

SAN FRANCISCO  
**Daily Journal**

January 11, 2007

## The Sooner CPAs Assist During Financial Litigation, the Better

By James A. Andersen and William G. Essig

When litigation involves financial issues, most recognize that a qualified certified public accountant should be engaged to provide expert consulting and testifying services. Surprisingly, many CPA experts are hired too late in the process.

One would hope that lawyers would not wait until the latter stages of a trial to ask the CPA to testify. Yet, within the last year, we have had two such requests. In one instance, we turned down the attorney's request. This individual believed we could analyze financial data, prepare a damage model and provide expert testimony all within the span of three days.

In the other instance, the plaintiff's counsel requested that we testify, on two days' notice, on the net worth of a defendant as a basis for possible punitive damages. This testimony would be the last evidence presented to the jury. Under some circumstances, an expert might be able to provide such testimony. But in this instance, discovery relating to the defendant's net worth had not been handled properly, and there was no financial information on which an expert could base an opinion. Counsel attempted to convince the trial judge to reopen discovery so that the appropriate financial information could be produced for the expert's use, but the judge refused to do so. As a result, the plaintiff's counsel was precluded from pursuing his client's punitive-damages claim.

Had we been engaged before the discovery process started, we would have assisted the attorney in developing a discovery plan that would have yielded the information on which an opinion could be rendered.

Even if the financial expert is engaged before discovery is well under way, it may be too late for the expert to have sufficient time to analyze the relevant financial information.

In a recent matter, the plaintiff was claiming substantial economic dam-



ages, in the form of lost earnings, extraordinary out-of-pocket costs and diminution in value of its business. The damages calculations were prepared by the entity's chief financial officer and were supported by numerous worksheets and analyses. As with most damages calculations, the assumptions on which the calculations were based were the most significant. To evaluate the assumptions and to determine their reasonableness was a task that required intensive research and analyses over a four- to five-month period.

Based on this work, we determined that a number of the plaintiff's assumptions were unfounded and that many were applied improperly. Had we not started our work in the early stages of this litigation, we would not have performed the research and analyses necessary to rebut the plaintiff's damage claims.

A few years ago, one of our clients prepared its own damage analysis and model. As the trial date neared, and before discovery closed, we were engaged to review the damages calculation. We found that the revenue and most of the cost and expense assumptions were reasonable but that the plaintiff was relying on a sole supplier for the key component of its product. We were told that this supplier was the only one in the United States capable of providing this component.

We contacted the supplier to verify its ability to provide components during the damages period. Based on the damages model, the business would need to sell 50 units a month to break

even; it was forecasting that it would sell 200 to 250 units per month, giving rise to the plaintiff's substantial lost-earnings claim. We learned that the supplier could make, at most, 25 units a month — half the number of units necessary to meet the break-even point.

At this point, the plaintiff's action died, but many tens of thousands of dollars had been expended. These dollars would not have been spent had we been engaged on completion of the original damages model.

In another case, a number of plaintiffs sought damages for an environmental accident. Of the plaintiffs, only one had a history of successful business operations. All of the remaining plaintiffs' businesses had never shown a profit for three to five years. We pointed out this fact to the defendant's counsel, and the plaintiffs' claims were quickly dismissed.

Finally, we were once asked by a plaintiff's lawyer to prove a damage claim before the complaint was filed. The defendant's liability was very clear; however, how the plaintiff was damaged was not clear. Because the plaintiff's business continued its rapid growth and profitability, we concluded that the amount of the damages suffered was indeterminable, and the action wasn't filed. The plaintiff incurred less than \$5,000 in legal and expert fees, a huge savings from the fees that would have been incurred had a lawsuit been filed, discovery started, and the damages part of the case fallen apart.

The conclusion to be drawn from these situations is that the most successful and cost-effective cases are those in which the CPA expert is involved in the earliest stages of litigation and works with counsel as a partner in the process.

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