

Illustrations Relating to Litigation Engagements and Certain Controversy Proceedings

6. *Illustration 1.* Do lost profits damage computations fall within the scope of the Statement?

7. *Conclusion.* No, unless the computations are undertaken as part of an engagement to estimate value (SSVS paragraphs 1, 2, and 8).

8. *Illustration 2.* Is an economic damages computation that incorporates a terminal value within the scope of the Statement?

9. *Conclusion.* The use of a terminal value exclusively for the determination of lost profits is not within the scope of this statement unless that determination will be used as part of an engagement to estimate value (Illustration 1).

10. *Illustration 3.* If a start-up business is destroyed, is the economic damages computation within the scope of the Statement?

11. *Conclusion.* There are two common measures of damages: lost profits and loss of value. If a valuation analyst performs an engagement to estimate value to determine the loss of value of a business or intangible asset, the Statement applies. Otherwise, the Statement does not apply (*Illustration 1*). In order to determine whether the Statement applies, a member acting as an expert witness should evaluate whether the particular damages calculation constitutes an engagement to estimate value with respect to the business, business interest, security, or intangible asset or whether it constitutes a lost-profits computation.

12. *Illustration 4.* Does the Statement include any exceptions relating to litigation or controversy proceedings?

13. *Conclusion.* Yes, the Statement includes a reporting exemption for certain controversy proceedings (SSVS paragraph 50); however, there is no litigation or controversy proceeding exemption from the developmental provisions of the Statement (SSVS paragraphs 21–46) in circumstances in which an engagement to estimate value is performed (*Illustration 1*).

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14. *Illustration 5.* Is the Statement's reporting exemption for litigation or controversy proceedings (see SSVS paragraph 50) the same as the "litigation exemption" in the AICPA attestation standards?

15. *Conclusion.* No, the so-called "litigation exemption" is provided for in the AICPA attestation standards and is further discussed in the attestation interpretations. The attestation standards do not apply to engagements in which a practitioner is engaged to testify as an expert witness in accounting, auditing, taxation, or other matters, given certain stipulated facts. This is clarified in the attestation interpretation, which states, in part, that the attestation standards do not apply to litigation services engagements when (among other requirements) the practitioner "has not been engaged to issue and does not issue an examination, a review, or an agreed-upon procedures report on the subject matter, or an assertion about the subject matter that is the responsibility of another party." (Interpretation No. 3, "Applicability of Attestation Standards to Litigation Services," of Chapter 1, "Attest Engagements," of Statement on Standards for Attestation Engagements No. 10, *Attestation Standards: Revision and Recodification*, as revised [AICPA, *Professional Standards*, vol. 1, AT sec. 9101.34–.42].) However, unlike the AICPA attestation standards, which do not apply in any capacity to litigation or controversy proceeding situations, as discussed above, the Statement's exemption for litigation or certain controversy proceedings is an exemption from the reporting provisions of the Statement (SSVS paragraphs 47–78).