

# Relying on your team

How to use a financial expert during litigation or disputes **Interviewed by Meredyth McKenzie**

**A**ny type of dispute, whether big or small or one that lands in court, can be a disruption to your business. It can cost you time, money, energy and other resources to pursue or defend the claim. Your reputation may also become tainted or you may develop bad relationships with vendors due to claims.

You need to be prepared, so assemble the right team — one that will handle the dispute and litigate on behalf of (or defend) your company. A good team consists of legal counsel, company representatives, a financial expert if appropriate, and industry or other experts to address specific portions of the lawsuit.

“Litigation can be an out of control process,” says Rebekah Smith, CPA, CVA, CFFA, director of dispute advisory and forensic services at GBQ Consulting LLC. “Assemble a group of experienced advisers that understand the litigation process. Your advisers can help you control costs and the process.”

*Smart Business* spoke with Smith about how to assemble the right group of advisers to handle your dispute and the importance of involving a financial expert.

## Whom should business owners turn to at the first sign of trouble?

Legal counsel. Don't take threats of litigation or indications that someone has a dispute with you or your company lightly. Take potential claims seriously and contact your legal counsel, rather than just assuming it will go away. Legal counsel can help assess the validity of a potential claim or a claim that has already been made and determine a plan of action. There are also certain legal requirements with respect to retention of data that your legal counsel can help you navigate.

## What types of disputes require assistance from a financial expert?

A financial expert becomes involved when there are financial issues as well as legal issues. Financial experts are typically involved in complex commercial litigation where economic damages or lost profits are at issue. They are also involved when the cases requires forensic accounting skills such as in a fraud or embezzlement case or the value of a business is at issue such as in a shareholder dispute. A financial expert may also be called upon to explain an accounting, tax or financial issue to the judge or jury.

A financial expert may assist legal counsel in identifying the particular financial issues related to this case. Financial experts may



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also assist legal counsel in creating discovery requests, preparing for depositions of financial witnesses, or assisting with trial exhibits.

The financial expert can also assist in settlement negotiations. Many cases settle before reaching the courtroom, and a financial expert can assess whether a particular settlement option makes economical sense or not.

## Why is it important to put the right group of advisers together and get a financial expert involved?

Putting together the right group of advisers can give a litigant some perspective as the case progresses regarding risks and strategy. Having the right advisers also ensures that all aspects of the case are covered. For example, many legal counsels involve a financial expert early in the process to assess the cost benefit of proceeding with litigation. From an economical standpoint, spending \$150,000 to pursue a claim worth \$50,000 might not make sense. A financial expert can help you and your legal team make a determination of the possible range of recovery before incurring a substantial amount of fees pursuing a claim.

It is also important to get the financial expert's input on creating discovery requests. Some of the most critical steps of the litigation have to do with the discovery process. It's important to obtain the appropriate data for

the relevant time period and well-crafted discovery requests can ensure you have asked for the right information. Unfortunately, some times the financial expert is called in to assist after the discovery process is closed and data that would have been relevant and potentially helpful to the analysis was not obtained.

The financial expert should become involved sooner than later in order to ensure that all the financial issues are identified and the related documents obtained. Accountants and financial experts know what reports should be available and how to ask for them. For example, asking for a company's 'financial information' may get you different results than making a more specific request such as 'balance sheets, income statements and cash flows, on a monthly basis for the prior 36 months.' Also, asking for an electronic back-up of the company's books and records (if they use common software such as QuickBooks) can provide a wealth of information.

## What should a business owner do to make sure this process goes smoothly and the advisers have all the necessary information to handle the dispute?

You need to be as forthcoming as possible with your attorney during this process. For the most part, a litigant has attorney/client privilege with their attorney, meaning they do not have to disclose their communication with their attorney to the other party. Even if there are facts that you think might hurt you, you need to share them with your attorney so he or she has all the information in advance and can be prepared to deal with it. If a bad fact comes to light very far into a case, it's difficult to deal with it at that point.

Also keep in mind that you don't have that same attorney/client privilege with a CPA or financial expert. Thus, communications with your CPA or expert can be discoverable.

## How can business owners be prepared for future disputes?

Many attorneys will consult with companies on litigation readiness and to assist owners in assessing where their company might be vulnerable. From a financial standpoint, if the dispute involved some type of financial misconduct or embezzlement, there may be some internal control processes that are weak and need to be remediated. <<

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