

ROADMAP TO A SUCCESSFUL DISCOVERY PROCESS

OBTAINING KEY FINANCIAL DOCUMENTS IN BUSINESS DISPUTES

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One of the most challenging aspects of a lawsuit can be obtaining the relevant documents that matter most to a case. Discovery can prove to be costly, time-consuming and at times, beyond frustrating. As one may expect, the sharing of information between opposing parties is complicated. We have all been there; the painstaking waiting process of discovery which is part of the legal process. What if you could minimize the waiting game and strengthen your position? It is possible with the help of an expert. We will explore how a financial expert can lay out a road map of key documents that you will need to pursue a successful review and analysis of your case. If you know what to request in advance, you can get ahead of the process and step-up your strategy.

Help Your Expert Help You

During the discovery process, your legal team will often receive a substantial number of documents. Often many of those documents will not be relevant. Consider engaging a financial expert to assist you in wading through documents to help substantiate your damages claim or assess other financial aspects of the case. Also, do not overlook the expert's assistance with the discovery process. Consult with your expert and ask for assistance with creating a detailed document request. The expert may also assist you in crafting a pointed and timely response to a deficient document request.

Not All Documents Are Equal or Relevant

During the exchange of documents with your adversary, you will likely receive PDF files and perhaps user files such as Excel and/or Word files. However, relevant documents come in many different forms and formats. When seeking business financial data, consider going straight to the actual accounting system and ask for an electronic copy of the accounting system. Also, consider going directly to the Internal

Revenue Service when seeking difficult-to-get business or individual income tax returns.

In the majority of cases involving financial issues including damages, obtaining an accounting system electronic file would be a significant benefit when analyzing the financial aspect of your case. Such an electronic file will contain detailed transaction history and other key financial data. In addition, obtaining copies of tax returns or tax transcripts directly from the Internal Revenue Service will eliminate questions about whether copies of tax returns produced during discovery were filed with the Internal Revenue Service. Furthermore, when tax returns are unavailable for any reason, it provides an opportunity to obtain them.

Requesting an accounting system electronic file or tax returns directly from the Internal Revenue Service will likely encounter a robust challenge from opposing legal counsel. Nonetheless, obtaining such data is not insurmountable. We have found a well-written affidavit signed by your financial expert explaining the need for this information that is filed with your pleading with the court is an effective way of obtaining this information. Also helpful to overcome the challenge of disclosing detailed financial information is to consider the protections of "Attorneys' Eyes Only" designation for such sensitive information.

Detailed Look into Accounting Systems and Income Tax Returns

QuickBooks Accounting System

Since many businesses use QuickBooks as their accounting system, our discussion will focus on the unique intricacies of analyzing an electronic QuickBooks file. You may receive a PDF version of QuickBooks reports from opposing legal counsel in response to your request. In addition to not being responsive to your request, PDF reports will likely be missing critical information. For example, an electronic copy of the QuickBooks system

file provides an audit function which reveals if any transactions were deleted or modified, and if so, by whom and when. This may be critical information in cases of potential fraud. Furthermore, the QuickBooks system file may also provide missing or incomplete financial information which may be a critical linkage to an allegation of wrongdoing.

Let us now say you have received the electronic QuickBooks file. Is it all it is cracked up to be? Are you able to access the computer file and is it the correct file? There are many variables to consider. Although you were granted user access to the QuickBooks electronic file, you may still find it difficult to upload the file. Obtaining answers to the following questions will help gain access to the QuickBooks electronic data. What version and what year are being used? What are the credentials to open the file?

The version and year of the electronic copy of the QuickBooks system file are important to obtain so your financial expert can deploy the appropriate QuickBooks electronic file to gain access to the data. The proper user credentials are also critical to access the QuickBooks data. Gaining full administrator access to the QuickBooks file will provide full access to all available data in the QuickBooks file.

Lastly, understanding the reports available from QuickBooks is critical for a comprehensive analysis. Access to an electronic accounting system file is useless without a full understanding of its capabilities and knowledge of how to retrieve data from it. Anyone who has worked with electronic accounting software systems knows that one unchecked box in a report query could result in incorrect data. Your expert must understand critical report functions and the accuracy of the output produced.

Income Tax Returns

Business and individual income tax returns are commonly critical documents in any dispute

related to economic damages. Opposing parties in such disputes may attempt to distance themselves from financial statements or other financial documents produced in the matter claiming the documents are preliminary, draft or superseded. This approach will be difficult to perpetuate in relation to income tax returns filed with the Internal Revenue Service which indicates the following language above the signature line of both business and individual income tax returns: “Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.” As such, opposing legal counsel may raise spirited challenges to obtaining their client’s federal income tax returns.

In addition to financial information, federal income tax returns may disclose other information helpful to your case. For example, individual income tax returns may provide banking information including bank account numbers, which may be beneficial for issuance of subpoenas. Additionally, business income tax returns may indicate the name, address and phone number of the paid tax preparer, and the names of shareholders. Such information may be helpful in drafting subpoenas for additional responsive documents.

At times, federal income tax returns may not be available due to poor record retention by the opposing party or claims of such. Another option to obtain a copy of income tax returns or amounts from the income tax returns is to seek such from the Internal Revenue Service. Copies of income tax returns are available directly from the Internal Revenue Service by filing Form 4506 “Request for Copy of Tax Return”. Alternatively, a tax return transcript may be requested from the Internal Revenue Service, which shows most line items from the original income tax return filed, along with any forms and schedules by filing Form 4506-T “Request for Transcript of Tax Return”. A transcript is not a copy of the actual income tax return filed.

Since the filing of Form 4506 and 4506-T requires the signature of the taxpayer, an unwilling opposing party taxpayer may necessitate a court order for a signature on the tax forms. A compelling legal argument with input from your financial expert will likely be required to obtain the court order. Nonetheless, the benefits of the data obtained from income tax returns far outweigh the burdensome efforts to obtain income tax returns.

Conclusion

The discovery process is complicated and lengthy. Consider engaging a financial expert to assist with discovery requests. Your expert can lay out a road map of key documents you will need to pursue a successful financial review and analysis of your case. This will help facilitate obtaining key financial documents in your case and also provide for a successful discovery process.



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