

Working with Experts to Render or Challenge an Equitable Accounting

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Status: **Maintained** | Jurisdiction: **United States**

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A Practice Note written from the perspective of forensic accountants for use by attorneys who retain experts to assist with the rendering of an accounting as an equitable remedy in commercial litigation. This Note provides guidance to attorneys concerning the accounting deliverable and best practices for working with forensic accounting experts on behalf of clients rendering or objecting to an accounting.

In an intra-business dispute, the need for an accounting typically arises where a holder of ownership interests in an entity seeks to evaluate the propriety of financial transactions undertaken by a fiduciary. The results of the accounting allow a court to determine whether any sort of restitution or reallocation of funds is required as a matter of equity. This Note applies to an accounting as an equitable remedy based on fiduciary relationships in closely held or privately owned business entities, such as private corporations, LLCs, and limited partnerships. The right to an accounting may also arise from a contract or a statute, but that is beyond the scope of this Note.

Both sides of the dispute may retain experts. The party that the court orders to render an accounting may retain an expert to prepare the accounting and present it to the court (for purposes of this Note, the rendering party). The other party (for purposes of this Note, the objecting party) may retain an expert to evaluate and make objections to the accounting prepared by the rendering party.

Occasionally, courts appoint an expert as a special master to conduct the accounting as a neutral arbiter and present their findings to the court. Similarly, the parties may agree to jointly retain a neutral expert to make sense of a complicated set of financial transactions. An arbitration panel may similarly order a party to render an accounting, or the panel may bring in an expert to conduct an accounting. This Note assumes that a forensic accountant is individually retained by a party to the dispute, but the concepts discussed in this Note may apply to other scenarios.

This Note also assumes that the entity in question is a closely held corporation and that the party seeking an accounting is a minority shareholder, but the same principles apply if the party that requested the accounting is a member in an LLC, a partner in a partnership, or a party to a joint venture.

This Note provides guidance to counsel from forensic accounting experts to help counsel understand:

- What an accounting is in the context of an intra-business dispute (see *Defining an Accounting*).
- The role of the forensic accounting expert for both the rendering and the objecting party (see *Role of the Expert*).
- Best practices for working with the expert (see *Educate the Expert*).
- What records to obtain from the client to allow the expert for the rendering party to prepare the accounting deliverable (see *Records to Obtain to Render an Accounting*).
- The content and format of the accounting deliverable (see *Content and Format of the Accounting Deliverable*).

This Note provides a broad, national perspective of this topic, but there may be jurisdictional and venue-specific nuances, including different terminology and deliverables, for similar engagements.

Obtaining an accounting is distinct from the inspection of a company's books and records by a shareholder,

LLC member, or limited partner. For more on books and records demands, see Practice Notes:

- [Inspection Rights \(Corporation\): Making a Books and Records Demand.](#)
- [Inspection Rights \(Corporation\): Scope of a Books and Records Demand.](#)
- [Inspection Rights \(LLC\): Making a Books and Records Demand.](#)
- [Inspection Rights \(LLC\): Scope of a Books and Records Demand.](#)

Defining an Accounting

The Accounting Remedy

In an intra-business dispute, an accounting is an equitable remedy that requires one party to provide detailed information about a fiduciary's actions concerning entity funds received and disbursed (see *The Accounting Deliverable*). After the rendering party submits the accounting, the other side has an opportunity to review and make objections that the accounting is inaccurate or incomplete. Once the court resolves the disputed items in the accounting, the court may order restitution of misappropriated funds to the entity, a reallocation among different accounts or between the parties, or otherwise order a true-up as equity dictates. (See *Sigalit v. Kahlon*, 2023 WL 5609099, at *2 (S.D.N.Y. Aug. 30, 2023).)

In some jurisdictions, an accounting may be a stand-alone claim, and in others it may only be available as a remedy for a different claim, typically breach of fiduciary duty. The accounting remedy may involve restitution or reallocation of funds where equity requires and, therefore, may give the parties the ultimate relief necessary for the dispute (see *Sigalit*, 2023 WL 5609099, at *2 (after the rendering party provides the accounting, the court holds a hearing to determine the final amounts due to the plaintiff)).

Alternatively, an accounting may be used as an interim remedy to provide the parties and the court the information necessary to determine the ultimate remedy appropriate for the dispute (see, for example, *Sipko v. Koger, Inc.*, 251 N.J. 162, 170-71 (2022) (noting that the trial court ordered an accounting, after which it determined the appropriate remedy for a minority shareholder oppression claim); *Meister v. Mensinger*, 230 Cal. App. 4th 381, 403 (2014) (noting that the trial court ordered an accounting after the trial to assist it in addressing the issue of remedies)).

A typical scenario involves a minority or non-managing shareholder seeking an accounting because they

suspect that a corporate officer or majority shareholder responsible for managing the company's financial affairs breached their fiduciary duties to the minority shareholder and the entity by engaging in self-dealing, misappropriation of corporate assets, co-mingling of funds, or other financial improprieties. In most cases, the party that is accused of wrongdoing is also the custodian of or has access to the entity's records, and the court orders the accused party to render the accounting.

Occasionally the party accused of wrongdoing is not the custodial party. For example, in a dispute between LLC members where one of the members has been removed from their role as manager on the suspicion of improper conduct with the LLC's funds, the former manager likely no longer has access to the historical information required to properly perform an accounting. In this case, the parties may take the position that the best course of action is to:

- Have a court-appointed special master or mutually agreed-on neutral expert conduct the accounting.
- Give the accused party access to the necessary business records to render an accounting and demonstrate the propriety of their suspicious transactions.
- Have the custodial party prepare the accounting and flag all the transactions it considers suspicious or improper.
- Resolve the dispute using a different remedy.

The Accounting Deliverable

In addition to being the term for the remedy sought, the deliverable the rendering party provides is generally also called an accounting or an account. There is no universal definition or format for an accounting. However, an accounting is generally understood as a written statement reflecting the factual identification and summarization of historical cash receipts and disbursements for both:

- A specific subject (for example, a business entity, a bank account, or a contract).
- A finite period (for example, a given year or another timeframe).

Ultimately, the accounting should tell the user the "who, what, when, and where" of the receipts and disbursements within the scope of the accounting. (See *Content and Format of the Accounting Deliverable*.)

An accounting may provide more details concerning specific transactions than the entity's accounting ledgers and should, as a best practice, include accompanying documentation. The accounting deliverable should have

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enough information to allow the court to assess whether any transactions are improper and require the court to order restitution or reallocation of funds.

Accordingly, the accounting should assist the trier of fact (and the parties) to understand the flow of funds within the appropriate scope and help determine:

- The source of cash receipts.
- The recipient of the cash disbursements.
- When the cash inflows and outflows were received and disbursed.
- The nature of the cash flows (for example, operating expense, personal expenditure, loan proceeds, revenues, and so on).

The end goal of the accounting deliverable is to assist with an impartial resolution of the dispute based on the facts and circumstances surrounding the transactions in the business's accounts.

The rendering party may render an accounting without the help of an expert, especially if there is sufficient internal expertise to deliver the necessary product. This Note assumes that the rendering party requires the assistance of an expert to meet its obligations.

Role of the Expert

Even when retained by a party to support its position in the case, the forensic accounting expert's role is to be objective and help the parties and the court better understand the financial information relevant to the dispute. Experts are generally advocates for their opinions and work product, in contrast to attorneys, who are advocates for their clients.

An accountant's professional standards require them to be objective by:

- Viewing the information presented in a neutral manner.
- Drawing objective conclusions from the data.

This may require concessions by the parties when interpreting and applying the results of the accounting. It is common for there to be some level of dissatisfaction by the party retaining the expert when the findings of the expert are used for the disposition of the related claims and remedies.

The accounting deliverable is a factual identification and summarization of the historical transactions of an entity based on the records analyzed by the expert, but may not necessarily rise to the level of an expert opinion

per se. In the context of an accounting, depending on the circumstances and the court's requirements, the expert may:

- Issue a formal expert report containing the disclosures required by Federal Rule of Civil Procedure (FRCP) 26 or analogous state-court rules.
- Create an informal deliverable that the rendering party submits to the other parties and the court. The expert's assistance with and preparation of this accounting provides credibility to the deliverable.

The parties may also seek to take testimony from the expert at a deposition or a hearing before the court. Oral testimony may be beneficial to the court and the parties to ensure the information contained in the deliverable is not misinterpreted or misused, especially if the accounting is an interim point in the disposition of a related claim.

The definition of an expert opinion may vary depending on jurisdiction and the legal proceeding. Counsel should determine and tell the expert whether the deliverable will be a formal expert report or an informal work product and whether testimony will be part of the engagement. The form and content of the expert's written deliverable as well as the verbal communication of the expert's findings may vary based on the jurisdiction, venue, and the facts and circumstances of the matter.

While the accounting might not necessarily be offered as an expert opinion, the facts of the case and the role of the forensic accountant may lead a court to consider the deliverable as an expert opinion. Even if the accounting is not presented in a formal report, the information contained in the accounting deliverable, or the conclusions drawn from that information may be used by the same expert (or another expert) as factual background in a formal expert opinion about additional issues in the dispute.

Professional Standards

The professional standards applicable to Certified Public Accountants (CPAs) providing expert witness or expert consulting services to attorneys and their clients include the following standards promulgated by the American Institute of Certified Public Accountants (AICPA):

- The AICPA Code of Professional Conduct.
- Statement on Standards for Forensic Services No. 1, also referred to as SSFS No. 1 or FS Section 100, which:
 - applies to services rendered in connection with an actual or potential legal or regulatory proceeding, and investigations conducted in response to specific concerns of wrongdoing; and

- allows an expert to provide opinions relating to whether evidence is consistent with certain elements of fraud but prohibits the accountant from offering an ultimate conclusion that fraud occurred and leaves that to the trier of fact.
- Statement on Standards for Valuation Services No. 1, also referred to as SSVS No. 1 or VS Section 100, which applies when the accountant's engagement includes estimating the value of a business. SSVS No. 1 describes required elements for developing and reporting the estimated value of the business.

Depending on the specific nature of the engagement, other professional standards set by the AICPA and other standard-setting bodies may also apply to engagements within the scope of this Note. This includes applicable regulatory standards depending on the facts and circumstances of the matter. Even if an accountant is not a CPA or not a member of the AICPA, they still may be bound by the professional standards of their state's CPA Society which may mirror those of the AICPA.

Accounting and valuation experts may hold licensures and certifications offered by other professional standard-setting bodies including:

- Certified Fraud Examiner (CFE) certification offered by the [Association of Certified Fraud Examiners \(ACFE\)](#).
- Chartered Financial Analyst (CFA) offered by the [CFA Institute](#).
- Accredited Senior Appraiser (ASA) offered by the [American Society of Appraisers](#).
- Certified Valuation Analyst (CVA) offered by the [National Association of Certified Valuators and Analysts \(NACVA\)](#).

Each of these licensures and certifications are governed by the standards set out by their respective governing bodies. For example, if the expert holds a CPA license and the CFE certification, their work must comply with both the AICPA's and the ACFE's professional standards.

Counsel should be aware of which licensures and certifications the expert has attained and which professional standards govern the performance of the expert's services. The expert's qualifications (such as education, experience, licenses, and certifications) will likely come up during discovery. These disclosures are also required by the FRCP and may be required by analogous state civil procedure rules.

The applicability of professional standards to the expert's work should also be addressed in the engagement letter.

Assistance with Discovery

If the rendering party is not the party with custody of the underlying records or is missing some portion of the necessary records, the rendering party may need to engage in discovery before the expert can conduct their analysis. The necessary records may be in the custody of another party to the dispute or may be maintained by a third party (for example, financial institutions, outsourced accounting providers, tax accountants, or title companies).

In this case, counsel should rely on the expert's guidance to determine the specific documentation needed to render a complete and responsive work product. The expert should explain what documents they are seeking, as well as why they seek those specific documents. Understanding the relevance of discovery helps counsel draft precise discovery demands and negotiate the appropriate scope of discovery with opposing counsel. The expert may also suggest specific language, such as industry-specific terms, which would allow counsel to draft efficient discovery demands.

Working with the expert on discovery demands helps counsel to:

- Ensure the expert has the necessary information to perform the accounting.
- Minimize the production and required review of documents which are not helpful.

Similarly, counsel may wish to consult with the expert on developing topical areas and specific questions to ask during deposition and trial testimony of witnesses. Where assistance with discovery may be required, counsel should be sure to engage the expert sufficiently early in the litigation.

The forensic accounting expert can also help counsel determine whether the issues require assistance from certain specialists. For example, obtaining, protecting, and processing certain information, especially large volumes of raw data or other electronically stored information, may require the assistance of a digital forensics expert. Likewise, if any commercial assets are held in cryptocurrency, the assistance of a digital currency expert may be needed to obtain and interpret records relating to the acquisition and disposition of these assets.

Role of the Expert for the Objecting Party

The objecting party may also retain their own expert to review the accounting submitted by the rendering party, identify the necessary objections, and, if deemed necessary, issue their own report. This report may offer

critiques of the accounting rendered by the rendering party's expert as a whole or may be limited to critiques of certain components of the accounting. The objecting party's expert may highlight, for example:

- That the accounting is incomplete for failing to review and rely on material information. For example, the objecting party's expert may point to the rendering expert's failure to include a certain entity bank account in their analysis.
- Information which conflicts with the results of the accounting. For example, tax reporting information may indicate the entity's gross receipts during a specified period are greater than the gross receipts reported in the accounting.
- That certain assumptions made by the expert are unsupported. For example, the expert rendering the initial accounting may assume all disbursements to a certain vendor constitute operating expenses, but the objecting party may have knowledge that the vendor is owned by a related party or performs services for the entity's fiduciary in their personal capacity.
- The accounting deliverable contains clerical and mathematical errors.

In essence, the role of an objecting expert is the same as the rendering party's expert: to assist the parties and court in obtaining and evaluating objective information which moves the dispute towards an equitable resolution. If nothing else, the objecting expert helps ensure the rendering party, and their respective expert, have rendered a deliverable that achieves this goal.

Educate the Expert

Counsel and the expert should engage in a two-way educational dialogue before the expert begins its substantive analysis, which should continue throughout the engagement.

Underlying Concepts

Counsel should educate the expert on legal, procedural, and administrative concepts relevant to the dispute. These concepts may include:

- Interpretation of relevant contractual provisions.
- The required scope of the accounting, including the time frame and the transactions at issue. For example, whether the accounting is analyzing the entirety of the entity's transactions for a given time period, transactions in a certain bank account or series of accounts, or a single segment of the business.

- The desired form and content of the accounting deliverable and the workpapers to be maintained by the expert supporting its findings. The required support is governed by a combination of the expert's professional standards and any judicial mandates or terms of the engagement letter. Counsel may receive guidance from the expert about these concepts.
- The other claims set out in the pleadings and appropriate remedies for those claims based on statutory and case law interpretations.
- Attorney-client privilege nuances specific to the jurisdiction and venue.
- Client and counsel preferences about written and verbal communications.
- Work product rules in the relevant jurisdiction and venue, including the rules on discoverability of drafts and other written documents.

Background of the Dispute

It is important for the experts for both sides to understand the factual timeline of events preceding the need for the accounting. This allows the expert to contextualize the dispute and provide a work product responsive to the court's and the parties' needs.

The end goal is to ensure the content and presentation of the accounting furthers the dispute towards its ultimate resolution. A lack of understanding of the facts and circumstances of the case, including the preceding timeline of events, applicable laws, and issues related to outside documents (for example, shareholder agreements and operating agreements) may cause the expert to overlook or misinterpret important information or render a deliverable that is not responsive to the dispute at hand.

For example, if there are questions about whether a majority shareholder used company funds to pay the company's attorneys for legal services for other entities or personal matters, but the expert is not aware that this is an issue in the dispute, the expert's accounting deliverable may not contain the information necessary to distinguish between legal fees that were appropriately charged to the company and the charges that should be disputed. This potential scenario can be avoided with proper two-way dialogue between the expert and counsel before the expert starts its analysis.

If the accounting is meant to be an interim step towards an additional ultimate remedy, counsel should ensure that the expert understands this fact and what remedy the court will evaluate. These discussions with the expert help

ensure the deliverable contains the information needed to determine the ultimate remedy, such as a buyout of the minority shareholder's shares in accordance with the entity's governing documents.

Records to Obtain to Render an Accounting

This section assumes that the rendering party is the party that has possession, custody, and control of the entity's records. The rendering party's counsel should ensure that the client provides the necessary records and information to enable the expert to render a complete accounting within the scope of the court's order. If the records are not in the rendering party's possession, custody, or control, then counsel should seek these records in discovery from the opposing party or independent third parties with custody over the necessary records (see Assistance with Discovery).

The decision about what records to obtain from the client is based on the scope of the accounting. For example, an accounting can be performed for an entire business entity for a specific period, a specific bank account held by an entity, or a specific contract entered into by an entity. While business entities should maintain accounting records in the ordinary course of business, what constitutes actual record-keeping practices in the ordinary course of business may differ across organizations.

When requesting documents from the client, counsel and the expert should ensure that they and the client have a uniform understanding of what specific terms mean. An entity may use business-specific or industry-specific terminology that may be unfamiliar to one or more parties and the trier of fact, and may even have different meanings to different experts. For example, an expert may seek a "general ledger" for a specific entity for a specific period. In this example, the expert may explain to counsel and the client that a general ledger is a detailed listing of all accounting journal entries recorded in the entity's official "books" for a defined period and that each entry identified in the general ledger should, in theory, be supported by contemporaneous business records.

To assist the expert's understanding of the particular client's record-keeping, counsel should find out from the client:

- The name and type of the accounting software (for example, QuickBooks) and other informational systems (such as Customer Relationship Management) that the relevant entities use.

- The names of the financial institutions that held company funds during the relevant period and the account numbers.
- An understanding of the contemporaneous records maintained by the entities (for example, bank reconciliations) in the ordinary course of business.
- Company policies, procedures and practices relating to internal accounting controls, whether written or oral, including the company's historical compliance with and enforcement of those policies.
- The entities' additional record-keeping and document retention practices.
- Whether the entity relies on outside service providers such as bookkeepers and accountants, and if so, the identity of those providers and the extent of the services they provide.

Counsel should ensure that the expert has all the relevant source documentation for the transactions within the scope of the accounting that aids in identifying and summarizing all relevant inflows and outflows to aid the trier of fact in determining the propriety of those transactions. Common records the expert may seek to review as source documentation supporting the entity's accounting entries include, for example:

- Periodic account statements maintained by financial institutions (such as checking account, credit card, mortgage loan, and commercial loan statements).
- Records pertaining to billing, collections, and gross receipts from the entity's customers or clients.
- Purchase orders, expense invoices, and disbursement approvals.
- Payroll records.
- Records supporting dividends or similar distributions to the company's shareholders.
- Loan agreements demonstrating loans the entity extended to its owners, officers, or affiliates.
- Check registers. The entity's bank statements may also include canceled check images (including both sides of the check). Underlying documentation from the financial institution for other types of transactions, such as a counter transaction, wire transfer, or ACH could be obtained to review signatures and endorsements.
- Tax records (including income, sales, and payroll taxes).

The scope of the accounting, and therefore the necessary records, may initially be limited to a specific timeframe based on the facts and circumstances known when the

court orders the accounting. However, based on the expert's findings, the scope may be expanded to include time periods, entities, and transactions not initially contemplated, if this scope expansion is useful to the court and parties with the disposition of the claims.

Reliability of Records

During the initial stages of the expert's analysis, the expert seeks to ascertain the reliability of a company's accounting records through the review of underlying source documentation and discussions with the individuals responsible for maintaining the accounting records. If a company's accounting records are deemed unreliable, perhaps due to a lack of completeness, the expert's analysis may rely on third-party documentation. If the expert ultimately is unable to ascertain the correct treatment of transactions due to the custodial party's failure to maintain proper and complete records, a court or other finder of fact may draw a negative inference and charge the custodial party's account for those disbursements. A lack of internal or external records should be disclosed in the expert's deliverable.

Third-party records (such as bank statements), especially those obtained directly from the third-party through subpoena, may be deemed more reliable than records produced by one of the parties to the dispute as these third-party records are less susceptible to bias and manipulation.

Missing Records

If certain records are missing either because of poor record-keeping or the rendering party is unable to obtain the records through available discovery methods, the expert then identifies this limitation in the accounting deliverable. This is especially true if the unavailable records are believed to contain information material to the accounting or other related claims, which highlights the importance of a contextual understanding (see *Educate the Expert*).

In the absence of necessary records, the court may allow the objecting party to present additional evidence to fill in the missing information, which may include an estimate provided by that party's expert (see, for example, *Donati v. Marinelli Constr. Corp.*, 800 N.Y.S.2d 571, 574 (2d Dep't 2005)).

Content and Format of the Accounting Deliverable

There is no uniform format for an accounting. If possible, the parties, the court, and the expert should agree to

the content, format, and presentation of the expert's deliverable. Counsel for the rendering party and the expert should determine the format early in the engagement. Doing so ensures the expert's work product is responsive to the end goal and may help to avoid disputes later in the process, which may save time and avoid unnecessary costs.

Determining the appropriate scope, format, and presentation of the final product also helps the expert determine which specific records they should review to perform their analysis.

Terminology and Timeframe

The specific language contained in a court's order or in an entity's governing document may be a key determinant for the form and content of the accounting. For example, the court may use language similar to the following: "the accounting should be in the form of the underlying QuickBooks files along with the accountants notes on the payees and underlying invoices for the disputed transactions." Counsel and the party's expert should ensure that they have a mutual interpretation of all terminology used in the court's order as well as any governing documents to which the accounting is responsive.

The timeframe for the accounting may also be set by court order. In the absence of that, counsel should ensure that the expert is aware of the timeframe of the dispute as set out in the pleadings in the action.

Format

If there is no guidance on format from the court's order, the expert must use their judgment in consultation with counsel to format the accounting in a way that makes sense for the relevant timeframe and the dispute at issue. An accounting is often formatted as a spreadsheet or chart reflecting the acquisition and disposition of financial resources of the entity during a specified period. The accounting should specify the applicable timeframe on the face of the chart.

The format of the accounting should allow a reader to determine the "who, what, when, and where" of the company's historical transactions within the scope of the dispute. This includes for each transaction:

- The date of the transaction.
- The source or recipient of funds.
- The dollar amounts.

- Notes concerning the transaction sufficient to describe the transaction and allow the trier of fact to determine whether it was proper.
- Supporting documentation, as relevant.

The individual line items in an accounting are typically organized by date. However, a court often orders an accounting where there is a complex set of transactions or a complex corporate structure. In this case, the expert may suggest a different or additional format that categorizes transactions based on specific criteria such as business segment, account type, or transaction type or that focuses on specific issues or transactions that are in dispute. Alternatively, the expert may add other information for each transaction, such as categories of transactions (for example, operating expenses, shareholder distributions, and so on) or applicable business segments or accounts in which the transactions took place.

Assumptions

An expert may make assumptions about the nature of certain transactions based on, among other factors, contemporaneous records and the expert's understanding of the context of the dispute. For example, a bank deposit on a monthly account statement of a commercial rental property may provide few details about the source of the deposit, especially if it is a counter deposit. However, if the monthly account statements present deposits of similar amounts on or around the same date each month, the expert may assume that those deposits constitute gross receipts from rental income. If those assumptions are made, the expert should discuss with counsel and disclose the specific assumptions in the written deliverable.

Likewise, certain general assumptions may be appropriate and may warrant disclosure in the expert's report. These assumptions may include the following:

- Copies of documents provided to the expert are complete and conform to the original documents, and there have been no subsequent amendments, orally or in writing.
- All information provided to the expert, whether the information provided was a paper document, electronic document, or testimony, is true and correct.
- A statement that the expert did not perform an audit or review as those terms are defined by professional accounting standards. Counsel should note that the term "audit" has a specific meaning within the accounting industry which often differs from the public's perception of what an audit is.

Illustrative Example

For illustrative purposes, the following is a hypothetical scenario triggering the need for an accounting and an example of what the accounting deliverable might look like.

A minority shareholder in a closely held corporation, who is a passive investor, believes the majority shareholder, who is an officer of the corporation, is diverting corporate funds for personal expenditures to the detriment of the corporation and the minority shareholder.

The minority shareholder files a lawsuit against the majority shareholder alleging breaches of fiduciary duties and seeking an accounting. The court finds that the minority shareholder is entitled to an accounting and orders the majority shareholder to provide an accounting of what happened with the corporation's funds during a defined period.

The following chart demonstrates the type of information that an accounting may contain. The summary of certain transactions illustrated in this hypothetical extract may be one component of the expert's deliverable. The deliverable would also likely include a narrative describing the nature and scope of the expert's analyses, among other disclosures and information.

This example focuses on disbursements classified as rent expenses. It shows a series of regularly recurring \$10,000 rent expenses to "Office Real Estate, LLC" that are consistent with the company's lease for its office space and a single, non-recurring \$12,000 rent expense, which were all classified as "office rent expense" on the company's books.

The additional rent payment in February for an inconsistent amount drew attention to this disbursement. The expert's investigation revealed that the payment was a one-time payment to a different recipient, "Ski Lodge RE, LLC." The entry reflecting this payment includes a reference to "Exhibit 1," which contains a copy of the disbursement documentation (which may be, for example, a cancelled check image). The footnote in the chart reflects the expert's factual observations about this outlier expense. These neutral observations provide counsel the necessary springboard to investigate and litigate whether this expense demonstrates a proper business expense or possible wrongdoing by the majority shareholder, such as using company funds to pay a personal expense.

[COMPANY NAME]					
DISBURSEMENTS CLASSIFIED AS RENT EXPENSE					
FOR THE PERIOD JANUARY 1, 20XX TO JUNE 30, 20XX					
<u>Transaction Date</u>	<u>Payee</u>	<u>Amount</u>	<u>Expense Category</u>	<u>Memo</u>	<u>Reference</u>
1/2/20XX	Office Real Estate, LLC	\$ 10,000	Rent expense	Office rent expense	Per executed lease
2/1/20XX	Office Real Estate, LLC	10,000	Rent expense	Office rent expense	Per executed lease
2/1/20XX	Ski Lodge RE, LLC	12,000	Rent expense	Office rent expense	Exhibit 1 ^(a)
3/1/20XX	Office Real Estate, LLC	10,000	Rent expense	Office rent expense	Per executed lease
4/1/20XX	Office Real Estate, LLC	10,000	Rent expense	Office rent expense	Per executed lease
5/1/20XX	Office Real Estate, LLC	10,000	Rent expense	Office rent expense	Per executed lease
6/1/20XX	Office Real Estate, LLC	10,000	Rent expense	Office rent expense	Per executed lease
Total disbursements		<u><u>\$ 72,000</u></u>			
<p>(a) This rent expense is inconsistent with the company's executed office lease, in terms of amount and payee. This expense is also a second rent expense in the month of February, 20XX and does not recur in any other month.</p>					
PREPARED BY [FIRM NAME]					

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