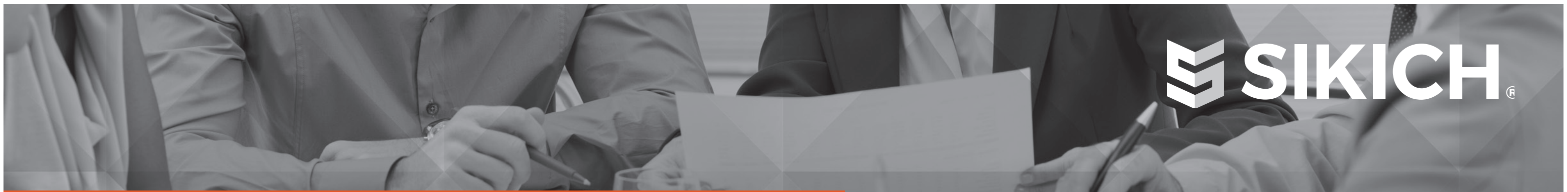

FORENSICS AND VALUATION SERVICES

QUANTIFYING LOST PROFITS DAMAGES

Sikich has extensive resources in dispute advisory, damages calculations, fraud investigations, eDiscovery, computer forensics, data analytics, valuation, and insurance claims.

Sikich will provide sophisticated, resourceful and objective expertise to your business with our forensic accountants, auditors, certified fraud examiners, former city government inspector general, cyber security and computer forensic specialists, data analytics experts, and credentialed valuation experts.

The Sikich dispute advisory team has significant experience in calculating lost profits damages as expert witnesses and consultants for the following types of legal claims:

- Bankruptcy litigation
- Breach of contract
- Breach of fiduciary duty
- Business interruption
- Construction defects and delays
- Employment (covenant not-to-compete)
- Fraud
- Insurance coverage
- Misappropriation of trade secrets
- Negligence
- Patent infringement
- Professional liability and malpractice
- Shareholder disputes
- Technology and licensing disputes
- Trademark infringement
- Unfair competition
- Tortious interference with contracts
- Tortious interference with prospective business advantage

Lost Profits are calculated as lost revenue minus avoided costs.

The calculation is generally based on the difference between (1) the plaintiff's cash flow or other measure of economic income in the "but for" world and (2) the plaintiff's cash flow or economic income in the "actual" world.

According to the AICPA Practice Aid titled, "Calculating Lost Profits," "Lost profits are typically claimed as an element of economic damages in a litigation setting. Damage analyses are prepared to provide an estimate of the detriment suffered by the plaintiff as a result of a wrongful act of the defendant. In order to prove damages the plaintiff must show that:

- The wrongful act of the defendant caused a loss; and
- The amount of the loss can be estimated with reasonable certainty." [1]

Some of the key considerations in a lost profits analysis include:

- Loss period
- Calculation of lost revenue. Methodologies for calculating lost revenue include: [2]
  - a) Before-and-after method. This is based on comparing revenue history before and after a damaging event.
  - b) Yardstick method (or benchmark). A "yardstick" or "benchmark" is used as a basis for estimating what the revenues of the plaintiff's business would have been but for the wrongful conduct of the defendant. The estimate might be based on a similar business not affected by the loss-causing event, the plaintiff's performance at another location, or based on industry averages.
  - c) Sales projection. The sales projection method compares projected revenue before the harmful event to actual revenue after the harmful event.
  - d) Market share method. The market share method is based on the market share the plaintiff would have attained, but for the harmful event.
  - e) Terms of contract. The lost revenue would be calculated based on the terms of the contract.
- Calculation of avoided costs (sometimes referred to as incremental expenses)
- Growth (attrition) rate applied to future lost profits
- Competition
- Discount rate applied to future lost profits
- Capital expenditures required to support future growth
- Mitigation of lost profits damages
- Business plan
- Calculated on a pre-tax basis
- Impact from changes in the industry and economic conditions and outlook

1 AICPA Practice Aid 06-4, "Calculating Lost Profits," 3.

2 Ibid., 25-26.

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