

LITIGATION SERVICES HANDBOOK

The Role of the Financial Expert

FOURTH EDITION

Edited by
Roman L. Weil
Peter B. Frank
Christian W. Hughes
Michael J. Wagner



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PREFACE

The litigation services practice for financial experts continues to expand in size, complexity, and geographic scope. This *Handbook* offers a comprehensive guide for economists, accountants, and litigators involved generally with damages or analytic issues in commercial litigation. The three previous editions, the first of which appeared 16 years ago, have enjoyed critical success as they served to guide readers and practitioners in the litigation services industry.

This fourth edition of the *Litigation Services Handbook* contains 39 chapters, all written by experts—accountants, economists, and litigators—in their field. In addition to the new chapters, this edition consolidates related chapters that appeared in the third edition and presents substantial updates to or complete rewrites of previous chapters. Together, they explain the financial theory behind the demonstrated practical application and clarify relevant case and statute law. This edition also includes an extensive glossary of financial terms.

Organization and Writing. This edition comprises seven sections, each addressing a different practice area or set of functional tools.

Part I: *The Litigation Environment* (4 chapters) discusses the civil court system, principles and techniques of alternative dispute resolution, and how CPAs and economists function in the litigation environment; it also includes a new chapter on causation issues.

Part II: *Damages Techniques* (12 chapters) addresses the components of damages calculations with eight new chapters on statistical estimation, econometrics, *ex ante* versus *ex post* calculations, prejudgment interest, problems with averages in calculations, losses of new businesses, business valuation and punitive damages.

Part III: *Litigation Tools* (1 new chapter) explains data management in regulatory and litigation environments.

Part IV: *Civil Litigation* (14 chapters) addresses specific types of commercial cases, categorized into five subsections:

1. *Securities and Accountant Liability* (2 chapters, one of which consolidates securities chapters of past editions)
2. *Intellectual Property* (4 chapters, including two new chapters that discuss intellectual property in the entertainment industry and license compliance, respectively, as well as a chapter that consolidates intellectual property chapters of previous editions)
3. *Antitrust/Business Combinations* (2 chapters, including a new chapter that revisits antitrust issues)
4. *Construction and Real Property Disputes* (2 chapters, including a new analysis of construction claims)
5. *Other Civil Litigation* (4 chapters, including a consolidation of previous bankruptcy chapters and a new discussion of federal contract disputes)

Part V: *Family Law* (5 chapters)

Part VI: *Criminal Cases* (1 chapter with a new discussion of tax fraud)

Part VII: *Investigations* (2 new chapters, one of which considers investigations of financial statements and another that expands the discussion to include international considerations)

Glossary of Financial Terms (a new section that comprises an extensive catalog of terms, concepts, and distinctions among them)

Notes on Writing Style. Many chapters contain a variety of statements of the form, “The expert will measure cash flows and discount them to present value.” Often, the authors originally wrote, and mean, “The expert will usually measure cash flows and then, typically, discount them to present value.”

Rather than qualify every positive or absolute statement with “typically” or “usually” or “generally,” we have omitted those qualifiers. The reader should understand that unless the statement says something like, “always do X,” the writer intended to qualify the statement with “typically” or “generally” or the like, not to assert a prescriptive formula. As a result of this style simplification, we think the reader more easily will comprehend the message.

Relation between Authors and Editors. We acknowledge the cooperation and patience that our contributing authors have shown. We do not agree with everything they say and sometimes indicate that in notes. We prefer to have experts give their own opinions, even when controversial, rather than less specific guidance—like bland committee reports—on which we can all agree. Note to litigators cross-examining us: just because the author of the chapter said it doesn’t mean we agree with it.

Acknowledgments. We thank Debbie Asakawa for her work in managing, editing, and adding consistency and clarity to the manuscript. We also thank Hillary Ruben for her assistance in tracking down dilatory authors in addition to other tasks that helped bring the book to fruition. We acknowledge the excellent assistance of Katherine McGuire and Nicholas Asakawa and the diligent work of our liaisons at John Wiley & Sons: Judy Howarth and Natasha Wolfe.

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He has served as editor or associate editor of *The Accounting Review*, *Communications of the Association for Computing Machinery*, *Management Science*, *Journal of Accounting and Economics*, and the *Financial Analysts Journal*.

He has coedited four professional reference books for McGraw-Hill, Simon & Schuster, Prentice Hall, and John Wiley & Sons. He has coauthored a dozen textbooks for Holt, Rinehart and Winston, The Dryden Press, Harcourt Brace Jovanovich, and Thomson-SouthWestern. His articles have appeared in *Barron's* and *The Wall Street Journal*. He has published over 80 articles in academic and professional journals. He has served as the principal investigator on various research projects of the National Science Foundation.

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Mr. Frank is a retired Certified Public Accountant. He chaired the AICPA Subcommittee on Litigation Services (1990–1994) and served on the Management Advisory Services (MAS) Executive Committee (1989–1994) and the Professional Ethics Executive Committee (1995–1996) of the AICPA.

Mr. Frank's consulting expertise has been applied to engagements involving analyses of economic, liability, and damages issues in connection with expert testimony. He was consultant to the Christopher Commission's study of the Los Angeles Police Department and the alleged excessive use of force and also acted as special consultant for the Los Angeles Police Commission study (the Webster Commission), organized to assess the city agencies' response following the riots in Los Angeles.

Mr. Frank received his BS in Economics from the University of Pennsylvania. He obtained his MS in Accounting from the Wharton School of the University of Pennsylvania., graduating at the top of his class in both programs.

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He has also acted in support of disputants or as neutral arbitrator in a large number of postmerger purchase price adjustment disputes and assisted in the preparation, analysis, and settlement of over two billion dollars worth of property and business interruption insurance claims across a diverse range of industries and event types.

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Mr. Wagner has testified 27 times in alternative dispute resolution forums and has acted as an arbitrator in a number of commercial arbitrations based on his extensive business consulting experience and his legal training. He was an arbitrator for the American Arbitration Association. He has served on the Litigation Services Committee, the Litigation Services Conferences Steering Committee, the MAS Practice Standards Committee, and the Business Valuation Standards Task Force for the AICPA. He is also a member of numerous professional organizations.

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THE LITIGATION ENVIRONMENT

CHAPTER 1

The Role of the Financial Expert in Litigation Services

CHAPTER 2

Causation Issues in Expert Testimony

CHAPTER 3

The Economics in Accounting for Litigation

CHAPTER 4

Alternative Dispute Resolution

