

OCEAN TOMO

# FINANCIAL DAMAGES



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Litigants and their counsel have a number of options when engaging financial expert and litigation support services. For more than 30 years, Ocean Tomo professionals have been at the forefront of damages analysis.

Our financial expert professionals have industry-leading experience across all types of disputes and are particularly skilled in the determination of damages. Decades of experience by our top financial experts benefits clients when considering the complex financial data, qualitative facts, supporting testimony, and damages-related case law that are pertinent to a case involving potential economic damages.

## Financial Damages Testimony Experience

Determining with reasonable certainty the measures of economic harm requires the evaluation of theories of damages, and of causation issues and the ability to create and measure alternative economic scenarios. Among the many variables to be analyzed are:

- » determination of marginal/incremental costs
- » projections of future cash flows
- » use of appropriate discount and capitalization rates
- » but-for world comparisons

Our experts have testified regarding virtually all damage elements, including, among others:

- » accelerated market entry
- » commercial success
- » corrective advertising
- » creditor allocations
- » future cash flows
- » incremental cost damages
- » & future lost profits
- » price erosion and suppression
- » reasonable royalties
- » unjust enrichment

Our evaluation of damages elements have related to a wide range of agreements, transactions, arrangements and circumstances, including, but not limited to the following:

- » auditor malpractice
- » breach of contracts
- » compensatory damages
- » deepening Insolvencies
- » diminution in value
- » financial statement misstatements
- » fraudulent transfers
- » intellectual property infringement
- » irreparable harm
- » post purchase price disputes

Our financial damages experts have or continue to serve on leading thought leadership think tanks, professional associations, and related economic damages committees including, the AICPA's Economic Damages Advisory Panel, the Damages Subcommittee of the Expert Witness Committee of the American Bar Association's Section of Litigation, the IPO Damages & Injunctions Committee, and the Sedona Conference FRAND International Working Group.

# Featured Engagements

For expertise specific to accounting, financial reporting, and internal controls, and economic damages, Ocean Tomo has no peer. Our services are built upon more than three decades of experience in the most rigorous venues – state, federal, and international courts – and spans more than 150 different industry segments. Because our past success provides the best indication of our capabilities, we are proud to feature a few representative engagements and encourage potential clients to seek references from both past clients and opposing counsel.

## Breach of Contract

On behalf of the U.S. Department of Justice, provided analysis and expert testimony in several engagements defending the Department of Energy against breach of contract claims involving hundreds of millions of dollars related to the costs associated with the storage of spent nuclear fuel.

## Idenix Pharmaceuticals Inc. et al. v. Gilead Sciences Inc.

Ocean Tomo provided deposition and trial testimony related to patent infringement damages. On December 15, 2016 a Delaware jury awarded Ocean Tomo Managing Director, Andrew Carter's claim for 10% (\$2.5B), resulting in the largest patent verdict in history, at the time.

## Hurricane Katrina Losses

Engaged to critique an assertion of consequential damages that were allegedly incurred in connection with a delay in the reconstruction of a building complex that was destroyed by Hurricane Katrina, including an assessment of alleged increased construction costs as well as calculations of alternative measurements of financing costs and investment income.

## Centripetal Networks, Inc. v Cisco Systems, Inc.

Centripetal Networks, Inc. retained Ocean Tomo to provide expert opinion and testimony in conjunction with Centripetal's allegation of patent infringement of their cybersecurity technology by Cisco Systems, Inc. Centripetal called two economic witnesses at trial. The first presented an accounting of the apportioned revenues accused of infringement as well as the applicable reasonable royalty rate. Ocean Tomo's CEO James E. Malackowski testified as the plaintiff's final witness and addressed the options Centripetal held pre-infringement for monetizing its proprietary technology, including through licensing, commercializing or selling the asserted patents. Mr. Malackowski then addressed the adverse impact of Cisco's infringement on Centripetal's ability to realize the true value of its innovations. This evidence was presented to both put the damages claim into context and provide an economic foundation for Centripetal's claim of irreparable harm.

Following a twenty-two-day bench trial and hearing on damage evidence, the Court returned a decision on both past damages and interest totaling \$1.9 Billion (\$1,903,239,288) as well as future royalties, in a range of \$700 Million (\$754,701,723) to \$1.3 Billion (\$1,3050,345,753).

## Agricultural Product Damages

Engaged by counsel in defense against claims related to damages involving genetically altered agricultural products. Deposition and arbitration testimony provided.

## SecurityPoint v United States Government

SecurityPoint Holdings, LLC retained Ocean Tomo to opine on economic damages in conjunction with alleged patent infringement claims against the Transportation Security Administration (TSA) related to a system of recycling trays through security screening checkpoints by use of movable carts.

On August 31, 2021, the United States Court of Federal Claims issued an opinion containing one of the largest, if not the largest, damages award ever against the United States. Judge Eric G. Bruggink found the TSA's use of carts to move around trays at airport security screenings would cost the agency 2 cents for every passenger, dating to 2008, as the agency was infringing a SecurityPoint patent. The total amount owed by the government was calculated at just under \$133.8 million. Ocean Tomo Managing Director James E. Malackowski opined as to the damages in the case and found evidence that the TSA had gone through over a decade of failed efforts at moving bins around quicker and more efficiently before it began using SecurityPoint's method as outlined in its' U.S. Patent No. 6,888,460.

## Auditor Compliance for Bermuda Liquidator & UK Counsel

Engaged by Bermuda liquidator and its U.K. counsel to assist in evaluation of compliance by auditors with generally accepted auditing standards and assessment of whether financial statements were prepared in accordance with appropriate accounting practices. Issues included loss reserve adequacy, reinsurance assets and internal control deficiencies.



### CONTACT

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Ms. Avery provides expert witness testimony and leads major dispute resolution engagements, providing forensic accounting and expert witness services in high profile litigations. She is responsible for leading the Financial Expert Services group.



### CONTACT

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Ms. Keelan's efforts at Ocean Tomo are concentrated in the practice of business development, sales relationship growth and maintenance within the Financial Expert group and Valuation practices.



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## About Ocean Tomo

Established in 2003, Ocean Tomo, LLC provides Financial Expert, Management Consulting, and Advisory services related to intellectual property (IP) and other intangible assets; corporate accounting investigations; regulatory and reporting obligations; solvency and restructuring; and contractual or competition disputes.

Practice offerings address economic damage calculations and testimony; accounting investigations and financial forensics; technology and intangible asset valuation; strategy and risk management consulting; mergers and acquisitions; debt and equity private placement; and IP brokerage.

Our services are built upon more than three decades of experience in the most rigorous venues – state, federal, and international courts. Our financial, market, and technical experts provide a unique understanding of the contributory value of proprietary innovation. This is the cornerstone of our business. This insight permeates every practice and client engagement.

Collectively, Ocean Tomo professionals have:

- Completed over 1000 engagements, including over 300 valuation and 500 financial damages expert testimony engagements;
- Consulted and provided expert testimony on some of the highest profile matters over the past decades;
- Successfully closed hundreds of IP sale transactions with a cumulative transaction value well in excess of \$1 billion; and
- Originated more successful IP monetization solutions than any other firm, including creation of the world's oldest and most successful live patent auction.

Our track record of results spans more than 150 different industry segments. Because our past success provides the best indication of our capabilities, we are proud to serve more than 80% of the AM Law 100® and encourage potential clients to seek references from past clients.

Intangible assets comprise 90 percent of business value but are also subject to significant impairment due to enterprise and regulatory compliance risk. Ocean Tomo assists clients – corporations, law firms, governments, and institutional investors – in realizing Intellectual Capital Equity® value broadly defined.

Headquartered in Chicago, Ocean Tomo has offices in Greenwich, Houston, Jacksonville, Reston (DC Metro), San Francisco, and Shanghai. Subsidiaries of Ocean Tomo include Ocean Tomo Investment Group, LLC, a licensed broker-dealer under Federal and State securities law (brokercheck.finra.org Broker Check CRD #: 172912), OTI Data Networks, LLC and Patent Marking, LLC.