Ten Years After GeyerGorey LLP's Phillip Zane Published His Definitive Work on Game Theory

Ten years ago this spring, Zane published his definitive work on game theory which changed the way law-and-economics scholars and sophisticated prosecutors and defense counsel analyze whether, when, and how corporations and executive management teams should disclose white collar criminal conduct.

NEW YORK - Aug. 5, 2013 - *PRLog* -- Phillip Zane of GeyerGorey LLP may be the only attorney whose colleagues and clients might expect to see an open book on games and strategy on his desk.

Ten years ago this spring, Zane published *The Price Fixer's Dilemma: Applying Game Theory to the Decision of Whether to Plead Guilty to Antitrust Crimes*, 48 Antitrust Bull. 1 (2003), which changed the way law-and-economics scholars and sophisticated prosecutors and defense counsel analyze whether, and when, to settle high-stakes antitrust cases.

Zane's article strongly suggested that in a number of common situations, pleading guilty (or even seeking the protections of the corporate leniency program) is not always justified. Zane's article used a repeated, or iterative, version of the prisoner's dilemma to demonstrate that pleading guilty was not always the best strategy for antitrust defendants facing criminal prosecution and civil liability in multiple proceedings or jurisdictions.

At the time, a few of the brainier Antitrust Division prosecutors breathed a sigh of relief when the defense bar did not seem to notice and they failed to incorporate Zane's research into their negotiating strategies.

In 2007, Zane published "An Introduction to Game Theory for Antitrust Lawyers," which he used in a unit of an antitrust class he taught at George Mason University School of Law. That paper was another milestone on the way to making game theory concepts accessible and useful to the antitrust defense bar.

Zane's work, which now used game theory to criticize the settlement of the second Microsoft case and the Government's approach to conscious parallelism, as well as the leniency program, was met with official grumblings within the Antitrust Division.

GeyerGorey LLP was founded on the principle that the chances for achieving the best possible outcome are maximized by having access to multiple, top-notch, cross-disciplinary legal minds that are synced together by an organizational and compensation structure that encourages sharing of ideas and information in client relationships.

As international enforcement agencies sprouted and developed criminal capabilities and as more hybrid matters included prosecutors from US enforcement agency components with sometimes overlapping jurisdictions, such as the Antitrust, Criminal, Civil and Tax Divisions of the Department of Justice, and the alphabet soup of regulatory agencies, particularly the Securities and Exchange Commission, it became apparent that Zane's game-theoretic approach has application in almost every significant decision we could be called upon to make. Since Zane has joined us we have been working to factor in the increased risks associated with what we call hybrid conduct (conduct that violates more than a single statute). Our tools of

analysis for identifying risks for violations of competition laws, anti-corruption laws, anti-money-laundering laws, and other prohibitions, include sophisticated game-theoretic techniques, as well as, of course, the noses of former seasoned prosecutors, taking into account, each particular client's tolerance for risk.

To take one example, an internal investigation might show both possible price fixing and bribery of foreign government officials. How, given the potential for multiple prosecutions, should decisions to defend or cooperate be assessed? And how might such decisions trigger interest by the Tax Division, the SEC, the Commodities Futures Trading Commission, the Federal Energy Regulatory Commission or other regulators. When should a corporation launch an internal investigation? When should it make a mandatory disclosure? What should it disclose and to which agency, in what order? When should it seek leniency and when should it instead stand silent? These tools are valuable in the civil context as well: When should it abandon a proposed merger or instead oppose an enforcement agency's challenge to a proposed deal?

These are truly the most difficult questions a lawyer advising large corporations is required to address. We are well positioned to help answer these questions.

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