

Rebecca Conoulty, Managing Director, Sapere Forensic

BIO/SUMMARY

Rebecca Conoulty joined Sapere Forensic & Valuation (formerly LECG) in March 2008. She is a Managing Director and co-lead of Sapere Forensic & Valuation and a chartered accountant with more than thirty years' experience, twenty-five of those years in the forensic accounting field primarily focusing on disputes and litigation consulting. Rebecca specialises in calculating complex economic loss claims, disputes involving business valuations including intellectual property, accounting issues and investigations.

Rebecca has provided oral testimony in the Supreme Court of NSW and the Administrative Appeals Tribunal and has been instructed as expert accountant as to damages, account of profit, disputes involving business valuations, disputes concerning the solvency of companies and for the purpose of expert determinations. Rebecca has been engaged as a Court appointed referee for both valuation and accounting matters. Her experience includes intellectual property disputes, franchise disputes, class action disputes, disputes relating to injunctions and damages undertakings in the pharmaceutical sector, disputes in the fast food and restaurant industry, telecommunications sector, waste sector, mining sector and the financial services sector.

Rebecca was on the Board of Sapere Research Group Ltd from 2015 to 2023. She has given presentations on technical aspects of intellectual property and class action disputes at major law firms, has organised and hosted round table lunches for major law firms on issues concerning expert evidence and presented at the national forensic accounting conference. Prior to joining Sapere Forensic, Rebecca was a Principal in LECG's Forensic Services Division and prior to that an Associate Director in Ernst & Young's (and formerly Arthur Andersen's) Fraud and Forensic Services practice.

Various representative matters that Rebecca has either been instructed as expert or had a significant involvement in are listed below.

EDUCATION

Bachelor of Business
University of Technology, Sydney

Member, Institute of Chartered Accountants in Australia and New Zealand (**CA ANZ**)
CA ANZ Forensic Accounting Specialist
CA ANZ Business Valuation Specialist

PROFESSIONAL EXPERIENCE – Representative Projects

Disputes involving Business Valuation

- Instructed as expert to value the taxable Australian real property (TARP) and Non-TARP assets of a data centre company;
- Instructed as expert to calculate the diminution in Business value as a result of breach of warranty in a post acquisition dispute for a company in the defence and security industry;
- Instructed as Court appointed referee to value a partnership interest in a business that manufactures tea;
- Instructed as consulting expert in a dispute involving the fair value of the equity of a company producing table grapes;
- Instructed as consulting expert in a dispute concerning the value of illiquid units in a hotel property fund;
- Instructed as expert to determine the market value of a private company involved in residential, retail and leisure property development;
- Instructed as expert in a post acquisition dispute to determine the market value of a records management business and equity with and without a breach of warranty;
- Instructed as expert in a post acquisition dispute to value a quarry and raw materials business;
- Instructed as expert to determine the market value of a parcel of shares in a company involved in trading foreign exchange and other derivative products;
- Instructed as expert to determine the market value of a service station business;
- Instructed as expert to value various Australian and foreign mining entities for the purpose of a tax dispute;
- Instructed as expert in a dispute concerning the value of the Nespresso trademark and IP to an entity and group of cafés' and the damages suffered after its use was withdrawn;
- Instructed as expert to value the shares in a company operating in the sheet metal product manufacturing industry, for the purpose of a minority shareholder dispute;
- Instructed jointly as expert to provide an opinion as to the appropriate methodology for determining the value of the copyright subsisting in certain Pacific Brands (including Bonds, Sheridan and Yakka);
- Instructed as expert in a dispute concerning the valuation of a drilling and blasting company;
- Instructed as expert to value the taxable Australian real property (TARP) and Non-TARP assets of a company with numerous gold mines (ongoing);
- Instructed as expert to determine the market value of certain payment rights referable to agreements made by funds management entities in the healthcare property sector;
- Instructed as expert to determine loss under a no transaction claim which involved valuing a business supplying equipment to the waste industry;

- Instructed as expert to determine the market value of a minority interest in an insurance underwriting business;
- Instructed as expert to value a business in the renewable energy sector with and without certain business agreements in place;
- Instructed as expert to value an animal Vaccine for the purpose of registration requirements;
- Instructed jointly as expert to provide an opinion on certain valuation issues concerning a takeover bid by Hancock Prospecting;
- Instructed as expert to value a firearms business;
- Instructed as expert to value a restaurant business in a family dispute;
- Instructed as expert to value a real estate agency in a family dispute;
- Instructed as expert to value the minority interest in a captive insurance company;
- Instructed as expert to value the equity in a large security company based on certain counterfactual assumptions;
- Instructed as expert in a dispute concerning the valuation of a family law partnership;
- Instructed as expert in a dispute concerning the valuation of a printing and graphics company;
- Valuation of a waste recycling company for the purpose of a tax dispute;
- Valuation of a lithium and tantalum mining company (including the value of business, shares, tangible assets and goodwill) for the purpose of determining the value of taxable Australian real property (TARP) assets;
- Determination of the market value of two parcels of minority shareholdings in the holding company of a listed furniture company sold to a family member;
- Valuation of a company holding software related IP immediately after delisting and prior to a possible sale of that IP to an offshore entity;
- Valuation of software intangible assets sold to an offshore related entity;
- Post-acquisition dispute involving the valuation of a company in the food and beverage industry as a result of alleged misrepresentation (Asahi Holdings (Australia) Pty Ltd & Anor v Pacific Equity Partners Pty Ltd & Ors, FCA VID 87 of 2013);
- Valuation of a major Australian manufacturing company, including its five business divisions, for the purpose of a dispute in the Federal Court involving the Australian Taxation Commission. The valuations were prepared on both a discounted cash flow basis and a capitalised maintainable earnings basis;
- Valuation of a large battery manufacturer for the purposes of calculating the economic loss suffered by it as a result of its reliance upon certain advice, in the period leading to its listing on the ASX;
- Valuation of a holding company both immediately before and immediately after the issue of a preference share for the purposes of a tax dispute;

- Consideration of minority interest and lack of marketability discounts when valuing a parcel of shares in a communications and entertainment company;
- Comparison of the valuation of total property of an Australian pipeline company for stamp duty purposes, with the total assets recorded in the completion accounts of that company. This engagement involved reviewing and verifying the valuation prepared for stamp duty purposes and explaining why that valuation would differ from the assets recorded in the completion accounts;
- Valuation of a major heavy machinery distributor where the distribution agreement with Caterpillar contained a 90-day termination clause;

Intellectual Property Disputes

- Instructed as consulting expert to assist with the election of either an account of profit or damages and to advise on the calculation of each in a patent infringement dispute in the pharmaceutical sector;
- Instructed as expert to calculate an account of profit relating to a patent infringement for a company manufacturing fences and garden beds;
- Instructed as expert to calculate an account of profit arising from copyright infringement;
- Instructed as expert to calculate an account of profit arising from the theft of business confidential information in the real estate industry;
- Instructed as expert to provide an opinion as to damages or an account of profit as a result of the theft of business confidential information in the financial sector;
- Instructed as expert in a dispute concerning the value of the Nespresso trademark and IP to an entity and group of cafés' and the damages suffered after its use was withdrawn;
- Instructed jointly as expert to provide an opinion as to the appropriate methodology for determining the value of the copyright subsisting in certain Pacific Brands (including Bonds, Sheridan and Yakka);
- Calculation of an account of profit and damages for a dispute resulting from patent infringement in the pharmaceutical industry;
- Calculation of the reasonable royalty payable for simulcasting radio broadcasts;
- Consideration of the reasonable royalty payable by Facebook and Google for the use of the intellectual property of tv news broadcaster;
- Calculation of the reasonable royalty payable for the licence to use the name of an Australian rock band;
- Preparation of a report on the methodology that should be used to value the name of an Australian band;
- Calculation of an account of profit arising from patent infringement for a ship building company;
- Calculation of the quantum of damages arising from the infringement of a patent for a data storage device;

- Estimation prior to election as to both the Damages suffered and the amount that would be payable under an Account of Profits arising from patent infringement in the medical device sector;

Economic Loss Disputes

- Instructed as expert to determine the loss as a result of breach of contract for a manufacturer of kitchens;
- Instructed as consulting expert to calculate the value of lost post termination payments due to a retired PwC partner;
- Instructed as expert to calculate the lost gross revenue of a joint venture entity that was part of a PPP, due to the delay in completion of a toll road (ongoing);
- Instructed as expert in a dispute concerning the contract entered into for the operation and maintenance of a major rail network;
- Instructed as consulting expert to calculate the loss suffered by a manufacturer in the construction industry as a result of anti-competitive pricing behaviour (ongoing);
- Instructed as expert in a class action dispute concerning the administration fees included in toll notices issued by Queensland toll road operators (ongoing);
- Instructed as expert to calculate the damages suffered by a Queensland nickel and cobalt refinery resulting from the receipt of insufficient working capital from related companies, resulting in its liquidation (ongoing);
- Instructed as expert by a multinational company in the mining sector to provide opinions on damages and account of profit;
- Instructed as expert to calculate the loss suffered by an actor as a result of childhood abuse;
- Instructed as expert to calculate the economic loss suffered by a group of investment management companies as a result of being de listed from the National Stock Exchange;
- Instructed as expert to calculate the economic loss suffered by a large hotel group as a result of a breach of contract;
- Instructed as expert to calculate the economic loss suffered as a result of misrepresentations made during the acquisition of a mining and quarrying company;
- Instructed as expert to calculate the economic loss suffered by a business as a result of misrepresentations made by the seller of a laser machine;
- Instructed as expert to calculate the economic loss suffered by a financial services company as a result of a breach of contract and departure of one of its employees;
- Instructed as consulting expert to calculate the loss suffered by a company owning various motor vehicle dealerships in a post-acquisition dispute involving alleged misrepresentation;
- Instructed as expert to determine the accuracy of monthly project claims for two major mining projects;

- Instructed as expert to calculate the economic loss suffered by a transport company due to the loss of a Prime Mover;
- Instructed as expert to calculate the economic loss suffered by investors as a result of a share trader allegedly not following the instructions of those investors when managing the portfolios;
- Instructed as expert in a dispute between a principal and contractor with respect to the reimbursable costs incurred on a construction project;
- Instructed as expert to evaluate the economic loss suffered by an aircraft charter company as a result of a faulty engine;
- Instructed as expert to calculate the loss suffered by lot owners and a hotel group due to future building rectification requirements;
- Instructed as expert to calculate the present value of costs required to rectify defects in a dispute between the owners of a strata plan and a developer;
- Calculation of the loss suffered by a large coal and bulk rail transport company as a result of being prevented from entering into various transactions;
- Calculation of the loss suffered by a large fuel supplier as a result of misrepresentations as to fuel branding made by the seller during the acquisition process;
- Calculation of the loss suffered by a chain of hotels as a result of Government actions in response to COVID-19;
- Calculation of the loss of earning capacity arising from an alleged conspiracy to exclude an individual from the demolition sector in Sydney;
- Calculation of loss in a dispute between a distributor and supplier of heating and air-conditioning equipment;
- Evaluation of a claim for lost profits arising from the termination of the franchise agreement between Hungry Jacks and Burger King;
- Evaluation of a claim for lost profits arising from the design and installation of a computer hardware and software system;
- Evaluation of the economic loss suffered by a major heavy machinery distributor due to the termination of its distribution agreement;
- Evaluation of the economic loss of a large battery manufacturer arising from reliance upon certain advice, in the period leading to its listing on the ASX;
- Evaluation of the economic loss of a property developer arising from the incorrect zoning applied to the property by the council;
- Calculation of the economic loss suffered by a company providing liquid waste collection and treatment services as a result of misrepresentations made by an alternative treatment provider;
- Calculation of the economic loss suffered by a telecommunications provider as a result of the publication of an article published in an Australian newspaper;

- Calculation of the loss suffered by a chain of restaurants as a result of the theft of confidential information by a former employee;
- Calculation of damages arising from the alleged failure of a machine in the agricultural sector;
- Evaluation of the economic loss suffered by a petroleum company due to the faulty implementation of an electronic payment system.

Class Actions

- Instructed as expert in a class action dispute concerning the administration fees included in toll notices issued by Queensland toll road operators (ongoing);
- Instructed as expert in a class action dispute concerning alleged overcharge of life insurance premiums;
- Instructed as Review Expert to determine disputes as to damages arising from a pharmaceutical product recall in the pharmaceutical sector;
- Instructed as expert to consider the damages of a class of leaseholders at a Sydney shopping and dining venue;
- Instructed as expert to provide accounting advice relating to a class action concerning medical mesh devices;
- Calculation of the benefit derived by a company in the retirement industry as a result of the introduction of certain residential contracts;
- Consideration of damages incurred by a class of investors who acquired Toyota vehicles;
- Consideration of damages incurred by a class of investors who acquired VW, Audi and Skoda vehicles as a result of misrepresentation of diesel emissions;
- Consideration of damages incurred by a class of investors in a structured finance company due to the misclassification of current debt;
- Valuation of an Australian company providing retail property ownership and management services for the purpose of a class action dispute;
- Analysis of the movement in analyst valuations of an Australian property company for the purpose of a class action dispute;
- Calculation of the loss incurred by business owners as a result of the failure of the Governments Home Insulation Project;
- Calculation of damages in an investor class action concerning margin lending activities;
- Consideration of accounting and stock valuation issues for an investor class action against a company in the wine industry;

With respect to various class action matters, the Sapere team are experienced in preparing calculations that estimate damages at a preliminary stage using various methodologies such as the net purchases methodology and further applying a first in first out methodology or a last in first out methodology when performing the calculations. Matters where the Sapere team have

prepared loss estimates include the Allco class action, Forge class action, Sirtex class action, Quintis class action and another confidential ongoing matter.

Accounting, Fraud and Professional Negligence Disputes

- Instructed as court appointed referee in a dispute between the partners in a property development company. Instructed to determine the partnership accounts and the partner capital accounts;
- Instructed as expert to calculate the damages suffered by a marketing company resulting from a fraud by one of its employees including tracing the proceeds of the fraud between bank accounts to determine the ultimate use of the funds;
- Instructed as expert to determine the accuracy of monthly project claims issued by construction companies for two major mining projects;
- Instructed as expert to analyse the accounting records of a construction company in order to quantify reimbursable costs under a construction contract;
- Instructed as expert in a dispute between an investor and a development company. Dispute concerned the profit that ought to have been recorded by the developer and the investigation of related party transactions;
- Instructed as expert to provide an opinion on how certain funds were received and applied by a unit trust, development company and construction company including the analysis of intercompany loan accounts;
- Instructed as expert to advise on accounting issues surrounding sale of businesses and intercompany loan accounts in a family dispute involving multiple companies;
- Instructed as expert to calculate the profit generated by a partner in a law firm in a dispute between that partner and the firm;
- Instructed as expert in an Expert Determination concerning a post-acquisition dispute. The accounting issues included accounting for leases, revenue recognition and deferred income;
- Instructed as expert in a dispute concerning a number of (more than 20) family companies and trusts and a review of the nature and use of certain related company loan accounts;
- Instructed as expert to provide accounting opinions in a dispute between an insurer and a company providing administration services to industry superfunds. The dispute concerned the correct accounting treatment for prior period errors, revenue and provisions;
- Instructed as expert to provide an opinion on the ability of a company to pay legal fees and damages if required;
- Instructed as expert to give an opinion on the financial position of a company including the analysis of various director loan transactions and the sale of a business and whether the company had the capacity to remit a payroll tax liability;
- Instructed as expert to quantify the amount misappropriated from certain trust accounts and calculate the financial benefit obtained from alleged fraudulent activities;
- Calculation of benefits received and the distributions paid to certain entities and individuals over a nine year period from approximately 70 companies, partnerships and trusts.

- Opinion as to the correctness of a deferred payment adjustment in a dispute between ASIC and a vocational education and training company. Involved considering the revenue recognition accounting standard, prior period error accounting standard and accounting for provisions and subsequent events;
- Consideration of accounting and stock valuation issues for an investor class action against a company in the wine industry;
- Analysis of trading activities and profits and losses made for the purpose of an insider trading case;
- Determination of the source of funding for various expenses and assets including shares. This matter involved tracing the funds through more than ten margin loan and business cheque accounts;
- Assistance on liability and quantum issues in a claim by a manufacturing company against auditors and financial advisers of a failed listed company to which the bank had lent money;
- Assistance on the liability issues in a claim against a major accounting firm relating to the audit of Bond Corporation;
- Assistance on the quantum issues in a claim against a major accounting firm relating to the audit of HIH.

Examples of Pharmaceutical Industry Disputes

- Instructed as consulting expert to assist with the election of either an account of profit or damages and to advise on the calculation of each in a patent infringement dispute in the pharmaceutical sector;
- Instructed as Review Expert to determine disputes as to damages arising from a pharmaceutical product recall in the pharmaceutical sector;
- Instructed as consulting expert in a dispute between the Commonwealth and a pharma company with respect to compensation arising from an Undertaking as to Damages;
- Instructed jointly as expert to prepare a report opining on the relative difficulties in calculating damages or the compensation arising from an Undertaking as to Damages;
- Calculation of damages arising from alleged misleading and deceptive advertising in the pharmaceutical industry;
- The calculation of damages arising from patent infringement in:
 - Otsuka Pharmaceutical Co. Ltd and Anor v Generic Health Pty Ltd FCA NSD 121 of 2012 and 837 of 2015
 - Bayer Pharma Aktiengesellschaft v Generic Health Pty Ltd [2017] FCA 250; and
 - H Lundbeck A/S & Ors v Alphapharm Pty Ltd & Ors FCA NSD 643,644, 645 & 647 of 2014;
- The calculation of an account of profit arising from patent infringement in H Lundbeck A/S & Ors v Alphapharm Pty Ltd & Ors FCA NSD 643,644, 645 & 647 of 2014 ;
- The calculation of compensation arising from an Undertaking as to Damages in:

- Apotex Pty Ltd & Ors v sanofi-aventis Pty Ltd & Ors (FCA NSD 1639 of 2007);
- Apotex Pty Ltd v Wyeth Australia Pty Ltd;
- Alphapharm Pty Limited & Ors v Wyeth & Anor FCA NSD 596/2009;
- Apotex Pty Ltd v AstraZeneca AB & Anor (FCA NSD 673/2011 and 1916/2011);
- Servier ats Apotex Pty Ltd (FCA NSD 51 of 2012); and
- The calculation of damages arising from a breach of contract in a cross claim made by Sandoz Pty Limited in the matter H Lundbeck A/S & Ors v Alphapharm Pty Ltd & Ors FCA NSD 643,644, 645 & 647 of 2014;
- The consideration of the relative difficulties in calculating damages or the compensation arising from an Undertaking as to Damages in Eli Lilly and Company & Anor v Generic Health Pty Ltd (FCA NSD 1902/2013).

Matters where the solvency of a company was considered

- Instructed as expert to provide an opinion as to whether a company in the food and beverage industry was solvent at a particular date;
- Instructed as expert to answer specific questions concerning the solvency of a plastering company;
- Instructed as expert to analyse a group of companies in order to determine whether those companies were likely to have the capacity to pay certain legal fees one year into the future;
- Instructed as expert in a dispute concerning several family companies and trusts and a review of the nature and use of certain related company loan accounts. This matter involved the consideration of whether several of the related companies were solvent and had the capacity to repay the intercompany loans;
- Instructed as expert to give an opinion on the financial position of a company including the analysis of various director loan transactions and the sale of a business and whether the company had the capacity to remit a payroll tax liability. This matter involved the consideration of the solvency of the company based on various scenarios;
- Instructed as expert in numerous disputes concerning the valuation of shares or businesses. These matters involved the consideration of solvency when determining the appropriate valuation methodology. In some of these matters at the valuation date, Administrators were appointed to the company;
- Instructed as expert in a class action concerning a major pharmaceutical company. This matter required the consideration of whether the company has the ability to pay a suggested settlement amount;
- Preparation of a report as to whether the plaintiffs will be able to pay the legal costs of the defendants if ordered to do so. This matter involved both company and unit trust structures. This matter required the consideration of the solvency of the various entities;



OTHER POSITIONS HELD

Jun 15 to Jun 23 Member of the Board of Sapere Research Group
Sep 22 to Current Managing Director, Sapere Forensic
Jul 12 to Aug 22 Director, Sapere Forensic
Jan 11 to Jun 12 Principal, Sapere Forensic (formerly LECG Limited)
May 08 to Dec 10 Principal, Forensic Services LECG Limited
Apr 06 to Apr 08 Principal, Forensic Services, CRA International Pty Ltd
May 02 to Apr 06 Associate Director, Fraud and Forensic Services, Ernst & Young
Apr 99 to May 02 Manager, Litigation Consulting Services, Arthur Andersen
Apr 98 to Apr 99 Portfolio Accountant, Funds Management, Bankers Trust
Mar 93 to Apr 98 Consultant, Audit Division, Deloitte

CONTACT DETAILS

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