



GROSSMAN YANAK & FORD LLP
Certified Public Accountants and Consultants

*Effective Use of Financial Experts:
When and How to Utilize Them in Your Case*



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*Effective Use of Financial Experts:
When and How to Utilize Them in Your Case*

INTRODUCTION



Effective Use of Financial Experts

INTRODUCTION

- *The Practice of Law*
 - Body of knowledge complex, ever changing and evolving
 - Requires special focus, attention and constant learning
 - Breadth of issues, subject matter and guidance drives the need for the use of specialists
 - Integration of “non-legal” experts often required to move matters forward



Effective Use of Financial Experts

INTRODUCTION

- ***Most efforts center on evidentiary considerations***
 - Four common categories of evidence
 - Real, Demonstrative, Documentary, Testimonial
 - State/Federal rules of evidence govern admissibility
- ***Federal and State Rules of Evidence***
 - Set basic prerequisites of admissibility
 - FRE set these as relevance, materiality, and competence



Effective Use of Financial Experts

INTRODUCTION

- ***Use of an Outside Expert***
 - Works to bring pointed expertise outside the scope of that available within the engaging attorney's skillset
 - Adds insight and weight to the matter before the court
 - Also, outside experts are often used to supplement specific matter knowledge in non-controversy matters
 - Examples include transactional matters/dispute resolutions



Effective Use of Financial Experts

INTRODUCTION

▪ *Use of Financial Experts*

- Process involving the following:
 - Identification of financial/economic matters at issue
 - Search for the most appropriate expert
 - Working with financial/economic expert prior to engagement
 - Determining the expectations of those issues that counsel would look to have addressed in the course of the assignment



Effective Use of Financial Experts

INTRODUCTION

▪ *Optimizing Use of Financial Experts*

- Once engaged, best results stem from organized processes, engagement management and regular communication with counsel
- Most difficult aspect in the provision of expert financial and economic expert services is the limitation imposed by incomplete documentation and financial information
- Also, inadequate time to facilitate best outcome



Effective Use of Financial Experts

INTRODUCTION

■ *Today's Program*

- Identification of Financial and Economic Elements of the Matter
- Understanding the Role of the Financial/Economic Experts
- Identification and Selection of the Financial and/or Economic Expert
- Engagement Protocols and Management
- Preparation for Depositions and Trial / Expert Testimony
- Case Illustrations
- Concluding Remarks



Effective Use of Financial Experts: When and How to Utilize Them in Your Case

IDENTIFICATION OF FINANCIAL AND ECONOMIC ELEMENTS IN THE MATTER





Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***American Bar Association:***

- *“A financial expert’s main role is to educate, by helping the attorney and the court, to understand the financial aspects of a case during evidence gathering, trial preparations, possible mediation and in court at trial. Therefore, the expert’s ability not only to understand the issues but also to communicate them clearly and in understandable language is paramount.”*



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Areas of Assistance***

- Include those attendant to litigation and in matters unrelated to litigation
 - Business valuation
 - Damages assessments including lost profits
 - Fraud and forensic investigation
 - Marital dissolutions
 - Personal injury awards



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Areas of Assistance (cont'd)***
 - Evaluation of operations
 - Transaction analysis
 - Loan compliance and covenant testing
 - Business viability and business plan feasibility
 - ...And more!



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Business Valuation***
 - Answers: What is the business or particular interest worth?
 - Advising on a business valuation independent of a controversy related to subject valuation
 - Providing an opinion of value used before the IRS in an examination or appeal
 - Assisting legal counsel out of court in understanding technical issues and preparing for a case
 - Testifying in court relative to an opinion



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

▪ *Business Valuation*

- Purpose
 - What are the facts and circumstances?
 - Generally provided by legal counsel
- Can be limited by
 - Availability and quality of appropriate records
 - Selected dates of valuation
 - Acceptability and credibility of procedures, approaches, methodologies and calculations within the jurisdiction



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

▪ *Business Valuation*

- Purpose must consider technical items
 - What is the appropriate standard of value?
 - Is the premise of value a going concern premise, or, alternatively, liquidation?
 - Is it appropriate or permissible to apply discounts for lack of control and/or lack of marketability?
 - What is the date of valuation?



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

▪ *Damages/Lost Profits/Business Interruption*

- Damages = what would have happened if the damage did not occur, less the actual results that occurred following the damage
- Damages can be caused by a variety of means (events)
- Expert must
 - Evaluate whether the damage is linked to the specific event
 - Properly analyze the economic damages
 - Properly link the damages to the cause of action



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

▪ *Damages/Lost Profits/Business Interruption*

- Dates are a major consideration in damages or lost profits
 - Three points in time that must be understood
 - Time of damaging event
 - Date of resolution
 - Date at which the incurrence of further damage ends (can be permanent)
 - Damages period is generally from the time the damage occurs to the time the damage ends



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Fraud/Forensic Analysis***
 - Can be extremely valuable
 - Requires an in-depth look at history via the financial records and operating activities of the abused business entity or individual
 - Almost always extremely cumbersome and costly
 - Requires cost/benefit analysis
 - Primary purpose is to gather evidence



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Fraud/Forensic Analysis***
 - Fraud is most often defined as criminal deception, whereby, the use of false representations result in an unfair advantage or harm of another's interest
 - Requires
 - Analytical procedures
 - Detailed test work
 - Evaluations of internal control



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Shareholder Disputes and Shareholder Oppression***
 - Alleged shareholder oppression
 - Requires a determination of the financial effects of the alleged acts
 - Can be similar to damages calculations at times
 - May require multiple valuations to prove the loss of value before and after the alleged oppression



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Shareholder Disputes and Shareholder Oppression***
 - Shareholder Disputes
 - Typically arise when there is an imbalance of power between controlling shareholders/equity owners and minority owners or a deadlock amongst equal owners
 - Financial expert needs to have a clear understanding of the type of dispute
 - Pending or threatened litigation?



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Shareholder Disputes and Shareholder Oppression***
 - Shareholder Disputes
 - Valuation of subject interest
 - Forensic services related to the suspected fraudulent, illegal, or oppressive actions
 - Quantify economic damages
 - Appraisals to quantify lost business value or lost profits



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Shareholder Disputes and Shareholder Oppression***
 - Shareholder Disputes
 - Often most difficult element is to find a value that both sides agree too
 - Can be as simple as a “previously-agreed-upon” valuation formula set forth in shareholder agreements
 - Can also be very complex, requiring multiple business valuers on each side or a third valuator deciding between two
 - Often ends in formal litigation



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Marital Dissolution***
 - Many divorce cases involve complex financial issues
 - Financial professional should be engaged, especially when there is a wide discrepancy between the earnings capabilities of the spouses
 - Even if quick settlement is desired, consider consulting financial expert (see *Kojovic v. Goldman*)



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- ***Marital Dissolution***
 - Financial expert may assist with
 - Coordinating financial information
 - Performing net disposable income calculations to quantify support
 - Aiding in the preparation of statement of marital assets and liabilities
 - Researching and explaining an asset's net worth
 - Quantifying the value of stock-based compensation



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

▪ *Personal Injury*

- Financial expert will focus on damages
 - Quantifying the present value of future lost wages and benefits
 - Assist in discovery , identifying necessary documents
 - The economic loss quantified by financial expert is often used by the jury as base for determining pain and suffering damages



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

▪ *Analysis/Rebuttal of Opposing Expert*

- Can be pivotal to a case
- Expose flaws and weaknesses in opposing expert's work and opinions
- May expose differences in facts and shortcomings
- Challenges the reliability and creditability of experts



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- *Expert Testimony at Trial*
 - Financial experts can also assist with
 - Preparing for and attending mediation, arbitration and/or trial, including depositions
 - Providing expert testimony
 - Assisting with cross examination of opposing experts
 - Providing charts or other illustration to utilize in trial to help highlight certain analyses or conclusions



Effective Use of Financial Experts

IDENTIFYING ISSUES/QUESTIONS

- *Decision to retain a financial expert is impacted by:*
 - Amount of money at stake
 - Likelihood of success with and without the expert
 - Cost of expert versus the perceived benefit



*Effective Use of Financial Experts:
When and How to Utilize Them in Your Case*

**UNDERSTANDING THE ROLE
OF FINANCIAL/ECONOMIC EXPERTS**



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- *Federal Rule of Civil Procedure 26(b)*
 - Testifying Expert
 - Consulting Expert



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- *Considerations in determining the need for an expert*
 - Will the expert be called to the stand?
 - Did the opposing expert arrive at the correct result?
 - Will further discovery produce additional information that would aid the expert in forming an opinion?
 - Will the expert's opinion change with additional information?



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- *Testifying Expert vs. Consulting Expert*
 - Independence
 - Designation before the court
 - Subject to subpoena
 - Reporting requirements



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

▪ *Admissibility of Expert Testimony and Opinions*

- Pennsylvania Rules of Evidence (Pa.R.E.)
 - Witness qualified as an expert by:
 - Skill
 - Experience
 - Training
 - Education



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

▪ *Admissibility of Expert Testimony and Opinions*

- Pennsylvania Rules of Evidence (Pa.R.E.)
 - Qualifying Experts may testify if
 - The expert's scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson;
 - That knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; and
 - The expert's methodology is generally accepted in the relevant field



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- ***Test of Admissibility of Expert Testimony***
 - Federal Rules of Evidence
 - *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993)
 - Pennsylvania Rules of Evidence (Pa. R.E.)
 - *Frye v. United States*, 293F.1013 (D.C. Cir. 1923)



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UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- ***Pa.R.E. 702***
 - Expert's opinion
 - Must be expressed with reasonable certainty
 - May be in the form of an "opinion or otherwise"
 - Generally in the form of an opinion
 - May be called upon to educate the trier of fact



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- ***Discloser of an expert***
 - Federal Rule of Civil Procedure 26
 - 90 days prior to trial
 - Disclosure required if expert will present evidence under Federal Rules of Evidence 702, 703, or 705



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- ***Discloser of an expert***
 - Disclosure must include a report, written by the witness, which includes:
 - A comprehensive statement, covering all of the opinions the witness intends to express
 - The basis and reasons for those opinions
 - The facts the witness considered when forming their opinions
 - Any exhibits the witness intends to use to support, summarize or otherwise advance the testimony



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

▪ *Discloser of an expert*

- Disclosure must include a report, written by the witness, which includes (continued):
 - Expert qualifications, which include all publications authored by the expert over the past year
 - A list of all cases wherein the witness testified during the prior four years, either in a trial or during a deposition
 - An accounting of the witness's compensation, both for the review of the file, trial preparation, and testimony



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

▪ *Pennsylvania Rules of Civil Procedure, Rule 4003.5. Discovery of Expert Testimony*

- Discovery of facts known and opinions held by an expert may be obtained through interrogatories and require identification of
 - Each person expected to be called as an expert witness at trial
 - The subject matter on which the expert is expected to testify
 - The substance of the facts and opinions to which the expert is expected to testify
 - A summary of the grounds for each opinion



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- ***Pennsylvania Rules of Civil Procedure, Rule 4003.5.
Discovery of Expert Testimony***
 - The party answering the interrogatories may:
 - File a report of the expert as his or her answer
 - Have the interrogatories answered by the expert



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

- ***Expert Engagement Letter***
 - “...will provide expert business valuation (economic damages calculations, etc.) services, and that these services, while conducted at the request of legal counsel, will be undertaken on an independent and objective basis.”
 - “In this assignment, all procedures required to complete the engagement will be determined by Grossman Yanak & Ford LLP, and those conclusions and opinions we develop as a result of these procedures will be solely our own”



Effective Use of Financial Experts

UNDERSTANDING THE ROLE OF FINANCIAL EXPERTS

▪ *Expert Engagement Letter*

- Legal counsel as engaging party
 - Affords privilege such that consultative services can be performed prior to notification of testifying expert witness
 - Allows counsel to decide whether to continue forward and ask the expert to prepare a formal report and prepare for testimony



Effective Use of Financial Experts: When and How to Utilize Them in Your Case

IDENTIFICATION AND SELECTION OF THE FINANCIAL AND/OR ECONOMIC EXPERT





Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Must Understand Necessary Skills***
 - Technical Skills
 - Ability to understand the case
 - Ability to communicate clearly and concisely
 - Both written and verbal



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Four Main Questions***
 - Is the financial expert needed for the case?
 - What different types of experts might be used to effectively move the matter forward?
 - What type of process can counsel employ to screen potential expert?
 - How should the financial expert ultimately be selected?



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Necessity of a Financial Expert***
 - Will the inclusion of a financial expert's opinion increase the likelihood of a favorable outcome?
 - Is a specific area of technical knowledge/expertise needed?
 - Consider rules governing admissibility of evidence
 - Purpose of expert – to analyze, simplify, and educate



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Necessity of a Financial Expert***
 - Limitations
 - Credentialed experts must be able to substantiate their opinion
 - Will the expert have access to the required amount of information?
 - Professional Standards dictate a minimum level of information that an expert must review to formulate an opinion
 - Consider involving expert in preliminary discussions to determine if (and what type of) expert assistance is needed



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Expert Specializations***
 - Business Valuation/Business Appraisal
 - Forensic Expert
 - General Financial Expert



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Expert Evaluation and Screening***
 - Is the expert qualified?
 - Education
 - Training within the specific discipline
 - Experience in similar matters
 - Professional credentials



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Professional Credentials***
 - Credentials indicate area of expertise
 - Can carry different weights
 - Experts may carry multiple credentials



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Professional Credentials***
 - General Financial Expert Credentials
 - Certified Public Accountant (CPA)
 - Chartered Financial Analyst (CFA)



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

▪ *Professional Credentials*

- Business Valuation/Business Appraisal Expert Credentials
 - American Institute of Certified Public Accountants (AICPA)
 - Accredited in Business Valuation (ABV)
 - Certified in Entity and Intangible Valuation (CEIV)
 - Certified in the Valuation of Financial Instruments (CVFI)



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

▪ *Professional Credentials*

- Business Valuation/Business Appraisal Expert Credentials (Cont.)
 - National Association of Certified Valuators and Analysis (NACVA)
 - Certified Valuation Analyst (CVA)
 - Accredited in Business Appraisal Review (ABAR)



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

▪ *Professional Credentials*

- Business Valuation/Business Appraisal Expert Credentials (Cont.)
 - American Society of Appraisers
 - Accredited Senior Appraiser (ASA)
 - Fellow of the American Society of Appraisers (FASA)
 - Institute of Business Appraisers (now owned by the NACVA)
 - Certified Business Appraiser (CBA)
 - Master Certified Business Appraiser (MCBA)



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

▪ *Professional Credentials*

- Forensic Expert Credentials
 - AICPA
 - Certified in Financial Forensics (CFF)
 - NACVA
 - Master Analyst in Financial Forensics (MAFF)
 - Association of Certified Fraud Examiners (ACFE)
 - Certified Fraud Examiner (CFE)



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Professional Credentials***
 - Other Credentials
 - Certified Turnaround Professional (CTP)
 - Certified Management Accountant (CMA)



Effective Use of Financial Experts

SELECTING A QUALIFIED EXPERT

- ***Other Considerations***
 - Title and Position
 - Experience
 - History as a Financial Expert
 - Conflicts of Interest
 - Will the Expert Testify?
 - Ability to Communicate



*Effective Use of Financial Experts:
When and How to Utilize Them in Your Case*

**ENGAGEMENT PROTOCOLS AND
MANAGEMENT**



Effective Use of Financial Experts

MANAGING THE ENGAGEMENT

- *Compliance with legal, regulatory, & professional standards*
 - Build an engagement team with appropriate specializations, experience, and knowledge
 - Imperative to address both administrative and procedural issues at outset of engagement
 - Manage the engagement in a way that maximizes the expert's skills and satisfies the objectives of the assignment
 - The financial expert gaining a proper understanding of facts of the case sets expectations for legal counsel



Effective Use of Financial Experts

MANAGING THE ENGAGEMENT

▪ *Timing of Engagement*

- Preference of financial experts to be engaged by legal counsel as early on in the process as possible
 - Fair and complete access to all information to perform an independent analysis
 - Seek to understand if limitations exist with respect to access of documents and personnel
 - Participate in preparation of discovery requests to streamline process



Effective Use of Financial Experts

MANAGING THE ENGAGEMENT

▪ *Conflict Checks*

- Financial experts must maintain an attitude of independence to ensure unbiased interpretation of the evidence
 - Before any background information on a case is shared, a conflict check should be undertaken by the financial expert
 - Results of the conflict check should be articulated to legal counsel in writing, typically included in the engagement letter
 - If a potential conflict exists, the attorney must decide if it is truly a conflict and if they can proceed with the engagement



Effective Use of Financial Experts

MANAGING THE ENGAGEMENT

▪ *Identifying the Client*

- At the beginning of the engagement, it must be determined who will be the expert's client
 - If counsel is the client, the financial expert's work is generally protected from discovery by opposing parties
 - Financial expert and legal counsel will discuss extent of work that is protected by legal privilege
 - Financial expert should confirm aspects of the work that should be labeled "privileged" to aid in identification and protection



Effective Use of Financial Experts

MANAGING THE ENGAGEMENT

▪ *Confidentiality and Privilege*

- Financial expert is expected to preserve client confidences
 - Should at least be knowledgeable of preservation of attorney-client privilege
 - Work product doctrine embodied in Federal Rule of Civil Procedure 26, including amendments
 - If the expert will not testify, everything shared should be protected by attorney-client privilege
 - If this is unknown, counsel will exercise caution regarding evidence



Effective Use of Financial Experts

MANAGING THE ENGAGEMENT

- ***Legal Counsel – Expert Communication***
 - Both expert and counsel should be mindful of discovery implications in connection with all written materials
 - Expert should understand legal counsel’s preferences for communications
 - Expert will communicate findings and opinions, or those expected to result from their work, to legal counsel as work progresses
 - Legal counsel can develop case strategy as it relates to the financial/economic aspects and manage their client’s expectations



Effective Use of Financial Experts

MANAGING THE ENGAGEMENT

- ***Effective management of the engagement by expert requires careful oversight and thoughtful communication***
 - As cases evolve, the amount of information and evidence received can be voluminous
 - Process of gathering and reviewing evidence is time consuming
 - An electronic document management system can be maintained for ease of searching the population of documents provided
 - Inefficiencies can arise if the expert is waiting for critical data and then resumes work upon receipt of the information



*Effective Use of Financial Experts:
When and How to Utilize Them in Your Case*

**PREPARATION FOR DEPOSITIONS AND
TRIAL/EXPERT TESTIMONY**



Effective Use of Financial Experts

PREPARATION FOR DEPOSITIONS AND TESTIMONY

- *Depositions of Financial Experts*
 - Critical element of developing the attorney's case
 - Somewhat less formal than testimony in trial before court – but no less important
 - Allows the expert's testimony to be preserved for later use
 - Allows opposing counsel to better prepare for future decisions and legal strategy development
 - Thorough preparation with engaging counsel is key



Effective Use of Financial Experts

PREPARATION FOR DEPOSITIONS AND TESTIMONY

▪ *Depositions of Financial Experts*

- Likeability and emotional bearing are important attributes for an expert at deposition
- Counsel must advise his/her expert to respond only to the very specific questions posed
 - Short direct answers are key



Effective Use of Financial Experts

PREPARATION FOR DEPOSITIONS AND TESTIMONY

▪ *Expert Witnesses at Trial*

- Direct Examination
 - Preparation is vital, but shouldn't begin too early
 - Process should be generally outlined but NOT scripted
 - Review earlier deposition transcript



Effective Use of Financial Experts

PREPARATION FOR DEPOSITIONS AND TESTIMONY

▪ *Expert Witnesses at Trial*

- Direct Examination (cont.)
 - Qualify expert (Federal Rules of Evidence & PA Rules of Evidence)
 - Attorneys should be aware of strengths and weaknesses of the expert's testimony – be prepared for counter arguments
 - Focus on the “education” aspect of expert's testimony



Effective Use of Financial Experts

PREPARATION FOR DEPOSITIONS AND TESTIMONY

▪ *Expert Witnesses at Trial*

- Cross Examination
 - More difficult to prepare for
 - Understand strengths and weaknesses of engaging counsel's expert's testimony and potential challenges prior to the actual direct examination so weaknesses can be brought out in the least harmful manner and strengths can be emphasized



Effective Use of Financial Experts

PREPARATION FOR DEPOSITIONS AND TESTIMONY

▪ *Expert Witnesses at Trial*

- Cross Examination – Opposing Expert
 - Professionalism is important
 - Use your expert to prepare and develop strategy
 - Your expert may help prepare draft questions for cross
 - Experts must be cautious to avoid adopting a posture of client advocacy



Effective Use of Financial Experts: When and How to Utilize Them in Your Case

CASE ILLUSTRATING THE EFFECTIVE USE OF FINANCIAL EXPERTS





Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Cortes v. 3A N. Park Ave. Rest Corp.***
 - Plaintiff a minority owner and day manager of a restaurant
 - Defendants were two majority shareholders – one controlled the finances and the other was passive
 - Upon Plaintiff's resignation, Defendants offered to buy him at the same price he originally paid for his interest.
 - Plaintiff rejected the offer



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Cortes v. 3A N. Park Ave. Rest Corp.***
 - Plaintiff filed complaint accusing Defendants of diverting millions of dollars of cash receipts
 - Plaintiff claimed cash receipts were not reported on the company's financial statements or tax returns, which showed minimal profits
 - Defendants alleged that Plaintiff's mismanagement was cause for poor profitability
 - Plaintiff engaged forensic accountant to analyze financials



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Cortes v. 3A N. Park Ave. Rest Corp.***
 - Using server reports the expert estimated that Defendants had diverted in excess of \$3.7 million in the form of cash receipts
 - Defendants were order to pay this amount plus interest back to the Company
 - The value of the company and Plaintiff's interest was calculated using testimony of multiple experts
 - The diverted receipts were added to the value of the company in determining the value of Plaintiff's interest to be \$1.2 million



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Kojovic v. Goldman***
 - Divorce matter
 - At date of separation, Wife was a actress, Husband was CEO and minority owner of a closely held corporation – Capital IQ, Inc.
 - Less than three months after the divorce actions began they settled pursuant to a comprehensive settlement agreement negotiated with the assistances of the parties' attorneys



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

▪ ***Kojovic v. Goldman***

- Wife received \$1.15 million in cash, rehabilitative spousal support of \$350,000 payable over four years, and certain other considerations. Husband retained, among other things, his minority shareholder interest in Capital IQ
- One month later, Capital IQ was sold for \$225 million, Husband received \$18 million for his minority interest
- Wife commenced action for fraud, reformation, breach of contract and rescission of the settlement agreement



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

▪ ***Kojovic v. Goldman***

- Wife asserted Husband concealed information regarding the value and potential sale of Capital IQ
- Court disagreed finding that by agreeing to the settlement, Wife waived her rights to inquire into Husband's finances, noting:
 - "...Wife has only herself to blame for her failure to inquire further. Such failure is not, however, a basis upon which to vacate the settlement."
 - Wife should have been aware of the circumstances and "instead, opted for an immediate and certain payout instead of the uncertainty of an eventual sale."



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Quick Pick Express, LLC v. Quick Pick Express, Inc.***
 - Owners marketed business growing, profitable, and established
 - A buyer was identified and a purchase agreement signed with a portion of the purchase price to be paid through a seller note
 - Note included a clause that allowed it to be offset if material facts were not disclosed or if material misrepresentations were made
 - However, the note required continued payment until offset had been agreed upon or determined through arbitration or litigation



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Quick Pick Express, LLC v. Quick Pick Express, Inc.***
 - After closing, buyers found multiple material issues, and after being unable to resolve with the sellers, they ceased payment on the note
 - Buyers filed a complaint alleging breach of contract, intentional misrepresentation and negligent misrepresentation
 - Sellers cross-complained alleging failure to pay on note



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Quick Pick Express, LLC v. Quick Pick Express, Inc.***
 - Buyer's financial expert, a forensic accountant, quantified damages in three categorizations, but failed to attribute the damages to specific causes of action
 - Forensic Accountant identified damages in the form of:
 - Out-of-pocket costs and lost assets (\$280,000)
 - Lost profits (\$2,050,000, at minimum)
 - The difference in what the buyers paid for the assets versus what they were actually worth (\$1,150,000)



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Quick Pick Express, LLC v. Quick Pick Express, Inc.***
 - Jury struggled in the verdict resulting from confusion in assigning the expert's categories of damages to individual claims
 - Jury found against the buyers on the breach of contract claim, and in favor of the buyers on the negligent and intentional misrepresentation and concealment claims
 - On Appeal, Judgement was reversed and the award for out-of-pocket losses and lost assets on the concealment claim was stricken



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Steiner Electric Co. v. Maniscalco and Sackett Systems, Inc.***
 - Plaintiff (Steiner) was in the business of distributing electrical products and services, including generators
 - Sackett was a manufacturer and seller of battery storage systems and purchased supplies from Plaintiff
 - Delta Equipment Company (Delta) sold, installed, and maintained natural gas powered electric generators sold to Delta by Plaintiff



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Steiner Electric Co. v. Maniscalco and Sackett Systems, Inc.***
 - Maniscalco was the owner of Delta and Sackett
 - Over time, Delta's financial situation weakened. Delta stopped paying invoices to Plaintiff and owed approximately \$200,000
 - Plaintiff made multiple attempts to aid in resolving the debt but eventually had to file mechanics liens
 - Maniscalco closed Delta and never repaid the debt before dissolving the business



Effective Use of Financial Experts

CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Steiner Electric Co. v. Maniscalco and Sackett Systems, Inc.***
 - Plaintiff filed suit to pierce the corporate veil such that Maniscalco and Sackett would be held liable for Delta's debt
 - Shortly after Delta closed, Maniscalco's daughter and her husband started a new company which sold the same products as Delta and used Delta's customer list and sales data



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CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Steiner Electric Co. v. Maniscalco and Sackett Systems, Inc.***
 - Plaintiff engaged a forensic accountant to review the financial records of Maniscalco, Delta and Sackett
 - He found Delta, Sackett and Maniscalco comingled funds to yield substantial tax benefits to Sackett and estimated the value of Delta's customer list to be upwards of \$200,000
 - Court ruled in favor of Plaintiff, noting comingling of funds and treatment of the customer list as intentional actions to avoid payment to Plaintiff



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CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Graves v. Tomlinson, et. al.***
 - Wife owned three businesses which became focus of the divorce proceedings
 - Husband hired financial expert and forensic accountant to value Wife's businesses
 - Husband's expert valued all three businesses as one, noting that each could be viewed as divisions of a single entity
 - Husband's expert relied on a weighting of the income and market approaches, for a total value of \$3.5 million



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CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Graves v. Tomlinson, et. al.***
 - Wife's valuation expert valued the entities separately as they were different legal entities
 - Wife's expert relied solely on an asset approach, and determined the aggregate value of the entities to be \$200,000
 - After consideration of the expert testimony, the jury determined the value of each of the entities individually, resulting in an aggregate value of approximately \$1.3 million



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CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Fairway Dodge, LLC. v. Decker Dodge, Inc., et. al.***
 - Owner of Fairway Dodge, a successful family owned and operated car dealership, decided to sell the business
 - The owner's daughter (Fair) and her husband (Morgan), both long-time employees of the dealership opposed the sale
 - After the sale, Fair, Morgan, and another employee (Kennedy) resigned to work at a competing dealership, Decker Dodge



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CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Fairway Dodge, LLC. v. Decker Dodge, Inc., et. al.***
 - Before leaving, but after being hired by Decker Dodge, Fair canceled a key referral contract and rejected a shipment of highly profitable vans for Plaintiff
 - Fair and Morgan also returned to the premises and made a backup tape of the computer system, providing in to Decker



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CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Fairway Dodge, LLC. v. Decker Dodge, Inc., et. al.***
 - New owner acquired Fairway and business began to plummet
 - Learning of the actions, Fairway Dodge filed action alleging conspiracy to interfere with Fairway’s prospective economic relations, breach of the duty of loyalty, misappropriation of property, and violation of the Computer Act.
 - The matter was tried before a jury.



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CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Fairway Dodge, LLC. v. Decker Dodge, Inc., et. al.***
 - At trial, Fairway’s forensic expert opined on the damages
 - Defendant’s financial expert testified against these assumptions
 - Defendants also presented a list of former Fairway customers who were prepared to testify that they purchased their vehicle from Decker without solicitation.
 - Court denied their testimony due to “lack of competency”



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CASE ILLUSTRATING THE USE OF FINANCIAL EXPERTS

- ***Fairway Dodge, LLC. v. Decker Dodge, Inc., et. al.***
 - Jury awarded in favor of Plaintiff and awarded compensatory damages and punitive damages, as well as attorneys' fees, investigation costs, and prejudgment interest.
 - On appeal, it was found that failure to admit witness testimony (Decker customers) may have undermined the damages calculations of Plaintiff's expert.
 - The Supreme Court of New Jersey affirmed the Appellate Court's decision.



Effective Use of Financial Experts: When and How to Utilize Them in Your Case

SUMMARY/CONCLUDING REMARKS





Effective Use of Financial Experts

CONCLUSION

- *Use of Financial Experts*
 - Valuable in moving matters forward
 - Engaging attorney must optimize impact of expert's presence
 - Legal counsel must ensure there is a thorough understanding of the work undertaken and how its communicated



Effective Use of Financial Experts

CONCLUSION

- *Use of Financial Experts*
 - Find the best expert to fit the case
 - Nature of the case
 - Type of expert needed
 - Screening professional credentials
 - Interviewing experts



Effective Use of Financial Experts

CONCLUSION

▪ *Use of Financial Experts*

– Grossman Yanak & Ford LLP

- Shareholder Disputes
- Business Transactions
- Estate and Gift Tax
- Marital Dissolution
- Employee Stock Ownership Plans
- Damages and Lost Profits
- Forensic Analysis & Fraud
- Cash Flow Planning
- Fair Value Financial Reporting



Effective Use of Financial Experts

CONCLUSION

▪ *Use of Financial Experts*

– Grossman Yanak & Ford LLP – Professional Credentials

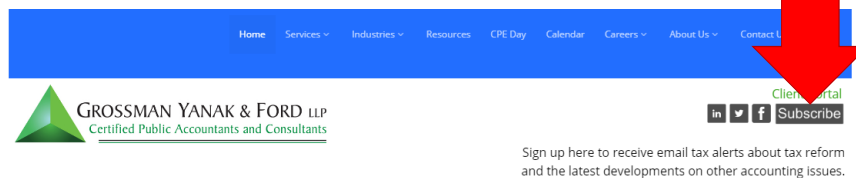
- Certified Public Accountants (in Pennsylvania and elsewhere)
- Accredited Senior Appraiser (American Society of Appraisers)
- Certified Valuation Analyst (NACVA)
- Certified in Financial Forensics (AICPA)
- Accredited in Business Valuation (AICPA)
- Certified Business Appraiser (IBA)



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CONCLUSION

- Please go to www.gyf.com to subscribe to receive timely updates about accounting topics, tax reform legislation and other issues



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FINAL QUESTIONS?

THANK YOU!