THE Witness Chair

Leading-edge Ideas for CPAs Providing Litigation and Dispute Resolution Services

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Another Look at Reasonable Compensation

by Ed Rataj, CCP
and Priya Kapila

As compensation consultants, we are regularly involved in determining reasonable pay as a component of ongoing litigation matters. This article aims to describe the significance, practical applications and best practices of reasonable executive compensation in order to provide a broad look at the intricacies involved in evaluating compensation.

Overview of Reasonable Compensation

Marital dissolution cases in which both parties hold claim to a company tend to involve discussions regarding compensation to the extent that one or both parties are company employees. From a government and compliance perspective, the IRS is increasingly focusing on compensation to ensure that deductible amounts are reasonable due to the financial abuses of the 1990s and the recent outcry against executive compensation in the financial services industry. As a result, IRS and court decisions provide much of the information available on acceptable approaches related to assessing reasonableness.

Internal Revenue Code Sec. 162(a)(1) allows companies to deduct "a reasonable allowance for salaries or other compensation for personal services actually rendered." Such a deduction has been permissible since the Revenue Act of 1918; however, the IRS' approach to reviewing compensation has continued to evolve, as have factors the courts consider when hearing cases.

The courts use multiple factors in reviewing the reasonableness of the amount paid as compensation (Moran, 290-4th T.M., *Reasonable Compensation*), including:

1. The nature of the employee's duties;
2. The employee's background and experience;
3. The size of the business;
4. The employee's contribution to the success of the business; and
5. The amount paid by similar size businesses in the same area to equally qualified employees for similar services.

The problems resulting from the lack of free bargaining within closely held companies are compounded in marital dissolution cases in which both sides have a stake in the business. There will often be conflicting interests as to the appropriateness of compensation paid historically as well as what will be paid in the future.

Practical Applications and Best Practices

It is important to understand methods for obtaining applicable compensation information and factors that should be considered when conducting external market analyses and utilization of market data to assess the reasonableness of compensation.

Unclear Definition of Reasonable Compensation
Reasonable compensation has never been definitively defined. The IRS offers the following in Regs. Sec. 1.162-7(b)(3): "It is, in general, just to assume that reasonable and true compensation is only such amount as would ordinarily be paid for like services by like enterprises under like circumstances."

Similarly, recent family law case precedent supports the "similarly situated professional" standard. This standard, as described in *Iredale v. Cates*, (2004) 121 Cal. App.4th 321, 16 Cal.Rptr.3d 505, states reasonable compensation ought to be based on "the cost of hiring a non-owner outsider to perform the same average amount that other people are normally compensated for performing similar services."

While these definitions are clearly logical, they provide little guidance as to appropriate comparison points. For example, there is no mention of elements that should be included in "reasonable and true compensation," whether one should distinguish between guaranteed pay and variable pay or what constitutes "similar services." Due to the broad explanation of reasonable compensation, we have witnessed diverse methodologies employed to demonstrate what is reasonable. The following details the standard approaches to compensation on which we rely.

External Market Data Considerations
What would it cost to effectively replace the employee in question and what are the opportunity costs of losing the employee? The answer to this critical question is best

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Section Action

Business Valuation

by John Misuraca, CPA

The saying, "**Part** science, part art" accurately describes our work in valuing businesses. The value of a business to one person will never be the same value to everyone else. Therefore, there will always be a degree of art to our work. However, since 20, 10, even five years ago, there have been new theories, models and data products developed to bring more and better information to the science.

No longer is just using BizComps, Pratts Stats and Yahoo Finance sufficient to do our work. These sources will likely continue to be heavily used by appraisers, but there are many new products that provide information in greater quantity, detail and in user-friendly formats. Analysis that used to take hours in the past can now sometimes be reduced to minutes.

For the last year, the Business Valuation Section has provided demonstrations of some of these new products at our quarterly meetings. Product users, not sales people, have conducted most of these demonstrations so attendees can better evaluate the pros and cons of the software in an open forum.

From these demonstrations, we have learned that FetchXL provides public company data quickly and with lots of information and ratios as part of the output. IBIS World has excellent industry information and a product that provides forecasts of industry risks, which is very helpful for supporting a build-up rate. ProfitCents is a database of financial information that compares a company with others in the same industry, account by account, and also prints a verbal narrative of the subject company's strengths and weaknesses. Finally, CapitalIQ is a heavyweight of information, with almost limitless data on companies and industries that is quite overwhelming at first glance, but can serve you well for complex cases.

These are but a few of the newer products on the market. The Business Valuation Section will continue these demonstrations at meetings this year. Attend our section meetings and learn the newest information. Don't let opposing appraisers have the edge simply because they know the latest products.

John Misuraca, CPA *is Business Valuation Section chair and managing partner with Avalon Advisors, Inc. in Laguna Hills.*

Economic Damages

by Craig M. Enos, CPA

In employment cases, the terminated employee has a duty to mitigate. If the plaintiff is entitled to any damages, the defendant will claim that the damages should be reduced by the amount that the plaintiff could have earned from other employment (see California Civil Jury Instructions (CACI) No. 2407). For the defendant employer to succeed, and have the plaintiff's damages reduced, the defendant must prove the following:

1. That employment substantially similar to the plaintiff's former job was available to them;
2. That the plaintiff failed to make reasonable efforts to seek and retain this employment; and
3. The amount that the plaintiff could have earned from this employment.

The employer has the burden to prove that substantially similar employment was available. When deciding whether the employment is substantially similar, the jury will be instructed to consider whether:

1. The nature of the work was different from the plaintiff's employment with the defendant;
2. The new position was substantially inferior to the plaintiff's former position;
3. The salary, benefits and hours of the job were similar to the plaintiff's former job;
4. The new position required similar skills, background and experience;
5. The job responsibilities were similar; and
6. The job was in the same locality.

When evaluating whether or not to accept an employment case, discuss with the attorney what their expectations are regarding who will be testifying about these mitigation issues. Who is going to testify that substantially similar employment was available and when it was available? Is the defense attorney expecting you to make calculations based on the plaintiff having returned to work? Who determines how much the plantiff should have earned in mitigation? You need to be mindful of what type of expertise you are being asked to testify about. There is no time better than during your evaluation of the acceptance of a case to have the discussion with the attorney about the use of appropriate other experts upon whom you will be relying.

Craig M. Enos, CPA, ABV, CFF, CFE *is Economic Damages Section chair and owner of Enos Forensics in Folsom.*

Family Law

by Robert O. Watts, CPA

A 38-member task force was appointed in May 2008 to conduct a comprehensive review of California family law proceedings. This group, the Elkins Family Law Task Force, reviewed family law proceedings and prepared recommendations that it believed would increase access to justice, ensure due process and provide for more effective and consistent rules, policies and procedures. On April 23, 2010, these recommendations were presented to the Judicial Council of California, which accepted the report along with its recommendations.

AB 939 was signed into law Sept. 27, 2010. This bill enacts many of the Elkins Task Force recommendations, making sweeping changes in family law procedures that will affect a number of existing family law statutes and create new ones.

A significant change that would appear to have a direct impact on financial experts in the area of family law includes Family Code Sec. 217, which requires that at hearings on any OSCs or motions brought under the Family Code, absent a stipulation of the parties or a finding of good cause, courts must receive competent live testimony that is relevant and within the scope of the hearing.

Previously, for most hearings before trial, expert testimony was provided in writing by declaration submitted to the court. Beginning January 2011, under the new rules, all hearings require oral testimony unless both parties specifically waive that right or a judge finds good cause not to hear oral testimony.

This change was intended to increase efficiency and allow all parties to be heard by the court and present relevant evidence. What might not have been contemplated by the panel is the added time and costs of the actual proceedings, which require the presence of experts and the presentation of live testimony.

In a system that often appears inefficient and time consuming, this initial change may seem ominous given the state of the courts with California's budget constraints. However, absent the near term, I believe that in time the process will work itself into a manageable solution, as long as the system is willing to adjust and accept further recommendations.

A complete reading of the report, available at *www.calcpa.org/lit/elkins*, shows many positive proposals and recommendations, much of which does not concern the financial expert.

Robert O. Watts, CPA *is Family Law Section chair and partner with Gursey | Schneider LLP in Los Angeles.*

Fraud

by Barbara J. Gottlieb, CPA

Tax fraud is a practice area often overlooked by general practitioners. It melds both tax law and fraud, with unique indicia and "badges of fraud."

For years the IRS had an unwritten, informal voluntary disclosure program, allowing taxpayers to report previously under-reported or omitted income without criminal sanctions. The general rule was that for six months prior to disclosure, there was no contact by the IRS with the taxpayer or related third-party. It was often defined as the taxpayer who had trouble sleeping at night, and in a 3 a.m. epiphany, realized their conscience was causing the insomnia. To appease their conscience, they filed amended tax returns and paid their share.

In about 2003 the IRS discovered offshore debit cards, and identified numerous taxpayers using the cards on unreported bank accounts. That year, the Offshore Voluntary Compliance Initiative commenced, and thousands came forward and filed amended returns reporting offshore income.

More recently, a private banker with UBS Zurich blew the whistle on a pervasive tax evasion scheme by which U.S. taxpayers utilized nominee entities to conceal income and assets offshore. An international tug-of-war commenced between the United States and Switzerland, involving John Doe Summonses, which UBS unsuccessfully sought to quash.

Ultimately, the Swiss government ordered UBS to turn over approximately 4,500 names of U.S. customers. The release of names created uneasiness among "tax cheats," resulting in the IRS' 2009 Offshore Voluntary Disclosure Initiative. Approximately 15,000 taxpayers participated in that initiative, which ended Oct. 15, 2009. Taxpayers paid a penalty of 20 percent of the highest value of their offshore account, filed amended returns and paid taxes, penalties and interest.

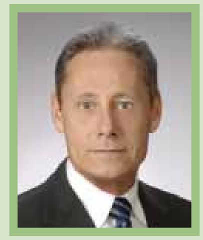
The IRS has launched a new and improved Offshore Voluntary Disclosure Initiative for 2011, this time extracting a penalty of 25 percent of the highest balance, reaching back to 2003, and requiring amended returns, the filing of Foreign Bank Account Reports, and payment of all taxes, penalties and interest. The program ends Aug. 31, 2011.

Will these initiatives be ongoing? It's too early to tell, but it appears that the cost of compliance will not get any better.

Barbara J. Gottlieb, CPA *is Fraud Section chair and a partner with Laffer & Gottlieb, CPAs in Beverly Hills.*

Message From the Chair

by Daniel W. Ray, CPA



This issue's *Message* *From the Chair* was initially going to focus on the challenges we are facing as practitioners in a down economy with high unemployment.

I was going to write about the changing landscape for firms that provide forensic accounting, valuation and litigation services due to these difficult economic conditions.

I was going to write about the impact of the budget crisis on the national and local levels, and how the deficits impact the ability for the federal and municipal governments to operate at capacity.

I was going to write about these difficulties and challenges—up until the time that the 9.0 earthquake struck the northeast coast of Japan on March 11.

Witnessing the death and destruction caused by the earthquake and resulting tsunami, as it was streamed to my television and computer in the comfort of my home and office, has caused me to at least temporarily pause in the discussion of our problems.

While our economic crisis is significant, it pales by comparison to what the people of Japan are dealing with now and for years to come. According to a Congressional Research Report submitted to Congress in July 2007, Japan and the United States are the two largest economic powers in the world. Combined they account for more than 40 percent of the world domestic products, and a major portion of international investment. The report further states, "This economic clout makes the United States and Japan powerful actors in the world economy. Economic conditions in the United States and Japan have a significant impact on the rest of the world."

Those of us living in California recognize that an earthquake and possible catastrophic tsunami on our shores could occur at any time. We can only prepare as best we can, and perhaps help those now in need after these horrific events.

There will be other opportunities to discuss our problems, but for now, do what you can to help those in need, create a family and friends emergency notification system, give back to your community and engage in your profession.

— **Daniel W. Ray, CPA, CFE, CFF** *is a director with Hemming Morse, Inc., CPAs, Litigation & Forensic Consultants in San Francisco.*

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Keepin' It Legal

Rule of Thumb No More

by M. Monica Ip, CPA and Sacha Zadmehran

The United States Court of Appeals for the Federal Circuit issued an important decision Jan. 4 on the determination of reasonable royalties in patent infringement damages. In *Uniloc USA, Inc. v. Microsoft Corporation*, the Court soundly rejected the use of the 25 percent Rule of Thumb, which had been increasingly used by damages experts and tacitly accepted by many courts.

In the *Uniloc* matter, Microsoft was accused of infringing Uniloc's '216 patent for a software registration system that deters the illegal copying of software on multiple computers. The accused product was Microsoft's Product Activation feature that acted as a gatekeeper to Word XP, Word 2003 and Windows XP software programs.

Section 284 of Title 35 of the United States Code provides that on finding infringement of a valid patent, damages shall "in no event [be] less than a reasonable royalty for the use made of the invention by the infringer, together with interest and costs as fixed by the court." A reasonable royalty is often determined on the basis of a hypothetical negotiation occurring between the parties at the time infringement began. Frequently, to assist in valuing the license that would have resulted from the hypothetical negotiation, parties look to the 15 factors laid out in the decades-old district court case *Georgia-Pacific Corp. v. U.S. Plywood Corp*.

At trial, Uniloc's damages expert relied on a pre-litigation Microsoft document that valued the Product Key between $10 and $10,000 depending on usage. Uniloc's expert took the low end of the range, or $10, as "the isolated value of Product Activation." He applied the 25 percent rule, thereby assuming that the patent holder would receive 25 percent of the value of the product, and established a baseline royalty rate of $2.50 per license. He then considered several of the *Georgia-Pacific* factors and concluded that the factors in favor of Uniloc and Microsoft would generally balance out.

Based on 225,978,721 licenses of the at-issue products sold, and the royalty rate of $2.50 per license, he reached a reasonable royalty of $564,946,803.

Finally, the expert checked the reasonableness of this amount by comparing it against an estimate of Microsoft's gross revenue of $19.28 billion from the at-issue products, which resulted in a royalty rate of 2.9 percent. Based on his experience that royalty rates for software were generally above 10 percent, the expert concluded that his calculated royalty was reasonable. The jury awarded Uniloc $388 million in damages.

The Court found that Uniloc's expert's starting point of a 25 percent royalty "had no relation to the facts of the case, and as such, was arbitrary, unreliable and irrelevant." The Court added, "The use of such a rule fails to pass muster under *Daubert* and taints the jury's damages calculation" and granted a new trial on damages.

History of the 25 Percent Rule

The 25 percent rule, first written about by Robert Goldscheider in 1971, suggests that "the licensee pay a royalty rate equivalent to 25 per cent of its expected profits for the product that incorporates the IP at issue" (Robert Goldscheider, et al., *Use of the 25 Percent Rule in Valuing IP*, les Nouvelles, December 2002, pages 123–124). The licensee, having undertaken substantial development, operational and commercialization risks, would retain the remaining 75 percent of the profits.

Further research found that across all industries, the royalty rate as a percentage of average operating profit margins ranged from 8.5 percent for semiconductors to 79.7 percent for automotive, (Goldscheider, page 133). Also, a 1997 study showed that 25 percent of licensing organizations used the 25 percent rule as a starting point in negotiations (Goldscheider, page 127). Typically, damages experts have used the rule to establish a baseline royalty rate, then adjust based on the *Georgia-Pacific* factors.

While the 25 percent rule was widely used by some experts, there were many experts who objected to its use. Opponents had argued that the rule:

- Failed to account for the unique relationship between the patent and the accused product;
- Failed to account for the unique relationship between the parties;
- Was arbitrary and did not fit within the model of the hypothetical negotiation within which it is based; and
- Was not meaningful for products subjected to multiple licenses, as profits would be quickly depleted by multiple licensors each claiming 25 percent thereof.

Additionally, the historical background of the 25 percent rule is somewhat incongruous as it relates to valuing a single patent in a hypothetical negotiation for damages caused by infringement within the United States. According to Goldscheider, the 25 percent rule was premised on 18 licenses entered into by a Swiss company (a U.S. subsidiary) covering worldwide sales (Goldscheider, page 123). Moreover, these licenses were for a "portfolio of valuable patents," as well as for "a continual flow of know-how; trademarks developed by the licensor; and copyrighted marketing and product description materials" (Goldscheider, page 123). Thus, the 25 percent royalty was developed for multiple patents, as opposed to only one patent, for worldwide sales, as opposed to only U.S. sales, and for substantial other intellectual property rights as opposed to no other property rights.

The Court's Rejection of the 25 Percent Rule

In its ruling, the Court first dismissed the supposed widespread acceptance of the 25 percent rule, stating:

"The admissibility of the bare 25 percent rule has never been squarely presented to this court. Nevertheless, this court has passively tolerated its use where its acceptability has not been the focus of the case, or where the parties disputed only the percentage to be applied …, but agreed as to the rule's appropriateness. Lower courts have invariably admitted evidence based on the 25% rule, largely in reliance on its widespread acceptance or because its admissibility was uncontested."

The Court then soundly rejected the use

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AICPA Alert

by D. Paul Regan, CPA

The subcommittees of the Forensic and Valuation Services Executive Committee are working on a number of key projects. Its Forensic and Litigation Services Committee has a number of important initiatives on its plate. If you have a particular interest and would like to provide comments to the Committee, here are the task force leaders and the projects in progress:

Fraud Task Force: Randy Wolverton

- Interviewing Crooks/Thieves Project
- AARA Survey Project
- Convergence Project
- Pathway for YEP Project
- Best Practices/Report Writing
- Frank-Dodd/UK Bribery Act Ramifications
- How to organize a forensic accounting investigation

Economic Damages Task Force: Greg Regan

- Discount Rates Practice Aid (PA): finalize the current draft
- Create stand alone deliverables from prejudgment interest and tax portions of PA for FVS website
- Update of PA 06-1 Calculating Intellectual Property Infringement Damages by Kathi Kedrowski and Dan Jackson
- Update of PA 98-2 Calculation of Damages From Personal Injury, Wrongful Death, and Employment Discrimination by Holly Sharp

Family Law Task Force: Stacy Collins

- Update of PA 05-1 A CPA's Guide to Family Law Services
- Ongoing contribution of articles to ABA Family Law Section's e-newsletter

Forensic Technology Task Force: Chuck Reid

- Whitepaper on Forensic Technology (not yet titled)
- Develop whitepaper contents to the level of a PA to bridge resource/guidance gap identified by the CFF Credential Committee

Litigation Process: David Wood

- Monitor and report state laws resulting from FRCP 26 implementation
- Track and report effects of PI Licensing legislation on CPAs state by state
- Present best practices to handle *Daubert* state challenges

M&A Dispute Resolution: Bob Gray

- PA on Overview of M&A Disputes
- 6-8 presentations with the ABA to promote the PA

Bankruptcy: Bob Gray

- Update existing PA 98-1 Providing Bankruptcy and Reorganization Services

If you would like more information about the above projects, please contact me at *reganp@hemming.com*.

D. Paul Regan, CPA, CFE, CFF *is chair of Hemming Morse, Inc., CPAs, Litigation & Forensic Consultants. He is a member of the AICPA's Forensic and Valuation Services Executive Committee.*

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determined through the use of published compensation survey data. In the absence of credible data, even the most experienced and credentialed compensation expert in the world is simply guessing. Survey data should provide the foundation for the vast majority of reasonable compensation opinions.

Multiple survey sources should be used where possible. Multiple sources can be used to validate one another and identify outliers. Different sources may focus on distinct market characteristics to define "peer groups" and allow the organization to more closely define peers and peer relationships than is possible using a single survey source.

Organization size and industry are two primary factors that apply to executive compensation market data. Revenue, assets or number of employees typically measure organization size. Since there is a strong correlation between executive compensation and an organization's size, it is often the most important factor. Industry varies from major to minor significance. Some organizations are indifferent with regard to industry experience when recruiting a top executive; rather, the focus is on hiring the most highly qualified leader possible and assuming industry nuances could be learned quickly. Conversely, for other organizations, industry is critical as the executive is expected to have established relationships or industry-specific knowledge that can be leveraged immediately.

Adding Clarity to Compensation Analysis

Surveys typically report compensation data at the multiple statistical points of 10th, 25th, 50th, 75th and 90th percentiles, and often both the simple and weighted averages. We believe that compensation between the 25th and 75th percentiles of the market represents a conservative approach to reasonable compensation and should be focused upon absent evidence of outstanding performance, unique skills or extraordinary talent. Essentially, in most situations we exclude the top and bottom 25 percent of the market as outliers. Stated another way, we concentrate on the area that represents the middle 50 percent of the market as reasonable.

There are certainly exceptions to this middle 50 percent of the market approach. For example, a CEO who leads a company to achieve stellar results may be paid above the 75th percentile of the market. Likewise, an organization that wants to hire a world-class individual or someone with a proven track record may need to pay above the 75th percentile. Filling a one-of-a-kind job for which only very few employees in the world qualify may also warrant compensation above the middle 50 percent.

Comprehensive reviews of executive compensation that can serve as effective support in litigation require the use of methodologies that are considerably different from those of more common forensic accounting assignments. Therefore, it is essential that, when compensation issues arise, in-house or external compensation experts be brought in to ensure that documented opinions regarding the reasonableness of compensation are substantiated by the expert's experience, knowledge and use and interpretation of appropriate survey data.

Ed Rataj, CCP *is managing director, compensation consulting and* **Priya Kapila** *is a senior consultant with CBIZ Human Capital Services in St. Louis.*

HAPPENINGS

LITIGATION SECTIONS MEETINGS

Business Valuation	Thursday, Aug. 18, LAX Thursday, Oct. 20, LAX
Economic Damages	Tuesday, Aug. 2, LAX Thursday, Oct. 20, LAX
Family Law	Friday, Aug. 19, LAX Thursday, Oct. 20, LAX
Fraud	Tuesday, Aug. 2, LAX Thursday, Oct. 20, LAX

You may register online or download a registration form at *www.calcpa.org/LIT.* For more information, call (818) 546-3506.

EDUCATION FOUNDATION CONFERENCES/COURSES

(800) 922-5272 or www.educationfoundation.org

Business Valuation Conference	Friday, June 3	SF
Fraud in Audit, Accounting and Tax Conference	Thursday, July 7 Friday, July 8	BUR SF

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of the 25 percent rule, stating: "This court now holds as a matter of Federal Circuit law that the 25 percent rule of thumb is a fundamentally flawed tool for determining a baseline royalty rate in a hypothetical negotiation. Evidence relying on the 25 percent rule of thumb is thus inadmissible under *Daubert* and the Federal Rules of Evidence, because it fails to tie a reasonable royalty base to the facts of the case at issue."

The Court refers to three prior cases, *Lucent Technologies*, *ResQNet* and *Wordtech*, as a reminder that "evidence of royalty rates from licenses without a relationship to the claimed invention could not form the basis of a reasonable royalty calculation."

The Court further states: "The meaning of these cases is clear: there must be a basis in fact to associate the royalty rates used in prior licenses to the particular hypothetical negotiation at issue in the case. The 25 percent rule of thumb as an abstract and largely theoretical construct fails to satisfy this fundamental requirement. The rule does not say anything about a particular hypothetical negotiation or reasonable royalty involving any particular technology, industry, or party. Relying on the 25 percent rule of thumb in a reasonable royalty calculation is far more unreliable and irrelevant than reliance on parties' unrelated licenses, which we rejected in *ResQNet* and *Lucent Technologies*. There, the prior licenses at least involved the same general industry and at least some of the same parties as the hypothetical negotiations at issue, and in *Wordtech* even involved licenses to the patents in suit entered into by the patentee-plaintiff. Lacking even these minimal connections, the 25 percent rule of thumb would predict that the same 25%/75% royalty split would begin royalty discussions between, for example, (a) TinyCo and IBM over a strong patent portfolio of twelve patents covering various aspects of a pioneering hard drive, and (b) Kodak and Fuji over a single patent to a tiny improvement in a specialty film emulsion."

The Court dismisses the 25 percent rule method, ruling that, "Beginning from a fundamentally flawed premise and adjusting it based on legitimate considerations specific to the facts of the case nevertheless results in a fundamentally flawed conclusion."

Going Forward

The Court, citing *ResQnet*, states, "To be admissible, expert testimony opining on a reasonable royalty rate must 'carefully tie proof of damages to the claimed invention's footprint in the market place.'" In particular, the Court cited *Georgia-Pacific* "factors 1 and 2—looking at royalties paid or received in licenses for the patent in suit or in comparable licenses—and factor 12—looking at the portion of profit that may be customarily allowed in the particular business for the use of the invention or similar inventions" and considers them "valid and important factors in the determination of a reasonable royalty rate." However, "evidence purporting to apply to these, and any other factors, must be tied to the relevant facts and circumstances of the particular case at issue and the hypothetical negotiations that would have taken place in light of those facts and circumstances at the relevant time."

While the 25 percent rule of thumb is essentially dead for purposes of litigation, other tools are available for experts to establish a reasonable royalty rate that would meet the Court's criteria. A reasonable royalty analysis should focus on the incremental economic benefits derived from the patented invention, in the form of increased sales volumes, lower costs or higher sale prices, and on the standards used by the industry to share in the economic benefits obtained from the technology. The experts should consider pre-existing licenses, license negotiations and perhaps even settlement agreements, as well as out-of-pocket design-around costs and costs of any expected economic disruption.

M. Monica Ip, CPA, CFF, CVA *is a director and* **Sacha Zadmehran** *is a manager with Hemming Morse, Inc. CPAs, Litigation & Forensic Consultants in San Francisco.*

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Editor
Susan Bleecker

Associate Editors
Leslie O. Dawson
Maria N. Nazario

Sections Chair
Daniel W. Ray

Individual Section Chairs

Business Valuation	John Misuraca
Economic Damages	Craig M. Enos
Family Law	Robert O. Watts
Fraud	Barbara J. Gottlieb

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