



Litigation Services Handbook, 2008 Supplement: The Role of the Financial Expert

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The 2008 Supplement contains the following updates:

- **Chapter 15.** The authors of our chapter on Punitive Damages review the Supreme Court's decision in *Philip Morris USA v. Williams* and the implications of that decision for punitive damage claims going forward.
- **Chapter 18A.** In securities class actions, a lot rides on class certification. Many defense counsel appear to believe that to defeat the certification of the class is to win the big battle, maybe even the war. One impediment to class certification is non-alignment of the interests of the members of the class. Our authors discuss how the proposed class members' interests can easily be adverse and how one might show that.
- **Chapter 22.** The authors of our chapter on Patent Infringements have revised their chapter to discuss whether a current patent owner has entitlement to the former owner's damages.
- **Chapter 25A.** Merger transactions often have a so-called MAC or MAE clause—Material Adverse Change or Material Adverse Event. The idea is that some company specific events might occur (think private jet crash killing the top echelon of the target company's management), which would give the buyer reason to want to change its mind about the acquisition itself, or the purchase price. In any particular deal, the parties can negotiate whatever terms of MAC or MAE they choose, but still may find themselves in sufficient disagreement that the buyer, typically, tries to invoke the MAC clause to get out of the deal. (In our experience, there has been some economy wide bad economic event—think the market crash of March 2000—that causes the buyer to wish he hadn't offered such a high price. The buyer seeks to find some aspect of the target's operations or financial statements on which to build a case that bad things happened to the target company beyond economy-wide effects. The lead case discussed here, *IBP v. Tyson*, arose from a deal negotiated in December 1999, but not completed before the March 2000 crash.) The authors discuss the proto-typical MAC clause and how an expert can help in supporting or defeating the claim that a company-specific MAC has occurred.

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