

How to determine damages

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What are Damages?

Damages

Described as pecuniary compensation, obtainable through success in an action for a wrong which is either a breach of contract or a tort, the compensation being in the form of a lump sum which is awarded unconditionally.

Measure of damages (Quantum):

“that sum of money which will put the party that has been injured, or suffered, in the same position as he would have been if he had not sustained the wrong...”

Defined by Lord Blackburn in *Livingstone v Rawywards Coal Co* (1880)

Valuation approaches

Asset based

-Book value

-Replacement cost

Market Approach

Income approach

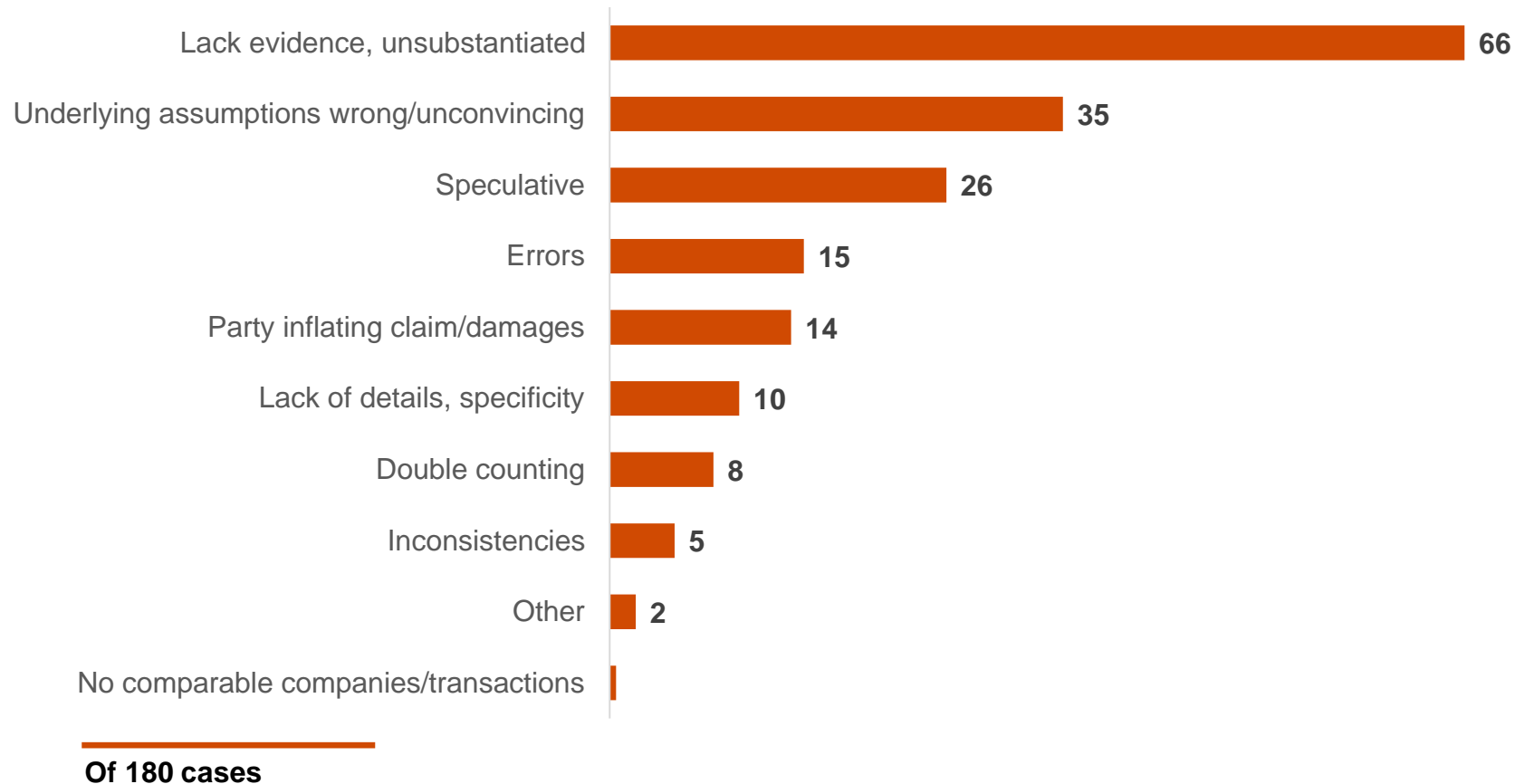
Sunk costs

Method	Advantages	Disadvantages
Income based	Theoretically accurate	Subjective Professional judgments
Market based	Use of public sources	Comparable data Market distortions
Asset based	Understandable Theoretically objective	Business potential

Evidence is important

Based on the analysis of 180 awards from arbitration proceedings administered by the ICC performed by Queen Mary University of London and PwC

Common Tribunal criticisms of valuation methodologies are:



Over half of all cases attracted one of the top three criticisms

Key Tips on Evidence collection

- ✓ **Start collecting evidence of losses sooner rather than later;**
- ✓ **Set up internal processes so that the information you need to prove the loss is stored in one place**
- ✓ **Empower a person / team to drive the data collection and define data collection rules and procedures. It is of great importance, particularly in the remote working environment.**

What evidence to collect?

Financial data

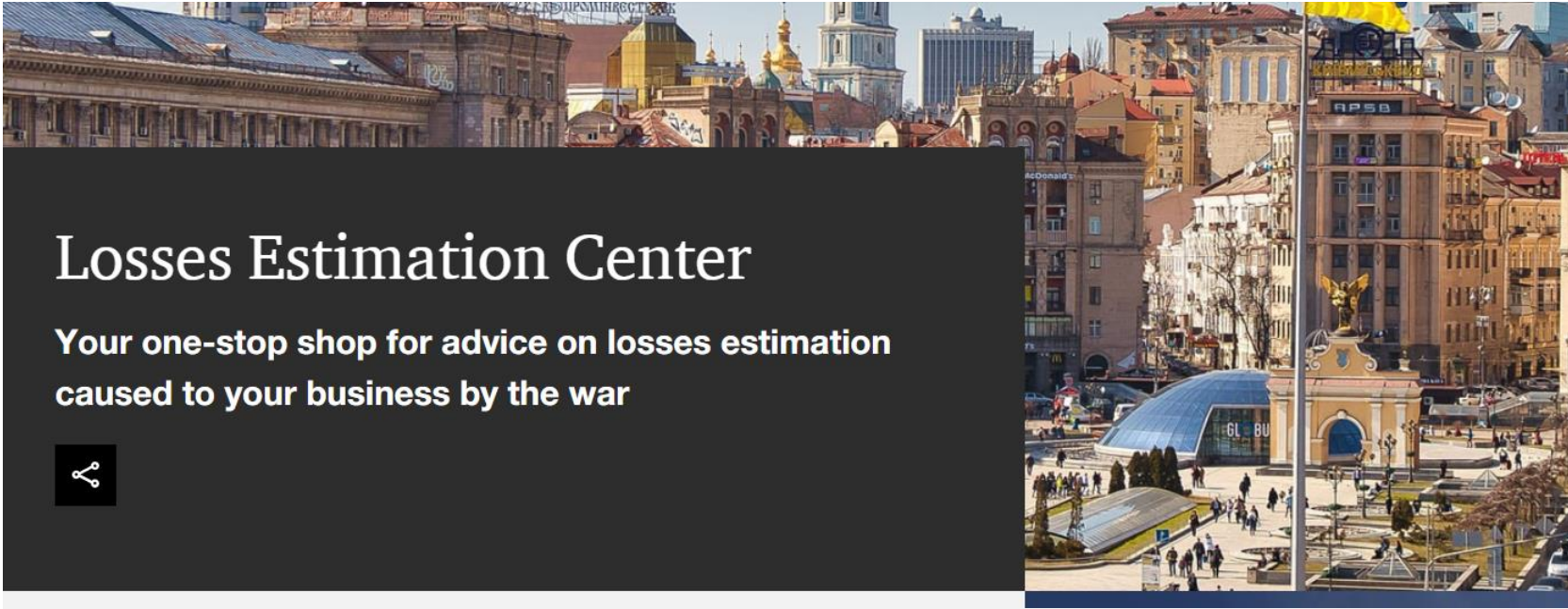
- Business plans, budgets, comparison with the actual figures;
- Accounting documentation including managerial accounting, financial statements, general ledger
- Long-term and short-term profit and cash flow plans;
- Investment plans and programs;

Production related data

- Production capacity, production plans and schedules;
- Inventory records and obsolescence;

Other relevant data

- Photo-documentation;
- Police reports
- Invoices, receipts, delivery notes;
- Bank account statements;
- Contracts (including insurance policies), termination of contracts / cancellation of orders, payment notices, instructions, etc.



Losses Estimation Center

Your one-stop shop for advice on losses estimation caused to your business by the war



Initial Case Assessment

Discovery and evidence collection

Losses estimation

Communication of the Results

Expert Witnessing

Discovery and evidence collection

Providing support in collecting due evidence of losses. We have special knowledge of the financial and other record-keeping instruments and tools. Additionally, our forensic technology experts have necessary automated tools that enable us to search for information in the electronic records, if this level of discovery is available.

Thank you

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