

EXCERPT

Nancy J. Fannon | Jonathan M. Dunitz

The Comprehensive Guide to Economic Damages



Fifth Edition

BVR
What It's Worth

FIFTH EDITION

The Comprehensive Guide to Economic Damages

VOLUME ONE

Nancy Fannon
and
Jonathan M. Dunitz
Editors



111 SW Columbia Street, Suite 750, Portland, OR 97201
(503) 479-8200 • www.bvresources.com



What It's Worth

Copyright © 2018 by Business Valuation Resources, LLC (BVR). All rights reserved. Printed in the United States of America.

No part of this publication may be reprinted, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, scanning or otherwise, except as permitted under Sections 107 or 108 of the 1976 United States Copyright Act, without either the prior written permission of the Publisher or authorization through payment of the appropriate per copy fee to the Publisher. Requests for permission should be addressed to the Permissions Department, Business Valuation Resources, LLC, 111 SW Columbia Street, Suite 750 Portland, OR 97201-5814; (503) 479-8200; fax (503) 291-7955; permissions@bvresources.com.

Information contained in this book has been obtained by Business Valuation Resources from sources believed to be reliable. However, neither Business Valuation Resources nor its authors guarantee the accuracy or completeness of any information published herein and neither Business Valuation Resources nor its authors shall be responsible for any errors, omissions, or damages arising out of use of this information. This work is published with the understanding that Business Valuation Resources and its authors are supplying information but are not attempting to render business valuation or other professional services. If such services are required, the assistance of an appropriate professional should be sought. In addition, such information is supplied within the thematic context or scope of a given chapter or topic. Readers should approach and interpret information within this context. Information may be subject to change when addressed within a different setting, context, or scope.

Please note that there are several hyperlinks to Internet links within this text and are included for your reference. However, due to the fluid nature of Internet links (i.e., the url can change at any time), some may not be accessed in the same location as they were when this guide was originally published.

Publisher: Sarah Andersen

Managing Editor/Desktop Editor: Monique Nijhout-Rowe

Senior Copy Editor: David Solomon

Chair and CEO: David Foster

President: Lucretia Lyons

Chief Revenue Officer: Lisa McInturff

Customer Service Manager: Retta Dodge

PRINT ISBN: 978-1-62150-151-0

EPUB ISBN: 978-1-62150-152-7

Library of Congress Control Number: 2018952308

*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

Table of Contents

VOLUME ONE

About the Editors	xv
Acknowledgments	xvi
Author Bios	xx
Foreword	1

PART I. EXPERT TESTIMONY IN THE U.S. COURTS

Chapter 1. Professional Standards for Experts	5
<i>By Michael A. Crain, DBA, CPA/ABV, CFA, CFE</i>	
Chapter 2. The Process: A Brief Introduction to the U.S. Court Systems, From Filing to Appeal	11
<i>By Jonathan M. Dunitz, Esq., and Clifton T. Hutchinson, Esq.</i>	
Chapter 3. Spoliation of Evidence	33
<i>By David B. Chaffin, Esq., and Rachel J. Eisenhaure, Esq.</i>	
Chapter 4. A Guide to Electronic Discovery and Evidence	59
<i>By Daniel K. Gelb, Esq. and Richard M. Gelb, Esq.</i>	
Chapter 5. Expert Depositions: Accountants, Economists, and Appraisers	73
<i>By David L. Herzer Jr., Esq.</i>	
Chapter 6. The Reasonable Certainty Requirement in Lost Profits Litigation: What It Really Means	89
<i>By Robert M. Lloyd, Esq.</i>	
Chapter 7. Motions to Exclude Financial Experts	119
<i>By Jonathan M. Dunitz, Esq., and Clifton T. Hutchinson, Esq.</i>	
Chapter 8. Motions to Exclude Expert Testimony	169
<i>By Robert M. Lloyd, Esq.</i>	

PART II. LOST PROFITS DAMAGES

Chapter 9. Context of the Lost Profits Damages Claim	205
<i>By Jonathan M. Dunitz, Esq., and Tyler L. Farmer, Esq.</i>	
Chapter 10. Performing Credible Lost Profits Analyses	217
<i>By James O'Brien, CPA, CFF, and Greg Stillman, Esq.</i>	
Chapter 11. Projecting But-For Profits	241
<i>By Stacey Udell, CPA/ABV/CFF, CVA</i>	
Chapter 12. Establishing Evidence in Lost Profits Cases	259
<i>By Tom Burrage, CPA/ABV, CVA, CFF, and Clifton T. Hutchinson, Esq.</i>	
Chapter 13. Lost Profits Versus Lost Business Value	273
<i>By Tyler L. Farmer, Esq., and Neil J. Beaton, CPA/ABV/CFF, CFA, ASA</i>	
Chapter 14. Discounting Lost Profits in Damage Measurements	289
<i>By Michael A. Crain, DBA, CPA/ABV, CFA, CFE</i>	

Note: The title page for each chapter contains a detailed table of contents for that chapter.

Chapter 15. Discounting Damages: Case Law	299
<i>By Robert M. Lloyd, Esq.</i>	
Chapter 16. Use of Forensic Evidence in a Lost Profits Case	315
<i>By Michael Kaplan, CPA/ABV/CFF, CVA, MAFF, and Rebekah Smith, CPA/CFF, CVA, MAFF</i>	
PART III. DAMAGES IN SPECIFIC INDUSTRY SETTINGS	329
Chapter 17. Calculating Damages for Early-Stage Companies	331
<i>By Neil J. Beaton, CPA/ABV/CFF, CFA, ASA, and Tyler L. Farmer, Esq.</i>	
Chapter 18. Lost Profits for Physician Practices and Violation of Noncompete Agreements	347
<i>By Mark O. Dietrich, CPA/ABV</i>	
Chapter 19. Lost Profits Issues Unique to the Government Contracts Industry	365
<i>By Patrick A. McGeehin, CPA, Daniel E. Johnson, Esq., and Evan Sherwood, Esq.</i>	
Chapter 20. Construction Claims	375
<i>By Greg A. McKinnon, CPA/CFF, CMA</i>	
Chapter 21. Lost Profits for Automobile Dealerships	397
<i>By Timothy W. York, CPA/ABV</i>	
Chapter 22. Lost Profits Analysis in Eating Establishments	411
<i>By Ron Seigneur, CPA/ABV, ASA, CVA, CFF, CGMA</i>	
Chapter 23. Damages and Right of Publicity Infringements	423
<i>By Audrey Wessel, Esq., and Mark Roesler, Esq.</i>	
Chapter 24. Franchise and Dealership Litigation Damages	437
<i>By Mark M. Leitner, Esq., Joseph S. Goode, Esq., and Ted Stockton</i>	
PART IV. INTELLECTUAL PROPERTY DAMAGES	481
Chapter 25. Intellectual Property Overview	483
<i>By Michael A. Crain, DBA, CPA/ABV, CFA, CFE</i>	
Chapter 26. Patent Infringement Damages: Lost Profits and Royalties	491
<i>By Richard F. Bero, CPA/ABV, CVA, CLP, and Autumn N. Nero, J.D.</i>	
Chapter 27. Trade Secret Damages	517
<i>By Richard F. Bero, CPA/ABV, CVA, CLP, and Jon Margolies, J.D.</i>	
Chapter 28. Lost Profits (and Other Damages) in Trademark and Copyright Cases	529
<i>By Rick Hoffman, Mark Glick, Ph.D., J.D., and Milan Politi, J.D.</i>	
Chapter 29. Uses of Survey Research in Damages Estimation	543
<i>By Larry Chiagouris and Leon Kaplan</i>	
Chapter 30. Using Internet Analytic Tools for Valuation and Damages Calculations in Internet IP Infringement and Defamation Cases	559
<i>By Doug Bania, CLP, and Brian Buss, CFA</i>	
Chapter 31. Profit Apportionment in Intellectual Property Infringement Damages Calculations	577
<i>By Brian Buss, CFA, and Doug Bania, CLP</i>	

PART V. THE UNJUST ENRICHMENT REMEDY	599
Chapter 32. Introduction to Remedies in Equity	601
<i>By George P. Roach</i>	
Chapter 33. Counting the Beans: Unjust Enrichment and the Defendant's Overhead	611
<i>By George P. Roach</i>	
Chapter 34. Restitution Rollout: <i>The Restatement (Third) of Restitution & Unjust Enrichment: Counter-Restitution for Monetary Remedies in Equity</i>	685
<i>By George P. Roach</i>	
PART VI. PERSONAL INJURY/WRONGFUL DEATH	723
Chapter 35. Economic Damages From Personal Injury and Wrongful Death	725
<i>By James A. (Jim) Koerber, CPA/ABV/CFF</i>	
Chapter 36A. Damages in Common-Law Employment Cases	743
<i>By Joseph D. Garrison, Esq., and Joshua R. Goodbaum, Esq.</i>	
Chapter 36B. Calculation of Damages in Common-Law Employment Cases	751
<i>By James A. (Jim) Koerber, CPA/ABV/CFF</i>	
PART VII. OTHER DAMAGES ANALYSES	759
Chapter 37. Financial Forensic Services for Internal Investigations	761
<i>By Peter Resnick, CPA, CFF, CFE, and Greg Naviloff, CPA, CFF, CFE, ABV</i>	
Chapter 38. Business Interruption and Damage Claims	797
<i>By John Garaffa, Esq.</i>	
Chapter 39. An Overview of Accounting and Financial Analysis in Fraudulent Transfer Matters	835
<i>By Jeffrey L. Baliban, CPA, ABV, CDBV</i>	
Chapter 40. Compensation Forfeiture: Stacking Remedies Against Disloyal Agents and Employees ..	855
<i>By George P. Roach</i>	
Chapter 41. Post-Acquisition Disputes and Related Damages	917
<i>By Jeff Litvak, CPA/ABV/CFF, ASA, Kenneth Mathieu, CPA/ABV/CFF, Jared Bourgeois, CPA/ABV, CFE, and Jonathan Dunitz, Esq.</i>	
Chapter 42. Event Studies in Securities Litigation	937
<i>By Adrian M. Cowan, Ph.D., and Paul J. Seguin, Ph.D.</i>	
Chapter 43. Use of Statistical Analysis to Measure Damages	961
<i>By Charles D. Cowan, Ph.D.</i>	
PART VIII. INDEX	981
Index	983
Index of Cases in Volume One	1009

VOLUME TWO: CASE LAW DERIVED FROM BUSINESS VALUATION RESOURCES

Introductionxi
 PART VII. CASE DIGESTS	1
Court Case Summary Table	3
Court Case Digests	17
<i>3M Innovative Props. Co. v. GDC, Inc.</i>	17
<i>ActiveVideo Networks, Inc. v. Verizon Communications, Inc.</i>	20
<i>Advanced Drainage Sys. v. Quality Culvert, Inc.</i>	22
<i>Akamai Techs., Inc. v. Limelight Networks, Inc.</i>	25
<i>Alamar Ranch, LLC v. County of Boise</i>	26
<i>Alaska Rent-a-Car, Inc. v. Avis Budget Group, Inc.</i>	28
<i>Allstate Sweeping, LLC v. City and County of Denver et al.</i>	30
<i>American Aerial Services v. Terex United States</i>	32
<i>American Eagle Waste Industries, LLC v. St. Louis County</i>	35
<i>American Federal Bank, FSB, v. United States</i>	37
<i>In re: American Suzuki Motor Corporation</i>	40
<i>Anchor Savings Bank v. United States</i>	43
<i>Antioch Co. Litig. Trust v. Morgan</i>	46
<i>Apple, Inc. v. Motorola Mobility, Inc. (I)</i>	48
<i>Apple, Inc. v. Samsung Electronics Co. (I)</i>	52
<i>Apple, Inc. v. Samsung Electronics Co. (II)</i>	54
<i>Apple, Inc. v. Samsung Electronics Co. (III)</i>	56
<i>Apple, Inc. v. Samsung Electronics Co. (IV)</i>	58
<i>Apple, Inc. v. Samsung Electronics Co. (V)</i>	60
<i>Arctic Cat v. Sabertooth Motor Group</i>	62
<i>Arlington Industries, Inc. v. Bridgeport Fittings, Inc.</i>	64
<i>AstraZeneca AB v. Apotex Corp.</i>	65
<i>B-K Cypress Log Homes Inc. v. Auto-Owners Insurance Company</i>	69
<i>Baker v. Seaworld Entm't, Inc.</i>	71
<i>Banjo Buddies, Inc. v. Joseph F. Renosky</i>	74
<i>Basile Baumann Prost Cole & Assoc. v. BBP & Assoc. LLC</i>	77
<i>BC Technical, Inc. v. Ensil International Corporation</i>	79
<i>Beijing Tong Ren Tang (USA), Corp. v. TRT USA Corporation et al.</i>	80
<i>Bell Atlantic Network Services, Inc. v. P.M. Video Corp</i>	82
<i>Bellagio Jewelry, Inc. v. Croton Watch Company, Inc.</i>	84
<i>Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.</i>	86
<i>Bergquist v. Commissioner of Internal Revenue</i>	89
<i>Berman v. Unimin Corp.</i>	92
<i>Bero Motors, Inc. v. General Motors Corporation</i>	94
<i>Bessemer Trust Company, N.A. v. Francis S. Branin, Jr.</i>	95
<i>Beverly Hills Concepts, Inc. v. Schatz & Schatz (I)</i>	97
<i>Beverly Hills Concepts, Inc. v. Schatz & Schatz (II)</i>	99
<i>Blinds to Go (U.S.), Inc. v. Times Plaza Development, L.P.</i>	101
<i>Bocek v. JGA Assocs., LLC</i>	103
<i>Michael Bowling v. Hasbro, Inc.</i>	107
<i>Brennan's Inc. et al. v. Dickie Brennan & Company, Inc. et al.</i>	109

<i>Bricklayers and Trowel Trades International Pension Fund v. Credit Suisse First Boston</i>	112
<i>Brighton Collectibles, Inc. v. RK Texas Leather Mfg.</i>	114
<i>Kirk Brisbin v. Superior Valve Company et al.</i>	116
<i>Brocade Communications Systems, Inc. v. A10 Networks, Inc. (I)</i>	118
<i>Brocade Communications Systems, Inc. v. A10 Networks, Inc. (II)</i>	120
<i>Bruno v. Bozzuto's, Inc.</i>	122
<i>Business Machines Sales and Service, Inc. v. Robert E. Murphy</i>	125
<i>CADCO, Inc. v. Fleetwood Enterprises, Inc.</i>	126
<i>Camar Corporation v. Preston Trucking Company, Inc.</i>	128
<i>Cambridge Plating Company v. Napco, Inc.</i>	129
<i>Carlton Energy Group, LLC v. Phillips</i>	130
<i>Carnegie Mellon University v. Marvell Technology Group (I), (II)</i>	132
<i>Carnegie Mellon University v. Marvell Technology Group (III)</i>	132
<i>Carnegie Mellon University v. Marvell Technology Group (IV)</i>	135
<i>Cartwright v. Jackson Capital Partners, Limited Partnership</i>	136
<i>Catropa v. Metal Building Supply, Inc.</i>	139
<i>Celebrity Cruises, Inc. v. Essef Corp. (I)</i>	141
<i>Celebrity Cruises, Inc. v. Essef Corp. (II)</i>	144
<i>Cement-Lock v. Gas Technology Institute</i>	146
<i>Century 21 Real Estate Corp. v. Meraj International Investment Corp.</i>	149
<i>Chambers v. Fike.</i>	150
<i>Chico's Fas, Inc. v. Clair</i>	153
<i>Children's Broadcasting Corporation v. The Walt Disney Company, et al. (II)</i>	157
<i>Children's Broadcasting Corporation v. The Walt Disney Company, et al. (III)</i>	158
<i>Christou v. Beatport, LLC</i>	159
<i>Brent E. Clary v. Lite Machines Corporation</i>	161
<i>ClearOne Communications v. Chiang</i>	163
<i>Clear-View Technologies, Inc. v. Rasnick (I)</i>	165
<i>Clear-View Technologies, Inc. v. Rasnick (II)</i>	165
<i>Club Car, Inc. v. Club Car</i>	169
<i>Coastal Fuels of Puerto Rico, Inc. v. Caribbean Petroleum Corporation</i>	170
<i>Collelo v. Geographic Services, Inc.</i>	173
<i>Collins Holding Corporation v. Scott Landrum, et al.</i>	174
<i>Comcast Cable Communs. v. Sprint Communs. Co.</i>	175
<i>Commonwealth Sci. & Indus. Research Organisation v. Cisco Sys.</i>	178
<i>Compania Embotelladora Del Pacifico, S.A., v. Pepsi Cola Co.</i>	181
<i>Conwood Company, L.P. v. United States Tobacco Company</i>	183
<i>Cortes v 3A N. Park Ave. Rest Corp.</i>	186
<i>Crocker v. Greater Colo. Anesthesia</i>	189
<i>CR-RSC Tower I, LLC v. RSC Tower I, LLC</i>	191
<i>Crystal Semiconductor Corporation v. Trittech Microelectronics International, Inc.</i>	195
<i>CSC Holdings, Inc. v. Frank P. Redisi, Sr., et al.</i>	198
<i>DaimlerChrysler Motors Company v. Manuel</i>	200
<i>Danmark v. CMI USA, Inc.</i>	204
<i>Dataquill Ltd. v. High Tech Computer Corp. (II)</i>	206
<i>Daubert v. Merrell Dow Pharmaceuticals</i>	208
<i>Steve Davis v. Forest River, Inc.</i>	210
<i>Deflecto, LLC v. Dundas Jafine Inc.</i>	211
<i>Denny Construction, Inc. v. City and County of Denver</i>	213
<i>Depuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.</i>	216
<i>Dering v. Service Experts Alliance, LLC</i>	218

<i>Dominion Liquid Technologies, LLC v. GT Beverage Co., LLC</i>	219
<i>Douglas Dynamics v. Buyers Products Co.</i>	221
<i>Dynetix Design Solutions, Inc. v. Synopsis, Inc.</i>	222
<i>El Aguila Food Products, Inc., et al. v. Gruma Corporation</i>	224
<i>In re El Paso Pipeline Partners, L.P. Derivative Litig.</i>	225
<i>Electro-Mechanical Corp. v. Power Distribution Products, Inc.</i>	230
<i>Electronic Funds Solution, LLC v. Murphy</i>	232
<i>Elie Abboud, et al. v. Sylvester Robertson, et al.</i>	234
<i>Energy Capital Corp. v. United States</i>	236
<i>Enzo Biochem, Inc. v. Applera Corp.</i>	237
<i>Ericsson Inc. v. D-Link Corp. (I)</i>	239
<i>Ericsson, Inc. v. D-Link Corp. (II)</i>	241
<i>Ericsson, Inc. v. Harris Corp.</i>	244
<i>Fabrication & Truck Equipment, Inc. v. Roger M. Powell</i>	245
<i>Factory Mutual Insurance Co. v. Alon USA</i>	246
<i>Fairmont Supply Company v. Hooks Industrial, Inc.</i>	249
<i>Fairway Dodge, Inc. v. Decker Dodge, Inc.</i>	250
<i>Feesers, Inc. v. Michael Foods, Inc.</i>	253
<i>Fidelity Warranty Services, Inc. v. Firststate Insurance Holdings, Inc.</i>	256
<i>Fifth Third Bank of Western Ohio v. The United States</i>	258
<i>In re Finisar Corp. Secs. Litig.</i>	260
<i>Finjan, Inc. v. Blue Coat Systems, Inc. (I)</i>	263
<i>Finjan, Inc. v. Blue Coat Systems, Inc. (II)</i>	266
<i>First Annapolis Bancorp, Inc. v. The United States</i>	268
<i>Fisher v. U.S.</i>	272
<i>Fisherman Surgical Instruments, LLC v. Tri-Anim Health Services, Inc.</i>	275
<i>Flood Mobile Homes, Inc. v. Liberty Homes, Inc.</i>	277
<i>Floorgraphics, Inc. v. News America Marketing In-Store Services, Inc.</i>	278
<i>Florafax International, Inc. v. GTE Market Resources, Inc.</i>	280
<i>Fluorine on Call Ltd. v. Fluorogas Limited, et al.</i>	283
<i>Flying J, Inc. v. Department of Transportation</i>	284
<i>Funai Electric Company v. Daewoo Electronics Corp. (I)</i>	286
<i>Gallagher & Co. v. Babcock</i>	288
<i>Gary's Implement, Inc. v. Bridgeport Tractor Parts</i>	290
<i>Richard S. Gesoff v. IIC Industries Inc., et al.</i>	292
<i>Glattly v. Air Starter Components, Inc.</i>	295
<i>Gold v. Ziff Communications Co.</i>	296
<i>Gordon Partners v. Blumenthal</i>	299
<i>Great Lakes Business Trust v. M/T Orange Sun (I)</i>	301
<i>Great Lakes Business Trust v. M/T Orange Sun (II)</i>	304
<i>Great Pines Water Co., Inc. v. Liqui-Box Corporation</i>	305
<i>Green v. Polyester Fibers, LLC</i>	307
<i>In re Groupon Securities Litigation</i>	308
<i>Oscar Gruss & Son, Inc. v. Yossie Hollander</i>	312
<i>Robert Haff, et al. v. Richard Augeson D/BA/ Hubbard Concrete Pumping, et al.</i>	313
<i>Hark'n Technologies, Inc. v. Crossover Symmetry</i>	314
<i>Harrison Manufacturing, LLC v. JMG Manufacturing, Inc.</i>	316
<i>Heritage Operating, LP v. Rhine Bros. LLC</i>	318
<i>Hinz v. Neuroscience, Inc.</i>	320
<i>Holder v. Howe</i>	322
<i>Honeywell International, Inc. et al. v. Air Products & Chemicals, Inc.</i>	325

<i>Horizon Health Corp. v. Acadia Healthcare Co.</i>	329
<i>Hubbard v. BankAtlantic Bancorp, Inc.</i>	331
<i>Humetrix, Inc. v. Gemplus, S.C.A., et al.</i>	334
<i>i4i Limited Partnership v. Microsoft Corp.</i>	335
<i>Icare-EMS, Inc. v. Rural Metro Corp.</i>	338
<i>Ice Corp. v. Hamilton Sundstrand Corp.</i>	340
<i>Illinois Tool Works, Inc. v. MOC Products Co., Inc.</i>	342
<i>Imaging International v. Hell Graphic Systems, Inc.</i>	343
<i>Immersion Corp. v. HTC Corp.</i>	346
<i>Interactive Pictures Corporation v. Infinite Pictures, Inc.</i>	348
<i>Interstate Oil and Supply Company, et al. v. Troutman Oil Company</i>	350
<i>Ileana Irvine, IRG Research Group, Inc. v. Murad Skin Research Labs, Inc.</i>	351
<i>ITT Corp. v. Xylem Group, LLC</i>	352
<i>J&M Distrib., Inc. v. Hearth & Home Techs., Inc.</i>	355
<i>Jack Tyler Engineering Co. v. Colfax Corp.</i>	357
<i>James V. James et al. v. David MacDonald et al.</i>	360
<i>JGR, Inc. v. Thomasville Furniture Industries, Inc. (II)</i>	361
<i>In re Jonatzke</i>	363
<i>Joyce v. Armstrong Teasdale, LLP (I)</i>	365
<i>Joyce v. Armstrong Teasdale, LLP (II)</i>	367
<i>Kairos Scientific Inc. v. Fish & Richardson P.C.</i>	370
<i>Kids' Universe et al. v. In2Labs et al.</i>	374
<i>Kinesoft Development Corporation v. Softbank Holdings Inc.</i>	376
<i>Kumho Tire Co. v. Carmichael</i>	379
<i>Kyocera Corporation v. Prudential-Bache Trade Services, Inc. et al.</i>	380
<i>Lane v. Lampkin (I)</i>	383
<i>Lane v. Lampkin (II)</i>	385
<i>Lane v. Lampkin (III)</i>	388
<i>LaserDynamics, Inc. v. Quanta Computer, Inc. (V)</i>	390
<i>Judith A. Lawton et al. v. Robert Nyman et al.</i>	395
<i>Li v. Aeterna Zentaris, Inc.</i>	398
<i>LifeWise Master Funding LLC et al. v. Telebank</i>	400
<i>Lightbox Ventures, LLC v. 3 RD Home Ltd.</i>	403
<i>LightLab Imaging, Inc. v. Axsun Technologies, Inc.</i>	406
<i>Lucent Technologies, Inc. v. Microsoft Corp. (IV)</i>	408
<i>Edward E. Lucente v. International Business Machines Corporation (II)</i>	412
<i>Luminara Worldwide, LLC v. Liown Elecs. Co.</i>	414
<i>M & A Technology, Inc. v. iValue Group, Inc.</i>	417
<i>MacDermid Printing Solutions, Inc. v. Cortron Corp.</i>	420
<i>In Re: Magna Cum Latte Inc.</i>	422
<i>Manpower, Inc. v. Insurance Co. of Pennsylvania (II)</i>	425
<i>Manpower, Inc. v. Insurance Co. of Pennsylvania (III)</i>	426
<i>Marine Travelift, Inc. v. Marine Lift Systems, Inc.</i>	429
<i>Marten Transp., Ltd. v. Plattform Adver., Inc.</i>	431
<i>Massachusetts Eye and Ear Infirmary v. QLT Phototherapeutics, Inc.</i>	434
<i>Mattress Closeout Ctr. IV, LLC v. Panera, LLC</i>	436
<i>Maytronics, Ltd. v. Aqua Vac Systems, Inc.</i>	438
<i>Mentor Graphics Corp. v. EVE-USA, Inc. (I)</i>	440
<i>Mentor Graphics Corp. v. EVE-USA, Inc. (II)</i>	440
<i>Metro Tech Corp. v. TUV Rheinland of N.A.</i>	443
<i>Mifflinburg Telegraph, Inc. v. Criswell, Inc.</i>	445
<i>Miller Bros. Coal, LLC v. Consol of Kentucky, Inc.</i>	446

<i>MindGames, Inc. v. Western Publishing Company, Inc.</i>	448
<i>Montage v. Athle-Tech (I)</i>	450
<i>Mood v. Kronos Products, Inc.</i>	452
<i>Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings Inc.</i>	454
<i>Mosaid Technologies Inc. v. LSI Corp.</i>	457
<i>Multimatic, Inc. v. Faurecia Interior Systems USA, Inc.</i>	459
<i>MyGallons LLC v. U.S. Bankcorp.</i>	461
<i>Natchez Regional Medical Center v. Quorum Health Resources, LLC.</i>	463
<i>Navigato v. SJ Restaurants, LLC</i>	465
<i>Nebraska Plastics, Inc. v. Holland Colors America, Inc.</i>	468
<i>Nebula Glass International, Inc. v. Reichhold, Inc.</i>	469
<i>Netquote, Inc. v. Byrd (I)</i>	472
<i>Netquote, Inc. v. Byrd (II)</i>	474
<i>Nieman v. Bunnell Hill Development Co., Inc.</i>	476
<i>Nordetek Environmental, Inc. v. RDP Technologies, Inc.</i>	477
<i>Nordock, Inc. v. Systems, Inc.</i>	480
<i>North Dade Community Development Corp. v. Dinner's Place, Inc.</i>	483
<i>In re Novatel Wireless Securities Litigation</i>	484
<i>Oracle America, Inc. v. Google Inc. (I)</i>	487
<i>Oracle America, Inc. v. Google Inc. (II)</i>	492
<i>Oracle America, Inc. v. Google Inc. (III)</i>	494
<i>Orthoflex, Inc. v. Thermotek, Inc.</i>	498
<i>Packgen v. Berry Plastics Corp. (I)</i>	501
<i>Packgen v. Berry Plastics Corp. (II)</i>	505
<i>Parlour Enterprises, Inc. v. The Kirin Group, Inc.</i>	508
<i>Pattridge v. Starks</i>	510
<i>Penn Mart Supermarkets, Inc. v. New Castle Shopping LLC</i>	513
<i>PharmAthene, Inc. v. SIGA Technologies, Inc.</i>	516
<i>Physicians Dialysis Ventures, Inc. v. Griffith</i>	520
<i>Pike v. Tex. EMC Mgmt., LLC</i>	522
<i>Robert J. Pound v. Airosol Company, Inc.</i>	525
<i>Powell v. The Home Depot U.S.A., Inc.</i>	527
<i>Progressive Casualty Insurance Company v. All Care, Inc.</i>	529
<i>Progressive Child Care Systems, Inc. v. Kids 'R' Kids International, Inc.</i>	532
<i>PSKS, Inc. v. Leegin Creative Leather Products, Inc.</i>	533
<i>Pulse Medical Instruments, Inc. v. Drug Impairment Detection Services, Inc.</i>	535
<i>Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp</i>	538
<i>Radiologix, Inc. v. Radiology & Nuclear Medicine, LLC</i>	540
<i>RAF Enterprises LLC, et al. v. Trident LLC, et al.</i>	543
<i>Real View, LLC v. 20-20 Technologies (I)</i>	546
<i>Rebelwood Apts. RP, LP v. English</i>	549
<i>Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corporation</i>	551
<i>Rembrandt Social Media, LP v. Facebook</i>	552
<i>RKR Motors, Inc. v. Associated Uniform Rental & Linen Supply, Inc.</i>	554
<i>RMD, LLC v. Nitto Americas, Inc.</i>	556
<i>RMS of Wisconsin, Inc. v. S-K JV</i>	558
<i>Roll-Rite, LLC v. Shur-Co, LLC</i>	561
<i>Rolls-Royce PLC v. United Technologies Corp.</i>	564
<i>Rosco, Inc. v. Mirror Lite Company</i>	567
<i>Rowe v. DPI Specialty Foods</i>	569
<i>Royal's Reconditioning Corporation, Inc. v. Garry Royal</i>	572

<i>Russell v. Allianz Life Insurance Co. of North America</i>	573
<i>Russo v. Ballard Medical Products</i>	576
<i>Saks Fifth Avenue, Inc. v. James, Ltd.</i>	578
<i>Samsung Electronics Co. v. Apple, Inc. (VI)</i>	580
<i>Sargon Enterprises v. University of Southern California</i>	582
<i>Reese Schonfeld v. Russ Hilliard et al.</i>	583
<i>Select Comfort Corp. v. Tempur Sealy Int'l, Inc.</i>	587
<i>Shah v. Steam and Starch Corp.</i>	588
<i>Sherwood Invs. Overseas Ltd. v. Royal Bank of Scot. N.V. (In re Sherwood Invs. Overseas Ltd., Inc.)</i>	590
<i>Showers v. Pfizer, Inc. (In re Pfizer Inc. Sec. Litig.)</i>	592
<i>SIHLE Insurance Group, Inc. v. Right Way Hauling, Inc.</i>	596
<i>Silicon Knights, Inc. v. Epic Games, Inc.</i>	597
<i>Situation Management Systems, Inc. v. Malouf, Inc.</i>	601
<i>Skier's Edge Company v. Ladapa Die & Tool, Inc.</i>	602
<i>Delores Skinner, et al. v. Robert Thomas</i>	604
<i>Slattery v. U.S.</i>	605
<i>Sloan Valve Company v. Zurn Industries, Inc.</i>	608
<i>Sossikian v. Ennis</i>	612
<i>Guillermo Sostchin v. Doll Enterprises, Inc.</i>	614
<i>Southern National Corporation v. United States</i>	615
<i>Southwestern Energy Production Co. v. Berry-Helfand</i>	618
<i>Spencer Franchise Servs. of Ga. v. WOW Café & Wingery Franchising Account, LLC</i>	621
<i>Spine Solutions, Inc. v. Medtronic Sofamor Danek, Inc.</i>	624
<i>Springs Window Fashions Division, Inc. v. The Blind Maker, Inc.</i>	626
<i>St. Alphonsus Diversified Care, Inc. v. MRI Associates, LLP</i>	630
<i>St. Jude Med. S.C., Inc. v. Biosense Webster, Inc.</i>	632
<i>Structural Polymer Group, Ltd. v. Zoltek Corporation</i>	634
<i>Sugar Hill, LLC v. United States</i>	636
<i>Synqor, Inc. v. Artesyn Technologies, Inc. (I)</i>	638
<i>Synqor, Inc. v. Artesyn Technologies, Inc. (II)</i>	641
<i>Synqor, Inc. v. Artesyn Technologies, Inc. (III)</i>	642
<i>System Development Integration, LLC v. Computer Sciences Corp.</i>	644
<i>Taheri v. Khadavi</i>	647
<i>Tax Services of America, Inc. v. Mitchell</i>	649
<i>Telxon Corporation v. Smart Media of Delaware, Inc.</i>	650
<i>Jose M. Terrones, et al. v. Abel J. Tapia, P.E. et al.</i>	653
<i>Tidwell Industries, Inc. v. Diversified Home Products, Inc.</i>	654
<i>TiVo Research & Analytics, Inc. v. TNS Media Research LLC</i>	656
<i>To-Am Equipment Co., Inc. v. Mitsubishi Caterpillar Forklift America, Inc.</i>	658
<i>Total Clean, LLC v. Cox Smith Matthews, Inc.</i>	659
<i>Tri Cnty. Wholesale Distribs. v. Labatt USA Operating Co. LLC</i>	661
<i>TruGreen Companies, L.L.C. v. Scotts Lawn Service, et al.</i>	666
<i>Try Hours, Inc. v. David L. Swartz, et al.</i>	668
<i>TXCO Resources, Inc. v. Peregrine Petroleum, LLC (In re: TXCO Resources, Inc.)</i>	671
<i>Tyco Healthcare Group LP v. Ethicon Endo-Surgery, Inc.</i>	673
<i>Uniloc USA, Inc. v. Microsoft Corp. (II)</i>	676
<i>United States ex rel. Landis v. Tailwind Sports Corp.</i>	679
<i>University of Pittsburgh v. David W. Townsend</i>	683
<i>University of Pittsburgh v. Varian Medical Systems, Inc.</i>	687
<i>U.S. Salt, Inc. v. Broken Arrow, Inc.</i>	689
<i>Utah Medical Products, Inc. v. Graphic Controls Corporation</i>	690

<i>Versata Software Inc. v. SAP America, Inc. (I)</i>	692
<i>Versata Software, Inc. v. SAP America, Inc. (II)</i>	694
<i>Victory Records, Inc. v. Virgin Records America, Inc.</i>	697
<i>Villaje del Rio, Ltd. v. Colina del Rio, LP</i>	699
<i>VirnetX, Inc. v. Cisco Systems, Inc. (II)</i>	701
<i>Volterra Semiconductor Corp. v. Primarion, Inc.</i>	704
<i>Von der Ruhr v. Immtech International, Inc.</i>	707
<i>Waggoner v. Barclays PLC</i>	709
<i>Wai Ming Ng v. Connie Tow</i>	713
<i>Wallace v. Kalniz</i>	714
<i>Warsaw Orthopedic, Inc. v. NuVasive, Inc.</i>	716
<i>Washington v. Kellwood Co. (I)</i>	718
<i>Washington v. Kellwood Co. (II)</i>	723
<i>Washington v. Kellwood Co. (III)</i>	723
<i>Washington v. Kellwood Co. (IV)</i>	727
<i>Wellogix, Inc. v. Accenture, LLP</i>	729
<i>West Plains, LLC v. Retzlaff Grain Co. (I)</i>	732
<i>West Plains, LLC v. Retzlaff Grain Co. (II)</i>	732
<i>WesternGeco LLC v. ION Geophysical Corp.</i>	735
<i>Whitserve, LLC v. Computer Packages, Inc.</i>	737
<i>Willis v. Big Lots, Inc.</i>	739
<i>World Wide Prosthetic Supply, Inc. v. Robert J. Mikulsky</i>	742
<i>In re Xcelera.com Securities Litigation</i>	743

PART VIII. APPENDICES	745
Appendix A. Links to Ethical Guidelines Published by Member Organizations	747
Appendix B. Links to Requirements for Certifications, by Organization	748
Appendix C. Decision Tree to Determine the Application of Professional Standards	750
Appendix D. Comparison of AICPA Professional Standards and Federal Rule of Evidence 702	751
Appendix E. Federal Rules of Evidence Pertaining to Expert Testimony	752
Appendix F. Federal Rules of Civil Procedure Pertaining to Expert Testimony	757
Appendix G. Reference Manual on Scientific Evidence: 3rd Edition (2011), Selected Sections	759

About the Editors

Nancy J. Fannon is the partner in charge of business valuation and litigation services with Marcum LLP. She is a nationally known author and expert in the area of economic damages and corporate valuation. With over 30 years of experience as a financial analyst, she frequently serves as an expert witness or a financial consultant in matters involving complex corporate litigation for public and private companies and testifies or consults on matters involving economic damages, unjust enrichment/disgorgement, shareholder disputes, and other damages analyses. She has written for numerous valuation and damages journals, has published three books related to valuation and damages, and has been a technical reviewer or contributing author to several others. Fannon is a frequent national speaker, has served on the editorial boards of four of the major valuation and economic analysis industry organizations, and served as co-chair of a joint industry standard-setting board. In 2007, she was inducted into the AICPA's "Hall of Fame," awarded for substantial contributions to the advancement of the business valuation profession.

Jonathan M. Dunitz is counsel in the Portland, Maine, office of the law firm Verrill Dana LLP, where he co-chairs both the Breweries, Distilleries and Wineries Group and the Insurance Coverage and Litigation Group. Dunitz has 25 years of experience, including complex commercial and business litigation, appellate advocacy, and insurance coverage. More recently, his practice has expanded to work with breweries, distilleries, and wineries from startup through the life of the company. He is admitted to practice before the United States Supreme Court, all state and federal courts of Maine, and the United States 1st Circuit Court of Appeals. Dunitz has written and spoken extensively on the issue of expert exclusion, particularly in the area of financial damages. He is listed in *The Best Lawyers in America* under "Litigation—Insurance." Dunitz has presented at AICPA conferences on damages and expert issues and has been a frequent panelist for the Maine State Bar Association on legal writing issues, commercial litigation matters, and business valuation. He also speaks regularly on the issue of risk management in the breweries, distilleries, and wineries industry, including as a panelist at the Brewers Association's National Craft Brewers Conference. He graduated from Ithaca College in 1988 and is a 1993 magna cum laude graduate of the Syracuse University College of Law, where he was lead articles editor of the *Syracuse Law Review*. Dunitz is also an accomplished photographer and musician. He lives with his rescue trippawd lab mix, Kirby.

Acknowledgments

The ability to create a text with deep insights into the breadth of issues that affect financial damages requires the talents of many individuals, and no group is more qualified than this group of contributing authors. They are specialists in the particular area they have written about. We thank each of them for the time and energy they put into helping others gain from their insights by participating in this book.

Contact information for each of the contributing authors can be found below; each of their biographies can be found in the section starting on page 21.

Jeffrey L. Baliban (Chapter 39)
CPA, ABV, CDBV
jbaliban@nyu.edu
jeffrey.baliban@capitalforensics.com

Doug Bania (Chapters 30 and 31)
CLP
Nevium Intellectual Property Solutions
Suite 341
415 Laurel St.
San Diego, CA 92101
nevium.com

Neil J. Beaton (Chapters 13 and 17)
CPA/ABV/CFF, CFA, ASA
Alvarez & Marsal Valuation Services
Suite 2450
1111 Third Ave.
Seattle, WA 98101
www.alvarezandmarsal.com

Richard F. Bero (Chapters 26 and 27)
CPA/CVA
The BERO Group
N16 W23217 Stone Ridge Drive
Ridgeview Office Center, Suite 250
Waukesha, WI 53188
www.berogroup.com

Jared Bourgeois (Chapter 41)
Pricewaterhouse Coopers LLC
1 N. Wacker Drive
Chicago, IL 60606
www.pwc.com/us

Brian Buss (Chapters 30 and 31)
CFA
Nevium Intellectual Property Solutions
Suite 341
415 Laurel St.
San Diego, CA 92101
nevium.com

David B. Chaffin, Esq. (Chapter 3)
White and Williams LLP
Suite 1930
101 Arch St.
Boston, MA 02110
www.whiteandwilliams.com

Larry Chiagouris (Chapter 29)
Pace University—New York City campus
Room W-471
1 Pace Plaza
New York, NY 10038
www.pace.edu

Adrian Cowan (Chapter 42)
Ph.D.
Analytic Focus
Suite 200
11467 Huebner Road
San Antonio, TX 78230
www.analyticfocus.com

Charles D. Cowan (Chapter 43)
Ph.D.
Analytic Focus
Suite 200
11467 Huebner Road
San Antonio, TX 78230
www.analyticfocus.com

Michael A. Crain (Chapters 1, 14, and 25)
CPA/ABV, CFA, CFE
Florida Atlantic University
College of Business, School of Accounting
3200 College Ave.
Davie, FL 33314
business.fau.edu/departments/accounting/

Mark O. Dietrich (Chapter 18)
CPA/ABV
945 Concord St.
Framingham, MA 01701
www.cpa.net

Jonathan M. Dunitz, Esq. (Chapters 2, 7, 9, and 41)
Verrill Dana LLP
1 Portland Square
P.O. Box 586
Portland, ME 04112
www.verrilldana.com

Rachel Eisenhaure, Esq. (Chapter 3)
White and Williams LLP
Suite 1930
101 Arch St.
Boston, MA 02110
www.whiteandwilliams.com

Tyler Farmer, Esq. (Chapters 9, 13, and 17)
Harrigan Leyh Farmer & Thomsen LLP
Suite 4400
999 Third Ave.
Seattle, WA 98104
www.harriganleyh.com

John V. Garaffa, Esq. (Chapter 38)
Butler Weihmuller Katz Craig LLP
Suite 2300
400 N. Ashley Drive
Tampa, FL 33602
www.butler.legal

Joseph D. Garrison, Esq. (Chapter 36A)
Garrison, Levin-Epstein, Fitzgerald & Pirrotti PC
405 Orange St.
New Haven, CT 06511
www.garrisonlaw.com

Daniel K. Gelb, Esq.
Richard M. Gelb, Esq. (Chapter 4)
Gelb & Gelb LLP
84 State St., 4th Floor
Boston, MA 02109
www.gelbgelb.com

Mark Glick, Ph.D., J.D. (Chapter 28)
University of Utah
Orson Spencer Hall
Economics Department
260 Central Campus Drive, Room 343
Salt Lake City, UT 84112
www.utah.edu

Joshua R. Goodbaum, Esq. (Chapter 36A)
Garrison, Levin-Epstein, Fitzgerald & Pirrotti PC
405 Orange St.
New Haven, CT 06511
www.garrisonlaw.com

Joseph Goode, Esq. (Chapter 24)
Laffey, Leitner & Goode LLC
Suite 200
325 E. Chicago St.
Milwaukee, WI 53202
www.llgmke.com

David L. Herzer Jr., Esq. (Chapter 5)
Norman Hanson DeTroy LLC
2 Canal Plaza
P.O. Box 4600
Portland, ME 04112
www.nhldlaw.com

Richard S. Hoffman (Chapter 28)
CPA/ABV
Lone Peak Valuation Group
Suite 500
36 S. State St.
Salt Lake City, UT 84111
www.lonepeakvaluation.com

Cliff T. Hutchinson, Esq. (Chapters 2, 7, and 12)
4222 Bobbitt Drive
Dallas, TX 75201
Cliff.T.Hutchinson@gmail.com

Daniel E. Johnson, Esq. (Chapter 19)
Covington & Burlington LLP
1 CityCenter
850 10th St., NW
Washington, DC 20001
www.cov.com

Leon Kaplan (Chapter 29)
Princeton Research and Consulting Center
12 Roszel Road
#C103
Princeton, NJ 08540

Michael Kaplan (Chapter 16)
CPA, CVA, MAFF
Kaplan Forensics
Suite 400
5850 Canoga Ave.
Woodland Hills, CA 91367
www.kaplanforensics.com

James A. Koerber (Chapters 35 and 36B)
The Koerber Co. PA
103 Madison Plaza
P.O. Box 18170 (39404)
Hattiesburg, MS 39402
Koerbercompany.com

Mark M. Leitner, Esq. (Chapter 24)
Laffey, Leitner & Goode LLC
Suite 200
325 E. Chicago St.
Milwaukee, WI 53202
www.llgmke.com

Jeff Litvak (Chapter 41)
CPA/CFF/ABV, ASA
FTI Consulting Inc.
Suite 900
227 W. Monroe St.
Chicago, IL 60606
www.fticonsulting.com

Prof. Robert M. Lloyd (Chapters 6, 8, and 15)
The University of Tennessee
College of Law
1505 W. Cumberland Ave.
Knoxville, TN 37996
www.utk.edu

Jonathan H. Margolies, Esq. (Chapter 27)
Michael Best & Friedrich LLP
Suite 3300
100 E. Wisconsin Ave.
Milwaukee, WI 53202

Kenneth Mathieu (Chapter 41)
CPA, ABV, CFF, CAMS
PricewaterhouseCoopers LLC
1 N. Wacker Drive
Chicago, IL 60606
www.pwc.com/us

Patrick McGeehin (Chapter 19)
CPA
FTI Consulting
Suite 375
1375 Piccard Drive
Rockville, MD 20850
www.fticonsulting.com

Greg McKinnon (Chapter 20)
CPA/CFF/CGMA CMA
Hemming Morse LLP
2595 Ceanothus Ave.
Chico, CA 95973
www.hemming.com

Greg Naviloff (Chapter 37)
RSM US LLP
84 State St.
Boston, MA, 02109
www.rsmus.com

Autumn Nero, Esq. (Chapter 26)
Perkins Coie LLP
1 E. Main St.
Suite 201
Madison, WI 53703
www.perkinscoie.com

James O'Brien (Chapter 10)
CPA, CFF
Management Planning Inc.
2 Logan Square
Suite 300
100 N. 18th St.
Philadelphia, PA 19103
www.mpival.com

Milan Politi, J.D. (Chapter 28)
Milany02@gmail.com

Peter Resnick (Chapter 37)
CPA, CFF, CFE
Charles River Associates
200 Clarendon St.
Boston, MA 02116
www.crai.com

George P. Roach, Esq. (Chapters 32, 33, 34 and 40)
George Roach Litigation Consulting
6820 Meadow Lake Circle
Dallas, TX 75214
www.litigation-consultant.com

Mark Roesler, Esq. (Chapter 23)
CMG Worldwide
10500 Crosspoint Blvd.
Indianapolis, IN 46256
www.cmgworldwide.com

Paul J. Seguin (Chapter 42)
Ph.D.
pauljseguin@msn.com

Ronald L. Seigneur (Chapter 22)
CPA/ABV/CFF, ASA, CVA, CGMA
Seigneur Gustafson LLP
Suite 200
940 Wadsworth Blvd.
Lakewood, CO 80214
www.cpavalue.com

Evan Sherwood, Esq. (Chapter 19)
Covington & Burlington LLP
1 CityCenter
850 10th St., NW
Washington, DC 20001
www.cov.com

Rebekah Smith (Chapter 16)
CPA, CVA, CFF, MAFF
GBQ Consulting LLC
Suite 700
230 West St.
Columbus, OH 43215
www.gbqconsulting.com

Gregory N. Stillman, Esq. (Chapter 10)
Hunton Andrews Kurth, LLP

Edward (Ted) Stockton (Chapter 24)
The Fontana Group Inc.
3509 N. Campbell Ave.
Tucson, AZ 85719
www.fontanagroup.com

Stacey D. Udell (Chapter 11)
CPA/ABV/CFF, ASA, CVA
Gold Gerstein Group LLC
505 Pleasant Ave.
Moorestown, NJ 08057
www.g3cpa.com

Audrey Wessel, Esq. (Chapter 23)
CMG Worldwide
10500 Crosspoint Blvd.
Indianapolis, IN 46256
www.cmgworldwide.com

Timothy W. York (Chapter 21)
CPA/ABV
Dixon Hughes Goodman PLLC
Suite 800
4350 Congress St.
Charlotte, NC 28209
www.dixon-hughes.com

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.

The information contained in this guide is provided for informational or educational purposes only. It is not intended and shall not be deemed to constitute legal advice.

Author Bios

Jeffrey L. Baliban, CPA/ABV, CDBV, is an economist, a certified public accountant, and business valuation appraiser. In his professional practice, Baliban has, for the last four decades, focused on resolving complex commercial disputes by providing independent evaluation studies of economic impact on businesses and individuals involved. His clients have come to include a diverse group of corporations and their counsel who retain him to value businesses and/or provide an independent measure of expectation, reliance, restitution, statutory, and/or punitive damages. He has, on numerous occasions, provided testimony as an expert witness in accounting, economics, valuation, business interruption, and other finance matters in various federal and state jurisdictions as well as in arbitration. During his career, Baliban has been a managing director at Alvarez & Marsal, a senior vice president at NERA Economic Consulting, and a senior partner in KPMG LLP's Dispute Advisory Services Practice. He is currently an adjunct professor of statistical measurements, analysis and research at the New York University School for Professional Studies and a senior advisor to Capital Forensics Inc. Baliban holds degrees in accounting (B.S., 1977) and economics (M.A., 1995) and has been a CPA since 1981. He holds the ABV and CDBV accreditations in business valuation and completed FINRA Series 63 and Series 79 licenses. Over the years, Baliban has written and spoken widely on fraudulent transfer as well as other complex commercial damages matters and business valuation issues.

Doug Bania, CLP, has 15 years' experience as an intellectual property (IP) and brand licensing strategist and IP valuation professional. Bania is an accomplished writer, speaker, and is part of the International Trademark Association's (INTA) Internet Committee and the ICANN Compliance and Domain Name Industry Subcommittee. He is a Certified Licensing Professional (CLP) and is a founding principal of Nevium Intellectual Property Solutions and a managing director of Brand Finance USA. Bania is also a branding, licensing and IP damages expert and has been named in approximately 50 cases, has been deposed 10 times, and has provided trial testimony five times, including testimony as the damages and apportionment expert in the *Blurred Lines* case. Bania has managed hundreds of projects related to brands, intellectual property, and the related intangible assets. He has assisted clients in intellectual property matters related to acquisitions, litigation, bankruptcy, tax, estate, and licensing. He holds an M.A. in television, film, and new media with an emphasis on marketing from San Diego State University and a B.A. in cinema from San Francisco State University. His writings have appeared in peer-reviewed journals such as the *Journal of Intellectual Property Law* and other publications such as *The World Trademark Review* and panel presentations for the Licensing Executive Society (LES) and the SXSW music festival.

Neil J. Beaton, CPA/ABV/CFF, CFA, ASA, is a managing director in Alvarez & Marsal's Valuation Services Practice. Prior to joining A&M, Neil was the global lead in charge of complex valuation at Grant Thornton LLP's Valuation Services Group. He has over 25 years of experience analyzing both closely and publicly held companies. Beaton has appeared as an expert witness across the country and in international tribunals, is an instructor for the AICPA's business valuation courses, and speaks nationally on business valuation with a special emphasis on early-stage and high-technology companies. He has published two books, contributed chapters to a number of other books, and written many articles on early-stage company valuations as well. He has served on the AICPA's National Accreditation Commission and the Financial Accounting Standards Board Valuation Resource Group. Beaton has a Bachelor of Arts degree in economics from Stanford University and a MBA in finance from National University. In addition to his formal education, Beaton is a Certified Public Accountant, Accredited in Business Valuation and Certified in Financial Forensics, a Chartered Financial Analyst, and an Accredited Senior Appraiser in business valuation from the American Society of Appraisers.

Richard F. Bero, CPA/ABV/CVA, is the managing director of The BERO Group. The BERO Group specializes in litigation and valuation services. Bero is a Certified Public Accountant, accredited in business valuation, and a Certified Valuation Analyst. Bero received his BBA in accounting and finance from the University of Wisconsin—Madison. He has provided accounting and financial consulting services and expert testimony pertaining to valuation and economic damages issues for more than 28 years. Bero has served as an expert witness in commercial and intellectual property litigations concerning a wide range of industries and technologies including medical imaging, medical devices, financial services, electronics, software, industrial equipment, construction and heavy equipment, automotive, pharmaceutical, consumer products, and many others. Bero has testified as an expert more than 130 times in trials, depositions, arbitrations, and other hearings in federal and state courts across the country. Bero has presented, instructed, and written articles on topics including intangible assets, intellectual property damages, commercial damages, and various accounting issues. He is the lead instructor of the intellectual property damages course for the National Association of Certified Valuation Analysts. Bero has also been a member of the damages committee of the Intellectual Property Owners Association since 2004. Prior to founding The BERO Group, Bero was the Wisconsin Practice Leader for Coopers & Lybrand's National Litigation & Claims Services practice and an executive consultant with Peterson Consulting.

Jared Bourgeois, CPA/ABV, CFE, CAMS, is a manager in a large professional services firm in the financial forensics practice and is based in Chicago. Bourgeois has significant professional experience advising clients in commercial disputes, post-merger and acquisition disputes, bankruptcy-related litigation, and forensic accounting investigations. He has performed valuation, solvency, and economic damages analyses in various matters, including breach of contract disputes, earnout disputes, fraudulent conveyance investigations, benefit-of-the-bargain and material adverse change cases, and marital dissolutions. He has served as a consulting expert on various matters involving complex damages, valuation, and accounting issues, including the interpretation of generally accepted accounting principles. He has also conducted a variety of forensic accounting and other internal investigations, including fraud, FCPA, anti-money laundering, auditor malpractice, successor liability, and breach of fiduciary duty investigations.

Brian Buss, CFA, is a founding principal of Nevium Intellectual Property Solutions, a San Diego-based intellectual property (IP) consulting firm specializing in valuing, monetizing, and managing IP. Buss has over 20 years of experience in valuations, financial analysis, and corporate finance both in the U.S. and overseas. He provides strategic advice for intellectual property portfolios and transactions; product pricing and resource allocation strategies for executive teams and corporate boards; and performs valuations of trademarks, patents, copyrights, brand assets, trade secrets, technology assets, marketing strategies, and other intangible assets. Buss has provided expert testimony and opinions regarding the value of intellectual property assets and the contribution of IP to economic profits in bankruptcies, tax court, federal court, and arbitration. He has spoken and wrote papers on topics including damages in internet and social media infringement, IP valuation, and the economic impact of brand disparagement. Buss graduated from Claremont McKenna College with a degree in biology and economics and earned an MBA from San Diego State University. During his career, Buss has developed financial models and forecasts for acquisitions, business valuations, class action litigation, reorganizations and privatization transactions, licensing transactions, and new business ventures. His entrepreneurial experience includes serving as co-founder of a technology startup. Prior to founding Nevium, Buss worked at San Diego-based consulting firms Westpac Institutional Bank and Deloitte & Touche's Financial Advisory Services group in New Zealand and the United States.

David B. Chaffin, Esq., is the managing partner of the Boston office of White and Williams LLP. Chaffin has been a commercial litigator and trial lawyer for over 30 years. He handles complex litigation in the areas of, among others, real estate, intellectual property, employer/employee relations, corporate governance, and insurance coverage. Chaffin is a member of the bars of the Commonwealth of Massachusetts and the State of New York, as well as the bars of several United States District Courts and the Courts of Appeals for the 1st and 2nd Circuits. He graduated in 1983 from Duke Law School, where he was an editor of the *Duke Law Journal*. Chaffin graduated cum laude from Amherst College in 1979.

Larry Chiagouris, Ph.D., possesses a unique combination of having served as both an executive with *Fortune* 500 companies and also as an accomplished academician. He currently is a tenured full professor of marketing at the Lubin School of Business at Pace University in New York City where he teaches marketing and survey research methods. In addition to his academic work, he is also a principal in the consulting firm BrandMarketing Services. He has been conducting marketing and research assignments for more than 30 years on behalf of *Fortune* 500 companies, startups, and major law firms. He is past chairman of the Advertising Research Foundation and currently serves on the editorial review board of the *Journal of Advertising Research*.

Adrian M. Cowan is co-founder of Analytic Focus LLC and former associate professor in finance in the Business School at St. Mary's University. Dr. Cowan has over 20 years of experience in research and design applied to issues in banking risk. She specializes in the study of derivatives and other forms of investment, as well as operations in financial institutions. Dr. Adrian Cowan has worked in the federal government, academia, and in financial institutions. Her diverse work encompasses: creation of prototypes of term structure and interest rate derivatives models for the OTS risk management model; valuation of bonds and fixed income derivatives; and evaluation of asset and liability policies and procedures and installation of risk measurement software using stochastic term structure models, simulations, binomial models, and option valuation models. Dr. Cowan taught financial risk management, investments and derivatives, money and capital markets, and financial institutions; she also directed the Student Investment Portfolio for the Business School at St. Mary's. She is the author of many articles on credit and interest rate risk, commercial lending, and pricing models.

Charles D. Cowan is managing partner of Analytic Focus LLC. Dr. Cowan has 40 years of experience in statistical research and design. He consults for numerous public- and private-sector entities on the design, implementation, and evaluation of research and the synthesis of statistical and sampling techniques for measurement. Dr. Cowan has designed some of the largest and most complex research programs the federal government has conducted. He has provided expert advice to corporations and government agencies on the incorporation of complex research designs in demographic and economic measurement problems. Dr. Cowan teaches graduate and undergraduate courses in survey methods, statistics, and computer methods for analysis. He is the co-author of two books, one on evaluation of survey and census methods and one on econometric measures related to the welfare of the U.S. economy. He has written numerous articles on statistical methods, sampling, rare and elusive population research, and optimization techniques. Dr. Cowan is also professor of biostatistics at the University of Alabama—Birmingham in the School of Public Health.

Dr. Michael A. Crain, DBA, CPA/ABV, CFA, CFE, is on the faculty at Florida Atlantic University and the director of FAU's Center for Forensic Accounting. He is also senior advisor at Miami-based accounting firm Kaufman Rossin in forensic accounting and valuation. He has over 30 years of experience as a practicing certified public accountant (CPA). Dr. Crain has been a licensed CPA in Florida since 1984 and has the certification Accredited in Business Valuation (American Institute of CPAs); he also has the Chartered Financial Analyst designation (CFA Institute) and is a Certified Fraud Examiner (Association of Certified Fraud Examiners). He has B.A. (accounting) and an MBA from Bellarmine University and a Doctor of Business Administration (finance) degree

from Manchester Business School in England at the University of Manchester. He has previously been approved as an arbitrator for the American Arbitration Association's Commercial Panel. In addition to his academic role, Dr. Crain consults with clients largely in the areas of business/economic damages measurement, valuation of businesses and financial assets, and forensic accounting. He has served as a consulting and testifying expert in many commercial cases in state and federal courts and has also served as an arbitrator in commercial damages and minority shareholder cases and as a court-appointed accountant. Dr. Crain has previously worked in the auditing and consulting areas in public accounting firms, including senior manager at an international firm. He is a past chairman of the AICPA's Business Valuation Committee and has been inducted into the AICPA's Business Valuation Hall of Fame. Dr. Crain's publications include contributing author of *Litigation Services Handbook: The Role of the Financial Expert*, 4th edition, co-author of *Financial Valuation: Applications and Models*, 1st and 2nd editions, contributing author of *The Portable MBA in Finance and Accounting*, 3rd and 4th editions, and articles in the *Journal of Accountancy*. He received AICPA's Lawler Award for best article of the year in *Journal of Accountancy* and AICPA's Sustained Contribution Award.

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 CPAs (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.

Rachel J. Eisenhaure, Esq., is an associate at the Boston office of White and Williams LLP. Eisenhaure handles a variety of complex commercial litigation matters in areas such as insurance coverage, environmental, and contract/business-tort matters. She has extensive appellate experience. Eisenhaure is a member of the bars of the Commonwealth of Massachusetts, the United States District Court for the District of Massachusetts, and the Courts of Appeals for the 1st Circuit. She graduated in 2005 from Georgetown University Law Center and from Harvard College in 2002.

Tyler L. Farmer, Esq., is a partner at Harrigan, Leyh, Farmer & Thomsen LLP, a litigation firm in Seattle. Tyler has been recognized as a top civil trial lawyer in Washington by Best Lawyers in America (2018), *Super Lawyers* (2012-2018), and Benchmark Litigation (2016-2018) and is an associate fellow in the Litigation Counsel of America. Tyler handles complex cases across the country, including real estate disputes (including condemnation and construction impact), class action litigation, business interruption cases, and shareholder disputes. Tyler earned his J.D. with honors from the University of Notre Dame law school. Before moving to Seattle, Tyler was with the Silicon Valley and Washington, D.C., offices of Jones Day.

John V. Garaffa, Esq., is partner in the Tampa, Fla., office of Butler Weihmuller Katz Craig LLP. He practices in the firm's construction, coverage defense, and cyber losses departments. Prior to joining the firm, Garaffa served on active duty for 21 years as a member of the Judge Advocate Generals Corp, United States Navy, retiring as a captain. Garaffa is admitted to practice law before the state courts of Minnesota and Florida, the United States District Courts for the Northern, Middle, and Southern Districts of Florida, and the United States Courts of Appeals for the 11th Circuit. He has written and spoken widely on property coverage issues, first party bad faith, punitive damages, discovery disputes, and on the application of state-valued policy laws. He is the co-author of Chapter 42 of *New Appleman on Insurance*, concerning legal issues underlying coverage determinations in commercial property insurance. Garaffa received his J.D. from the University of Minnesota, cum laude, in 1982 and a Master of Laws degree, with distinction, from Georgetown University in 1991.

Joseph D. Garrison, Esq., is the senior partner at Garrison, Levin-Epstein, Fitzgerald & Pirrotti PC in New Haven, Conn., where he practices employment law on behalf of employees. Garrison is an elected member of the American College of Trial Lawyers and the American Board of Trial Advocates. He served for three years as president of the National Employment Lawyers Association (NELA) and was a Charter Fellow in the board of governors of the College of Labor and Employment Lawyers, later serving as its national president. As an elected member of the American Law Institute (ALI), he has been substantially involved in drafting the highly influential Restatement (Third) of Employment Law, which was published in 2014. He increasingly focuses his practice on mediation and arbitration and has served since 2009 as a member of the board of directors of the American Arbitration Association (AAA).

Daniel K. Gelb, Esq., a partner at Gelb & Gelb LLP, is a member of the bars of the Commonwealth of Massachusetts and State of New York, the United States District Court for the District of Massachusetts, and the United States Court of Appeals for the 1st Circuit. He graduated from Tufts University (B.A. in English, 1999), Boston College Law School (J.D., 2003), and Boston College Carroll Graduate School of Management (MBA, 2003). Prior to joining Gelb & Gelb LLP, Gelb was an assistant district attorney with the Norfolk County District Attorney's Office in Massachusetts. Gelb practices at the state and federal levels in the areas of general and white-collar criminal defense, complex civil litigation, arbitration, regulatory proceedings, and academic discipline and student misconduct defense. He is a member of various professional organizations including The Sedona Conference® Working Group on Electronic Document Retention & Production, American Bar Association, Litigation Counsel of America, Massachusetts Bar Association, Boston Bar Association, and the Massachusetts Academy of Trial Attorneys. Gelb is also a member of the Frank J. Murray American Inn of Court, National Association of Criminal Defense Lawyers' (NACDL) White Collar Crime Committee, as well as NACDL's Amicus Committee for which he is as a vice chair for the 1st Circuit. For the past several years, Gelb has been a volunteer faculty member for Harvard Law School's *Trial Advocacy Workshop*. Gelb has achieved the AV Preeminent® peer review rating by Martindale-Hubbell® and is included in *Martindale-Hubbell Bar Registrar of Preeminent Lawyers*. He is a Louis D. Brandeis Fellow of the *Massachusetts Bar Foundation* and has been recognized by various legal industry publications such as *Massachusetts Super Lawyers*, *New England Super Lawyers*, *The National Trial Lawyers*, and *National Association of Distinguished Counsel*.

Richard M. Gelb, Esq., a partner and co-founder of Gelb & Gelb LLP, is a member of the bars of the Commonwealth of Massachusetts, State of New York, District of Columbia, United States District Courts for the Districts of Massachusetts, the Southern and Eastern Districts of New York and the District of Connecticut, United States Courts of Appeals for the 1st, 2nd, and 11th Circuits and the United States Supreme Court. He is a graduate of New York University (B.A., 1969) and Boston College Law School (J.D., 1973). He is experienced in trying jury and nonjury business and securities cases in federal and state courts and in arbitration and regulatory proceedings, including those before the United States Securities and Exchange Commission, FINRA, and the Massachusetts Division of Securities and Division of Insurance, and represents clients before the Certified Financial Planner Board of Standards Inc. and the Massachusetts Board of Accountancy. Gelb was a member of the board of trustees and is a member of the Leadership Council of the American Inns of Court Foundation, and the state liaison for Massachusetts. On the local level, he was a founder and co-president of the Suffolk University Law School Litigation American Inn of Court and is the past president of the Boston Inn of Court. At Boston College Law School, he was vice president, communications, of the Boston College Law School Alumni Council and co-chair of the Leadership Gifts Committee. Gelb received the Reverend James B. Malley, S.J. Award for service and commitment to the law school and was a recipient of the 75th BC Law Anniversary Awards. Gelb was a member of the Massachusetts Bar Association's Civil Litigation Section Council, a member of the Committee on Ethics, chair of the Business Litigation Committee, and a member of the State Bench-Bar Forum Committee. At the Boston Bar Association, he was co-chair of the Securities Law Committee Broker-Dealer Subcommittee, the Fee Disputes Committee, and a member of the Task Force on Civility in the Legal Profession. Gelb was co-chair of the Trade Secrets Committee of the Boston Patent Law Association. Gelb is included in the *Martindale-Hubbell Law Directory* ("AV" rating), *Martindale-Hubbell Bar Registrar of Preeminent Lawyers*, *The Best Lawyers in America* (for over 15 years), *New England Super Lawyers*, *Massachusetts Super Lawyers*, and *Who's Who in the World*. He is a life member of the Massachusetts Bar Foundation, Fellow of the American Bar Foundation, and Fellow of the Litigation Counsel.

Mark Glick, Ph.D., J.D., has over 20 years of experience as an economist, lawyer, and expert witness. He is a professor of economics at the University of Utah. He also co-wrote *Intellectual Property Damages: Guidelines and Analysis*.

Joshua R. Goodbaum, Esq., is a partner with Garrison, Levin-Epstein, Fitzgerald & Pirrotti PC in New Haven, Conn., where he represents individuals in employee rights and civil rights litigation. A magna cum laude graduate of Harvard Law School and a former editor of the *Harvard Law Review*, Goodbaum previously served as a law clerk to the Honorable Neil M. Gorsuch of the U.S. Court of Appeals for the 10th Circuit.

Joseph S. Goode is the managing partner of Laffey, Leitner & Goode LLC. He approaches client problems with passion and intensity as if those problems were his own. The day he graduated from Syracuse University College of Law, Goode received the George and Evelyn Marcus Award for being the graduate who best demonstrated the qualities of good judgment, ambition, understanding, compassion, and an appreciation of learning. In the more than two storied decades since, those exact qualities have become synonymous with Goode. They've not only contributed to his countless successes as an attorney both inside and outside of the courtroom, but also to the standards by which he sets professionally for those he works with at LLG. As the last of five children, he honed his advocacy skills early in life and became very good at letting people know where he stands. He's a tireless leader who is intense and demanding (mostly of himself). He maintains the exacting eye of an old-school newsroom editor. Joe's joie de vivre is infectious to everyone around him, and his passion for people is routinely used to speak for those who require his advocacy.

Dave Herzer, Esq., is a trial attorney with substantive litigation experience in general insurance defense litigation, insurance coverage issues, product liability defense, lead poisoning claims, construction disputes, employment law, and medical malpractice claims since 1992 representing a variety of clients in trial courts throughout Maine, both state and federal, and in appeals to the Maine Law Court, the 1st Circuit Court of Appeals, and the U.S. Supreme Court. Herzer also practices before the Maine Public Utilities Commission as counsel for trade organizations. He received his undergraduate degree from the University of Pennsylvania and is a cum laude graduate of the University of Maine School of Law, where his Moot Court team was a national champion. An active member of local, state, national, and international bar associations or attorney organizations, Herzer has held leadership positions in the Defense Research Institute and the Northern New England Defense Counsel Association (now known as The Tri-State Defense Lawyers Association). Since 2010, he has been a member of the Advisory Committee for the Maine Rules of Civil Procedure that develops rules of civil court, and he chairs the Maine Professional Ethics Commission that advises attorneys on issues of ethics for 2017. Herzer has been a featured speaker at seminars conducted for hospitals, risk managers, private medical practices, insurance companies, attorneys, and the construction industry on matters of insurance, ethics, risk management, claim investigation, professional liability, and civil litigation. Herzer has achieved Martindale Hubbell's highest peer review rating (AV® Preeminent™), has been recognized as a New England Super Lawyer, and has received special mention as a "Future Star" in the firm's listing as one of five "Highly Recommended Firms in Maine" by Benchmark Litigation. His peers nominated him for The Best Lawyers in America® in the fields of defendant's personal injury litigation, insurance law, and defendant's professional malpractice law. The Best Lawyers in America® named him "Lawyer of the Year" in the field of insurance law in 2014 and again in 2017 for defendant's professional malpractice law.

Richard Hoffman, CPA/ABV, has nearly 20 years of experience in performing damage calculations, business valuations, and other forensic accounting projects for several international consulting firms. He is a frequent instructor on the proper methods of measuring damages resulting from intellectual property disputes. He co-wrote *Intellectual Property Damages: Guidelines and Analysis* and has taught many courses for NACVA. He has testified in state and federal courts, including bankruptcy courts, on many occasions. He has also acted as the Special Master in a number of matters. He is a co-founding partner of Lone Peak Valuation Group in Salt Lake City, Utah.

Clifton T. Hutchinson, Esq. is a litigation partner in the Dallas office of K&L Gates LLP, where he focuses on disputes involving complex technical and scientific issues and evidence. Hutchinson has tried cases in state and federal courts around the U.S. and has argued before state and federal appellate courts, including the United States Supreme Court. He has written and edited several books and book chapters on the subject of expert witnesses and is a frequent speaker on experts and related topics. He is an adjunct professor of law at Southern Methodist University School of Law, teaching expert evidence. Hutchinson received an undergraduate degree in industrial engineering from the Georgia Institute of Technology in 1969 and his J.D. from Southern Methodist University School of Law, cum laude, in 1980, where he was Texas survey editor of the *Southwestern Law Journal*. He is admitted to the State Bars of Texas and California and to practice before the United States Patent and Trademark Office.

Daniel E. Johnson, Esq., is an attorney and partner in the international law firm of Covington & Burling LLP, practicing in its Washington, D.C., office. He has over 30 years of experience litigating lost profits claims arising from government contracts, commercial disputes, and business torts. He represents parties in lost profits litigation at the trial and appellate levels and appears before administrative agencies and arbitration panels. Johnson graduated magna cum laude from Virginia Polytechnic Institute and State University and received a J.D. from the University of Virginia.

Leon B. Kaplan, Ph.D., is the president and CEO of the Princeton Research & Consulting Center LLC (PRCC), a firm he founded in 1979. PRCC is a social-science research company specializing in marketing research, advertising research, and intellectual property research. Prior to founding PRCC, Dr. Kaplan worked at The DuPont Co. and Opinion Research Corp. (ORC). Dr. Kaplan has been involved in over 200 IP research projects spanning over 25 years. He has designed and implemented his own IP research, implemented research for other testifying experts, consulted on IP research projects, and evaluated the work of others. He has conducted research on likelihood of confusion, secondary meaning, genericness, fame, dilution, claim substantiation, design patents, and damages estimation. He is a past president of the Society for Consumer Psychology of the American Psychological Association.

Michael Kaplan, CPA/ABV/CFF, CVA, CFFA, is the principal of Kaplan Forensics, Forensic Valuation Consultants (Woodland Hills, Calif.). He has provided services in numerous litigation matters, including business litigation, professional malpractice matters, fraud, embezzlement, intellectual property, marital dissolution, loss of earnings, employment matters, and partner and shareholder disputes. Kaplan has qualified to testify in court as an expert witness in approximately 250 matters and has served as a court-appointed expert and accounting referee. Kaplan has served on the faculty of the Marshall School of Business and Leventhal School of Accounting (University of Southern California) and the National Judicial College. He has written numerous publications on business valuation and litigation practice marketing. Kaplan is a managing member of Courtroom Boot Camp LLC and a principal member of the training development team for the National Association of Certified Valuators and Analysts (NACVA). He is the recipient of NACVA's Magna Cum Laude Award and NACVA's 1997 Circle of Light Award (the highest distinction awarded to NACVA instructors). Kaplan received his B.S. in business administration and MBA degree from the University of Southern California.

James (Jim) A. Koerber, CPA/ABV/CFF, is a shareholder in The Koerber Co. PA and is responsible for valuation and litigation services for attorneys, CPAs, and their clients. Koerber has over 40 years of experience in public accounting. Koerber attended Mississippi State University (banking and finance) and Louisiana State University (accounting) and is licensed as a Certified Public Accountant in Mississippi, Louisiana, and Alabama. He is Accredited in Business Valuation (receiving the 2013 Accredited in Business Valuation Champion of the Year Award) and Certified in Financial Forensics by the American Institute of Certified Public Accountants. As for professional organizations, Koerber is a member of the National Association of Forensic Economics, the American Academy of Economic & Financial Experts, the Mississippi Society of Certified Public Accountants (including past chairman of the Business Valuation and Litigation Services Committee), the Society of Louisiana Certified Public Accountants (including past chairman of the Litigation Services Committee), the Alabama Society of Certified Public Accountants, and the American Institute of Certified Public Accountants (including the Forensic & Valuation Services Section). Koerber has qualified as an expert witness in state courts in Mississippi, Louisiana, Florida, and Texas and United States District Court in Mississippi.

Mark M. Leitner, Esq., has been successfully trying and arguing cases in Wisconsin and throughout the United States for three decades. Inspired to attend journalism school by Woodward and Bernstein's relentless Watergate reporting, his training armed him with the investigative and fact-finding skills needed to shine as a trial lawyer. Earning his J.D. (cum laude) from the University of Wisconsin, Leitner combines blue-collar street smarts with an outstanding academic background to create a persuasion style that gets through to judges and juries alike. Now a seasoned veteran, he has taken dozens of cases to verdict at trial and has handled countless injunction matters and other summary proceedings. His appellate work includes several precedent-setting cases in Wisconsin, and he is one of the very few lawyers nationwide to have won both a jury verdict and a settlement of more than nine figures. Along with his colleague, Joseph S. Goode, Leitner is a founding member of Laffey, Leitner & Goode LLC, a Milwaukee-based trial boutique.

Jeff Litvak, CPA/CFF/ABV, ASA, is a senior managing director in FTI's Forensic and Litigation Consulting practice and is based in Chicago. Litvak is a Certified Public Accountant, Accredited in Business Valuation (ABV), an Accredited Senior Appraiser (ASA) in business valuation, and is Certified in Financial Forensics (CFF). Litvak specializes in forensic accounting investigations and valuation matters, assessment of economic damages, analysis of lost profits, and unity of interest/separateness matters. Litvak is FTI's national product leader in merger and acquisition disputes. Recently, he was designated as co-chair of the AICPA task force on merger and acquisition disputes. Litvak received the 2009 AICPA Award for Volunteer of the Year for his achievements regarding the efforts of the AICPA's Task Force on Mergers and Acquisition Disputes. Litvak has experience in a cross-section of industries: real estate, manufacturing, wholesaling, construction, high-tech, automotive, and pharmaceutical. His extensive experience in accounting and auditing, market penetration analysis, and corporate finance provide a strong background for analyzing damages in many types of business litigation. He has worked on significant matters for the United States Department of Justice and Internal Revenue Service on valuation and other corporate finance matters.

Professor Robert M. Lloyd is Professor Emeritus at The University of Tennessee College of Law, where he taught courses in contracts, commercial law, and finance. His primary research interest is damages for lost profits. Professor Lloyd has three times been honored the Harold C. Warner Outstanding Teacher Award and once with the Student Bar Association Outstanding Teaching Award. In 1996, he received the University of Tennessee National Alumni Outstanding Teacher Award. Professor Lloyd is a Fellow of the American College of Commercial Finance Lawyers. He received a Bachelor of Science degree in aerospace and mechanical engineering from Princeton University and a law degree from the University of Michigan. Prior to his teaching career in Tennessee, he practiced law with a large firm in Los Angeles.

Jon Margolies, Esq., has practiced at Michael Best & Friedrich LLP in Milwaukee for over 26 years. He graduated from Princeton University in 1985 and the University of Michigan Law School in 1988. Jon concentrates his practice on intellectual property litigation, on both the trial and appellate level. He has worked on cases in a wide variety of technology areas, including medical equipment, generators, locks, trailers, and animal monitoring equipment. Margolies has taught as an adjunct professor at Marquette University Law School for more than 15 years on topics related to intellectual property litigation. He is also the General Counsel of Michael Best and a frequent lecturer on legal ethics.

Kenneth Mathieu, CPA, ABV, CFF, CAMS, is a director with a large international professional services firm and is based in Chicago. Mathieu provides financial, economic, and accounting services to attorneys and a variety of public and private companies in various industries. His areas of practice include conducting analyses for dispute-related damages involving accounting disputes, business valuation, fraudulent conveyances, fair market value analysis, post-acquisition disputes, lost sales, lost profits, incremental profits, product line profitability, reasonable royalty, and interest on damages. He also conducts complex investigations related to accounting irregularities and management conduct. He is a Certified Public Accountant, Certified in Financial Forensics, Accredited in Business Valuation by the AICPA, and a Certified Anti-Money Laundering Specialist.

Patrick A. McGeehin, CPA, is a senior managing director with FTI Consulting Inc. (FTI) (www.fticonsulting.com) and is head of FTI's Government Contracts and Construction Solutions practice in the Americas. He consults and provides expert testimony on government contract and litigation support matters and provides contract claims assistance and services relating to the calculation of and approach to damages, including breach of contract, lost profits, requests for equitable adjustment, delay and disruption cases, and fraud-related issues. McGeehin has provided expert testimony, both in deposition and trial proceedings, on over 150 occasions and has published related articles and book chapters in various professional publications. He graduated summa cum laude from the University of Scranton and received an MBA degree from George Washington University.

Greg A. McKinnon, CPA/CFF/CGMA, CMA, is a partner in the Litigation and Forensic Consulting Group of Hemming Morse LLP, a California-based certified public accounting firm. Having been a CFO and general manager in private industry as well as an accountant, auditor, and consultant, he has more than 30 years of experience in accounting, specializing in the long-term contracts, construction, and real estate industries. Currently, McKinnon applies this experience to matters in long-term contract disputes including claims for delay, disruption, and loss of productivity; long-term contract; construction and real estate accounting; commercial economic damages (including lost profits); partnership; shareholder and joint venture disputes; embezzlement, fraud, and false claims; lost wages; and business valuation. McKinnon also provides project contract audits and consulting on construction claims and troubled projects and provides advice on effective systems for project management and administration. McKinnon has testified as an expert in court and at national and international arbitrations and presents his findings in mediation. He has lectured on construction claims and industry best practices at local, regional, and national construction conferences and seminars. McKinnon is a Certified Public Accountant, Certified Management Accountant, and Certified Financial Forensics. He earned his Bachelor of Science in business administration from California State University (Chico).

Greg Naviloff, CPA (NY), CFF, CFE, ABV, is the New England leader of RSM US LLP's Financial Investigation and Disputes Services practice. Prior to joining RSM, Naviloff worked at a Big Four accounting and consulting firm, specializing in assisting large global corporations with investigations and fraud and corruption risk mitigation needs throughout the world (Asia, Africa, Middle East, Eastern Europe, and South America). Naviloff assists clients with Securities and Exchange Commission, Department of Justice, and other regulatory inquiries. He has significant experience in forensic accounting, corporate investigation services, forensic data analytics, asset tracing, anti-bribery and anti-corruption compliance and fraud risk management services, and dispute and litigation support services. Naviloff also is a Financial Advisory Services leader within RSM's Life Science industry practice group, a dedicated team of professionals focused on delivering strategic innovative solutions to companies ranging from startup to emerging and prominent public companies. Naviloff has assisted in a variety of business disputes involving asset and company value, generally accepted accounting principles (GAAP), labor and employment, professional malpractice, damages stemming from breach of contract, antitrust, bankruptcy and reorganizations, intellectual property, securities, and other corporate litigation-related matters. Naviloff has drafted expert reports, affidavits, and rebuttal reports for use in court and dispute resolution forums.

Autumn Nero, Esq., is a partner at the Madison, Wis., office of Perkins Coie LLP. Nero focuses her practice on intellectual property litigation, including patent, trademark, trade secret, and copyright actions; breach of contract and licensing disputes; privacy and right to publicity suits; and breach of fiduciary duty claims. Her clients have included major consumer products, pharmaceutical, telecommunications, entertainment, and biotechnology companies, as well as nonprofit organizations. She received her J.D. from the University of Wisconsin in 2006 and her B.A. from New York University in 1996.

James O'Brien, CPA, CFF, is a managing director with Management Planning Inc. (MPI) in its Philadelphia office. MPI is a national consulting firm that provides forensic investigations, business valuations, and litigation support services to its clients. MPI has offices in New York City; Boston; Chicago; Philadelphia; Hartford, Conn.; and Orlando, Fla., with its home office located in Princeton, N.J. O'Brien has provided a variety of financial consulting and financial services to attorneys, insurance companies, governmental agencies, and public and private corporations throughout his career. Prior to joining MPI, he spent almost three decades with international and national public accounting firms. O'Brien specializes in calculating lost profits and forensic financial analyses related to disputed matters, the majority involving complex commercial litigation and/or insurance claims matters, as well as performing financial and forensic investigations of financial statements, tax returns, relevant contracts/agreements, and corporate data. He has spoken before professional and educational groups

on various aspects of economic damages, complex financial analysis, litigation consulting, and providing fraud investigations. The AICPA selected O'Brien to provide thought leadership on the "Forensic Accounting – Fraud Investigations Practice Aid" and "Serving as an Expert Witness or Consultant Practice Aid."

Milan Politi, Esq., is a management consultant and attorney specializing in expert testimony support in litigation for technology firms. Her primary focus is intellectual property damages, consumer perception surveys, and business strategy related to these areas. Milan received her J.D. from Southwestern Law School in Los Angeles.

Peter Resnick, CPA, CFF, CFE, is the national leader of the Investigative Solutions team at Charles River Associates. Previously, Resnick was the co-national leader of investigations services at a global accounting firm and the co-national leader of the Disputes & Investigation practice of a nationally recognized consulting firm. He is a Certified Public Accountant (MA), Certified in Financial Forensics by the AICPA, and a Certified Fraud Examiner. Resnick has significant experience in forensic accounting, valuation, and fraud investigations. His clients have included law firms from throughout the country, *Fortune* 500 companies, high-tech, manufacturing, software companies, healthcare providers and insurers, and not-for-profit organizations. He has provided expert testimony and analysis at trial, deposition, arbitration, and mediation proceedings.

George P. Roach practices damages law and provides consulting or testimony on corporate damages and valuation in Texas. He is also a senior adviser to the litigation consulting firm of Freeman & Mills Inc. in Los Angeles. Prior to establishing his own practice in Dallas, he directed a consulting group for a corporate litigation boutique in Dallas, operated a cattle ranch in East Texas, and worked for a major bracket investment bank in New York City. The *Business Valuation Review* and a variety of law reviews have been published several of his articles, including "Counter-Restitution for Monetary Remedies in Equity" (*Washington & Lee Law Review*, Vol. 68, No.3, page1271 (Fall 2011)) and "Rescission in Texas, A Suspect Remedy" (*The Review of Litigation*, Vol. 31, Summer, 2012). His background includes an MBA (Harvard, high honors), J.D. (University of Texas—honors) and an A.B. in economics (University of California, Davis—high honors).

Mark A. Roesler, Esq., is the founder and CEO of CMG Worldwide, which protects and licenses the intellectual property rights of hundreds of entities, primarily including celebrities and the estates of deceased celebrities. Roesler is known as one of the foremost authorities on the subject of the right of publicity in the United States, having been involved in the passing of various states' right-of-publicity statutes and certain landmark right-of-publicity decisions. Roesler has also been called upon to provide right-of-publicity and trademark valuation services for celebrities in tax matters, infringement matters, and celebrity divorce cases. Roesler graduated from DePauw University. He has an MBA from the Indiana University Kelley School of Business and a J.D. from the Indiana University School of Law in Indianapolis (now the Indiana University Robert H. McKinney School of Law).

Paul J. Seguin, Ph.D., has over 30 years of experience in consulting and expert witness work in finance and statistics. Dr. Seguin is an internationally recognized expert in estimating cost of capital; mergers and acquisitions; valuation of publicly and privately held corporations using accounting, cash flow, and multiple-based methods; estimation of damages including those from improper disclosure; derivative; and employee stock option valuations. Dr. Seguin has consulted on the calculation of damages for RMBSs and alternative investments including indexed ETNs, leveraged ETFs, and nontraded REITs. Dr. Seguin has applied econometric approaches to 10b-6 fraud-on-the-market cases (event studies), FACTA analysis, and class-action gender discrimination and MDL antitrust litigation. Dr. Seguin also has decades of experience at the University of Georgia, Vanderbilt University, the University of Minnesota, the University of Michigan, and the University of Rochester. Dr. Seguin taught graduate and Ph.D.-level courses in the areas of finance and statistics. Dr. Seguin has been recognized as one of the "Top 1,000 for All Economists by Productive and Impact," a recognition rarely earned by a finance

academic, and has published in the leading peer-reviewed journals on finance, economics, and real estate. He received his M.S. and Ph.D. in finance and applied statistics from the University of Rochester and a B.Comm. in finance and accounting from Carleton University.

Ron Seigneur, CPA/ABV/CFF, ASA, CVA, CGMA, is managing partner of Seigneur Gustafson LLP CPAs, in Lakewood, Colo. Ron holds the Accredited in Business Valuation (ABV) and Certified in Financial Forensics (CFF) designations from the American Institute of Certified Public Accountants, the Certified Valuation Analyst (CVA) designation from the National Association of CVAs, and is a senior appraiser with the American Society of Appraisers (ASA). He is the co-author of the 1,300-plus page treatise on business appraisal titled *Financial Valuations: Applications and Models*, 4th edition, published by John Wiley & Sons in 2017, *Reasonable Compensation: Applications and Analysis for Management, Valuation and Tax*, published by Business Valuation Resources in 2010, and the *Ultimate Cannabis Appraisal and Financial Management Guide*, published by LuLu in 2018. Seigneur has served on the board of directors of the Colorado Sports Hall of Fame and the Colorado Association of Business Intermediaries. Ron is co-founder of YS Advisory, a consultancy focused on advising practitioners and attorneys on practice management and technical issues in the areas of business and IP appraisal, economic damages, financial forensics, malpractice issues, and related concerns. He has been an adjunct professor at either the University of Denver, Sturm College of Law and Daniels College of Business for over 25 years, where he has taught law firm finance, leadership, and business valuation classes. He is a fellow of the College of Law Practice Management and a frequent speaker and author on valuation, economic damages, leadership, and other topics. Seigneur was the 2009-10 chair of the Colorado Society of CPAs and was inducted into the AICPA Business Valuation Hall of Fame in 2006.

Evan Sherwood, Esq., is an associate at Covington & Burling LLP, where he practices government contracts law. He graduated magna cum laude from the University of Pennsylvania Law School in 2015, and he clerked for the Honorable Charles F. Lettow of the United States Court of Federal Claims from 2015 through 2016.

Rebekah Smith, CPA, CVA, CFF, MAFF, is a member of and director of forensic and dispute advisory services with GBQ Consulting LLC in Columbus, Ohio. Rebekah focuses her practice on economic damages, forensic accounting, fraud, litigation consulting, and business valuation. She has rendered expert opinions in various courts for a variety of purposes including business disputes, economic loss claims, shareholder disputes, intellectual property lawsuits, asset tracing, embezzlement, and fraud. She is a member and chair of the National Association of Certified Valuators and Analysts' (NACVA) Executive Advisory Board and a past chair and member of NACVA's Litigation and Forensics Board.

Gregory N. Stillman, Esq., joined the Richmond-based law firm of Hunton & Williams in 1973 and was elected to the partnership in 1980. In that same year, he founded the firm's Norfolk, Va., office. His practice has focused on business litigation, particularly corporate governance, intellectual property, and patent litigation. Stillman is a fellow of the American College of Trial Lawyers, a fellow of the Virginia Bar Foundation, a past chairman of the Virginia Beach School Board, and a past chairman of the Hampton Roads Chamber of Commerce. He is an adjunct professor at Washington & Lee University School of Law. Stillman received his Bachelor of Arts from the University of Richmond (1969) and his J.D. from Washington and Lee University School of Law (1974).

Edward Stockton is the vice president and director of economics services for The Fontana Group Inc. in Tucson, Ariz. Stockton's 20 years of professional experience include studies of complex economic problems across multiple industries where manufacturers and distributors sell through networks of authorized franchisees. Stockton has also served as the economic expert for large classes of consumers and retailers in matters involving complex issues of economic harm, including the Volkswagen Diesel emissions matters in the United States and Canada.

and the Wells Fargo unauthorized accounts matter. He has analyzed manufacturers' methods for franchisee performance measurement and has had courts cite his testimony in contested decisions and in approval of settlement agreements on nearly two dozen occasions. Stockton has studied and lectured on the economic implications of the use of leverage in franchisee/franchisor relations and has developed models for evaluating these effects. He received his B.A. in economics from Western Michigan University and his M.S. in agriculture and resource economics at the University of Arizona with an emphasis on applied econometrics.

Stacey D. Udell, CPA/ABV/CFF, CVA, is the director of valuation and litigation services in the mid-Atlantic region in HBK Valuation Group. In her previous position as a partner in the public accounting firm of Gold Gerstein Group LLC, in addition to valuation and litigation support services, she provided accounting, tax, and consulting services for closely held and family businesses. She is currently a member of the AICPA's Forensic and Litigation Services Committee and chair of the AICPA's Family Law Task Force. Udell was a member of the planning committee for the 2013 and 2014 AICPA Forensic and Valuation Services Conferences, vice co-chair of the 2015 AICPA Forensic and Valuation Services Conference, and co-chair of the 2016 and 2017 conferences. She was a founding member of the AICPA's CFF examination development committee from its inception through 2014. She is on the panel of experts of the *Financial Litigation and Valuation Expert* publication. She is a contributing author to the *BVR/AHLA Guide to Healthcare Valuation, Family Law Services Handbook*, and a co-author of *Financial Valuation: Applications and Models*.

Audrey Wessel, Esq., is in-house counsel at CMG Worldwide, where she works closely with various clients to protect and license intellectual property and also supports outside counsel on litigation matters. Wessel graduated with a B.S. from Purdue University and received her J.D. from the Indiana University Robert H. McKinney School of Law.

Timothy W. York, CPA/ABV, is the managing partner of Dixon Hughes Goodman LLP's (DHG) national dealerships practice, which provides services to more than 2,500 rooftops in all 50 states, including six of the country's top 10 dealership groups. York has served in a number of leadership positions for national organizations. In 2014, he began a term on the AICPA Auto Dealer Committee, has been the chair the National Auto Dealer Conference in 2015 and 2016, and will chair the conference again in 2017. He completed a three-year term as a member of the Business Valuation Committee for the American Institute of Certified Public Accountants (AICPA) and was the 2004 Chair of the National Business Valuation Conference for the AICPA. Furthermore, York has been featured in a variety of industry publications, including *Automotive News* and *Automotive Buy Sell Report*, and is a frequent speaker on automotive topics. His participation with Business Valuation Resources includes contributions to *Key Trends Driving Auto Dealership Value*, various editions of the *Comprehensive Guide to Lost Profit and Other Commercial Damages*, webinars, and more.

Foreword

*"It costs us nothing to be just."*¹

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).

Part VIII.

Index

Index

A

- Ability to pay debts, 852–853
- Acceleration, construction projects, 391
- Acceptable noninfringing substitutes, 499
- Accountants. *See also* Certified Public Accountants (CPA)
 - discovery depositions of, 75–87
 - experience in, as expert qualification, 172–174
 - professional standards for, 7–9
- Accounting. *See* Generally accepted accounting principles (GAAP)
- Accounting in equity, 886
 - but-for profit causation and, 605–606
 - disgorgement, 609–610
 - historical perspective of unjust enrichment, 627–629
 - opportunity cost adjustment and, 606
 - remedies in equity, 864–865
- Accounting profit, 850
- Accounts receivable turnover, 849
- Accused sales, 536–537
- Acquisitions, insights/observations in disputes of, 936
- Activity ratios, 849
- Acts of civil authorities, business interruption, 807–808
- Actual cost pricing method, for construction claims, 382
- Actual damages
 - defined, 291
 - plaintiff's, in trademark cases, 531–532
- Actual lost damages, trade secret misappropriation, 523–524
- Adjacent property, 807
- Admissibility, survey-based research, 546
- Admissible evidence, 27
 - forensic evidence admissibility, 322–323
- Admissions, as admissible evidence, 28
- Admission-seeking interviews, 768, 782–783
- Advantage, 623, 641–643
 - profit vs., 692–694
- Advertising, Internet and social media tools, 566
- Advertising Research Foundation (ARF), survey-based research guidelines, 551
- Affirmative defenses, 15
- Agent, as fiduciary, 895–898
- Alabama, expert gatekeeping opinions of, 140–141
- Alaska, expert gatekeeping opinions of, 141
- Alaskan Method, 736
- Albritton, Judge, 865–866
- Alcohol distribution, franchise litigation and, 465
- All-risk policies, 809–810
- Alternative market indexes, for robustness test, 951
- Alternative securities, event studies, 959–960
- Alternative tests, 956
- American Arbitration Association rules
 - discovery pursuant to, 23–24
 - Rule R-22 and R-23, 23–24
- American Association for Public Opinion Research (AAPOR), survey-based research guidelines, 550
- American Institute of Certified Public Accountants (AICPA)
 - audit standards, 766
 - conflict of interest guidance, 771
 - objectivity and integrity guidance, 771–772
 - professional standards, 7–9
- Analytic techniques, for internal investigations
 - analytical review of financial statement balances, 793–795
 - Benford's law, 792–793
 - cash sources and uses, 790
 - chronology of events and facts sheet, 790
 - data-mining procedures, 792–793
 - journal entry/subledger reviews, 795
 - net worth method, 790
 - proof-of-cash method, 790
 - ratio analysis, 793–795
 - reperformance, 792
 - reverse proof, 793
 - sampling techniques, 790–791
- Ancillary jurisdiction, of unjust enrichment, 619–620
- Ancillary testing income, 353
- Answer, in lawsuit filing, 15
- Anticipatory profit, 373
- Anti-kickback statute, 364
- Anti-netting doctrine
 - characteristics of, 698
 - as genetic marker for monetary remedies in equity, 689–690
- Anti-netting rule
 - Levin* case, 665
 - in unjust enrichment, 638–640
- Antitrust cases, inconsistent facts and, 200
- Apparel manufacturer case, forensic evidence used in, 325–326
- Appeal, process of, 26
- Apportionment
 - in compensation forfeiture, 905–908
 - profit apportionment analysis for intellectual property infringement, 577–597
 - royalty damage, 510
 - unjust enrichment and, 646–648
- Appraisal, business interruption claim, 829
- Appraisers, discovery depositions of, 75–87
- Aramony, William, compensation forfeiture case, 867–871
- Arbitration, business interruption claim, 829–830
- Arithmetic average of growth rate, 251–253
- Arithmetic returns, versus continuously compounded returns, 954
- Arizona, expert gatekeeping opinions of, 141
- Arkansas, expert gatekeeping opinions of, 141–142
- As-built schedule method, 386, 387–388
- As-planned schedule, 384–385, 386

- Asset approach to purchase price valuation, 921
- Asset forfeiture, 912–913
- Asset misappropriation, 765–769
- Assumptions, of experts
 - cases that were not excluded, 189–190
 - as disputed facts, 194–195
 - duration of loss period, 195–197
 - as grounds for exclusion, 190–194
 - sanction for unsupported, 197–198
- Attorney fees
 - damages for trade secret misappropriation, 526–527
 - franchise litigation and, 452–453, 465–466
- Attributable, defined in relation to unjust remedy, 622–623
- Attributes sampling, 791
- Attribution sampling, avoided cost estimation, 236
- Audited financial statements, 183
- Auditors, forensic, 317
- Audits procedures, compared to financial forensic investigation, 765–769
- Autocorrelation, 955–956
- Automobile dealerships, lost profits, 399–410
 - dealership business factors
 - complexity of business, 405
 - facilities, 405
 - financial and operational reporting, 406–407
 - franchise type, 406
 - location of, 406
 - franchise relationship
 - franchise agreements, 400
 - franchise damages, 401–403
 - franchise laws, 401
 - information sources for
 - financial and operational data, 408–409
 - understanding business, 408
 - valuation-related guidance, 409
 - lost profit considerations, 403–404
 - overview, 399–401
- Avoidable consequences, doctrine of, 215
- Avoided costs, estimations, 234–236
 - cost structure analysis, 235–236
 - fixed and variable costs, 235–236
- B**
- Background investigation, by forensic specialist, 767–768, 780–781
 - covered peril, all-risk policies, 809–810
- Back pay, 755
- Bad faith spoliation, 40–41, 41–42
- Balance sheet, disputes over post-closing adjustments and, 924–925
- Balance sheet test, defining insolvency and, 844
- Bank fraud, 765
- Bankruptcy. *See* Fraudulent transfer claims
- Bankruptcy fraud, 765
- Bars. *See* Eating establishments lost profits analysis
- Base earnings, personal injury and wrongful death economic damages, 730–731
- Baseline schedule, 384–385
- Bastiat, Frederic, 473
- Before-and-after method
 - advantages/disadvantages of, 247
 - example of, 246–247
 - lost revenue estimates, 225–227, 245–246
 - for proving lost profits, reasonable certainty requirement and, 96
- Below-market discount rate method, 736
- Benefit, in unjust enrichment, 623–626
 - excluded expenses, 625–626
 - ways of establishing, 624–625
- Benefit of the bargain damages, 930–931
- Benford's law, 792, 793
- Best available evidence, reasonable certainty requirement and, 111–113
- Bildman, Lars, compensation forfeiture case, 871–875
- Billing practices, as form of disloyalty, 903–904
- Blameworthiness, reasonable certainty requirement and, 106–111
- Blanket policy, 812–813
- Bonding capacity, lost profits impairment on, 395–396
- Book ends method, 225
- Book of wisdom, 285, 508
 - discounting future lost profits, 297–298
- Bowles, Tyler J., 183
- Brandeis, Louis, 425–426
- Breach of contract
 - damage claims, 277–278
 - employment cases, 1109–1111
 - lost profit claims, 208
 - measurement for damages, 649–650
 - in post-acquisition disputes, 928–931
 - determining damages in, 929
 - measuring damages, 930–931
 - pitfalls to avoid in assessing, 931
 - types of damages, 929–930
- Breach of fiduciary duty, 879–889. *See also* Compensation forfeiture
 - categories of remedies available, 884–887
 - causation and burden of proof, 887–889
 - claims against lawyers, 913–915
 - defining who is fiduciary, 895–898
 - dual goals and stacked remedies, 880–884, 915–916
 - unjust enrichment remedy, 613
- Breach of sales contracts, lost profit claims, 210
- Breach of warranty agreements, lost profit claims, 210
- Bribes, 894, 902
- Burden of proof, breach of fiduciary duty, 887–889
- Business experience, as evidence for lost profit
 - at other locations, 263–264
 - subsequent, 263
- Business interruption, calculating loss due to, 978–980

Business interruption insurance coverage, 799–833
 choice-of-law and forum clauses, 830
 coinsurance clause, 813–814
 covered peril, specified peril policies, 808–810
 extra expense coverage, 799, 818–819
 making a claim
 access to damaged property, 820–822
 access to records, 822–824
 appraisal, 829
 arbitration, 829–830
 duties after loss, 819–820
 examination under oath (EUO), 826–829
 independent and public adjusters, 828–829
 prompt reporting, 820
 proof of loss, 825–826
 mitigation of loss, 824–825
 overview of, 211, 799
 period of restoration
 extended period of indemnity, 817–818
 initial period of restoration, 815–817
 overview of, 814–815
 waiting period, 815
 policy limits
 blanket policies, 812–813
 designated limits, 811
 sublimits by peril, 812
 sublimits by property/schedules of value, 811–812
 triggers of coverage
 acts of civil authorities, 807–808
 covered property, 804–807
 direct physical damage, 802–804
 interruption, 800–802
 time element provision, 800–802
 valuing business interruption
 history of business, 831–832
 market forces, 832–833
 new businesses, 832
 new facilities/product lines, 832

Business records
 access to records in business interruption claim, 822–824
 as admissible evidence, 29
 summary of, 31

But-for profit causation
 fixed costs in unjust enrichment, 621
 patent infringement cases, 495–502
 remedies in equity and, 605–606

But-for profit projections. *See also* Lost profits analyses
 before-and-after method, 225–227
 forecasting expense methods, 258
 growth considerations, 255–257
 historical information
 averages, medians and compound annual growth, 251–253
 when past is indicator of future, 251
 industry and economic information considerations, 257
 methods for determining
 before and after method, 246–247
 lost market share method, 249–250
 sales projection method, 249
 yardstick method, 247–249
 new business rule and, 254
 projections prepared in ordinary course of business, 254–255
 unjust enrichment, 643–646
 yardstick method, 227–231

C

California
 expert gatekeeping opinions of, 142
 right of publicity infringement, 428

Capacity, patent infringement cases, 501–502

Capacity limitations, as evidence, 262–263, 265

Capital, unreasonably small capital, 851–852

Capitalization of earnings, 921

Car dealerships. *See* Automobile dealerships, lost profits

Cardinal changes, 392–393

Cash flow forecasts, defining insolvency, 843, 845

Cash sources and uses, for internal investigation, 790

Causation
 breach of fiduciary duty, 887–889
 as element of lost profit case, 211–212
 establishing, for eating establishments lost profit, 415–416

Celebrity endorsement, relief from pay-per-click claim, 572–573

Celebrity name and likeness claims, using Google analytics to defend against, 571–572

Certified Public Accountants (CPA)
 professional standards for, 7–9
 as qualified expert, 173

Changes clause, 378

Cheit, Earl, 735

Choice of law, 26
 business interruption claims, 830

Chronology of events and facts sheet, 790

Chrysler, 402, 403

Ciecka, James E., 734

Circuit Court opinions in unjust enrichment
 1st Circuit, 672
 2nd Circuit, 672–673
 faulty baseline, 661–666
 jurisprudence by adjective, 666–669
Levin case, 664–666
Sheldon case, 661–664
 3rd Circuit, 673–674
 4th Circuit, 674–675
 5th Circuit, 675
 6th Circuit, 675–676
 7th Circuit, 676
 8th Circuit, 676
 9th Circuit, 677
 10th Circuit, 677
 11th Circuit, 677

Class certification, 940–941

Clawback, unjust enrichment, 647

Clawback agreement, 66–67

Clean-up doctrine, 628

Client-provided data, reliability of, 183–186

Coinsurance clause, 813–814

Collateral sales
 patent infringement cases, 505
 royalty damages, 511

Colorado, expert gatekeeping opinions of, 142–143

Commercial publications, as admissible evidence, 30

- Commodities fraud, unjust enrichment remedy, 613
 - Communication plan, internal investigation, 774–780
 - Comparability, yardstick method and, 227–229
 - Compensable delays, 383
 - Compensation forfeiture
 - apportionment, 905–908
 - asset forfeiture, 912–913
 - breach of fiduciary duty, 879–889
 - categories of remedies available, 884–887
 - causation and burden of proof, 887–889
 - claims against lawyers, 913–915
 - dual goals and stacked remedies, 880–884, 915–916
 - case examples
 - Dennis Kozlowski, 877–879
 - Ian Gittlitz, 875–877
 - Lars Bildman, 871–875
 - Richard Grassgreen, 860–867
 - Richard Scrushy, 909–911
 - William Aramony, 867–871
 - conclusion, 915–916
 - counter-restitution, 905
 - damages at law or remedy in equity, 893–895
 - defining who is fiduciary, 895–898
 - forms of disloyalty
 - billing practices, 903–904
 - confidentiality, 902–903
 - conflicts, 898–899
 - disloyal competition, 900–901
 - duty to disclose, 902
 - secret profit, 902
 - self-dealing, 901
 - nonforfeiture clauses, 909
 - origins and foundations for, 890–893
 - overview of, 857–859
 - professional liability insurance policies, 893
 - as shield or sword function, 892–893
 - types of compensation included, 904–905
- Compensatory damages
 - breach of fiduciary duty, 881, 884
 - calculating for right of publicity infringement, 431–433
 - defined, 291
 - franchise litigation, 444–445
 - objective of, 291–292
 - statistical analysis for calculating, 964
- Competition
 - impact of lost profit analysis, 265
 - physician practice and noncompete violations, 355–356
- Competitor traffic source tools, 565
- Compiled financial statements, 182
- Complaint, in filing lawsuit, 14–15
- Computer forensic expert, ESI testimony by, 68–70
- Computer fraud, 765
- Confidential information, protections, unjust enrichment remedy and, 613
- Confidentiality, breach of, as form of disloyalty, 902–903
- Confidential sources, forensic investigation and, 768
- Conflicted transaction, 894
- Conflicts, as form of disloyalty, 898–899
- Conflicts of interest, forensic specialist and, 771
- Confounding events, events studies and, 957–958
- Confounding informational event, 945–946
- Conjoint analysis, in survey-based research, 555–556
- Connecticut, expert gatekeeping opinions of, 143
- Consequential damages
 - breach of fiduciary duty, 885
 - in employment cases, 747
 - foreseeability and, 213
 - franchise litigation, 444–445
 - in post-acquisition disputes, 929
- Consequential gains, 623–624
- Consistent statements, 28
- Constant growth model, 282
- Construction claims, 377–396
 - acceleration
 - defined, 391
 - pricing impact of, 391
 - causes of, typical
 - cardinal change, 392–393
 - defective specifications, 392
 - defective work, 393
 - differing site conditions, 392
 - extra work, 391
 - termination, 393–395
 - claim pricing methodologies
 - actual cost method, 382
 - jury verdict method, 382–383
 - modified total cost, 381–382
 - total cost method, 380–381
 - delay claim
 - defined, 383–384
 - determining responsibility for delay, 384–388
 - pricing impact of delay, 388–390
 - project schedule, 384–388
 - disruptions
 - defined, 390
 - pricing impact of, 390–391
 - lost profits impairment on working capital and bonding capacity, 395–396
 - overview of, 377–380
 - changes clause, 378
 - reasonable certainty, 378–379
 - steps in preparing, 379–380
 - summary, 396
- Construction defects damage computation, 967–970
 - differences in designs for units, 968
 - double counting of repair costs, 969
 - overestimation problems from high/low defect rates, 968–969
 - subsets of items used for testing, 968
 - variability of costs of repair, 970
- Construction equipment, franchise litigation and, 465
- Constructive fraud, 844
- Constructive trust, 865, 886, 904
- Consumer Expenditure Survey*, 735
- Consumer fraud, unjust enrichment remedy, 613
- Consumer Price Index*, 737
- Contingent liabilities, 845
- Continuously compounded returns, versus arithmetic returns, 954

- Contracts. *See also* Breach of contract
 common-law employment cases, 745–748
 foreseeability and, 212
 government contracts, 366–370
 lost profit claims, 210
- Contractual limitations on damages, 929
- Controls, in survey-based research, 549
- Copyright Act, 582, 628, 669, 695
- Copyright damages, 540–541
 defendant's profits, 541
 example cases, 541
 historical perspective on, 627–629
 Internet related, 569
 overview of, 539–540
 plaintiff's actual damages, 540–541
 lost profits, 540
 reasonable royalty, 540
 summary, 542
- Copyright infringement, lost profit claims, 208–209
- Corporate depositions, 19
- Corporate officer, extending Lanham Act liability in franchise litigation, 452
- Corporations
 as citizen, 15
 claiming punitive damages against, in franchise litigation, 462–463
 deposing, 19
- Corruption schemes, 765
- COSO Framework, components of internal controls, 769
- Cost analysis, of government contracts, 371–372
- Cost of capital, 842
- Cost plus award fee contract, 370
- Cost plus fixed fee contract, 370
- Cost plus incentive fee contract, 370
- Cost reimbursable government contracts, 367, 369–370
- Cost sharing contract, 369
- Costs of repair
 double counting of, 969
 variability of, 970
- Cost structure analysis, avoided cost estimation, 235–236
- Council of American Survey Research Organizations (CASRO), survey-based research guidelines, 550
- Counterfeit marks, franchise litigation, 450, 451
- Counter-restitution for monetary remedies in equity, 687–721
 anti-netting doctrine, 689–690
 compensation forfeiture and, 905
 conclusion, 720–721
 disgorgement by default, 701–703
 FTC claims for gross disgorgement, 707–721
 gross disgorgement cases, 704–707
 fraud, 704–706
 outlaws, 706–707
 groups that do not warrant, 699–700
 importance of, 697–698
 introduction, 687–689
 monetary remedies in 19th century IP case opinions, 691
 quasi-trustee, 695–697
 semantics of, 691–694
 profit vs. advantage, 692–694
 restitution, 691–692
 total equity principle, 698
 two-step process of measuring for, 698–699
- Counter-restitution in unjust enrichment, defendant as quasi-trustee
 origins of, 631–636
- Courts in equity, 604, 618
- Court system
 overview of, from filing to appeal, 13–26
 rules of evidence, 27–31
- Covenants, 920
- Cover, 215
- Covered peril
 all-risk policies, 809–810
 specified peril policies, 808
- Covered property, 804–807
 property by description, 805–806
 specified property, 804–805
- CPA. *See* Certified Public Accountants (CPA)
- CPT billing codes, 352–353
- Critical path method (CPM) scheduling techniques, 384–385
- Cross-examination, 25–26
- Curative measures, for ESI spoliation, 53–54
- Current ratio, 848
- ## D
- Damage calculation
 experience in, as expert qualification, 176
 for franchises and guiding principles for, 474–478
 initial disclosure, computation of damages, 21–22
 right of publicity infringement, 427–436
 statistical analysis for, 963–980
 questions of
 how different, 964–965
 how many, 965–966
 how much, 964
 scenarios for
 loss due to business interruption, 978–980
 observational data for, 971–978
 sampling process to measure losses, 967–970
 survey-based estimation, 545–557
- Damages
 alternative methods to compensation for, 115–118
 amount at stake, and reasonable certainty requirement, 113–115
 certainty of, and reasonable certainty requirement, 101–106
 in common-law employment cases, 745–749
 copyright damages, 540–541
 discounting future lost profits to measure, 291–298
 fact and amount rule, 101–106, 110
 franchise damages, 401–403
 in post-acquisition disputes, 928–931
 determining damages in, 929
 measuring damages, 930–931
 types of damages, 929–930
 trademark damages, 531–539
 trade secret, 519–527
 whole and partial, 334, 345–346
- Damages at law, compensation forfeiture, 893–895
- Damages period, determining relevant, 222–224
- Damodoran, Aswath, 253, 255

- Data
 - adequate consideration of all data, 270–271
 - cherry-picking, 187–188
 - data and information generally available from parties
 - business history and experience, 262–263
 - capacity limitations, 265
 - competition's impact, 265
 - other sources of evidence from parties, 265–266
 - plaintiff's/defendant's subsequent experience, 263
 - plaintiff's experience at other locations/similar business, 263–264
 - prelitigation profit projections, 264
 - data gathering/analysis in survey-based research, 549
 - industry and economic data, 268–270
 - internal investigation
 - key word searches, 787
 - preliminary data gathering, 777
 - processing, sorting, dissecting and drawing conclusions from, 787
 - market and demand for plaintiff's product, 267–268
 - for new business lost profit damages, 337–338
 - other unverified data, 186–187
 - problems caused by opposing party, 187
 - reliability of
 - financial statements, 182–183
 - generally, 180–183
 - supplied by client, 183–186
 - restoration of, 52–53
 - sanctions for relying on improper data, 188
- Data analytics, 768
- Data economy, unjust enrichment remedy and, 613
- Data-mining procedures, for internal investigation, 792–793
- Daubert* case
 - impact of, on survey-based evidence, 545
 - trends in motions to exclude financial testimony, 81–83
- Daubert* challenge
 - based on selection of discount rate, 311–312
 - discount rate and, 302
 - remedies in equity, 607
- Daubert* test, 121–123, 171, 270
 - adequate consideration in all available data, 270–271
 - computer forensic expert testimony, 69
- D.C. District Court, expert gatekeeping opinions of, 140
- Deal negotiation, in transaction process, 919–922
 - determining purchase price, 921
 - indemnification provisions, 920
 - losses/damages definitions, 920
 - purchase price valuation approaches, 921–922
 - seller assurances, 919–920
- Debt discount rates, 284
- Debts
 - ability to pay, 852–853
 - entity's debt in defining insolvency, 844–845
- Debt-to-equity ratio, 849
- Declarant unavailable, admissible evidence and, 30–31
- Defamation
 - damages for costs expended to mitigate, 285–286
 - Internet and social media analytic tools for damage calculations, 561–575
- Defective specifications, construction claims and, 392
- Defective work, construction claims and, 393
- Defend Trade Secrets Act (DTSA)
 - available damage remedies under, 522–527
 - overview, 520–522
- Delaware, expert gatekeeping opinions of, 143
- Delay claim, construction project
 - as-built schedule method, 386, 387–388
 - as-planned method, 384–385
 - defined, 383–384
 - determining responsibility for delay, 384–388
 - Eichleay formula, 389–390
 - pricing impact of delay, 388–390
 - types of, 383
 - update impact method, 388
- Demand, patent infringement cases, 497–499
- Dependent property, 806–807
- Depositions
 - cost of, 76–77, 80–81
 - defined, 19
 - of experts, financial
 - decision not to take deposition, 80–81
 - decision to take deposition, 81
 - example questioning scenario, 83–86
 - issues of privilege in, 86–87
 - motions to exclude testimony, 81–83
 - of experts, general considerations
 - discovery of files of testifying expert, 77–78
 - just and reasonable fees, 76–77
 - notice duces tecum, 78
 - practice of taking discovery depositions, 78–79
 - procedural vehicle for discovery depositions, 75–76
 - scope of disclosure and immunity, 77–78
 - trial depositions, 79
 - using discovery deposition at trial, 79
 - ground rules for, 20
 - types of
 - corporate depositions, 19
 - expert depositions, 20
 - nonparty witness depositions, 19
 - party depositions, 19
 - witness conduct, 20–21
- Designated limits, business interruption insurance, 811
- Design-bid-build project system, 378
- Design-build project method, 378
- Design patent infringement, 554–555
- Differing site conditions, construction claims and, 392
- Digital stored information disclosure rule, 23
- Dilution, franchise litigation, 450
- Diminution in value after negative event, 972
- Direct damages, in post-acquisition disputes, 929
- Direct examination, 25
- Direct physical damage, as trigger for business interruption coverage, 802–804
- Discounted cash flow (DCF) model, 282, 921
 - formula for valuation, 293
 - intellectual property valuation, 485
- Discounting future lost profits to measure damages, 291–298
 - calculating, 293–296
 - investment rate of return, 294–295
 - risk adjusted discount rate, 295–296
 - safe rate of return, 294

- discounting to date of trial or injury, 296–297
- discount rate as safe rate of return, as matter of law, 294
- in nominal and real dollars, 298
- objective of compensatory damage, 291–292
- prejudgment and post-judgment interest, 292
- time value of money, 291
- using hindsight (Book of Wisdom), 297–298
- Discount methods, personal injury and wrongful death economic damages, 736–737
- Discount rates
 - alternative to challenging
 - appellate review of discount rate, 311
 - Dubert challenges based on selection of, 311–312
 - judgment as matter of law, 310–311
 - based on commensurate with risk receiving lost profits, 295–296
 - define, 292
 - defining insolvency, 846
 - in lost business value vs. lost profit claim, 283–284
 - mentioned in opinions but not discussed, 310
 - other opinions discussing, 309
 - personal injury and wrongful death economic damages, 736
 - as rate of return from investing award, 294–295
 - reinvestment rate, 309
 - risk adjusted discount rate, 295–296
 - risk-free rate, 306–308
 - cases allowing, 301–304
 - cases requiring, 304–309
 - yield on Treasury securities as, 303–304
 - as safe rate of return, as matter of law, 294
- Discovery
 - American Arbitration Association rules, 23–24
 - devices of, 17–24
 - depositions, 19–21
 - interrogatories, 18
 - requests for admissions, 19
 - requests for production of documents, 18
 - of expert's report, 43–46
 - financial experts assistance with e-discovery, 70–72
 - notable federal rules on
 - digitally or electronically stored information, 23
 - expert designations, 22–23
 - expert report, 22–23
 - initial disclosures, 21–22
 - privilege, 21
 - purpose of, 17
- Discovery depositions
 - of experts, financial
 - decision not to take deposition, 80–81
 - decision to take deposition, 81
 - example questioning scenario, 83–86
 - issues of privilege in, 86–87
 - motions to exclude testimony, 81–83
 - of experts, general considerations
 - discovery of files of testifying expert, 77–78
 - just and reasonable fees, 76–77
 - notice duces tecum, 78
 - practice of taking discovery depositions, 78–79
 - procedural vehicle for discovery depositions, 75–76
 - scope of disclosure and immunity, 77–78
 - trial depositions, 79
 - using discovery deposition at trial, 79
- Discretion
 - equitable discretion, 706, 707
 - measuring unjust enrichment and, 682
- Disgorgement, 653
 - breach of fiduciary duty, 881–883
 - by default, 692, 701–703
 - gross
 - cases of, 704–707
 - FTC claims for gross disgorgement, 707–721
 - gross, 692
 - profit vs. advantage, 692–694
 - as term, 620, 692
- Disgorgement of profit
 - in IP damage valuation, 488–489
 - in remedies of equity, 604, 605, 606
 - term of, 609–610
- Disloyal agents, indemnity, 632, 696–697
- Disloyal competition, 900–901
- Disloyalty, forms of
 - billing practices, 903–904
 - confidentiality, 902–903
 - conflicts, 898–899
 - disloyal competition, 900–901
 - duty to disclose, 902
 - secret profit, 902
 - self-dealing, 901
- Disruptions, construction projects, 390–391
- District of Columbia, expert gatekeeping opinions of, 144
- Diversity jurisdiction, defined, 15
- Dobbs, Dan B., 624, 634, 636
- Doctrine of adequate remedy, 608–609
- Doctrine of avoidable consequences, 215, 236–237
- Documentation
 - economic damages in employment litigation, 753–754
 - personal injury and wrongful death economic damages, 728–730
- Documents
 - access to records in business interruption claim, 822–824
 - for construction claims, 379
 - for internal investigation
 - categories of, 776–777
 - establishing control of, 778–779
 - public document review, 780–781
 - requests for production of, 18
- Dollar-for-dollar damages, 930
- The Dollar Value of a Day*, 738
- Domicile, determining, 427
- Double counting of repair costs, 969
- Dow Jones Industrial, robustness test and, 951
- Drexel Burnham Lambert Inc., 861, 862
- Duces tecum, 78
- Duplicativeness, 914
- Duties after loss, 819–820
- Duty to disclose, breach of, as form of disloyalty, 902
- Duty to preserve
 - ESI and litigation hold, 49–52
 - spoliation of evidence and, 39–40

E

- Early-stage companies. *See* New businesses, lost profits; New business rule
- Earnings before interest, taxes, depreciation, and amortization (EBITDA), 850
- Earnings growth rate, personal injury and wrongful death economic damages, 731–732
- Earnout payments
 - characteristics of, 922–924
 - disputes over
 - measurement of performance, 925–926
 - post-closing accounting methodologies, 926–927
 - post-closing operation of business, 927–928
- Easterbrook, Frank, 177, 305, 306–307
- Eating establishments lost profits analysis, 413–422
 - establishing causation for losses, 415–416
 - examples cases of, 417–418
 - financial performance measures, 414–415
 - forensic considerations, 416
 - general background of restaurant industry, 413–414
 - introduction, 413
 - notable case law relating to, 419
 - restaurant industry resources, 418–419
 - valuation information request (VIR) checklist, 420–422
- Economic data, lost profit analyses and, 257, 270
- Economic profit, 850
- Economic Report of the President*, 732
- Economists
 - discovery depositions of, 75–87
 - experience in, as expert qualification, 172–174
 - professional standards, 9–10
- Effective tax rate, 732
- Efficiency ratios, 849
- Efficient market hypothesis, 941–944
- Eichengrun, Joel, 640
- Eichleay formula, 389–390
- 8th Circuit, expert gatekeeping opinions of, 135–136
- Electronically stored information (ESI)
 - business records, 29
 - circumstances for preservation, 62–65
 - claw back agreement, 66–67
 - cost of producing, 65–66
 - custody and control issues of, 49
 - defined, 61
 - disclosure of, 23
 - financial experts assisting with e-discovery, 70–72
 - inadvertent disclosure of privileged information, 66–67
 - management of, during litigation, 67–68
 - metadata of, 66
 - motion to suppress, 67
 - preservation letter, 63
 - production procedures for, 65–67
 - protocol for preserving, 63–64
 - requirements of, as trial evidence, 68–70
 - Sedona Principles, 62, 67
 - spoliation issues, 46–57
 - concerns and obligations of counsel, 56–57
 - duty to preserve and written litigation hold, 49–52
 - failure to preserve evidence, 52
 - reasonable requirement, 48
 - recommendations, 57
 - restoration of data, 52–53
 - safe harbor rule, 47–48
 - sanctions/remedies, 53–56
 - storage locations, 61
- Electronic evidence, analysis of, by forensic specialist, 768
- Electronic medical records, value of, 362
- 11th Circuit, expert gatekeeping opinions of, 137–139
- Elizabethan fraudulent transfer, 837–838
- Emergency assistance standard, 651–652, 700
- Employees, fiduciary duty of, 895–898
- Employment Cost Index*, 732
- Employment damages, in common-law cases
 - contract damages
 - breach of contract other than termination, 746
 - consequential damages, 747
 - duty of mitigation, 747
 - injunctive relief, 748
 - noneconomic damages, 747
 - termination in breach of contract, 745–746
 - damage calculations
 - conclusion, 756
 - documentation, 753–754
 - fringe benefits, 755
 - loss period, 755
 - lost earnings, 754–755
 - medical expenses, 756
 - mitigating earnings, 755
 - overview of, 753
 - references, 756–757
 - taxes, 755
 - promissory estoppel, 748
 - taxation, 748–750
 - tort damages, 748
- Engagement acceptance, internal investigation, 771–772
- Engineer, procure, and construct (EPC) project, 378
- Engineering applications, avoided cost estimation, 236
- Enstar Group, 860–867
- Entire market value rule
 - patent infringement cases, 497
 - royalties, 510–511
- Entity's debts, in defining insolvency, 844–845
- Equitable claim, franchise litigation, 456–457
- Equitable recoupment
 - as counterclaim, 459
 - franchise damages, 458–459
- Equitable remedy, 718–719, 859
- Equity discount rates, 284
- Escalation, construction claims, 388
- Established royalties, 506–507
- Estimate of loss, reasonable certainty requirement
 - certainty injured party has suffered some damage, 101–106
 - within defined range, 99–101
 - new business rule, 94, 97
 - number of difficult-to-quantify risks in, 98–99
 - track record of plaintiff, 97–98
 - verifiable data to support, 95–97
- Estimation period, 947

- Estimation window, 947, 955
- Ethical concerns, internal investigation and, 784
- Evans, Cyndi, 875–876
- Event studies in security litigation, 939–960, 964–965
 - efficient market hypothesis, 941–944
 - impact of *Halliburton II* on, 939–941
 - methodology basics
 - common error in inference, 949–950
 - Fifth *Crammer* factor, 950–951
 - goal of study, 944–947
 - inference and significance in, 948–949
 - performing study, 947–948
 - methodology complications
 - alternative securities, 959–960
 - confounding events, 957–958
 - subjectivity of study, 958–959
 - trading halts/trading delays, 958
 - robustness tests
 - alternate market indexes, 951
 - alternative tests, 956
 - arithmetic vs continuously compounded returns, 954
 - autocorrelation, 955–956
 - estimation windows, 955
 - heteroskedasticity, 956
 - industry indexes and market bubbles, 951–952
 - multiple indexes, 952–953
 - outlier analysis, 955
- Event window, 947
 - confounding events and, 957–958
- Evidence. *See also* Federal Rules of Evidence; Rules of evidence
 - adequate consideration of all data, 270–271
 - admissible evidence, 27
 - best available, and reasonable certainty requirement, 111–113
 - data and information generally available from parties
 - business history and experience, 262–263
 - capacity limitations, 262–263, 265
 - competition's impact, 265
 - other sources of evidence from parties, 265–266
 - plaintiff's/defendant's subsequent experience, 263
 - plaintiff's experience at other locations/similar business, 263–264
 - prelitigation profit projections, 264
 - duty to preserve, 39–40
 - ESI requirements for trial evidence, 68–70
 - failure to preserve, 52
 - forensic
 - admissibility of, 322–323
 - cases demonstrating use of, 323–327
 - conditions that require, 318–322
 - defined, 317
 - overview of, 317–318
 - gathering, during internal investigation, 780
 - hearsay, 322–323
 - industry and economic data, 268–270
 - laboratory analysis of physical and electronic evidence, 768
 - market and demand for plaintiff's product, 267–268
 - reasonable certainty requirement, 261
 - relevant, 27
 - spoliation of
 - defined and explained, 35–43
 - electronic stored information (ESI) issues, 46–57
 - expert-related issues, 43–46
 - survey-based evidence, 545–557
- Examination under oath (EUO), 826–829
- Ex ante approach, discounting future lost profits and, 296–297
- Excusable and compensable, 383
- Excusable but not compensable delays, 383
- Exemplary damages, damages for trade secret misappropriation, 526–527
- Expectancy damages, in post-acquisition disputes, 929
- Expectation damages, 277–278
- Expense-based metrics for eating establishment, 414
- Expenses
 - deductibility of, in lost business value vs. lost profit claim, 279–280
 - expense reimbursement in compensation forfeiture, 904
 - forecasting, 258
- Expert depositions, 20
 - financial experts
 - decision not to take deposition, 80–81
 - decision to take deposition, 81
 - example questioning scenario, 83–86
 - issues of privilege in, 86–87
 - motions to exclude testimony, 81–83
 - general considerations
 - discovery of files of testifying expert, 77–78
 - just and reasonable fees, 76–77
 - nontestifying experts, 75–76
 - notice duces tecum, 78
 - practice of taking discovery depositions, 78–79
 - procedural vehicle for discovery depositions, 75–76
 - scope of disclosure and immunity, 77–78
 - trial depositions, 79
 - using discovery deposition at trial, 79
- Expert report, 22–23
- Experts. *See also* Expert testimony
 - assumptions of, in testimony, 188–198
 - Daubert* test, 121–123, 171
 - ESI and assisting with e-discovery, 70–72
 - expert's report
 - discovery of, 43–46
 - required contents, 44
 - trial-preparation protection, 45
 - failure to deal with inconsistent facts, 198–201
 - Federal Rule of Civil Procedure 26, 21, 22–23
 - financial, motions to exclude, 121–168
 - basic legal predicate, 121–123
 - expert gatekeeping by jurisdiction, 126–168
 - by Federal Circuit, 127–140
 - by state, 140–168
 - factors to consider in making motion, 123–124
 - format for pretrial gatekeeping, 123
 - methodologies flaws in expert opinion, 124–126
 - methodologies for expert gatekeeping, 123
 - methodology used by, 177–180
 - nontestifying, 75–76
 - privilege and, 21
 - professional standards for, 7–10
 - qualifications of
 - damage calculations experience, 176
 - experience in accounting, finance, economics, 172–174
 - necessity of financial experience, 174
 - plaintiff's industry experience, 174–176
 - in relation to amount at stake, 176
 - spoliation of evidence and, 43–46
 - trial preparation evidence rules, 71

Expert testimony

- bases of opinion testimony by experts, 322–323
- checklist for testing admissibility of, 81–82
- disclosure of, 22–23
- motions to exclude
 - assumptions, 188–198
 - data, 180–188
 - expert qualifications, 172–176
 - failure to deal with inconsistent facts, 198–201
 - methodology, 177–180
 - success rate for, 82–83
 - trends in, 81–83
- professional standards for experts, 7–10
- when admissible, 27–28

Ex-post approach, discounting future lost profits and, 296–297

Extended period of indemnity, 817–818

External validity, in survey-based research, 556

Extra expense coverage, 799, 818–819

Extra work, construction claims and, 391

F

Facebook, 565

- advertiser charges, 573
- analyzing responses and impressions, 573, 574

Fact and amount rule, 94, 101–106, 110

Fact-finding and analysis phase of internal investigation, 780–786

- addressing ethical concerns, 784
- determine order of interviews, 781
- evidence gathering, 780
- execute investigation plan, 780
- interview knowledgeable persons, 781–784
- interview steps, 781–782
- public document review and background investigation, 780–781
- structure of interviews, 781
- types of interviews, 781–784

Fact-finding interviews, 781–782

Facts

- assumptions on disputed facts, 194–195
- experts failure to deal with inconsistent, 198–201

Failure to preserve evidence, 52

Fair market value

- calculating damages for right of publicity infringement, 431–433
- defining insolvency, 845
- in estimating reasonable equivalent value, 840–842

Fair market value standard, 276–277

Fair value option for financial assets and liabilities, 844–845

Faithless servant doctrine, 878, 879, 890

False designation of origin, franchise litigation, 450

Farm equipment, franchise litigation and, 465

Federal Acquisition Regulations (FAR), 367

- cost reimbursable contracts, 369–370
- fixed priced contracts, 368–369
- Termination for Convenience clause, 373, 374
- unallowable cost under FAR Part 31, 372

Federal agency, unjust enrichment claims, 652–660

Federal Arbitration Act, 829

Federal circuit, expert gatekeeping opinions, 126–140

Federal courts

- jurisdiction of, 13, 15
- lawsuit initiation in, 15
- organization of, 13–14

Federal Energy Regulatory Commission, 653

Federal question, defined, 15

Federal Rules of Civil Procedure

- disclosure of digitally or electronically stored information, 23
- disclosure of expert testimony, 22–23
- electronically stored information, 62, 64, 66
- expert designations, 22–23
- expert report, 22–23, 44–45
- initial disclosure, 21–22
- Rule 26, 21–23, 44–45
- Rule 26(b)(2)(C), 64
- Rule 26(b)(4), 71, 76
- Rule 30, 78, 79
- Rule 30(b)(6), 19
- Rule 32, 79
- Rule 34(a)(1)(A), 62
- Rule 35(b), 76
- Rule 37(e), 47–48, 52–53, 53–56
- safe harbor rule, 47–48
- trial preparation, 71

Federal Rules of Evidence

- admissible evidence, 27
- bases of opinion testimony by experts, 322–323
- electronically stored evidence, 66–67
- expert testimony, 27–28, 171
- hearsay, 28–29
 - exceptions to, 29–31
- leading questions, 25–26
- progress of trial, 24–25
- Rule 502, 66–67
- Rule 611, 25–26
- Rule 701, 31
- Rule 702, 31, 69–70, 171, 270–271
- Rule 703, 180, 184, 185, 270–271, 322–323
- Rule 803, 29, 30
- Rule 804, 30
- Rule 902, 29
- Rule 1006, 31

Federal Trade Commission (FTC), claims for gross disgorgement, 707–721

Fees, attorneys', franchise litigation and, 465–466

Fiduciary duty. *See also* Breach of fiduciary duty
defining who is fiduciary, 895–898

5th Circuit, expert gatekeeping opinions of, 131

Fifth *Cammer* factor, 950–951, 959, 960

Finance, experience in, as expert qualification, 172–174

Financial analysis, for profit apportionment analysis for IP infringement, 590–591

Financial experts

- depositions
 - decision not to take deposition, 80–81
 - decision to take deposition, 81
 - example questioning scenario, 83–86
 - issues of privilege in, 86–87
 - motions to exclude testimony, 81–83
- motions to exclude, 121–168
 - basic legal predicate, 121–123

- expert gatekeeping by jurisdiction, 126–168
 - by federal circuit, 127–140
 - by state, 140–168
- factors to consider in making motion, 123–124
- format for pretrial gatekeeping, 123
- methodologies flaws in expert opinion, 124–126
- methodologies for expert gatekeeping, 123
- professional standards, 7–10
- Financial forecast
 - defined, 243
 - effective, 245
- Financial forensic services, 763–795
 - forensic defined, 763
 - indicators of fraud, 769
 - internal investigation
 - analysis of financial transactions, 768
 - audit procedures compared to, 765–769
 - confidential sources, 768
 - defined, 763
 - forensic specialist role in, 770–771
 - interview of knowledgeable persons, 768
 - laboratory analysis of physical and electronic evidence, 768
 - physical and electronic surveillance, 768
 - public document reviews and background investigation, 767–768
 - purposes of, 763–764
 - undercover operations, 768
 - overview of, 763–764
 - white-collar crimes and, 764–765
- Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 265
- Financial projection, 243. *See also* Projection, financial
- Financial ratios, 847–850
 - efficiency, 849
 - liquidity, 847–848
 - return, 850
 - solvency and leverage, 848–849
- Financial statement fraud, 765
- Financial statements
 - analytical review of balances, for internal investigation, 793–795
 - audited, 183
 - automobile dealerships and, 406–407, 408–409
 - compiled, 182
 - information that can be extracted from, 847
 - reliability of data, 182–183
 - reviewed, 182
- Financial transactions, analysis of, by forensic specialist, 768, 786–787
- Firm fixed price contract, 368
- Firm fixed price level of effort contract, 369
- 1st Circuit, expert gatekeeping opinions of, 127–128
- Fixed ceiling with retroactive price redetermination contract, 369
- Fixed compensation, 964
- Fixed costs
 - avoided cost estimation, 235–236
 - breach of contract damages, 649
 - construction projects and, 378
 - defined in relation to unjust remedy, 620–622
 - emergency assistance standard, 651
- Fixed priced government contracts, 367–368, 368–369
- Fixed-price incentive contract, 369
- Fixed price with economic price adjustment contract, 368–369
- Fixed price with prospective price redetermination contract, 369
- Florida, expert gatekeeping opinions of, 144–145
- Flow down clauses, 373
- Food and Drug Administration (FDA), gross disgorgement, 709–710, 713, 718, 719
- Ford, 402
- Forecast, financial
 - compared to projection, 244
 - defined, 243
- Forensic accounting, defined, 317
- Forensic auditors, 317
- Forensic economist, professional standards, 10
- Forensic evidence, 317–327. *See also* Financial forensic services
 - admissibility of, 322–323
 - cases demonstrating use of
 - apparel manufacturer, 325–326
 - metal products manufacturer, 326–327
 - restaurant case, 323–325
 - conditions that require, 318–322
 - defined, 317
 - eating establishments lost profits analysis, 416
 - employment litigation, 753–754
 - forensic defined, 763
 - overview of, 317–318
 - personal injury and wrongful death, 728–729
- Forensic expert, computer, ESI testimony by, 68–70
- Forensic specialist
 - engagement acceptance
 - conflicts of interest, 771
 - integrity and objectivity of, 771–772
 - fact-finding investigation phases, 780–786
 - initial allegation response, 772–773
 - role of, in internal investigations, 770–771
- Foreseeability, as element of lost profit case, 212–213
- Former employees, internal investigation and, 784
- Forum clause, business interruption claims, 830
- 4th Circuit, expert gatekeeping opinions of, 130–131
- Fracturing, 914
- Franchise, 437–480
 - compensatory and consequential damages, 444–445
 - economics analysis of litigation damages for, 466–473
 - equitable recoupment, 458–459
 - franchise registration and relationship state laws, 455–458
 - damages for equitable claims, 456–457
 - fraudulent inducement, 457–458
 - quantum meruit, 457
 - unclean hands, 457
 - guiding principles for economic damage analysis
 - mind the money factors, 476
 - profit contribution, 474–476
 - ride the escalator, 476
 - understand abnormal, study normal, 477–478
 - hypothetical parts and services case, 439–444
 - injunctions, 460–462
 - mandatory, 461–462
 - permanent, 461
 - preliminary, 461

- Lanham Act
 - attorneys' fees and injunction relief, 452–453
 - calculating damages, 450–451
 - counterfeit marks, 450
 - dilution, 450
 - extending liability to corporate officer, 452
 - false designation of origin, 450
 - recent and definitive ruling on interpretation, 449–450
 - treble damages, 451
- liquidated damages and penalties, 454–455
- lost future profit, 445–448
 - estimation of future lost profit, 447–448
 - Sealy* and franchise law, 446–447
- opportunity cost and compulsion, 473–474
- punitive damages, 462–463
- references, 479–480
- relationship in automobile dealerships
 - franchise agreements, 400
 - franchise damages, 401–403
 - franchise laws, 401
- rescission, 459–460
- unique regimes
 - alcohol distribution, 465
 - attorneys' feed, 465–466
 - construction and farm equipment, 465
 - damages under PMPA, 465
 - injunctions under PMPA, 464–465
- Frank, Jerome, 426
- Fraud
 - categories of, and statutes pertaining to, 765
 - counter-restitution and, 635–636, 704–706
 - fraud triangle, 769
 - gross disgorgement, 704–706
 - indicators of, 769
 - lost profit claims, 207–208
 - mitigate risk of, 769
- Fraud on the market, 940, 941. *See also* Event studies in security litigation
- Fraudulent conveyance, 837
- Fraudulent inducement, franchise litigation, 457–458
- Fraudulent transfer claims, 837–853
 - background of, 837–838
 - defining insolvency, 842–853
 - ability to pay debts, 852–853
 - balance sheet test, 844
 - cash flow forecasts, 843
 - discount rates, 846
 - entity's debts, 844–845
 - fraud in fraudulent conveyance, 844
 - key financial ratios, 847–850
 - liquidation value, 845–846
 - overview, 842–843
 - property at fair valuation, 845
 - return on assets, 846
 - unreasonably small capital, 851–852
 - when and why insolvency occurred, 844
 - overview of, 837
 - preferential period, 838
 - reasonably equivalent value, 839–842
 - identifying value, 839
- Friendly witness, 25
- Fringe benefits
 - economic damages in employment litigation, 755
 - personal injury and wrongful death economic damages, 733–734
- Front pay, 755
- Fruits of advantage gained, 623, 641–643. *See also* Advantage
- Frye* rule, 122
- Full-absorption approach of unjust enrichment, 619, 692, 694
 - attributable expenses, 622–623
 - breach of contract damages, 650
 - compared to incremental income approach, 678–682
 - emergency assistance standard, 652
 - Levin* case, 664
 - overview of, 614–615
 - paradox of offsetting allocated overhead, 616–618
- Full absorption cost allocation, 371–372
- Full function life expectancy, 738
- Functional patent infringement, 552–554
- Funeral expenses, wrongful death economic damages, 739
- Future lost earnings, 738
- Future lost profit, estimation of, and franchise litigation, 447–448
- Future lost profits, 291
- G**
- Gatekeeper role, of judges
 - Daubert* test, 121–123
 - Daubert* test and, 171
- Geiger, Judge, 614, 695
- General damages, foreseeability and, 212–213
- Generally accepted accounting principles (GAAP)
 - balance sheet test and, 844
 - contingent liabilities, 845
 - disputes over post-closing adjustments and, 924–925
 - earnout disputes, 926–927
 - fair value option for financial assets and liabilities, 844–845
- General Motors, 400, 402, 403
- General sign test, 956
- Geometric average or compound annual growth rate (CAGR), 251–253
 - steps in calculating, 252
- Georgia, expert gatekeeping opinions of, 145–146
- Georgia-Pacific* factors, 508, 533
 - list of, 511–512
 - overview of, 511–513
 - qualitative, 514
 - quantitative, 513–514
 - similarity to relief from royalty method, 533–534
- Gittlitz, Ian, compensation forfeiture case, 875–877
- Gleijser test, 956
- Going concern appraisal, 277
- Going concern value, 845–846
- Gold, Alan S., 840
- Good Samaritan, 651
- Goodwill, as benefit, in unjust enrichment, 625
- Google, 562, 563
 - pay-per-click rate, 573
 - using Google analytics to defend against celebrity name/likeness, 571–572

Government, patent infringement claims against, 516

Government contracts industry, 366–370

- contract types
 - cost reimbursable contracts, 369–370
 - fixed priced contracts, 368–369
 - other, 370
 - overview, 367–368
- cost analysis
 - effect of indirect costs reimbursed by government, 372
 - full absorption vs variable/avoided cost analysis, 371–372
 - unallowable cost under FAR Part 31, 372
- lost profit disputes and, 373–374

Grassgreen, Richard, compensation forfeiture case, 860–867

Gray, John Clinton, 426

Griesa, Judge, 877, 878, 879, 895

Gross disgorgement, 692

- cases of, 704–707
 - fraud, 704–706
 - outlaws, 706–707
- FTC claims for, 707–721

Gross profit margin, 850

Growth rate

- arithmetic average, 251–253
- as evidence of lost profits, 262–263
- factors in maintaining high levels of, 255–256
- factors to consider when averaging, 251
- geometric average or compound annual growth rate (CAGR), 251–253
- law of large numbers, 255
- median, 251–253
- in physician damage calculations, 358–360
- stable growth period, 256
- weighted averages, 251

Grupo analysis, 653–654, 655–656, 659, 682, 708–709

Guides to the Evaluation of Permanent Impairment, 735

H

Hand, Judge, 661, 662–666, 679, 700, 703

Hawaii, expert gatekeeping opinions of, 146

Healthcare Common Procedure Coding System (HCPCS) codes, 352–353

HealthSouth Corp., 909–911

Healthy Life Expectancy Tables, 738

Hearing on the merits, 24

Hearsay evidence, 322–323

Hearsay rule

- exceptions to
 - business records, 29
 - commercial publications, 30
 - declarant unavailable, 30–31
 - learned treatises, 30
 - summary of business records, 31
- hearsay defined, 28–29

Heteroskedasticity, 956

Hindsight, discounting future lost profits, 297–298

HIPAA (Health Insurance Portability and Accountability Act), 362, 364

Historical information

- business information/history as evidence, 262–263
- common techniques for comparing, 250–251
- valuing business interruption, 831–832
- when past growth is indicator of future, 251

HITECH (Health Information Technology for Economic and Clinical Health Act) Act, 362

Holmes, Judge, 902

Home-office costs, construction claims, 389

Horne, Mark J., 344

Hostile witness, 25

Household services, personal injury economic damages, 738

Housing bubble, 951

Hurdle rates, 284

Hypothetical negotiation, 508–509

I

ICD Publications Inc. (ICD), 875–877

Idaho, expert gatekeeping opinions of, 147

Illinois, expert gatekeeping opinions of, 147

Illiquidity, 960

Impartiality, forensic specialist and, 771–772

Implied statutory jurisdiction

- gross disgorgement, 707–711
- of unjust enrichment, 619–620

Implied waiver, 869

Incidental damages, in post-acquisition disputes, 929

Income approach to purchase price valuation, 921

Income taxes

- effect of, in lost business value vs. lost profit claims, 280–281
- excluded from benefit in unjust enrichment, 625–626

Inconsistent statements, 28

Incremental income approach of unjust enrichment, 694

- attributable expenses, 622–623
- breach of contract damages, 649
- compared full-absorption approach, 678–682
- fixed costs, 621
- Hamil* case, 667
- paradox of offsetting allocated overhead, 616–618
- patent infringement damages, 650–651

Indemnification provisions, 920

Independent adjuster, business interruption claim, 828–829

Indiana

- expert gatekeeping opinions of, 147–148
- right of publicity infringement, 428

Indicator variable, 965

Industry data, lost profit analyses and, 257

- comparable experience of others, 268–269
- trade or industry association data, 269–270

Industry experience, as expert qualification, 174–176

Industry indexes, market bubbles and, 951–952

Inference

- common error in, 949–950
- in event studies, 948–949

Informational event, confounding, 945–946

- Information-seeking interviews, 781–782
- Infringements, of personality's right of, 425–436
- Infringements of intellectual property, 199
 - Internet IP, and Internet media analytic tools for damage calculations, 561–575
 - unjust enrichment remedy, 613
- Infringing compensation, 625
- Infringing expenses
 - disgorgement by default, 701–703
 - in unjust enrichment, 636–638
- Infringing sales, 536–537
- Initial allegation response, in internal investigation, 772–773
- Initial disclosure, 21–22
- Initial period of restoration, 815–817
- Injunctions
 - franchise litigation and, 460–462
 - mandatory, 461–462
 - permanent, 461
 - under Petroleum Marketing Practices Act (PMPA), 464–465
 - preliminary, 461
 - as remedy in equity, 603–604
- Injunctive relief, 620, 627, 629–630, 691, 709–710, 899, 902–903
 - in employment cases, 748
 - franchise litigation and, 452–453
- Insolvency, defining, 842–853
 - ability to pay debts, 852–853
 - balance sheet test, 844
 - cash flow forecasts, 844
 - discount rates, 846
 - entity's debts, 844–845
 - fraud in fraudulent conveyance, 844
 - key financial ratios, 847–850
 - liquidation value, 845–846
 - overview, 842–843
 - property at fair valuation, 845
 - return on assets, 846
 - unreasonably small capital, 851–852
 - when and why insolvency occurred, 844
- Insurance, business interruption insurance coverage, 211, 799–833
- Integrated delivery system, 357–358, 364
- Integrated provider, 364
- Integrity, forensic specialist and, 771–772
- Intellectual property. *See also* Patent infringement damages
 - copyright damages, 540–541
 - defendant's profits, 541
 - example cases, 541
 - overview of, 539–540
 - plaintiff's actual damages, 540–541
 - lost profits, 540
 - reasonable royalty, 540
 - summary, 542
 - counter-restitution for monetary remedies in equity, 691
 - Internet analytic tools for IP infringement and defamation, 559–575
 - lost profit claims, 208–210
 - overview, IP valuation/damages measurements
 - discounted cash flow (DCF) model, 485
 - disgorgement of offending party's profits, 488–489
 - lost profits of injured party, 487–488
 - reasonable royalties, 488
 - residual income model, 486–487
 - summary, 489
 - valuing operating company's IP, 485–487
 - profit apportionment for infringement damage calculations, 577–597
 - right of publicity infringements, 425–436
 - survey-based research in damage estimation, 545–557
 - case studies of, 551–555
 - federal judiciary guidelines, 545–549
 - industry guidelines, 549–551
 - overview, 545
 - special concerns for, 555–557
 - trademark damages, 531–539
 - calculating damages, 535–539
 - defendant's profits in, 534–535
 - plaintiff's actual damages
 - name recognition that increases product's prices, 532
 - name recognition that increases sales volume, 531
 - saved time and costs, 532
 - summary of, 539
 - types of actual damages, 532–534
 - lost profits, 532–533
 - reasonable royalty, 533–534
 - trade secret damages, 519–527
- Intentional conduct, remedies for ESI spoliation, 54–55
- Intentional torts, lost profit claims, 208
- Interest coverage ratio, 849
- Interest rate
 - defined, 292
 - post-judgment interest, 292
 - prejudgment interest, 292
- Internal controls, COSO Framework, 769
- Internal investigation
 - analytical techniques
 - analytical review of financial statement balances, 793–795
 - Benford's law, 793
 - cash sources and uses, 790
 - chronology of events and facts sheet, 790
 - data-mining procedures, 792–793
 - journal entry/subledger reviews, 795
 - net worth method, 790
 - proof-of-cash method, 790
 - ratio analysis, 793–795
 - reperformance, 792
 - reverse proof, 793
 - sampling techniques, 790–791
 - areas of
 - analysis of financial transactions, 768
 - audit procedures compared to, 765–769
 - laboratory analysis of physical and electronic evidence, 768
 - physical and electronic surveillance, 768
 - common mistakes in, 787–789
 - common types of investigations, 770
 - confidential sources, 768
 - defined, 763
 - engagement acceptance, 771–772
 - conflict of interest, 771
 - integrity and objectivity, 771–772
 - forensic specialist role in, 770–771
 - initial allegation response in, 772–773
 - interview of knowledgeable persons, 768
 - narrower vs. broader scope of, 775–776
 - phases/tasks of, 774–786
 - concluding investigation, 784

- creating report, 784–786
- develop communication plan and line of reporting, 779–780
- establishing control of documents/files, 778–779
- establish team, 775
- evidence gathering, 780
- fact-finding and analysis, 780–786
- interviewing, 781–784
- planning and communication, 774–780
- preliminary data gathering, 777
- technology specialist tasks, 777–778
- work plan and tasks, 775–776
- public document reviews and background investigation, 767–768
- purposes of, 763–764
- undercover operations, 768
- Internal Revenue Code, Section 104, 732, 755
- Internet and social media analytic tools for damage calculations, 559–575
 - key concepts
 - Internet use statistics, 561–562
 - optimization, 563–565
 - search, 562–563
 - social media platforms, 565
 - overview, 561, 574–575
 - valuation and damage analyses
 - identifying IP misuse, 566–568
 - Internet damages matrix, 570
 - supplementing accepted valuation methods, 569–570
 - to support unjust enrichment calculations, 570–571
 - using analytics to support celebrity endorsement relief from pay-per-click claim, 572–573
 - using Google analytics to defend against celebrity name/likeness, 571–572
 - using location-specific search statistics to determine confusion in trademark infringement claim, 573–574
- Internet bubble, venture-backed companies and, 344, 345
- Internet IP infringement, Internet and social media analytic tools for damage calculations, 561–575
- Interrogatories, 18
- Interruption, as trigger for business interruption coverage, 800–802
- Interviews, during internal investigation
 - admission-seeking, 768
 - admission-seeking interviews, 782–783
 - determining order of interviews, 781
 - ethical concerns, 784
 - fact-finding or information-seeking interviews, 781–782
 - key points to every interview, 783
 - key steps of, 781–782
 - of knowledgeable persons, 768, 781–784
 - memoranda of interviews, 784
 - structure of, 781
- Invention, patented technology in patent infringement damages, 494–495
- Inventory turnover, 849
- Investigative auditors, 317
- Investment rate of return, 294–295
- Iowa, expert gatekeeping opinions of, 148–149
- IP misuse, identifying, 566–568. *See also* Internet and social media analytic tools for damage calculations
- Irreparable injury, doctrine of, 894–895
- J**
 - Journal entry, review of, for internal investigation, 795
 - Judgment as matter of law
 - choice of discount rate, 310–311
 - discount rate as safe rate of return, 294
 - Judiciary Act, 654
 - Jurisdiction
 - choice of law, 26
 - diversity jurisdiction, 15
 - of federal courts, 13, 15
 - of state courts, 13
 - Jurisdiction in equity, of unjust enrichment, 619–620
 - Jury verdict pricing method, for construction claims, 382–383
 - Just and reasonable fees, 76–77
- K**
 - Kentucky, expert gatekeeping opinions of, 149
 - Key word searches, during internal investigations, 787
 - Kinder-Care Learning Centers Inc. (KCLC), 860–861
 - Known or knowable concept, business valuation, 284
 - Kozlowski, Dennis, compensation forfeiture case, 877–879
 - Krogman* factor, 943, 959
 - Krueger, Kurt V., 734, 735
 - Kull, Andrew, 691, 706
- L**
 - Laboratory analysis of physical and electronic evidence, 768, 786
 - Lanham Act, 209, 429, 434–435, 533, 551, 583, 643
 - franchise litigation
 - attorneys' fees and injunction relief, 452–453
 - calculating damages, 450–451
 - counterfeit marks, 450
 - dilution, 450
 - extending liability to corporate officer, 452
 - false designation of origin, 450
 - recent and definitive ruling on interpretation, 449–450
 - treble damages, 451
 - Law of large numbers, 255
 - Lawsuits
 - initiating, 14–15
 - scheduling order, 16–17
 - Lawyers, fiduciary claims against, 913–915
 - Laycock, Douglas, 608
 - Leading questions, 25–26
 - Learned treatise, as admissible evidence, 30
 - Legal malpractice, 913
 - Leveraged buyout, 846, 847
 - Leverage ratio, 848–849
 - Lewis, W. Cris, 183
 - Lien doctrine, 631–632
 - Life care planners, personal injury economic damages, 739–740
 - Limitation of Funds clause, 373, 374
 - Liquidated damages, franchise litigation, 454–455

- Liquidation value, defining insolvency, 845–846
 - Liquidity ratios, 847–848
 - Litigation hold, 49–52, 57
 - Logarithm transformation, 976–977
 - Loss. *See also* Estimate of loss
 - due to business interruption, 978–980
 - Loss of market, business interruption claims and, 833
 - Loss period
 - duration of, as assumption by expert, 195–197
 - economic damages in employment litigation, 755
 - Loss recovery period, in lost business value vs. lost profit claim, 281–283
 - Lost asset value, 116
 - Lost business value, 115
 - for new businesses, 345–346
 - Lost business value claim
 - compared to lost profits claim
 - deductibility of expenses in, 279–280
 - discount rates, 283–284
 - effect of income tax, 280–281
 - loss recovery period, 281–283
 - mitigation in, 285–286
 - overview, 278–279
 - post-breach events, 284–285
 - summary of differences, 287
 - wrongdoer rule, 278
 - consideration in making, 277–278
 - definition of value in, 276–277
 - introduction to, 275
 - recovering both lost profits and business value, 286
 - Lost earnings
 - economic damages in employment litigation, 754–755
 - personal injury and wrongful death economic damages, 730
 - Lost enterprise value, breach of fiduciary duty, 885
 - Lost future profits, franchise litigation, 445–446
 - Lost profits. *See also* Estimate of loss
 - automobile dealerships and, 403–404
 - best available evidence of, 111–113
 - breach of fiduciary duty, 884–885
 - copyright infringement, 540
 - defined, 207, 220–221
 - eating establishments, 413–422
 - government contracts and, 373–374
 - impairment on working capital and bonding capacity for contractors, 395–396
 - as net amount, 220
 - past and future defined, 291
 - in patent infringement cases, 495–502
 - sample of, model approaches, 238–239
 - social media analysis to support, 571
 - trademark infringement, 532–533
 - trade secret misappropriation, 523–524
 - Lost profits analyses, 219–239
 - consideration of mitigation, 236–237
 - definition of lost profits, 220–221
 - determining relevant damages period, 222–224
 - elements to consider in planning, 221–222
 - estimating avoided costs, 234–236
 - expense forecasting and, 258
 - growth rate considerations, 255–257
 - historical information uses, 250–253
 - industry and economic information considerations, 257
 - lost revenue estimates, 224–226
 - before-and-after method, 225–227, 246–247
 - factors to consider, 224–226
 - market model, 232–233, 249–250
 - other methods, 233–234
 - sales projection method, 231–232, 249
 - yardstick method, 227–231, 247–249
 - projections prepared in ordinary course of business, 254–255
 - Lost profits claims
 - compared to lost business value
 - deductibility of expenses in, 279–280
 - discount rates, 283–284
 - effect of income tax, 280–281
 - loss recovery period, 281–283
 - mitigation in, 285–286
 - overview, 278–279
 - post-breach events, 284–285
 - summary of differences, 287
 - wrongdoer rule, 278
 - consideration in making, 277–278
 - elements of cases
 - foreseeability, 212–213
 - mitigation, 215–216
 - proximate cause, 211–212
 - reasonable certainty, 214–215
 - establishing reliable foundation for, 261
 - recovering both lost profits and business value, 286
 - types of cases, 207–211
 - Lost revenue estimates, 224–226
 - before-and-after method, 225–227, 246–247
 - factors to consider, 224–226
 - market share model, 232–233, 249–250
 - other methods, 233–234
 - sales projection method, 231–232, 249
 - yardstick method, 227–231, 247–249
 - Lost volume sellers, 215
 - Louisiana, expert gatekeeping opinions of, 149–150
 - Loyalty, fiduciary duty and, 895–898
 - Lump-sum royalty, 509
- ## M
- Madoff, Bernie, 717
 - Maine, expert gatekeeping opinions of, 150
 - Management interviews, for profit apportionment analysis for IP infringement, 588–589
 - Mandatory injunctions, franchise litigation, 461–462
 - Manual for Complex Litigation*, sampling/opinion surveys, 546
 - Marginal tax rate, 732
 - Maritime law, lost profit claims, 210
 - Market bubbles, industry indexes and, 951–952
 - Market demand, as evidence in lost profit, 267–268
 - Market efficiency, five-factor test of, 943
 - Marketing material, for profit apportionment analysis for IP infringement, 592, 593
 - Marketing plan, franchise litigations and, 456
 - Market segment, in patent infringement cases, 499–500

- Market share analysis, as evidence for lost profit, 267
 - Market share damage, patent infringement cases, 502–503
 - Market share model, lost revenue estimates, 232–233, 249–250
 - Market valuation approach to purchase price valuation, 921
 - Martin, Judge, 666–668, 702
 - Maryland, expert gatekeeping opinions of, 151
 - Massachusetts, expert gatekeeping opinions of, 151–152
 - Materiality, initial allegation response and, 772–773
 - Mathematical certainty, 214
 - McCarthy on Trademarks and Unfair Competition*, 547
 - McCorkle, C. R., 633
 - McCormick, Charles T., 92, 95–96, 110–111
 - Measured mile calculation, 390–391
 - Measuring Damages Involving Individuals: A CPA's Litigation Service Guide With Case Studies* (Sharp), 729
 - Median growth rate, 251–253
 - Medical expenses
 - economic damages in employment litigation, 755
 - personal injury and wrongful death economic damages, 737
 - Medical Group Management Association (MGMA), 351
 - Medical records, value of, 362
 - Medicare
 - price per unit of service, 358–360
 - sustainable growth rate (SGR) formula, 359
 - Megra Partners, 861–867
 - Mendel, Perry, 860–867
 - Mere volunteer, 651
 - Mergers, insights/observations in disputes of, 936
 - Metadata
 - from ESI, 66
 - Internet search and, 564
 - Metal products manufacturer case, forensic evidence used in, 326–327
 - Methodology of experts, 177–180
 - failure to understand, 179–180
 - misuse of accepted methods, 178–179
 - Michigan, expert gatekeeping opinions of, 152
 - Milken, Mike, 861, 862
 - Minnesota, expert gatekeeping opinions of, 152–153
 - Misappropriation, laws governing trade secret misappropriation, 521
 - Misappropriation of website, unjust enrichment remedy, 613
 - Misrepresentation
 - lost profit claims, 207–208
 - purchase or sale of securities, 940, 941–942
 - Mississippi, expert gatekeeping opinions of, 153
 - Missouri, expert gatekeeping opinions of, 154
 - Mitigating earnings
 - economic damages in employment litigation, 755
 - as lost earning category, 738
 - personal injury and wrongful death economic damages, 734–735
 - Mitigation
 - addressing as factor in economic damages analyses, 236–237
 - in business interruption claim, 824–825
 - as element of lost profit case, 215–216
 - employees in terminated in breach of contract, 747
 - in lost business value vs. lost profit claim, 285–286
 - lost volume sellers exception, 215
 - negligence exception, 215–216
 - Modified total cost pricing method, for construction claims, 381–382
 - Monetary remedies, remedies in equity as alternative to, 603
 - Montana, expert gatekeeping opinions of, 154–155
 - Moral fault, reasonable certainty requirement and, 106–111
 - Motions to exclude
 - expert testimony
 - assumptions, 188–198
 - data, 180–188
 - expert qualifications, 172–176
 - failure to deal with inconsistent facts, 198–201
 - methodology, 177–180
 - financial experts, 121–168
 - basic legal predicate, 121–123
 - Daubert* case and, 81–82
 - expert gatekeeping by jurisdiction, 126–168
 - by Federal Circuit, 127–140
 - by state, 140–168
 - factors to consider in making motion, 123–124
 - Federal standards for, 81–82
 - format for pretrial gatekeeping, 123
 - methodologies flaws in expert opinion, 124–126
 - methodologies for expert gatekeeping, 123
 - success rate for exclusion, 82–83
 - Motion to suppress, electronically stored information (ESI), 67
 - Multiple linear regression analysis, sales prices of housing, 974–975
- ## N
- NASDAQ Composite, 951
 - National Automobile Dealers Association (NADA), 401, 408
 - National Restaurant Association, 418
 - Nebraska, expert gatekeeping opinions of, 155
 - Negative information, misappropriation of, unjust enrichment remedy and, 613
 - Negligence
 - duty to mitigate and, 215–216
 - lost profit claims, 208
 - Net discounting method, 736
 - Net opinion, 321
 - Net worth method, for internal investigation, 790
 - Nevada, expert gatekeeping opinions of, 155–156
 - New businesses, lost profits damages
 - evidentiary standards, 333
 - legal requirements for, 334–336
 - methods for proving
 - adjusting for survival rates, 337–338
 - collecting and analyzing data, 337–338
 - guidance from courts, 340–342
 - list of factors to assess, 338–340
 - lost profits vs. lost business value, 345–346
 - overview, 336–337
 - venture-backed companies, 343–345
 - new business rule, 335–336
 - reasonable certainty requirement, 334, 335–336
 - valuing business interruption, 832
 - whole or partial damages, 334

New business rule, 97, 254
 apparel manufacturing case and forensic evidence, 325–326
 higher evidentiary burden, 215
 historical perspective on, 335
 moving away from, 335
 reasonable certainty requirement and, 94, 97, 214–215

New Hampshire, expert gatekeeping opinions of, 156

New Jersey, expert gatekeeping opinions of, 156–157

New Mexico, expert gatekeeping opinions of, 157

New York
 expert gatekeeping opinions of, 157–158
 right of publicity infringement, 428–429

9th Circuit, expert gatekeeping opinions of, 136

Nominal discounting method, 736

Nominal dollars, future lost profit damages in, 298

Nonattributable fixed costs, 625

Noncompete agreement. *See also* Physician practice, noncompete violations
 yardstick method of lost revenue, 228

Noneconomic damages
 in employment cases, 747
 personal injury and wrongful death, 728

Nonexcusable delays, 383

Nonforfeiture clauses, in employment contracts, 909

Nonparametric tests, 956

Nonparty witness depositions, 19

Nonphysician providers (NPP), 351

Nontestifying experts, 75–76

North Carolina, expert gatekeeping opinions of, 158

North Dakota, expert gatekeeping opinions of, 158

Notice of Deposition, 78

Notice pleadings, 14

Notice provision, 820

O

Objectivity
 forensic specialist and, 771–772
 in survey-based research, 548

Observational data, 971–978
 complications in computations, 977–978
 computation of damages, 976–977
 determination of who is harmed and when, 975–976
 diminution of value after negative event, 972
 measurement of alleged diminution and corresponding damages, 973–978
 overview of, 971–972

Occupational fraud, 765

Ohio
 expert gatekeeping opinions of, 159
 right of publicity infringement, 429

Oklahoma, expert gatekeeping opinions of, 159

Operating profit, 850

Operational reporting, automobile dealerships and, 406–407, 408–409

Operation of business, earnout disputes over post-closing, 927–928

Opportunity cost, franchise litigation and, 473–474

Opportunity cost adjustment, remedies of equity and, 606

Opportunity cost approach, personal injury economic damages, 738

Optimization, search engine, 563–565

Oregon, expert gatekeeping opinions of, 159–160

Outlaws, civil, 706–707, 717

Outlier analysis, 955

Overestimation problems from high/low defect rates, 968–969

Overhead allocation in unjust enrichment remedy. *See also* Unjust enrichment remedy: defendant's overhead
 range of amount due to, 616
 willfulness of defendant and, 669–671

Overhead costs, damages for breach of contract, 649

P

Palcek, David, 875–876

Palmer, George, 697–698

Panduit test
 acceptable noninfringing substitutes, 499
 calculating amount of lost profit, 502
 capacity, 501–502
 defined, 496–497
 demand for patented product, 497–499

Partial damages, new businesses, 334

Party depositions, 19

Past lost profits, 291

Patented technology, 494–495

Patent infringement damages, 493–516
 collateral sales, 505
 damages against U.S. government, 516
 design patent infringement, 554–555
 federal law governing, 493–494
 forensic evidence and, 319–320
 functional patent infringement, 552–554
 historical perspective on, 627–629
 incremental income approach, 650–651
 limitations on damages, 515–516
 lost profit claims, 208–209, 495–502
 alternative action available to infringer, 501
 but-for causation, 496
 entire market value rule, 497
 market at issue, 499–500
 Panduit factor 1: demand, 497–499
 Panduit factor 2: acceptable noninfringing substitutes, 499
 Panduit factor 3: capacity, 501–502
 Panduit factor 4: calculating amount of lost profits, 502
 Panduit factors, 496–497
 patent owner's products, 500
 substitute products, 499
 two-supplier market, 497
 market share damages, 502–503
 market share model, 232–233
 mitigation defense, 237
 patented technology at issue, 494–495
 post-verdict royalties, 515
 prejudgment interest, 516
 price erosion, 503–505
 RAND royalties-standard essential patents, 514–515

- royalty damages, 506–514
 - collateral sales, 511
 - entire market value rule, 510–511
 - established royalties, 506–507
 - form of reasonable royalty, 509–510
 - Georgie-Pacific* factors, 511–513
 - hypothetical negotiation, 508–509
 - qualitative *Georgia-Pacific* factors, 514
 - quantitative *Georgia-Pacific* factors, 513–514
 - reasonable royalties, value of what was taken, 507–508
- Patient medical records, value of, 362
- Patton-Nelson study of personal consumption, 735
- Payer mix, 354–355, 364
- Pay-per-click claim, celebrity endorsement relief from, 572–573
- Pennsylvania, expert gatekeeping opinions of, 160–161
- PE ratio, 921
- Performance, earnout disputes over measurement of, 925–926
- Peril, sublimits of, 812
- Period of restoration, 800
 - extended period of indemnity, 817–818
 - initial period of restoration, 815–817
 - overview of, 814–815
 - waiting period, 815
- Permanent injunctions, franchise litigation, 461
- Personal consumption, personal injury and wrongful death economic damages, 735
- Personal injury, economic damages from, 727–742
 - components of economic damage analysis
 - base earnings, 730–731
 - earnings growth rate, 731–732
 - fringe benefits, 733–734
 - lost earnings categories, 730
 - mitigating earnings, 734–735
 - personal consumption, 735
 - tax rate, 732–733
 - work-life expectancy, 734
 - conclusion, 740
 - discount methods, 736–737
 - discount rates, 736
 - documentation, gathering information, 728–729
 - household services, 738
 - introduction, 727–728
 - life care planners, 739–740
 - medical expenses, 737
 - references, 740–741
 - standards and burdens, 728
 - vocational experts, 739
- Personal injury tort, lost profit claims, 208
- Petroleum Marketing Practices Act (PMPA)
 - damages under, 465
 - injunctions under, 464–465
 - overview of, 464
- Physician practice, noncompete violations, 349–364
 - availability, affordability, and ability, 355–356
 - basic factors of
 - ancillary testing income, 353
 - basic compensation analysis, 349–353
 - collections for services, 354
 - compensation, 354
 - competition, 355–356
 - general measures of productivity, 351–353
 - payer mix, 354–355
 - physician billing codes, 352–353
 - physician supply and demand, 353
 - conclusion, 363
 - glossary of terms for, 363–364
 - special issues in identifying damages
 - general price per unit of service for physicians, 358–359
 - growth rates in but-for and future earnings calculations, 358–360
 - large practice and integrated providers, 357–358
 - Medicare price per unit of service, 358–360
 - patient medical record value, 362
 - regulatory considerations, 360–362
 - typical claims that do not fly, 362–363
 - unallocated overhead, 356–357
- Plaintiff restored, damages for breach of contract, 649
- Planning phase of internal investigation, 774–780
- Population
 - defining, in survey-based research, 547
 - estimating size of, for damage calculations, 965–966
- Posner, Richard, 118, 179–180, 200, 311, 338, 342, 644
- Post-acquisition disputes and related damages, 919–936
 - breach of contract claims in, 928–931
 - determining damages in, 929
 - measuring damages, 930–931
 - pitfalls to avoid in assessing, 931
 - types of damages, 929–930
 - case study of, 931–935
 - general process for resolving, 931
 - insights for merger/acquisition disputes, 936
 - introduction, 919
 - transaction process overview, 919–928
 - deal negotiation, 919–922
 - determining purchase price, 921–922
 - purchase price valuation, 921–922
 - disputes over post-closing adjustments
 - earnout disputes, 924–928
 - working capital disputes, 924–925
 - post-closing adjustment to purchase price, 922–924
 - earnout payment, 922–924
 - working capital adjustments, 922
- Post-breach events, in lost business value vs. lost profit claim, 284–285
- Post-closing adjustments, 922–924
 - disputes over, 924–928
- Post-closing covenants, 920
- Post-judgment interest, 292
- Post-loss duties, 819–820
- Preclosing covenants, 920
- Prejudgment interest, 292, 516
- Preliminary injunctions, franchise litigation, 461
- Preservation failure, 52
- Preservation letter, 63
- Pretest, in survey-based research, 555
- Price discrimination, forensic evidence and, 319–320
- Price erosion, patent infringement cases, 503–505
- Price-to-earnings multiple, 921

- Privilege
 - expert deposition and issues of, 86–87
 - expert witnesses and, 21
 - Procurement fraud, 765
 - Productivity-based metrics for eating establishment, 415
 - Professional component (PC or “26”), 364
 - Professional standards
 - for accountants, 7–10
 - for experts, 7–10
 - Profit
 - accounting vs. economic, 850
 - advantage vs., 692–694
 - defined in relation to unjust remedy, 623–627
 - prelitigation projections of, as lost profit evidence, 264
 - profit contributions in damage analysis for franchise litigation, 474–476
 - unjust enrichment, 640–646
 - Profitability ratios, 850
 - Profit apportionment analysis for intellectual property infringement, 577–597
 - analytical tools for
 - combining tools, 592–593
 - financial analysis, 590–591
 - Internet and social media analytics, 591–592
 - management interviews, 588–589
 - marketing and communications language, 592, 593
 - surveys, reviews and feedback, 589–590
 - contribution questions for, 594–597
 - damage remedy statutes and apportionment, 581–583
 - definitions for, 580–581
 - introduction, 579–580
 - steps for
 - step 1-identify sources of revenue at subject business, 584
 - step 2-analyze financial performance of each revenue source, 584–585
 - step 3-identify key assets business owns and uses, 585–586
 - step 4-assess relative importance and contribution of identified assets to revenue source, 586–587
 - Projection, financial
 - compared to forecast, 244
 - defined, 243
 - expense forecasting and, 258
 - growth rate factors and, 255–256
 - historical information and, 250–253
 - industry and economic information considerations, 257
 - for lost business value or lost profits claims, 278–279
 - for lost revenue, 245–250
 - making credible projection, 245
 - new businesses and, 254
 - overview of factors to consider, 244–245
 - prelitigation profit projections, as lost profit evidence, 264
 - prepared in ordinary course of business, 254–255
 - use of post-litigation projections, 255
 - Project schedule, construction claims, 384–388
 - Promissory estoppel, employment cases, 748
 - Prompt reporting, 820
 - Proof-of-cash method, for internal investigation, 790
 - Proof of loss, business interruption claim, 825–826
 - Property
 - access to damaged property, 820–822
 - covered by business interruption, 804–807
 - adjacent property, 807
 - dependent property, 806–807
 - property by description, 805–806
 - specified property, 804–805
 - direct physical damage, 802–804
 - at fair valuation, 845
 - sublimits of, 811–812
 - Proximate cause, as element of lost profit case, 211–212
 - Proximate cause test, 449
 - Public adjuster, business interruption claim, 828–829
 - Public Company Accounting Oversight Board (PCAOB), audit standards, 766
 - Public document reviews, by forensic specialist, 767–768
 - Publicity. *See* Right of publicity infringement
 - Pump and dump cases, 657
 - Punitive damages, 866
 - breach of fiduciary duty, 882–884, 886
 - franchise litigation, 462–463
 - in post-acquisition disputes, 930
 - Purchase and Sale Agreement (PSA), 919
 - losses/damages definitions, 920
 - working capital disputes and, 924–925
 - Purchase price
 - determining, 921–922
 - post-closing adjustments to
 - disputes over, 924–928
 - earnout payments, 922–924
 - working capital adjustments, 922
 - valuation approaches to, 921–922
- Q**
- Qualitative *Georgia-Pacific* factors, 514
 - Quantitative *Georgia-Pacific* factors, 513–514
 - Quantum meruit, franchise litigation, 457
 - Quasi-trustee origin in unjust enrichment, 629–640
 - anti-netting rule, 638–640
 - counter-restitution, 631–636, 695–697
 - infringing expenses, 636–638
 - quasi-trustee, 629–630, 695–697
 - Quick peek agreements, 67
 - Quick ratio, 848
- R**
- Racketeering, 765
 - RAND (reasonable and nondiscriminatory) royalties, 514–515
 - Rank test, 956
 - Rate of return
 - defined, 292
 - discount rate
 - based on commensurate with risk receiving lost profits, 295–296
 - from investing award, 294–295
 - as safe rate of return, as matter of law, 294

- Ratio analysis
 avoided cost estimation, 236
 for internal investigation, 793–795
- Real dollars, future lost profit damages in, 298
- Reasonable certainty requirement, 91–118
 construction claims, 378–379
 as element of lost profit case, 214–215, 261
 employment litigation, 753
 factors courts consider, 111–113
 alternative method to compensate available, 115–118
 amount at stake, 113–115
 certainty injured party has suffered damage, 101–106
 degree of blameworthiness/moral fault on defendant's part, 106–111
 estimate of loss accuracy, 95–101
 fact and amount rule, 94, 101–106, 110
 new business rule, 94, 97, 214–215
 wrongdoer rule, 94, 106–111
 mathematical certainty and, 214
 new businesses and, 334, 335–336
 overview
 balancing competing concerns, 93–94
 decision-making vs. opinion-writing level of court, 92–93
 historical perspective on, 91–92
 personal injury and wrongful death economic damages, 728
 replacing rule with standard, 118
- Reasonable fee, 76–77
- Reasonable royalties
 copyright infringement, 540
 damages for trade secret misappropriation, 525–526
 form of, 509–510
 hypothetical negotiation, 508–509
 similarity to relief from royalty method, 533–534
 trademark damages, 533–534
 as value of what was taken, 507–508
- Reasonably equivalent value, in fraudulent transfer claims, 839–842
 fair market value, 840–842
 identifying value, 840
 measuring reasonable equivalence, 840–842
- Reference Manual on Scientific Evidence*
 data gathering and analysis, 549
 defining population, 547
 personnel qualifications and objectivity, 548
 purpose and design of study, 546
 sampling, 547–548
 use of a control, 549
- Regression analysis
 avoided cost estimation, 236
 cautionary note on, 971–972
 predicting sales prices of housing, 973–974
 using to measure damages, 965
- Regulation, physician practice noncompete violations and, 360–362
- Relationship state laws, 455–456
- Relative value unit (RVU), 351, 364
- Relevant evidence, 27
- Reliance damages, 117, 277–278
- Remedy for ESI spoliation, 53–56
- Remedy in equity, 603–610
 advantages, 603–604
 basis of, 605–607
 breach of fiduciary duty, 880, 886
 but-for profit causation and, 605–606
 compensation forfeiture, 893–895
 conclusion, 610
 Daubert challenge process, 607
 decline in familiarity, 609–610
 disadvantages, 604
 discretion and limited jurisdiction, 607–609
 opportunity cost adjustment and, 606
 overview, 603
 variation by jurisdiction, 607
- Rental value, as measure of compensation, 116
- Reperformance, 792
- Replacement cost approach, personal injury economic damages, 738
- Report, of internal investigation, 784–786
- Requests for admissions, 19
- Requests for production of documents, 18
- Rescission, 881, 901, 911
 franchise litigation, 459–460
 in post-acquisition disputes, 930
 as remedy in equity, 603–604
- Rescissory damages, 930
- Residence, 427
- Residual income model, intellectual property valuation, 486–487
- Restatement of Agency*, 630
- Restatement (Second) of Agency*, 632
- Restatement of Restitution*, 631–632
- Restatement (Third) of Restitution and Unjust Enrichment*, 608, 610, 618
 benefit, 623–626
 consequential gains, 623–624
 incremental income vs. full-absorption method, 678–679
 unjust enrichment defined, 619
- Restatement (Third) of the Law Governing Lawyers*, 903
- Restatement of Torts*, 608
- Restatement of Trusts*, 630
- Restatement (Second) of Unfair Competition*, 678–679
- Restaurant Industry Forecast*, 418
- Restaurant Industry Operations Report*, 415, 418
- Restaurant Performance Index, 418
- Restaurants. *See also* Eating establishments lost profits analysis
 forensic evidence used in restaurant case, 323–325
- Restitution
 equal to unjust enrichment, 619
 term of, 609–610, 691–692
- Restoration of data, 52–53
- Return on assets, defining insolvency, 846
- Return on total assets (ROA), 850
- Return ratios, 850
- Return to equity holders (ROE), 850
- Revenue-based metrics for eating establishment, 414
- Revenue cycle, 364
- Revenue source analysis in profit apportionment analysis, 584–585

Reverse proof, for internal investigation, 793

Reviewed financial statements, 182

Reviews, for profit apportionment analysis for IP infringement, 589–590

Rhode Island, expert gatekeeping opinions of, 161

Ride the escalator, damage analysis for franchise litigation, 476

Riggins, John, 432

Right of privacy, 425–426

Right of publicity infringement

- calculating compensatory damages, 431–433
- compared to right of privacy, 426
- current state and determining domicile, 427
- fair market value and, 431–433
- forum shopping, 434–435
- historical perspective, 425–427
- trademark law intersecting with, 434
- types of damages available, 427–431

Risk-adjusted discount rate, 283, 295–296

- cost of capital in determining, 306–308
- reinvestment rate, 309

Risk-free discount rate

- cases allowing, 301–304
- cases requiring, 304–309
- yield on Treasury securities as, 303–304

Robinson-Putnam Act, 320

Robustness tests for event studies

- alternate market indexes, 951
- alternative tests, 956
- arithmetic vs continuously compounded returns, 954
- autocorrelation, 955–956
- estimation windows, 955
- heteroskedasticity, 956
- industry indexes and market bubbles, 951–952
- multiple indexes, 952–953
- outlier analysis, 955

Rounds, Charles, 690, 696, 720

Royalty damages, 506–514

- collateral sales, 511
- entire market value rule, 510–511
- established royalties, 506–507
- form of reasonable royalty, 509–510
- Georgie-Pacific* factors, 511–513
- hypothetical negotiation, 508–509
- increase in damage awards, 506
- lump-sum royalty, 509
- post-verdict royalties, 515
- qualitative *Georgia-Pacific* factors, 514
- quantitative *Georgia-Pacific* factors, 513–514
- RAND royalties-standard essential patents, 514–515
- reasonable royalties, value of what was taken, 507–508
- running royalties, 509–510

Royalty model, for intellectual property damage valuation, 488

Rule 30 Notice of Deposition, 78

Rule 45 subpoena, 78

Rule 436, 455–456

Rules of evidence. *See* Federal Rules of Evidence

Running royalties, 509–510

Russell indexes, 951

S

Safe harbor rule, historical overview, 47–48

Safe rate of return, 294

Saffo, Paul, 245

Sales projection method

- lost revenue estimates, 231–232, 249
- strengths and weaknesses of, 231–232

Sales projections, reliability of data, 181

Sampling, in survey-based research, 547–548

Sampling process to measure losses, 967–970

- construction defects, counting individual problems, 967
- differences in designs for units in populations, 968
- double counting of repair costs, 969
- overestimation problems from high/low defect rates, 968–969
- subsets of items used for testing, 968
- variability of costs of repair, 970

Sampling techniques, for internal investigation, 790–791

- attributes sampling, 790–791
- stratified sampling, 792
- variable sampling, 791–792

Sanctions

- for ESI spoliation, 68–70
- for relying on improper data, 188
- for spoliation of evidence, 41–43
- for unsupported assumptions, 197–198

Saved costs, damages for breach of contract, 649

Schedule, project in construction claims, 384–388

Schedules of values, 811–812

Scheduling order, 16–17

Scheindlin, Judge, 869, 871

Scheindlin, Shira A., 62

Scienter, 838, 844, 887

Scrushy, Richard, compensation forfeiture case, 905, 909–911

Sealy case, franchise law and, 446–447

Search, Internet, 562–563

Search engine optimization, 563–565

2nd Circuit, expert gatekeeping opinions of, 129–130

Secret profit, as form of disloyalty, 902

Securities and Exchange Commission, unjust enrichment claims, 654–660

Securities fraud, unjust enrichment remedy, 613

Securities litigation. *See* Event studies in security litigation

Sedona Principles, 62, 67

Self-dealing, as form of disloyalty, 901

Seller assurances, 919–920

Semistrong form efficiency, 942–943

Sensitivity, initial allegation response and, 772–773

7th Circuit, expert gatekeeping opinions of, 132–135

Significance, in event studies, 948–949

Site traffic source tools, 565

6th Circuit, expert gatekeeping opinions of, 131–132

Skoog, Gary R., 734

Small Business Job Protection Act, 755

- Snepp, Frank, 660, 706–707
- Social business, 565
- Social media analysis for damage calculations, 559–575
- key concepts
 - Internet analytics used, 565–566
 - Internet use statistics, 561–562
 - optimization, 563–565
 - search, 562–563
 - social media platforms, 565
 - overview, 561, 574–575
 - valuation and damage analyses
 - identifying IP misuse, 566–568
 - Internet damages matrix, 570
 - supplementing accepted valuation methods, 569–570
 - to support lost profits, 571
 - using analytics to support celebrity endorsement relief from pay-per-click claim, 572–573
 - using Google analytics to defend against celebrity name/likeness, 571–572
 - using location-specific search statistics to determine confusion in trademark infringement claim, 573–574
- Solvency ratios, 848–849
- South Carolina, expert gatekeeping opinions of, 161–162
- South Dakota, expert gatekeeping opinions of, 162
- S&P 500 index, robustness test and, 951
- Special damages
 - foreseeability and, 213
 - personal injury and wrongful death, 727
- Specific restitution, 865
- Specified-peril policy, 808
- Specified property, 804–805
- Spoliation of evidence, 33–57
- defined, 35, 36
 - elements of
 - bad faith, 40–41
 - culpability of spoliator, 40–41
 - destruction, alteration or suppression, 38
 - duty to preserve, 39–40
 - evidence existence, 37–38
 - prejudice resulting from, 38–39
 - relevant evidence, 38
 - ESI related issues, 46–57
 - concerns/obligations of counsel, 56–57
 - custody and control issues of, 49
 - duty to preserve and written litigation hold, 49–52
 - failure to preserve evidence, 52
 - reasonable requirement, 48
 - recommendations, 57
 - restoration of data, 52–53
 - safe harbor rule, 47–48
 - expert-related evidence, 43–46
 - expert's file, 44–46
 - of physical evidence, 43–44
 - trial-preparation protection, 45
 - overview of, 35–36
 - purpose of doctrine, 37
 - sanctions for, 41–43
- Stable growth period, factors in, 256
- Stacked remedies, for breach of fiduciary duty, 883–884, 915–916
- Standard costs, avoided cost estimation, 236
- Standard essential patents, 514–515
- Standard t-test, 956
- Stark laws, 364
- State courts
 - expert gatekeeping opinions, 140–168
 - jurisdiction of, 13
 - lawsuit initiation in, 14–15
 - organization of, 14
- Statement against interest, 30–31
- Statistical analysis for damage calculation, 963–980
- questions of
 - how different, 964–965
 - how many, 965–966
 - how much, 964
 - scenarios for
 - loss due to business interruption, 978–980
 - observational data for, 971–978
 - complications in computations, 977–978
 - computation of damages, 976–977
 - determination of who is harmed and when, 975–976
 - diminution of value after negative event, 972
 - measurement of alleged diminution and corresponding damages, 973–978
 - sampling process to measure losses, 967–970
 - construction defects, counting individual problems, 967
 - differences in designs for units in populations, 968
 - double counting of repair costs, 969
 - overestimation problems from high/low defect rates, 968–969
 - subsets of items used for testing, 968
 - variability of costs of repair, 970
- Statutory jurisdiction, of unjust enrichment, 619–620
- Stefanchik, John, 711
- Stolen property, counter-restitution and, 633
- Stored Communications Act, 49
- Story, Judge, 93, 98, 894
- Stratified sampling, 792
- Stream of events, 971
- Strong form efficiency, 942
- Subjectivity, of event studies, 958–959
- Subledger review, for internal investigation, 795
- Sublimits
 - by peril, 812
 - by property, 811–812
- Sub rosa distributions of profit, 626
- Subsampling plan, 968
- Substitute products, patent infringement cases, 499
- Surety bonds, 395
- Surveillance, physical and electronic surveillance for internal investigation, 768, 786
- Survey-based research in damage estimation, 545–557
- case studies, 551–555
 - design patent infringement, 554–555
 - functional patent infringement, 552–554
 - likelihood of confusion, 551–552
 - federal judiciary guidelines
 - admissibility factors, 546
 - data gathering and analysis, 549

- defining population, 547
- Manual for Complex Litigation*, 546
- personnel qualifications and objectivity, 548
- purpose and design of study, 546
- Reference Manual on Scientific Evidence*, 546–549
- sampling, 547–548
- use of a control, 549
- validity factors, 546
- impact of *Daubert*, 545
- industry guidelines
 - Advertising Research Foundation (ARF), 551
 - American Association for Public Opinion Research (AAPOR), 550
 - Council of American Survey Research Organizations (CASRO), 550
- overview, 545
- special concerns for
 - conjoint analysis, 555–556
 - external validity, 556
 - pretests, 555
 - use of prior survey research in litigation, 556–557
 - validation, 555
- Surveys, for profit apportionment analysis for IP infringement, 589–590
- Survival rates, adjusting for new businesses and, 337–338

T

Taverns. *See* Eating establishments lost profits analysis

Taxes

- economic damages in employment litigation, 755
- employment case damages, 748–750
- income tax effect in lost business value vs. lost profit claims, 280–281
- personal injury and wrongful death economic damages, 732–733

Tax fraud, 765

Tax shelter fraud, 765

Technical component (TC), 364

Technology, patented technology in patent infringement damages, 494–495

Technology-assisted review (TAR), 69–70

Tennessee, expert gatekeeping opinions of, 163

10th Circuit, expert gatekeeping opinions of, 137

Terminable contracts, duration of loss period assumptions, 195–197

Terminal value calculation, 282

Termination

- in breach of contract, 745–746
- construction claim, 393–395
- for convenience clause, 373, 374

Testimony

- computer forensic expert on ESI, 69–70
- expert testimony, professional standards for experts, 7–10

Texas, expert gatekeeping opinions of, 163–164

3rd Circuit, expert gatekeeping opinions of, 130

30(b)(6) deposition, 19

Time element provision, in business interruption insurance coverage, 800–802

Times interest earned, 849

Time value of money, damage measurement and, 291

Tort damages

- employment cases, 748
- in post-acquisition disputes, 929

Tortious interference, 650

- lost profit claims, 208

Torts

- damage claims, 277–278
- damages period determination, 223–224
- lost profit claims, 207–208

Total cost pricing method, for construction claims, 380–381

Total equity principle, 698

Total offset method, 736

Trade association data, as evidence in lost profit analyses, 269–270

Trademark damages, 531–539

- calculating damages, 535–539
- defendant's profits in, 534–535
- plaintiff's actual damages, 531–532
 - name recognition that increases product's prices, 532
 - name recognition that increases sales volume, 531
 - saved time and costs, 532
- summary of, 539
- types of actual damages, 532–534
 - lost profits, 532–533
 - reasonable royalty, 533–534
- using location-specific search statistics to determine confusion in trademark infringement claim, 573–574

Trademark infringement

- identifying IP misuse, 566–568
- lost profit claims, 208–210

Trademark law, right of publicity infringement intersecting with, 434

Trade secret damages, 519–527

- available damage remedies under DTSA and UTSA, 522–527
 - actual loss damages, loss profits, 523–524
 - attorney's fees, 527
 - exemplary damages, 526–527
 - reasonable royalty damages, 525–526
 - unjust enrichment damages, 524–525
- introduction, 519–520
- state and federal law governing misappropriations, 520–522

Trading delays, 958

Trading halts, 958

Transaction costs, counter-restitution, 634

Transaction process overview, 919–928

- deal negotiation, 919–922
 - determining purchase price, 921–922
 - purchase price valuation, 921–922
- disputes over post-closing adjustments
 - earnout disputes
 - over measurement of performance, 925–926
 - over post-closing accounting methodologies, 926–927
 - over post-closing operation of business, 927–928
 - working capital disputes, 924–925
- post-closing adjustment to purchase price, 922–924
 - earnout payment, 922–924
 - working capital adjustments, 922

Treble damages, franchise litigation, 451

Trespass, willful or intentional to timber/mineral detachable, 633

- gross disgorgement, 704

Trial depositions, 79

- Trial system
 - discovery, 17–24
 - discovery depositions used in, 79
 - lawsuit initiation, 14–17
 - privilege, 21
 - rules of evidence, 27–31
 - trial, 24–26
 - appeal, 26
 - process overview, 24–26
 - rules and laws for, 26
 - Triggers of coverage, business interruption
 - acts of civil authorities, 807–808
 - covered property, 804–807
 - direct physical damage, 802–804
 - interruption, 800–802
 - time element provision, 800–802
 - 20 Group report, 408
 - Twitter, 565
 - Two-supplier market, patent infringement cases, 497
 - Tyco International Ltd., 877–879
- U**
- Unallocated overhead, physician practice and noncompete violations, 356–357
 - Unclean hands, 457
 - Undercover operations, for internal investigation, 768
 - Unfair competition, lost profit claims, 207–208
 - Uniform Trade Secrets Act (UTSA)
 - available damage remedies under, 522–527
 - overview of, 520–522
 - United States Life Tables*, 737
 - United States Treasury rates, 736
 - United Way, 867–871
 - Universe, defining, in survey-based research, 547
 - Unjust enrichment
 - compensation forfeiture, 882–883
 - equal to restitution, 619
 - sources of jurisdiction, 619–620
 - Unjust enrichment claims, 224, 344
 - franchise litigation, 456–457
 - Internet analytics to support, 570–571
 - remedies in equity, 603–610
 - advantages, 603–604
 - basis of, 605–607
 - but-for profit causation and, 605–606
 - conclusion, 610
 - Daubert* challenge process, 607
 - decline in familiarity, 609–610
 - disadvantages, 604
 - discretion and limited jurisdiction, 607–609
 - opportunity cost adjustment and, 606
 - overview, 603
 - variation by jurisdiction, 607
 - trademark damages, 536
 - trade secret misappropriation, 524–525
 - Unjust enrichment in equity, defined, 613, 619–620
 - Unjust enrichment remedy
 - counter-restitution in, 631–636, 687–721
 - defendant's overhead and
 - Americanization of profit origin, 640–648
 - apportionment, 646–648
 - but-for analysis, 643–646
 - conclusions, 682–684
 - defendant as quasi-trustee origin, 629–640
 - anti-netting rule, 638–640
 - counter-restitution, 631–636
 - infringing expenses, 636–638
 - quasi-trustee, 629–630
 - full-absorption approach of unjust enrichment, 614–615
 - incremental vs. full-absorption, 678–682
 - analysis, 680–681
 - discretion, 682
 - Restatements*, 678–679
 - introduction, 613–615
 - relevance
 - legal relevance, 616–618
 - Willie Sutton theory, 616
 - remedy measurement relate areas of law, 648–660
 - contract breach measures, 649–650
 - emergency assistance standard, 651–652
 - federal agency claims, 652–660
 - patent damages, 650–651
 - 2nd Circuit opinions
 - faulty baseline, 661–666
 - jurisprudence by adjective, 666–669
 - substance over form, 618, 623
 - survey by circuit, 671–677
 - terms for
 - attributable, 622–623
 - benefit, 623–626
 - fixed costs, 620–622
 - profit, 623–627
 - unjust enrichment, 619–620
 - willfulness and overhead, 669–671
 - Unreasonably small capital, 851–852
 - Update impact method, 388
 - Upjohn warning, 768, 783
 - Use value of asset, as measure of compensation, 116
 - Utah, expert gatekeeping opinions of, 164
- V**
- Validation, in survey-based research, 555
 - Validity
 - survey-based research, 546
 - in survey-based research, 556
 - Valuation information request (VIR) checklist, eating establishments
 - lost profits analysis, 420–422
 - Value/valuation
 - definition of, in loss of business value claim, 276–277
 - fair market value standard, 276–277
 - identifying in reasonable equivalent value, 840
 - using Internet or social media data for, 569–570
 - Variable cost allocation, 371–372
 - unjust enrichment claim, 621–622
 - Variable costs
 - avoided cost estimation, 235–236
 - construction projects and, 378

Variable sampling, 791–792

Venture-backed companies (VBCs)

characteristics of, 343–345

Internet bubble and, 344, 345

proving lost profit damages, 343–345

Vermont, expert gatekeeping opinions of, 165

Veterans Administration BCA (VABCA), 385

Virginia, expert gatekeeping opinions of, 165

Vocational experts, personal injury economic damages, 739

W

Waiting period, in period of restoration, 815

Warren, Samuel D., 425–426

Washington, expert gatekeeping opinions of, 166

Washington's Personality Rights Act (WPR), 435

Weak form efficiency, 942

Weighted average cost of capital (WACC), 284

Weighted averages, of growth rate, 251

West Virginia, expert gatekeeping opinions of, 166–167

White-collar crimes, categories of, and statutes pertaining to, 765

Whole damages

loss of new business, 345–346

new businesses, 334

Wiese, Judge, 307

Willfulness of defendant, offset credit for overhead, 669–671

Williams, John Burr, 485

Williston, Professor, 102

Wisconsin, expert gatekeeping opinions of, 167–168

Witnesses

deposition and conduct during, 20–21

friendly or hostile, 25

who must provide written report, 22

Working capital

adjustments to purchase price

characteristics of, 922

disputes over, 924–925

lost profits impairment on, 395–396

Worklife Estimates: Effects of Race and Education, 734

Worklife expectancy

personal injury and wrongful death economic damages, 734

tables for, 734

Work plan, internal investigation, 775–776

Wrongdoer rule, 94, 106–111, 278

risk-free discount rate and, 303

Wrongful death, economic damages from, 727–742

components of economic damage analysis

base earnings, 730–731

earnings growth rate, 731–732

fringe benefits, 733–734

lost earnings categories, 730

mitigating earnings, 734–735

personal consumption, 735

tax rate, 732–733

work-life expectancy, 734

conclusion, 740

discount methods, 736–737

discount rates, 736

documentation, gathering information, 728–729

funeral expenses, 739

introduction, 727–728

medical expenses, 737

references, 740–741

standards and burdens, 728

Wyoming, expert gatekeeping opinions of, 168

Y

Yardstick method

advantages/disadvantages of, 248

apparel manufacturing case and forensic evidence, 326

comparability and choosing guideline company, 227–229

example of, 248–249

lost revenue estimates, 227–231, 247–249

possible benchmarks for, 247

for proving lost profits, reasonable certainty requirement and, 96–97

YouTube, 565

analyzing video views, 574

Z

Zone of interest test, 449

Index of Cases in Volume One

Note: The list of cases in this index exceeds the number of cases that are covered in the second volume of this guide. The cases that are covered in the second volume of this guide are pared down to include those that are more recent and/or relevant to the subject matter covered throughout the guide.

A

ADC Fairways Corp v. Johnmark Construction, 165
Advanced Bodycare Solutions, LLC v. Thione International, Inc., 231
AGF v. Great Lakes Heat Treating, 159
Alaska v. Coon, 141
Albert v. Warner-Lambert Co., 127
Allen-Myland, Inc. v. International Business Machines Corp., 670
Alphamed Pharmaceuticals Corp. v. Arriva Pharmaceuticals, Inc., 310
Ambrosini v. Labarraque, 81
American Aerial Services, Inc., v. Terex USA, LLC, 127, 185
American Federal Bank, FSB v. United States, 307–308
American Int'l Group, Inc. Sec. Litigation, In re, 952
American List Corp. v. U.S. News & World Report, Inc., 303
American Southern Ins. Co. v. Goldstein, 146
American Suzuki Motor Corp., 403
Ancar, et al. v. Brown, et al., 739
Appeal of Eichleay Corp, 389
Appeal of Grumman Aerospace Corp., 381–382
Aramony v. United Way of America, 867, 869, 892–893, 916
Aramony v. United Way Replacement Benefit Plan, 916
Ashland Pipeline Co. v. Indiana Bell Telephone Co., 148
Astra USA, Inc. v. Bildman, 883, 916
ATA Airlines v. Federal Express Corp., 179–180
ATM Exch., Inc. v. Visa Int'l Serv. Ass'n., 341

B

Baldwin Cooke Co. v. Keith Clark, Inc., 617
Bank of Tokyo-Mitsubishi, Ltd. v. Malhotra, 906
Barto v. Shore Construction, LLC, et al., 734
Basic Inc. v. Levinson, 940, 942, 943
Beiner Enters., Inc. v. Adam Caldwell, Inc., 310
Bell Atlantic Network Services v. PM Video Corp., 156–157
Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc., 403
Bennett v. Sprint Nextel Corp., In re, 959
Bergstrom v. Sears, Roebuck & Co., 616, 617
Bero Motors, Inc. v. General Motors Corporation, 269, 403
Berry v. Goodyear Tire & Rubber Co., 901
Best Payphones, Inc. v. City of New York, 53
BGB Pet Supply, Inc. v. Nutro Products, Inc., 302
BIC Leisure Prods., Inc. v. Windsurfing Int'l, Inc., 500
Bigelow v. RKO Radio Pictures, Inc., 198
Big O Tire Dealers v. Goodyear Tire & Rubber Co., 433
Blinderman Construction Co. v. United States, 386

Blythe v. Bell, 310
BMW of N. Am., Inc. v. Gore, 462
Borden v. Howard Trucking Co., 150
Bourns, Inc. v. Raychem Corp., 525
Brennan's Inc., et al. v. Dickie Brennan & Company, Inc., 419
Brooks v. Conston, 636
Bundles v. Baker, 842
Bunting v. Jamieson, 168
Burger King Corp. v. Barnes, 310
Burger King Corp. v. Pilgrim's Pride Corp., 617
Burrow v. Arce, 913, 914–915
Business Machines Sales and Services, Inc. v. Murphy, 153
Busy Bee, Inc. v. Corestates Bank, N.A., 160

C

CADCO Inc. v. Fleetwood Enterprises, 320
Cadco v. Fleetwood Enterprises, 154
Callaghan v. Myers, 625, 637, 701
Callery v. United States Insurance Co., 715
Camar Corp. v. Preston Trucking Co., Inc., 268
Cambridge Plating Company v. Napco, Inc., 265
Cameco, Inc. v. Gedicke, 908
Cammer v. Bloom, 943, 944, 950, 959, 960
Cardinal Consulting v. Circo Resorts, 152–153
Carter Products, Inc. v. Colgate-Palmolive Co., 674
Casco v. John Deere, 128
Cashman v. Allied Products Corp., 135
Catoe v. Helms Construction & Concrete Co., 158
Cayuga Indian Nation v. Pataki, 192
C.B.C. Enterprises, Inc. v. United States, 389
Celebrity Cruises, Inc. v. Essef Corp., 129, 248, 311
Cell, Inc. v. Ranson Investors, 167
Century Distilling Co. v. Continental Drilling Corp, 673, 674
CFTC v. American Metals Exchange Corp., 674
CFTC v. Co Petro Mktg. Group, Inc., 658
Chaney & James Construction, 385
Charles R. Combs Trucking, Inc. v. Int'l Harvester Co., 159
Chemipal, Inc. v. Slim-Fast Nutritional Foods International, Inc., 174
Cher v. Forum Int'l, Ltd., 430, 433
Children's Broadcast Corp. v. Walt Disney Co., 136
Christensen v. Nat'l Brake & Elec. Co., 614, 617, 639–640, 646, 672, 673, 681
Christoff v. Nestlé, 432
Chung v. Kaonohi Center Co., 146

CIT Group/Business Credit, Inc. v. Graco Fishing & Rental Tools, Inc., 185
City Line Joint Venture v. United States, 307
City Welding v. Gidley-Eschenheimer, 151–152
Claar v. Burlington N.R.R., 81
Clark v. Celeb Pub., Inc., 430–431
Client Funding Solutions Corp. v. Crim, 893
Club Car, Inc. v. Club Car (Quebec) Import, Inc., 138
Cobalt Operating, LLC v. James Crystal Enterprises, LLC, 929
Cole v. Homier Distributing Co., Inc., 135–136
Collins Holding Corp. v. Landrum, 162
Commonwealth v. Lanigan, 151
Contemporary Mission, Inc. v. Famous Music Corp., 112–113
Coonis v. Rogers, 154
Cooper v. Ashley Commc'ns, Inc., 841
Cooper v. Travelers Indemnity Co. of Illinois, 184
Cortes v. 3A N. Park Ave Rest Corp., 419
Crawford v. Washington, 67
Credit Managers Ass'n of Southern Cal. v. Fed. Co., 851–852
Creditors' Comm. of Jumer's Castle Lodge, Inc. v. Jumer, 842
Crystal Semiconductor Corp. v. TriTech Microelectronics Internat'l, Inc., 267, 504
Culver v. Slater Boat Company, 737, 740

D

Daimler Chrysler Motors Co. vs. Manuel, 403
Dairy Queen, Inc. v. Wood, 640
Da Silva Moore v. Publicis Groupe, 62, 70
Data General Corp. v. Grumman Sys., 617
Daubert v. Merrell Dow Pharmaceuticals, 62, 69, 81–82, 83, 121, 171, 172, 177, 178, 545, 607
Davis v. Forest River, Inc., 403
De Jager Construction, Inc. v. Schleining, 198
Delaney & Co. v. City of Bozeman, 155
Delores Skinner and Delvia Skinner v. Robert Thomas, 419
Denny Construction, Inc. v. City and County of Denver, 396
DePalma v. Westland Software House, 280
Dering v. Service Experts Alliance LLC, 187
Dernick Resources, Inc. v. Wilstein, 913
Design Strategy, Inc. v. Davis, 906
Diabetes Centers of America, Inc. v. Healthpia America, Inc., 131
Dictiomatic, Inc. v. U.S. Fidelity & Guar. Co., 831
Douglas Dynamics LLC v. Buyers Products Co., 509
Dowd & Dowd, Ltd. v. Gleason, 916
DSU Medical Corp. v. JMS Co., Ltd., 136
DSU Medical Corp. v. Medisystems Corporation, 140
Duane Reade, Inc. v. St. Paul Fire and Marine Ins. Co., 816
Duplicate Corp. v. Triplex Safety Glass Co., 666
Duro Co. (of Ohio) v. Duro Co. (of New Jersey), 617
Durrett v. Washington Nat'l Ins. Co., 842

E

Eastern Auto Distributors, Inc. v. Peugeot Motors of America, Inc., 200
eBay Inc. v. MercExchange, 515
Eckard Brandes, Inc. v. Riley, 900
Edell v Edell, 321
Edgewater Services, Inc. v. Epic Logistics, Inc., 158
Edwards v. Hauff, 636
E.E. Wooden-Ware Co. v. United States, 701
E.I. du Pont de Nemours & Co. v. C.R. Robinson, 163
El Aquila Food Products v. Gruma Corp., 265
Ellipsis, Inc. v. The Color Works, Inc., 132
Energy Capital Corp. v. United States, 283, 304
Engineered Products Co. v. Donaldson Co., Inc., 135
Enstar Group, Inc. v. Grassgreen, 883, 916
E. Qualcom v. Global Commerce, 144
Equity Analytics, LLC v. Lundin, 62
ERI Consulting Engineers, Inc. v. Swinnea, 912–913
Ericsson Inc. v. D-Link Systems, Inc., et al., 514–515
Ericsson v. Harris, 269
EX Dock, Inc. v. Shafer Systems, Inc., 135
Experience Hendrix L.L.C. v. Hendrixlicensing.com Ltd., 434–435

F

Fabrication & Truck Equipment, Inc. v. Powell, 403
Fail-Safe, L.L.C. v. A.O. Smith Corp., 305, 308
Fairmont Supply Company v. Hooks Industrial, Inc., 305
Farm Bureau Ins. Co. v. Foote, 141
Federal Home Loan Mortgage Corp. (Freddie Mac) Securities Opinion Litigation, In re, 954, 959
Federal Trade Commission v. Febre, 716
Federal Trade Commission v. Figgie International, Inc., 712
Federal Trade Commission v. Stefanchik, 711–712, 719
Fed. Trade Comm'n v. H.N. Singer, Inc., 713
Fed. Trade Comm'n v. Neovi, Inc., 718
Feesers Inc. v. Michael Foods Inc., 320
Ferriel v. Podgursky, 149
Fidelity-Phenix Fire Ins. Co. v. Benedict Coal Corp., 818
Fifth Third Bank of Western Ohio v. United States, 285
Fishman v. Estate of Wirtz, 305–306
FiTeq Inc. v. Venture Corp., 53
Flood Mobile Homes, Inc. v. Liberty Homes, Inc., 403
Flourine on Call, Ltd. v. Fluorogas Ltd., 28647
Flying J, Inc. v. Dept. of Trans., 228–229
FMS, Inc. v. Volvo Construction Equipment North America, Inc., 403
Food Lion, Inc. v. Capital Cities, 897
Fortress Systems, L.L.C. v. Bank of the West, 135
Foti Fuels, Inc. v. Kurrle Corp., 165
Franconia Associates v. United States, 305
Frank Music Corp. v. Metro-Goldwyn-Mayer, Inc., 645, 669, 670, 677
Freesen, Inc. v. Boart Longyear Co., 133

F.T.C. v. First Universal Lending, LLC, 49
F.W. Woolworth Co. v. Contemporary Arts, Inc., 678

G

Gallagher v. Southern Source Packaging, LLC, 130–131
Garcia v. Llerena, 144
Garretson v. Clark, 627, 646, 647, 891
Gary's Implement, Inc. v. Bridgeport Tractor Parts, 228
Gemini Networks v. Nofs, 904
General Dynafab, Inc. v. Chelsea Industries, Inc., 161
General Electric Co. v. Joiner, 81, 121–122
General Ins. Co. v. Pathfinder Petroleum Co., 818
Genetically Modified Rice Litigation, In re, 179
George Haiss Manufacturing Co. v. Link Belt Co., 617, 673
Georgia-Pacific Corp. v. United States Plywood Corp., 488, 508, 526
Gesoff v. IIC Industries Inc., 255
Given v. Field, 167
Glattly v. Air Starter Components, Inc., 234
GN Netcom, Inc. v. Plantronics, 52–53, 56
Goldman Sachs Group Inc, In re, 941
Goodstein Construction Corp. v. City of New York, 278
Gordon Form Lathe Co. v. Ford Motor Co., 676
Goya De Puerto Rico Inc. v. Rowland Coffee Roasters, 128
Grain Processing Corp. v. American Maize, 501
Great-West Life & Annuity Ins. Co. v. Knudson, 708
Green v. Polyester Fibers, LLC., 727
Groupon Securities Litigation, In ew, 959
Grupo Mexicano de Desarrollo v. Alliance Bond Fund, Inc., 708, 709, 713
G.T. Laboratories, Inc. v. The Cooper Companies, Inc., 134
Guidance Endodontics, LLC v. Dentsply Int'l, Inc., 137

H

Hadley v. Baxendale, 91–92, 116–117, 213
Haelean Laboratories, Inc. v. Topps Chewing Gum, Inc., 426
Haemonetics Corp. v. Baxter Healthcare Corp., 127–128
Haff v. Augeson, 336
Haiss Mfg. Co. v. Link-Belt Co., 664
Halliburton Co. v. Erica P. John Fund, Inc. (Halliburton II), 939, 940, 941, 942, 960
Hallmark v. Eldridge, 155–156
Hamill America, Inc. v. G.F.I., 623, 667, 669, 679, 702
Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 682
Hamilton Shoe and Sheldon, 676
Hanover Shoe, Inc. v. United Shoe Machinery Corp., 280
Hardman Trucking v. Poling Trucking, 167
Harper House, Inc. v. Thomas Nelson, Inc., 670
Harris Wayside Furniture v. Idearc Media, 128
HealthSouth Corp. Securities Litigation, In re, 959
Henry Hanger & Display Fixture Corp. of America v. Sel-O-Rak Corp., 675
Holt Atherton Industries, Inc. v. Heine, 106, 244

Home Placement Service v. The Providence Journal Co., 270
Honeywell International, Inc. v. Air Products & Chemicals, Inc., 231, 310
Hopper v. All Pet, 168
Horne v. World Publications, Inc. et al., 344–345
Hsueh v. New York State Dep't of Fin. Servs., 55
HTS, Inc. v. Boley, 916
Hubbard v. BankAtlantic Bankcorp, Inc., 953
Hynix Semiconductor Inc. v. Rambus, Inc., 55

I

I.B. of T. Grocery & Food Emps. Welfare Fund v. Regions Fin. Corp., 943
ICD Publ'ns., Inc. v. Gittlitz, 916
Indiana & Michigan Electric Company v. Terre Haute Industries, Inc., 148
Interim Healthcare, Inc. v. Spherion Corporation, 929
In the Matter of OSF Healthcare System v. Rockford Health System, 51
Irvine v. Murad Skin Research Laboratories, 127
Isaksen v. Vermont Castings, Inc., 246

J

James v. MacDonald, 264
Jarvis v. A & M Records, 667
J&B Entertainment v. City of Jackson, Miss., 372–373305
Jim's Hot Shot v. Continental Western, 158
Johnson v. Alaska State Dept. of Fish & Game, 141
Jonatzke, In re, 310
Jose M. Terrones, et al. v. Abel J. Tapia, P.E., 419

K

Kairos Scientific, Inc. v. Fish & Richardson, P.C., 305
Kamar Int'l, Inc. v. Russ Berrie & Co., 669–670, 677
KAR Printing, Inc. v. Pierce, 145–146
Kay v. First Continental Trading, Inc., 311–312
Kenford Co. v. County of Erie, 113, 157
Kipperman v. Onex Corporation, 139
Klapmeier v. Cirrus Indus., Inc., 310
Kleen Products LLC v. Packaging Corp. of Am., 70
Knox v. Taylor, 309
Konica Minolta Bus. Solutions, U.S.A., Inc. v. Lowery Corp., 53
Krogman v. Sterritt, 943, 9959
Kumho Tire Co. v. Carmichael, 81, 82, 122

L

Lambert, In re, 305
Lamoureux v. Anazahealth Corp., 129
Larsen v. Walton Plywood Co., 166
Larson Co. v. Wrigley Co., 676
Leisure Time Entertainment v. Global Videos, Inc., 200
Lestigao v. M. R. Mansfield Realty, 635
Levin Bros. v. Davis Mfg. Co., 623, 664, 670, 674, 676

Levy v. Markal Sales Corp., 916
Lewis Jorge Construction Management, Inc. v. Pomona Unified School District, 395–396
Lexmark Intern., Inc. v. Static Control Component, Inc., 449
Libman Co. v. Vining Indus., 617
Lifewise Master Funding v. Telebank, 179
Lindevig v. Dairy Equipment Co., 167–168
Linton v. Shell Oil Company, et al., 739
Lithuanian Commerce Corp. v. Sara Lee Hosiery, 192
Little Rock Wastewater Utility v. Larry Moyer Trucking, 142
Living Color Enters. v. New Era Aquaculture Ltd., 52, 53
Local 703 v. Regions Financial Corp., 941, 943
Loeffel Steel Products, Inc. v. Delta Brands, Inc., 133, 134, 270
L. P. Larson, Jr., Co. v. Wm. Wrigley, Jr., Co., 666, 671
Lucarell v. Nationwide Mutual Ins. Co., 159

M

Macbeth-Evans Glass Co. v. L. E. Smith, 617
Madrid v. Lawyers Title Ins. Co., 842
Maiz v. Virani, 137–138
Maltina Corp. v. Cawy Bottling Co., 673, 677, 679, 680–681
Mann v. United States, 305
Manufacturers Technologies, Inc. v. Cams, Inc., 670
Marriage of Pagano, In re, 908
Marten Transp., Ltd. v. Platform Advers., Inc., 50
Marzoll v. Marine Harvest US, Inc., 81
Matrix Group Ltd., Inc. v. Rawlings Sporting Goods Co., 282
Matsushita Elec. Corp. v. Sonus Corp., 151
Matthew Enter. v. Chrysler Grp. LLC, 52, 54
Max Sugarman Funeral Home, Inc. v. A.D.B. Investors, 838
McCullough v. Scarbrough, Medlin & Associates., Inc., 913
McDaniel v. CSX Transportation, Inc., 163
Meineke Car Care Centers, Inc. v. RLB Holdings, LLC., 447–448
Mellon Bank, N.A. v. Metro Commc'ns, Inc., 842
Mentor Graphics Corporation v. Eve-USE, Inc. et al., 582
Metro Tech v. TUV Rheinland, 128
M.G. Bancorporation, Inc. v. Le Beau, 143
M&G Polymers, USA, LLC v. Carestream Health, Inc., 185, 309
Micron Technology, Inc. v. Rambus, Inc., 55
Miller v. Bike Athletic Co., 159
Minco, Inc. v. Combustion Engineering, Inc., 504
Mindgames, Inc. v. Western Publishing Co., 99, 343
Minemyer v. B-Roc Representatives, Inc., 134–135
Mississippi Transport Commission v. McLemore, 153
Mitchell v. Robert DeMario Jewelry, Inc., 652, 708, 709
Monessen Southwestern Railway Co. v. Morgan, 737
Montage Group Ltd. v. Athle-Tech Computer Systems, Inc., 267
Moore v. Ashland Chemical, Inc., 82
Mowry v. Whitney, 641, 642, 692–693

Multimatic, Inc. v. Faurecia Interior Systems USA, Inc., 131–132
Multimedia Patent Trust v. Apple, Inc., 510–511
MyGallons LLC v. U.S. Bankcorp, 337

N

National Envelope Corp. v. American Pad & Paper Co. of Delaware, Inc., 129
National Railroad Passenger Corp. v. Veolia Transportation Services, 889
Navigato v. SJ Restaurants, LLC, 419
NCRIC, Inc. v. Columbia Hosp. v. Women Med. Ctr., Inc., 310
Nebraska Nutrients, Inc. v. Shepherd, 155
Nebraska Plastics, Inc. v. Holland Colors Americas, Inc., 319
Nebula Glass International, Inc. v. Reichold, Inc., 262, 263
New England Dairies v. Dairy Mart, 129–130
Nike, Inc. v. Wal-Mart Stores, Inc., 647, 669, 678, 681
Northern Helex Co. v. United States, 304
Novatel Wireless Securities Litigation, In re, 948

O

Oakland California Towel Co. v. Sivils, 279
O'Berry v. Turner, 52
Olympia Equipment Leasing Co. v. Western Union Telegraph Co., 124
Omnicom Group, Inc. Securities Litigation, In re, 958
Oslon v. Sax, 47
Otis v. Doctor's Associates, Inc., 134

P

Panduit Corp. v. Stahlin Bros. Fibre Works, Inc., 496
Parlour Enterprises Inc. v. The Kirin Group, 269
Pavesich v. New England Life Insurance Co., 426
Penn Mart Supermarkets, Inc. v. New Castle Shopping, LLC, 265, 266
Pennzoil v. Texaco, 93
Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities., 51, 54–55, 56
People v. Kelly, 142
Pepe & Hazard v. Jones, 143
Petrobras Securities, In re, 941, 944
Phansalkar v. Andersen Weinroth & Co., 904–905
Pharmanetics, Inc. v. Aventis Pharmaceuticals, Inc., 130
Pharmathene, Inc. v. SIGA Technologies, Inc., 308–309
Phillip M. Adams & Associates, LLC v. Dell, Inc., 47
Platypus Wear, Inc. v. Clarke Modet & Co., 138, 184–185
Plumbers & Pipefitters, Nat. Pension Fund v. Burns, 955, 959, 960
Polaroid Corp. v. Eastman Kodak Co., 280
Polo Fashions, Inc. v. Craftex, Inc., 674
Porter v. Warner Holding Co., 628–629, 707, 709, 718
Postal Instant Press v. Sealy, 446–447
Progressive Casualty v. All Care, 153
Propellex Corp. v. Brownlee, 381
PSKS, Inc. v. Leegin Creative Leather Products, Inc., 282

Purina Mills, LLC v. Less, 302, 303–304

Purolator Prod., Inc. v. Torite Indus., Inc., 916

Q

Q Sales and Leasing, LLC v. Quilt Protection, Inc., 187

R

Radisson Hotels Int'l, Inc. v. Majestic Towers, Inc., 447, 448

RAF Enterprises LLC, et al. v. Trident LLC, et al., 419

R & A Inc. v. Kozy Korner, 144

Reading Radio, Inc. v. Fink, 160

Rebelwood Apartments RP, LP, et al. v. English, et al., 734, 740

Recreational Data Services, Inc. v. Trimble Navigation, Ltd., 342

Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corp., 403

Reed v. Maryland, 151

Reinforced Molding Corp. v. General Electric Co., 617

REMEC Incorporated Securities Litigation, In re, 953

Resenius Medical Care Holdings, Inc. v. Baxter, 136

R.F.M.A.S., Inc. v. Mimi So, 310

Rimkus Consulting Group, Inc. v. Cammarata, 50, 55

RMD v. Nitto Americas, 310

Roberson v. Rochester Folding Box Co., 426

Rockefeller v. Grabow, 147

Rolls-Royce PLC v. United Technologies, 319–320

Root v. Railway Co., 707

Rossi v. Standard Roofing, Inc., 189

Roulo v. Russ Berrie & Co., 617

Rowe v. DPI, 320–321

Russell v. Allianz Life Insurance Co. of North America, 321

S

Saden v. Smith, 913

Sammons v. Colonial Press, Inc., 617, 671

Sargon Enterprises, Inc. (Sargon) v. University of Southern California, 142, 249–250, 333

Sargon Enters., Inc. v. University of S. Cal., 233

SAS Inst. Inc. v. World Programming Ltd., 310

Scenicland v. St. Francis Medical Center, 150

Schmid v. Milwaukee Tool Corp., 44

Schmadig Corp. v. Gaines Manufacturing Co., 646, 676

Schonfeld v. Hilliard, 115, 116, 283

Scientific Atlanta, Inc. Securities Litigation, In re, 958

Scrushy v. Tucker, 905

Sealed Party v. Sealed Party, 903

Sebastian Intern., Inc. v. Russolillo, 136

SEC v. Benson, 656

SEC v. Blatt, 658, 716

SEC v. Blavin, 654, 699

SEC v. Cavanagh, 655, 673, 684, 709, 713

SEC v. Commonwealth Chem. Sec., Inc., 716

SEC v. First City Fin. Corp., 658–659

SEC v. First Pac. Bancorp, 658

SEC v. Global Express Capital Real Estate, 658

SEC v. Great Lakes Equities Co., 654

SEC v. Hughes Capital Corp., 656–657, 658

SEC v. JT Wallenbrock & Associates, 699, 718

SEC v. Poirier, 658

SEC v. Texas Gulf Sulphur Co., 708, 710, 715

SEC v. Thomas James Associates, 657

SEC v. United Energy Partners, Inc., 658

SEC v. World Gambling Corp., 716

Segal v. Rochelle, 840

Sereboff v. Mid Atlantic Medical Services, Inc., 708

Servidone Constr. Corp. v. United States, 380

Sheehan v. Daily Racing Form, Inc., 82

Sheldon v. Metro-Goldwyn Pictures Corp., 615, 642, 661, 666–667, 668, 669, 678, 679, 682, 683, 695, 700, 702, 703

Sherf v. Antoniak, 136

SIHLE v. Right Way Hauling, 145

Snepp v. United States, 905, 912

Southern National Corp. v. United States, 265

Southern Pacific Communications Co. v. American Telephone & Telegraph Co., 197–198

Spencer v. Commonwealth, 165

State v. Brown, 159–160

State v. Crosby, 164

State v. Jones, 161–162

State v. Moore, 154

State v. O'Key, 160

State v. Porter, 143

Stensvad v. Miners & Merchants Bank, 154–155

Sterling v. Velsicol Chem. Corp., 82

Stevens v. Gladding, 628, 652–653, 708

St. Jude Medical Inc. Securities Litigation, In re, 941

Story Parchment Co. v. Paterson Parchment Paper Co., et al., 108, 278

Strougo v. Barclays Bank PLC, 941

Structural Polymer Group, Ltd v. Zoltek Corp., 320

Sunnyland Farms, Inc. v. Central New Mexico Electric Cooperative, Inc., 157

SuperValu Inc. v. Associated Grocers, 196

Super Valu Stores v. Peterson, 140–141

Swierczynski v. Arnold Foods Co., 303, 312

Swinnea v. ERI Consulting Eng'rs, Inc., 916

Sys. Development Integration, LLC v. Computer Sciences Corp., 310

T

Tate Access Floors, Inc. v. Maxcess Techs., Inc., 500

Teamsters Local 445 Freight Division Pension Fund v. Bombardier, Inc., 943, 944, 960

Telecomm Technical Services, Inc. v. Siemens Rolm Communications Inc., 199

Thakore v. Universal Machine Co. of Pottstown, Inc., 133–134
360 Mortg. Grp., LLC v. Homebridge Fin. Servs., Inc., 310
Tilghman v. Proctor, 643–644
To-Am Equipment Co. v. Mitsubishi Caterpillar Forklift America Inc., 403
Total Clean, LLC v. Cox Smith Matthews Inc., 310
TOUSA, Inc., In re, 839
Town & Country Properties, Inc. v. Riggins, 432
Tractebel Energy Marketing, Inc. v. AEP Power Marketing, Inc., 99–100
Tremaine v. Hitchcock, 672, 678
Tull v. United States, 655–656, 709, 713
Tyco International, Ltd. v. Kozlowski, 895

U

Unger v. Amedisys, Inc., 944
United Phosphorous, Ltd. v. Midland Fumigant, Inc., 199
United States v. 14.38 Acres of Land Situated in Leflore County, Mississippi, 83
United States v. Lane Labs-USA, Inc., 674
United States v. O’Keefe, 62
United States v. Raymond, 81, 82
United States v. Snepp, 637
United States v. Spearin, 392
United States v. Universal Management Services, Inc., 716, 717
University Computing Co. v. Lykes-Youngstown Corp., 524, 526
The University of Colorado Foundation, Inc. v. American Cyanamid Company, 677
U.S. Salt, Inc. v. Broken Arrow, Inc., 249
UST v. General Road Trucking, 161
Utah Med. Prods. Inc. v. Graphic Controls Corp., 500

V

Vendo Co. v. Stoner, 916
Ventura v. Titan Sports, Inc., 181–182, 435
Venture Corp. v. Wherify Wireless, Inc., 136
Vibra-Tech Eng’rs, Inc. v. Kavalek, 916
Vickers v. Wichita State University, 149
Victor Stanley, Inc. v. Creative Pipe, Inc., 56–57, 62
Victory Fireworks & Specialty Co., 617

W

Waggoner Motors, Inc. v. Waverly Church of Christ, 163
Waits v. Frito-Lay, Inc., 429–430, 434
Wallace’s Bookstores, Inc., v. Wells, In re, 132
Ward v. Taggart, 635
Warford v. Industrial Power Systems, 128
Washington v. Kellwood, 321–322
Watts et al. v. Waddle et al., 628
Wayne Oakland v. Garden City, 152
Weaver v. Lentz, 162
Webb v. Braswell, 153
Westinghouse Electric & Manufacturing Co. v. Wagner Electric & Manufacturing Co., 646, 647–648, 661–662, 669, 678
Whitby v. Infinity Radio, 144–145
Wilko of Nashua, Inc. v. TAP Realty, Inc., 156
William Floyd Union Free School District v. Wright, 908
Williams Electronics Games, Inc. v. Garrity, 676
Wilt v. Buracker, 166
Winstar Communications, In re, 943
World Radio Labs. v. Coopers & Lybrand, 155
Wyndham International, Inc. v. Ace Am. Ins. Co., 164

X

Xcelera.com Securities Litigation, In re, 943, 951

Y

Yarway Corp. v. Eur-Control USA, Inc., 500

Z

Zacchini v. Scripps-Howard Broadcasting Co., 426
ZixIt Corp. v. Visa USA Inc., 337
Zubulake v. UBS Warburg, LLC, 47, 49, 51, 54, 62, 65

Trustworthy business valuations start here.

About Business Valuation Resources

Every informed stakeholder in business valuation, performance benchmarking, or risk assessment turns to Business Valuation Resources (BVR) for authoritative deal and market data, news and research, training, and expert opinion. Trust BVR for unimpeachable business valuation intelligence. BVR's data, publications, and analysis have won in the boardroom and the courtroom for over two decades.

Deal & Market Data

- DealStats
- BIZCOMPS
- PitchBook Guideline Public Company Comps Tool
- Economic Outlook Update
- FactSet Mergerstat/BVR Control Premium Study
- Stout Restricted Stock Study™
- Valuation Advisors Discount for Lack of Marketability Study
- ktMINE Royalty Rate Data & License Agreements
- First Research Industry, State & Province Profiles
- BizMiner Industry Financial Reports
- Mergerstat Review & Mergerstat Review Monthly
- Duff & Phelps Cost of Capital Navigator
- Valuation Handbook - U.S. Industry Cost of Capital
- Valuation Handbook – International Guide to Cost of Capital
- Valuation Handbook – International Industry Cost of Capital
- Butler Pinkerton Calculator – Total Cost of Equity and Public Company Specific Risk Calculator

News & Research

- BVRResearch Pro
- Business Valuation Update
- BVLaw
- Economic Outlook Update
- Business Reference Guide Online

Training & CPE

- Webinars
- Web Workshops & Special Series
- Desktop Learning Centers
- Self-study CPE
- eLearning

Guides, Books & Reports

- Digital Library
- Guides & Books
- Special Reports
- Legal Compendiums
- Yearbooks

Learn more about all of our offerings at:
bvresources.com

Contact us at: 1-503-479-8200 or info@bvresources.com