



Thomas W. Britven
Managing Director
Duff & Phelps, LLC

***Representative
Engagements***

PROFESSIONAL CREDENTIALS

Thomas Britven is a Managing Director in the Houston office of Duff & Phelps, LLC. He is also the National Intellectual Property Consulting Practice Leader.

Intellectual Property / Asset Matters

- Determined lost profit and reasonable royalty damages in connection with a patent infringement claim involving six patents related to ultrasound methods and technology and accused products that spanned various segments in the ultrasound market; also determined reasonable royalty damages related to counter-plaintiff's patent infringement assertion involving four ultrasound technology patents.
- Determined reasonable royalty damages and assessed plaintiff's lost profit and reasonable royalty damages claims related to a patent infringement matter involving two major market competitors and multiple patents related to balloon catheters and cardiac stents, including drug-eluting stents; also quantified false patent marking statutory damages in connection with a related counter-claim in the case.
- Determined the amount of reasonable royalties due to patent infringement involving a course management system patent and two of the primary competitors in the enterprise eLearning solutions market.
- Assisted with the damages quantification assessment involving a patent prosecution malpractice matter involving patented technology for application in the worldwide intermodal railroad market.
- Determined the amount of reasonable royalty damages due to infringement of a patent related to the chemical composition of a generic injectable pharmaceutical product for anesthesia. Analyzed defendant's lost profit, reasonable royalty and price erosion damages counter-claim.
- Determined damages sustained by an engineering consulting firm as a result of ex-employees' wrongful conduct including misappropriation of trade secrets and other confidential information. Damage analysis involved determination of lost profits on specific lost accounts, disgorgement of the defendants' revenues and assessment of overall business impact on the engineering consulting firm as a result of the defendants' actions.
- Assessed damages as a result of misappropriation of trade secrets related to education software platform in the K-12 market. Damage analysis involved determination of the avoided research and development costs, disgorgement of the respondents' revenues and assessment of the incremental value associated with the alleged trade secrets based on a cost-over-cost analysis and purchase price allocation of the programs incorporating the subject technology.
- Determined the amount of trade secret and patent damages as a result of misappropriation of trade secrets and patent infringement related to a foreign specialty water chemicals company. Determination of trade secret damages involved determination of profitability associated with the chemicals allegedly incorporating the trade secrets based in part on an understanding of inter-company transactions with the parent company.

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- Assessed damages as a result of misappropriation of trade secrets related to sub sea oil and gas service company.
- Determined reasonable royalty damages for prepaid cellular telephone technology. Assisted client in preparation of product line profitability analysis and assessed reasonable royalty claims developed by multiple licensing and damage experts.
- Determined reasonable royalty damages related to methods for recording, storing and retrieving digital voice data transmitted over telephone or other communication lines. Also assessed plaintiff's lost profit and reasonable royalty claims.
- Determined the amount of reasonable royalties due to patent infringement involving multiple air-jet weaving machine patents and assessed reasonable royalty and lost profits claimed by plaintiff.
- Determined reasonable royalty damages resulting from the use of wired and wireless telecommunication vending technology.
- Determined reasonable royalty damages resulting from the use of switches and cables for computer peripheral connectivity technology. Also assessed plaintiff's lost profit and reasonable royalty claims.
- Determined damages involving computer backup storage technology.
- Determined reasonable royalty damages related to methods of capturing and recording screen data and performing synchronized playback of screen and voice data. Assessed plaintiff's lost profit and reasonable royalty claims.
- Determined lost profit and reasonable royalty base related to chemical encapsulant technology.
- Determined reasonable royalty damages related to spinal cord stimulation technology used in medical devices. Also assessed lost profit and reasonable royalty damages claimed by plaintiff.
- Determined unjust enrichment head start damages as a result of misappropriation of trade secrets and unfair business practices involving a cardiac rhythm management start-up business.
- Determined the amount of lost profits and reasonable royalty damages due to infringement of patent related to gas well drilling technology. Analyzed lost profit and reasonable royalty damages claimed by defendant.
- Assessed reasonable royalty and lost profits claims involving multiple cardiac rhythm management companies involved in multiple litigations based upon extensive study of industry practices and licensing agreements.
- Determined damages resulting from public release of trade secret and/or confidential information involving drilling fluids.
- Determined lost profits and reasonable royalty damages related to refinery additive injection technology. Also assessed defendants' lost profit and reasonable royalty claims.
- Determined damages resulting from public release of trade secret and/or confidential information involving deepwater drilling exploration equipment.
- Determined lost profits and reasonable royalty damages due to patent infringement of petroleum drill bit technology.

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- Assessed the economic benefits and additional costs associated with drilling method technology for use in deepwater offshore drilling operations.
- Determined lost profit damages due to trade secret misappropriation and breach of contract involving juvenile furniture product.
- Determined royalty base and calculated incremental profits and reasonable royalties associated with patented lubricant technology. Also developed accounting system to determine incremental patented product costs and profits.
- Determined royalty base and associated reasonable royalty damages due to patent infringement of shaving technology.
- Determined copyright damages involving infant care product.
- Determined reasonable royalty involving children's confectionary products.
- Determined the amount of reasonable royalty damages due to patent infringement of pet snack products and assisted counsel in preparing for defendant's damages expert cross-examination at trial.
- Determined lost profit and reasonable royalty damages related to plastic-bag dispenser technology. Also assessed defendants' reasonable royalty claims.
- Determined lost profit and reasonable royalty damages related to the patent infringement of horticulture method patent.
- Determined reasonable royalty damages involving the use of pigmentation and stability technology in food and beverage products.
- Determined copyright damages associated with designer jeans.
- Determined up-front payment and running royalty damages due to patent infringement of a drug discovery screening technology.
- Performed royalty audit of specialty chemical products in accordance with license agreement terms.

Commercial Litigation / Other Matters

- Assessed damages claim in connection with NASD matter.
- Assessed damages in connection with claims of breach of contract, trademark misappropriation and unfair competition pertaining to the distribution of caskets to funeral homes.
- Traced historical business transactions and asset title in connection with claims of breach of contract, fraud and misappropriation of trade secrets related to gas centrifuge technology. Reviewed representations made by multiple business entities pertaining to ownership and existence of the gas centrifuge technology and determined whether indicia of fraud were present in such representations.
- Determined damages resulting from a failed software implementation, maintenance and development program.
- Assessed decline in stock price and future earn-out damages associated with multiple claimed acts of misrepresentations in connection with acquisition of a line of consumer car-care products.

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- Investigated allegations that executives of a large public waste company intentionally inflated its stock price by releasing unreasonable earnings estimates.
- Quantified damages resulting from the withholding of restricted securities in association with an acquisition of a Phase I/Phase II biotechnology firm.
- Calculated the amount of damages due to a breach of contract concerning a skin care product line and associated trademark. Analyzed historical sales trends, projected future sales and calculated future royalties.
- Determined the amount of lost profits and excess costs incurred by plaintiff as a result of defendant's early termination of multiple purchasing contracts.
- Analyzed subrogation of lost profits by an insurance company as a result of an explosion of a power-generating facility and the subsequent claimed business interruption loss of a steel-manufacturing facility, its suppliers and its customers.
- Determined business interruption, lost profits, restoration costs and mitigation adjustments due to a fire and an explosion at a large oil refinery and adjacent facilities.
- Determined business interruption and lost profits due to construction defects in airport runway causing shutdown of regional airport.
- Assessed asbestos removal, additional cost and delay claim submitted by contractor in connection with remediation project.
- Determined replacement power costs during delayed start up of coal-fired electric utility due to construction and design defects.
- Performed management audit involving large roadway construction project.
- Evaluated additional construction costs and delay claim submitted in connection with large outfall tunnel construction project.

Energy Related Matters

- Valued natural gas pipeline in connection with redistribution of ownership interest as a result of joint venture partners' decision to opt out of future capital expansion projects. Valuation was based on a complex discounted cash-flow model and an assessment of comparable transactions among other things.
- Evaluated \$1 billion plus damage claim related to natural gas trading and marketing venture. Analyzed the nature, classification and value of trading transactions. Also performed accounting and business record fact finding relative to specific transactions in dispute and assessed disclosures contained in annual reports and SEC findings.
- Determined value of salt dome natural gas storage facility while serving as a "third-party appraiser." Valued facility as a stand-alone business enterprise after adjustment for shared facility and overhead expenses.
- Developed forward price curves used to value client's gas, power and oil derivative contracts (including commodity and basis swaps). Analysis of changes in the market-to-market value of positions was used to assist in the resolution of multiple claims between two major trading and marketing organizations.
- Calculated breach of contract damages associated with natural gas processing and purchase contracts. Determined well-connection costs, well deliverability, well capacity, and compression maximums. Also analyzed gains to producers from gaming nominations to pipelines.

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- Audited subcontractor's pipeline construction costs in accordance with terms of pipeline construction contract. Determined contract balance owed to owner based on amounts incurred by subcontractor and subcontractor's unpaid amounts to third-party vendors.
- Audited natural gas contract to ensure appropriate accounting methodology and accuracy.
- Analysis of breach of contract claims related to volumetric production payments in exchange for mineral rights and interests in natural gas and natural gas liquids derived from multiple wells located in Nebraska. This analysis included a calculation of the residual value of the wells, based on monthly production rates and total recoverable gas reserves.
- Calculated the amount of lost profit damages due to a steel manufacturer as a result of its energy trading and marketing service provider's failure to execute contracts placed for the future purchase of natural gas. Verified amounts of natural gas delivered and paid as a result of prior transactions and determined the additional costs incurred as a result of the steel manufacturer's failure to mitigate.
- Development of project execution plan for pipeline construction companies. Project execution plan involved development of a system for project controls and procedures as well as an audit plan to test the project controls and procedures and ongoing project costs.
- Analyzed claims of fraudulent conveyance, breach of contract, preference actions and conversion of collateral. Determined the amounts, timing and circumstances surrounding natural gas received, and payments made, between an oil and gas forward contract merchant and multiple insolvent gas marketing entities during the ninety-day period prior to bankruptcy filing. Traced funds between various entities and bank accounts to establish whether third party letters of credit were satisfied from payments for alleged fraudulent conveyances of natural gas.

Testimony

- *General Electric Company, et. al. v. SonoSite, Inc.*, Case No. 07-C-0273-C, Deposition before United States District Court for the Western District of Wisconsin, 2008.
- *DeepNines, Inc. v. McAfee, Inc.*, Case No. 9:06-CV-174 (RC), Deposition and trial before United States District Court for the Eastern District of Texas, Lufkin Division, 2008.
- *Medtronic Vascular, Inc., Medtronic USA, Inc., Medtronic, Inc., and Medtronic Vascular Galway, Ltd. v. Boston Scientific Corp., Scimed Life Systems, Inc., and Boston Scientific Scimed, Inc.*, Case No. 2:06 CV-78-TJW, Deposition and trial before United States District Court for the Eastern District of Texas, Marshall Division, 2008.
- *Blackboard Inc., v. Desire2Learn Inc.*, Case No. 9:06 CV155, Deposition and trial before United States District Court for the Eastern District of Texas, Lufkin Division, 2008.
- *Witness Systems, Inc. v. Nice Systems, Inc. and Nice Systems, Ltd.*, Civil Action No. 1:06-CV-0126-TCB, Deposition before United States District Court for the District of Georgia, Atlanta Division, 2008.
- *Nice Systems, Inc. and Nice Systems, Ltd. v. Witness Systems, Inc.*, Civil Action No. 1:06-CV-00311-JJF, Deposition and trial before the United States District Court for the District of Delaware, 2008.
- *Ben Venue Laboratories, Inc. d/b/a Bedford Laboratories v. Hospira, Inc.*, Case No. 1:05 CV 1787, Deposition before the United States District Court for the Northern District of Ohio, Eastern Division, 2007.
- *Witness Systems, Inc. v. Nice Systems, Inc. and Nice Systems, Ltd.*, Civil Action No. 1:04-CV-2531-CAP, Deposition before the United States District Court for the Northern District of Georgia, Atlanta Division, 2007.
- *Brazoria County Disposal Corporation v. Republic Waste Services of Texas, Ltd., Republic Services, Inc., Waste Management of Texas, Inc., Waste Management, Inc., and Brazoria County Recycling Center, Inc.*, Cause No. 16385*BH01, Deposition before the United States District Court for the 23rd Judicial District of Brazoria County, Texas, 2007.
- *D2 Data Driven Software Corporation, formerly known as EdSoft Software Corporation v. Voyager Expanded Learning, Ltd., Voyager Expanded Learning, Inc., Emery Randolph Best, Jeri A. Nowakowski, Matthew Peter Hunter and Stephan Randal Black*, AAA No. 71 117 Y 00238 06, Depositions and Arbitration testimony before the American Arbitration Association, 2007.
- *Shainin II, LLC, Shainin LLC, and Red X Holdings LLC v. John Allen and David Hartshorne*, Case No. 50 180 T 00149 06, Testimony in Arbitration before the American Arbitration Association Fresno, California Office (Western Case Management Center), 2007.
- *MGM Well Services, Inc. v. Mega Lift Systems, LLC*, Civil Action No.: H-05-1634, Deposition and Trial before the United States District Court for the Southern District of Texas, Houston Division, 2007.
- *ClearValue, Inc. and Richard Alan Haase v. Pearl River Polymers, Inc., Polychemie Inc., SNF Inc., Polydyne, Inc. and SNF Holding Company*, Civil Action No. 6:06 CV 197, Deposition and Trial before the United States District Court for the Eastern District of Texas, Tyler Division, 2007.

Testimony
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- *Ivan G. Rice v. Honeywell International Inc., and Rolls-Royce, PLC v. Northrop Grumman Corp.*, Civil Action No. 6:05cv330-LED, Deposition, United States District Court for the Eastern District of Texas, Tyler Division, 2007.
- *Newton Research Partners, LP v. Shell Exploration and Production Company v. Michael Bloom and Sonic Centrifuge Company*, Civil Action No. 3:05-cv-0091-PECF, Deposition, United States District Court for the Northern District of Texas, Dallas Division, 2006.
- *Aerotel, Ltd. v. Verizon Communications, Inc., Cellco Partnership a/k/a and d/b/a Verizon Wireless, Verizon Select Services, Inc., and Codetel International Communications Incorporated*, Civil Action No. 05 CV 0120 (TPG), Deposition, United States District Court for the Southern District of New York, 2006.
- *Union Oil Company of California vs. Acquiport Sugar Creek, Inc.*, Civil Action No. H-05-0318, Deposition, United States District Court Southern District of Texas, Houston Division, 2006.
- *Hyperion Solutions Corporation v. OutlookSoft Corporation*, Civil Action No. 2:04-CV-436 (TJW), Deposition and Trial before the United States District Court for the Eastern District of Texas, Marshall Division, 2006.
- *PowerOasis, Inc. and PowerOasis Networks, LLC v. T-Mobile U.S.A., Inc.*, Civil Action No. 05-CV-42-B, Deposition, United States District Court for the District of New Hampshire, 2006.
- *Transocean Offshore Deepwater Drilling, Inc. vs. GlobalSantaFe Corporation; Global Marine, Inc.; GlobalSantaFe Drilling Company; Global Marine Drilling Company*, Case No. H-03-2910, Deposition and Trial before the United States District Court for the Southern District of Texas, Houston Division, 2006.
- *PowerOasis, Inc. and PowerOasis Networks, LLC v. Wayport, Inc.*, Civil Action No. 04-12023-RWZ, Deposition, United States District Court for the District of Massachusetts, 2006.
- *Advanced Neuromodulation Systems, Inc. v. Advanced Bionics Corporation*, Civil Action No. 4:04cv131, Deposition, United States District Court for the Eastern District of Texas, Sherman Division, 2005.
- *Latin American Courier, Inc. and Pegaso Express, S.A. de C.V. vs. Airborne, Inc., et al.* Cause Number 2004-CI-03951, Deposition and Trial before the United States District Court for the 285th Judicial District of Bexar County, Texas, 2005.
- *Crown Poly, Inc. v. Unistar Plastics, LLC and Bunzl Distribution California, LLC*, Case Number SA CV 03-1678 DOC (ANx), Deposition, United States District Court for the Central District of California, Southern Division, 2005.
- *Maritimes & Northeast Pipeline L.L.C. vs. Murphy Bros., Inc.*, Case Number 11 110 00868 04, Testified before Arbitration Panel in the matter filed with the American Arbitration Association, 2005.
- *The Men's Wearhouse, Inc., and Renwick Technologies, Inc. vs. Retek Inc.*, Case Number AAA Reference No. 70 Y 117 660 03, Testified before Arbitration Panel in the matter filed with the American Arbitration Association, 2005.
- *Mars, Inc. vs. H.J. Heinz Company, L.P., Heinz Management Company and Del Monte Corporation*, Case Number CV-01-10961 RGK (JTLx), Deposition and Trial before the United States District Court for the Central District of California, 2004 and 2005.

Testimony
(continued)

- *GPR Holdings, L.L.C., et al. vs. Duke Energy Trading and Marketing, L.L.C., et al.* Case Number 01-36736-SAF-11 (Chapter 11), Testified before the United States Bankruptcy Court, Northern District of Texas, Dallas, 2005.
- *East Tennessee Gas Company v. Murphy Bros., Inc.* CPR File No. G-04-04, Testified before Arbitration Panel in the matter filed with the CPR Institute for Dispute Resolution, 2004.
- *Freedom Wireless, Inc. v. Boston Communications Group, Inc., et al.*, Case Number 00-CV-12234, Deposition, United States District Court, District of Massachusetts, 2003.
- *Keraplast Technologies, Ltd. v. Southwest Research Institute and Mark E. Van Dyke*, Case Number 2002-CI-09879, Deposition, 285th Judicial District Court of Bexar County, Texas, 2003.
- *Heritage Skin Care, Inc., et al. v. Dyno-Heritage Brands, Inc. et al.*, Arbitration. Number 50 T 133 0012603, Testified before Arbitration Panel, Miami, Florida, 2003.
- *Dictaphone Corporation v. Nice Systems Ltd. and Nice Systems, Inc.*, Docket Number 3:00-CV-1143, Deposition, United States District Court, District of Connecticut, 2002.
- *Factory Mutual et al. v. Ford Motor Company*, Testimony before Arbitration Panel (Hon. William Webster, Kenneth R. Feinberg, and Ferd C. Meyer, Jr.), 2002.
- *DukeSolutions, Inc., v. AK Steel Corporation*, Case Number C-1-01-259, Deposition, United States District Court, Southern District of Ohio, Western Division, 2002.
- *Seitel, Inc; Seitel Solutions, Inc.; and Seitel Solutions Canada, Ltd., v. Winthrop Resources Corporation and Dale Olsen*, Cause Number 2002-34994, Deposition and Hearing before the United States District Court of Harris County, Texas, 2002.
- *General Gas Company, L.P. v. Duke Energy Field Services, L.P.*, Docket Number 2:01-CV-351J, Deposition, United States District Court, Northern District of Texas, Amarillo Division, 2002.
- *Tanox, Inc. v. Panresources International N.V., Andries De Nooij B.V., M. DeBoer, J.W. Larrick, J.S. Price, R.F. Balint, M.T. Den Hartog and L. Boon*, Deposition, United States District Court of Harris County, Texas, 2002.
- *DETMi Management, Inc., Duke Energy Services Canada Ltd., and DTMSI Management Ltd. v. Mobil Natural Gas Inc., and Mobil Canada Products, Ltd.*, Docket Number 50-T198-00485-00, Deposition and Arbitration before the Arbitration Panel, 2001.
- *Sulzer Textil A.G. and Sulzer Textile, Inc. v. Picanol N.V.*, Docket Number 6-00-CV-279, Testified before United States District Court Eastern District of Texas, Tyler Division, 2001.
- *C. Cowles & Company v. The Bernard M. Packtor Company, ITT Industries, Inc., d/b/a McDonnell & Miller, and ITT Fluid Technology Corp*, Docket Number 3-99-CV-01996-RNC, Deposition, United States District Court, District of Connecticut, 2001.
- *Cardiac Pacemakers, Inc., Guidant Sales Corporation, and Eli Lilly and Company v. St. Jude Medical, Inc., Pacemaker, Inc. and Ventritex, Inc.*, Docket Number IP96-1718-C-H/G, Deposition and Trial before the United States District Court, Southern District of Indiana, Indianapolis Division, 2001.
- *PGS Ocean Bottom Seismic, Inc. and PGS Tensor, Inc. v. Dan Loewenthal and Dan Loewenthal v. PGS Ocean Bottom Seismic, Inc. and PGS Tensor, Inc.*, Docket Number H-99-1886, Deposition, United States District Court, Southern District of Texas, Houston Division, 2000.

Testimony
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- *JVM Innovation Design, LLC v. Spalding & Evenflo Companies, Inc., et al. and Evenflo Company, Inc. v. John V. Mariol, et al.*, Docket Numbers 1-97-528 and 1-98-233, Deposition, United States District Court, Southern District of Ohio, Western Division, 2000.
- *Gregg Communications Systems, Inc. and Apropos Technology, Inc.*, Docket Number 51-181-00019-98, Deposition and Arbitration Hearings before Commercial Arbitration Tribunal, 2000.
- *Williams Fire & Hazard Control, Inc. v. National Foam, Inc.*, Docket Number H-98-3179, Deposition, United States District Court, Southern District of Texas, Houston Division, 1999.
- *Intermedics, Inc. v. Cardiac Pacemakers, Inc. and Cardiac Pacemakers, Inc. v. Intermedics, Inc.*, Docket Number 4-95-716, Deposition, United States District Court, District of Minnesota, Fourth Division, 1998.
- *Angeion Corp. v. Cardiac Pacemakers, Inc.*, Docket Number 97-1681-JMR, Deposition, United States District Court, District of Minnesota, Fourth Division, 1997.
- *The Lowell Dunn Company v. Metropolitan Dade County*, Docket Number 94-16374, Deposition and Trial before Circuit Court of the 10th Judicial Circuit, in and for Dade County, Florida, 1997.
- *Roberts & Schaefer Company v. The Hardaway Company v. National Union Fire Insurance Company and The Hardaway Company v. Roberts and Schaefer*, Docket Number 95-590-CIV-T-17E, Trial before United States District Court, Middle District of Florida, Tampa Division, 1997.

**Publications and
Presentations**

“Approaches for Valuing Biotechnology/Pharmaceutical Inventions”
Practicing Law Institute, Biotechnology Patents & Business Strategies in the New Millennium, San Diego, August 6-7, 2001.

“Patent Valuation from a Business and Litigation Perspective”
Licensing Executive Society (U.S.A. and Canada), Inc. 2002 Annual Meeting, Chicago, September 24, 2002.

**Professional and
Business History**

Duff & Phelps, LLC, National Intellectual Property Consulting Practice Leader and Managing Director (2008-present).

Lumin Expert Group (merged with Duff & Phelps, LLC), President (2007-2008); Managing Director (2006-2007).

LECG, LLC (2002-2006); positions held include: Senior IP Practice Director (2006); Governing Board (2002-2006); Managing Director (2002-2006).

Navigant Consulting, Inc. and its predecessor companies (1983-2002); positions held include: Director (1999-2002); Vice President (1991-1999); Executive Consultant (1986-1991); Senior Consultant (1983-1986).

Amsted Industries, Inc. (1981-1983); positions held include: Senior in Charge Auditor (1983); Senior Auditor (1982-1983); Staff Auditor (1981-1982).

***Education and
Certifications***

B.B.A., Accounting, University of Iowa – May 1981
Accredited in Business Valuation – May 2006
Certified Valuation Analyst – February 2004
Certified Fraud Examiner – December 1992
Certified Public Accountant, Florida – January 1989
Certified Public Accountant, Texas – February 1984
Passed Certified Public Accountant Examination, Iowa – February 1982

***Professional
Associations &
Affiliations***

Member National Association of Certified Valuation Analysts
Associate Member American Bar Association
Examiner to Federal Bankruptcy Court
Member Licensing Executive Society
Member American Institute of Certified Public Accountants
Member Houston Chapter of Texas Institute of Certified Public Accountants
Member Association of Certified Fraud Examiners