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## SUMMARY

Mr. Hoerberlein is a Managing Director with Berkeley Research Group, LLC, resident in the New York office. Prior to joining Berkeley Research Group, LLC, Mr. Hoerberlein was a Managing Director with UHY Advisors; a Managing Director with Aon Consulting, Inc.; a Managing Director at Kroll Inc.; a founding member of Hoerberlein Associates, LLC, a firm specializing in providing litigation consulting services to counsel; and from 1986 through 1996, Mr. Hoerberlein was a partner in Arthur Andersen, LLP's New York Litigation Services Practice. During that time Mr. Hoerberlein had several roles, including head of the New York Litigation Consulting Division, partner in charge of the Intellectual Property practice for the Northeast Region and the head of the firm's New York Office Government Contract Consulting Services Practice.

Mr. Hoerberlein has over twenty years experience in assisting attorneys in the area of damages in disputes. Much of that experience has been in connection with intellectual property matters. He has also had extensive experience on audits of large and small companies in a variety of industries, including manufacturing, service, and leasing, specifically during the early part of his career as a senior auditor at Arthur Andersen. He has also assisted counsel in several matters involving auditor malpractice, and has served a number of times as an arbitrator in purchase price disputes. Mr. Hoerberlein has testified a number of times in Federal court as well as in arbitration hearings in matters relating to commercial litigation and intellectual property.

## RELEVANT EXPERIENCE:

Mr. Hoerberlein's experience related to commercial disputes as well as his government contract consulting experience includes the following:

- Preparation of damage claims for lost profits and reasonable royalties in patent litigations.
- Performance of audits in connection with determining compliance with contractual provisions, including royalty audits.
- Performance of audits on contract and project costs, including construction projects.
- Development of position papers on accounting issues in support of clients in arbitration proceedings.

- Lost profits analysis in commercial contract and business interruption cases.
- Testifying as an expert accounting witness in Federal court as well as in arbitration proceedings.
- Assisting in the negotiations of licenses involving patents.
- Determination of appropriate cost allocation methodologies in various disputes.
- Served as arbitrator in major commercial disputes.
- Preparation of damage claims relating to delay and disruption on construction projects.
- Determination of subsidy amounts and yearly allocations under countervailing duty regulations.
- Consultation as to propriety of cost accounting systems in compliance with government pricing and cost regulations (Federal Acquisition Regulation, Cost Accounting Standards, etc.).
- Review of contract proposals for compliance with RFP and applicable government regulations.

**PRIOR TESTIMONY EXPERIENCE:**

<u>Nature of Dispute</u>	<u>Case Name</u>	<u>Nature of Testimony</u>	<u>Venue</u>
Patent Infringement	Electro-Biology	Lost Profits	Federal District Court – Dallas, 1986
Reinsurance Dispute	Republic Insurance Co. v. American Excel Insurance Co.	Computation of value received/concessions given in reinsurance agreements between two insurers	Arbitration – Three person panel Dallas, TX 12/10/86
Dispute Between Owner and Vessel Operator/Manager	Alicia Ocean Transport v. Equity Steamship Agencies	Adequacy of statements re: cash receipts and disbursements	Federal District Court New York 10/27/87
Patent Litigation	Comair Rotron, Inc. v. Electric Corp. of America	Calculation of lost profits and reasonable royalty analysis	Deposition 1/90 Trial, Federal District Court Newark, NJ 5/92
Anti-trust Litigation	Lightwave Technologies Inc., v. Corning, Inc.	Rebuttal of claim for lost profits and diminution of value	Federal District Court, New York 5/30/90
Contract Termination	Triangulum Assoc. v.	Capitalization rates	Superior Court

Walter A. Green, Et. Al.

Waterbury, CT  
3/15/91

Professional Fee Dispute	Mar Oil, S.A. v. F.X. Morrissey, Jr.	Estimate of hours incurred on assignments	Federal District Court New York 4/11/91
Divorce	Elizabeth Webster v. George Webster	Analysis of financial transactions throughout the marital history	Deposition 10/91 Matter settled
Patent Litigation	Merck & Co., Inc. v. Biocraft Laboratories, Inc.	Calculation of lost profits	Deposition 11/91 Matter subsequently settled
Tortious Interference	Emprotech v. Renda, Fukoku Kogyo	Analysis of economic damages	Deposition 3/92
Patent Litigation	Hoffman-La Roche, Inc. v. Promega Corp.	Calculation of lost profits	Deposition 11/94
Patent Litigation	Thermoscan Inc. v. Sherwood Medical Co.	Calculation of lost profits	Deposition 4/95 Matter subsequently settled
Patent Litigation	Hewlett-Packard v. Genrad, Inc.	Calculation of lost profits and reasonable royalties	Deposition 7/95 Matter subsequently settled
Trademark Litigation	A&H Sportswear v. Victoria's Secret	Profit and royalty analysis	Deposition 11/95 Trial Federal District Court Easton, PA 11/5/96
Patent Litigation	Ferag AG v. Grapha-Holding AG	Reasonable royalties	Deposition 4/96 Trial, Federal District Court Washington DC 5/96
Patent Litigation	Orlaford Ltd. v. BBC Int'l Meldisco, K-Mart Corp.	Reasonable royalties	Deposition 9/96 Trial, Federal District Court Madison, WI 10/96
Patent Litigation	Essilor Int'l v. Nidek and Santinelli Int'l	Lost profit and royalty analysis	Deposition 12/96
Patent Litigation	DSC Communications v. Pulse Communications	Lost profit and royalty analysis	Deposition 4/97
Patent Litigation	K-Rain Manufacturing v. Rain Bird Sprinklers	Lost profits and royalty analysis	Deposition 11/97 Trial, Federal District Court S.D. Florida

			12/97
Patent Litigation	HCC, Inc. v. RH&M	Lost profit and royalty analysis	Deposition 10/97
Copyright Litigation	Statpower v. HSN	Rebuttal of damage claim	Deposition 11/97 Matter settled
Contract Dispute	LG LS, Inc. v. LS Industrial Systems	Lost profit analysis	Arbitration 11/97
Business Valuation Dispute	Campbell v. Rogers & Wells	Analysis of diminution in value of business	Trial, NY Supreme Court 11/97
Legal Malpractice	Slucker v. AHA Acquisition Corp.	Analysis of commissions to be earned under contract	Deposition 1/98 Matter subsequently settled
Patent Litigation	Orlaford Ltd. v. BBC Int'l	Lost profit and royalty analysis	Deposition 3/98 Matter subsequently settled
Contract Dispute	Universal Re. V. St. Paul Fire and Marine	Lost profits and valuation analysis	Deposition 3/98
Patent Litigation	Schreiber Foods, Inc. v. Beatrice Cheese	Lost profit and royalty analysis	Deposition 4/98 Trial, Federal District Court Eastern District of Wisconsin 8/98
Contract Dispute	A Corp. v. B Corp.	Contract damages	Arbitration 7/98, 8/98
Patent Litigation	Robotic Vision Systems v. View Engineering	Lost profit and royalty analysis	Deposition 9/98 Trial 11/99
Patent Litigation	Sherwood Medical v. Ivac Holdings	Calculation of lost profits	Deposition 10/98 Matter settled
Partnership Dispute	Barton v. Holtzmann Wise & Shepard, LLP	Partnership "accounting"	Arbitration 10/98
Patent Litigation	Sudbury Systems v. Pitney Bowes	Lost profit and royalty analysis	Deposition 3/99
Patent Litigation	Cool Care v. Dade Service	Calculation of reasonable royalties	Deposition 6/99 Matter settled
Insurance Litigation	Simplexdiam	Claim evaluation	Deposition 6/99
Patent Litigation	Berrios and Great Dane v. Wright	Calculation of lost profits and reasonable royalties	Deposition 9/99
Misappropriation Claim	Glencore v. State Bank of Saurashtra	Analysis of bank records	Deposition 10/99

Patent Litigation	Evident v. Colgate-Palmolive	Calculation of reasonable royalties	Deposition 6/00 Summary Judgment
Breach of Contract	GMRI v. Pussers	Contract damages	Deposition 7/00 Matter settled
Patent Litigation	The Gleason Works v. Oerikon Geartec AG	Lost profits and reasonable royalties	Deposition 1/01 Matter Settled
Trademark Litigation	Cache v. M.Z. Berger	Determination of defendants' profits	Deposition 1/01
Patent Litigation	British Telecommunications v. Prodigy	Calculation of reasonable royalties	Deposition 6/02 Summary Judgment
Royalty Litigation	Voxem v. Avaya	Calculation of royalties	Arbitration 1/03
Patent Litigation	Tekni-Plex v. Pactiv	Calculation of royalties	Deposition 2/03
Patent Litigation	VPIP v. Nobel Biocare/3i	Calculation of reasonable royalties	Deposition 9/03 Matter settled
Trademark Infringement	Chase Manhattan v. FreedomCard	Rebuttal of damage claims	Deposition 3/04 Summary Judgment
Patent Litigation	Mylan v. Schwarz Pharma	Lost profits and reasonable royalties	Deposition 5/04 Matter settled
Breach of Contract	PT Cable, Inc. v. AT&T	Contract damages	Deposition 7/04 Summary Judgment
Trademark Litigation	NexTrade v. ProTrader	Determination of defendants' profits	Deposition 8/04 Matter settled
Patent Litigation	Lucent v. Foundry Networks	Calculation of reasonable royalties	Deposition 12/04 Matter settled
Breach of Contract	BVHE v. Blockbuster	Contract damages	Deposition 12/04 Arbitration 1/05
Patent Litigation	Lucent v. Extreme Networks	Calculation of reasonable royalties	Deposition 2/05 Trial, Federal District Court District of Delaware 5/05 Matter settled
Patent Litigation	Media Technologies v. Topps	Calculation of reasonable royalties	Deposition 3/05
Patent Litigation	Philips Electronics v. Defibtech, LLC	Calculation of lost profits and reasonable royalties	Deposition 7/05 Matter settled
Patent Litigation	Ryobi v. Rexon	Calculation of reasonable	Deposition 1/06

		royalties	Matter settled
Patent Litigation	Foundry Networks v. Lucent	Calculation of reasonable royalties	Deposition 5/06 Matter settled
Patent Litigation	Lucent v. Microsoft, Dell and Gateway	Reasonable royalty calculations	Deposition 7/06, 11/06, 1/08 Trial, Federal District Court Southern District of California 2/07, 3/08
Patent Litigation	Ryobi v. Rexon	Calculation of reasonable royalties	Deposition 10/06 Matter settled
Trademark Litigation	ConsulNet v. Dynamic Investment Group	Calculation of damages	Deposition 12/06, 8/08 Trial – 12/08
Patent Litigation	TruePosition v. Andrew Corp.	Calculation of Lost Profits	Deposition 1/07 Trial, Federal District Court District of Delaware 9/07
Patent Litigation	Murata Manufacturing v. Bel Fuse Inc.	Calculation of reasonable royalties	Deposition 5/07
Copyright Litigation	Lombardi v. WXII	Defendant's profits	Deposition 10/07
Patent Litigation\	Howmedica v. Zimmer	Calculation of lost profits and reasonable royalties	Deposition 1/08
Patent Litigation	Multimedia Patent Trust v. Microsoft	Reasonable royalty calculations	Deposition 2/08 Trial, Federal District Court Southern District of California 5/08
Patent Litigation	Paone v. Microsoft	Reasonable royalty calculations	Deposition, 1/09, 9/11 Hearing 5/13
Patent Litigation	Terwilliger v. AnazaoHealth	Reasonable royalty	Deposition, 3/09
Patent Litigation	Tessera v. Spansion	Calculation of reasonable royalty	Deposition 1/10 Trial, U.S. Bankruptcy Court, Delaware 1/10
Patent Litigation	Honeywell Security v. 2GIG	Calculation of lost profits And reasonable royalties	Deposition 9/10; Matter settled
Breach of Contract	Revelations Perfume v. Price Rogers Nelson, et.al	Calculation of lost profits	Deposition 1/11; Hearing 5/11
International Trade Commission	Motiva v. Nintendo	Evaluation of domestic industry	Deposition 6/11; Hearing 8/11

International trade Commission	Thompson Center Arms v. Traditions Sporting Firearms	Analysis in connection with Temporary Exclusion Order	Deposition 7/11; Hearing 8/11
Patent Litigation	Gerber Scientific v. Roland	Calculation of lost profits and reasonable royalties	Deposition 1/12
Patent Litigation	Tomita Technologies v. Nintendo	Calculation of reasonable royalties	Deposition 2/12; Trial, Southern District of New York, 3/13
Patent Litigation	Nextec Applications v. Brookwood Companies	Calculation of reasonable royalties	Deposition 3/12; Trial, Southern District of New York 5/12
Patent Litigation	Prism Technologies v. Adobe Systems, et al	Calculation of reasonable Royalties	Deposition 9/12
Trademark Litigation	On Site Energy v. MTU Onsite Energy	Damage Determination	Trial, Federal District Court EDNY 8/12
Patent Litigation	Delavau v. J.M. Huber	Analysis of irreparable harm	Deposition 3/13
Patent Litigation	Medien v. Warner Brothers	Calculation of reasonable royalties	Deposition 5/13
Patent Litigation	Nutrition 21 v. Pfizer, Inc.	Calculation of reasonable royalties	Deposition 10/13; Matter Settled

**EDUCATION AND PROFESSIONAL CERTIFICATIONS:**

Mr. Hoeberlein is a graduate of Hofstra University (B.B.A. - Accounting, 1974) and received his legal education at the Hofstra University School of Law (J.D., 1977). He is a certified public accountant and a member of the American Institute of CPAs.

**PUBLICATIONS:**

“Trade Secrets: Damages” - published in Trade Secret Protection and Litigation, 1992, by Practising Law Institute.

“Damages for Conveyed Sales; Interest; Survey of Damage Awards” - published in Damages and Other Remedies in Patent Litigation, October 1994, by ACI Publications.