

See you in court

Get your litigation support team together at the first sign of trouble. **Interviewed by Steve Trusty**

You have just lost a large contract and you feel you have a case against another party. You have suffered damages due to some weather phenomena and need to determine total losses due to being shut down for a period of time. A former employee is filing suit claiming commissions due or other damages because of a termination. To whom do you turn to for help in these or similar situations?

"You should first turn to your CPA [certified public accountant]. They have the experience with your business and the capabilities to analyze the situation from a numbers standpoint," says Phil Shechter, partner and litigation support group leader in the CPA firm of Berenfeld, Spritzer, Shechter & Sheer, headquartered in Coral Gables, Fla. "They can help you quantify the situation."

Smart Business talked with Shechter for more insight on involving your CPA in potential litigation.

When do you get your CPA involved?

CPAs should get involved in the early stages of a commercial dispute. A CPA can analyze the damages or issues in question and try to quantify them at the beginning. Many times the issues are simple, and a quick determination of the real damages and consequences can allow a company to make an offer to correct or remedy a matter before counsel is engaged.

Why is it important to involve your CPA in this litigation?

Companies frequently discover that the legal costs to fight or defend a lawsuit are greater than the damages themselves. Once a lawsuit is commenced, the cost to defend the lawsuit could outweigh the damages that a judge ultimately awards. In addition, settling the lawsuit may allow the company to avoid any bad press resulting from the lawsuit.

What is a common dispute where a CPA can help?

Sensitive personnel matters that result in termination are a good example. If a com-



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pany terminates an employee who seeks damages for the termination due to claims of unpaid commissions or payroll, a CPA can analyze the amount of the potential loss at a trial. Based on this analysis, the company may choose to make an offer to the employee, accompanied by the independent CPA's schedules and damage calculations. The company may be able to settle with the employee without incurring any legal fees.

What is the difference between lost business and lost profits?

When commencing litigation against a vendor or partner, some companies calculate their damages based on lost profits. However, by case law, lost profits are typically limited to two or three years due to the speculation involved in estimating profits into the future and due to unknown business circumstances. If a business is damaged and loses a portion of its business, a product line, a department or a location, and such loss is permanent and the cost to re-establish the business is prohibitive, a CPA can calculate the value of the entire business segment before the damage happened. Such damage could be substantially greater than the loss incurred

by only a few years of lost profits.

How can a CPA help to negotiate settlements?

Accountants seem to be able to meet with clients and vendors and assist companies in settling litigation. Most lawyers have to advocate their client's position. CPAs by nature and training are conservative, collaborative and are reconciliatory in nature. The accountant can meet with the vendor or client to discuss damages and how to settle the matter.

Does this serve both plaintiffs and defendants?

Most plaintiffs make a request for reimbursement before they engage counsel and file suit against a company. A CPA can analyze the issue and determine the possible range of loss and recommend a settlement before the company is responsible for incurring a substantial amount of legal fees. The monies saved from defending itself could be used to pay for the settlement.

What other information is important?

The CPA should be engaged before counsel when a company is considering filing a complaint against a third party for damages. The CPA has the capability to calculate the damages. If the company has already engaged counsel, it should have the CPA look at the documents and issues. He or she may be able to come up with additional damages that the company or its counsel had not originally contemplated. These additional damages can include lost opportunity costs, consequential damages, and costs to change the business or marketing plan of the company.

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