

**2004 The Damages Institute**  
**September 30 - October 1, 2004 • Belo Mansion • Dallas, TX**  
**October 14-15, 2004 • Four Seasons Hotel • Houston, TX**

**Thursday Morning, Sep. 30, 2004**

**Presiding Officers:**

In Dallas: **Stephen Ferris Malouf**, Law Ofc Stephen F. Malouf - Dallas, TX

In Houston: **Alistair B. Dawson**, Beck Redden & Secrest - Houston, TX

9:00 am In Dallas Only 1.00 hr	<p><b>Overview of the Balkanized Law of Damages</b></p> <p>An overview of the general principles of damages including the issues of causality and certainty, as applied to various types of cases in state and federal courts. This session features materials and commentary contrasting theories and rules developed in case law in light of current principles of economic analysis. Recovery of pre-judgment interests and appellate review will be covered in this session.</p> <p>David Michael Gunn, Beck, Redden &amp; Secrest LLP - Houston, TX  E. Allen Jacobs, Charles River Associates, Inc. - Dallas, TX</p>
10:00 am In Dallas Only 0.00 hr 0.25 hr ethics	<p><b>The Name of the Game: What Is Your Case Worth?</b></p> <p>What you should demand to see in evaluating whether to take the case; who to retain as a damages expert and when; counterclaims, cross-claims and third-party claims; the impact of arbitration on the amount of damages; controlling the client's expectations by negotiation of the fee agreement; early ADR and; the limited utility of mock trials to predict damage awards.</p> <p>Stephen D. Susman, Susman Godfrey LLP - Houston, TX</p>
11:00 am In Dallas Only 0.50 hr	<p><b>Choosing, Retaining and Communication with Experts</b></p> <p>A discussion of what an expert really is, what an expert can and cannot do, what you should look for when hiring one, how to use them effectively and disastrously, and how to try to handle the opposing expert.</p> <p>Rod Phelan, Baker Botts - Dallas, TX</p>
11:30 am In Dallas Only 0.00 hr 0.50 hr ethics	<p><b>Experts Panel</b></p> <p>How lawyers manage experts and experts manage lawyers: discovery issues — including drafts of, or comments on, reports — and the difference between consulting and testifying experts, what makes an expert effective and ineffective, and ethical issues that surround the expert exercise.</p> <p>Daniel L. Jackson, AlixPartners, LLC - Dallas, TX  Rod Phelan, Baker Botts - Dallas, TX  Jeffrey M. Tillotson, Lynn Tillotson &amp; Pinker LLP - Dallas, TX</p>

**Thursday Afternoon, Sep. 30, 2004**

**Presiding Officers:**

In Dallas: **Stephen Ferris Malouf**, Law Ofc Stephen F. Malouf - Dallas, TX

In Houston: **Alistair B. Dawson**, Beck Redden & Secrest - Houston, TX

1:45 pm In Dallas Only 0.50 hr	<p><b>Prepare Your Papers with Damages in Mind—Special Considerations for Your Pleadings and Your Discovery ...</b></p> <p>From the start of your case and through discovery, focus your pleadings and your discovery with attention to damages. How can your allegations maximize your entitlement to damages (or minimize your opponent's recovery of damages)? What discovery tools can best be used to promote your damages (or to undercut your opponent's damages)?</p> <p>John J. McKetta III, Graves Dougherty Hearon &amp; Moody PC - Austin, TX</p>
2:15 pm In Dallas Only 1.00 hr	<p><b>How (and Whether) to Make and Respond to a <i>Daubert</i> Challenge</b></p> <p>The ultimate guide to Daubert challenges: A practical approach from the Court's perspective.</p> <p>Jane J. Boyle, Untied State District Judge - Dallas, TX Harvey G. Brown Jr., Wright Brown &amp; Close LLP - Houston, TX</p>
3:30 pm In Dallas Only 0.67 hr	<p><b>Economic Analysis in Litigation: Ten Common Fallacies</b></p> <p>Following the Daubert and Kumho decisions, courts are continuing to raise the standard for admissibility of expert analysis and testimony. In the areas of economics, finance, and damages, cases such as Brunswick, Marshfield Clinic, Lantec, and Heary Brothers (in antitrust), Grain Processing, and Crystal Semiconductor (in patent damages) show an increased appreciation by courts of the need for rigorous and sophisticated economic analysis, as well as an increased willingness to repudiate all or part of an expert's testimony (now over one third of the time).</p> <p>E. Allen Jacobs, Charles River Associates, Inc. - Dallas, TX</p>
4:10 pm In Dallas Only 0.67 hr	<p><b>Deposing and Cross-Examining Experts</b></p> <p>A discussion of how to prepare for the examination of an expert; tips on locating other testimony given by the same expert; and pointers on how to use an expert to educate the jury.</p> <p>Mark S. Werbner, Sayles   Werbner P. C. - Dallas, TX</p>
4:50 pm In Dallas Only 0.50 hr	<p><b>Equitable Remedies That Recover Money</b></p> <p>Restitution, recession, constructive trust and other equitable remedies may offer viable alternatives to damages. This paper will provide a basic outline of these remedies.</p> <p>Roger James George Jr., George &amp; Brothers, L.L.P. - Austin, TX</p>

## Friday Morning, Oct. 1, 2004

### Presiding Officers:

In Dallas: **Hon. William Royal Furgeson Jr.**, United States District Judge - San Antonio, TX

In Houston: **Max L. Tribble Jr.**, Susman Godfrey - Houston, TX

8:30 am In Dallas Only 0.50 hr	<p><b>Contractual and Other Limitations on Damages</b></p> <p>A survey of contractual, statutory, and common-law limitations on damages under Texas law.</p> <p>J. Roger Williams Jr., Andrews Kurth LLP - Austin, TX</p>
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9:00 am In Dallas Only 0.50 hr	<p><b>Employing and Circumventing the New Business and Future Damages Rule—How Certain Does Certain Have to Be</b></p> <p>A review of the “reasonable certainty” standard creative strategies and concepts including perspectives on lost business opportunity and other hybrid damages theories.</p> <p>Walt Bratic, CRA International, Inc. - Houston, TX Kevin Marshall Sadler, Baker &amp; Botts, L.L.P. - Austin, TX</p>
9:30 am In Dallas Only 0.75 hr	<p><b>Beyond Insurance: Identifying and Recovering Uninsured Business Damages</b></p> <p>A brief look at certain types of business damages that property insurance policies typically exclude, like loss of market share, that may otherwise be recoverable in litigation.</p> <p>Thomas Hal Cook Jr., Zelle Hofmann Voelbel Mason &amp; Gette LLP - Dallas, TX</p>
10:30 am In Dallas Only 0.75 hr	<p><b>Presenting the Damages Case to the Jury: Voir Dire to Verdict</b></p> <p>Technologies and design concepts for effectively presenting a damages case to a jury. Discussion will include recommendations regarding hardware and software.</p> <p>Stephen Ferris Malouf, Law Ofc Stephen F. Malouf - Dallas, TX Xavier Rodriguez, US District Court - San Antonio, TX</p>
11:15 am In Dallas Only 0.75 hr	<p><b>An Exemplary Tale of Punitive Damages: How to Bust the Cap without Getting Busted on Appeal and How to Bust the Chops of a Cap Busting Plaintiff</b></p> <p>Prosecuting and defending a punitive damage case at trial and on appeal, emphasizing the changes wrought by HB4. How to prepare the jury charge in a punitive damage case, including the jury questions that remove the cap on the amount of punitive damages that may be recovered; the problems of the clear and convincing standard of proof in the trial and appeal of a punitive damage case; and the implications of the U.S. Supreme Court opinion in Campbell v. State Farm in every punitive damage case.</p> <p>Deborah G. Hankinson, Law Offices Of Deborah Hankinson PC - Dallas, TX Thomas E. Kurth, Haynes &amp; Boone LLP - Dallas, TX Philip Kent Maxwell, Law Offices Of Philip K. Maxwell - Austin, TX</p>

## Friday Afternoon, Oct. 1, 2004

### Presiding Officers:

In Dallas: **Hon. William Royal Furgeson Jr.**, United States District Judge - San Antonio, TX

In Houston: **Max L. Tribble Jr.**, Susman Godfrey - Houston, TX

1:15 pm In Dallas Only 0.75 hr	<p><b>Proportionate Responsibility and Responsibility of Third Parties</b></p> <p>Understanding the complex rules—old and new—as they affect the value and collectability of damage awards.</p> <p>James B. Sales, Fulbright &amp; Jaworski - Houston, TX Alan Edward Wright, Baker Botts LLP - Dallas, TX</p>
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2:00 pm In Dallas Only 0.50 hr	<p><b>Special Damages Considerations in Patent Cases—A Guide for General Litigators</b></p> <p>A discussion of the special rules, including the Georgia-Pacific factors, that are used in the calculation of damages in patent and other intellectual property cases.</p> <p>Brett C. Govett, Fulbright &amp; Jaworski - Dallas, TX  Robert S. Harrell, Fulbright &amp; Jaworski - Houston, TX</p>
2:30 pm In Dallas Only 0.00 hr 0.25 hr ethics	<p><b>Maximizing and Minimizing Damages for Legal Malpractice Claims</b></p> <p>Damages in legal malpractice claims are sometimes treated as tort damages (as in negligence), sometimes as other kinds of tort damages (as in fraud), and sometimes as contract damages. The theory of damages in cases against lawyers is not coherent, and can be complicated by equitable claims. This session offers a practical guide to litigating these claims.</p> <p>Michael Sean Quinn, Quinn Hayes &amp; Quinn - Austin, TX</p>