

EXCERPT

Nancy J. Fannon | Jonathan M. Dunitz

The Comprehensive Guide to Economic Damages



Fifth Edition

BVR
What It's Worth

FIFTH EDITION

The Comprehensive Guide to Economic Damages

VOLUME ONE

Nancy Fannon
and
Jonathan M. Dunitz
Editors



What It's Worth

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What It's Worth

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

NJF, 2018

To my parents, for their decades of support.

JMD, 2018

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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.

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Foreword

“It costs us nothing to be just.”¹

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

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

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

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

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

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

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

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

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

Nancy J. Fannon and Jonathan M. Dunitz
2018

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

Part VIII.
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