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Discovery First? or Damages First?

When to quantify damages is an important tactical decision.

Option One: Have an expert quantify the damages based on the productions and transcripts; or

Option Two: Have an expert prepare a preliminary quantification of the damages based on the information available and reasonable assumptions. Share this preliminary report with the other side.

The primary implications of these two options are as follows:

Option One:

- Provides for a more final report;
- Delays expenditures on the damages expert; and
- Reduces the likelihood of having more than one report prepared on damages.

Option Two:

- Can be used by the client and counsel to calibrate the time, energy and money to be devoted to the discovery process, and make discoveries more focused on the relevant issues;
- Can provide both sides with a clear understanding of the quantum at issue, and the key issues;
- A preliminary report can motivate the other side to counter the assumptions in the report by providing documents or testimony; and
- Can drive settlement earlier in the process.

Get my assistance in quantifying damages, whatever your trial tactics