The Comprehensive Guide to Economic Damages
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 ........................................... 3

- Chapter 1. Professional Standards for Experts .................................................. 5  
  By Michael A. Crain, DBA, CPA/ABV, CFA, CFE

- Chapter 2. The Process: A Brief Introduction to the U.S. Court Systems, From Filing to Appeal .................................. 11  
  By Jonathan M. Dunitz, Esq., and Clifton T. Hutchinson, Esq.

- Chapter 3. Spoliation of Evidence ................................................................. 33  
  By David B. Chaffin, Esq., and Rachel J. Eisenhaure, Esq.

- Chapter 4. A Guide to Electronic Discovery and Evidence ................................... 59  
  By Daniel K. Gelb, Esq. and Richard M. Gelb, Esq.

- Chapter 5. Expert Depositions: Accountants, Economists, and Appraisers ................ 73  
  By David L. Herzer Jr., Esq.

- Chapter 6. The Reasonable Certainty Requirement in Lost Profits Litigation: What It Really Means ........................................ 89  
  By Robert M. Lloyd, Esq.

- Chapter 7. Motions to Exclude Financial Experts ............................................. 119  
  By Jonathan M. Dunitz, Esq., and Clifton T. Hutchinson, Esq.

- Chapter 8. Motions to Exclude Expert Testimony .............................................. 169  
  By Robert M. Lloyd, Esq.

## PART II. LOST PROFITS DAMAGES ........................................... 203

- Chapter 9. Context of the Lost Profits Damages Claim ...................................... 205  
  By Jonathan M. Dunitz, Esq., and Tyler L. Farmer, Esq.

- Chapter 10. Performing Credible Lost Profits Analyses ..................................... 217  
  By James O’Brien, CPA, CFF, and Greg Stillman, Esq.

- Chapter 11. Projecting But-For Profits ........................................................... 241  
  By Stacey Udell, CPA/ABV/CFF, CVA

- Chapter 12. Establishing Evidence in Lost Profits Cases ................................... 259  
  By Tom Burrage, CPA/ABV, CVA, CFF, and Clifton T. Hutchinson, Esq.

- Chapter 13. Lost Profits Versus Lost Business Value ....................................... 273  
  By Tyler L. Farmer, Esq., and Neil J. Beaton, CPA/ABV/CFF, CFA, ASA

- Chapter 14. Discounting Lost Profits in Damage Measurements ............................ 289  
  By Michael A. Crain, DBA, CPA/ABV, CFA, CFE

---

*Note: The title page for each chapter contains a detailed table of contents for that chapter.*
<table>
<thead>
<tr>
<th>Chapter</th>
<th>Title</th>
<th>Authors</th>
</tr>
</thead>
<tbody>
<tr>
<td>16</td>
<td>Use of Forensic Evidence in a Lost Profits Case</td>
<td>Michael Kaplan, CPA/ABV/CFF, CVA, MAFF, and Rebekah Smith, CPA/CFF, CVA, MAFF</td>
</tr>
<tr>
<td><strong>PART III. DAMAGES IN SPECIFIC INDUSTRY SETTINGS</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Calculating Damages for Early-Stage Companies</td>
<td>Neil J. Beaton, CPA/ABV/CFF, CFA, ASA, and Tyler L. Farmer, Esq.</td>
</tr>
<tr>
<td>18</td>
<td>Lost Profits for Physician Practices and Violation of Noncompete Agreements</td>
<td>Mark O. Dietrich, CPA/ABV</td>
</tr>
<tr>
<td>20</td>
<td>Construction Claims</td>
<td>Greg A. McKinnon, CPA/CFF, CMA</td>
</tr>
<tr>
<td>21</td>
<td>Lost Profits for Automobile Dealerships</td>
<td>Timothy W. York, CPA/ABV</td>
</tr>
<tr>
<td>22</td>
<td>Lost Profits Analysis in Eating Establishments</td>
<td>Ron Seigneur, CPA/ABV, ASA, CVA, CFF, CGMA</td>
</tr>
<tr>
<td>23</td>
<td>Damages and Right of Publicity Infringements</td>
<td>Audrey Wessel, Esq., and Mark Roesler, Esq.</td>
</tr>
<tr>
<td>24</td>
<td>Franchise and Dealership Litigation Damages</td>
<td>Mark M. Leitner, Esq., Joseph S. Goode, Esq., and Ted Stockton</td>
</tr>
<tr>
<td><strong>PART IV. INTELLECTUAL PROPERTY DAMAGES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Intellectual Property Overview</td>
<td>Michael A. Crain, DBA, CPA/ABV, CFA, CFE</td>
</tr>
<tr>
<td>26</td>
<td>Patent Infringement Damages: Lost Profits and Royalties</td>
<td>Richard F. Bero, CPA/ABV, CVA, CLP, and Autumn N. Nero, J.D.</td>
</tr>
<tr>
<td>27</td>
<td>Trade Secret Damages</td>
<td>Richard F. Bero, CPA/ABV, CVA, CLP, and Jon Margolies, J.D.</td>
</tr>
<tr>
<td>28</td>
<td>Lost Profits (and Other Damages) in Trademark and Copyright Cases</td>
<td>Rick Hoffman, Mark Glick, Ph.D., J.D., and Milan Politi, J.D.</td>
</tr>
<tr>
<td>29</td>
<td>Uses of Survey Research in Damages Estimation</td>
<td>Larry Chiagouris and Leon Kaplan</td>
</tr>
<tr>
<td>30</td>
<td>Using Internet Analytic Tools for Valuation and Damages Calculations in Internet IP Infringement and Defamation Cases</td>
<td>Doug Bania, CLP, and Brian Buss, CFA</td>
</tr>
<tr>
<td>31</td>
<td>Profit Apportionment in Intellectual Property Infringement Damages Calculations</td>
<td>Brian Buss, CFA, and Doug Bania, CLP</td>
</tr>
</tbody>
</table>
## Table of Contents

### PART V. THE UNJUST ENRICHMENT REMEDY

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 32. Introduction to Remedies in Equity</td>
<td>599</td>
</tr>
<tr>
<td>By George P. Roach</td>
<td></td>
</tr>
<tr>
<td>Chapter 33. Counting the Beans: Unjust Enrichment and the Defendant’s Overhead</td>
<td>611</td>
</tr>
<tr>
<td>By George P. Roach</td>
<td></td>
</tr>
<tr>
<td>Chapter 34. Restitution Rollout: The Restatement (Third) of Restitution &amp; Unjust Enrichment: Counter-Restitution for Monetary Remedies in Equity</td>
<td>685</td>
</tr>
<tr>
<td>By George P. Roach</td>
<td></td>
</tr>
</tbody>
</table>

### PART VI. PERSONAL INJURY/WRONGFUL DEATH

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 35. Economic Damages From Personal Injury and Wrongful Death</td>
<td>723</td>
</tr>
<tr>
<td>By James A. (Jim) Koerber, CPA/ABV/CFF</td>
<td></td>
</tr>
<tr>
<td>Chapter 36A. Damages in Common-Law Employment Cases</td>
<td>743</td>
</tr>
<tr>
<td>By Joseph D. Garrison, Esq., and Joshua R. Goodbaum, Esq.</td>
<td></td>
</tr>
<tr>
<td>Chapter 36B. Calculation of Damages in Common-Law Employment Cases</td>
<td>751</td>
</tr>
<tr>
<td>By James A. (Jim) Koerber, CPA/ABV/CFF</td>
<td></td>
</tr>
</tbody>
</table>

### PART VII. OTHER DAMAGES ANALYSES

<table>
<thead>
<tr>
<th>Chapter</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 37. Financial Forensic Services for Internal Investigations</td>
<td>759</td>
</tr>
<tr>
<td>By Peter Resnick, CPA, CFF, CFE, and Greg Naviloff, CPA, CFF, CFE, ABV</td>
<td></td>
</tr>
<tr>
<td>Chapter 38. Business Interruption and Damage Claims</td>
<td>797</td>
</tr>
<tr>
<td>By John Garaffa, Esq.</td>
<td></td>
</tr>
<tr>
<td>Chapter 39. An Overview of Accounting and Financial Analysis in Fraudulent Transfer Matters</td>
<td>835</td>
</tr>
<tr>
<td>By Jeffrey L. Baliban, CPA, ABV, CDBV</td>
<td></td>
</tr>
<tr>
<td>Chapter 40. Compensation Forfeiture: Stacking Remedies Against Disloyal Agents and Employees</td>
<td>855</td>
</tr>
<tr>
<td>By George P. Roach</td>
<td></td>
</tr>
<tr>
<td>Chapter 41. Post-Acquisition Disputes and Related Damages</td>
<td>917</td>
</tr>
<tr>
<td>By Jeff Litvak, CPA/ABV/CFF, ASA, Kenneth Mathieu, CPA/ABV/CFF, Jared Bourgeois, CPA/ABV, CFE, and Jonathan Dunitz, Esq.</td>
<td></td>
</tr>
<tr>
<td>Chapter 42. Event Studies in Securities Litigation</td>
<td>937</td>
</tr>
<tr>
<td>By Adrian M. Cowan, Ph.D., and Paul J. Seguin, Ph.D.</td>
<td></td>
</tr>
<tr>
<td>Chapter 43. Use of Statistical Analysis to Measure Damages</td>
<td>961</td>
</tr>
<tr>
<td>By Charles D. Cowan, Ph.D.</td>
<td></td>
</tr>
</tbody>
</table>

### PART VIII. INDEX

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Index</td>
<td>981</td>
</tr>
<tr>
<td>Index of Cases in Volume One</td>
<td>1009</td>
</tr>
</tbody>
</table>

www.bvresources.com
## Introduction

### PART VII. CASE DIGESTS

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

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

Horizon Health Corp. v. Acadia Healthcare Co. ......................................................... 329
Hubbard v. BankAtlantic Bancorp, Inc. ................................................................. 331
i4i Limited Partnership v. Microsoft Corp. ............................................................ 335
Icare-EMS, Inc. v. Rural Metro Corp. ................................................................. 338
Ice Corp. v. Hamilton Sundstrand Corp. .................................................................. 340
Illinois Tool Works, Inc. v. MOC Products Co., Inc. .............................................. 342
Imaging International v. Hell Graphic Systems, Inc. ............................................. 343
Immersion Corp. v. HTC Corp. .................................................................................. 346
Interactive Pictures Corporation v. Infinite Pictures, Inc. ...................................... 348
Interstate Oil and Supply Company, et al. v. Troutman Oil Company ............... 350
Ileana Irvine, IRG Research Group, Inc. v. Murad Skin Research Labs, Inc. .... 351
ITT Corp. v. Xylem Group, LLC ............................................................................. 352
J&M Distrib., Inc. v. Hearth & Home Techs., Inc. ...................................................... 355
Jack Tyler Engineering Co. v. Colfax Corp. ........................................................... 357
James V. James et al. v. David MacDonald et al. .................................................... 360
JGR, Inc. v. Thomasville Furniture Industries, Inc. (II) .......................................... 361
In re Jonatzke ........................................................................................................... 363
Joyce v. Armstrong Teasdale, LLP (I) ................................................................... 365
Joyce v. Armstrong Teasdale, LLP (II) ................................................................. 367
Kairos Scientific Inc. v. Fish & Richardson P.C. ...................................................... 370
Kids’ Universe et al. v. In2Labs et al. .................................................................... 374
Kinesoft Development Corporation v. Softbank Holdings Inc. ......................... 376
Kumho Tire Co. v. Carmichael ................................................................................ 379
Kyocera Corporation v. Prudential-Bache Trade Services, Inc. et al. ................. 380
Lane v. Lampkin (I) ............................................................................................... 383
Lane v. Lampkin (II) ............................................................................................. 385
Lane v. Lampkin (III) ........................................................................................... 388
LaserDynamics, Inc. v. Quanta Computer, Inc. (V) .............................................. 390
Judith A. Lawton et al. v. Robert Nyman et al. ..................................................... 395
Li v. Aeterna Zentaris, Inc. ..................................................................................... 398
LifeWise Master Funding LLC et al. v. Telebank .................................................. 400
Lightbox Ventures, LLC v. 3 RD Home Ltd. ......................................................... 403
LightLab Imaging, Inc. v. Axsun Technologies, Inc. ............................................. 406
Lucent Technologies, Inc. v. Microsoft Corp. (IV) .................................................. 408
Edward E. Lucente v. International Business Machines Corporation (II) ........ 412
Luminara Worldwide, LLC v. Liown Elecs. Co. .................................................... 414
M & A Technology, Inc. v. iValue Group, Inc. ....................................................... 417
MacDermid Printing Solutions, Inc. v. Cortron Corp. .......................................... 420
In Re: Magna Cum Latte Inc. ................................................................................. 422
Manpower, Inc. v. Insurance Co. of Pennsylvania (II) ............................................ 425
Manpower, Inc. v. Insurance Co. of Pennsylvania (III) ......................................... 426
Marine Travelift, Inc. v. Marine Lift Systems, Inc. ............................................... 429
Martin Transp., Ltd. v. Platiom Adver., Inc. ............................................................. 431
Massachusetts Eye and Ear Infirmary v. QLT Phototherapeutics, Inc. ............... 434
Mattress Closeout Ctr. IV, LLC v. Panera, LLC ..................................................... 436
Maytronics, Ltd. v. Aqua Vac Systems, Inc. ........................................................... 438
Mentor Graphics Corp. v. EVE-USA, Inc. (I) .......................................................... 440
Mentor Graphics Corp. v. EVE-USA, Inc. (II) ......................................................... 444
Metro Tech Corp. v. TUV Rheinland of N.A. ......................................................... 443
Mifflinburg Telegraph, Inc. v. Criswell, Inc. ........................................................ 445
Miller Bros. Coal, LLC v. Consol of Kentucky, Inc. ............................................. 446
MindGames, Inc. v. Western Publishing Company, Inc. .......................................................... 448
Montage v. Athle-Tech (I) ........................................................................................................ 450
Mood v. Kronos Products, Inc. ................................................................................................. 452
Morgan Stanley & Co. Inc. v. Coleman (Parent) Holdings Inc. ........................................ 454
Mosaid Technologies Inc. v. LSI Corp. .................................................................................. 457
Multimatic, Inc. v. Faurecia Interior Systems USA, Inc. ....................................................... 459
MyGallons LLC v. U.S. Bankcorp. ........................................................................................... 461
Natchez Regional Medical Center v. Quorum Health Resources, LLC. ................................ 463
Navigato v. SJ Restaurants, LLC ............................................................................................ 465
Nebraska Plastics, Inc. v. Holland Colors America, Inc. ....................................................... 468
Nebula Glass International, Inc. v. Reichhold, Inc. ................................................................. 469
Netquote, Inc. v. Byrd (I) ........................................................................................................ 472
Netquote, Inc. v. Byrd (II) ....................................................................................................... 474
Nieman v. Bunnell Hill Development Co., Inc. ...................................................................... 476
Nordetek Environmental, Inc. v. RDP Technologies, Inc. .................................................... 477
Nordock, Inc. v. Systems, Inc. ................................................................................................. 480
North Dade Community Development Corp. v. Dinner’s Place, Inc. .................................. 483
In re Novatel Wireless Securities Litigation ......................................................................... 484
Oracle America, Inc. v. Google Inc. (I) .................................................................................. 487
Oracle America, Inc. v. Google Inc. (II) ................................................................................ 492
Oracle America, Inc. v. Google Inc. (III) ............................................................................. 494
Orthoflex, Inc. v. Thermotek, Inc. ......................................................................................... 498
Packgen v. Berry Plastics Corp. (I) ......................................................................................... 501
Packgen v. Berry Plastics Corp. (II) ....................................................................................... 505
Parlour Enterprises, Inc. v. The Kirin Group, Inc. ................................................................. 508
Pattridge v. Starks .................................................................................................................. 510
Penn Mart Supermarkets, Inc. v. New Castle Shopping LLC .............................................. 513
PharmAthene, Inc. v. SIGA Technologies, Inc. ................................................................... 516
Physicians Dialysis Ventures, Inc. v. Griffith ....................................................................... 520
Pike v. Tex. EMC Mgmt., LLC ............................................................................................... 522
Robert J. Pound v. Airosol Company, Inc. ........................................................................... 525
Powell v. The Home Depot U.S.A., Inc. .............................................................................. 527
Progressive Casualty Insurance Company v. All Care, Inc. .................................................. 529
PSKS, Inc. v. Leegin Creative Leather Products, Inc. ......................................................... 533
Pulse Medical Instruments, Inc. v. Drug Impairment Detection Services, Inc. ................ 535
Pure Power Boot Camp, Inc. v. Warrior Fitness Boot Camp ............................................... 538
Radiologix, Inc. v. Radiology & Nuclear Medicine, LLC ..................................................... 540
RAF Enterprises LLC, et al. v Trident LLC, et al. ................................................................. 543
Real View, LLC v. 20-20 Technologies (I) .......................................................................... 546
Rebelwood Apts. RP, LP v. English ....................................................................................... 549
Reeder-Simco GMC, Inc. v. Volvo GM Heavy Truck Corporation ....................................... 551
Rembrandt Social Media, LP v. Facebook .......................................................................... 552
RKR Motors, Inc. v. Associated Uniform Rental & Linen Supply, Inc. ................................ 554
RMD, LLC v. Nitto Americas, Inc. ........................................................................................... 556
RMS of Wisconsin, Inc. v. S-K JV ....................................................................................... 558
Roll-Rite, LLC v Shur-Co, LLC ............................................................................................. 561
Rolls-Royce PLC v. United Technologies Corp. ................................................................ 564
Rosco, Inc. v. Mirror Life Company ..................................................................................... 567
Rowe v. DPI Specialty Foods ................................................................................................. 569
Royal’s Reconditioning Corporation, Inc. v. Garry Royal ................................................... 572
### Table of Contents

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

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.nhdlaw.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 & Burling 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
Acknowledgments

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
HBK Valuation Group
220 Lake Dr. E Suite 205
Cherry Hill, New Jersey 08002
www.hbkcpa.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 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 CPA’s (AICPA) National Healthcare Industry Conference for 2012 and 2013, chaired the AICPA Virtual Conference on the Affordable Care Act in January 2014, and the National Healthcare Industry Conference Affordable Care Act section in 2014. AICPA acknowledged his career achievements at the 2016 National Healthcare Industry Conference.

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.”

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
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, 765404
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
dealer 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
The Comprehensive Guide to Economic Damages: Volume One

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
take deposition, 81
take deposition, 81
example question 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

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, 226–237

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

Dues 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

www.bvresources.com
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, 322–327
  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
labaratory 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
The Comprehensive Guide to Economic Damages: Volume One

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
Faithful 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
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 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
    reviewed, 182
    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
The Comprehensive Guide to Economic Damages: Volume One

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
- 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, 621, 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

Glejser 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, 772–773
  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

Krognan 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
best available evidence of, 111–113
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, 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
    Daubert and, 81–82
    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
Outlaw, 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
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
Index

royalty damages, 506–514
  collateral sales, 511
  entire market value rule, 510–511
  established royalties, 506–507
  form of reasonable royalty, 509–510
  *Georgia-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, affability, 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


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

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

www.bvresources.com
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
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
cautions 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
The Comprehensive Guide to Economic Damages: Volume One

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

Riggs, 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

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
  Georgia-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

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

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

Self-dealing, as form of disloyalty, 901

Seller assurances, 919–920

Semistrong form efficiency, 942–943

Sensitivity, initial allegation response and, 772–773

Significance, in event studies, 948–949

Site traffic source tools, 565

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

Small Business Job Protection Act, 755
Index

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

www.bvresources.com 1005
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, 455–457
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, 651–660
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
attribution, 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
Variable-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 (WPRA), 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 Gramman 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. Mallotra, 906
Barto v. Share 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
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
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
Camco, 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
Capuya 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
Chasey & James Construction, 385
Charles R. Combs Trucking, Inc. v Int’l Harvester Co., 159
Cher v. Forum Int’l, Ltd., 430, 433
Children’s Broadcast Corp. v. Walt Disney Co., 136
Christoff v. Nestlé, 432
Chung v. Kao nohi Center Co., 146

www.bvresources.com
The Comprehensive Guide to Economic Damages: Volume One

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
Chaar v. Burlington N.R.R., 81
Clark v. Celeb Pub., Inc., 430–431
Client Funding Solutions Corp. v. Crim, 893
Clab Car, Inc. v. Club Car (Quebec) Import, Inc., 138
Cobalt Operating, LLC v. James Crystal Enterprises, LLC, 929
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. v. Manuel, 403
Dairy Queen, Inc. v. Wood, 640
Da Silva Moore v. Publicis Groupe, 62, 70
Data General Corp. v. Grumman Sys., 617
Danbert v. Morrell 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. Schleininger, 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. Healthopia America, Inc., 131
Dichtomatic, Inc. v. U.S. Fidelity & Guar. Co., 831
Douglas Dynamics LLC v. Biyers Products Co., 509
Dowd & Dowd, Ltd. v. Gleason, 916
DSU Medical Corp. v. JMS Co., Ltd., 136
DSU Medical Corp. v. Medisystems Corporation, 140
Duplate Corp. v. Triplex Safety Glass Co., 666
Duro Co. (of Ohio) v. Duro Co. (of New Jersey), 617

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. Qualcomm 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) Securites Opinion Litigation, In re, 954, 959
Federal Trade Commission v. Febre, 716
Federal Trade Commission v. Stefanchik, 711–712, 719
Fed. Trade Comm’n v. H.N. Singer, Inc., 713
Feersers Inc. v. Michael Foods Inc., 320
Ferrie 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., 664
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 re, 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
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
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 Dept' of Fin. Seres., 55
HTS, Inc. v. Boley, 916
Hubbard v. BankAtlantic Bankcorp, Inc., 953
Hynix Semiconductor Inc. v. Rambus, Inc., 55

I
ICD Publ’ns., Inc. v. Gittlitz, 916
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
Jonatze, In re, 310

K
Kairos Scientific, Inc. v. Fish & Richardson, P.C., 305
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
Krogman v. Sterritt, 943, 9959
Kumho Tire Co. v. Carmichael, 81, 82, 122

L
Lambert, In re, 305
Lamoureux v. Anzaahbealth Corp., 129
Larsen v. Walton Plywood Co., 166
Larson Co. v. Wrigley Co., 676
Lestigao v. M. R. Mansfield Realty, 436
Levin Bros. v. Davis Mfg. Co., 623, 664, 670, 674, 676

www.bvresources.com 1011
<table>
<thead>
<tr>
<th>M</th>
<th>Macheth-Ecans Glass Co. v. L. E. Smith, 617</th>
</tr>
</thead>
<tbody>
<tr>
<td>M</td>
<td>Madrid v. Lawyers Title Ins. Co., 842</td>
</tr>
<tr>
<td>M</td>
<td>Maiz v. Virani, 137–138</td>
</tr>
<tr>
<td>M</td>
<td>Maltina Corp. v. Caavy Bottling Co., 673, 677, 680–681</td>
</tr>
<tr>
<td>M</td>
<td>Mann v. United States, 305</td>
</tr>
<tr>
<td>M</td>
<td>Manufacturers Technologies, Inc. v. Cans, Inc., 670</td>
</tr>
<tr>
<td>M</td>
<td>Marriage of Paganino, In re, 908</td>
</tr>
<tr>
<td>M</td>
<td>Marten Transp., Ltd. v. Platform Advers., Inc., 50</td>
</tr>
<tr>
<td>M</td>
<td>Marzoll v. Marine Harvest US, Inc., 81</td>
</tr>
<tr>
<td>M</td>
<td>Matrix Group Ltd., Inc. v. Rawlings Sporting Goods Co., 282</td>
</tr>
<tr>
<td>M</td>
<td>Matsushita Elec. Corp. v. Sony Corp., 151</td>
</tr>
<tr>
<td>M</td>
<td>Matthew Enter. v. Chrysler Grp. LLC, 52, 54</td>
</tr>
<tr>
<td>M</td>
<td>Max Sugarman Funeral Home, Inc. v. A.D.B. Investors, 838</td>
</tr>
<tr>
<td>M</td>
<td>McDaniel v. CSX Transportation, Inc., 163</td>
</tr>
<tr>
<td>M</td>
<td>Meineke Car Care Centers, Inc. v. RLB Holdings, LLC., 447–448</td>
</tr>
<tr>
<td>M</td>
<td>Mellon Bank, N.A. v. Metro Commc’ns, Inc., 842</td>
</tr>
<tr>
<td>M</td>
<td>Mentor Graphics Corporation v. Eze-USE, Inc. et al., 582</td>
</tr>
<tr>
<td>M</td>
<td>Metro Tech v. TUV Rheinland, 128</td>
</tr>
<tr>
<td>M</td>
<td>M.G. Bancorporation, Inc. v. Le Beau, 143</td>
</tr>
<tr>
<td>M</td>
<td>McG Polymers, USA, LLC v. Carestream Health, Inc., 185, 309</td>
</tr>
<tr>
<td>M</td>
<td>Micron Technology, Inc. v. Rambus, Inc., 55</td>
</tr>
<tr>
<td>M</td>
<td>Miller v. Bike Athletic Co., 159</td>
</tr>
<tr>
<td>M</td>
<td>Minco, Inc. v. Combustion Engineering, Inc., 504</td>
</tr>
<tr>
<td>M</td>
<td>Mindgames, Inc. v. Western Publishing Co., 99, 343</td>
</tr>
<tr>
<td>M</td>
<td>Mississippi Transport Commission v. McLemore, 153</td>
</tr>
<tr>
<td>M</td>
<td>Mitchell v. Robert DeMario Jewelry, Inc., 652, 708, 709</td>
</tr>
<tr>
<td>M</td>
<td>Monessen Southwestern Railway Co. v. Morgan, 737</td>
</tr>
<tr>
<td>M</td>
<td>Montage Group Ltd. v. Athle-Tech Computer Systems, Inc., 267</td>
</tr>
<tr>
<td>M</td>
<td>Moore v. Ashland Chemical, Inc., 82</td>
</tr>
<tr>
<td>M</td>
<td>Moawry v. Whitney, 641, 642, 692–693</td>
</tr>
<tr>
<td>P</td>
<td>Multimedia, Inc. v. Faurecia Interior Systems USA, Inc., 131–132</td>
</tr>
<tr>
<td>P</td>
<td>MyGallons LLC v. U.S. Bankcorp, 337</td>
</tr>
<tr>
<td>N</td>
<td>National Envelope Corp. v. American Pad &amp; Paper Co. of Delaware, Inc., 129</td>
</tr>
<tr>
<td>N</td>
<td>National Railroad Passenger Corp. v. Veolia Transportation Services, 889</td>
</tr>
<tr>
<td>N</td>
<td>Navigato v. SJ Restaurants, LLC, 419</td>
</tr>
<tr>
<td>N</td>
<td>Nebraska Nutrients, Inc. v. Shepherd, 155</td>
</tr>
<tr>
<td>N</td>
<td>Nebraska Plastics, Inc. v. Holland Colors Americas, Inc., 319</td>
</tr>
<tr>
<td>N</td>
<td>Nebula Glass International, Inc. v. Reichold, Inc., 262, 263</td>
</tr>
<tr>
<td>N</td>
<td>New England Dairies v. Dairy Mart, 129–130</td>
</tr>
<tr>
<td>N</td>
<td>Nike, Inc. v. Wal-Mart Stores, Inc., 647, 669, 678, 681</td>
</tr>
<tr>
<td>N</td>
<td>Northern Helco Co. v. United States, 304</td>
</tr>
<tr>
<td>N</td>
<td>Noratel Wireless Securities Litigation, In re, 948</td>
</tr>
<tr>
<td>O</td>
<td>Oakland California Towel Co. v. Sivils, 279</td>
</tr>
<tr>
<td>O</td>
<td>O’Berry v. Turner, 52</td>
</tr>
<tr>
<td>O</td>
<td>Olympia Equipment Leasing Co. v. Western Union Telegraph Co., 124</td>
</tr>
<tr>
<td>O</td>
<td>Omnicom Group, Inc. Securities Litigation, In re, 958</td>
</tr>
<tr>
<td>O</td>
<td>Oslon v. Sax, 47</td>
</tr>
<tr>
<td>O</td>
<td>Otis v. Doctor’s Associates, Inc., 134</td>
</tr>
<tr>
<td>P</td>
<td>Panduit Corp. v. Stahlin Bros. Fibre Works, Inc., 496</td>
</tr>
<tr>
<td>P</td>
<td>Parlour Enterprises Inc. v. The Kirin Group, 269</td>
</tr>
<tr>
<td>P</td>
<td>Penn Mart Supermarkets, Inc. v. New Castle Shopping, LLC, 265, 266</td>
</tr>
<tr>
<td>P</td>
<td>Perinroll v. Texaco, 93</td>
</tr>
<tr>
<td>P</td>
<td>Pension Committee of the University of Montreal Pension Plan v. Banc of America Securities., 51, 54–55, 56</td>
</tr>
<tr>
<td>P</td>
<td>People v. Kelly, 142</td>
</tr>
<tr>
<td>P</td>
<td>Pepe &amp; Hazard v. Jones, 143</td>
</tr>
<tr>
<td>P</td>
<td>Petrobras Securities, In re, 941, 944</td>
</tr>
<tr>
<td>P</td>
<td>Phansalkar v. Andersen Weinroth &amp; Co., 904–905</td>
</tr>
<tr>
<td>P</td>
<td>Pharmnetics, Inc. v. Aventis Pharmaceuticals, Inc., 130</td>
</tr>
<tr>
<td>P</td>
<td>Pharmacnet, Inc. v. SIGA Technologies, Inc., 308–309</td>
</tr>
<tr>
<td>P</td>
<td>Plumbers &amp; Pipefitters, Nat. Pension Fund v. Burns, 955, 959, 960</td>
</tr>
<tr>
<td>P</td>
<td>Polaroid Corp. v. Eastman Kodak Co., 280</td>
</tr>
<tr>
<td>P</td>
<td>Polo Fashions, Inc. v. C Interstate, Inc., 674</td>
</tr>
<tr>
<td>P</td>
<td>Porter v. Warner Holding Co., 628–629, 707, 709, 718</td>
</tr>
<tr>
<td>P</td>
<td>Postal Instant Press v. Sealy, 446–447</td>
</tr>
<tr>
<td>P</td>
<td>Progressive Casualty v. All Care, 153</td>
</tr>
<tr>
<td>P</td>
<td>Propex Corp. v. Brownlee, 381</td>
</tr>
<tr>
<td>P</td>
<td>PSKS, Inc. v. Leegin Creative Leather Products, Inc., 282</td>
</tr>
</tbody>
</table>
Index of Cases in Volume One

Purina Mills, LLC v. Less, 302, 303–304
Purator 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
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
R & M 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
Roue v. DPI, 320–321
Russell v. Allianze Life Insurance Co. of North America, 321

S

Saden v. Smith, 913
Sammons v. Colonial Press, Inc., 617, 671
Sargen Enterprises, Inc. (Sargon) v. University of Southern California, 142, 249–250, 333
Sargen 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
Schnadig Corp. v. Gaines Manufacturing Co., 646, 676
Schonfeld v. Hilliard, 115, 116, 283
Scientific Atlanta, Inc. Securities Litigation, In re, 958
Scruby 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. IT 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, 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 Patchen Co. v. Paterson Patchen Paper Co., et al., 108, 278
Strougo v. Barclays Bank PLC, 941
Structural Polymer Group, Ltd v. Zoltek Corp., 320
Sunnyside 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
Swimina 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
The Comprehensive Guide to Economic Damages: Volume One

Thakore v. Universal Machine Co. of Pottstown, Inc., 133–134
Tilghman v. Prout, 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. 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
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
Wallace’s Bookstores, Inc., v. Wells, In re, 132
Ward v. Taggert, 635
Warford v. Industrial Power Systems, 128
Watts et al. v. Waddle et al., 628
Wayne Oakland v. Garden City, 152
Weaver v. Lenz, 162
Webb v. Braswell, 153
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

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
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 Industry Cost of Capital
- Butler Pinkerton Calculator – Total Cost of Equity and Public Company Specific Risk Calculator

News & Research

- BVResearch 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