



## James D. Paskell

### President

Litigation & Liability Management, LLC  
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#### PROFESSIONAL HISTORY

- Navigant Consulting, Inc. (2004 - 2008),  
Director
- Deloitte & Touche, LLP (2002 - 2004),  
Senior Manager
- Navigant Consulting, Inc. (1990 - 2002),  
Principal

#### PROFESSIONAL AFFILIATIONS

- American Bar Association, Associate  
Member (Tort Trial & Insurance, and  
Litigation Sections)

#### EDUCATION

- B.A. Economics and Political Science,  
University of California at Los Angeles

Jim Paskell is President and Founder of Litigation and Liability Management (LLM), LLC. LLM specializes in advising and assisting corporate clients and counsel with financial, accounting, cost and operational management of long tail contingent and other corporate liabilities for litigation and regulatory disputes, insurance claims, financial planning and reporting, transactions and other business needs. For over twenty years, Mr. Paskell has provided economic and cost accounting analyses, project management services, and general claims consulting services on a variety of litigation, environmental, and insurance coverage matters for clients in a variety of industries across the United States. Prior to founding LLM, Mr. Paskell was a Director in the Insurance and Claims group of Navigant Consulting in San Francisco, California.

#### PROFESSIONAL EXPERIENCE

» Provided economic and cost accounting analyses, project management services, and general claims consulting for clients in the electric utility, oil and gas, manufacturing, insurance, transportation, waste, and other commercial industries, including assistance with dispute mediation, settlement negotiations and Federal and State Court proceedings.

» Managed numerous commercial damages cases involving accounting and economic damage issues such as lost profits, incremental profits, lost sales, mitigating costs, account reconstruction, and allocation of costs amongst multiple parties. Also performed numerous analyses and studies related to environmental and other toxic tort matters, including liability assessments, mass balance analyses, operational reviews, and cost and production reconstruction and segregation studies.

» Projects have involved preparing, submitting and negotiating insurance claims for business interruption and property damage, and various third-party claims, including environmental damage, asbestos bodily injury, and multi-party product liability.

*Small firm value. Big firm benefits.*

## REPRESENTATIVE ENGAGEMENTS

### Commercial Damage Litigation

- » Designated damages expert by counsel for the owner/operator of a tank farm in two related multi-party property insurance litigation matters in Federal Court in Michigan. Client suffered significant business interruption and property damage losses due to a tank rupture which released 3 million gallons of liquid asphalt into the facility. In attempting to recover the asphalt, a fire broke out at the facility. Litigation is ongoing with the insurer and multiple third parties with potential liability. Efforts include calculation of the full extent of economic damages while working with counsel to recover from the insurer under the property policy and from other potentially liable parties through direct action and the carrier's subrogation litigation. Deposition testimony has been completed in one matter.
- » Designated damages expert by counsel for a large print and binding operation in a multi-party property insurance coverage litigation in State Court in Ohio. Client suffered significant business interruption and property damage losses due to flooding caused by a pipe burst at the adjacent property. Business interruption issues in this matter are unique because the client alleges moisture infiltrated the circuitry of the client's machinery, causing many latent but persistent production delays. Litigation is ongoing against both the insurance carrier for coverage and the adjacent property owner for liability for the flood. Trial is anticipated in early 2012.
- » Providing expert witness support for counsel for a machinery manufacturer in evaluating lost wages and business income for various claimants in asbestos tort matters. Our analyses include calculation of lost income from historical wages or, in the case of one multi-million-dollar income plaintiff, long-term business income, through a compensatory loss model. In addition, we have advised counsel on potential settlement values based on verdicts in similar cases with similar characteristics. Client has been able to quickly settle these matters on favorable terms.
- » Appointed as damages expert for a commercial real estate developer in litigation against prior tenant who left significant contamination and other toxic waste in the building, preventing it from being leased for several years. Claim was complicated by sharp downturn in real estate market as remediation activities were underway and space could not be rented.
- » Retained by a large investor-owned utility to analyze damages in a large breach of contract dispute. Plaintiffs alleged lost profits related to the curtailment of energy purchases by the utility. Our work included a detailed analysis of the utility's operational procedures and history, a gap analysis of the actual operating history and curtailment decisions, calculation of damages, and direct support for expert witness testimony at deposition and trial.
- » Retained by counsel for a large aerospace contractor to provide discovery and trial support for a commercial litigation. Plaintiffs sought \$500 million in damages, alleging breach of contract, fraud, and engineering and design negligence in the conversion of 10 passenger aircraft to a cargo configuration. Supported defendant's expert analysis and testimony with analytical document databases of design and fabrication specifications, change orders, compliance checks, and other engineering documents to support counsel and subject matter experts for deposition and trial. The jury returned a unanimous defense verdict for our client, awarding no damages.

### Insurance Coverage – Property and Liability

- » Successfully negotiated and resolved a property damage and business interruption claim for a law firm that suffered property damage and business interruption due to flooding. Calculation of business interruption loss was complicated by the fact that the insured's revenue was based on billable hours. Our analysis uncovered an analytical flaw in the insurer's calculations which, once corrected, resulted in recovery of almost four times the insurers' original offer. In addition, our claim preparation fees were covered by the policy.

- » Successfully negotiated and resolved insurance claim for theft coverage for a large heavy-equipment leasing company. Client suffered significant losses stemming from embezzlement of funds by an employee. After internally-developed claim was denied by the insurer, mined enterprise financial software and historical accounting transactions to document the liability and prepared and presented an updated claim to carrier. Ultimately negotiated a settlement for an amount 50% higher than internal claim valuation and also recovered 100% of claim preparation fees.
- » Assisted a national real estate development company with the calculation and preparation of its property damage, extra expense, and business interruption claim stemming from Hurricane Ike. The claim involved several million dollars of damage to an apartment complex and associated loss of rental income. Client was able to repair the property and recapture rental income sooner than other affected properties in the area while also obtaining a favorable outcome on its business interruption claim. In addition, a significant disagreement regarding the calculation of property deductible was resolved favorably for our client and our consulting fees were recovered in full under the terms of the policy.
- » Assisted seven companies in quantifying business interruption, contingent business interruption losses, and extra expenses resulting from damages caused by Hurricane Katrina on the Gulf Coast. Work included analyzing proximate and extended economic losses caused by the storm and subsequent events, allocating costs to coverage based on terms and conditions in the policies, preparing and submitting claims to insurers, and directing negotiations with the insurers and their adjusters to settle claims. Combined, clients ultimately recovered over \$70M dollars in business and contingent business interruption losses. In addition to common claim measurement and calculation issues, these claims included several additional contentious issues which were addressed in the preparation and negotiation of the claims, including:
  - Definition of the Period of Restoration and Extended Period of Indemnity for clients suffering extended delays repairing property damage and other clients with contingent BI losses projected to last for several years.
  - Application of coverage(s), exclusions, limits and deductibles to multiple occurrences.
  - Law & Ordinance and Civil Authority impacts and coverage(s).
  - “Make-up” sales.
  - Newly-started businesses, including enterprises that were not yet profitable.

**Work was performed for the following businesses/industries:**

- Hospitality
  - Commercial Real Estate Development
  - Retail
  - National and Local Media Advertising
  - Internet Sales
  - Direct Marketing
- » Assisted three major oil companies in the preparation, presentation and negotiation of liability insurance claims for past and future environmental and asbestos liabilities. Efforts included valuation of environmental liabilities, allocation of liabilities to insurance coverage, development of claim values and preparation, presentation and negotiation of claims to insurers. Clients recovered over \$400 million in costs.

- » Assisted in valuing over 9,000 asbestos claims from a bankrupt insulation distributor/installer. Work included assessment of liability and exposure parameters, accumulation, review and quantification of existing claims, estimation of value for potential future claims, review of insurance policy detail to assess coverage and potential defenses, historical analysis of insured's operations, and allocation of quantified costs to insurance coverage. Work product was used to ultimately settle the claims with approval by the bankruptcy court.
- » Assisted in the evaluation of over 4,000 asbestos claims for a West Coast distributor and installer of refractory brick products. Efforts included a qualitative evaluation of job site histories and profiles for purposes of determining the nature and parameters of exposure. These profiles were then to be used for determination of "products" versus "non-product" liability exposure and subsequent allocation of damage amounts to coverage.

### Environmental Litigation and Related Matters

- » Retained as allocation expert by the steering committees of two separate large hazardous waste landfills in California to perform allocation of site cleanup costs, as well as discovery, settlement and litigation support for cost recovery actions. Efforts included allocation of remediation costs to 20,000 parties, analytical and cost support for contribution claims against non-participating parties, analysis of "ability-to-pay" issues, development of claims for waste contribution and settlement, and tracking of claim responses and settlements. One action is on-going, while the other has resulted in the recovery of over \$100 million in site remediation costs for our client and the U.S. EPA.
- » Assisted a real estate partnership with a review and analysis of State of California and US EPA oversight and response costs at a Superfund site in California. The site is a former gold mine which was subsequently developed into residential real estate. Efforts included analysis and verification of direct costs, review of indirect cost calculations, and analysis of costs against progress billings. Also performed allocation of cost billings to responsible parties at the site based on various allocation factors, including prior agreements with the oversight agencies, geographic location of contamination, remediation volumes and percentage of site ownership. Matter was successfully settled with the State and EPA.
- » Assisted a manufacturing company with liability assessment in a multi-party perchlorate contamination case in Southern California. Work included a "mass-balance" analysis of historic accounting and operating records to quantify purchase, usage and disposal of product for purposes of assessing liability. Also performed a detailed accounting analysis of historic corporate successorship to resolve alleged corporate liability. Matter was successfully settled with the State oversight agency.
- » Performed an independent review and analysis of engineering expert's remediation plan and associated damages analysis for a large real estate development company in Southern California. The client owned and leased the property to an oil company and was seeking clean-up costs for the remaining oil waste in order to commercially develop the property. Efforts included a comprehensive review of the remediation plan and associated drawings and site characterizations, verification of the underlying volume and cost data, and systematic testing of the veracity of the data, underlying model assumptions, and mathematical calculations for consistency and accuracy.
- » Retained by counsel for a major oil company to assist in analysis of potential regulatory penalties related to air releases at the company's refinery. Our work included the quantification of potential penalty amounts using the EPA "BEN Model." Through analysis of company records and interviews of appropriate refinery personnel, we were able to calculate and verify significantly lower penalty amounts than demanded by the oversight agency. The case was resolved with a very favorable settlement for our client.
- » Performed litigation support for a large utility in a \$300 million class action toxic tort lawsuit alleging exposure to chromium from our client's natural gas pipeline facilities. Efforts included assistance in initial case assessment and strategy, historical fact-finding and continued issue and witness support through trial.

- » Assisted a large multi-national manufacturing company with due diligence and liability estimation for over 100 operating and common disposal sites across the US. Our work included detailed review of engineering and cost documentation for current and planned environmental remediation activities at each site, regulatory oversight and site closure/post-closure costs for appropriateness with applicable regulations and accounting procedures, testing of total company environmental litigation liabilities and identification of all known and unknown remediation sites, and estimation of total company environmental liabilities over the next 50 years. Our work is being used by Senior Company management for strategic operating decisions and to support potential transactional solutions.

## PUBLICATIONS

### Authored or Co-Authored the following:

“Business Interruption Claims 101: Issues Regarding the Measurement, Calculation and Negotiation of Business Interruption Claims”, *ABA TIPS ICLC Mid-Year Meeting*, February 2010.

“Analyzing Settlements and Negotiating Complex Liability Insurance Claims, A Financial Consultant’s Perspective”, *The Brief (ABA Section of Tort, Trial and Insurance Practice)*, Fall 2006 Vol. 36, No.1.

“Recent Issues in the Allocation of Asbestos Claim Costs to Insurance Policies”, *Coverage (ABA Section of Litigation, Committee on Insurance Coverage Litigation)*, March/April 2005.

“Creative Settlements in the Complex Insurance Coverage Context”, *John Liner Review*, Spring 2004.

## PRESENTATIONS

“Business Interruption Claims: Measurement and Calculation Methodologies and Claim Preparation Issues Facing Policyholders”, CLE presentation for *New Jersey Bar Association Insurance Law Section*, March 16, 2011 and CLE presentation for *Philadelphia Bar Association Insurance Law Committee*, February 9, 2011.

“Proper Measurement of Damages in Lost Profits, Business Interruption and Other Commercial Litigation”, *Indianapolis Bar Association*, June 9, 2010.

“Ins and Outs of Business Interruption Claims”, *American Bar Association, Tort and Insurance Practice Section, Insurance Coverage Litigation Committee Mid-Year Meeting*, February 27, 2010.

“Transferring Mass Tort Risks: Financial Considerations and Potential Capital Market Transactions”, *American Bar Association, Tort and Insurance Practice Section, Toxic Tort and Environmental Law Committee Spring Meeting*, February 16, 2007.

“Creative Settlements in Complicated Coverage Cases”, *American Bar Association, Tort and Insurance Practice Section, Insurance Coverage Litigation Committee Mid-Year Meeting*, February 21, 2004.