team in support of an academic affiliate in the examination of investment suitability regarding JPMorgan's purchase of debt securities issued by a structured investment vehicle that later defaulted.
- **United States of America v. Frederick S. Schiff and Richard J. Lane**
United States District Court, District of New Jersey
Managed and performed analyses in support of expert testimony in defense of criminal fraud charges filed against a former officer of Bristol-Myers Squibb. Analyzed Bristol-Myers' stock price drop in connection with alleged fraud stemming from the company's pharmaceutical wholesale distribution practices. Resulted in successful Daubert challenge to the government's expert regarding his testimony. Favorable ruling was upheld on appeal.
- **Securities Litigation - Confidential**
Managed analysis to evaluate debt holders' recovery following a mortgage originator's bankruptcy. Used credit default swaps to value alleged misrepresentations on value of senior unsecured debt.
- **AT&T v. Clarendon America Insurance Co.**
Superior Court of the State of Delaware, New Castle County
Managed team and performed research to support expert testimony regarding the reasonableness of settlement values in class-action securities matter.
- **NYSE/Archipelago Merger Litigation**
Supreme Court of the State of New York, County of New York: Commercial Division
Team member in support of an academic affiliate analyzing bankers' valuations of the merging entities and fairness opinions.
- **Florida State Board of Administration of Florida v. Alliance Capital Management**
Circuit Court of Leon County, State of Florida
Team member in support of expert witnesses conducting financial analyses relating to Enron equity investments.
- **In re: Parmalat Securities Litigation**
United States District Court, Southern District of New York
Managed analysis of Parmalat's accounting system to determine how securitization affected Parmalat's financial statements. Assisted in damages analysis and report.

Valuation

- **UMG Recordings, Inc. v. NBC Universal, Inc., et al.**
Superior Court of California, County of Los Angeles
Managed a case team that supported an economic expert in analyzing data to calculate damages and value over 100,000 original master recordings that were destroyed in a warehouse fire.

- **State of Arkansas Teacher Retirement System, et al. v. Merrill Lynch**
Texas Southern District Court
Led a case team that supported an academic affiliate in a complex valuation model of “but-for” investment returns to private equity funds whose investments involved Enron assets.
- **OpenGate Capital v Thermo Fisher**
Federal District Court, Delaware
Managed project to value division of company sold in a private equity transaction.
- **Valassis Communications, Inc. v. ADVO, Inc.**
Delaware Chancery Court
Supported an expert witness in review of third-party valuations relating to the proposed merger between two parties.