



Leveraging the Power of a Financial Expert in Litigation

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Complex business disputes can arise anywhere in the world over a diverse set of circumstances. Organizations encounter litigation with competitors, suppliers, customers, employees and other stakeholders. In these disputes, it is often those who leverage the assistance of a financial expert from the start that can facilitate a settlement or keep the upper hand at trial.

The role of a financial expert is to provide objective opinions on technical, financial matters that require specialized knowledge or expertise that the court does not possess. During trial situations, the financial expert can also facilitate a critique of opposing testimony, assist in digging into the opposition's evidence presentation and provide educated testimony to better position you for success.

However, what is often not recognized is the role this expert can play earlier in the litigation process. There are considerations affecting the entire process from the preparation of the Statement of Claim to the trial that can impact the outcome.

Education, training and experience – These factors allow a financial expert to clearly and fully identify, and/or challenge, heads of damage relating to the financial elements of the loss in preparing pleadings. Ideally, an expert is a Chartered Accountant (CA) designated as a specialist in Investigative and Forensic Accounting (IFA). A Chartered Business Valuator (CBV) designation is another well recognized credential for this type of work.

Information needs – A financial expert can determine information requirements for quantification of the loss or valuation of the business involved in the litigation. Getting the right information up front in the Discovery process strengthens the case, the reliability of the expert report and enables the legal team to decide what is relevant. Also, to the extent that requested information is refused by opposing counsel, it restricts the information that can be relied upon by the other side.

The right team – Choosing the right expert with the right firm to assist you is critical. A good choice means selecting an expert from an organization that can give you detailed industry

information from the depth of the firm's resources and experience. Also, for international disputes where the loss occurred in a foreign country, knowledge of local economy, business customs and the related legal environment is crucial. In these circumstances, an international firm can deliver with a local accent and is also able to understand the technical language of industry and how to translate it to local settings.

Early assessment – An experienced financial expert can give a reasonable estimate of the loss based on preliminary information that can be refined when further information becomes available. This gives the advantage of being better able to assess the expected outcome for a client and what kind of settlement offer to consider. The cost of an early assessment is relatively low for the high value added content. The investment is not wasted even if you do not settle, since it's a step in the process of preparing a report for trial.

The settlement advantage – Good information shared by both sides helps settle cases. Dealing with the same facts brings parties to similar conclusions. Cases typically don't settle because one side's expectation of the outcome differs from the other sides'. Shared documentation and well-reasoned logic of an early objective assessment can help bridge this gap.

A well-reasoned conclusion involves a number of steps before a court-ready report is issued. If you are going to engage a financial expert for trial, the expert will want input into the nature of the information sought and the work that will need to be completed. Ideally you will want to leverage their knowledge right up front well before going to trial. This way you and your client will be better prepared, better informed, and you will have a higher probability of settling the case before you incur the costs of preparing a formal report or going to trial. 🗨️

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