



Commercial Litigation: Improving Your Chances for Victory

by Chris Hamilton, CPA, CFE, CVA, DABFA

Commercial litigators are engaged to handle any matter of business dispute between individuals, partnerships, or corporations. For many businesses, litigation is a common aspect of daily operations, protecting company rights and defending against frivolous lawsuits. The scope of commercial litigation is very broad, including:

- *Breach of contract*
- *Broker-dealer disputes*
- *Business interruption*
- *Claims analysis and negotiation*
- *Commercial collection*
- *Copyright, patent and trademark infringement*
- *Employment litigation*
- *Embezzlement and fraud*
- *Insurance claims/bad faith*
- *Insurance fraud*
- *Inventory losses*
- *Lender liability*
- *Mergers and acquisitions litigation*
- *Partnership/shareholder/officer/director disputes*
- *Personal injury*
- *Product liability*
- *Royalty agreements*
- *Unfair competition*
- *Uniform Commercial Code disputes*
- *Wrongful death*

Most of these matters may involve the use of financial and accounting experts, forensic accountants, business appraisers or fraud examiners.

Why Use a Litigation Consultant?

The margin of victory in commercial litigation can be very slim. Attorneys rely upon their knowledge of the law, industry expertise, litigation experience, experts and other factors to push the chances of victory in their client's favor. In many commercial disputes, one of the most critical factors for success is the proper selection and effective use of a litigation consultant specializing in accounting and finance issues. However, there are typically widely varying opinions between plaintiff and defense as to the damages, so you must have confidence in your litigation consultant. The best of these experts typically have expertise forensic accounting, fraud and business valuations.

How to Use a Litigation Consultant

An attorney should be able to rely upon his/her litigation consultant to provide objective and independent evaluation of the economic and financial issues involved in commercial and civil litigation. This would include working with litigators through:

- The evaluation of opposing party's claims
- Assistance in preparation of deposition and cross-examination questions
- Document request lists
- Other discovery assistance
- Analysis and calculation of damages
- Preparation of trial exhibits
- Expert witness testimony

Commercial Litigation Examples

Attorneys may recognize that a potential business litigation matter appears valid and even winnable; however, a litigation consultant can actually make or break the success of the matter. Here are a few examples:



- The calculation of damages from the breach of a contract involves the analysis of historical financial data, analysis of the current status of the parties involved, and projections of future economic activity. In most breach cases there is a basic formula used to calculate damages. In simple terms, the difference between what would have happened without the breach of contract and what did happen as a result of the breach of contract is the economic damage. Quantifying that difference is based on a combination of actual verifiable data, assumptions, and projections.
- Business interruption, such as from a fire, can be disastrous for the continuation of the business. Insurance is a vital element of the recovery from a disaster, however, sometimes the adjuster's offer is insufficient. Therefore, the use of experts to facilitate the insurance reimbursement is often necessary to arrive at a fair and reasonable conclusion. Many adjusters have been handled a formula and are simply hired to determine the inputs to the formula, so the financial expert should be able to think outside the parameters established by the adjusters.
- Partnership disputes often involve a disagreement between control and non-control owners. The results of these disputes usually head towards a buy-out of the disputing owner, sale of the company, or liquidation. Litigation of this type requires the use of financial experts who can assist with valuation, accounting, and tax issues.
- Employee theft is as common as there are businesses. There likely is not a business that has not been victimized from the inside. The size of the thefts range from miniscule (and undetected) to massive. Large thefts are generally perpetrated by employees in a position of significant authority based on years of relationship with the key personnel in the organization (owners, management, etc.). Forensic accountants assist in determining whether employee theft occurred, and if so, to estimate the extent of monetary loss or damages and to determine who committed the fraud.

The Arxis Difference

Arxis Financial's "Litigation Consulting" practice provides objective and independent evaluation of the economic and financial issues involved in commercial and civil litigation. We have experience resolving disputes in a wide variety of matters, and an array of industries. Our litigation consultants perform an analysis to calculate lost revenues, lost profits, lost opportunities, and unjust enrichment.

Clients are particularly pleased with Arxis Financial's abilities to clearly, persuasively, and accurately present economic and financial evidence and opinions. Our professionals assist attorneys in interpreting the data and help counsel to understand and analyze events or issues as they develop the case and prepare discovery. Expert analysis and conclusions are presented in depositions and trial at local, state and federal court levels as well as mediation and arbitration. If you have a commercial litigation matter that you would like to discuss, please feel free to contact us.

About the author:

Chris Hamilton is a partner with the CPA firm of Arxis Financial, Inc., in Simi Valley. He is a member of the California Society of Certified Public Accountants (Litigation Services Committee), and the American Institute of Certified Public Accountants. Mr. Hamilton is a Certified Public Accountant, a Certified Fraud Examiner, a Certified Valuation Analyst, and a Diplomat of the American Board of Forensic Accounting. He can be reached at ph. 805-306-7890 or chamilton@arxisgroup.com.