

AGEC 596F Forensic Economics (1 Credit)  
Instructor: John M. Connor

The aim of this course is to inculcate an understanding and appreciation for the role of economists assisting fact-finders and adjudicators in the courtroom, before regulatory bodies, legislative committees, and other adversarial public fora. One expected outcome of the course is the importance of non-academic styles of communication needed for lay audiences.

Initially, until the course is expanded to 2 or 3 credits, it will focus on economists serving as testifying experts in antitrust litigation. Some of the proposed elements of the course are [possible cases to be reviewed]:

- A. Economic consulting: How big is the industry? Non-profit and for-profit industry segments. Who is qualified to be an expert? “Inside” versus “Outside” economists. The role of legal “discovery” in obtaining data. The special rules governing class actions.
- B. The antitrust laws governing price fixing, monopolization, and merger control: Translating legal principles into economic concepts and operational models.
- C. Measurement issues: Compensatory and punitive damages and their relationship to economic welfare economics.
- D. A brief exegesis of key concepts from industrial-organization economics: Concentration, homogeneous products, barriers to entry, tacit vs. economic profit, financial vs. market performance, efficiency vs. market power, natural monopoly, and economic “damages.
- E. Economic writing to assist clients prior to litigation: Analyses of industry structure and oligopolistic behavior; anticipating opposing arguments.
- F. Sherman Act Section 1: Price-fixing litigation: Expert opinions proffered during discovery and courtroom testimony [Lysine, graphite electrodes, or fine-art auction houses cartels].
- G. Sherman Act Section 2 cases: Monopolization: Who won in *Microsoft* case, and did the economic testimony sway? Was the result different in *Conwood v. U.S. Tobacco*?
- H. Mergers: The increasingly sophisticated role of econometric price analyses [*FTC v. Toys-R-US*].
- I. The *Daubert* Challenge: When is testimony “Junk Science”?

The class will meet once per week early in the fall semester for up to eight weeks. There will be weekly assignments, such as, internet searches for appropriate sites, readings of one side of a case, short papers (e.g., after listening to both sides of a case, what were the key issues addressed by the experts, and who won the rhetorical battle?), play-acting of courtroom testimony taken from transcripts, written short market-structure profiles of industries involved in alleged antitrust violations. A final written assignment will be a short expert opinion on the validity/invalidity of an alleged antitrust violation and the degree of compensable economic harm.

### **Selected Readings**

- Baker, Jonathan B. "Working with Economic Experts: Economists' Roundtable." *Antitrust* 17 (Spring 2003): 8-19.
- Blair, Roger D. and Jill Boylston Herndon. "Inferring Collusion from Economic Evidence." *Antitrust* 15 (Summer 2001): 17-21. ["Comment" and "Reply" in *Antitrust* 17 (Spring 2003): 44-47].
- Blair, Roger D. and David L. Kaserman. *Antitrust Economics*. Homewood, Ill.: Irwin (1985).
- Carlton, Dennis W. "Market Power and Vertical Restraints in Retailing: An Analysis of FTC v. Toys-R-US," Chapter 5 in Slotte (1999).
- Connor, John M. *Global Price Fixing: "Our Customers Are the Enemy"*. Boston: Kluwer Academic (2001).
- Einhorn, Henry A. "The Use of Economic Analysis in Establishing Market Collusion," in *Litigation Economics* (Patrick A. Gaughan and Robert J. Thornton, editors). Greenwich, Conn.: JAI Press (1993).
- Hinman, Frank. "Working with Economists: Interview with Judge Vaughn Walker." *Antitrust* 17 (Spring 2003): 26-29.
- Houthakker, Hendrik S. "Expert Testimony by Economists: What Makes it Effective?" Chapter 1 in Slotte (1999).
- Kwoka, John and Lawrence J. White (editors). *The Antitrust Revolution (Fourth Edition)*. Oxford: Oxford University Press (2003).
- Mackie-Mason, Jeffery K. "Inducements to Advocacy: The Economist as Independent Expert," Chapter 13 in Slotte (1999).
- Page, William H. (editor). *Proving Antitrust Damages: Legal and Economic Issues*. Chicago, Illinois: Section of Antitrust Law, American Bar Association (1996).

- Milne, Robert A. and Jack E. Pace III. "Conspiratologists at the Gate: The Scope of Expert Testimony on the Subject of Conspiracy in a Sherman Act Case." *Antitrust* 17 (Spring 2003): 36-44.
- Scherer, F. M. "The Toys-R-US Case," in Kwoka and White (2003).
- Scherer, F. M. "Economic Consulting, Fire Fighting, and Similar Adventures," Chapter 8 in Slottje (1999).
- Slottje, Daniel J. (editor). *The Role of the Academic Economist in Litigation Support*. Amsterdam: North-Holland (1999).
- Ward, John O. and Gerald Olson. "Forensic Economics: The Development and Outlook for the Field," in *Litigation Economics* (Patrick A. Gaughan and Robert J. Thornton, editors). Greenwich, Conn.: JAI Press (1993).
- Weiskopf, David A. "Merger Simulation." *Antitrust* 17 (Spring 2003): 57-61.