



DISPUTE
ANALYSIS &
LITIGATION
SUPPORT
PRACTICE

ABOUT OUR PRACTICE

Cushman & Wakefield's Dispute Analysis & Litigation Support Practice is unique among service providers to the legal and real estate communities. No other litigation support service provider possesses the depth and diversity of experience, technical capabilities, multi-disciplinary personnel, or the vast, firm-wide resources that C&W can apply to high-stakes, real estate-related controversies.

The Dispute Analysis & Litigation Support Practice is known for its thought leadership, high ethical standards, and commitment to service. Practice members are domiciled in most major U.S. cities. Collective experience of the Practice is extensive, involving hundreds of litigated cases, with total claims in the billions of dollars. The Practice has experience in all states and a number of foreign countries. Practice members have testified in federal, state, and municipal courts throughout the United States and have been admitted by those courts as valuation, economic, statistical, financial, and survey research experts, among other forms of expertise. The Dispute Analysis & Litigation Support Practice has unparalleled experience in matters involving damage claims, lost profits, indigenous people's claims, environmental contamination, lease disputes, time series analyses and event studies, best practices assessments, retrospective research as far back as the late 1700s and other forms of customized research, rates of return analyses, economic forecasting and financial modeling, breach of contract disputes, construction defects, insurance claims, complex business and partnership disputes, bankruptcy and restructuring, fraud, and property tax and eminent domain cases. Practice members routinely serve in party-appointed and neutral member arbitration roles.

THE ART AND SCIENCE OF DISPUTE ANALYSIS AND LITIGATION SUPPORT

Sometimes the more things change the more they stay the same. This has been particularly true for many law firms as they seek to deal and work with expert witnesses. Daubert, Kuhmo Tire, the Federal Rules of Civil Procedure, and many changes at state levels have addressed what should be expected of expert witnesses, their testimony, their conduct, and how to deal with evidence rendered by expert witnesses. But many firms, if not most, still encounter the precedents established under old rules and procedures, “experts” who may be expert in a topic but not necessarily the topic of their testimony, and courts that confuse (or are confused) by controversies concerning expert witnesses and the evidence they provide. There are proverbial arguments over whether real estate valuation expertise is an art or a science. We believe both are necessary and have organized our specialty practice around scientific principles, highly skilled individuals, and the art of tying them together within the legal environment. The focus of C&W’s Dispute Analysis & Litigation Support practice is on complex commercial litigation involving property economics issues.

DISPUTE ANALYSIS

Our perspective of dispute analysis is that it normally occurs in the early stages of legal proceedings or when the potential for controversy is high. The function of dispute analysis is to vet case issues, develop a sound posture regarding the real estate components of these issues, and assist the client in preparing decisions as to alternative courses of action. Dispute analysis includes consultation that

will ultimately determine which experts the client needs, not simply the design of future services for our Practice. This is a fundamental difference that separates us from our competitors and is of significant importance to clients when teams must be assembled for the special, and sometimes unusual, requirements of litigation.

LITIGATION SUPPORT

The phase of an engagement that we describe as litigation support is when formal litigation has been initiated. Design of a litigation support program, which also consists of elements of dispute analysis described above, is the direct result of communication with the client and/or legal counsel. Three related but distinct areas of service are available—litigation consulting, expert services and testimony, and trial support.

LITIGATION CONSULTING

Our services as litigation consultants are typically protected by privilege since we are not named as expert witnesses in such situations. In our role as litigation consultants, we assist counsel in identifying key issues, developing case strategies, and recommending experts and expert teams. We also analyze and review relevant documents and technical materials; review deposition and trial testimony; investigate the history of opposing witnesses, including prior testimony and writings; assist in the preparation of lines of questioning and cross-examination; perform literature searches and other research. In rendering such services, we recognize that the complexities of real estate merge with differences among lawyer views and practices and the circumstances of particular case issues.

CUSHMAN & WAKEFIELD RESOURCES

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EXPERT SERVICES AND TESTIMONY

Expert services include testimony, financial modeling, customized research, forensic investigations, best practices assessments, damage calculations, valuation of real property and real property interests, highest and best use analyses, market and feasibility studies, rebuttal reports, geographic information systems (“GIS”) and special mapping capabilities, time series analyses, and the solution of highly individualized problems related to property economics and the full range of property types and geographies.

TRIAL SUPPORT

Many trial support services are similar to services rendered as litigation consultants. In this role, such services are performed without advocacy. Trial support services also include literature searches, preparation of trial exhibits and presentations, assistance in preparing pre- and post-trial memoranda, monitoring the testimony of other witnesses, and otherwise assisting counsel in all phases of the case.

As a line of service of Cushman & Wakefield, the Dispute Analysis & Litigation Support Practice draws on the resources of one of the world’s largest real estate services firms. This provides significant advantages to the client. The national and international market coverage by C&W provides members of the Practice with invaluable insights concerning local property trends and the state of national and global capital markets and business environments. It also provides clients—particularly in bankruptcy and restructuring situations—with access to C&W’s transaction execution capabilities, such as asset and loan sales, leasing capabilities, property management, placement of equity and debt financing.

GLOBAL FACTS

- 90 offices worldwide
- Over 575 valuation professionals
- 115 MAIs
- 56 RICS
- 19 AACIs
- Valuation technology group
- Dedicated portfolio team
- 16 Specialty Practice Groups
- Over 45,000 assignments per year

GLOBAL COVERAGE

Argentina	Japan
Australia	Mexico
Belgium	The Netherlands
Brazil	Poland
Canada	Portugal
China	Russia
Czech Republic	Singapore
Finland	Spain
France	Sweden
Germany	Turkey
Greece	Ukraine
Hungary	United States
India	United Kingdom
Italy	

CASE STUDIES

Breach of Contract

Performed research and estimated damages sustained by a 2,000-acre, master planned community consisting of a residential development, resort hotel, and golf course community in Arizona due to breach of contract of a hotel operator. Research consisted of a study of land prices of planned residential communities built around golf courses with and without a resort hotel and development of an extensive database of such projects state wide.

Event Study and Damages Model

Performed research to determine damages sustained by a Native American nation as a result of deficiencies between market value and actual prices paid by a state for Indian lands in a series of transactions between 1795 and 1830. The land area involved was approximately 250,000 acres. C&W performed highly specialized research and used GIS other special technical capabilities to determine and report its findings.

Rental Reset of Pipeline in a Railroad Corridor

This case involved estimating the market rent of over 1,000 individual pipeline easements in an 1,800-mile rail corridor extending through Texas, New Mexico, Arizona, California, Nevada and Oregon. The expert report was a 4-year undertaking involving special experience and technology, including GIS. The trial, which is in Los Angeles, is expected to last from 2007 through 2009.

World Trade Center Claims

C&W's Dispute Analysis Litigation & Support Practice was involved in a number of arbitrations related to the World Trade Center, including business interruption claims and an environmentally impaired, surviving property.

Event Study Relating to Property Values in Denver and Dallas From 1985 to 1995

Assisted in the preparation of a detailed study of capital flows of major institutional investors in development projects and lenders involved in Denver and Dallas, trends in property values between 1985 and 1995 in both markets, and the relationship of such phenomena to specific properties in each city.

Effects of Hurricane Katrina

Performed research concerning the effects of Hurricane Katrina on the market rent of select department stores throughout Louisiana both before and after the storm.

Environmental Contamination— Alleged Improper Disposal of Radioactive Waste

C&W performed proprietary research of historical home prices in a subject area and a control area to be used in the development of a regression model. The case involved ground water contamination attributable to alleged radioactive contamination.

Best Practices Assessment

Performed a detailed examination of loan files, appraisals, and appraisal review protocols. This case involved the purchase of a large portfolio of mortgage loans and a "put back" provision for those loans that did not conform to specified protocols and procedures as outlined in the originating lender's policy manuals.

Professional Sports Franchise

Retained by a professional sports franchise to assist with negotiation related to the development of a new stadium in a major metropolitan area.

EXPERIENCE OF PRACTICE MEMBERS

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Tax Appeal of the Trans Alaska Pipeline

Testified and provided litigation support for a consortium of oil companies in their appeal of the property tax assessment of the 800-mile corridor in which the Trans Alaska Pipeline is located.

Exxon Valdez Oil Spill

Performed research and analysis, and ultimately testified and provided litigation support concerning the effects on property values along over 2,000-miles of coastline from oil spilled in 1989 from the Exxon Valdez oil tanker in Prince William Sound, Alaska.

Rocky Flats Nuclear Weapons Plant

Performed research and analysis, and ultimately testified and provided litigation support concerning a class action lawsuit concerning the effects of alleged plutonium contamination in a 25-square mile area north of Denver, Colorado, involving around 25,000 residences.

Assessment and Calculation of Damages Involving Breach of an Operating Covenant at Randhurst Regional Mall, Mount Pleasant, Illinois

Examined the influence of the breach of an operating covenant by a major department store and the effect of the department store's going "dark" on the mall's financial performance. We developed a detailed damages model based on a lease-by-lease analysis, which revealed co-tenancy issues and problems related to occupancy costs, renewal probabilities, retail sales of individual stores, and overall desirability of the mall to existing and proposed tenants and shoppers.

Advisory Services Involving Limited Partnership Interest in 1,100 Properties

Provided advice to an institutional lender concerning the wisdom of foreclosing on a limited partnership

interest in 1,100 properties nationwide that was created by a poorly drafted partnership agreement. Services included review of the partnership agreement and financial performance of the partnership, valuation of the property portfolio using a specially developed automated valuation model ("AVM"), and the development of options and recommended courses of action.

Groundwater Contamination

Performed research and analysis, provided litigation support and trial testimony in many ground water contamination cases. Examples include examination of the effects of TCE contamination on 75,000 properties in the Phoenix, Arizona area, 70,000 properties in Burbank, California, and properties in Kankakee, Illinois, and analysis of the effects of alleged disposal of radioactive materials on surrounding property values on Long Island.

Thermonuclear Weapons Testing

Provided consultation to the Nuclear Claims Tribunal in the Marshall Islands in a dispute concerning the effects on property values of U.S. testing of thermonuclear weapons in the 1950s.

Retail Bankruptcies and Restructurings

Provided consultation and valuation-related services to the Creditors' Committee involving the bankruptcies of Montgomery Ward (over 100 properties in 38 states), Ames Department Stores (over 400 locations), Alamo Rental Car, Toys "R" Us, and Kmart.

Land Grantors v. United States

Provided consultation and litigation support with the U.S. Department of Justice in a Congressional referral case relating to the condemnation of hundreds of properties in western Kentucky during World War II for military necessity. Statistical analyses and GIS were used to determine whether compensation at the time was proportional.

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