

# **LITIGATION RISK ANALYSIS: MORE THAN ROLLING THE DICE**

**Hugh Gottschalk  
Wheeler Trigg Kennedy**

## Litigation Risk Analysis: *More Than Rolling the Dice*



Hugh Gottschalk

Wheeler Trigg Kennedy LLP

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## Basic Probability Analysis



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## Basic Probability Analysis in Litigation

- Filing of Complaint:  
"They've got no case. This one's a winner."
- Discovery:  
"It's a tough case, but there's a good chance will win."
- Courthouse Steps:  
"There's a significant risk that Plaintiffs will win. We should think about settling."

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### What's the Problem?

- The facts developed in discovery reduced the likelihood of a favorable outcome
- You need a trial lawyer, not a litigator
- Your method of evaluating risk is too vague

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### Descriptions of Uncertainty

	%
There is a good chance	_____
In all likelihood	_____
There is a definite possibility	_____

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### Uncertainty

	Low (5% Below)	High (5% Above)
Year Attila the Hun died	_____	_____
Auto Thefts in 2004	_____	_____
Population of Turkey	_____	_____

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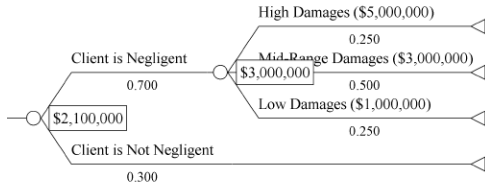
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## Basic Risk Tree – Negligence Case




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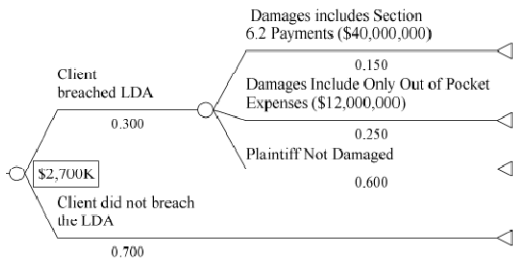
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## Joint Venture Breach




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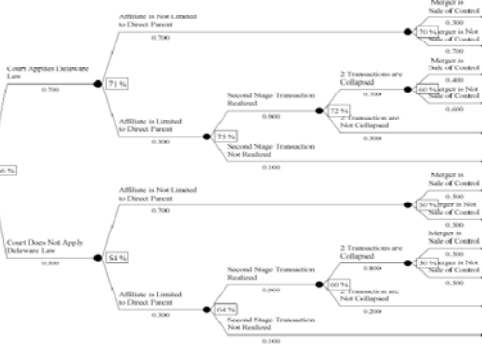
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## Joint Venture Termination




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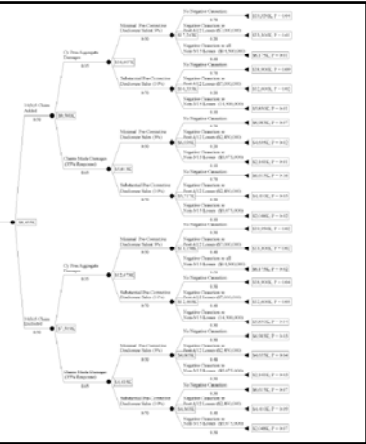
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10(b)5  
Litigation




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**Building a Tree –  
Evaluating the Case**

- Accounting malpractice case
- Company president embezzled \$4,000,000 to \$7,000,000
- President went to jail and company sued accountants for not discovering embezzlement in their audit

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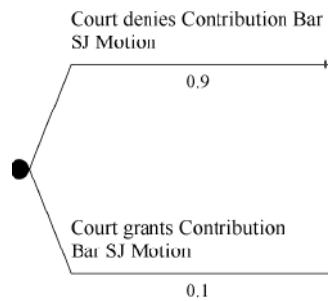
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**Building a Tree –  
Evaluating the Case**




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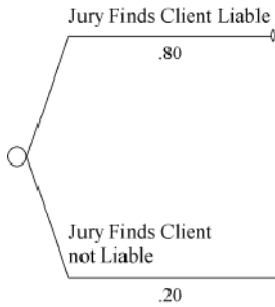
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**Building a Tree –  
Evaluating the Case**



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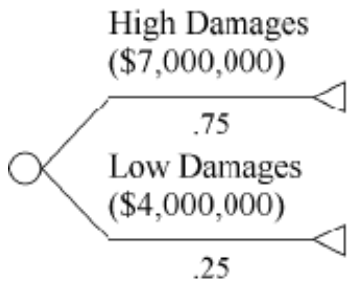
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**Building a Tree –  
Evaluating the Case**



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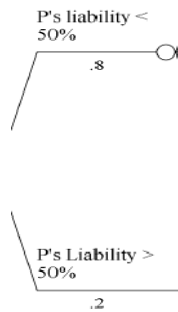
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**Building a Tree –  
Evaluating the Case**



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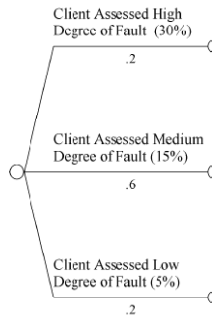
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## Building a Tree – Evaluating the Case




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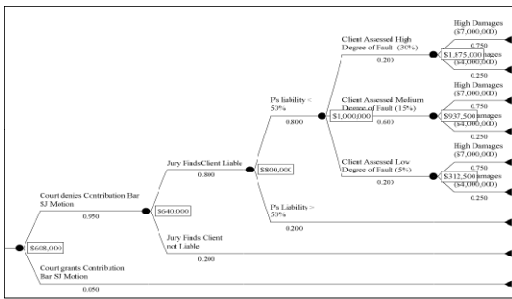
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## Overall Risk Tree/Case Evaluation




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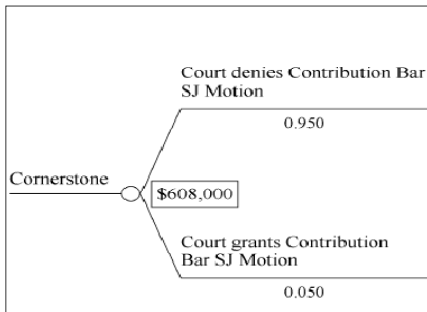
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## Overall Risk Tree/Case Evaluation




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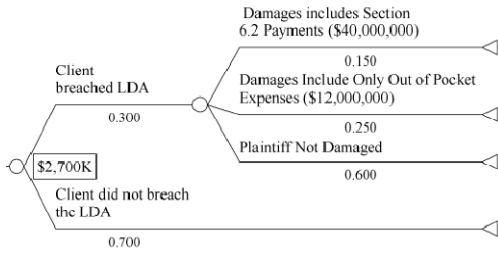
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## Joint Venture Breach




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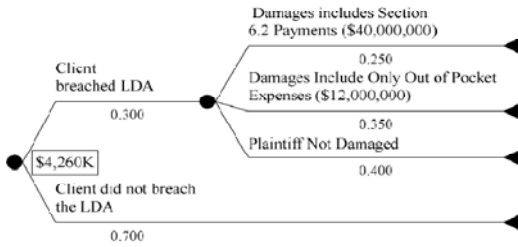
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## Joint Venture Breach - II




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## Quantitative Risk Assessment

### Cons

- Technical Proficiency/Infrequent Use
- Benefit to Client, Not Outside Counsel
- Artificial Accuracy

### Pros

- More Consistent Risk Assessment
- Better Communication re Issues
- Facilitates Early Case Evaluation and Settlement

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## HUGH Q. GOTTSCHALK

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(303) 244-1858

### Practice Areas

Commercial  
Intellectual Property  
Product Liability  
Professional Liability  
Securities  
Toxic Torts

### Industries

Computer Hardware  
Construction Equipment  
Energy  
Financial Services  
Industrial Equipment  
Manufacturing  
Pharmaceuticals  
Professional Services

### Education

University of Colorado, J.D.,  
1979

Articles Editor, *University  
of Colorado Law Review*  
Finalist, Rothgerber Moot  
Court Competition  
Selected to Law School's  
National Moot Court  
Team

Northwestern University,  
B.S., Biochemistry, 1975

My practice focuses on commercial, product liability, and toxic tort litigation. I have always enjoyed the trial practice because it provides me with the opportunity to present complex and technical information to a jury who are almost always trying to do the right thing. Overcoming all of the technical arguments and issues and convincing a jury that the right thing to do is to render a verdict for my client is endlessly challenging and extremely satisfying.

### REPRESENTATIVE CASES & CLIENTS

Golan v. Ashcroft  
Castle Rock v. Conoco  
Stearns v. Jetway  
Camall v. American Home Products  
ConocoPhillips  
CoPIRG v. Conoco  
Cornerstone v. BDO Seidman LLP  
Denver v. Conoco  
Denver v. Coors  
Diamond Shamrock v. Conoco  
Duke Energy  
FMC, Regional Trial Counsel Team  
Kamp v. FMC  
Laser Tech v. BDO Seidman LLP  
Rieder v. Hallmark  
Scott v. Conoco  
Sonoco Products Company v. Newark Paper Products  
Thistle v. Tenneco  
Union Pacific v. International Insurance

### ADMITTED TO PRACTICE

Colorado, 1979  
United States District Court  
District of Colorado, 1979  
Eastern District of Michigan, 2000  
United States Court of Appeals  
Fifth Circuit, 1998  
Tenth Circuit, 1980  
United States Supreme Court, 1982

