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Editor's Column – Litigation and the Limited Report

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One of the important things that I learned in IBA's Litigation Support class taught by Steve Schroeder and Michele Miles is to never go into court with a limited report. Up until recently, I have always followed this "rule." In the future, I intend never to violate it again.

Occasionally, we are asked to perform only a limited report to "see if the value is there for litigation." We prefer in these cases to do a complete appraisal anyway, but once in a while, the client and/or attorney insists on trying to save a buck up front and requests a limited report. In these cases, I have always reached an agreement and included a statement in my engagement letters requiring the client to pay the additional fee and allow us sufficient time to complete a comprehensive appraisal report if the matter does indeed go to litigation.

Recently, we had an assignment to value a two-man accounting practice as part of a less than amiable split. The CPA who retained us insisted on a limited report in order to "save money." We have done work for this CPA's clients over the years and knew him to be knowledgeable. Despite our warnings regarding the unsuitability of a limited report in litigation, he insisted that a limited report was all he wanted us to do. The matter was going to a binding arbitration instead of court and he felt our testimony would be sufficient to explain the details that would not be included in the report.

To make matters more interesting, the opposing expert also did a limited report. He concluded that all CPA practices sell for one times gross revenue regardless of earnings. We used a variety of appraisal methods, including a gross revenue multiplier of one as one of the methods – albeit with a small weight given it in our reconciliation of value. The practice split was accomplished by the CPA that retained us taking virtually all of the clients that required retention of the existing staff and the other CPA taking clients that he could take care of without a staff. We felt that the differential on earnings to the respective practices was very important; the opposing expert disagreed.

We spent about ten hours in the arbitration hearing which was conducted in a similar fashion to being in court. The arbitrator, a litigator from a neighboring town, stated that he generally ruled immediately upon the conclusion of the testimony, however, in this case, he felt the matter was sufficiently complicated that he needed more time. Several weeks later, he ruled that both halves of the practice were worth one-times gross revenue. He stated that he reread both limited reports and reviewed his notes from the testimony and based his decision on the fact that both experts used the one-times gross revenue multiplier in their reports.

I am convinced that had we followed our normal practice of completing a comprehensive appraisal report instead of a limited report, the arbitrator would have realized the weakness associated with the average or median one-time gross revenue multiplier as a stand alone measure of value. I believe that our client, in an effort to save money, lost much more money as a result of our not explaining our conclusions fully in our written report.

We have concluded, as a result of this case, never again to allow the client to influence the type of report and the level of detail we feel necessary simply in order to save money. Steve and Michele are right – a limited report does not serve the client, the trier-of-fact, or the appraiser well in matters of litigation.

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