

Agenda for the:

National Economic Damages Virtual Conference

DAY ONE: May 26, 2021

Session: Intellectual Property Damages

Time: 10am-11am PT

Speakers: Rick Bero & Autumn Nero

In this program, Rick Bero and Autumn Nero will provide attendees with a fast-paced and informative discussion on patent damages. They will first discuss the importance of defining the patented technology at issue. They will then address lost profits and the factors and conditions that are generally necessary for a plaintiff to receive lost profits. Next, they will discuss reasonable royalties, and various factors and considerations that typically are addressed when determining a reasonable royalty. Finally, Rick and Autumn will spend some time on the entire market value rule and comparable license agreements.

Agenda:

- Introduction and Defining the Technology
- Lost Profits
- Reasonable Royalty
- Entire Market Value Rule
- Comparable License Agreements

Learning Objectives:

- Participants will learn the importance of defining the patented technology at issue
- Participants will be able to identify the damage remedies in patent infringement cases
- Participants will develop a basic understanding of what the entire market value rule is
- Participants will learn about why not all license agreements are comparable

Session: Case Study: Calculating Covid-19 Economic Damages

Time: 11am-Noon PT

Featuring: Neil Beaton & Elizabeth Fenton

In this case study, financial expert Neil Beaton and attorney Beth Fenton discuss how to assess and measure damages that have arisen from, or were impacted by, COVID-19 directly or indirectly. Learn potential ways to look at activity levels from pre- and post-COVID-19 and how to potentially use those observations to assist in determining damages. Mr. Beaton and Ms. Fenton will discuss some of the ways COVID-19 has impacted the value of their clients' businesses and the wrinkles this may potentially add to damages.

Case study:

- Fact pattern;
- Forecast issues;
- Pre-COVID-19 vs. post-COVID-19;
- Activity ratios;
- Legal perspective;
- Other COVID-19/testifying tips.

Learning objectives:

- Describe methods for assessing and determining COVID-19 damages;
 - List several ways COVID-19 impacts value or damages; and
 - Restate potential concerns about COVID-19 calculations.
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Session: But-For Profits**Time: Noon-1pm PT****Featuring: Stacey Udell**

Forensic accountants and business valuation professionals are often asked to calculate economic damages when a plaintiff seeks to recover economic damages due to wrongful actions of a defendant. Lost profits represent the amount necessary to place the harmed party in a position it would have been “but for” the alleged acts. Join Stacey Udell to learn why every calculation must be credible, contain a reasonable degree of uncertainty, and cannot be speculative.

Agenda:

Speaker will discuss when it is (or is not) acceptable to use the past as an indicator of the future.

- Overview of but-for profits;
- Forecasts versus projection;
- Methods for determining lost revenue;
- Historical information as an indicator of the future;
- The use of averages, medians, and compound annual growth;
- Consideration of growth;
- Consideration of industry and economic information;

- Methods to forecast expenses; and
- Closing

Learning Objectives:

- Participants will be able to distinguish between forecasts and projections.
 - Participants will be introduced to the methods for determining lost revenue.
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Session: Editors Panel

Time: 1pm-1:30pm PT

Featuring: Steven Veenema, Jimmy Pappas, and William Scally

Join the editors of BVR's *Guide to Economic Damages* and get a recap of key insights from the day. Ask questions from the topics and beyond.

Agenda:

- Panel discussion of topics, themes, and questions; and
- Open Q&A.

Learning objectives:

- Restate key themes and lessons from the conference;
- Describe areas of damages for further inquiry; and
- List additional areas for study.

DAY TWO: May 27, 2021

Session: Planning Credible Lost Profits Analyses for Financial Expert

Time: 10am-11am PT

Featuring: Robert P. Gray, Robert B. Kester, and Karl G. Dial, Esq.

Join Robert Gray, Rob Kester and Karl G. Dial, Esq to learn the factors that financial experts should consider when preparing and executing credible expert lost profits analyses. Financial experts can improve their outcomes by properly planning and executing each of the factors. Learn the tips and tools that can be applied to their current and future engagements through the analysis of landmark cases. The speakers include seasoned experts and an attorney to offer insight from both sides of the process.

Agenda:

- Challenges facing experts
- Various roles an expert can serve
- Foundations for planning lost profits analyses
- Tips and tools
- Case analysis
- Key take aways

Learning Objectives:

- Participants will learn how to plan credible lost profits.
 - Participants will be able to identify various challenges that experts face and receive suggestions on how to navigate them.
 - Participants will be able to identify key cases relevant to lost profits analyses.
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Session: Forensic Evidence

Time: 11am-Noon PT

Featuring: Rachel Eisenhaure

Through the lens of fact patterns drawn from case law, this presentation will cover three areas of spoliation practice: avoiding spoliation, seeking redress for spoliation by another, and remedying spoliation. Using fact patterns from the case law, we will discuss best practices as well as worst-case scenarios.

Agenda:

Part I: Avoiding spoliation.

- Briefly define spoliation;
- Briefly list common practices to secure evidence (litigation hold, etc.); and
- Cautionary tales from case law: preservation failures from negligent to fraudulent.

Part II: Avenging spoliation.

- Brief review of spoliation test and remedies in federal court; and
- War stories from case law.

Part III: Ameliorating spoliation.

- Brief overview of how recovering the evidence impacts the spoliation test;
- Methods of fixing spoliation; and
- Examples from case law.

Learning Objectives:

- Describe how to avoid spoliation at the outset of litigation by learning about the gaps in other litigants' preservation methods as discussed in case law;
- List strategies for when the opposing party's spoliation has made evidence unavailable; and
- Demonstrate how to spot situations where spoliation may be remedied, such as by forensic recovery of documents, and to what extent the consequences of spoliation can be avoided in whole or in part by doing so.

Session: Exclusion of Financial Experts

Time: Noon-1pm PT

Featuring Jonathan Dunitz

Join attorney and author Jonathan Dunitz for a session on the legal predicate for excluding a lost profits damages expert. Learn about factors that the attorney should consider when deciding whether to file a motion to exclude an opposing expert. The second section of the presentation is a compendium of case law on expert evidence from the federal circuit courts and state courts, setting out the expert gatekeeping procedures in each state and discussing the leading lost profits cases and relevant principles in each jurisdiction. Don't exclude yourself from learning about this critical topic.

Agenda:

Motions to exclude financial experts

- Basic legal predicate;
- Methodologies for expert gatekeeping;
- Format for pretrial gatekeeping;
- Factors to consider in making a motion to exclude an expert;

- Methodological flaws in expert opinions; and
- Expert gatekeeping by jurisdiction.

Learning objectives:

- List basic legal predicate;
 - Describe different methods for expert gatekeeping;
 - List factors for pretrial gatekeeping; and
 - Restate methodological flaws in expert options.
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