

# WWL

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### Alvarez & Marsal



# 2019

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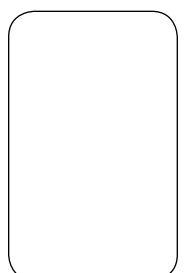
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# CONTENTS

2	Introduction
3	Legal Marketplace Analysis
5	Income Approach and the Discounted Cash Flow Methodology Alexander Demuth
THOUGHT LEADERS – Q&As	
18	Phil Beckett
22	Alexander Demuth
24	Andrew Flower
26	Laura Hardin
28	Julian Jones
30	Luke Steadman
33	Profiles
50	Index

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# INTRODUCTION

Who's Who Legal is delighted to publish this compilation of our research and analysis covering Alvarez & Marsal. This publication is the fruit of months of research. We have canvassed and analysed the opinions of law firm clients and legal practitioners from around the world.

Our research has revealed 28 consulting experts from six jurisdictions who can truly be considered leaders in the field.

Entry into our guides, is, of itself, no easy feat, with fewer than half of those nominated obtaining a listing. The bar to be considered a "Thought Leader" is even higher: only those listed lawyers who obtained the highest number of nominations from peers, corporate counsel and other market sources in our most recent research cycle were considered.

The names and contact details of all experts whose nominations are accepted by the editor are listed without charge. It is impossible to buy entry into *Who's Who Legal*. Specialists accepted for listing are invited, but not required, to supply a professional biography and photograph, which are published upon payment of a fee.

We hope that you find this publication useful and informative. If you do, it is due to the hundreds of people who helped us in the research, and we would like to sign off by thanking them for their kindness, helpfulness and insight, which made it a pleasure to be part of this undertaking.

Rupert Wilson  
*Editor*  
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Alvarez & Marsal's Disputes and Investigations team provide expert evidence and accounting investigation expertise to law firms, corporate counsel and management involved in complex financial disputes.

We act on high profile matters anywhere in the world; providing expert evidence on valuation and damages to Courts and Tribunals; assisting with the investigation of fraud and compliance issues; the collection, manipulation and electronic presentation of data and the recovery of assets.

In collaboration with Who's Who Legal, this publication provides an overview of our experts around the globe who are recognised by clients for outstanding work and contribution to thought leadership in their given practice areas.

If you have any questions for any of the individuals listed in this publication, please feel free to get in touch.

Julian Jones  
*Head of A&M's European Disputes and Investigations practice*

# LEGAL MARKETPLACE ANALYSIS

Alvarez & Marsal's superb experts feature in eight of our WWL international practice area guides as well as our annual WWL: *Consulting Experts* publication. Our editorial analysis for each expert is below.

## WWL INTERNATIONAL PRACTICE AREA GUIDES

### Arbitration / Expert Witnesses

**William Abington** is highly commended for his sophisticated financial analyses and vast testifying experience.

**Matthew Bialecki's** expertise in acquisition disputes earns him an outstanding reputation in the arbitration space.

The "diligent" **Alexander Demuth** is highly sought after by clients, one of whom notes, "He convincingly stands firm on his opinion even under intense questioning." A leading expert witness in Germany when it comes to arbitration disputes, he is considered a "top name" in the field.

"Excellent accountant" **Andrew Flower** is noted for his outstanding expertise in the French market.

**Daniel Frigell** is a "very good financial expert" who "does quality work" in the area, comment impressed peers.

**Dean Graves** is particularly commended for his outstanding expertise in the oil and gas space, an area in which he is considered one of the leading experts in the USA.

**Laura Hardin** consistently "exceeds clients' expectations" and is highlighted for her "exceptional work as an expert witness" in both investment treaty and commercial disputes.

**Trevor Phillips** draws praise for his excellent oral evidence as well as his deep expertise across the real estate and construction industries.

**Laureen Ryan** draws widespread praise for her in-depth analyses and expert handling of complex arbitration cases.

**Marc Sherman** is a highly respected practitioner, considered a go-to expert for complex financial investigations and damage calculations.

**Aaron Stai** provides much sought-after counsel on arbitral disputes at both the state and federal levels, and is recognised as a leader in the US market.

**Luke Steadman** draws widespread international praise for his top-notch work in arbitration proceedings, where he is known for delivering "clear and convincing argumentation".

**John Williams** is "a senior figure" in the Canadian market who wins high praise for his superb work providing expert testimony and damages valuations to clients.

### Asset Recovery / Experts

**Daniel Barton** is a widely recognised name in the asset recovery space who wins

praise for his expert handling of fraud and corruption-related issues.

**Carl Bowles** is a first-rate asset recovery expert who possesses over 15 years' experience handling a range of matters in both onshore and offshore jurisdictions.

**Ernest Brod** is a well-established figure in the US market, where he enjoys a great reputation for his vast experience in global asset recovery.

**Julian Jones** is a standout name in the investigations space who comes highly recommended by market commentators for his impressive work on asset tracing and identification relating to financial investigations.

**Alex Lawson** is "a star" in the asset recovery space, according to sources who commend his expert handling of complex cross-border insolvencies.

**Keith Williamson** is a forensic and investigative accounting specialist who is renowned internationally for his expertise in asset tracing relating to global investigations.

### Data / Experts

Standout practitioner **Phil Beckett** is "well regarded in the marketplace" thanks to his 19 years of experience in the forensic technology arena.

Global Elite Thought Leader **Robert DeCicco** has a top-tier practice in data and forensics. He possesses extensive experience in data analysis and e-discovery issues, often in the context of criminal and civil litigation.

### Energy / Experts

**Laura Hardin** is an experienced expert witness who enjoys a superb reputation for her expertise in damage quantification matters in the oil and gas and power sectors.

### Investigations / Digital Forensic Experts

**Phil Beckett** is "one of the best experts in the country" and possesses a superb practice covering a wide range of matters including e-disclosure, data analytics and management and forensic investigations.

**Robert DeCicco** is one of the leading practitioners in the North American region and is listed as a Global Elite Thought Leader in field this year. He has a top-quality practice, covering such matters as data breaches and electronic evidence verification.

### Investigations / Forensic Accountants

**William Abington** is described as "a really solid practitioner" and is widely recommended for his long-standing investigations practice.

Sources effuse that they have "nothing but respect" for **Matthew Bialecki**, a leading name in the market thanks to more than 25 years' experience conducting internal forensic accounting investigations.

**Julian Jones** stands out as a pre-eminent figure in the area thanks to more than 18 years focusing on financial investigations and disputes throughout Europe, the Middle East and the United States.

With more than 25 years' experience, **Laureen Ryan** is a big name in the global investigations space, and is commended for her excellent work on multi-jurisdictional financial investigations and disputes.

**Juan Valderas** is a well-established practitioner with a strong track record advising and leading domestic and international investigations.

**Keith Williamson** is a prominent figure in the Asian market who is regularly called upon to handle large-scale global investigations for major clients across a range of industries.

### Restructuring & Insolvency / Experts

**Al Hutchens** is an expert in turnarounds and is frequently sought after by stakeholders for his long-standing experience.

**Chris Johnston** is a longstanding name in the UK market with significant expertise in financial restructuring, handling a wide variety of distressed situations.

**Chris Kennedy** is called a "bright rising star" by interviewees who state that he is "commercial and cool under pressure".

The "excellent" **Alex Lawson** handles both official and voluntary liquidations; he is a seasoned professional who knows how to get the best for his clients in restructuring and insolvency proceedings.

**Doug McIntosh** is a leading figure in corporate restructuring and is widely regarded for his expertise in cross-border matters and Chapter 11 and 15 filings.

**Michael Stewart** is extremely well versed in transactions and a go-to name on significant corporate restructuring matters.

## WWL: CONSULTING EXPERTS

### Asset Recovery Experts

**Daniel Barton** is highly regarded in the international market where he stands out for his first-class forensics and disputes practice.

**Carl Bowles** stands out among peers for his “excellent work” handling complex asset tracing relating to restructuring and insolvency disputes.

**Ernest Brod** is an excellent expert who comes highly recommended for his strong forensic expertise and invaluable investigations experience.

**Julian Jones** receives widespread plaudits from peers who commend his impressive expertise in financial investigations and related accounting matters.

**Alex Lawson** is “a star” in the asset recovery space, according to sources who commend his expert handling of complex cross-border insolvencies.

**Keith Williamson** is a top name in the Hong Kong market and wins high praise from sources for his leading expertise handling fraud and corruption-related investigations.

### Digital & Data | Data and E-Discovery Experts

**Phil Beckett** garners respect from sources for his considerable experience in litigation support, particularly regarding e-disclosure and multi-jurisdictional investigations.

**Robert DeCicco** is singled out as an eminent practitioner, and commands a strong reputation in the field. Areas of particular expertise include computer data analysis, policy enforcement and multi-jurisdictional evidence collection.

### Digital & Data | Digital Forensic Experts

**Phil Beckett** is an investigations Thought Leader and praised as “one of the top figures” in forensic data investigations by peers. He has experience of global investigations across a multitude of sectors.

The “fantastic” **Robert DeCicco** is described as “a brilliant testifying expert” by sources, who consider him to be “a real stand out” for his expert handling of high-profile investigations.

### Financial Advisory and Valuation | Quantum of Damages

**William Abington** is widely respected by market players for his outstanding work in the field. He offers clients a wealth of insight into such matters as audit services and financial investigations in the energy sector.

**Matthew Bialecki** is a stand-out forensic accountant described by commentators as “top flight for competition litigation”.

**Alexander Demuth** gains recognition for his excellent work in relation to disputes with one source noting, “He understands what is needed of him to bring across his message to the arbitral tribunal.”

**Andrew Flower** possesses over 20 years of testifying experience in international disputes and is recognised for his quantum expertise across a range of industries from transport to pharmaceuticals and TMT.

**Dean Graves** offers a wealth of expertise in the energy and natural resources sectors with sources saying, “He’s great with oil and gas.”

**Laura Hardin** is an outstanding practitioner who is “highly recommended” by sources. She is adept on matters including shareholder and purchase price disputes.

**Trevor Phillips** is a widely respected quantum expert known for his first-class work handling disputes across a range of proceedings, including litigation and arbitration.

**Laureen Ryan** is highly recommended by market sources for her skilful handling of complex economic valuations.

**Marc Sherman** has a superb reputation in the market for his expertise on financial modelling, fraud and due diligence.

**Aaron Stai** stands out among peers for his superb handling of lost profit calculations and financial valuations.

**Luke Steadman** wins high praise from peers and clients alike who commend his extensive experience dealing with quantum matters in international arbitration proceedings.

**John Williams** is well known across the Canadian market as a standout name when it comes to providing first-rate damages valuations and testifying expertise in disputes proceedings.

### Financial Advisory and Valuation | Restructuring & Insolvency Experts

**Al Hutchens** is an expert in turnarounds and is frequently sought after by stakeholders for his long-standing experience.

**Chris Johnston** is a longstanding name in the UK market with significant expertise in financial restructuring, handling a wide variety of distressed situations.

**Chris Kennedy** is called a “bright rising star” by interviewees who state that he is “commercial and cool under pressure”.

The “excellent” **Alex Lawson** handles both official and voluntary liquidations; he is a seasoned professional who knows how to get the best for his clients in restructuring and insolvency proceedings.

**Doug McIntosh** is a leading figure in the market who garners recognition for his expertise in the restructuring of both domestic and international companies.

**Michael Stewart** is extremely well versed in transactions and advises debtors and creditors on significant corporate restructuring matters.

### Forensic Accountants

**William Abington** wins high praise from peers for his invaluable experience in investigations.

**Daniel Barton** is a well-regarded practitioner who has 20 years of extensive international experience conducting forensic investigations into fraud, corruption and bribery cases.

**Matthew Bialecki** is recognised as “a top name” in the US market. He possesses vast experience in forensic investigations spanning an impressive array of industries.

**Ernest Brod** is a revered figure in the US market, well known for his agency experience and innovative use of investigative tools.

**Gary Davies** brings 20 years of experience handling forensic investigations. He is highly knowledgeable in a range of areas including competition damages and lost profits.

The “excellent” **Julian Jones** is a leading name in the UK market. His investigative experience spans Europe, the US and the Middle East.

**Alex Lawson** is widely respected for his first-class forensic accounting practice by sources who consider him “an industry leader”.

**Laureen Ryan** is known for her expert analysis in complex forensic investigations and is regularly engaged in major cross-border disputes.

**Luke Steadman** is a renowned expert witness and stands out for his experience advising and testifying in disputes around the world.

**Juan Valderas** is highlighted as a “standout practitioner” with over 15 years’ experience regarding national and international investigations.

**Keith Williamson** is a distinguished practitioner in the market with 20 years’ experience in global forensic investigations.

# INCOME APPROACH AND THE DISCOUNTED CASH FLOW METHODOLOGY

Alexander Demuth



## INTRODUCTION

When applying the income approach, the theory of business valuation determines the value of a business by assessing the present value of its future net cash flows<sup>2</sup>. Since the requirement of full compensation is generally interpreted to put the damaged party into the same economic (ie, financial) situation it would have been in but for the wrongful act, the methodology and approaches widely accepted for business valuation are also applied in the determination of damages<sup>3</sup>.

The following sections briefly introduce the discounted cash flow (DCF) methodology and its approaches, and then discuss, in the context of international arbitration, its application to the assessment of damages, the assumptions required to adequately and reliably use this methodology and the documentation required to support its results.

## THE DISCOUNTED CASH FLOW METHODOLOGY Introduction

The DCF methodology determines the business value as the present value of expected future net cash flows discounted at a rate reflecting the time value of money and the risks attributable to these cash flows<sup>4</sup>. Within the different approaches applied for valuing a business, it ‘comes with the best theoretical credentials’<sup>5</sup>

and ‘remains a favourite of practitioners and academics because it relies solely on the flow of cash in and out of the company, rather than on accounting-based earnings’<sup>6</sup>. It is, therefore, less prone to manipulation through the use of accounting policies<sup>7</sup> and avoids divergent results from the use of different accounting principles (eg, International Financial Reporting Standards (IFRS), US-Generally Accepted Accounting Principles (US-GAAP)).

The DCF method distinguishes two general approaches, depending on whether the value is determined for only the equity investment in the business (known as ‘equity valuation approach’) or the entire business (known as ‘enterprise valuation approach’). Both approaches are broadly accepted but vary with regard to the relevant cash flows and discount rates<sup>8</sup>.

### The equity valuation approach

The equity valuation approach calculates the value of equity by discounting the future net cash flows after debt payments and reinvestment needs (known as ‘free cash flow to equity’) at a rate reflecting only the cost of equity<sup>9</sup>.

### The enterprise valuation approach

The enterprise valuation approach calculates the enterprise value of the business through discounting the future net cash

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<sup>1</sup> Alexander Demuth is co-head of A&M’s international arbitration group and leader of its German disputes and investigations practice.

<sup>2</sup> Cf. Aswath Damodaran, *Damodaran on Valuation – Security Analysis for Investment and Corporate Finance*, Second Edition, 2006 (Damodaran (2006)), p. 10; Tim Koller, Marc Goedhart and David Wessels, *Valuation – Measuring and Managing the Value of Companies*, Sixth edition, 2015 (Koller et al. (2015)), p. 137; Mark Kantor, *Valuation for Arbitration – Compensation Standards, Valuation Methods and Expert Evidence*, 2008 (Kantor (2008)), pp. 8 ff. or Joseph J. Galanti, *Business Valuation*, in *Litigation Services Handbook – The Role of the Financial Expert*, Fifth Edition, 2012 (Galanti (2012)), pp. 8 ff.

<sup>3</sup> Cf. Mark A. Allen, Robert E. Hall and Victoria A. Lazear, *Reference Guide on Estimation of Economic Damages*, in *Reference Manual on Scientific Evidence*, Third Edition, 2011 (Allen et al. (2011)), p. 448; or Michael K. Dunbar, Elizabeth A. Evans and Roman L. Weil, *Ex Ante versus Ex Post Damages Calculations*, in

*Litigation Services Handbook – The Role of the Financial Expert*, Fifth Edition, 2012 ((Dunbar et al. (2012))), p. 1.

<sup>4</sup> For an overview of other valuation methodologies, see Chapter 12 on methodologies for valuing fair market value.

<sup>5</sup> Damodaran (2006), p. 10; cf. Kantor (2008), pp. 131 f.

<sup>6</sup> Koller et al. (2015), p. 137.

<sup>7</sup> Cf. Patrick A. Gaughan, Henry Fuentes and Laura Bonanomi, ‘Cash Flow Vs. Net Income In Commercial Litigation’, *Litigation Economics Digest* 1(1), 1995 (Gaughan et al. (1995)), p. 13.

<sup>8</sup> Aswath Damodaran, *Investment Valuation – Tools and Techniques for Determining the Value of Any Asset*, Third Edition 2012 (Damodaran (2012)), pp. 12 ff.

<sup>9</sup> Cf. Damodaran (2006), p. 12; or Damodaran (2012), p. 351.

flows before debt payments and after reinvestment needs (known as 'free cash flow to the firm') at a rate reflecting the cost of all sources of capital, applying a blended cost of capital<sup>10</sup>. The equity value can be derived from the enterprise value by deducting the market value of non-equity claims<sup>11</sup> (ie, primarily interest-bearing debt).

The weighted average cost of capital (WACC) approach is the most commonly used enterprise valuation approach<sup>12</sup>. It is often used applying a constant discount rate, which would require a stable capital structure (ie, a constant ratio of the market value of debt to the market value of equity). But, since the capital structure typically changes over time, the use of a constant WACC may not be appropriate. Instead, it needs to be adjusted throughout the valuation period to reflect the changes in the capital structure<sup>13</sup>.

## APPLICATION OF THE DISCOUNTED CASH FLOW METHODOLOGY

### Introduction

The use of the DCF methodology will generally require some modification to quantify damages in international arbitration, as the required full compensation may necessitate a 'damages computation that is markedly different than a standard business valuation'<sup>14</sup>.

First, the standard approach to determine full compensation is a comparison of the damaged party's actual situation with the situation it would have been in 'but for' the wrongful act (ie, the 'but-for method').

Second, depending on the facts and circumstances, damages will be assessed as a loss in business value or as lost profits.

Third, while business valuation is typically based on the information available at the valuation date (the *ex ante* approach) the quantification of damages also regularly considers information available up to the date of the assessment (the *ex post* approach).

Fourth, notwithstanding the above, in some instances the quantification of damages may be easier by directly assessing the cash flow resulting from the wrongful act (direct assessment) than by comparing two sets of cash flows with and without the influences of the wrongful act (indirect assessment).

And fifth, a prerequisite of a useful damage quantification is the consistent application of these concepts, including the use of a proper valuation model.

### The but-for method

The but-for method determines the amount required to compensate the damaged party by comparing its actual position to the hypothetical position it would be in but for the wrongful act<sup>15</sup>. The but-for scenario always refers to a hypothetical situation, and thus cannot be established with certainty, but needs to comply with the principle of reasonable certainty and avoid undue speculation. In contrast, the actual situation is generally observable (eg, from the damaged party's accounting records). Nonetheless, the actual situation may also require adjustments, most importantly with regard to the identification, assessment and elimination of other factors that may have influenced the actual situation but are not attributable to the wrongful act<sup>16</sup> (eg, external factors such as a market decline). Furthermore, to the extent the damages continue beyond the date of the damages assessment, the actual scenario will necessarily also include a financial forecast of the expected actual development<sup>17</sup>.

### Loss in business value v lost profits

Applying the income approach, damages may be assessed as the loss in business value or as lost profits<sup>18</sup>. While the loss in business value is determined as the difference between the present value of all future earnings or cash flows of the business with and without the wrongful act (ie, by comparison of two business values), lost profits represent the difference between the earnings or cash flows with or without the wrongful act during the damages period<sup>19</sup>.

Even though the loss in business value is conceptually comparable to a standard business valuation, the latter aims to determine the fair value of a business based on objective measures, which may not be applicable to the damaged party, thus rendering its results inappropriate for the determination of damages<sup>20</sup>. These approaches only converge for damages incurred through the destruction of a business, since these are generally assessed as the market value of the business at the time of loss<sup>21</sup>.

The lost profit approach calculates damages as but-for profits less actual profits, where but-for profits are determined as but-for revenues, which would have been earned during the damages period but for the wrongful act, less the avoided cost (ie, the incremental costs that were not incurred because of the loss of revenue)<sup>22</sup>.

<sup>10</sup> Cf. Damodaran (2006), pp. 11 and 209; Damodaran (2012), p. 380; or Koller et al. (2015), p. 138.

<sup>11</sup> Cf. Koller et al. (2015), p. 150 f. for a list of the most common non-equity claims.

<sup>12</sup> Alternatively, the adjusted present value (APV) approach can be employed, which determines the enterprise value by first calculating the enterprise value of the business assuming no leverage (ie, no non-equity claims), and second, adding thereto the value of the tax implications of debt financing (ie, the value of the tax-deductibility of interest expenses). Theoretically, the APV and WACC approaches should determine an identical business value, as the only distinction between them is how the impact of debt financing is considered. Cf. Koller et al. (2015), p. 137; or Damodaran (2006), p. 215.

<sup>13</sup> Even though modelling these changes requires an iteration and is therefore more complex than using a constant WACC, the use of a period-specific WACC has become market standard as supported by Damodaran (2006), p. 194: 'one of the biggest strengths of the [WACC] model is the ease with which changes in the financing mix can be built into the valuation through the discount rate.'

<sup>14</sup> Everett P. Harry, Lost Profits and Lost Business Value – Differing Damages Measures, *Dunn on Damages*, Issue 1, Winter 2010 ((Harry (2010))), p. 6.

<sup>15</sup> Cf. Allen et al. (2011), p. 432; or European Commission, Practical Guide,

Quantifying Harm in Actions for Damages based on Breaches of Article 101 or 102 of the Treaty on the Functioning of the European Union, 2013 (EC (2013)), p. 7. While this guide is concerned with antitrust issues, the methods discussed equally aim for full compensation of the damaged party.

<sup>16</sup> Cf. Richard A. Pollack, Scott M. Bouchner, Craig M. Enos, Colin A. Johns and John D. Moyl, AICPA Practice Aid 06-4, *Calculating Lost Profits*, 2006 (Pollack et al. (2006)), p. 20.

<sup>17</sup> Cf. Pollack et al. (2006), p. 27.

<sup>18</sup> Cf. Harry (2010), p. 6.

<sup>19</sup> Cf. Kenneth M. Kolaski and Mark Kuga, Measuring Commercial Damages via Lost Profits or Loss of Business Value: Are these Measures Redundant or Distinguishable?, *Journal of Law and Commerce*, Fall 1998 (Kolaski/Kuga (1998)), p. 1.

<sup>20</sup> Cf. Harry (2010), pp. 6 f.

<sup>21</sup> Cf. Kolaski/Kuga (1998), p. 5.

<sup>22</sup> Cf. Pollack et al. (2006), para. 4; or Elizabeth A. Evans, Joseph J. Galanti and Daniel G. Lentz, Developing Damages Theories and Models, in *Litigation Services Handbook – The Role of the Financial Expert*, Fifth Edition, 2012 (Evans et al. (2012)), p. 29.



In comparison, an important conceptual distinction between the loss in business value and lost profits is the time horizon considered in the damages assessment and the additional assumptions and considerations required for the loss in business value as a result thereof (eg, the discussion of a terminal value or growth rate)<sup>23</sup>. Since, *ceteris paribus*, both concepts should theoretically determine the same amount of damages for a finite damages period during which a reduction of earnings or cash flow has been caused by a wrongful act, the use of the lost profits approach appears preferable to avoid these additional assumptions required for the loss in business value approach.

Another important distinction relates to the information used. While the assessment of the loss in business value typically only considers information available (ie, known or knowable) at the date of the wrongful act, the determination of lost profits typically also includes information available until the date of the damages calculation (ie, makes use of hindsight)<sup>24</sup>.

As lost profits are theoretically a subset of the loss in business value, double recovery needs to be avoided when both concepts are applied in parallel<sup>25</sup>. Furthermore, it is discussed whether a claim for lost profits may be limited by the business value at the date of loss<sup>26</sup>.

## EX ANTE V EX POST APPROACH

When assessing business damages, the ‘unavoidable issue of temporal perspective’<sup>27</sup> needs to be decided (ie, whether to apply the ex ante or the ex post approach). The ex ante approach ‘relies only on information that was known or knowable as of the date of the breach’<sup>28</sup> and requires all damages to be discounted back to the date of the wrongful act. In contrast, the ex post approach ‘relies on all information that is known or knowable up to the date of trial’<sup>29</sup> and requires prior damages to be compounded, if permitted,<sup>30</sup> and later damages to be discounted to that date.

One argument for the ex ante approach refers to the allocation of risk as it properly measures the damages at the time of the wrongful act capturing the probability of the entire spectrum of outcomes, whereas the ex post approach converts a risky business into a certain outcome<sup>31</sup>.

While the ex ante approach is thus ‘confined to reasonable expectations at the time’<sup>32</sup>, the reconstruction of the information available and reasonable expectations as at the date of the wrongful act may prove difficult and is ‘vulnerable to actual data’<sup>33</sup>. To overcome these difficulties, typical reference materials include historic financials, contemporaneous forecasts and budgets, industry or market studies, including studies published shortly after the time assuming that the information was available prior to their publication, or contemporaneous

analyst coverage. To ensure consistency with this approach, subsequent information, including about mitigation, should not be considered<sup>34</sup>. Nevertheless, sometimes subsequent information is used as a benchmark to assess the reasonability of the contemporaneous financial forecast<sup>35</sup>.

The ex post approach is arguably better suited to warrant full compensation (ie, putting the damaged party in the same position it would have been in but for the wrongful act at any time),<sup>36</sup> not least through the use of hindsight, which reduces uncertainty. But, the use of hindsight may also influence the development of the hypothetical but-for scenario, potentially allowing for subtle manipulation<sup>37</sup>. Furthermore, the ex post approach may result in the damages award exceeding the fair value that the damaged party was deprived of, as hindsight will clarify whether risks have materialised (ie, ‘the claim for compensation may appear to be worth more than the opportunity itself’)<sup>38</sup>. Finally, damages will vary over time until the end of the damages period as new information becomes available<sup>39</sup>.

In practice, a hybrid approach can sometimes be found ‘in which all lost profits are discounted back to the date of the breach, but the practitioner would rely on all information that was available up to the date of trial’<sup>40</sup> thereby using the book of wisdom to eliminate ‘some speculation as to what the cash flows would have been’<sup>41</sup>.

Since both approaches are widely accepted and neither is theoretically unsound, their applicability and reasonability need to be carefully assessed, considering the facts and circumstances of the individual case, as their results may vary significantly<sup>42</sup>.

## DIRECT V INDIRECT ASSESSMENT OF DAMAGES

Damages can be assessed directly or indirectly, depending on whether the impact of a wrongful act on the relevant cash flow can be identified and quantified distinctly.

As the direct assessment of damages avoids the need to compare the actual with a hypothetical cash flow and the cash flows used are identified based on their causal dependence on the wrongful act, this approach appears preferable from an evidential perspective. But, this approach may underestimate the amount of damages by failing to identify all direct influences on the cash flow and its inability to capture consequential damages or mitigating factors. Furthermore, even if identified, these consequential damages or mitigating factors are typically not directly quantifiable (ie, their impact on the cash flow cannot be assessed in isolation). Consequently, the direct assessment of damages is practically limited to narrowly defined damages occurring over a reasonable, short time period.

In contrast, the indirect assessment of damages is based

<sup>23</sup> See ‘Developing and reviewing terminal value and terminal growth rate’, *infra*.

<sup>24</sup> See ‘Ex ante v. ex post approach’, *infra*.

<sup>25</sup> Cf. Kolaski/Kuga (1998), pp. 10 f.

<sup>26</sup> Cf. Kolaski/Kuga (1998), p. 9; or James L. Plummer, Is the Value of a Firm the Upper Limit of Future Lost Profits in Business Litigation?, *Litigation Economics Digest* 1(1), 1995 (Plummer (1995)).

<sup>27</sup> John D. Taurman and Jeffrey C. Bodington, ‘Measuring damage to a firm’s profitability: ex ante or ex post?’, *The Antitrust Bulletin*, Spring 1992, (Taurman/Bodington (1992)), p. 59.

<sup>28</sup> Pollack et al. (2006), p. 36; cf. Dunbar et al. (2012), p. 2.

<sup>29</sup> Pollack et al. (2006), p. 36; cf. Dunbar et al. (2012), p. 3.

<sup>30</sup> Cf. Pollack et al. (2006), pp. 33 f. for a discussion of prejudgment interest on past losses.

<sup>31</sup> Cf. Dunbar et al. (2012), pp. 4 f.

<sup>32</sup> Taurman/Bodington (1992), p. 71.

<sup>33</sup> George P. Roach, ‘Correcting Uncertain Prophecies: An Analysis of Business Consequential Damages’, *The Review of Litigation*, Winter 2003 (Roach (2003)), p. 68; Cf. Dunbar et al. (2012), p. 4.

<sup>34</sup> Cf. Dunbar et al. (2012), p. 5.

<sup>35</sup> Cf. Taurman/Bodington (1992), p. 77; or Roach (2003), p. 38.

<sup>36</sup> Cf. Dunbar et al. (2012), pp. 8 f.

<sup>37</sup> Cf. Taurman/Bodington (1992), p. 71.

<sup>38</sup> Taurman/Bodington (1992), p. 79; cf. Dunbar et al. (2012), p. 9.

<sup>39</sup> Cf. Dunbar et al. (2012), p. 9.

<sup>40</sup> Pollack et al. (2006), p. 36; cf. Taurman/Bodington (1992), footnote 16, discussing the mixture of ex ante and ex post information as being flawed.

<sup>41</sup> Dunbar et al. (2012), pp. 10 f.

<sup>42</sup> Cf. Roach (2003), pp. 35 ff.; or Taurman/Bodington (1992), pp. 67 and 97.

on a comparison of the actual with a hypothetical cash flow but for the wrongful act<sup>43</sup> and thus implicitly considers all financial impacts, including consequential damages and mitigating factors. However, this approach may overestimate the amount of damages by including financial impacts unrelated to the wrongful act. Therefore, one of the most important issues is to identify, to quantify and to exclude the financial implications of unrelated influences from the damages calculation to the extent possible<sup>44</sup>.

### The use of a valuation model

Practically, the choice of whether to use a rather simple or a more sophisticated valuation model is often influenced by the availability of financial and other information and the approach applied. While the direct assessment of damages lends itself to a simpler model, the indirect assessment of damages typically necessitates an integrated model.

Accordingly, a simple model may include only a cash flow projection, while an integrated financial model typically includes financial projections for the income statement, the balance sheet and the cash flow statement. The integration refers to financial and other interdependencies modelled between input parameters, calculations and results (eg, a change in revenue resulting in an adjustment to trade receivables and thereby also to net working capital)<sup>45</sup>.

Best practice requires a financial model to distinguish between input parameter, the calculation itself and the output of results<sup>46</sup>. Best practice further requires simplicity as 'more detail creates the need for more inputs, with the potential for error in each one, and generates more complicated models'<sup>47</sup>. This will also improve the reviewability of the financial model, thus enabling an easier understanding and assessment of the mathematical accuracy and the applicability of the financial model for the specific damages quantification<sup>48</sup>.

In conclusion, a financial model should focus on the most important issues (ie, the key value drivers or key financial parameters with a more than insignificant influence on the result), but at the same time should not oversimplify the reality.

## ASSUMPTIONS REQUIRED TO ADEQUATELY USE THE DISCOUNTED CASH FLOW METHODOLOGY IN INTERNATIONAL ARBITRATION

### Introduction

The determination of a business value, as well as the determination of damages, is based on a few general but key parameters that need to be determined depending on the individual facts and circumstances (ie, the valuation object, the valuation date and the valuation or loss period).

Once these parameters have been decided, the financial information that coincides with these decisions must be determined, including the relevant prospective financial information to be used; for example, a business plan or a financial forecast, whether or not to consider a terminal value,

the applicable currencies and exchange rates, if any, and whether or not inflation needs to be considered expressly.

Upon determining the relevant cash flows, the time value of money and the riskiness of the cash flows need to be considered by calculating the present value of the cash flows through compounding of past cash flows, if applicable, and discounting of future cash flows to the valuation date.

Finally, to fully compensate for the wrongful act, the tax implications of the potential award need to be considered.

### Key parameter

#### *The valuation object*

The valuation object represents the business to be valued or the damages to be assessed. The appropriateness of the result is directly dependent on a distinct and definable identification of the valuation object, considering the prerequisite of causation<sup>49</sup>. The more narrowly the valuation object is defined, the fewer other influences will impact the result of the calculation and, consequently, the less information and fewer adjustments will be required. Therefore, damages should be determined on the basis of the smallest entity or unit for which individual cash flows can be determined; for example, a company, a business unit, a profit centre or a product<sup>50</sup>. The identification of the relevant cash flows attributable to the valuation object will typically involve a review of the existing internal and external financial reporting; for example, annual, quarterly or monthly financial statements, (monthly) management reporting, profit or cost centre reporting, or reporting on cost units such as products or projects.

#### *The valuation date*

As the value of businesses varies over time as a consequence of changes in the markets or the business itself, the appropriate date as of which the valuation object is to be valued must be identified<sup>51</sup>. While the valuation date is primarily a technical issue (ie, it represents the point in time to which all past cash flows are compounded and all future cash flows are discounted),<sup>52</sup> it also determines which information can, should or must be used<sup>53</sup>; may significantly impact the damages assessment, eg, by determining the information to be used, such as day rates, or by determining the remaining useful life of a damaged asset; and will reference the starting date for pre-award or pre-judgment interest calculation, if applicable.

#### *The valuation or loss period*

While business valuation generally assumes a perpetual valuation period, the loss period needs to consider the time from the commencement of the wrongful act until the cessation of its economic impact on the damaged party<sup>54</sup>. Therefore, the loss period will generally be limited, for example, by the contractual terms or the return of the business to customary levels<sup>55</sup>.

In a breach of contract matter, the loss period will usually extend over the remaining contract term, which may include contract renewals based on an analysis of the history of renewals,

<sup>43</sup> See 'The but-for method', *supra*.

<sup>44</sup> Cf. Pollack (2006), p. 20.

<sup>45</sup> Given the complexity of integrated financial models, the use of computer-based tools, eg, a spreadsheet software, is market standard.

<sup>46</sup> Cf. Koller et al. (2015), pp. 229 ff.

<sup>47</sup> Damodaran (2006), p. 8.

<sup>48</sup> Cf. Kantor (2008), pp. 301 ff., suggesting that the arbitral tribunal should obtain the financial models.

<sup>49</sup> Cf. Pollack et al. (2006), pp. 19 f., discussing the requirements of transaction causation and loss causation.

<sup>50</sup> Cf. the concept of IFRS' Cash Generating Units as defined in IAS 36.6, or the similar concept of US GAAP's Reporting Units as described in the ASC 350-20-35-33 ff. of the FASB.

<sup>51</sup> Cf. Damodaran (2006), p. 5; or Galanti (2012), p. 7.

<sup>52</sup> See 'Considering an appropriate discount rate', *infra*.

<sup>53</sup> See 'Ex ante v. ex post approach', *supra*.

<sup>54</sup> Cf. James R. Hitchner, *Financial Valuation, Applications and Models*, Second Edition, 2006 (Hitchner (2006)), p. 1036.

<sup>55</sup> Cf. Pollack et al. (2006), p. 3.

considering potential negotiations prior to the breach and other facts and circumstances as a result of which a renewal could not have been avoided (eg, a sole supplier agreement)<sup>56</sup>.

In the absence of a contractual limitation, there is a rebuttable assumption that the damaged business will return to its customary levels over a definite period of time, thus limiting the damages period.

Other than with regard to the destruction of a business<sup>57</sup>, damages will have a perpetual or indefinite effect only in rare circumstances. Only in these situations, a terminal value needs to be considered<sup>58</sup>, suggesting the use of the loss in business value approach.

## Financials

### Introduction

Determining the free cash flow to firm as a basis for the business valuation or assessment of damages requires the existence or projection of an integrated set of financial statements (ie, an income statement, a balance sheet and a cash flow statement)<sup>59</sup>.

Furthermore, when considering an indefinite valuation or loss period, a terminal value and a terminal growth rate must be considered.

Finally, depending on the facts and circumstances, special attention may be required with regard to currencies and exchange rates or inflation.

### Developing and reviewing prospective financial information

#### The income statement

##### Introduction

The income statement reports a business's financial performance over a specific period. It is used to assess the business's ability to produce net income for its owners. The analysis of historic income statements typically focuses on revenues and costs and often reveals relevant information to be used in the preparation or review of prospective financial information (eg, financial ratios such as the gross margin). When assessing income statements, the accounting principles<sup>60</sup> applied must be considered, as material deviations may exist in the way these recognise or measure revenue or cost.

##### Developing and reviewing revenue projections

Revenue is generally defined as the gross inflow of economic benefits arising from an entity's operating activities, such as sales of goods or services. It represents the product of the volume of goods and services sold and their corresponding prices<sup>61</sup>.

The assessment or projection of revenues (or lost revenues) needs to consider the economic environment of the business (ie, the demand for its products or services, the supply of materials, people and know-how, the type of competition and number of competitors, and potential disruptive impacts, for example, the

substitution of the products or services by other products or services). Sources to identify or validate such influences are, among others, market share analyses, market studies, industry studies, analyst coverage, financial reporting of the business or its competitors, analyst coverage or information derived from the business itself (eg, information memoranda).

Revenues (or lost revenues) are at the heart of the financial statement analysis and projection, as almost every other line item directly or indirectly depends on them<sup>62</sup> and their projection is likely 'the most controversial part of any damages estimate in a business case because it requires so many assumptions'<sup>63</sup>.

The determination of lost revenues (ie, those revenues 'that would have been earned but for the wrongful act')<sup>64</sup> is the first step in establishing lost profits. This concept aims to identify only incremental revenues and requires a careful analysis of causality to avoid both the inclusion of revenues unaffected by the wrongful act and the exclusion of revenues affected by the wrongful act. Frequently used approaches to determine lost revenues are: (1) the before-and-after method; (2) the yardstick or benchmark method; and (3) reference to contractual terms<sup>65</sup>. Alternatively, time-series models or econometric models may be employed<sup>66</sup>.

The before-and-after method compares a period during which the revenue is impacted by the wrongful act (loss or damages period) with a period of unaffected revenues (benchmark or base period). Importantly, the benchmark period needs to be a reliable indicator representative of the damaged party's reasonable prospects. While generally a longer benchmark period will produce more reliable observations, sometimes even a very short period (only a few months) may be acceptable. But the unavailability of a reliable benchmark period, for example, because of a lack of a track record, renders the before-and-after method inappropriate. As the selection of the benchmark period may have a significant impact on the damages, it requires a convincing reasoning and consistent application (eg, it should be identical for revenues and cost). Generally, the before-and-after method is considered the most reliable approach, as it relies on verifiable data rather than projections (eg, the damaged party's accounting records<sup>67</sup>. The lost revenues are determined as the difference between the revenues of the benchmark period and the damages period, assuming that but for the wrongful act the same level of revenue should have been obtained. If a growth trend is observable during the benchmark period, or revenue growth is expected based on other information, the projected revenues may consider a growth rate. While typically this growth rate is derived and extended from the benchmark period, this approach may not always be suitable, especially with young businesses or in declining markets<sup>68</sup>. Finally, the before-and-after method requires the analysis of whether other factors, such as changes

<sup>56</sup> Cf. Pollack et al. (2006), p. 23.

<sup>57</sup> Cf. Kolaski/Kuga (1998), p. 5.

<sup>58</sup> See 'Developing and reviewing terminal value and terminal growth rate', *infra*.

<sup>59</sup> Cf. Koller et al. (2015), pp. 232 f.

<sup>60</sup> Eg, International Financial Reporting Standards (IFRS), United States Generally Accepted Accounting Principles (US-GAAP) or other.

<sup>61</sup> Cf. IAS 18, Revenue; note that the standard will be replaced IFRS 15, Revenue from Contracts with Customers, as of 1 January 2018.

<sup>62</sup> Cf. Koller et al. (2015), p. 233.

<sup>63</sup> Allen et al. (2011), p. 499.

<sup>64</sup> Pollack et al. (2006), p. 3.

<sup>65</sup> Cf. Pollack et al. (2006), p. 25; or EC (2013), pp. 14 ff., referring to comparator-

based methods.

<sup>66</sup> Cf. Carroll B. Foster, Robert R. Trout and Patrick A. Gaughan, Losses in Commercial Litigation, *Journal of Forensic Economics* 6(3), 1993 (Foster et al. (1993)), pp. 184 ff.

<sup>67</sup> Cf. Robert M. Lloyd, Proving Damages for Lost Profits: The Before-and-After Method, 2014, University of Tennessee (Lloyd (2014)), p. 1; or EC (2013), p. 16.

<sup>68</sup> Cf. James Plummer and Gerald McGowin, Key Issues in Measuring Lost Profits, *Journal of Forensic Economics*, Vol. 6, No. 3, 1993, p. 232 (Plummer/McGowin (1993)); or Kolaski/Kuga (1998), p. 2; and refer to 'Developing and reviewing prospective financial information', *infra*, for a further discussion on the determination of growth rates.

in the economic conditions (eg, inflation, general price erosion, changes in demand, changes in competition or mismanagement of the business) have caused or contributed to the deviation of the actual revenue from the but-for revenue and to control (ie, eliminate) these other factors to avoid overcompensation or under-compensation of the damaged party<sup>69</sup>. This may also involve the elimination of such factors from the actual financial data to isolate the marginal effect of the wrongful act<sup>70</sup>. The failure to control these other factors may result in phantom losses or significantly exaggerate lost revenues, resulting in unreasonable and unjustified damages<sup>71</sup>.

The yardstick or benchmark method also relies on observable information but refers to similar assets or businesses. Therefore, its use and reliability is dependent on the identification of a truly comparable business and the availability of the required information. Possible yardsticks or benchmarks include revenue from the same business in a different geographic market, revenue projections developed prior to the wrongful act, revenues of a similar business with comparable market characteristics, sufficiently similar revenues of third parties, or industry averages. Importantly, the use of the comparable information typically involves adjustments to eliminate any differences between the valuation object and the comparable business (eg, with regard to sales volume or geographic footprint). Finally, the yardstick or benchmark method requires controlling other factors that may have influenced the actual results of either the valuation object or the comparable business to avoid overcompensation or under-compensation<sup>72</sup>.

In a breach of contract matter, the contract typically provides details for material assumptions that must be considered (eg, sales volume, prices, (remaining) contract term)<sup>73</sup>.

Finally, the projection of (lost) revenues must be sense-checked to ensure the reasonableness of the results. These checks may refer to external information, such as market studies, market share analysis, analyst coverage, competitor analysis or industry experts, or may use internal information, such as capacity constraints or the assessment of earlier performance, including budget-to-actual comparisons<sup>74</sup>.

#### *Developing and reviewing cost projections*

While generally costs cover a business's gross outflow of economic benefits (ie, the money used), the concept of avoided cost referred to in the assessment of lost profits considers only 'those incremental costs that were not incurred because of the loss of the revenue'<sup>75</sup>. Just like lost revenues, the 'calculation of avoided costs is a common area of disagreement about damages'<sup>76</sup>.

In an income statement compliant with the internationally prevailing cost of sales method, the major cost categories are cost of goods sold, selling, general and administrative expenses, and other expenses<sup>77</sup>. The costs of goods sold reflect the costs

directly attributable to the production of goods or services rendered and typically include direct labour and material costs. While they are generally expected to vary directly with revenues, they may also include fixed costs (eg, the depreciation of machinery and equipment used in the production). Conversely, selling, general and administrative expenses, as well as other expenses, primarily include costs not directly related to revenue (eg, compensation of officers, office supplies or vehicle costs) but they may also include costs that vary with levels of revenue (eg, marketing spend or advertising costs)<sup>78</sup>.

The distinction between variable and fixed costs is an important aspect of the identification and quantification of avoided costs, as these do not consider fixed costs that would have been the same with or without the wrongful act<sup>79</sup>. The assessment of whether or not costs are variable (ie, will change with each unit of production) or fixed (ie, will not change irrespective of the units of production) needs to consider that almost no cost is purely variable or fixed. Depending on the level of production, some costs are fixed within certain levels but vary outside these levels (eg, semi-variable cost). Furthermore, the length of the loss period needs to be considered, as a longer loss period will result in more costs being considered variable or semi-variable because they could be avoided<sup>80</sup>. And, while some costs may vary directly with revenues, they may, nonetheless, not or no longer be avoidable; for example, costs of goods sold already incurred for finished products that cannot be delivered because of the wrongful act<sup>81</sup>. Consequently, the application of the concept of avoided costs requires a thorough understanding of the damaged party's cost structure to identify the major cost drivers and other factors that may affect particular costs<sup>82</sup>. This also entails the identification and adjustment for extraordinary and other unusual costs to reflect the ordinary business activity<sup>83</sup>.

Generally, external financial reporting will not provide a sufficient level of detail to differentiate between fixed and variable costs and, therefore, more detailed information is required on the level of individual cost categories, cost centre or cost units<sup>84</sup>, which will be available at varying degrees and in various formats. A thorough review and analysis of this actual cost information, typically involving monthly, quarterly or yearly cost information, as well as useful planning measures (eg, standard costs) forms the basis for the development or review of cost expectations. Based thereon, either non-statistical or statistical methods may be applied to determine which costs vary with revenue.

Non-statistical methods include an account analysis (ie, a review of a detailed general ledger or chart of accounts to subjectively identify variable costs); the identification of direct costs related to an activity or product (eg, direct labour and material costs); the use of standard costs or other reports available from the damaged party; the use of ratio analysis (ie, cost allocation in proportion to a specific measure – eg, labour

<sup>69</sup> Cf. Pollack et al. (2006), pp. 20 and 25 f.; or Lloyd (2014), pp. 6 ff.

<sup>70</sup> Cf. Roach (2003), p. 56.

<sup>71</sup> Cf. Jonathan T. Tomlin and David R. Merrell, The Accuracy and Manipulability of Lost Profits Damages Calculations: Should the Trier of Fact be 'Reasonably Certain?', *The Tennessee Journal of Business Law*, Volume 7, 2006 (Tomlin/Merrell (2006)), pp. 303 ff.; or EC (2013), p. 16.

<sup>72</sup> Cf. Pollack et al. (2006), p. 26; or EC (2013), pp. 19 f.

<sup>73</sup> Cf. Pollack et al. (2006), p. 26.

<sup>74</sup> Cf. Pollack et al. (2006), p. 27.

<sup>75</sup> Pollack et al. (2006), p. 3.

<sup>76</sup> Allen et al. (2011), p. 449.

<sup>77</sup> In other formats of the income statement, eg, the nature of expense method, the distinction between variable and fixed costs can be even less discernible.

<sup>78</sup> Cf. Allen et al. (2011), p. 450; or Foster (1993), pp. 183 f.

<sup>79</sup> Cf. Pollack et al. (2006), p. 29; Allen et al. (2011), p. 499; or Plummer/McGowin (1993), p. 233.

<sup>80</sup> Cf. Foster et al. (1993), p. 193; or Plummer (1995), p. 31.

<sup>81</sup> Cf. Pollack et al. (2006), p. 30; or Allen (2011), p. 450.

<sup>82</sup> Cf. Pollack et al. (2006), p. 29; or Foster et al. (1993), p. 193.

<sup>83</sup> Cf. Damodaran (2006), pp. 91 f.

<sup>84</sup> Cf. Plummer/McGowin (1993), p. 233.

hours or unit of production); reference to industry standards (ie, based on industry studies or comparable information); or a percentage of sales approach (ie, the determination of a per cent quota for each avoided cost in relation to revenues). These approaches may capture incremental costs incompletely, are prone to errors and are highly subjective. Their application, therefore, requires comprehensive and reasonable documentation<sup>85</sup>.

More reliable statistical methods<sup>86</sup> include regression analysis<sup>87</sup>, which identifies patterns in the relationship between revenues and costs, including the extent to which certain costs are influenced by revenues. In addition, the quality of the regression analysis (ie, the predictive power of the regression model) can be back-tested to the benchmark period and statistically corroborated by an analysis of the correlation coefficient. The reasonable use of a regression analysis is primarily dependent on a sufficient number of observations (ie, data)<sup>88</sup> and a thorough understanding of the business to formulate valid hypotheses. Econometric techniques may further improve the assessment but require even more information<sup>89</sup>.

To the extent available and existent, contractual agreements will need to be considered irrespective of the approach, and may determine, for example, the purchase price and volumes for materials and services.

To assess the reasonability of the resulting costs, cost ratios may be compared internally to prior periods, other markets and other products, or externally to competitors or market information<sup>90</sup>. In addition, the reasonability is frequently assessed by reference to margins, especially to the gross margin<sup>91</sup>. This comparison, however, needs to recognise the lack of comparability, as lost profit does not equate to the definition of net income. Instead, the lost profit margin is best described as incremental profit margin (ie, the change of net income as a result of the lost revenues). Because of its composition it should typically fall between the historic gross profit margin and historic net profit margin<sup>92</sup>. Furthermore, for longer loss periods, this incremental profit margin should decline over time, reflecting the business adjustments of the damaged party (ie, mitigation)<sup>93</sup>.

#### *Considering corporate income taxes*

While business valuation typically considers after-tax results<sup>94</sup>, damages are generally determined on a pre-tax basis, assuming that any compensation will be taxed at the level of the damaged party<sup>95</sup>.

When corporate income taxes are considered, it needs to be decided whether a marginal tax rate or the effective tax rate is applied. While the marginal tax rate can be read from the applicable tax law and assumes that the corporate income tax for the business or damages is independent from any other tax issues, the effective tax rate is determined by reference to actual financial information comparing the tax payments with the income before tax, thereby considering any company-specific tax issues.

To the extent existent, corporate income tax loss carry-forwards need to be considered to the extent they are applicable to the damaged business and could be used to offset its future tax payment obligations. Determining the timing and amount of this offsetting typically requires detailed tax planning.

A further complication may result from the business's operation in multiple tax jurisdictions. Not only are these likely to provide for different corporate income tax rates, they may also define taxable income differently. Furthermore, based on local tax law or double tax treaties, international taxation will usually involve the deduction of foreign taxes or the exemption of foreign income from local corporate income taxes under certain restrictions.

#### *The balance sheet*

##### *Introduction*

The balance sheet is a financial statement that captures a business's assets, liabilities and equity at a specific point in time. The review of historic balance sheets and their development over time typically focuses on capital expenditures, net working capital and net debt, and often reveals relevant information to be used in the preparation or review of prospective financial information (eg, financial ratios such as the equity ratio or liquidity ratios and their development over time). When assessing balance sheets, the accounting principles<sup>96</sup> applied must be considered, as material deviations may exist in the way these rules recognise or measure assets, liabilities or equity.

For the valuation of a business or the assessment of damages as a loss in business value, the balance sheet, in addition to the income statement, is required as a basis on which to develop the statement of cash flows<sup>97</sup>. As the determination of damages as lost profits typically assumes lost revenues and avoided cost to be equivalent to cash flow, a balance sheet is not always required.

##### *Developing and reviewing projected capital expenditures*

Capital expenditure (CAPEX) refers to the use of funds to acquire or to extend the useful life of long-lived assets (ie assets, providing future economic benefit to the business beyond the current year or reporting period). These costs will be recognised in the income statement of the business as depreciation or amortisation over the useful life of the asset.

The analysis of past investment spending should identify and differentiate between investments for growth and investments for maintenance to assess the level of investments required to sustain the business and the related cash outflow in future periods. It should also review past patterns of investments to identify issues such as cyclicity that would require periods of peak investments.

The analysis of the financial projection should focus on whether the investment spending is in line with actual observations, or if any changes thereto are reasonable and sufficiently explained; for example, after a period of growth the business may reach a steadier state, resulting in a decline

<sup>85</sup> Cf. Pollack et al. (2006), pp. 30 f.

<sup>86</sup> See Chapter 22 on the use of econometric and statistical analysis and tools.

<sup>87</sup> Cf. Pollack et al. (2006), p. 31; Allen (2011), p. 450; Foster et al. (1993), p. 191; or Plummer/McGowin (1993), pp. 233 f.

<sup>88</sup> Cf. EC (2013), pp. 24 f.

<sup>89</sup> Cf. EC (2013), p. 32.

<sup>90</sup> Cf. Pollack et al. (2006), p. 32.

<sup>91</sup> Cf. Foster et al. (1993), p. 181.

<sup>92</sup> Cf. Plummer/McGowin (1993), p. 232; or Foster et al. (1993), p. 181.

<sup>93</sup> Cf. Plummer/McGowin (1993), p. 235; or Allen et al. (2011), p. 450.

<sup>94</sup> Cf. Damodaran (2006), pp. 92 ff.

<sup>95</sup> See 'Considering a tax step-up', *infra*.

<sup>96</sup> Eg, International Financial Reporting Standards (IFRS), United States Generally Accepted Accounting Principles (US-GAAP), or others.

<sup>97</sup> Cf. Brealey et al. (2012), pp. 63 ff., the so-called indirect approach derives the cash flow statement from the income statement and changes in balance sheet positions.

of growth investments or, conversely, the budget may consider significant growth that requires increased investment spending in the near term.

To assess the reasonability and consistency of the projected financial information, the level of long-lived assets may be compared to the level of revenue, assuming that a certain level of long-lived assets is required to deliver the business's products or services<sup>98</sup>. In addition, a comparison of the sales volumes required to obtain the projected revenues with the volumes of production may identify capacity constraints.

Furthermore, benchmarking against competitors or industry standards may identify inconsistencies that could indicate insufficient investment spend. This analysis should also involve an assessment of the market size (volume) and the respective market shares (volume) to ensure that sufficient capacity is available to service the expected market share of the business and to compare the expected growth of the market with the growth assumed for the business.

#### *Developing and reviewing projected net working capital*

Net working capital is generally defined as current assets less current liabilities at a specific point in time. It is used to assess the business's short-term financial health and its efficiency in converting products into revenue. While in practice there are numerous definitions to match the requirements of a specific business, the narrowest definition will typically entail inventories, trade accounts receivable and trade accounts payable<sup>99</sup>.

To analyse actual levels of net working capital and to project future levels of net working capital, the working capital turnover ratio<sup>100</sup> can be considered, which measures the utilisation of working capital to generate revenues. Furthermore, the key metrics days sales of inventory (DSI)<sup>101</sup>, days sales outstanding (DSO)<sup>102</sup> and days payables outstanding (DPO)<sup>103</sup> are frequently referred to<sup>104</sup>. While DSI is a measure of inventory effectiveness indicating the number of days it takes to convert inventory into revenue, DSO indicates the number of days it takes to collect the cash following the sale, and DPO indicates the number of days the business uses to pay its suppliers after the purchase or acquisition of their products or services. These metrics can be combined into the cash conversion cycle,<sup>105</sup> which indicates the length of time the cash used to acquire resources needs to be financed before cash is received from the business's operation.

The analysis of these metrics over time may indicate changes in the business (eg, new products or markets), or in the business processes (eg, in the introduction of a just-in-time production), or changes in the financing of the business (eg, by extending the period before paying creditors). Significant changes will require an explanation and an assessment of their sustainability (eg, a projected increase in working capital may result from an unrealistic assumption regarding payment terms).

Benchmarking these metrics with comparable companies or industry standards will further indicate the competitiveness of

the terms and thus their likely market acceptance (eg, a much longer DPO in comparison to competitors may not be sustainable with suppliers).

#### *Developing and reviewing projected financing (net debt)*

Net debt is generally defined as interest bearing debt less cash and cash equivalents (ie, current assets that can quickly be liquidated for cash) at a specific point in time. It indicates the business's ability to pay off its debts using its available cash and highly liquid assets.

The analysis of historic levels of net debt should indicate the level and structure of financing required to sustain the business's operations and can be used to assess the reasonableness of financial projections. While long-term debt will typically be based on contractual agreements (eg, loans), which should form the basis for the projection of these debt items, including a potential repayment or renewal, short-term debt is often agreed as an overdraft facility or a borrowing limit. Consequently, a financial projection needs to consider these limits.

Benchmarking with comparable companies or industry standards may identify variations of the level or structure of indebtedness and may indicate an adjustment to the debt level.

#### *Considering special items*

In addition to the above, there are special items that may be subject to discussion and potential disagreement as their inclusion or exclusion in working capital, net debt or the valuation as such will directly impact the business value. But, in the context of determining damages, these special items will often be unaffected by the wrongful act and thus their consideration is not required as their value will be equivalent in both the but-for and the actual scenario.

First, non-operating assets should be excluded from the valuation as they do not contribute to the generation of income or cash flow in the normal course of operations (eg, an investment into unused land). If required, these assets should be valued at their fair value as at the valuation date and added to the business value<sup>106</sup>.

Second, while cash is generally directly assessable, there may be circumstances that require special attention. Trapped cash is cash on the balance sheet that is not available for use in the business or distribution to its owners, as it is designated for some other purpose (eg, as a collateral or fiduciary deposits). Also, sometimes there is a discussion of the level of cash required to operate the business<sup>107</sup>, which, if one agrees with this concept, would not be available for use in the business or distribution to its owners, thereby reducing the value of the business<sup>108</sup>.

Third, financial instruments may require a thorough analysis to determine whether or not they are financial assets or liabilities and what their impact is on the future net cash generation.

<sup>98</sup> Cf. Koller et al. (2015), p. 244.

<sup>99</sup> These items will generally also be included in any derivation of the net working capital definition.

<sup>100</sup> Working capital turnover ratio = Revenue / Working Capital, whereas revenue is typically for a 12-month period and working capital is the average working capital over that same period.

<sup>101</sup> Days Sales of Inventory = (inventory / cost of sales) \* 365, assuming a period of one year; also referred to as Days Inventory Outstanding (DIO).

<sup>102</sup> Days Sales Outstanding = (trade accounts receivable / revenues) \* 365, assuming a period of one year.

<sup>103</sup> Days Payables Outstanding = (trade accounts payable / cost of sales) \* 365, assuming a period of one year.

<sup>104</sup> Cf. Koller et al. (2015), pp. 245 f.

<sup>105</sup> Cash conversion cycle = Days Sales of Inventory + Days Sales Outstanding – Days Payables Outstanding.

<sup>106</sup> Cf. Koller et al. (2015), pp. 149 and 247.

<sup>107</sup> Cf. Koller et al. (2015), p. 140.

<sup>108</sup> See 'The discounted cash flow methodology: Introduction', *supra*.

Fourth, debt-like items (ie, items that will result in future cash outflows and typically bear interest) are frequently subject to disagreement and dispute as the inclusion or exclusion within net debt will directly result in different business values. Examples of debt-like items are, among others, pension accruals, which reflect the future pension payments to then former employees and are recorded on the balance sheet at their present value, capital leases or environmental contingencies.

#### The cash flow statement

The cash flow statement is a financial statement that provides information about cash receipts and cash payments of a business during a specific period to, among others, support the assessment of the business's ability to generate future net cash flows<sup>109</sup>.

It usually distinguishes between the cash flows from operating, investing and financing activities. The cash flow from operations resembles the main revenue-producing activities of the business that are not investing or financing activities (ie, the production and sale of products or services). The cash flow from investing activities depicts the amount of cash invested in the purchase of, or received from the sale of long-lived assets<sup>110</sup>. The cash flow from financing activities<sup>111</sup> provides information about the funding of the business by both equity and debt investors<sup>112</sup>.

For the valuation of a business or the assessment of damages as a loss in business value, the cash flow statement is typically derived from the projected income statement and balance sheet<sup>113</sup>. The analysis of the actual or historic free cash flow to the firm may provide support in assessing or reviewing the reasonableness of the projected free cash flow to the firm.

Otherwise, the determination of damages as lost profits typically does not require the preparation of a statement of cash flows in full compliance with the applicable accounting standards but will focus directly on the cash flows derived from lost revenues and avoided costs.

#### Developing and reviewing terminal value and terminal growth rate

The terminal value represents the present value of all future cash flows at a specific point in time. To consider a stable growth of these cash flows a terminal growth rate is typically applied (perpetual growth model)<sup>114</sup>.

When the valuation or damage period is not limited (ie, infinite), the detailed planning period<sup>115</sup> must be extended to consider what is known as a 'terminal year'. The terminal year represents the income or cash flow expected for every year after the detailed planning period and thus, utilising the present value of an ordinary annuity<sup>116</sup>, captures the value of the business for all periods beyond the detailed planning period. As the terminal value frequently contributes the majority of the business value, its determination requires caution and should be based on reliable assumptions<sup>117</sup>.

First, the business should be in a steady state at the end of the detailed planning period – ie, no major changes

or disruptions should be expected for the business or its environment as these could not be captured in the terminal year. Accordingly, to the extent such events and circumstances are known or foreseeable, they must be considered in extended planning periods prior to the terminal year<sup>118</sup>.

Second, it is generally assumed that a business will grow over time. The growth rate can have a major impact on the business value and must therefore be determined very diligently. To determine a reasonable growth rate the historic development of the business, its competitors and its markets should be considered. In addition, fundamental data such as long-term inflation forecasts or projected growth of the relevant economies, eg, GDP forecast, should be considered. It seems reasonable to argue that '[a] company's growth rate typically approaches industry growth rates very quickly, and few companies can be expected to grow faster than the economy for long periods'<sup>119</sup>.

Practically, growth rates vary significantly, depending on the geography's economic outlook or the business' industry outlook, among others. For developed countries, the growth rate will typically be lower than the expected inflation rate, assuming that in mature markets the business will not be able to pass on the entire cost increase to its customers.

The financial projection should consider that growth requires investments, specifically in long-lived assets and net working capital, which in turn require financing<sup>120</sup>. An integrated financial model will consider these requirements which will reduce the free cash flow and thus the business value.

Common pitfalls in the use of the growth rate include the wrongful application of the growth rate to all line items of the income statement individually, thereby ignoring the relations of revenues, and an understatement of growth resulting from an overly conservative perception of uncertainty<sup>121</sup>.

#### Considering currency and exchange rates

A business value as well as damages need to be determined in a specific currency. Therefore, financial projections denominated in another currency need to be converted, applying an appropriate exchange rate.

Theoretically, the most precise approach would be to translate all foreign currency transactions with the exchange rate at the date of the transaction. In practice though, balance sheet items are typically converted applying the exchange rate as at the date of the balance sheet, while income statement items are converted applying an average exchange rate for the period covered.

For the conversion of cash flows, two methods are commonly applied: the forward-rate method or the spot-rate method. The forward-rate method uses forward exchange rates to convert the projected cash flows from foreign to domestic currency. Accordingly, the discount rate applied must consider domestic cost of capital. In contrast, the spot-rate method converts the present value of the projected foreign currency cash flows into a domestic present value applying the exchange rate as at the

<sup>109</sup> Cf. Statement of Financial Accounting Standards No. 95, Statement of Cash Flows, para. 4 f.

<sup>110</sup> See 'Developing and reviewing projected capital expenditures', *supra*.

<sup>111</sup> Note that interest expenses related to financial debt can be included either within the cash flow from financing or the cash flow from operations in compliance with IFRS, whereas it is included within the cash flow from operations in compliance with US-GAAP.

<sup>112</sup> Cf. Statement of Financial Accounting Standards No. 95 or Statement of Cash Flows and International Accounting Standard 7, Statement of Cash Flows.

<sup>113</sup> In contrast to this so-called indirect cash flow method, the so-called direct

cash-flow method is based on an identification and allocation of transfer of funds.

<sup>114</sup> Cf. Koller et al. (2015), pp. 229 f.

<sup>115</sup> See 'The valuation or loss period', *supra*.

<sup>116</sup> An ordinary annuity is a series of equal payments made at the end of consecutive periods.

<sup>117</sup> Cf. Koller et al. (2015), pp. 259 f.

<sup>118</sup> Cf. Damodaran (2006), p. 153; or Koller et al. (2015), p. 542.

<sup>119</sup> Koller et al. (2015), p. 263; cf. Damodaran (2006), p. 146.

<sup>120</sup> Cf. Damodaran (2006), pp. 148 ff.

<sup>121</sup> Cf. Koller et al. (2015), pp. 271 ff.

valuation date. Consequently, the discount rate applied must consider the foreign cost of capital. Both approaches are broadly accepted, but the consistent use of the appropriate discount rate must be ensured<sup>122</sup>.

### Considering inflation

Inflation is defined as an increase in the price level of goods and services in an economy and is measured by the inflation rate, generally the annual percentage change in consumer prices<sup>123</sup>. Generally, valuation as well as damages assessment implicitly considers inflation (ie, the financial forecast includes any potential adjustment for expected inflation and thus inflation must not be considered separately)<sup>124</sup>. But, in instances of very high and unstable inflation, or even hyperinflation (ie, an extremely rapid or out of control inflation in excess of 50 per cent per month), inflation must be considered separately<sup>125</sup>.

### Considering an appropriate discount rate

To consider the time value of money and the specific risks associated with the business, when applying the DCF methodology, the free cash flow to the firm is compounded or discounted to the valuation date applying an appropriate discount rate<sup>126</sup>. The same principles apply to the determination of damages; ie, past and future lost profits or cash flows are compounded or discounted to the valuation date applying an appropriate discount rate<sup>127</sup>, which may significantly differ from the discount rate appropriate for the valuation of a business. The appropriate discount rate is usually a matter of substantial dispute<sup>128</sup>.

While there are many approaches to determine the appropriate discount rate, depending on the cash flows to be discounted, the concept of WACC is the most commonly used methodology and enjoys broad acceptance<sup>129</sup>.

Sometimes, risk adjustments in addition to the risk premium already captured within the WACC are discussed to reflect facts and circumstances specific to the market or the valuation object; for example, a country risk premium, a small firm premium or an inflation premium.

The country risk premium is usually derived from a comparison of two countries' bond rates (ie, as a country bond default spread). It considers the additional risk that a specific country with an immature market may present in comparison to the mature markets from which the financial information to determine the WACC has been derived; for example, a WACC based on US-listed companies is adjusted to reflect the different risk of an investment in an emerging country with little historical data or data too volatile to yield a meaningful estimate of the risk premium<sup>130</sup>.

Some empirical studies indicate that the capital asset pricing model<sup>131</sup>, which is used to determine the equity risk premium within the WACC, may understate the more volatile returns of small firms. A small firm premium is discussed to consider the additional risk or the additional return an investor would require when investing into a smaller firm than those included in the determination of the WACC components (ie, stock-listed companies). While this premium is regularly applied in the valuation of privately held businesses, various standard setters and market participants have issued contradictory publications and its existence is seriously questioned<sup>132</sup>.

When expectations with regard to inflation rates differ between the market used to derive the risk premium included in the WACC (eg, the United States) and the market in which the valuation object operates and generates cash flows (eg, an emerging country), an inflation premium may be used to bridge the gap between expected inflation rates<sup>133</sup>.

### Considering a tax step-up

Compliant with the objective of full compensation and its assessment on the basis of after-tax free cash flow available to the damaged party, the tax implication of receiving a damages award needs to be considered to avoid double taxation<sup>134</sup>.

In case of an after-tax analysis, as commonly applied in business valuation and the determination of a loss in business value, the award should, therefore, include both the present value of the after-tax cash flows and the taxes payable on the award<sup>135</sup>. In contrast, since lost profit damages are generally taxable as ordinary income, these damages should be determined on a pre-tax basis<sup>136</sup>.

For lost profits, a commonly used approach to calculate pre-tax damages is to apply the after-tax discount rate to the pre-tax cash flow<sup>137</sup>. However, this approach will only produce the correct damages when the corporate income tax rate applicable to the lost profits is identical with the corporate income tax rate used in the taxation of the award. This prerequisite may not be fulfilled as a result of divergent tax laws or changes in tax law<sup>138</sup> (eg, changes of the corporate income tax rate, or different corporate income tax rates applicable in different tax jurisdictions). For example, income and cash flow may be generated and subject to corporate income tax globally at various corporate income tax rates while the claimant resides in a specific country, resulting in the damages award being taxed at the corporate income tax rate applicable in that country. In these circumstances, the after-tax present value of damages needs to be grossed up, utilising the corporate income tax rate applicable to the damages award<sup>139</sup>.

<sup>122</sup> Cf. Koller et al. (2015), p. 490.

<sup>123</sup> Cf., for example, U.S. Bureau of Labor Statistics, on [www.bls.gov](http://www.bls.gov).

<sup>124</sup> Cf. Allen et al. (2011), pp. 451 ff. for further discussion.

<sup>125</sup> Cf. Damodaran (2006), p. 36.

<sup>126</sup> Cf. Damodaran (2006), p. 10.

<sup>127</sup> Cf. Pollack et al. (2006), pp. 35 ff.; or Robert L. Dunn and Everett P. Harry, 'Modeling and Discounting Future Damages', *Journal of Accountancy*, January 2002 (Dunn/Harry (2002)), p. 3.

<sup>128</sup> Cf. Allen et al. (2011), p. 500.

<sup>129</sup> Cf. Koller et al. (2015), p. 148; or Pollack et al. (2006), pp. 35 ff.; see Chapter 15 on determining the weighted average cost of capital.

<sup>130</sup> Cf. Damodaran (2006) pp. 41 ff.

<sup>131</sup> Cf. Pollack et al. (2006), pp. 38 ff.; or Allen et al. (2011), p. 459.

<sup>132</sup> Cf. Damodaran (2006), p. 57.

<sup>133</sup> Cf. Damodaran (2006), p. 61.

<sup>134</sup> Cf. Robert P. Schweihs, 'Measuring Lost Profits Economic Damages on a Pretax Basis', *Dispute Resolution Insights*, Summer 2010 (Schweihs (2010)), p. 11; see Chapter 19 on taxation and currency issues in damages awards.

<sup>135</sup> Cf. Schweihs (2010), p. 10.

<sup>136</sup> Cf. Merle Erickson and James K. Smith, 'Tax Treatment of Damages Awards', in *Litigation Services Handbook – The Role of the Financial Expert*, Fifth Edition, 2012 (Merle/Smith (2012)), p. 1; Pollack et al. (2006), p. 43; Allen et al. (2011), p. 449; Schweihs (2010), p. 10; or Hitchner (2006), p. 1041.

<sup>137</sup> Cf. Pollack et al. (2006), p. 43; or Schweihs (2010), pp. 12 f., including a numerical example.

<sup>138</sup> Cf. Schweihs (2010), p. 13.

<sup>139</sup> Cf. Pollack et al. (2006), p. 43; or Schweihs (2010), p. 10.



## DOCUMENTATION REQUIRED TO SUPPORT THE RESULTS OF THE DISCOUNTED CASH FLOW METHODOLOGY IN INTERNATIONAL ARBITRATION

Documentation is an essential part of determining damages in international arbitration, as ultimately, the arbitral tribunal should be provided with sufficient evidence for its evaluation of whether the damages have been substantiated with reasonable certainty<sup>140</sup>.

To establish reasonable certainty, an opinion should be based on the use of an accepted methodology, on its reliable application to the facts and circumstances of the matter, and on sufficient, reasonable and unbiased source data, facts and assumptions<sup>141</sup>.

As discussed above, the discounted cash flow methodology is widely used and accepted<sup>142</sup>. Furthermore, it can be reliably

applied to the measurement of damages in international arbitration<sup>143</sup>.

Therefore, the acceptance of the damages assessment primarily depends on a complete documentation of the source data and facts, reliable evidence for the assumptions used and a comprehensible explanation of the analysis and calculations employed. Sources reasonably referred to in damages measurement include, but are not limited to, official government publications and databases, independent researches and studies, audited financial statements and company filings, accounting records maintained in the ordinary course of business, management reports prepared in the ordinary course of business or documents produced for the arbitration<sup>144</sup>.

**Accreditation:** An extract from the third edition of GAR's *The Guide to Damages in International Arbitration*, first published in December 2018. The whole publication is available at [www.globalarbitrationreview.com/edition/1001283/the-guide-to-damages-in-international-arbitration-third-edition](http://www.globalarbitrationreview.com/edition/1001283/the-guide-to-damages-in-international-arbitration-third-edition)

<sup>140</sup> Cf. Pollack et al. (2006), p. 3; for discussion of the 'reasonable certain' criteria refer to AICPA, Forensic & Valuation Services Practice Aid, Attaining Reasonable Certainty in Economic Damages Calculations, 2015 (AICPA (2015)); or Robert M. Lloyd, The Reasonable Certainty Requirement in Lost Profits Litigation: What It Really Means, University of Tennessee, 2010 (Lloyd (2010)).

<sup>141</sup> Cf. Pollack et al. (2006), p. 57.

<sup>142</sup> See 'The discounted cash flow methodology', *supra*; cf. Allen et al. (2011), p. 431.

<sup>143</sup> See 'Application of the discounted cash flow methodology to the assessment of damages in international arbitration', *supra*.

<sup>144</sup> Cf. Allen et al. (2011), p. 484.





## THOUGHT LEADERS

### **Editorial policy and selection criteria**

Nominees have been selected based on comprehensive, independent survey work with both general counsel and private practitioners worldwide.

Only specialists who have met independent international research criteria are listed.

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## Biography

Phil Beckett is a managing director with Alvarez & Marsal's (A&M) global disputes and investigations practice in London and leads the pan-European forensic technology team. He brings more than 19 years of experience in forensic technology engagements, advising clients on forensic investigations of digital evidence, the interrogation of complex data sets, information governance, cyber risk and the disclosure of electronic documents. He was recently named *Who's Who Legal's* Investigations Digital Forensic Expert of the Year for the second year running.



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***Describe your career to date.***

I am a career consultant, having worked for major accountancy firms, US consultancies and small boutique technology firms. I started life within the IT risk team at Arthur Andersen but quickly found my way to forensics and have focused my career in that field ever since. Even though that has been my area of focus I am also a fellow of the Association of Chartered Certified Accountants (ACCA), winning the ACCA Gold Medal when I qualified in 2001. I have continued to enhance my knowledge with a master's degree in forensic computing from Cranfield University and in computer and communications law from Queen Mary University. I am currently a partner/managing director within Alvarez & Marsal's European disputes and investigations practice where I regularly work with my colleagues across the forensic accounting and economic spectrum, not just technology – although that is and will always remain my area of expertise.

***What steps do you take, both individually and as a firm, to ensure you provide clients with a high level of service?***

To ensure a high level of client service we have built robust procedures and methodologies. This means melding the following key traits: being responsive to clients; having a passion for quality; having full and transparent communication; and always providing independent and expert advice – even when that may be what they do not want to hear. Our team are experienced and qualified in their fields – they are not “button-pushers” or trained in one isolated element. Their training within the firm and the structure of our teams gives them all full grasp of the entire project from end-to-end and where they fit within that. But it is also really about the people, and I work with a very dedicated and talented team who provide clients with excellent service.

***What do you enjoy most about your work?***

A combination of the people I work with (both clients and colleagues) and the actual work that we do. I love the challenging nature of my job – hunting down the key snippets of information to help see the overall picture and generating solutions that solve clients' problems or requirements.

***What effect has the GDPR had on the field so far? What impact will it have in the coming years?***

GDPR is certainly a hot topic, and this will only increase as time passes. This manifests itself in a number of ways. First, an increased number of incidents being reported, thus needing a thorough investigation; second, providing advice and training on responding to data subject access requests; third, increased scrutiny over cyber controls and GDPR preparedness around mergers, acquisitions and other corporate/private equity deals; and fourth, more regulatory, and therefore rigour, around incidents where there are potential GDPR breaches, turning them not just into a technical problem, but a regulatory and senior management one. All of these are driving both proactive and responsive work and will keep us busy for a number of years.

***There has been an uptick in the number of data breaches reported to the Information Commissioner's Office this year. What can be done to combat this?***

I think GDPR has, without doubt, increased the number of data breach reports to the ICO – you only have to look at the latest statistics to see this. I think, though, there are two factors that may impact the true situation: first, there are still many breaches that are not detected or identified – the time it takes to discover a breach can often be months or years; and second, there is probably an over-cautious reaction, meaning that many breaches or suspected breaches may be

reported when they don't necessarily need to be. Data breaches, unfortunately, are something executives need to get familiar with as it is impossible to build a system that is 100 % secure and still functional. Therefore the focus needs to be on: ensuring appropriate controls and implemented and monitored – especially patching vulnerable systems promptly; developing robust and tested detection controls so that issues are identified as soon as possible; and knowing what to do when the worst happens.

***Where, in your opinion, does the future of the practice area lie?***

The future of the practice is one that will continue to evolve to meet client requirements. There are a number of key areas where we are actively driving our practice forward. First, ensuring that we are up to speed with the latest developments in artificial intelligence and machine learning so that we can help clients take advantage of them as soon as they are beneficial. I do not foresee that these will ever make our lives redundant, but they will change the way we work and allow us to focus on ensuring clients continue to receive an excellent service. Second, ensuring the team is well-balanced and made up of more than just technical experts – we need to be able to understand the aims and objectives of clients, and to help them address their requirements without them necessarily knowing what they are looking for. Having a broader skill set, more experience and knowledge from across the forensic spectrum can help achieve this. These two aspects, combined, will help ensure innovative solutions and processes continue to be developed and implemented to help us provide an excellent service to our clients.

This content was previously published in *WWL Thought Leaders: Investigations 2018*

***You are engaged as a forensic expert across a wide variety of industries. What challenges arise when working for such a broad array of clients?***

It is interesting to see how alike businesses are from a technical perspective – the backbone of what technology they use is often very similar. What you do have to be conscious of are the subtle nuances within different industries: those that are regulated should have more archives or back-ups; financial services often have audio recordings and use instant messaging or chat rather than email; in some industries virtual machines are prevalent. It is also important to go into projects with an open mind to make sure in each case you get a complete and detailed picture of where data is stored. . . otherwise you may miss something crucial!

***What makes a good forensic investigator?***

It is the ability to really understand what a client wants and how to put that into action on a case that makes the difference. It is not per se about which tool to use, but how those tools are applied and used in different scenarios. You also need to appreciate the difference between how computer systems should be used (according to IT) and how they are used to make sure all the relevant data sources are incorporated into the process – especially when they are not technically sanctioned. Above all else, it is about following your nose and not just going through a standard set of motions to ensure the client gets the service they need.

***How has the role of an investigator evolved over the course of your career?***

When I first started, we would print everything out! We devised programmes to print – with header sheets, all “documents” – and also to identify, extract and print all textual content from system areas of computers. This is simply not feasible now. The use of advanced technical techniques – such as predictive coding, machine learning and artificial intelligence – means there is much more “science” to the role

nowadays. Having said that, the underlying aim of producing reliable findings has not changed.

***To what extent have various forensic disciplines become more integrated?***

The investigation team has become much more integrated with the lawyers and clients working more collaboratively with the various forensic disciplines, such as economists, accountants and technologists. The most successful cases are ones where these are seen as being one team rather than distinct separate teams. Another crucial element that can often be interwoven into this mix is true industry subject matter experts, who can provide insight into how businesses and industries operate – both formally and informally. This is essential to successfully meet the challenges of intense investigations.

***How has technology enabled investigators to handle cross-border matters more effectively?***

Many of the matters that we work on are cross-border, which means we regularly have to deal with the complexities and issues with moving data – be it for data privacy/protection, industry regulations, jurisdictional reasons or local legislation/regulation. What is critical to recognise is that there is no “one size fits all” solution. Technology should not stop any solution being implemented and there is a myriad of different solutions that can be applied in different situations. Therefore, it is more important to understand the inherent challenges and risks so that they can be mitigated from a process perspective before determining the technical solution to deliver that process.

***To what extent is it important for consultancy firms to have a global presence?***

A global presence provides many advantages when conducting investigations, from basic operational ones (eg. language skills, power systems) and financial ones (eg. lower travel costs), to those that should never be overlooked in an investigation: cultural and technical

norms. This is especially relevant when dealing with investigations outside of the “Western world” as individuals there tend to approach data and technology very differently. For example, you won’t get far looking for WhatsApp, Facebook or Twitter data as part of a Chinese investigation: you’d need to turn to Weibo, WeChat or QQ – and need to appreciate how these are much more than chat or social media channels in China!

***How do you expect technology to shape the practice area in the near future?***

Technology has already shaped the way investigations are carried out significantly and will continue to do so. One of the developments that have very recently come online is Continuous Active Learning – whereby an investigator can take advantage of the benefits of predictive coding without having to go through training cycles. From a more fundamental perspective merely understanding where potentially relevant data is stored is becoming a more complicated question to answer as more businesses move towards cloud solutions and smart devices – a trend that will only continue.

***What steps are Alvarez & Marsal taking to stay ahead of the curve of these changes?***

There are two aspects to this: firstly, investment in people through training and research to ensure that from a technical perspective we know what technologies our clients are and will be using, as well as knowing how to best take advantage of technological advancements in how we carry out investigations. This means not blindly jumping on the “latest thing” but thoroughly analysing it to determine how and where it can be deployed effectively. Secondly, it is about ensuring that technology is interwoven into everything that we do from a dispute and investigation perspective, as opposed to being seen as a completely foreign topic. This is one reason our disputes and investigations practice is one single team with integrated economic, accounting and technology skill sets.



This content was previously published in *WWL Thought Leaders: Data 2018*

### ***Describe your career to date.***

I originally started my career within an IT risk and assurance services team at a large accounting firm and quickly experienced a forensic engagement. The combination of technical and investigative skills drew me into forensic technology, as I especially enjoyed unravelling technical conundrums. I have now been working in this field for over 19 years.

### ***How has increased regulatory activity around the world impacted your practice?***

It has had a double impact, with more regulatory activity creating more projects, compounded by the fact that regulators are getting more and more interested in data and what can be derived from it. Therefore, there are more projects and each project tends to have a more substantial data element. This is also driving more proactive consultancy.

### ***To what extent are companies now taking a proactive rather than a reactive approach to cyber security? How has this changed in the past few years?***

Cybersecurity is still a hot topic for many Alvarez & Marsal clients, whether they need help to assess and improve their controls and infrastructure, or with incident response, should the worst happen. We are seeing more companies taking a proactive stance in respect of cyber, but there is still a surprising number who do not take it seriously enough or simply think it is an "IT issue".

### ***As business becomes more global and interconnected, how must businesses and lawyers adapt to ensure data is kept secure?***

It never fails to surprise me how technology and data within an organisation seems to live a life of its own. It has been easier to buy new or more storage rather than get the house in order. However, cyber risk and regulatory action, specifically GDPR, are changing this dynamic. Businesses need to fundamentally understand what data they

have, how they use it and the legal basis for doing so, as well as ensuring that it is sufficiently protected. However, there is an upside to this in that it can help drive competitive advantage and gain new insights.

### ***What impact have techniques such as predictive coding and artificial learning had on investigative practice?***

We are regularly using these technologies for virtually every project that we work on, regardless of whether it is investigative or not. However, they are not silver bullets that instantly find the answer, but rather another tool in the toolbox to be appropriately deployed. We are finding the greatest impact in two distinct areas: getting to the key documents quicker and ensuring a more robust quality control process. Specifically, in respect to the first, the application of continuous active learning is making a huge impact as it allows an investigator to quickly get into the documents and for the system to adapt to what they are doing, rather than having to go around iterative learning cycles. However, what matters most is not whether these technologies are deployed but rather how they are deployed – regularly ensuring that the results and impact are consistent with the objectives.

### ***What skills do clients look for when selecting digital forensic experts?***

Technical competence obviously goes without saying, but beyond that, the most important skill is communication, both in terms of written reports and oral discussions. The ability to articulate very technical details into plain English is something that is essential in an expert. Experts also need to be able to thoroughly, independently and methodically consider the issues that they are dealing with, fully considering the different options and consequences before presenting a considered view. Finally, responsiveness and availability are key requisites for an expert to be able to deliver the service clients demand.

### ***To what extent have the skills required of individual experts and investigating teams diversified over the course of your career?***

In some ways, the core skills required have not changed over my career. What I think has changed is the way that these are delivered to clients. Standard reports and processes are being replaced with agile and tailored solutions to ensure that clients receive the service they need rather than the service the expert can provide. In addition, the investigation team has become much more integrated with the lawyers and clients working more collaboratively with the economists, accountants and technologists and being seen as "one" team rather than distinct separate teams. This is essential to successfully meet the challenges of intense investigations.

### ***What do you expect to be the greatest challenges facing the profession over the next five years?***

There is the perennial challenge of handling more and more data in different formats in shorter time frames. However, this has always been there and will continue to be addressed through improvements in process and technology. Beyond these, I think one of the most significant challenges will be to maintain a level of quality and consistency given the above – especially when one document/email/chat message/transaction, etc, can totally change the case. The other challenge I foresee will be in dealing with the range of devices (including the internet of things) that hold data and the amorphous nature of them. There can be challenges now identifying where all the data is, but generally speaking at least a computer looks like a computer; a server like a server; and a phone like a phone. As devices in general get "smarter", merely identifying those that could hold relevant data will become more challenging – a taster of which is being seen with potential evidence being stored on Amazon Echo devices.

# Alexander Demuth

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## Biography

Alexander Demuth is a managing director with A&M, and leads its German disputes and investigations practice with offices in Munich, Frankfurt and Hamburg. Alexander has more than 20 years' experience in damages assessments, valuations, transactions, business modelling, consulting and auditing. He specialises in advising clients, tribunals and judges in arbitration, litigation and settlement negotiations with a focus on post-merger and commercial disputes. Alexander has given evidence in German and English in more than 15 matters.





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*WWL Thought Leaders: Arbitration 2018*

***Describe your career to date.***

I started my career in late 1997 with a focus on auditing, consulting and tax advice, only to be immediately assigned to a very significant international transaction. Consequently, my focus changed to transactions and international accounting, ie, IFRS and US-GAAP, and later to valuation and business modelling. About 10 years ago, driven by client demand, my focus shifted to providing expert economic and commercial advice in post-merger disputes.

***Since starting your career, how would you say the role of an expert witness has developed?***

In my experience, historically, experts were often engaged at a very late stage in the proceedings. Consequently, as the fact-finding was concluded and the available time was very limited, the expert's role was limited to the damages calculation based on the available data. More recently, my involvement typically starts much earlier in proceedings, which enables more involvement in identifying the relevant facts and providing consultative advice. As a result, a constrained damages calculation has been replaced with a true damages assessment.

***What is the most memorable matter that you have worked on?***

Unfortunately, client confidentiality prohibits me from telling some of the most interesting stories from my career, and notwithstanding that every matter is unique and provides its own memorable moments; the one that stands out personally for me is having to sustain more than seven hours of deposition relating to a US trial. It always amazes me how many ways the same question can be asked and the frustration that becomes apparent when you consistently reply.

***Arbitration as an area of focus seems increasingly popular among younger members of the profession. How does their approach to proceedings differ and has it had an impact on the practice of expert witnesses?***

It seems the younger members of the profession are more used to and potentially less reluctant to involve other proficiencies and experiences in their understanding of the facts and issues of a matter that contributes to an earlier involvement of expert witnesses. That may be a matter of open-mindedness rather than age, though – irrespective of which, breadth of experience and recognising the need for other areas of expertise are essential when acting as an expert.

***In your opinion, should tribunals be able to appoint their own experts to better understand expert witness submissions in very complex matters?***

I am mindful of the tribunal's ultimate responsibility to rule on the matters brought before them, and given such, I wonder whether it would not be easier to comply with this obligation if they had their own expert, especially where there are complex questions and issues outside of the legal field, including damages calculations. Therefore, to help them form a basis for sound judgement, I believe the tribunal should be empowered to involve a trusted "translator" to help it understand the technicalities, methodologies and their application to the facts of the matter.

***Currently, what poses the biggest challenge for expert witnesses active in international arbitration?***

In a world of ever-increasing complexity and seemingly unlimited information, the biggest challenge is to identify and focus on the issues that truly matter, ie, that have a (measurable) influence on the current dispute.

***Over the past decade, firms providing expert services have become more prominent in the German market. How does Alvarez & Marsal distinguish itself from the competition?***

At A&M, we believe in an integrated approach combining the experience, skills and knowledge of our various services to provide a tailored solution to our client's unique problems. This not only involves the services within our dispute and investigations practice (eg, forensic technology, investigations or economics) but also other practices (eg, restructuring, performance improvement, transaction advisory, private equity or valuation). Combined with our experts' deep involvement in matters from day one, these skill sets across our global platform enables us to deliver a differentiated service to our clients.

***How do you see your practice developing in the future?***

I do not expect a fundamental change to the expert's role to provide independent advice related to disputes. What will change, though, is how experts will analyse the ever-increasing volume of data and the use of technology to do so. This will not replace the expert but will empower them to add more value at an earlier stage of a dispute.

# Andrew Flower

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## Biography

Mr Flower brings over 25 years' experience in forensic accounting, providing expert evidence in high-profile international arbitrations – both commercial and investor-state. He has provided evidence in arbitrations conducted under the auspices of most of arbitral institutions and under the UNCITRAL rules. He has also been appointed by the ICC Centre of Expertise and as a tribunal expert. Mr Flower was previously the global head of disputes and arbitration at one of the Big Four accounting firms.





This content was previously published in  
*WWL Thought Leaders: Arbitration 2018*

***What motivated you to pursue a career as an expert witness?***

Frankly, I fell into the world of forensic accounting more by accident than by design. However, my first-ever matter ran for three years, and culminated in the lead partner providing evidence before a distinguished panel at the Peace Palace in The Hague, Netherlands. This got me hooked pretty fast, especially when combined with the intoxicating mix of working across cultures in an international context and visiting parts of the world I would be unlikely otherwise to visit.

***What do you enjoy most about working in the field of arbitration?***

I certainly enjoy the international cross-cultural aspects noted above. I also like the way in which there is the crossover and interrelationship between my valuation and accounting skills, the art of providing compelling expert evidence in a dispute, and the thorny legal issues that ultimately underpin the core of the dispute. Experts occasionally get a bad rap (for a variety of reasons), but ultimately, it's comforting to know that a party always reads an award backwards: starting with the financial outcome and only then looking at how the tribunal got there!

***How has the role of an expert changed since you first started practising?***

Twenty-five years ago there were a few people in big accounting firms with a focus (primarily tied to accounting malpractice suits) and a few former industry people boosting their pensions by dabbling in the world of expert evidence. The world of hobbyists is long gone: we now have publications like WWL listing leading experts, conferences on what makes a good expert, guides on giving evidence and academies for like-minded experts. The world has become far more competitive and challenging.

***What effect has the emergence of regional arbitration centres around the world, such as SIAC, had on the market?***

I think to date the emergence of regional arbitration centres has had less impact on the expert world than on the lawyers. In my experience, lawyers will still look for the right expert for their matter and issues of geographical proximity remain very much secondary. Singapore and Dubai are cases in point: there remain few experts who have relocated there so far relative to the level of lawyer relocations.

***How are recent technological developments impacting the way you approach quantum analysis?***

We are in a state of flux. Technology has changed significantly concerning the speed one can review and assess documents, whether emails, invoices or whatever. However, many expert reports are still constructed on the basis of a written expert report supported by an Excel model annexed to it built from data provided by clients. This is sure to change with, for example, financial data available remotely avoiding the need for substantial manual input. In construction claims, I have seen thousands of invoices charged to a particular project initially reviewed and assessed as relevant, duplicate or miscoded (or not), without human input. Automation is only going to accelerate this.

***Looking back over your career, what has been your proudest achievement?***

As previously noted, my first case concluded with the partner I was working for giving evidence before a distinguished panel at the Peace Palace in The Hague. Twenty years later I was able to give evidence myself in the same room, again before a distinguished panel. I shared the news with my early mentor. It was a very proud moment that I have since been able to repeat on two other occasions (most recently during the summer 2018 heatwave).

***Where, in your opinion, does the future of the practice area lie?***

Notwithstanding the doomsayers, I remain of the view that we are in the golden age of arbitration and this is set to continue as global trade continues to flourish and expand. I think we will see changes in the way things are done: there will be technological change, there will be more regulation and transparency must improve. In the past two decades, we have seen the rise of the under-40 groups and ArbitralWomen. This can only be good for the future of the community, bringing fresh blood and fresh ideas to push for change.

***What advice would give to someone starting out as a testifying expert?***

One of the classic challenges for someone coming into the world of expert evidence is how to find that first opportunity to give evidence. I think it is critically important, therefore, for someone new to attach themselves to a good mentor: someone who sees the need to bring on new talent and give the opportunity to the next generation. I am proud to have been able to offer that opportunity to a number of people in my teams over the years.

# Laura Hardin

## *Alvarez & Marsal Disputes and Investigations*

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## Biography

Laura Hardin is a managing director with Alvarez & Marsal Disputes and Investigations, LLC. Ms Hardin has over 20 years of experience providing quantum assessments on matters before ICC, ICDR, LCIA, SCC, ICSID and ad hoc tribunals. She has experience in disputes in a variety of industries including energy, telecommunications, real estate development, metals and mining, and manufacturing. Ms Hardin is fluent in Russian, and has worked extensively on engagements involving Russia and the CIS.

This content was previously published in *WWL Thought Leaders: Arbitration 2018*

***What motivated you to focus your practice on disputes?***

The first disputes case I worked on was while I was stationed at the PwC Moscow office and worked as part of a team engaged as the party-appointed expert for the Russian Federation. I was not even aware that this type of consulting work existed prior to that assignment. When I transferred back to the United States and joined the Houston practice, there was a large local disputes group. I discovered that I really enjoyed considering the legal arguments and calculating the damages associated with the alleged “bad acts”. In particular, I have always enjoyed trying to identify all the ways in which the calculation could be attacked to make sure I have addressed the key issues from every possible angle. I also began to specialise in international arbitration, because the inputs for these calculations, which necessarily incorporate different political and economic variables, were often much more complex than straight US litigation. Dispute work continues to be engaging for me because it incorporates analytical and research skills, with the ability to present highly technical findings in a compelling and comprehensible format. Each new case involves a new set of facts, and often a new twist on previous experiences, which constantly challenges me and my team to keep innovating and perfecting our skills.

***What advice would you give to younger experts who hope one day to be in your position?***

The most important piece of advice I have for up-and-coming experts is to focus on building lasting relationships with their current and potential clients. A portfolio of repeat clients can only be built over many years of cultivation through first becoming an indispensable adviser and by consistently providing high-quality work. This should always be viewed as a “long-game” process. Your own personal contact network can be developed either during

the course of an engagement, in cultivating relationships with junior staff, or at industry events, or in participating in CLE training courses. The earlier in your career that you can start interacting with your contemporaries in other firms that can be potential sources of work, the better.

***In your opinion, should higher ethical standards be imposed on experts? If so, why is this?***

I think that client counsel has a responsibility to ensure experts are held to the highest ethical standards. Paramount to this responsibility is taking the time to understand the damage issues in some detail, not just at a superficial high level. This applies both to recognising any limitations in the damages that can be claimed under their own legal approach, as well as ensuring that unscrupulous experts on the other side are not successful in making overly aggressive or fallacious arguments or arguments that are not consistent with generally accepted methodological approaches. It is critical that counsel use their own experts to identify such arguments being raised by the opposing expert and thoroughly understanding the key issues to be able to expose these flaws. In my opinion, when counsel allows such arguments to stand untouched by effective cross-examination (or witness conferencing), they are doing their clients a great disservice and are tarnishing the reputation of the expert profession as being nothing more than a group of “hired guns”.

***You have always had a strong focus on providing advisory services to clients in Russia. How has this aspect of your practice changed over the past five years?***

I have always enjoyed working on engagements with Russian clients or involving enterprises in Russia because of my background of having majored in Russian language as an undergraduate,

and having spent so much time studying, working and living in Russia. My fluency in Russian and my experience with the economic and political climate in Russia and Commonwealth of Independent States (CIS) have been significant assets for me as an expert. As a result, my practice has always involved a fair amount of Russia-related work, has also involved engagements in other CIS countries, such as Ukraine and Kazakhstan, among others. Being based in Houston and with my experience in oil and gas disputes, I have also been involved in a substantial number of disputes involving Latin America. In recent years, while the Russia-related work has continued, I have also worked on several large disputes in Europe and in other areas of the world. I have been focusing on energy-related disputes that have arisen as a result of EU regulatory changes, and have continued to be engaged on oil and gas disputes and on disputes involving certain other industries such as telecoms and financial institutions.

***Arbitration proceedings relating to renewable energy are reportedly increasing. How has this affected your practice?***

Over the last several decades, the increasing focus on energy conservation and developing more sustainable, renewable forms of energy, particularly in the EU, has significantly impacted the power-generating industries and systems on an EU-wide and country-specific basis. The varying regulatory changes in various countries that have shaped this movement have resulted in numerous disputes between investors and states. The impact of renewable energies and changes in the regulatory environment have played a central role in several engagements my team and I have worked on. I expect that we will continue to see disputes of this type in the upcoming years as these industries continue to evolve.



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## Biography

Julian Jones is a managing director with the Alvarez & Marsal (A&M) global disputes and investigations practice in London. He brings over 20 years of experience in forensic accounting engagements, advising clients in complex investigations in the white-collar, cross-border, regulatory arenas and provides expert witness services on accounting- and quantum-related issues. Mr Jones leads A&M's pan-European disputes and investigations teams and sits on the firm's global executive committee overseeing A&M's worldwide teams.



This content was previously published in *WWL Thought Leaders: Investigations 2018*

***What have been the most enjoyable aspects so far of your career in forensic accounting?***

Each assignment is different and the situation, whether a dispute or an investigation, will have a different fact base to unravel thus making each job interesting and new. As a result, the most enjoyable aspect of my career is the volume and variety of different people that I work with – whether clients or work colleagues. It keeps life interesting.

***You have maintained a broad practice encompassing asset tracing, fraud and quantum matters across a range of sectors. Was this a conscious decision?***

While it may appear a broad practice, the reality is that it reflects the broad range of areas in which the forensic accounting skill set can be deployed and the specific areas in which my clients have had a need for my services over the years. It seems to be that as you become known in a particular area, so you get asked again to do work in the same area – and the broad practice has evolved for that reason.

***What qualities make a successful forensic accountant?***

Successful forensic accountants that I have known are all very clear and disciplined in their thinking and have an ability to express their thoughts in a simple, easy-to-understand manner. Having tenacity, numeracy and an eye for detail are qualities that also spring to mind. But the most important factor in becoming and staying a successful forensic accountant is to consistently deliver high-quality work for clients, who will then have repeat work – even if only many years later.

***What has been most memorable case of your career to date?***

There have been many memorable, high-profile cases during my career,

often involving well-known companies or individuals. It is always interesting to see the effort expended and level of sophistication deployed by parties in perpetrating or concealing fraudulent schemes. For this reason, the *Parmalat* matter, where the level of false sales, the duplicity required to obtain financing at the scale achieved, the non-existent fake bank accounts – all supported by sophisticated accounting systems and processes set up for that sole purpose – is my most memorable case.

***How have forensic investigations changed over the course of your career?***

Unfortunately, I remember that when I started out in my career, mobile phones did not exist and computers were not standard issue. Hence over my career, it has been the technology advances that have significantly changed and continue to change the way in which forensic investigations are conducted – not only from the perspective of how information is analysed but also what information can, needs to be or is allowed to be gathered. As a result, greater and greater care needs to be taken over processes and methods used in connection with investigations. What has not changed, however, are the general ways in which parties commit or conceal their improper acts.

***What impact have these changes had on your accountancy practice?***

Within A&M, the forensic accounting professionals work alongside our forensic technology team (covering e-disclosure, document management and complex data analytics). Many younger professionals are multiskilled, possessing both the accounting and technology capabilities. I see this trend continuing. The current challenge, given the rapid pace of technology advancement, is for the practice to stay up to date and relevant by adapting

processes and methodologies to reflect new capabilities, provided it is efficient and effective to do so. In this regard, the market and practices will continue to change rapidly in the short term.

***How do you see Alvarez & Marsal's disputes and investigations practice developing over the next five years?***

A&M is growing rapidly across European and emerging market jurisdictions in other services such as insolvency, restructuring, transaction advisory and financial services advisory. All of these services or routes to market naturally complement the forensic accounting specialism and we see the disputes and investigations practice expanding alongside these practices over the next few years. At the same time, continuing to serve our core clients in our core locations (UK, Germany, Middle East, Hong Kong, China, India, Brazil and the US) while expanding our offering into new locations will bring natural growth.

***What advice would you give younger experts hoping to one day be in your position?***

Don't focus too quickly. By that, I mean don't focus on accounting too quickly. Having a wide range of experiences and a good understanding of real life before becoming an accountant makes you appreciate that numbers are just numbers and that the accounting should reflect the reality of the situation.

Three pieces of general advice that I was given and recall are: you never get a second chance to make a first impression, so make the most of it; do something you enjoy doing – like what you do and who you do it with; and finally, your career and job is what you make it. Don't wait for others – grab every opportunity that comes your way.



# Luke Steadman

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## Biography

Luke Steadman has over 25 years' experience as a forensic accountant, providing expert evidence for international arbitration as party-appointed and tribunal-appointed expert. He has acted over 150 matters and has testified on more than 25 occasions. His expert evidence has included quantum, valuation and the accounting treatment of complex transactions under international, US and UK GAAP. He also receives instructions in the High Court and as a GAAP expert in the first-tier tax tribunal.



This content was previously published in *WWL Thought Leaders: Global Elite 2019*

### ***Describe your career to date.***

I started in the early 1990s doing what was then called “audit special work” or “litigation support” at a medium-sized London firm. In 1996, I joined what was then the first forensic accounting boutique firm in London and our work over the next 10 years saw us working on some of the largest and most complex disputes of the time. The move to a boutique firm meant that I was at the forefront of a developing area of both accounting and law, which was fabulous. I spent some time at a US consulting firm that purchased our boutique and moved in 2010 to Alvarez & Marsal. Initially dividing my time between managing complex international investigations and London-based High Court work, my practice now is exclusively expert witness work, the majority of which is in international arbitration.

### ***What do you enjoy most about working in the field of forensic accounting?***

Forensic accounting suits someone who has a passion for accuracy and detail but an open mind as to what that accuracy and detail will reveal. Our work is part “journey” and part “translation” as ultimately what we find, however complex or esoteric, has to be communicated succinctly and clearly in legal proceedings for it to be of use. I also have to say I enjoy giving evidence and being challenged on my views by some of the best advocates and arbitrators.

### ***On what types of matters do clients most frequently approach you at present?***

My expert work focuses on the question of damages – whether those damages relate to the value of an entity or the profit under a contract, that is the specialism. I don’t believe I am known as an expert for a particular industry or sector as my

practice is varied – I am perhaps what used to be called a “general commercial” expert. At Alvarez & Marsal we have several sector-specific experts in the energy and financial services disputes space, and I tend not to do those matters. Over my career I have acted on matters ranging from nuclear reactors and ore mining, to plastic–diesel pyrolysis operations, consumer retail, healthcare and hospitality cases. I enjoy the range of cases and industries.

### ***How has the field of forensic accounting changed in recent years?***

For me the biggest change has been the rise of the “Excel” generation among counsel and instructing solicitors. When I first started all numbers in cases were seen as the preserve of the forensic accountants, whereas now there is a shared experience of how damages and valuations work in practice. There are some signs that this is changing again – the volume of analytical and numerical data on cases is growing exponentially – meaning that forensic accounting is evolving to deal with this big-data world.

### ***Are there any particular challenges presented by the increasingly global nature of disputes?***

The global nature of disputes means that clients have access to a worldwide pool of expertise and we compete for work in a global market. Language skills and IT/data analytic skills are in high demand and we have recognised this within our hiring practices. London remains, and will continue to remain in my view, a centre of excellence for international dispute resolution; the wealth and talent of experience among the legal (and accounting) professions here has yet to be matched by any credible “emerging” jurisdictions.

### ***Looking forward, what changes should clients and colleagues be most aware of?***

Think globally. We are fortunate as forensic accountants to have pretty much a common rulebook across the world, which means that we can act on disputes in practically any jurisdiction. While a matter may be run from London, during its course we have to interface with a multitude of locations and languages and ensure that we have experienced staff available. We are seeing more and more disputes arising out of Sub-Saharan Africa, South East Asia and Central Asia, requiring us to think about our office footprints.

### ***What qualities make a successful expert?***

I always meet with new forensic accountant trainees at our firm in the first week or so of their careers and offer them three pieces of advice that have served me well over the past 20-plus years in disputes. First, start with the cross-examination and work backwards into the report: focusing on the unique way in which our work is scrutinised and challenged allows us to present that information in a clear, objective and unemotive way. Second, realise that what makes a good report good evidence is the ability to communicate complex issues in a clear, precise and uncompromised manner. There is a different skill to be mastered between understanding and communicating, and only the latter is useful to clients and tribunals. Third, an application of Occam’s razor is often the most useful tool available to a forensic accountant: among competing hypotheses, the one with the fewest assumptions is often to be preferred.

# THOUGHT LEADERS

## **WWL Thought Leaders: Arbitration**

Demuth, Alexander – **Q&A**  
Flower, Andrew – **Q&A**  
Graves, Dean  
Hardin, Laura – **Q&A**

## **WWL Thought Leaders: Data**

Beckett, Phil – **Q&A**  
DeCicco, Robert

## **WWL Thought Leaders: Global Elite**

Beckett, Phil – **Q&A**  
DeCicco, Robert  
Demuth, Alexander  
Hardin, Laura  
Jones, Julian  
Ryan, Laureen  
Steadman, Luke – **Q&A**

## **WWL Thought Leaders: Investigations**

Beckett, Phil – **Q&A**  
DeCicco, Robert  
Jones, Julian – **Q&A**  
Steadman, Luke

## **WWL Thought Leaders: Restructuring & Insolvency**

Lawson, Alex



## PROFILES

### **Editorial policy and selection criteria**

Nominees have been selected based on comprehensive, independent survey work with both general counsel and private practitioners worldwide.

Only specialists who have met independent international research criteria are listed.

## Canada • Alberta



### John Williams

*Arbitration | Expert Witnesses,  
Consulting Experts | Financial Advisory and Valuation – Quantum of Damages*

John Williams is a managing director with Alvarez & Marsal's disputes and investigations practice, and leads its Canadian practice.

Mr Williams brings over 26 years of specialised expertise in damages assessments, valuations and expert testimony and forensic accounting.

He has a broad range of experience calculating lost profits and quantifying economic losses and with regulatory matters, corporate investigations and the quantification of insurance claims. Mr Williams has been qualified in the Federal Court of Canada, the Alberta Court of Queen's Bench, the Quebec Superior Court, the Manitoba Court of Queen's Bench and the Circuit Court of the Ninth Judicial Circuit Orange County, Florida as an expert witness in damage quantification and valuation issues and as a forensic accountant. Mr Williams has also testified in front of the Alberta Utilities Commission on cost of service issues, for a disciplinary matter before the Institute of Chartered Accountants of Alberta, and in various arbitration proceedings.

Mr Williams has been involved as an expert witness, arbitrator and adviser in matters regarding business interruption and property claims, breaches of contract, tort claims, intellectual property disputes, arbitrations, mediations, post-acquisition disputes and regulatory filings. His experience spans a wide variety of industries including, but not limited to, aviation, oil and gas, energy, manufacturing, insurance, telecom, gaming, real estate and transportation.

Mr Williams is a chartered professional accountant, chartered business valuator and has been recognised as a specialist in forensic and investigative accounting by the Chartered Professional Accountants Canada. He is a member of Chartered Professional Accountants Canada, Chartered Professional Accountants Alberta, the Ordre des Comptables Professionnels Agréés du Québec and the Canadian Institute of Chartered Business Valuators.

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**WWL says:** John Williams is "a senior figure" in the Canadian market who wins high praise for his superb work providing expert testimony and damages valuations to clients.

## Ontario



### Al Hutchens

*Restructuring & Insolvency | Experts*

Al Hutchens, is a managing director with Alvarez & Marsal Canada. He is in his ninth year with the firm and is based in A&M's Toronto office. With more than 20 years of turnaround and restructuring experience, Mr Hutchens has advised a broad range of clients, including corporate boards and management, lending syndicates and secured creditors. He brings extensive experience in the review and development of business plans and financial projections; assessment of restructuring alternatives; analysis of debt capacity; and the negotiation of credit, inter-lender, and purchase and sale agreements. Mr Hutchens has assisted clients across a broad range of industries, including retail, construction, mining, financial services, manufacturing and automotive. Recent assignments include serving as: financial adviser to Toys "R" Us Canada in connection with its CCAA proceedings, financial adviser to the ABL and term DIP lenders to Sears Canada, CCAA monitor of HB White Canada (construction), CCAA information officer of Payless Shoes and Modular Space Holdings, CCAA monitor of Express Canada (retail), CCAA monitor of Target Canada, CCAA monitor of Arctic Glacier and interim chief financial officer of Extreme Fitness (prior to and during its CCAA proceedings). Mr Hutchens holds a bachelor's degree in commerce from the University of Ottawa. He is a chartered professional accountant (CA, CPA), chartered insolvency and restructuring professional (CIRP), and a licensed insolvency trustee (LIT). Mr Hutchens is a member of the Insolvency Institute of Canada (IIC), Canadian Association of Insolvency and Restructuring Professionals (CAIRP), and the Turnaround Management Association (TMA).

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**WWL says:** Al Hutchens is an expert in turnarounds and is frequently sought after by stakeholders for his long-standing experience.



## Doug McIntosh

*Restructuring & Insolvency | Experts*

Doug McIntosh is a managing director with Alvarez & Marsal Canada ULC in Toronto. Mr McIntosh leads A&M's practice in Canada and is also a member of the executive committee for the firm's commercial restructuring business in North America.

Mr McIntosh, a recognised leader in the Canadian restructuring industry, bringing over 35 years of turnaround and restructuring experience to A&M. He has been involved in a number of engagements involving cross-border operations, including concurrent CCAA and Chapter 11 and Chapter 15 filings and court-appointed receiverships. He has been involved in restructuring and insolvency cases in numerous industries, most notably in real estate, retail, manufacturing, energy, media, pulp and paper, construction technology, transportation, building products, hospitality, and agriculture. Mr McIntosh's notable public engagements include acting as financial adviser to the ABL and term lenders to Sears Canada, CCAA monitor of Target Canada Co, CCAA monitor of Express Canada, financial adviser to Golf Town and Golfsmith, financial adviser to the senior secured lender group of Canwest Publishing, financial adviser to the senior secured lender syndicate of Bowater Canadian Forest Products Inc, financial adviser to Arclin Canada Inc, CCAA monitor of InterTAN (Circuit City), CCAA monitor and Chapter 15 representative of MAAX Corporation, financial adviser to the senior secured lending syndicate of Lone Pine Resources Inc and financial adviser to IBI Group.

Mr McIntosh was one of the leading players in the comprehensive insolvency reform process in Canada from 2000 to 2007, serving as vice chair of the joint task force steering committee on insolvency reform and on the joint legislative review task force committee, responding to draft Bill C-55 to Industry Canada and the standing parliamentary house committee. Mr McIntosh earned a bachelor's degree in commerce from Queen's University, where he has served as chair and past chair of the advisory board to the School of Business since 1999.

He is a chartered professional accountant, chartered insolvency and restructuring professional, and a Canadian licensed insolvency trustee. Mr McIntosh is a frequent speaker on restructuring matters, is a member of the Canadian Association of Insolvency and Restructuring Professionals and was on the board of directors of the Insolvency Institute of Canada from 2009 to 2016, serving as president of the IIC from 2012 to 2014. Mr McIntosh was named a fellow of the Insolvency Institute of Canada in 2014 in recognition of his outstanding contributions to the profession, and led the A&M team that was presented with the International Turnaround of the Year Award in 2015 for IBI Group.

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**WWL says:** Doug McIntosh is a leading figure in corporate restructuring and is widely regarded for his expertise in cross-border matters and Chapter 11 and 15 filings.



## Michael Stewart

*Restructuring & Insolvency | Experts*

Michael Stewart is a managing director at Alvarez & Marsal Canada ULC, with over 20 years of experience in providing restructuring advice to corporations and their stakeholders across a broad spectrum of industries. Prior to joining A&M, Mr Stewart spent six years as a managing director at CIBC Capital Markets in Toronto, where he was the head of recapitalisation and restructuring and six years at Jefferies & Company as a senior vice-president in New York City, where he gained significant transaction experience in both Canada and the US on advising debtors and creditors in all aspects of corporate restructurings ranging from CBCA debt recapitalisation and exchange offers to CCAA and Chapter 11 restructurings.

Some of his notable transactions have included acting as financial adviser to Performance Sports Group Ltd in its concurrent Chapter 11 and CCAA proceedings, acting as financial adviser to North American Palladium, in its CBCA debt recapitalisation; financial adviser to Great Basin Gold, in its concurrent CCAA and Chapter 11 proceedings; financial adviser to GasFrac, in its CCAA SISF process; financial adviser to Compton Petroleum, in its CBCA debt recapitalisation; financial adviser to CNOOC in its acquisition of Opti Canada, pursuant to a CCAA filing; financial adviser to certain creditors of Abitibi-Bowater, in its concurrent CCAA and Chapter 11 proceedings; and financial adviser to certain creditors of Quebecor World, in its concurrent CCAA and Chapter 11 proceedings.

Mr Stewart earned a bachelor's degree in commerce with distinction from the University of Toronto. He is a chartered accountant, chartered insolvency and restructuring professional, and became a licensed insolvency trustee in 2003.

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**WWL says:** Michael Stewart is extremely well versed in transactions and advises debtors and creditors on significant corporate restructuring matters.

## Cayman Islands



### Chris Kennedy

*Consulting Experts | Financial Advisory and Valuation – Restructuring & Insolvency Experts*

Chris Kennedy is a member of the A&M Cayman Islands team and is a qualified Cayman Islands insolvency practitioner.

With over 13 years of experience, he specialises in corporate advisory, restructuring and insolvency. He also acts as a director on structured finance vehicles in distressed situations. Mr Kennedy has developed a reputation as an industry leader in the offshore restructuring market and has been recognised as an expert in the field by Who's Who Legal.

Since moving to the Cayman Islands in 2009, Mr Kennedy has been appointed as an official, provisional, and voluntary liquidator to several hundred Cayman-registered entities. He has experience working with the courts of Bermuda, the British Virgin Islands, England and Wales, the United States, Switzerland, Portugal, Dubai, Luxembourg, Monaco, Hong Kong and the PRC. In addition, he has been recognised by the US Courts under Chapter 15 of the US Bankruptcy Code on multiple occasions.

Mr Kennedy earned a bachelor's degree in business management and accounting from Dublin Institute of Technology. He is a chartered accountant (Ireland), a CIMA-registered director, and an associate of the Chartered Institute for Securities and Investment (CISI) in the UK. He is also a member of the Cayman Island Society for Professional Accountants (CISPA), the International Association of Restructuring, Insolvency and Bankruptcy Professionals (INSOL International), the Cayman Islands chapter of INSOL and the American Bankruptcy Institute.

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**WWL says:** *Chris Kennedy is called a "bright rising star" by interviewees who state that he is "commercial and cool under pressure".*



### Alex Lawson

*Asset Recovery | Experts, Restructuring & Insolvency | Experts, Consulting Experts | Forensic Accountants*

Alex Lawson is a managing director and the head of A&M Cayman Islands and is a qualified Cayman Islands insolvency practitioner.

He brings over 15 years of experience in restructuring and specialises in offshore and cross-border engagements. His primary areas of concentration include hedge funds and PE funds, mining, oil and gas and alternative investments.

Mr Lawson leads international teams focused on delivering bespoke solutions to maximise stakeholder returns across stressed to distressed situations involving complex cross-border cases. With a strong focus across all hedge funds and PE funds, international corporations and conglomerates, Mr Lawson has developed a reputation as an industry leader in the offshore restructuring market and has been recognised as an expert in the field by Who's Who Legal.

Mr Lawson has been appointed by the Grand Court of the Cayman Islands as an inspector, provisional liquidator, and official liquidator to many high-profile cases. In addition, he has been appointed as a controller by CIMA and acted as voluntary liquidator to many Cayman Islands registered companies. Outside of the Cayman Islands, he has been appointed joint liquidator by the Eastern Caribbean Supreme Court over British Virgin Islands companies and has been recognised in the Courts of Norway, Hong Kong, Dubai, United States and Australia.

Prior to joining A&M, Mr Lawson worked at KPMG in the Cayman Islands for ten years and was a partner in the restructuring practice.

Mr Lawson earned bachelor's degrees in both commerce and law from the University of Queensland. He is an admitted lawyer (non-practicing) with the Supreme Court of Queensland, Australia and is a CPI and JIEB pass holder with the Insolvency Practitioners Association of England and Wales and member of INSOL and the Cayman Islands RISA chapter. Mr Lawson is an insolvency practitioner in the Cayman Islands and chartered accountant (Australia and New Zealand) as well as a member of the Cayman Islands Society for Professional Accountants (CISPA).

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**WWL says:** *Alex Lawson is widely respected for his first-class forensic accounting practice by sources who consider him "an industry leader".*

## England



### Daniel Barton

*Asset Recovery | Experts, Consulting Experts | Forensic Accountants*

Daniel Barton, a managing director with Alvarez & Marsal's global forensic and dispute services practice in London, brings more than 20 years of professional experience in forensic accounting investigations specialising in fraud, bribery and corruption, and regulatory issues. He has worked with clients across a wide range of sectors and has undertaken assignments in the UK, mainland Europe, Africa, the US, Russia, Uzbekistan, Argentina, Brazil, Japan, South Korea, mainland China, Hong Kong, Taiwan and Malaysia.

Mr Barton has conducted a large number of investigations into allegations of fraud, bribery and corruption and other ethics violations and has recently completed assignments arising from both internal and external whistle-blowing at a major European corporate. Many of these investigations have been cross-border and required him to conduct interviews and gather information in multiple countries. He has managed all aspects of these assignments including multicultural and multilingual teams and the appropriate use of forensic technology specialists. He has also taken receivership appointments, and directorships in multiple countries, to trace, recover and manage assets stolen from a Kazakh bank.

Mr Barton has given evidence in the English High Court and others on a range of fraud, asset recovery and investigation matters and also in criminal and civil cases in Russia.

In relation to bribery and corruption, especially the US Foreign Corrupt Practices Act (FCPA), he has managed assignments in all aspects of the life cycle, from providing training and education to corporate management and staff, conducting pre-acquisition due diligence, investigations into allegations of bribery and corruption and remediation in cases where control gaps have been identified.

Mr Barton has also assisted clients with developing policies, procedures and supporting tools in relation to various aspects of compliance. He has also provided training and education to clients on a broad range of fraud awareness, prevention and remediation issues such as corruption and bribery, internal audit, compliance reviews and internal investigations.

Prior to joining A&M, Mr Barton was a managing director with the Forensic Services practice of PricewaterhouseCoopers in Tokyo.

Mr Barton holds a bachelor's degree in history. He became a fellow of the Association of Chartered Certified Accountants (FCCA) and is a certified fraud examiner (CFE).

Mr Barton has spoken on cross-border investigations at the 2010 and 2011 ACFE European Fraud Conferences. He has also had articles published, and been quoted, in numerous journals and newspapers including the *Financial Times* in relation to the UK Bribery Act.



### Phil Beckett

*Data | Experts, Consulting Experts | Digital Forensic Experts*

Phil Beckett, a managing director with Alvarez & Marsal's disputes and investigations practice in London, brings more than 19 years of experience in forensic technology engagements, advising clients on forensic investigations of digital evidence, the interrogation of complex data sets, information governance, cyber risk and the disclosure of electronic documents. Mr Beckett leads the forensic technology team across Europe and was recently named Who's Who Legal's Investigations Digital Forensic Expert of the Year.

Mr Beckett has led anti-bribery/Foreign Corrupt Practices Act investigations, incident-response engagements, kickback investigations, intellectual property (IP) theft cases, employment disputes, cartel/antitrust investigations, and compliance review exercises. He has also supported commercial litigation and international arbitrations.

Mr Beckett has regularly been appointed as an information technology forensics expert and managed the execution of multi-site civil search orders whereby he has provided expert testimony. Mr Beckett also served as an expert witness in *Imerman vs Tchenguiz* ([2010] EWCA Civ 908).

Mr Beckett has worked on a large number of high-profile e-disclosure cases, including litigation between Russian entities in the High Court, where data had to be managed in an extremely secure environment across the UK and Russia. Mr Beckett also managed a regulatory review of a global bank trader performed by multiple regulators involving data from multiple systems and jurisdictions, including instant message chat and voice data.

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**WWL says:** Daniel Barton is a well-regarded practitioner who has 20 years of extensive international experience conducting forensic investigations into fraud, corruption and bribery cases.

Continued overleaf



## England

**Phil Beckett (cont.)**

Mr Beckett earned a bachelor's degree in computing and management from Loughborough University, a master's degree in forensic computing from Cranfield University and a master's degree in computer and communications law from Queen Mary, University of London. He is a fellow of the Association of Chartered Certified Accountants and won the ACCA Gold Medal in 2001. He is also a certified fraud examiner and lectures regularly on information governance and forensic technology.

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**WWL says:** *Phil Beckett is an investigations Thought Leader and praised as "one of the top figures" in forensic data investigations by peers. He has experience of global investigations across a multitude of sectors.*

**Carl Bowles**

*Asset Recovery | Experts*

Carl Bowles is a senior director with Alvarez & Marsal in London.

He brings 15 years of experience and specialises in offshore, asset tracing and contentious insolvency situations. He has worked in numerous offshore and onshore jurisdictions working on very complex corporate insolvencies and winding down large structures. In addition, Mr Bowles has also taken appointments as a trustee in bankruptcy in complex cross-border and asset tracing situations.

Mr Bowles has taken numerous offshore appointments, specifically in the Channel Islands, where recent cases include trust company liquidations, large international trading entities and winding down structures involving the Libyan Investment Authority sovereign wealth fund. He is currently joint liquidator (previously joint administrator) of a large international construction group, with a Guernsey top company, with a turnover in excess of US\$1 billion.

M. Bowles is listed as an expert in Who's Who Legal 2018 as an asset recovery expert, specialising in using office holder powers to recover complex assets.

Mr Bowles is a licensed insolvency practitioner who has earned an LLB in law and a masters' degree (LLM) in international commercial law.

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**WWL says:** *Carl Bowles stands out among peers for his "excellent work" handling complex asset tracing relating to restructuring and insolvency disputes.*

**Gary Davies**

*Consulting Experts | Forensic Accountants*

Gary Davies is a partner of Alvarez & Marsal's disputes and investigations practice in London, with 18 years' experience in quantifying economic damages, valuation and financial advisory work.

He has provided independent advice in more than 50 large commercial disputes in various proceedings, including those of the UK High Court, the ICC, ICSID and LCIA, and has testifying experience. He has written well over 100 expert reports on economic damages.

Mr Davies has advised on disputes relating to: competition damages; valuations; forensic accounting; fraud; lost profits; post-acquisition warranties; contract termination; intellectual property; accounting treatment; and pricing. He also led large-scale financial investigations.

Mr Davies also advises companies in a range of non-contentious engagements: valuations; business plan reviews; financial restructurings; creditor negotiations; creditor advisory; and strategic analysis.

Prior to joining Alvarez & Marsal, he worked for other global consulting firms having started his career with Arthur Andersen in its strategy, finance and economics group.

He has a bachelor of science degree in mathematics and management from the University of Nottingham and is a fellow of the Institute of Chartered Accountants in England and Wales.

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**WWL says:** *Gary Davies brings 20 years of experience handling forensic investigations. He is highly knowledgeable in a range of areas including competition damages and lost profits.*





### Chris Johnston

*Consulting Experts | Financial Advisory and Valuation – Restructuring & Insolvency Experts*

Chris Johnston is a managing director with Alvarez & Marsal Restructuring in London.

Mr Johnston brings 17 years of restructuring experience and specialises in advising lenders and borrowers in stressed and distressed situations. He focuses on complex transactions in both listed and privately owned businesses.

Prior to joining A&M, Mr Johnston spent eight years in the financial restructuring team at KPMG and also completed a 12-month engagement with the workout team of a major international clearing bank. In his career to date, Mr Johnston has played a key role in a number of European and UK restructurings where his ability to identify critical business issues (financial and operational), analyse options and marshal stakeholders has been fundamental to delivering solutions.

Mr Johnston has experience across a number of different sectors and jurisdictions, including oil and gas, infrastructure and business service outsourcing, power, manufacturing and telecommunications.

Mr Johnston has recently advised the senior lenders of a publicly owned U.K. continental shelf oil and gas exploration and production company on the options for a restructuring of their debt. This involved a full business review and extensive options analysis, which resulted in an equity raise and debt restructuring (senior and junior), providing the company with a stable and sustainable capital structure and greater liquidity.

Mr Johnston has also supported lenders of a privately owned UK oil and gas exploration and production company on the options for a financial restructuring of their debt that resulted in the sale of the group's key entities and assets. He advised the restructuring lenders of a European manufacturing group on their options for the financial restructuring of the group's debt following a full financial and operational review, which resulted in the sale of the business to a third party. He also advised the steering committee and restructuring lenders of a European manufacturing group on their options for the financial restructuring of the group's debt. This led to the lenders taking control through a debt for equity swap.

Mr Johnston is a fellow of the Association of Chartered Certified Accountants and earned a Master of Arts degree from Aberdeen University.

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### Julian Jones

*Asset Recovery | Experts,  
Investigations | Forensic Accountants  
Consulting Experts | Forensic Accountants*

Julian Jones is a managing director and a member of the executive committee of Alvarez & Marsal's disputes and investigations practice, based out of its London office. He brings more than 20 years of accounting experience, with over 18 years of specialist experience in financial investigations and disputes and has served both advisory and expert witness-related roles.

Mr Jones has worked on investigations throughout the UK, Europe, the US and the Middle East for lawyers, public and private sector clients, governments and regulators. Mr Jones brings significant experience in conducting confidential reviews, working either independently or in conjunction with a company's internal counsel. He has also provided expert opinions and given evidence on the assessment of loss, and has investigated allegations of bribery and corruption in connection with procurement managers, lawyers and accountants, bank officers, sports clubs, shipping agents, trustees of pension funds, and managing directors of both quoted and unquoted companies.

Mr Jones has acted in many high-profile cases including leading A&M's investigations in connection with the bankruptcy of Lehman Brothers and providing evidence in connection with several major High Court disputes related to Lehman Brothers intercompany relationships and the working practices between entities. He also investigated several issues linked to Lehman's structured transactions group and assisted the team leading the wind-down of those structures; analysing multiple pieces of financial information on behalf of a government in order to trace and identify worldwide assets of the former rulers of one of the Arab Spring countries; acting for various UK regulators in investigating the work of other accountants in several high profile matters; assisting attorneys to Citibank in an action arising from the collapse of Parmalat; working on behalf of financial regulators in analysing various boiler room and Ponzi scheme frauds to identify funds flows.

**WWL says:** *Chris Johnston is a longstanding name in the UK market with significant expertise in financial restructuring, handling a wide variety of distressed situations.*

Continued overleaf

## England



## Julian Jones (cont.)

Mr Jones's experience includes assessment of quantum, loss of profit, due diligence assistance, asset tracing, fraud and financial crime. His work has covered many sectors including retail, residential and commercial building development, shipping, oil and gas, automotive, retail wholesalers and manufacturers, telecoms, financial services and professional services companies. Many of Mr Jones's cases have required the efficient handling and reviewing of large volumes of electronic data, using advanced forensic computing and data analytical techniques.

Mr Jones earned a bachelor's degree in mechanical engineering from Imperial College in London and trained as a chartered engineer with British Steel Corporation. He is a member of the Institute of Chartered Accountants in England and Wales.

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**WWL says:** The "excellent" Julian Jones is a leading name in the UK market. His investigative experience spans Europe, the US and the Middle East.

## Luke Steadman

*Arbitration | Expert Witnesses, Consulting Experts | Financial Advisory and Valuation – Quantum of Damages, Consulting Experts | Forensic Accountants*

Luke Steadman is a partner in Alvarez & Marsal's disputes and investigations practice, specialising in expert accounting evidence for international arbitration and domestic litigation. He has over 25 years of professional accounting experience as a forensic accountant across Europe, Asia and the United States.

He has acted as both party-appointed and tribunal-appointed expert on over 30 matters in the past five years and has provided both solo and concurrent oral evidence in hearings under ICC, LCIA, Hong Kong and Dubai Arbitration Rules. Written and oral evidence has included considerations of quantum, valuation, the accounting treatment of complex transactions under international, US and UK Accounting Standards and Principles and the application of International Auditing Standards.

As an expert in accounting and valuation, Mr Steadman also provides expert evidence in domestic courts and has appeared in the High Court on many occasions. He continues to receive instruction in High Court matters and has also appeared as an expert on accounting concepts and principles in the First-tier Tax Tribunal.

Mr Steadman is also known for leading complex many-handed accounting investigations and asset recovery matters. He has led accounting investigations on both sides of the Atlantic, and in the US he has considerable experience in dealing with US regulators and prosecutors following investigations of fraud and accounting irregularities at major US companies. In Asia, Mr Steadman acted as an expert in a high-profile failed investment scheme, while in the UK he has carried out a number of wide-ranging investigations of accounting irregularities on behalf of UK companies, insurers and investors.

In the public sector, Mr Steadman saw regular appointments by the secretary of state for trade and industry as an inspector in matters of insider dealing and in the conduct of statutory company investigations under UK legislation, as well as providing assistance on accounting, fraud and other issues to major regulators.

Prior to joining Alvarez & Marsal, Mr Steadman was the head of the fraud and forensic accounting investigations team at a global consulting firm.

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**WWL says:** Luke Steadman draws widespread international praise for his top-notch work in arbitration proceedings, where he is known for delivering "clear and convincing argumentation".

## France



### Andrew Flower

*Arbitration, | Expert Witnesses, Experts | Financial Advisory and Valuation – Quantum of Damages*

Andrew Flower has over 25 years' experience providing expert evidence in international arbitration (both commercial and investor-state). He has provided expert evidence in arbitrations conducted under the auspices of many institutions including ICC, ICDR, ICSID, DIAC, NAI, DIS, and under UNCITRAL rules. He has provided written evidence in over 150 disputes and has testified and been cross-examined on his evidence on many occasions before tribunals around the world including New York; Washington DC; London; Paris; Stockholm; Geneva; Zurich; Dubai; Singapore; and Brisbane.

In 2017, Andrew was listed by Who's Who Legal as one of the top 10 leading expert witnesses in international arbitration in Europe. He has been listed as a leading expert by Who's Who Legal since inception of the list. In 2017 he was also one of 24 experts globally to be recognised as a Thought Leader in International Arbitration.

In the course of his career, Andrew has also provided advice to parties in post-transaction disputes, both in connection with arbitrations and in the context of expert determinations. Andrew has acted both as an advisor to one of the parties and as the appointed determining expert.

Andrew has been appointed as an independent expert by the ICC Centre of Expertise. He has also been appointed by a tribunal in an ICC arbitration matter between a US conglomerate and an Asian metropolitan municipality concerning the valuation of an equipment supply contract. Andrew also acted as mediator in a royalty dispute between a French company and a company based in Liechtenstein concerning the alleged understatement of sales of a licensed product.

In addition to his arbitration related experience Andrew assisted Vivendi as defendant in its long running class actions suits in the New York Courts in relation to its management in the Messier era and has provided written expert evidence in matters before the English High Court. He was also one of the senior advisers to the Kuwait government in the assessment of corporate claims for damages arising from the First Gulf War.

Andrew is a fellow of the Institute of Chartered Accountants in England and Wales, and is a native English and fluent French speaker.

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**WWL says:** Andrew Flower possesses over 20 years of testifying experience in international disputes and is recognised for his quantum expertise across a range of industries from transport to pharmaceuticals and TMT

## Germany



### Alexander Demuth

*Arbitration | Expert Witnesses, Consulting Experts | Financial Advisory and Valuation – Quantum of Damages*

Alexander Demuth, co-head of A&M's international arbitration group and leader of its German dispute and investigations practice, is a managing director based in Munich and Hamburg. He specialises in advising clients in arbitration, litigation and out-of-court settlement with a focus on post-merger disputes, commercial disputes and intellectual property disputes.

Alexander has acted as party-appointed or tribunal-appointed expert in international arbitration proceedings under DIS, ICC, ICSID, SIAC and VIAC rules as well as in litigation proceedings.

His experience covers various industries, including automotive and automotive supply, biotechnology, manufacturing, pharmaceutical, private equity, renewable energy, retail and software.

A German national, Alexander is fluent in German and English and has issued reports and testified in both languages.

Alexander is a German Certified Public Accountant and has earned his master's degree in economics from the University of Passau.

He is a member of the German Institute of Public Auditors, the American Institute of Certified Public Accountants (AICPA), the AICPA Forensic and Valuation Services (FVS), the German Institution of Arbitration (DIS), the Vienna International Arbitration Centre (VIAC), and the Swiss Arbitration Association (ASA).

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**WWL says:** Alexander Demuth gains recognition for his excellent work in relation to disputes with one source noting, "He understands what is needed of him to bring across his message to the arbitral tribunal."

## Hong Kong



### Keith Williamson

*Asset Recovery | Experts, Consulting Experts | Forensic Accountants, Investigations | Forensic Accountants*

Keith Williamson is a managing director with Alvarez & Marsal and leads the firm's disputes and investigations team in Hong Kong and China.

He brings more than 20 years of forensic and investigative accounting experience, specialising in investigations of fraud, corruption (US FCPA/UK Bribery Act) and regulatory issues, asset tracing and recovery, and litigation support and expert witness services for disputes.

Mr Williamson has mostly been involved in large-scale global investigations, asset tracing exercises and litigation support exercises on behalf of US, European and Asian-owned corporations facing fraud, corruption, regulatory, asset recovery and dispute issues across a broad spectrum of industries, including oil and gas, minerals and mining, healthcare and pharmaceuticals, manufacturing, retail, leisure, financial institutions, education, media and technology.

He has presented evidence and been cross-examined in legal proceedings relating to forensic accounting matters.

Most recently at A&M, Mr Williamson has been investigating allegations of US FCPA violations in China and the Asia-Pacific region, performing forensic accounting reviews of alleged fraudulent activity in Hong Kong, China, Singapore and Malaysia, performing an investigation and financial restatement exercise for the Asia operations of a listed European company, acting as a compliance monitor for a Chinese state-owned enterprise on behalf of a multilateral development bank, and leading an anti-money laundering review of a Macanese institution.

Other notable assignments in Asia include: pre-acquisition financial due diligence on a proposed Chinese acquisition by a US private equity firm; a US FCPA investigation of a global company's activities across Asia, including China and Singapore; leading a corporate inspection of financial records in the Philippines pursuant to a legal dispute in Hong Kong and the Philippines; and investigations of alleged fraud and corruption in the China operations of multinational pharmaceutical companies.

Additional work includes: advising and assisting a non-governmental organisation with investigations of the alleged misappropriation of grant funds in Asia and Africa; and managing a team of accountants and lawyers administering and investigating the assets comprising the multi-billion dollar estate of a Hong Kong businessman involved in property development.

Before joining A&M, Mr Williamson spent six years with AlixPartners in London, most recently serving as managing director, conducting investigations and anti-corruption compliance reviews and providing dispute services across Europe, Africa and the Middle East. He also spent 10 years with Deloitte's forensic and dispute services team, including three years working in their Hong Kong office.

Mr Williamson earned a bachelor's degree in law from the University of Birmingham. He is a member of the Institute of Chartered Accountants in England and Wales and the Hong Kong Institute of Certified Public Accountants.

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## Spain



### Juan Valderas

*Consulting Experts | Forensic Accountants, Investigations | Forensic Accountants*

Juan Valderas is the leader of Alvarez & Marsal's disputes and investigations practice in Spain. He brings more than 25 years of accounting experience, and more than 20 years of specialist experience in financial investigations and disputes, serving in both advisory and expert witness-related roles.

Mr Valderas commenced his professional career in auditing at KPMG before joining the London forensic department and was key to setting up the firm's forensic department in Spain. In 2003, he joined Deloitte in Spain, where he built and led its forensic department and was also appointed as Deloitte forensic leader of Europe, the Middle East and Africa. Between 2015 and 2018, he joined and led FTI's forensic practice in Spain.

As a full-time forensic practitioner for more than 20 years, Mr Valderas experience includes national and international investigations (fraud, corruption, accounting manipulation and other regulatory investigations), independent expert in litigation before both national and international arbitration courts (damages, loss of profit, commercial disputes, acquisition price adjustments, unfair competition, etc. having given evidence in more than 200 cases) and insolvency related assignments (advisory, court-appointed administrator).

Mr Valderas has worked across Europe and Latin America for lawyers, regulators, and public and private sector clients across a range of industries including, advertising, construction, retail, shipping, energy utilities, automotive, manufacturing, telecoms, financial services and professional services. He also brings extensive experience handling and reviewing large volumes of electronic data, using advanced forensic computing and data analytical techniques.

Mr Valderas is perceived in the Spanish market as an expert forensic practitioner and, over the years, he has been interviewed, quoted and led some publications that included thought leadership pieces by Juan himself.

**WWL says:** *Keith Williamson is a prominent figure in the Asian market who is regularly called upon to handle large-scale global investigations for major clients across a range of industries.*

## Sweden

**Daniel Frigell***Arbitration | Expert Witnesses*

Mr Valderas is internationally recognised as a leading forensic accountant by Who's Who Legal, in *WWL: Investigations* 2016, 2017 and 2018. He is described as one of Spain's leading experts on fraud-related investigations and also "respected across the continent for his work on regulatory-related issues".

Mr Valderas earned degrees in both law and economics from ICADE (Comilla University in Madrid). He is a qualified auditor and a certified fraud examiner.

Daniel Frigell is a managing director with A&M's Nordic practice where he is responsible for valuation-related services.

He specialises in valuation services, business modelling and transaction support. Mr Frigell brings over 17 years of experience, and has assisted clients in a wide range of industries with tax-related valuations, transaction and restructuring related valuations, fairness opinions as well as disputes.

Mr Frigell has worked with small, middle-market and large clients across various industries, including utility and power generation, newspaper and media, automotive, manufacturing, distribution, professional services, health care, consumer products and industrial services.

Mr Frigell also assists clients with dispute-related valuations in in arbitration, litigation and out-of-court settlement including acting as an expert witness. His assignments include valuation, assessment of quantum and loss of profit.

Most recently, Mr Frigell served as the head of valuation services with KPMG corporate finance where he was a senior project manager and engagement partner and was responsible for KPMG services relating to management incentives. In this capacity, Mr Frigell has advised a broad range of companies with incentive programmes including private equity and venture capital portfolio companies, large and mid-cap public companies, as well as private and closely held companies.

Mr Frigell earned a degree in business and administration from Uppsala University and a degree in finance and international business from Stockholm School of Economics. He also holds a certified European financial analyst certification (CEFA/AFA). Mr Frigell is frequently hired as a lecturer in valuation for both universities and corporates.

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**WWL says:** Juan Valderas is highlighted as a "standout practitioner" with over 15 years' experience regarding national and international investigations.

## USA • California

**Robert DeCicco***Data | Experts, Consulting Experts | Digital Forensic Experts*

Robert DeCicco is a managing director with Alvarez & Marsal Disputes and Investigations in Los Angeles.

He specialises in providing services related to data acquisition and forensic examinations for a variety of high-profile and confidential clients. His primary areas of concentration are digital forensics and incident response.

With more than 20 years of forensic technology experience, Mr DeCicco has performed hands-on examinations and analysis of computer data to day to day management of staff and the enforcement of policies and procedures. He has actively managed, participated in and defended the collection, analysis and reporting on the behavior of data from electronic evidence from thousands of computers, cloud-based storage environments, IoT, mobile and emerging data systems from extremely complex, disparate and sensitive technology environments throughout the world.

Mr DeCicco is a former civilian employee of the National Security Agency (NSA) and regularly works in conjunction with regulatory and law enforcement agencies to provide acceptable practices and forensically sound data and analysis protocols. He also maintains active involvement in the standard operating procedures group related to acceptable methodologies related to ESI collection and analysis in the field and in the lab.

Prior to joining A&M, Mr DeCicco served as a managing director and co-leader of the technology segment of global investigations at Berkeley Research Group, as a managing director and global practice leader of digital forensics incident response at Navigant Consulting and as a managing director, and technology central division leader and global risk and investigations practice liaison at FTI Consulting.

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**WWL says:** Daniel Frigell is a "very good financial expert" who "does quality work" in the area, comment impressed peers.

Continued overleaf



## USA • California

## District of Columbia

**Robert DeCicco (cont.)**

Mr DeCicco earned a bachelor's degree in management and management information systems from Pennsylvania State University. He also studied incident response forensic analysis and discovery at the Guidance Software Professional Training Center and cyber security incident response malware detection and removal, memory forensics and remediation at Mandiant Security Consultancy. Mr DeCicco is an Encase Certified Computer Examiner (EnCE), a licensed private investigator in the state of Texas and a member of the sedona conference working group 6, Association of Certified Fraud Examiners (ACFE) and American Bar Association.

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**WWL says:** Robert DeCicco is one of the leading practitioners in the North American region. He has a top-quality practice, covering such matters as data breaches and electronic evidence verification.

**Marc Sherman**

*Arbitration | Expert Witnesses,  
Consulting Experts | Financial Advisory and Valuation – Quantum of Damages*

Marc Sherman is a managing director with Alvarez & Marsal's disputes and investigations practice in Washington, DC. He specialises in insurance matters, financial fraud, white-collar investigations and quantum of damages.

With over 30 years of experience in business, consulting and forensic accounting, Mr Sherman has worked with clients across a broad range of industries, including real estate, construction, hospitality, telecommunications, banking, manufacturing insurance, higher education and retail and franchising, among others.

Mr Sherman has conducted hundreds of financial investigations, consulted and testified on economic damages, valued public and private companies, consulted on compliance, corporate governance and corporate restructuring. He has qualified as an expert witness in forensic accounting, lost profits, financial fraud, business appraisal, accounting matters and the real estate and financial services industries. He has testified in federal, state and international courts and arbitrations. He also serves as an accounting arbitrator in post-acquisition M&A disputes, and works closely with insurers and insureds in transactional and business interruption claims.

Mr Sherman has conducted investigations in the areas of the Foreign Corrupt Practices Act (FCPA), financial reporting, anti-money laundering, ethics and integrity, government investigations and general financial fraud. He has worked on many investigations for the US Department of Justice, US Attorneys' offices, FBI and DEA and several foreign governments.

Prior to joining A&M, Mr Sherman was a managing director and national practice leader of the fraud and white-collar practice with a publicly held consulting firm. Prior to that, he was with KPMG, where he held numerous senior roles, including partner-in-charge of forensic and litigation services, partner-in-charge of compliance and ethics practice and regional partner-in-charge of corporate transaction. Before KPMG, he was in the real estate and construction business, where his responsibilities included development, acquisition, financing and construction.

Mr Sherman earned a bachelor's degree from the University of Baltimore, and a Juris Doctor from the University of Maryland, School of Law. He is a certified public accountant in Maryland and Washington, DC, a certified fraud examiner, a certified insolvency and reorganisation adviser and holds a certification from the AICPA in financial forensics. He is a board member and finance committee member of the DC-based Council for Court Excellence and the chair of the audit committee of the National District Attorneys Association. Mr Sherman is also the chair of the American Bar Association (ABA) section of litigation, forensic accounting subcommittee and co-chair of the accounting issues subcommittee, and of the ABA securities litigation committee.

He is a frequent speaker on forensic accounting investigations, transactional insurance claims and quantum of damages, and has published chapters in several treatises on internal investigations, compliance programmes and anti-money laundering. Mr Sherman served on the faculty of Georgetown University for many years, where he taught in the joint JD/MBA programme.

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**WWL says:** Marc Sherman is a highly respected practitioner, considered a go-to expert for complex financial investigations and damage calculations.

## Illinois



### Matthew Bialecki

*Arbitration | Expert Witnesses,  
Consulting Experts | Financial Advisory and Valuation – Quantum of Damages,  
Consulting Experts | Forensic Accountants, Investigations | Forensic Accountants*

Matthew Bialecki (CPA, CFF, CGMA) is a managing director with Alvarez & Marsal's disputes and investigations practice, leading its eastern US region and serving as a member of its executive committee. He has over 25 years' experience as an expert witness, neutral arbitrator and consultant in a variety of areas, with a focus on pre- and post-acquisition matters. He is, and has for many years, been a member of the select American Institute of Certified Public Accountants' (AICPA) taskforce on merger and acquisition disputes, and is an author of the AICPA's practice aid on mergers and acquisitions disputes, which provides guidance to CPAs serving as consultants, experts or neutral arbitrators.

Mr Bialecki has experience in the automotive, professional services, banking, insurance, health-care, construction, petroleum, specialty chemicals, finance, gaming, manufacturing, distribution, food and beverage, branding, telecommunications, aerospace, agriculture, software, real estate, retail, and metals industries. He specialises in disputes with complex financial issues and is an expert on the application of generally accepted accounting principles (GAAP) and post-merger and acquisition disputes.

Mr Bialecki has served as a neutral arbitrator, mediator, consultant and expert witness in a significant number of matters involving the application of GAAP, on earn-outs and in the determination of working capital in mergers and acquisitions involving accounts receivable, accrued vacation, percentage of completion revenue recognition, deferred revenue, allowances for co-op advertising, volume rebates, obsolete and excess inventory reserves, inventory physical count adjustments, accrued expenses, inter-company accounts, accounts payable, accrued coupon liabilities, contingent assets and liabilities, workers' compensation and franchise tax issues, among other current asset and liability accounts. He has been involved in the preparation of carveout financial statements, closing balance sheets and working capital statements

Mr Bialecki has been involved in many matters involving indemnification under purchase agreements and has reviewed and consulted on hundreds of purchase agreements.

Mr Bialecki has conducted many internal forensic accounting investigations, SEC investigations and restatements.

Prior to joining A&M, Mr Bialecki was a partner at Deloitte Financial Advisory Services LLP (Deloitte FAS) in Chicago. While with Deloitte FAS, Mr Bialecki was the midwest and north central region professional practice director (PPD) for the dispute and forensic practice, was the midwest insurance industry leader, and was the midwest insurance industry fraud specialist.

Mr Bialecki earned a bachelor's degree in public accounting from Loyola University of Chicago. Mr Bialecki is a certified public accountant licensed in the states of Illinois and California, a chartered global management accountant, is a member of the American Institute of Certified Public Accountants (AICPA), the Illinois CPA Society, Association of Certified Fraud Examiners (ACFE), and is certified through the AICPA in financial forensics.

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## New York



### Ernest Brod

*Asset Recovery | Experts, Consulting  
Experts | Forensic Accountants*

Ernest Brod is a managing director with Alvarez & Marsal Disputes and Investigations in New York and leads the firm's business intelligence practice. Mr Brod has extensive experience in applying cutting edge forensic techniques to corporate investigations and providing in-depth business intelligence services to clients around the world.

Mr Brod is credited with groundbreaking work in applying a variety of investigative tools on behalf of companies engaged in litigation, global asset searches, enhanced due diligence and in corporate contests and transactions. In 30 years as an investigative and intelligence consultant, Mr Brod has worked with the country's leading law firms, corporations and financial institutions. His efforts helped the field of business investigations gain acceptance from corporate America and prominent law firms.

Mr Brod has uncovered assets around the world of borrowers who owe hundreds of millions of dollars to the four systemic Greek banks. He led the search for assets of the government of Venezuela and for Jean-Claude 'Baby Doc' Duvalier's pirated assets on behalf of the government of Haiti. According to *Who's Who Legal: Asset Recovery 2015*, Mr Brod "excels in tracing hidden assets".

Mr Brod is widely recognised as an authority on shareholder activism, proxy contests and hostile takeovers. By looking for hidden issues within companies, as well as insufficient disclosure or misrepresentation by their principals, his investigative work has helped clients reduce the risk of fraud, Foreign Corrupt Practices Act (FCPA) issues, and Anti-Money Laundering (AML) and terrorism concerns. In recent years, he has led panel discussions at the New York City Bar Association and at the Federal Bar Council Inns of Court about "pretexting" and the impact of the Hewlett-Packard case on corporate investigations. He has also written and lectured extensively on dotcom fraud, hostile takeovers, investigative due diligence, doing business in Asia, and litigation intelligence

**WWL says:** *Matthew Bialecki is recognised as "a top name" in the US market. He possesses vast experience in forensic investigations spanning an impressive array of industries.*

**Continued overleaf.**

## USA • New York

## Texas



## Ernest Brod (cont.)

Prior to joining A&M, Mr Brod led the business intelligence practice at Navigant and was a director in the forensic and dispute services practice for Deloitte FAS. Earlier, he spent 17 years with Kroll as one of the leaders of its investigation and intelligence business, and was a founder and CEO of Citigate Global Intelligence. Early in his career he served for five years as an attorney/investigator with the Federal Trade Commission.

Mr Brod earned a BA from Columbia College and a JD from Columbia Law School.

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**WWL says:** Ernest Brod is a revered figure in the US market, well known for his agency experience and innovative use of investigative tools.

## Laureen Ryan

*Arbitration | Expert Witnesses, Consulting Experts | Financial Advisory and Valuation – Quantum of Damages, Consulting Experts | Forensic Accountants, Investigations | Forensic Accountants*

Laureen M Ryan is a managing director in Alvarez & Marsal's disputes and investigations practice. She specialises in accounting/forensic investigations and compliance, and disputes with complex economic, valuation, solvency and financial issues. With over 25 years of experience, Ms Ryan has advised boards, corporations and stakeholders to help resolve high-stakes financial, regulatory and legal issues. She has also been appointed by various courts, retained by examiners, and engaged at the request of the New York State Banking Department, US Securities and Exchange Commission (SEC) and the DOJ, to investigate, oversee, monitor and report on various banking and corporate activities, including those related to compliance, financial reporting and internal controls.

She has led complex multinational investigations, including those involving FCPA and qui tam allegations, and has presented her findings to the SEC, New York State Banking Department, Ontario Superior Court of Justice, US Bankruptcy Court, corporate boards and other venues and constituents. Further, in her fiduciary roles as responsible officer, Chapter 11 trustee and liquidating trustee of various entities in the US and abroad, she conducted investigations, prepared valuation estimates, pursued litigation and resolved complex business, accounting and financial matters.

Ms Ryan has testified, written expert reports, and provided advice in civil and criminal matters in various venues in the US and the ICC International Court of Arbitration. The issues related to financial reporting, regulatory inquiries, financial transactions, escheatment, capital compliance, antitrust, accounting reconstruction, GAAS audits, GAAP accounting, fraud allegations, FCPA and qui tam issues, Ponzi schemes, asset diversion, accounting irregularities, over-billing and other fictitious billing and loan schemes, post-acquisition disputes, contract provisions, cost allocations, solvency and viability, preferences, damages, business valuation, bankruptcy litigation, lost profits, insurance claims, loans and securities. She has also served as a mediator for the Supreme Court of the State of New York.

Ms Ryan has worked across a broad range of industries, including financial institutions, mutual funds, private equity, hedge funds, broker/dealers, mortgage warehousing, structured finance products, derivative instruments, sub-prime and Alt-A loans, student loans, healthcare and medical claims, cable/telecommunications, hospitality/restaurants, casino/gaming, franchising, manufacturing, auto dealerships/auto parts manufacturing, insurance, real estate, insurance, explosives/mining, trucking, railroad, food distribution and publishing.

Prior to joining A&M, Ms Ryan was a senior managing director at FTI Consulting providing investigation and dispute services. She was instrumental in building FTI's forensic and litigation consulting practice and held various executive leadership positions, including Northeast regional leader and global expansion leader. In addition, she worked at an affiliate in Sydney, Australia.

She began her career with Ernst & Young (EY) where she provided audit and advisory services in the New York and London offices. She was also a member of EY's national financial services office where she monitored the audit risk profile of banks and thrifts, provided accounting, auditing and regulatory advice for the US and abroad, and worked on matters involving allegations of accounting malpractice and fraud.

Ms Ryan earned a bachelor's degree in accounting and economics from SUNY at Oswego. She is a certified public accountant (CPA), certified fraud examiner (CFE), accredited business valuer (ABV), certified distressed business valuer (CDBV) and certified insolvency and restructuring adviser (CIRA). She is also a founding member of the International Women's Insolvency and Restructuring Confederation (IWIRC).

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**WWL says:** With more than 25 years' experience, Laureen Ryan is a big name in the global investigations space, and is commended for her excellent work on multi-jurisdictional financial investigations and disputes.





### William Abington

*Arbitration | Expert Witnesses, Consulting Experts | Financial Advisory and Valuation – Quantum of Damages, Consulting Experts | Forensic Accountants, Investigations | Forensic Accountants*

Bill Abington is a managing director and has over 25 years of experience providing accounting and complex financial analysis, forensic investigations, and advisory services. He leads the firm's disputes and investigations practice in the energy sector and has worked on domestic and international litigation and arbitration matters for privately held companies as well as some of the largest companies in the world. He has performed forensic investigations for internally identified company matters, and in response to inquiries made by governmental oversight and regulatory organisations.

The focus of Mr Abington's work is in the energy industry, including oil, gas and electricity. He has worked with small and large businesses, including family owned and some of the largest companies in the world on matters dealing with public disputes as well as confidential internal evaluations. He has experience in taking complex issues, working with stakeholders in developing practical solutions, and presenting findings in an easily understood manner.

Mr Abington has led projects involving civil and criminal matters, and has traced transactions through voluminous accounting records and has identified accounting irregularities and misappropriation of funds. He has led lost profit analyses, purchase price calculations and true-ups, business interruption claims, causation analyses, and valuation of businesses and business units. He has performed solvency analyses for companies in bankruptcy, and has reviewed financial statements for compliance with accounting principles.

Mr Abington has testified in federal courts and in state courts around the United States, including US bankruptcy courts. He has also testified in multiple arbitrations, and has served as an arbitrator. Mr Abington has presented analysis findings to Company Boards and Management, the Securities and Exchange Commission, the Department of Justice, the Department of Interior, the Commodities Futures Trade Commission, the Mineral Management Service, state auditors and Indian tribunals. He has also served as trustee over a bankrupt company with a nuclear waste site, where he coordinated activities with the Nuclear Regulatory Commission and other governmental agencies.

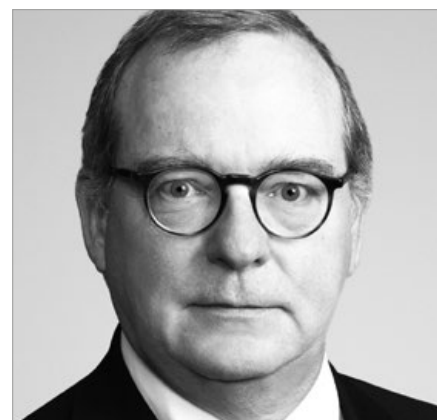
Mr Abington is a certified public accountant; certified in financial forensics; a certified fraud examiner; and an honours graduate of Texas State University. He is a member of the American Institute of Certified Public Accountants, the Association of Certified Fraud Examiners, and the American Bar Association's section of natural resources, energy and environmental law; he is also active in various civic organisations.

Mr Abington has spoken many times on the subjects of accounting, financial damages, and fraud to audiences of accountants, financial analysts, lawyers and other professionals.

Prior to joining Alvarez & Marsal in June 2003, Mr Abington was a partner with PricewaterhouseCoopers, where he led the firm's financial advisory practice in the energy sector, concentrating on accounting and financial matters in complex disputes.

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**WWL says:** William Abington is widely respected by market players for his outstanding work in the field. He offers clients a wealth of insight into such matters as audit services and financial investigations in the energy sector.



### Dean Graves

*Arbitration | Expert Witnesses, Consulting Experts | Financial Advisory and Valuation – Quantum of Damages*

Dean Graves is a managing director with Alvarez & Marsal's disputes and investigations practice in Houston, specialising in forensic accounting, damage analysis, and financial issues. His broad background includes international arbitration, transaction and financing negotiation, financial analysis and reporting, as well as coordinating non-financial disciplines.

With more than 30 years of advisory and industry experience, Mr Graves has served as an arbitrator, expert witness, court appointed expert, and business adviser. He has performed analyses related to arbitration, international claims, litigation, business interruption insurance claims, business and asset valuation, post-acquisition disputes, contract disputes, and regulatory compliance. His experience spans the BTU value chain including petroleum exploration and production, transportation, refining, retail gasoline, petrochemicals, and power generation. Additionally, he has experience in mining, apparel, consumer products, manufacturing, wholesale/distribution, professional services, commercial airlines, and biomedical research.

Mr Graves has led projects heard in state and federal courts in the United States and ad hoc arbitrations as well as, ICC, NAFTA, and ICSID claims. Many of his projects have included working collaboratively with economists, engineers, scientists and other technical experts.

Prior to joining Alvarez & Marsal in 2005, Mr Graves was a senior managing director at a publicly traded consulting firm and a partner at two big five accounting firms.

Mr Graves earned a bachelor's degree in chemistry and a master of professional accountancy degree from Baylor University. He is a certified public accountant (CPA) and a chartered financial analyst charterholder.

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**WWL says:** Dean Graves offers a wealth of expertise in the energy and natural resources sectors with sources saying, "He's great with oil and gas."

## USA • Texas

**Laura Hardin**

*Arbitration | Expert Witnesses, Consulting Experts | Financial Advisory and Valuation – Quantum of Damages, Energy | Experts*

Laura Hardin is a managing director with Alvarez & Marsal's disputes and investigations practice in Houston, Texas.

She has more than 20 years of experience in business valuation, damages assessments, forensic accounting and consulting services on a variety of engagements.

Ms Hardin has provided expert guidance on damage quantification for both investment treaty and commercial matters and has submitted evidence in international arbitration cases brought before ICC, ICDR, LCIA, SCC, ICSID, and ad hoc tribunals. These disputes involved amounts at issue of more than several billion dollars and allegations of expropriation, shareholder disputes, breach of contract controversies and purchase price disputes.

She has experience in disputes in several industries including oil and gas, power generation, telecoms, aviation, real estate development, metals and mining, and general manufacturing and has worked both as a consultant and party-appointed expert for private entities as well as sovereign governments and government-owned entities.

Before joining Alvarez & Marsal, Ms Hardin was a vice president with CRA and held prior roles with FTI Consulting, Navigant Consulting and PricewaterhouseCoopers in Houston and in Moscow.

Fluent in Russian, she has testified in Russian courts, and has worked extensively on engagements involving entities in Russia and the CIS in particular, as well as Latin America, Europe and Africa and the Middle East.

Ms Hardin holds an MBA from The George Washington University and a BA in Russian language and literature from Wesleyan University. She is also a certified valuation analyst (CVA) with the National Association of Certified Valuators and Analysts.

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**Trevor Phillips**

*Arbitration | Expert Witnesses, Consulting Experts | Financial Advisory and Valuation – Quantum of Damages*

Trevor Phillips is a managing director with Alvarez & Marsal's disputes and investigations group in Houston. His primary area of concentration is counselling and damage analysis in real estate, construction defects, mortgage, environmental and toxic tort litigation, including class action matters.

Mr Phillips has testified as a damages expert at deposition, trial, arbitration, class certification and mediation proceedings.

He has significant experience evaluating the effects of environmental contamination, as well as other risks and physical conditions, on the use and market value of real property. His background includes analysis of damages in disputes stemming from alleged breach of sale, lease, land development and partnership agreements, as well as evaluation and development of value assurance programmes designed to proactively resolve property value disputes. Mr Phillips has also developed business interruption and property damage insurance claims for businesses in several industries, and assisted public sector clients with applications for FEMA public assistance and hazard mitigation grants in the aftermath of natural disasters.

His real estate industry experience includes residential and commercial property valuation services for mortgage lenders, corporate relocation companies and property owners. He has also provided appraisal review services to evaluate compliance with Uniform Standards of Professional Appraisal Practice (USPAP). Mr Phillips's construction industry experience includes civil and structural engineering design and construction management in the United Kingdom and several eastern Caribbean countries.

Mr Phillips earned a bachelor's degree in civil engineering and building technology from Cardiff University, UK, and a master's degree in business administration, with an emphasis on real estate and urban analysis, from the University of Florida. He is a fellow of the Royal Institution of Chartered Surveyors, a member of the Counselors of Real Estate and the American Society of Appraisers, and a state certified real estate appraiser.

He is an associate member of the American Bar Association and serves the real estate, condemnation and trust litigation committee as co-chair of the experts subcommittee. He also serves as the real property chair and a member of the board of the Houston chapter of the American Society of Appraisers.

Mr Phillips has served the community as a mayor-appointed volunteer member of the Land Redevelopment Committee (chairman 2004–2006) supporting the City of Houston's Brownfields Redevelopment Program through technical assistance, fundraising and public education initiatives. He has developed and delivered continuing education and conference presentations on valuation and contaminated property topics for attorneys, insurance claims analysts and real estate and planning professionals.

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**WWL says:** Laura Hardin consistently "exceeds clients' expectations" and is highlighted for her "exceptional work as an expert witness" in both investment treaty and commercial disputes.

**WWL says:** Trevor Phillips draws praise for his excellent oral evidence as well as his deep expertise across the real estate and construction industries.



## Aaron Stai

*Arbitration | Expert Witnesses,  
Consulting Experts | Financial Advisory and Valuation – Quantum of Damages*

Aaron Stai is a managing director with Alvarez & Marsal's disputes and investigations practice in Houston.

He provides financial and accounting consulting services to clients requiring expertise in matters involving lost profits calculations, energy trading, derivative valuation, business valuations and forensic financial analyses.

His experience traverses several industries, including energy, utilities, healthcare and financial services and he has served as an expert witness in several oil and gas industry matters. Mr Stai has worked as a privileged and expert consultant on disputes with jurisdictions ranging from state and federal courts to large international arbitrations.

He has led numerous engagements involving complex financial modelling, accounting reconstruction, economic forecasting, data mining and analysis. His energy and utility expertise includes evaluating damages and valuations related to energy trading, refining and processing, power generation, pipeline and fractionation, gas storage and optimisation, risk management and gas processing.

In particular, Mr Stai brings deep expertise in the energy trading industry including the valuation of physical and financial derivative contracts with various underlying commodities, including coal, crude oil, natural gas, power and other commodities.

Before joining A&M, he was a manager with the financial advisory services practice of PricewaterhouseCoopers, focusing on financial matters involved in the dispute resolution process. Previously, he worked as an associate civil engineer designing bridges, roadways and other civil engineering projects located throughout the state of Texas.

Mr Stai earned a bachelor's degree in civil engineering from Texas A&M University and an MBA from Rice University. He is a chartered financial analyst (CFA) charter holder and a certified financial risk manager.

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**WWL says:** Aaron Stai provides much sought-after counsel on arbitral disputes at both the state and federal levels, and is recognised as a leader in the US market.

# INDEX

## WWL INTERNATIONAL PRACTICE AREA GUIDES

### Arbitration | *Expert Witnesses*

Abington, William – 47  
 Bialecki, Matthew – 45  
 Demuth, Alexander – 41  
 Flower, Andrew – 41  
 Frigell, Daniel – 43  
 Graves, Dean – 47  
 Hardin, Laura – 48  
 Phillips, Trevor – 48  
 Ryan, Laureen – 46  
 Sherman, Marc – 44  
 Stai, Aaron – 49  
 Steadman, Luke – 40  
 Williams, John – 34

### Asset Recovery | *Experts*

Barton, Daniel – 37  
 Bowles, Carl – 38  
 Brod, Ernest – 45  
 Jones, Julian – 39  
 Lawson, Alex – 36  
 Williamson, Keith – 42

### Data | *Experts*

Beckett, Phil – 37  
 DeCicco, Robert – 43

### Energy | *Experts*

Hardin, Laura – 48

### Investigations | *Digital Forensic Experts*

Beckett, Phil – 37  
 DeCicco, Robert – 43

### Investigations | *Forensic Accountants*

Abington, William – 47  
 Bialecki, Matthew – 45  
 Jones, Julian – 39  
 Ryan, Laureen – 46  
 Valderas, Juan – 42  
 Williamson, Keith – 42

### Restructuring & Insolvency | *Experts*

Hutchens, Al – 34  
 Lawson, Alex – 36  
 McIntosh, Doug – 35  
 Stewart, Michael – 35

---

## WWL: CONSULTING EXPERTS

### Asset Recovery *Experts*

Barton, Daniel – 37  
 Bowles, Carl – 38  
 Brod, Ernest – 45  
 Jones, Julian – 39  
 Lawson, Alex – 36  
 Williamson, Keith – 42

### Digital & Data | *Data and E-Discovery Experts*

Beckett, Phil – 37  
 DeCicco, Robert – 43

### Digital & Data | *Digital Forensic Experts*

Beckett, Phil – 37  
 DeCicco, Robert – 43

### Financial Advisory and Valuation | *Quantum of Damages*

Abington, William – 47  
 Bialecki, Matthew – 45  
 Demuth, Alexander – 41  
 Flower, Andrew – 41  
 Graves, Dean – 47  
 Hardin, Laura – 48  
 Phillips, Trevor – 48

Ryan, Laureen – 46  
 Sherman, Marc – 44  
 Stai, Aaron – 49  
 Steadman, Luke – 40  
 Williams, John – 34

### Financial Advisory and Valuation | *Restructuring & Insolvency Experts*

Hutchens, Al – 34  
 Johnston, Chris – 39  
 Kennedy, Chris – 36  
 Lawson, Alex – 36  
 McIntosh, Doug – 35  
 Stewart, Michael – 35

### Forensic Accountants

Abington, William – 47  
 Barton, Daniel – 37  
 Bialecki, Matthew – 45  
 Brod, Ernest – 45  
 Davies, Gary – 38  
 Jones, Julian – 39  
 Lawson, Alex – 36  
 Ryan, Laureen – 46  
 Steadman, Luke – 40  
 Valderas, Juan – 42  
 Williamson, Keith – 42



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