

# FYI

## A Special Report of Abo and Company, LLC on Dispute Resolution

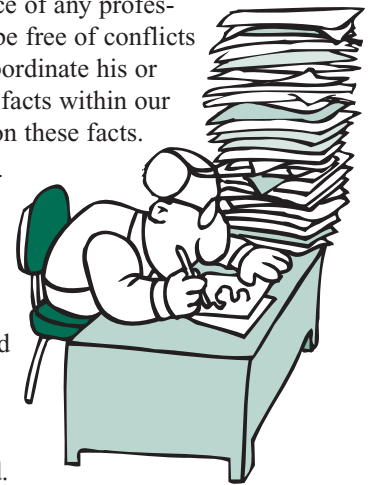
### I Give Up — What Exactly is a “Forensic Accountant”?

According to Webster’s Dictionary: “FORENSIC – Belonging to, used in or suitable to courts of judicature or to public discussion and debate; pertaining to or used in legal proceedings or argumentation.” Forensic accounting provides an accounting analysis that is suitable to the court which will form the basis for discussion, debate and ultimately dispute resolution. Forensic accountants are trained to look beyond the numbers.

Because of our training and skills, many companies and their attorneys often use us as experts in such accounting, financial and economic matters. We believe one key reason for retaining the expertise of CPAs in doing such due diligence or performing forensic services revolves around our ethical duties and responsibilities. We must adhere to a rigorous code of ethics for all engagements, which includes the requirement to be objective. Would you not want to seek the assistance of an expert who follows the AICPA’s Code of Professional Conduct Rule 102 requiring that “...CPAs in the performance of any professional service shall maintain objectivity and integrity, shall be free of conflicts of interest and shall not knowingly misrepresent facts or subordinate his or her judgment to others.” We have a duty to credibly analyze facts within our area of expertise and derive supportable conclusions based on these facts.

Forensic accountants are generally well-rounded professionals with broad exposure to many industries and even more business environments. Still, we go through a constant learning phase, which keeps us forever on our toes.

Throughout a forensic engagement, the CPA retained typically wades through voluminous amounts of financial and accounting information. Much of this data can be confusing and disorganized. In an entrepreneurial or small business, such data is often lacking the traditional accounting controls which might help to ensure the accuracy of the data provided. Here again, use of a CPA or forensic accountant seasoned in such engagements must interpret this accumulated data in a logical, reasonable and accurate manner.



In response to today’s litigious society, Abo and Company’s involvement in dispute resolution services (a/k/a litigation support services) has expanded significantly. Today’s legal matters, matrimonial discord and insurance coverage disagreements often require the consultation of CPAs who possess expertise in a wide range of accounting, tax, financial, forensic and investigative matters. We prepare damage studies and financial analysis with the utmost of professional care. We substantiate our findings with convincing, supporting evidence, within a reasonable degree of accounting certainty.

We provide litigation support services to both plaintiffs and defendants. We often get involved early as litigation strategists and consultants to help determine when and if assistance is needed. We will later perform expert witness services and testimony, as needed.

We believe we possess superior technical capabilities gained from extensive hands-on experience and continual educational training. Beyond having served as Chairman and an active member of the New Jersey Society of CPAs Litigation Services Committee and on its Matrimonial Accounting Committee, founding partner, Martin H. Abo has quite an exhaustive list of accomplishments as can be seen on his professional profile (see Marty’s Curriculum Vitae on our website [www.aboandcompany.com](http://www.aboandcompany.com) for details regarding his credentials or call us for a paper copy).

We may be especially adept at providing professional assistance in wrongful death, catastrophic injury or permanent disability cases, covering such matters as:

- Analysis of lost earnings, fringe benefits and retirement benefits
- Analysis of medical care costs
- Loss of household services

### Inside this Issue...

- I Give Up – What Exactly is a “Forensic Accountant”?
- How About Some Specific Examples of Dispute Resolution Services
- Business Valuations Aren’t Just Needed in Disputes
- Perhaps “...Til Death Do Us Part” is a Bit Unrealistic

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*Continued on page 2*

# I Give Up — What Exactly is a “Forensic Accountant”?

Continued from page 1

## We also offer the following dispute resolution services:

**Preliminary Fact-Finding** – Prior to counsel taking on a case, we’ve assisted in determining a preliminary value of possible damages and the viability of obtaining sufficient financial evidence.

**Causation of Damages** – We help the attorney for the plaintiff in proving that the defendant’s actions caused damages. Alternatively, we’ll assist the attorney for the defendant assess the merits or perhaps negate such claims.

**Damage Studies** – We will assist the client and counsel by performing forecasts, projections, business valuations or feasibility studies related to a case and consolidating all financial data into economic evidence in an effort to effectively demonstrate the strength of the legal position taken.

**Trial and Settlement Support** – We assist by providing persuasive, articulate and credible expert testimony when required. We will brief the attorneys, litigants or others in the understanding and presentation of financial and economic evidence.

We also analyze financial data and assist in understanding the financial and tax implications of various settlement proposals. We will support cross-examination, scrutinize and comment on the opposition’s financial evidence and experts. In addition, we will assist with the discovery process.

## Examples of Cases:

- Matrimonial litigation
- Business interruption and other insurance claims
- Reconstruction of missing or incomplete records
- Shareholder disputes & partnership dissolutions
- Business valuations
- Commercial and contract disputes
- Personal injury and wrongful death claims
- Business interruption claims
- Lender liability analysis
- Interrogatory assistance
- Lost profit claims and damage measurement
- Breaches of contract
- Business acquisition and sales
- Arbitration and mediation

*Call us. We want to help.*

## How About Some Specific Examples of Dispute Resolution Services

As the business world grows increasingly complex, the need for litigation support or forensic accounting services has never been greater. When attorneys, judges or insurance companies are enmeshed in a complicated case, it’s not unusual for them to call upon Abo and Company. By tapping into our knowledge of business, accounting, taxation and financial information, it’s easier for them to focus on key issues and to organize the case.

Consider the case of the minority shareholder who was offered an unduly small amount for his stock. After filing suit against the majority shareholders to recover a fair share of the business value, his attorney asked us for advice. Knowing the language of business, we were able to assist him in framing the deposition questions presented to the majority shareholders as well as the company’s accountants. In the end, the case was settled favorably for the plaintiff.

In another case, we were called upon to help after a fire ravaged an operating business. The insurance company had paid property damages but a dispute arose over the economic losses incurred while the business was closed for repairs. Prior to the trial, we were able to help assess the lost profit and other consequential damage computations developed by the plaintiff’s accountant, which created a stronger case.

Or how about the terminated sales manager of an automobile dealership who sued under his employment agreement for a promised bonus based on a questionable formula? Our analysis of the financial records, re-computation of intercompany profits and expert

testimony, helped result in a highly successful re-determination of the plaintiff’s bonus.

In truth, litigation support takes us down many paths. During divorce proceedings, we frequently value closely held businesses, taking into account both tangible and intangible assets; real estate, machinery and inventory, as well as reputation, goodwill and market share. Once this is complete, we work with the attorney to structure settlement that allows for an equitable division of both business and personal assets.

Much of our work is investigative, which means we provide the relevant accounting and analytical reviews to resolve financial disagreements. We also often assist in preparing cases for trial. This involves clarifying language and economic concepts for the attorney, and preparing useful exhibits and analysis for the judge and jury. It may also involve testifying as an expert witness in the courtroom or arbitration hearings to discuss tax, accounting and financial matters. Furthermore, we can provide the defendant’s attorney or the plaintiff’s attorney with an assessment of the strengths and weaknesses of the case and, in turn, impact on the trial plan being developed.

During the last twenty five years, Abo and Company has performed investigative analysis work in many cases, covering a wide range of topics and industries. Operating in a supportive capacity, we can provide on-going facilitation in the litigation process, helping attorneys and clients alike to strengthen their cases.

*Got a situation? Give us a call to discuss.*



# Business Valuations Aren't Just Needed in Disputes

So owning your own business is becoming a drain on your personal lifestyle? Maybe you're thinking "...now's the time to kick back and enjoy."

Why not sell your business and sail off into the sunset? What? You don't have a clue what the business is worth? Well, you're not alone!

During the course of any fiscal year, business owners ask this important question – "How much is my business really worth?" – more times than they'd like to admit. They rarely admit to this because, frankly, many of them have no idea of the real value of their business.

Certainly, there are those business owners who have a "rough idea" of what the property and other capital assets are worth, but they realistically have no concept of what the intangible assets or "goodwill" could be valued at. Consequently, most business owners only have a "ball park" figure that they use. Remarkably, that number often remains the same in their minds for a long period of time.

Maybe if you knew how much your business was worth you wouldn't want to "...sail into the sunset"! Perhaps armed with knowledge of the value of your business, you could transform it into an industry leader!

What can a valuation of a business do and how can it help an owner more effectively handle the daily operations of the business?

Owning and operating a business requires the owner to make many decisions. Knowing what a business is worth makes facing these decisions much easier and can be used as a starting point for planning ways to increase its value.

For instance, reducing the risk factors enhances the value. A business that has only a few customers may have more risk than one that sells to a large number of customers dispersed over a wide geographic area. Changing the customer base may reduce the risk and thus increase the business value.

Each business is unique and identifying the value of a business is a complex procedure. Cost, income and market information all must be gathered and analyzed in several different approaches to accurately provide a valuation that will give the owner information needed to improve the financial condition of a business.

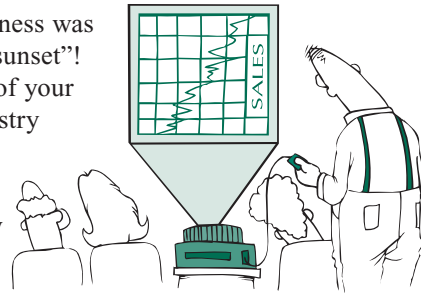
After a valuation of a business is complete and the results have been

analyzed, the owner will often be able to make adjustments to the operational efficiency of the business by simply looking at the numbers and uncovering some of the hidden strengths and weaknesses.

Other situations we've seen where business valuations are beneficial include:

- Business split-up or spin off
- Buy sell agreement
- Bankruptcy and foreclosure
- Charitable contributions or gifting programs
- Compensation plan
- ESOP (Employee Stock Ownership Plan)
- Estate and gift taxes
- Financing
- Incentive stock option program
- Initial public offering
- Lease vs. buy option
- Litigation support, mediation and arbitration (i.e. dissenting shareholders, divorce, economic loss analysis, partner disputes, wrongful death, etc.)
- Liquidation or reorganization
- Pre- or post-nuptial planning
- Succession planning

Abo and Company has considerable experience in resolving challenging valuation problems. We've performed business valuation studies in connection with sales of businesses, litigation, estate planning and for other purposes. Where we think additional resources are required or where a real or perceived conflict of interest exists (i.e. perhaps we represent two of the parties involved), we're frequently asked to recommend one of our colleagues also seasoned in this arena. We're proud to personally know some of the best and brightest in the region – hell, in the country! Give us a call.



## Perhaps "...Til Death Do Us Part" is a Bit Unrealistic

Though it is unfortunate, divorce often leads to acrimony as well as alimony. This attitude causes some to renege on their alimony obligations and others to seek even higher awards if the fortunes of the ex-spouse improve. Often these matters result in litigation and other costly legal expenses. Since alimony is a form of taxable income, matrimonial clients should be made aware that the cost of litigation to protect one's right to alimony or to obtain a larger amount of alimony is a tax deductible expense for the production of income. Perhaps this tax tip will even encourage matrimonial clients to accelerate payment of their legal and accounting bills!

And how about some advice for those "...getting back in the saddle?" Well, economic complications can frequently cloud second marriages. The newly re-weds are likely to have children from a former marriage, real estate, savings and other property, significant pension benefits that have accrued with an employer, and there may also be alimony payments to a former spouse. For these reasons, it is important to be candid with the new spouse and to make equitable provisions regarding the wealth being brought into the new marriage.

This would usually entail:

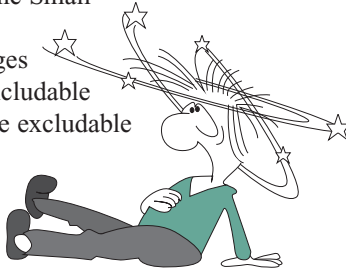
- Preparation of a pre-nuptial agreement to protect children from a former marriage, and possibly, the ex-spouse.
- Determination of the handling of real estate, especially where both of the new spouses have homes.
- Planning for the sharing of income.
- Restructuring of employee benefits and insurance.
- Re-drafting of wills.

All of these matters have both legal and economic implications. The parties should consult with their attorneys to deal with the legal issues and with their seasoned CPAs (hopefully us) to pursue strategies that will minimize taxes and arrive at the economic balance they seek.



# Tax Aspects of Personal Injury Awards

For years, confusion and litigation abounded concerning the taxability of punitive damages and damages for nonphysical injuries such as gender and age discrimination or in harassment cases. With the passing of The Small Business Job Protection Act signed into law in 1996, years of litigation ended by stating that punitive damages – whether or not related to physical injury – are not excludable from gross income. Awards for nonphysical injuries are excludable only to the extent of amounts paid for medical care attributable to emotional distress. Consider these:



- Punitive damages will be included in gross income and taxed when received on account of personal injury or sickness whether or not related to a physical injury or physical sickness. For example, Tax E. Vater was awarded by the jury \$200,000 for physical injuries received from an accident at his job. \$150,000 of the award was attributable to his actual physical injuries while the balance was punitive as a result of repeated OSHA violations at his employer's factory. Tax E. Vater should include the \$50,000 punitive portion of the award in his taxable income while the \$150,000 payment for his actual physical injuries can be excluded.
- Damage recoveries for other than physical injuries or sickness will be taxed. Emotional pain and suffering or emotional distress is not considered a physical injury or illness excludable from taxation. Other than for the actual medical expenses incurred, damages received for a "wrongful discharge" claim, race and age discrimination, injury to reputation accompanied by a claim of emotional distress, and similar non-physical claims will all be included in gross income. For example, Jane Denim was awarded \$70,000 for sexual harassment by her employer. All of the award was for her pain and suffering but because the award was for a non-physical injury, the entire \$70,000 would be taxable.
- We indicated that damage awards (nonpunitive) received because of physical injury or sickness will not be taxed. Similarly, awards for emotional distress or other non physical injuries to the extent attributable to a physical injury, will be excluded. In this first instance, if Sally Jones received \$50,000 for physical injuries she received in a car accident, she would not be taxed on anything since the entire amount was for the actual physical injuries she suffered. Similarly, if her husband received another \$30,000 for his loss of consortium with Sally resulting from her injuries, the entire award would still not be taxed because the award had its origin in a physical injury.
- Nonpunitive awards for non-physical injuries will not be taxable to the extent they are paid for medical care attributable to emotional distress. For example, Jane Martin was granted \$100,000 from a jury for her sexual harassment claim. If \$20,000 of the award was to reimburse her for the medical expenses due to her treatment of the emotional distress caused by the harassment, only \$80,000 of the award for her pain and suffering would be included in income.

What's it all mean? In some of the cases we've consulted on, we've noticed plaintiffs holding out for more money to make up for an increased tax liability. Also, we've heard some lawyers say that they believe a greater number of claims have been made alleging physical injuries in some harassment or discrimination cases.

How do CPAs involved in litigation support services like us get used? Well, we help lawyers by analyzing, quantifying or preparing claims for damages or settlement offers. We may discuss with lawyers the tax or financial impact of filing a claim under several different scenarios, giving consideration to maximizing the after-tax recovery. We also might consult with defense counsel, preparing reports or counter-reports where necessary, and even advising them on settlements of legitimate claims that might minimize income taxes, which could result in lower payments by their clients/payors.

## Principal Client Services of ABO AND COMPANY, LLC

### TAX PLANNING AND COMPLIANCE

- Tax planning for individuals, corporations, partnerships, limited liability companies, estates and trusts
- Tax return preparation and review
- Assistance with IRS, state and city examinations and conflicts, including representation and negotiations to resolve disputes
- Tax related valuations

### FINANCIAL CONSULTING

- Financial forecasts and projections
- Funding assistance, including preparation of business plans, financing negotiations and communications with lenders and investors and workouts
- Merger, acquisition and divestiture services
- Transaction structuring for financial and tax purposes
- Bank relationship consulting

### DISPUTE RESOLUTION SERVICES

- Litigation support services
- Damage assessments and computations in diverse areas including family law, insurance claims, wrongful termination, personal injury, shareholder disputes, breach of contract claims, lost profit computations, and historical analyses
- Valuations of businesses
- Analysis and evaluation of opposing experts' reports and independent expert witness testimony

### ACCOUNTING AND REVIEW SERVICES

- Design of financial statements and internal management reporting systems
- Compilations and Reviews of financial statements
- Budgeting, cash flow, internal control and financial statement analysis with recommendations.

### MANAGEMENT CONSULTING

- Profitability analysis
- Strategic business and financial planning and general business advice
- Bookkeeping operations review and recommendations.
- Accounting systems solutions
- Assistance in defining, interviewing and hiring of financial personnel
- Controller services

FYI is published by Abo and Company, LLC, Certified Public Accountants and Litigation & Forensic Consultants for its clients, their advisors and other interested persons upon request. Since technical information is presented in a generalized fashion, the publication is not meant to replace the need for competent professional advice.