

**Proving and Attacking Damages  
with a Financial Expert –  
Going Beyond the Numbers**

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## Proving or attacking damages with a financial expert

Concepts of damages relate to business valuation methods, whether you are valuing an entire business or only measuring a component of a business (product line, market segment, specific item). For proof of damages to succeed, the expert opinion needs to withstand challenges from the opposition. To defend against damages claims, you must be able to assess your factual and liability position, and be prepared to give an alternative estimate if circumstances call for it.

The purpose of this seminar is to illustrate some common issues which have arisen in financial expert testimony related to litigation. It addresses business valuation and calculation of business damages. The introductory section provides an overview of the business valuation process and outlines some key concepts useful in business valuation. Subsequent sections provide examples of how business valuation and business damage concepts have been applied or misapplied in practice. The examples show how experts have had difficulty proving their points, and are intended to stimulate thought regarding ways to strengthen proof as well as to highlight areas where expert credibility has been attacked.

This is not a seminar on current theoretical controversies or disputes among financial professionals regarding cutting-edge valuation or damages methodologies. If you are interested in such topics, send an email to [whb@billblackcpa.com](mailto:whb@billblackcpa.com) and I will give you numerous references and announcements of learning opportunities. It is not a seminar on legal issues or how to conduct litigation or trials.

### ***How valuation works***

Fundamentally, an asset is worth what someone will pay for it, or the value of the returns that can be earned by using it in business activities. Business valuation is an attempt to estimate how much a business is likely to be worth under known or expected market conditions based on history and assumptions. The central concept, “Fair Market Value”, is defined as:

the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.<sup>1</sup>

Cash flow is one key to valuation. Cash flow is the difference between the cash generated by the business in its operations and the cash required to support those operations. If investments in fixed assets (buildings, equipment, vehicles, tools, etc.) are needed for the business to operate, those investments must be recovered before the business can return cash to its owners.

The value of a business can vary depending on the purpose of the valuation. For example, a valuation for Employee Stock Ownership Plan purposes follows different rules and utilizes different assumptions from a valuation performed to estimate the value of a dissenting shareholder’s ownership interest in resolving an ownership dispute. Tax valuations follow the

For the remainder of this article or to discuss an in-person presentation of this seminar, contact Bill Black at [whb@billblackcpa.com](mailto:whb@billblackcpa.com)

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## About the Author

William H. Black is an independent Certified Public Accountant and business valuation consultant, practicing from Atlanta, Georgia, who has served clients in 17 states and 11 foreign countries. Areas of practice focus include intellectual property and other intangibles, and professional practices (including law firms). He has served as an expert witness in State and Federal Courts for disputes ranging from very small amounts to damages alleged in a \$180 million purchase of a business. Black is a member of the AICPA, National Association of Certified Valuation Analysts, the Institute of Business Appraisers, and the Association of Certified Fraud Examiners. He is a Certified Valuation Analyst, Accredited in Business Valuation by the AICPA, and a Certified Fraud Examiner. For more information about his practice, visit <http://billblackcpa.com>.

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<sup>1</sup> *International Glossary of Business Valuation Terms*, August 2001, jointly developed by the American Institute of Certified Public Accountants, American Society of Appraisers, Canadian Institute of Chartered Business Valuators, National Association of Certified Valuation Analysts, The Institute of Business Appraisers.  
<http://www.bvappraisers.org/glossary/>