

Introduction to Damages Engagements: Who can be an expert

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1. Who can do Damage calculations:

CPA, MBA, Appraisers, economists

Depositions/trials: pressure, difficult questions: income, emails with attorney discoverable, attack credibility, bias. Are you published? Have you taught? Deal with jury, public speaking, court experience

2. What are damage calculations?

Damages are from contracts (breach)/torts(negligence)-'but for' causation

3. Types of damages

Lost profits-PL

Lost business value-Bal sht


4. Sample cases

Non-competes: tort and contract. Look at value of sales to plaintiff's customers that were transferred to new employer (gross profit only, look at overhead). Lost profit=lost revenue less cost of performance (defined by Robert Dunn)

<u>Cost Elements</u>	<u>Damage Period</u>
Revenue	\$ 3,345,779
Cost of Goods Sold	3,175,813
Gross Profit	169,966
Commission	50,990
Other Variable Costs	27,101
Lost Profits	\$ 91,875

Other cases

- ▶ Nigerian Fraud: George Smith/DLA \$500,000
- ▶ Ship to Fedex/military base-spoof email

QUESTIONS	RESPONSE	RISK LEVEL
Is this a new customer?	No	0
Have we completed and received payment for less than five orders with this customer in the past two years?	Yes	1
Is the quote or order over \$100,000?	No	0
Is there a new supplier associated with this quote or order?	No	0
Have we processed less than five orders with this supplier/vendor in the past two years?	No	0
Has the customer stated their intent to export or ship the order outside the continental U.S.?	No	0
Is the supplier/vendor located outside of the U.S.?	No	0
TOTAL		1
Assessed Risk Level		14%

More cases

- ▶ Bankrate-CFO pad income: Civil, criminal, duties
- ▶ Savi-QB fraud: back-dating invoices
- ▶ PI case: stabbing
- ▶ Storage: valuing \$5 million of property
- ▶ Malpractice: CPA and Attorney
- ▶ Elder abuse: 2 brothers fighting
- ▶ Aptframe: value employment stream

Fire: not use Book value. Issue with cash value= replacement value less depreciation. Issue with depreciation. Arson?

Failed acquisition-current engagement. Restaurant was supposed to be sold. New owner claims they could have higher profits than seller did—examine business plan

Other: fraud, IP theft

Yardstick method. Damages under this method are based on how guideline companies performed. Industry trends are perceived by the courts to be an objective indicator of how the plaintiff might have performed, if not for the defendant's wrongdoing. But the subject company must be sufficiently similar to comparable, or guideline, companies if used.

Before-and-after method. Here, damages equal the difference in the plaintiff's actual performance before and after the defendant's wrongdoing. Or an appraiser might quantify a plaintiff's loss by assessing how much the defendant actually benefited from the wrongdoing.

Sales projection method. A valuator may choose to analyze historic trends and forecast how the plaintiff might have fared if not for the defendant's actions.

5. Time periods/calculations: **ex ante** (before event)-damages projected are pv discounted back to breach date/use only info available at date of breach
ex post (after the fact)

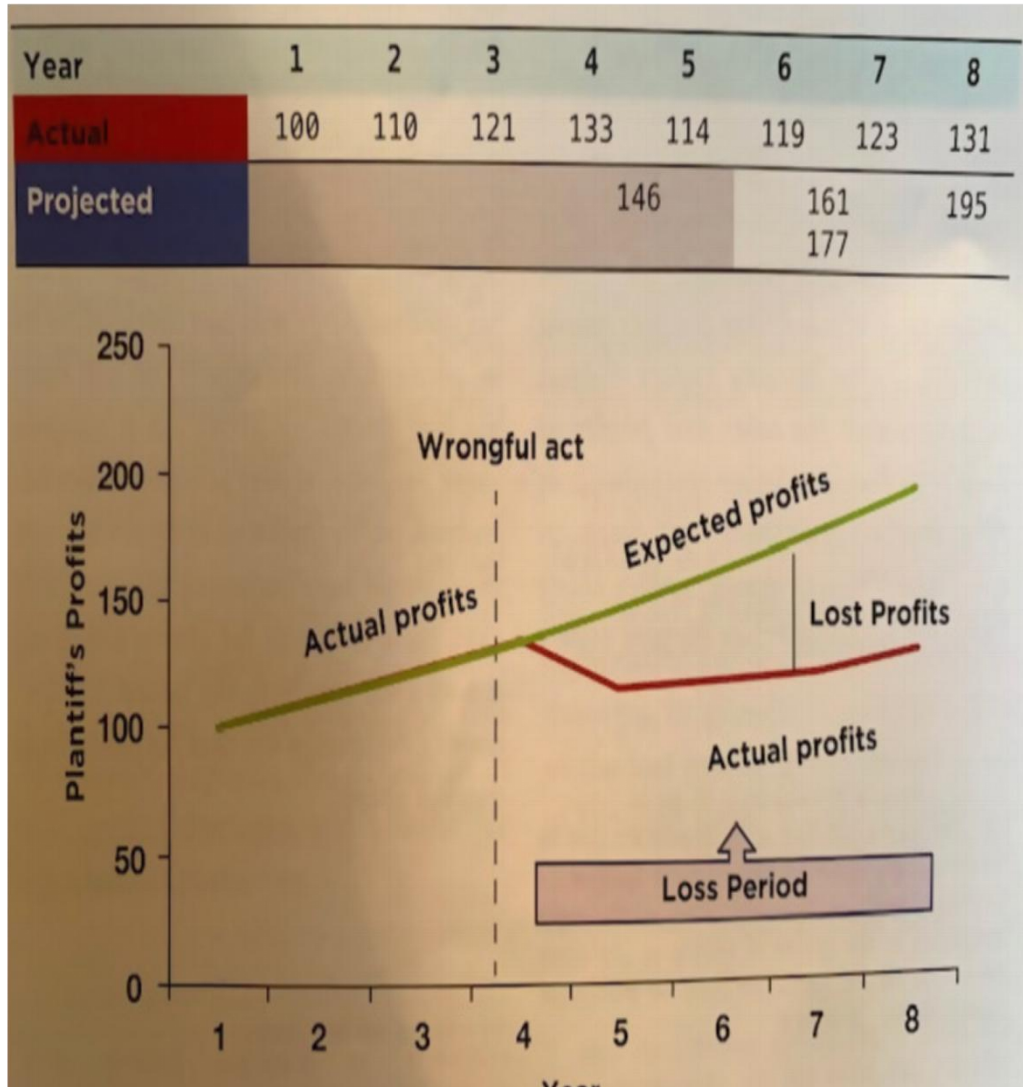
CHART 1: ESTIMATED LOSSES

YEAR	LOST SALES	ADD'L COSTS	COSTS AVOIDED	LOST PROFITS	DISCOUNT FACTOR	PRESENT VALUE
2	1000	100	700	400	0.9091	364
3	1080	105	735	450	0.8264	372
4	1166	110	772	505	0.7513	379
5	1260	116	810	565	0.6830	386
					Loss	1,501

Interest, tax

Duty to mitigate

“(D)amages for the loss of ‘income producing property’ must be measured by the asset’s market value as of the time the property is lost, not by the loss of the profits the asset could have produced in the future.”



Discount rate, WACC

Damages Analysis (Dollars in Millions)

	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Year	But-For Revenue	But-For Costs	But-For Earnings	Actual Earnings	Lost Earnings	Discount Factor	Damages
2008	\$561	\$374	\$187	\$34	\$153	1.21	\$185
2009	600	400	200	56	144	1.14	164
2010	639	426	213	45	168	1.07	180
2011	681	454	227	87	140	1.00	140
2012	726	484	242	96	147	0.96	141
2013	777	518	259	105	153	0.92	142
2014	828	552	276	116	160	0.89	142
2015	882	588	294	127	167	0.85	143
Total							\$1236

6. How to recognize case