In memory of my biggest cheerleader and the most powerful influence in my life...my dad.

NJF, 2018

To my parents, for their decades of support.

JMD, 2018
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Please note:

Participation in this guide does not mean that individual contributors, reviewers, or editors agree with everything that has been included in it, including the writings and opinions of other contributors. While we have attempted to present clear guidance on the various topics wherever possible, damages and their proper calculation will always be subject to the facts of the particular matter, the opinion of the expert, the case law, and the law that governs the particular jurisdiction, as well as the trier of fact’s ultimate findings.

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Mark O. Dietrich is a summa cum laude, Beta Gamma Sigma graduate of Boston University where he also earned an MBA with high honors; he holds a Master in Taxation degree from Bentley College as well. A prolific writer, Mark is editor and contributing author to the Business Valuation Resources/American Health Lawyers’ Association Guide to Healthcare Finance and Valuation, 4th edition; editor and principal author of Business Valuation Resources’ Guide to Physician Practice Valuation, 3rd edition; co-editor and contributing author to the American Business Valuation Resources/Health Lawyers’ Association Guide to Valuing Physician Compensation and Healthcare Service Arrangements, 2nd edition; and co-author with Gregory Anderson, CPA/ABV, of The Financial Professional’s Guide to Healthcare Reform. Dietrich is also author of the Medical Practice Valuation Guidebook and co-author of Thomsen-PPC’s Guide to Healthcare Consulting, along with more than 100 articles on valuation, taxation, managed care, and the healthcare regulatory environment. His career experience includes serving as partner-in-charge of the annual audit of an 80-physician tax-exempt faculty group practice affiliated with a major teaching hospital, representation of tax-exempt and taxable entities in Internal Revenue Service field audits, participation in the development of a 250-physician network and negotiation of managed care and Medicare Advantage contracts, and more than 450 valuation and litigation support engagements in the healthcare industry. Dietrich has an in-depth knowledge of the healthcare payment and regulatory environment, including such arcane matters as physician billing codes and the impact of local-market provider payment rates on fair market value compensation. A regular speaker at state and national conferences on healthcare reform, valuation, and other topics, he also lectured in the United Kingdom in 2009, 2011, 2012, and 2014 on managed care, healthcare valuation, and valuation of medical practices to Her Majesty’s Revenue and Customs. He served as chairperson of the American Institute of CPA’s (AICPA) National Healthcare Industry Conference for 2012 and 2013, chaired the AICPA Virtual Conference on the Affordable Care Act in January 2014, and the National Healthcare Industry Conference Affordable Care Act section in 2014. AICPA acknowledged his career achievements at the 2016 National Healthcare Industry Conference.

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Foreword

“It costs us nothing to be just.”

This book is about financial evidence: how to gather it, interpret it, and tell its story in a lawsuit or litigation setting. This is the task that the attorney typically retains the financial expert to accomplish. In this comprehensive guide, we bring together the financial expert’s knowledge of accepted methods and procedures with the attorney’s knowledge of legal issues and insights. This includes a summary of the applicable rules of civil procedure and of evidence, as well as the rich and continually expanding case law that interprets what courts have accepted as evidence for damages claims—and what the courts have rejected and why. This guide contains representational analyses as well as excerpts and abstracts of case law on financial damages. However, like any guidance, it is a tool and not a substitute for the professional’s knowledge of a particular case, the potential impact of local rules regarding discovery, and the jurisdictional nuances that may affect the damage calculations.

The attorneys and financial experts who have participated in putting together this text are among the best in the country in their respective areas of expertise. Our heartfelt thanks go out to all of them for their generous and substantial contributions. Each of their chapters served to make this a better, more comprehensive work covering a range of never-before-addressed topics—including extensive analysis of concepts and case law that lawyers and experts have to grapple with when faced with a damage analysis.

This fifth edition includes materials on a variety of damages measures, including lost profits or value, unjust enrichment, intellectual property damages, other commercial damages, and an expanded chapter on personal injury and wrongful termination. There is also comprehensive and expanded analysis of motions to exclude experts and an in-depth review of the concept of reasonable certainty, the result of significant research on the topic.

Much of the text’s material has been substantially enhanced for this edition, and we thank the continuing efforts of the panel of contributing authors for their efforts. Additionally, many case digests have been added.

In addition to these expanded materials, new topics have been added to this edition, including theft of trade secrets, apportionment, and damages in cases involving rights of publicity and for franchises.

Finally, this edition also includes new digests of many of the damages cases found throughout the book.

Once again, Business Valuation Resources LLP has provided extraordinary support, and, in particular, we thank Sarah Andersen, publisher at BVR, whose assistance has been irreplaceable, as well as Sylvia Golden for her valuable assistance with case digests.

To all our new contributors to the guide, a warm welcome, and to all who participated in this edition, a heartfelt thank you.

We hope you find this text to be a rich resource for your practice and welcome your suggestions and input for our continuing updates and for new topic areas that would benefit your work as an attorney or expert.

Nancy J. Fannon and Jonathan M. Dunitz
2018

1 Henry David Thoreau, “A Plea for Captain John Brown” (1859).
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