WHAT LEGAL COUNSEL NEEDS TO KNOW ABOUT FORENSIC ANALYSIS DUE DILIGENCE PROCEDURES

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Whether representing a plaintiff or defendant, legal counsel (“counsel”) are sometimes involved in litigation and other controversy matters that involve valuation, damages, or other economic analyses. And these forensic analyses sometimes relate to a private company, a private company security or ownership interest, or a private company economic event. These forensic analyses often arise in taxation, bankruptcy, condemnation and eminent domain, antitrust, family law, tort claims, breach of contract claims, shareholder disputes, lender liability claims, fraud and misrepresentation, and various other types of commercial litigation matters.

In such matters, counsel may retain a specialized forensic analyst (“analyst”) to assist the counsel with the forensic investigation. This discussion considers the procedures that such an analyst may perform during the due diligence stage of that forensic investigation. In such controversy matters, the counsel often retains, works with, reviews the work of, relies on, and defends the forensic analyst. Therefore, counsel should have at least a foundational familiarity with the analyst’s due diligence procedures.

For various litigation and dispute resolution purposes, the analyst may be asked to prepare an opinion regarding business valuation, transaction fairness, transaction solvency or insolvency, damages measurement, transfer price determination, or other special investigation. For purposes of this discussion, the analyst could be an accountant, financial analyst, economist, damages expert, or industry consultant—any professional who can perform a forensic investigation and analysis for litigation or other controversy purposes.

In such forensic engagements, the analyst may be retained by counsel for any party to the dispute. In such cases, the analyst may serve as either a consulting expert or as a testifying expert. On rare occasions in certain alternative dispute resolution scenarios, the analyst may be retained jointly by the litigation parties to serve as a mediator or arbitrator. In any event, the analyst is asked by one (or more) of the parties in interest to the dispute to analyze the private company, a specific ownership interest in the private company, or a specific event that caused the dispute.

In such forensic-related assignments, the analyst often conducts due diligence interviews (often referred to as “management interviews”) as part of the forensic analysis or other special investigation assignment. For purposes of this discussion, the management interview involves inquiries (usually in person, sometimes in writing) to any level of employee of the subject company. That is, for purposes of this discussion, the term “management” encompasses all levels of the organization from, say, staff accountants up to the owner/operator (for a private company)—and up to the board of directors (for a public company). In addition, the analyst sometimes performs due diligence interviews of parties who are not employees of the company. These parties may include former employees, independent auditors, counsel, commercial bankers, contractors, customers, and suppliers.

Based on the forensic investigation, the analyst may be asked to reach a valuation, damages, transfer price, or other conclusion with regard to the company, ownership interest, or event. Often, the analyst learns more
about the company, ownership interest, or event from the due diligence interviews than from any other single source. And, that other single source may include the documents provided by the subject company or its counsel.

Information obtained by the analyst during the management interview process often affects the development of, the conclusion of, and the reporting of the controversy-related analysis or special investigation. The work product of the analyst’s efforts is usually a special investigation report (to the company or its counsel), an expert report prepared for the litigation, or expert testimony before a judicial finder of fact.

The due diligence or management interview process is a forensic procedure performed in virtually every valuation, damages, transfer price, or other economic analysis prepared within a litigation or other controversy context. This discussion provides guidance to counsel (and to the company management or board) as to what to expect during the due diligence interview process. This discussion provides a checklist to the forensic analyst as to the topics to consider during the forensic due diligence investigation. In particular, this discussion considers the following topics:

1. Best practices with regard to the due diligence interview process
2. Typical questions that the analyst may ask during the due diligence interview process.

THE DUE DILIGENCE INTERVIEW PROCESS

There are many ways for the analyst to conduct the due diligence interview. There is no absolutely “right” way—or no absolutely “wrong” way—for the analyst to conduct the due diligence interview. However, there are some procedural issues that may help the analyst to conduct—and to document—an effective due diligence interview.

First, the analyst should be thoroughly prepared to conduct the interview. The motto “be prepared” is good advice for every aspect of the forensic analysis. This “be prepared” advice is especially appropriate during the due diligence interview process.

The analyst’s preparation typically includes the performance of the following procedures:

1. Thoroughly review the subject company’s website and any other publicly available data about the company (or the subject business interest, contract, economic event, etc.)
2. Completely review all of the documents that have been provided by the company management and/or counsel
3. Comprehensively review and analyze the company’s historical and prospective financial statements, pay particular attention to the year-to-year changes in the company’s financial statement account balances
4. Thoroughly research the company’s industry segment and the local, regional, or national economy (as applicable)
5. Prepare a specific list of written questions to ask to each person who will be interviewed during the management interview process

Second, it is important for the analyst to interview the appropriate individuals. Determining who are the appropriate individuals to interview may be a collaborative process, with the participation of counsel. The selection of exactly who are the appropriate individuals to interview will vary with each forensic analysis.

Therefore, the analyst may discuss with counsel the general topics that will be covered during the due diligence interview process. The analyst should request to interview the individuals (at whatever level within the company organization) who are the most knowledgeable regarding the proposed interview topics.

In some forensic analyses, it may be useful for the analyst to interview individuals from outside of the private company. Such individuals may include the following:

1. Independent accountants
2. Commercial bankers
3. Principal customers
4. Principal suppliers
5. Principal competitors
6. Former management employees

The analyst should balance the need for client confidentiality with the need for information when determining which individuals to interview during the forensic investigation.
Third, the analyst should understand the interviewee’s bias, if any. In a typical forensic investigation, the role of the analyst is to conclude the dispute-related value, damages, transfer price, transaction price, or some other quantitative variable related to the subject company. In most litigation-related forensic investigation, there are two (or more) sides to the dispute—with each side seeking a very different quantitative outcome.

For example, in a dissenting shareholder appraisal rights action or a shareholder oppression action matter, the company owners (and the company management) may want a company acquisition transaction to close and the dissenting shareholders may want to stop the transaction from closing (or to receive their estimate of the company fair value for their shares). In such a situation—where the company management may have a personal bias in the results of an economic event—it is important for the analyst to be:

1. Diligent in asking all of the relevant due diligence investigation questions; and
2. Prepared to ask (and document) follow up due diligence questions.

In many forensic investigations, and especially when the management team has worked for the private company for a long time, the management has much more information about the company than the analyst has. This access to (and familiarity with) information gives management an advantage in presenting a particular point of view to the analyst.

However, the analyst should endeavor to uncover the complete truth about the issues related to the subject company and/or the subject event by:

1. Being sufficiently prepared to conduct the due diligence interviews and
2. Being sufficiently prepared to anticipate the potential bias of the company management or other interviewee.

Fourth, if the analyst can control the interview process, the due diligence interview should not be restricted to one interview session. Let’s assume that the analyst follows the due diligence guidance discussed above—that is, the analyst (1) is prepared, (2) interviews the appropriate individuals, and (3) filters out any potential interviewee bias. Nonetheless, the initial due diligence interview may uncover unexpected issues about the subject company or the subject event.

These issues may require the analyst to conduct additional research and, consequently, to conduct additional follow-up interviews with the company management.

These follow-up interviews are often needed to allow the analyst to pursue unexpected issues raised during an initial interview. These follow-up interviews may be necessary to help the analyst to resolve conflicting “stories” from multiple interviewees. And, these follow-up interviews may be helpful to determine whether the same interviewee changes his or her “story” after a period of time.

New and unexpected issues that are uncovered in the initial interview often turn out to be the important issues in the forensic investigation. Analysts on different sides of a forensic investigation may conduct similar analyses and make similar assumptions regarding the subject analysis. It is usually the treatment of just a few issues that materially impact the value, price, damages, or other conclusion regarding the subject company or the subject event.

The analyst’s understanding what these few issues are—and how these issues affect value, damages, transfer price, or other conclusion regarding the company or the event—and then presenting a persuasive argument for the appropriate treatment of these few issues—can allow the counsel to reach a favorable outcome for the client.

And, the due diligence interview process often helps the analyst to identify which issues are important to the value, damages, transfer price, or analysis conclusion.

CAVEATS REGARDING THE DUE DILIGENCE QUESTIONS

It is important for counsel (and the analyst) to recognize several caveats regarding the use of any standardized list of due diligence interview questions. First, the list of questions presented in Exhibit 1 is not intended to be comprehensive or all-inclusive. Second, not every listed question is appropriate for every forensic investigation.

The list provided in Exhibit 1 is generally applicable to the forensic investigations involving valuation, damages, or transfer price analysis involving a private
company. The list provided in Exhibit 1 should not substitute for the application of the analyst’s independent judgment and professional experience.

SUMMARY

The management interview process is one part of the analyst’s due diligence procedures performed during the forensic investigation of a private company, company ownership interest, or economic event. Such an analysis could involve controversy-related investigations related to a breach of contract, tort, taxation, fraud and misrepresentation, bankruptcy, eminent domain and condemnation, family law, antitrust, or other dispute. And, such controversy-related investigations could involve quantitative analyses related to business valuation, transaction pricing and structuring, economic damages measurement, intercompany transfer pricing, or other economic events.

This discussion presents the foundational elements that counsel should be aware of regarding the due diligence component of the forensic investigation.

Related to any forensic investigation, it is important for the analyst to effectively conduct the due diligence interview process. The due diligence interview process is an important forensic investigation procedure. During the due diligence interview process, the analyst often learns important information that may influence the quantitative analyses related to the forensic investigation.

The primary purpose of the due diligence interview is to enable the analyst to get questions answered. In addition, the interview may also be helpful to uncover information that the analyst may not otherwise have access to.

A list of representative due diligence interview questions is presented in Exhibit 1. This list is not intended to be comprehensive. This list is intended to provide general guidance to counsel who may work with the analyst in the interview process.

Counsel (and the analyst) should recognize that every private company, company ownership interest, contract, and economic event has unique attributes. Neither the list provided below—nor the information provided above—should not substitute for the forensic analyst’s application of independent judgment and professional experience.

EXHIBIT 1

FORENSIC ANALYSIS REPRESENTATIVE DUE DILIGENCE QUESTIONS

For purposes of this exhibit, the due diligence interview questions are categorized into four principal categories:

1. Questions related to the business operations of the private company or the private business ownership interest;
2. Questions related to the subject industry segment and the subject economy;
3. Questions related to the financial statements of the private company or of the business ownership interest;
4. Questions related to specific events that may impact the private company or the business ownership interest.

Even the most experienced analyst may fail to ask the perfect question to uncover every material issue related to the subject dispute. Therefore, at the end of the due diligence interview session, the analyst may ask each interviewee a catch-all question. For example, the analyst may ask, “Do you know of any information that has not been covered and that could have a bearing on the issues we talked about?” This type of general question may provide an opportunity for management to volunteer any material information that was previously undisclosed during the interview.

QUESTIONS RELATED TO THE COMPANY BUSINESS OPERATIONS

This category of questions helps the forensic analyst to understand how the private company or the ownership interest operates. By asking these questions, the analyst may gain an understanding of the business risks and opportunities that exist for the private company or the ownership interest.

Every forensic analysis has unique aspects. These questions may help the analyst to uncover the factors that are unique to the particular forensic investigation.

Company History and Organization

1. When was the company founded?
2. Describe the key events in the company’s history.
3. Describe any historical mergers, acquisitions, or divestitures.
4. Describe any historical ownership changes.
5. Describe any historical changes in the company’s lines of business.
6. Describe any historical changes in the geographic area served by the company.
7. Provide a list of the company owners and their respective ownership interests.
8. Are any of the company owners currently active in the business? If yes, explain.
9. Is there any company stock that is subject to any stockholders’ agreement, stock restriction agreement, buy-sell agreement, etc.?
10. List the names of any subsidiaries of the company or ownership interests in other companies, including the percentage owned by the parent company.
11. List all known related parties (including subsidiaries, affiliates, or relatives) that the company does business with.
12. List the states (or the countries) in which the company currently transacts business.
13. Describe the locations of the company facilities and the primary activities that occur at each facility.
14. Describe all historical transactions in the company stock in the five years prior to the forensic analysis date. Describe the circumstances surrounding each of the transactions, including whether the transaction was at arm’s-length.
15. Describe all current litigation involving the private company or the ownership interest classified by (a) claims against the company and (b) claims on behalf of the company.

**Services (or Products) Offered**

1. Describe the company’s service (product) lines and the approximate percentage of the most recent fiscal year company revenue and gross profit produced by each service (product).
2. Describe the process by which the company prices its services.
3. What other services typically compete with the company?
4. What are the advantages and disadvantages of the company products/services versus the products/services of the competitor companies?
5. Why do clients select this company to provide services—instead of the competitor companies?
6. How long is the typical services sale cycle?
7. How frequently are the company’s services changed/modified?
8. Which service lines have achieved the fastest revenue growth? Which services have reported the slowest revenue growth?
9. Which service lines are the most profitable? And, which service lines are the least profitable?
10. Does the company own patents, proprietary technology, or trade secrets that prevents or hinders competitor companies from duplicating its services?
11. Describe any services that are unique, or not easily duplicated by new or existing competitors.
12. Are the revenue from the company services cyclical?
13. Are the revenue from the company services seasonal? If so, what are typically the strongest and weakest months for the company revenue?
14. What are the company plans for future services?
15. Describe the research and development activities of the company.

**Manufacturing (or Production)**

1. What percentage of the company’s services (or products) is produced by the company? And what percentage of the company’s services (products) is subcontracted to a third party?
2. Where are the company’s facilities?
3. Describe the company’s production process for its services or products.
4. Is the company’s process more labor intensive or more capital intensive?
5. What are the ages and the conditions of the company’s facilities?
6. What is the capacity of each facility relative to the current operating levels?
7. Who is the manager of each facility and how long has he or she been employed by the company?
8. Does the company have any planned expansion of its facilities?
9. Does the company have any planned asset dispositions related to its facilities?
10. How do the facilities compare to similar companies in the same industry segment?
11. Do the facilities enable the company to earn superior or inferior profit margins compared to similar companies in the same industry segment? Why?
12. How technologically advanced are the company’s processes?
13. Are the company’s employees unionized?
14. Describe the company’s relationship with its employees.
15. Does the company have any outstanding workers compensation claims?

**Clients (or Customers)**

Provide an overview of the company’s client (or customer) base.

1. How are the company’s services used by clients?
2. List the ten largest clients (as measured by revenue) for the most recent fiscal years, and the percentage of total revenue made to each of those clients.
3. For the company’s largest recurring clients (as measured by revenue), how long has that party been a client of the company?
4. Does the company provide credit to any of its clients? If so, describe the conditions in which the company offers credit and the credit terms offered by the company.
5. Do clients tend to consistently purchase services from the same company, or do they periodically switch services providers?
6. Identify the most important markets for the company’s services.
7. What are the key recent trends in each of these markets?
8. Are the company’s key markets increasing, decreasing, or stable in terms of size?
9. Does the company have existing contracts with its clients? If so, provide copies of representative contracts.
10. Approximately how many current clients does the company have?
11. Is the company typically the sole supplier of services (or products) to its clients? Or do clients typically buy services (or products) from multiple suppliers?
12. Are there any large contracts, significant new clients, or new markets that the company anticipates adding during the next 12 months?
13. Are there any large contracts, existing clients, or present markets that the company expects to lose, terminate, or abandon during the next 12 months?
14. Does the company provide services to federal, state, or local governments to governmental agencies? If so, what percent of the company’s total business is from federal, state, or local governments or governmental agencies?

**Suppliers**

1. What raw materials or other supplies does the company rely on?
2. Who are the company’s principal suppliers?
3. How many suppliers does the company have?
4. Are any of those suppliers the sole source of supply for the company?
5. For each key supplier, how long has the company had a business relationship with that supplier?
6. Are any of the suppliers the only (or primary) entity that supplies the industry segment with a particular product?
7. Describe how supplies were/are priced?
8. What has been the trend in the cost of supplies?
9. List and provide copies of any long-term supply contracts or other special purchasing arrangements in place with suppliers.
10. How much notice is required by either the company or the supplier to terminate the business relationship?
11. Could the company switch suppliers without a detrimental impact on the business? Why or why not?

12. If the company had to find a new supplier for a key supply, (a) could it and (b) how long would it take to find a new supplier?

13. Has the company considered becoming more vertically integrated by acquiring a supplier or by expanding its line of business?

14. To what extent does the company fabricate versus assemble products, and how much flexibility does the company have in this respect?

15. Does the company use derivatives or other hedging activities to protect against increasing prices?

**Sales and Marketing**

1. What is the approximate total size of the market (in dollars) for the services (or products) offered by the company?

2. What is the company’s estimated market share for each of the services offered?

3. How has the company’s market share for each of its service lines changed in the last five years? Ten years?

4. What are the most important selling features of the company’s services (i.e., price, quality, brand name, service, etc.)?

5. What warranty does the company offer for its services? And, how frequently do customers submit warranty claims?

6. How intense is the competition in the relevant industry segment?

7. How are the company’s services priced?

8. Describe how new business opportunities are identified, followed-up, prioritized and pursued, and by whom.

9. What distribution channels does the company use for its services?

10. How is technology used in the company’s marketing?

11. Describe any changes in the company’s marketing budget from year-to-year.

12. Describe the typical level of experience and typical tenure of the company sales staff.

13. Does the company depend on one employee or on a small number of employees to generate sales?

14. Describe the historical turnover rate of the company sales staff.

15. On what basis are the company’s sales people compensated?

**Management and Other Employees**

1. Provide a copy of the most current company organization chart, along with resumes for the senior members of the management team.

2. How long have the senior members of the management team been employed by the company?

3. Do any of the senior members of the management team have known health issues? And, are any of the senior members of the management team close to retirement age?

4. Provide the total compensation for each member of the company management team, including perquisites.

5. How many hours per week do each of the senior members of the management team spend working for the company?

6. How many employees does the company have?

7. What unions (if any) represent the company’s employees, and when do any union contracts expire?

8. How many employees are covered by collective bargaining agreements?

9. Has the company ever experienced any work stoppages due to a strike?

10. What is the total number of employees in each organizational area?

11. What are the critical skills and backgrounds needed in the development, production, and distribution of the company’s products/services?

12. Identify any management or technical positions that have been difficult for the company to fill due to shortages of labor with the appropriate skills.
13. Describe the current labor market for the company’s industry segment. That is, is the supply of employee candidates robust or sparse?

14. How extensively are independent contractors used?

15. List the members of the company’s board of directors and provide a description of the background of each member.

**Company Outlook**

1. Describe the company’s strengths, weaknesses, opportunities, and threats.

2. What are the most important things that the company must accomplish in order to be successful over next five years?

3. What is the company’s expected annual growth rate over next five years in terms of revenue, operating profit, and net profit?

4. What is the biggest risk to the company achieving its projected financial results of operations?

5. What could cause the actual financial results of operations to greatly exceed the projected financial results of operations?

6. What is the level of capital spending required to support the company’s projected revenue growth?

7. What are the known large and infrequent capital expenditures that will be made within the next five years (e.g., a plant expansion, an IT upgrade, the replacement of major equipment)?

8. Do you expect any changes in the service lines offered by the company in the next five years (due to either expansion or contraction)?

9. Are there any internal factors that may constrain the company’s business growth, such as lack of access to capital or insufficient cash?

10. Does the company plan to acquire other companies in the next five years?

11. Are the company’s profit margins expected to change over the next five years? Why or why not?

12. Does the company prepare an annual budget, plan, projection, or forecast? Describe the process that is applied to create the company’s annual budget, plan, projection, or forecast.

13. Is the annual budget or forecast considered to be conservative, baseline, or aggressive?

14. How do the projected revenue growth and profit margins compare to historical revenue growth and profit margins?

15. Does the company plan any changes in ownership in the future (for example, through either share buybacks or the issuance of shares)?

**QUESTIONS RELATED TO INDUSTRY SEGMENT AND ECONOMIC FACTORS**

These questions may help the forensic analyst to put the private company in context relative to other similarly situated companies. In addition, these questions may also help the analyst to understand the long-term outlook for the company.

**Industry and Economy**

1. What national or regional economic factors impact the company’s revenue (e.g., interest rates, inflation rate, disposable income, etc.)?

2. How does this company differ from other competitor companies in the relevant segment industry?

3. How has the company performed during recent recessions? During recent strong economic periods?

4. Is government regulation a factor for the company? If so, how?

5. What stage of the industry life cycle is the relevant industry segment in (i.e., introduction, growth, maturity, or decline)?

6. What are the most important recent developments or trends in the industry segment?

7. How many companies of your approximate size (e.g., revenue within plus or minus 50 percent) operate in the industry segment?

8. Is the industry segment generally comprised of small local companies or large multinational companies?

9. Describe the barriers to entry in the relevant industry segment.

10. How has the size of the industry segment changed in the last five years?
11. How is the size of the industry segment expected to change in the next five years?

12. What level of innovation and/or change is required to stay competitive in the industry segment?

13. Does the company generally lead or lag the industry segment in terms of new services, pricing, and other similar factors?

14. Is the technology employed at the company considered (a) outdated, (b) current, or (c) leading edge compared to the industry segment standard?

15. What trade associations does the company belong to?

**Competition**

1. Who are the most significant competitors of the company? Describe any publicly traded competitors—as well as any privately owned competitors.

2. Does the company management monitor the financial results and/or public filings of any publicly traded peer group companies? Describe which ones.

3. How large are the company’s principal competitors in terms of revenue?

4. Where are the company’s principal competitors located?

5. What is the estimated principal competitors’ market shares for each of the services offered by the company?

6. What are the primary strengths and weaknesses of the principal competitors—versus the strengths and weaknesses of the subject company?

7. On what basis do companies in this industry segment compete (e.g., price, quality, service, technology, or some other basis)?

8. How often do the company’s clients switch between the subject private and its competitors?

9. How easy is it for the company’s clients to switch between the subject private company and its competitors?

10. Do any principal competitors have proprietary technology, trade secrets, patents, copyrights, trademarks, or other intangible property that give them a competitive advantage over the subject company?

11. Do the company’s principal competitors have greater or weaker economies of scale compared to the subject private company?

12. How has competition changed in the last five years (i.e., new competitors, regulatory changes that affected competition, erosion of pricing power, etc.)?

13. How does branding help (or hurt) the company to compete? Or, are the company’s services unbranded and considered to be commodity products/services by the company’s clients?

14. For each service line, if the company bids on a business opportunity, (a) what competitor companies does it typically compete against and (b) why is/isn’t the company typically successful in winning the competitive bid?

15. How intense is the competition among the companies in the industry segment?

**QUESTIONS RELATED TO THE COMPANY FINANCIAL STATEMENTS**

Understanding the company’s financial statements is an important procedure in just about any forensic analysis. This is because of the significant impact that the financial statements may have on the company’s business value, transaction price, damages measurement, or transfer price.

A discussion of the company’s historical financial statements may also inform the forensic analyst as to any financial statement normalization adjustments—or financial statement errors or irregularities—that need to be considered in the forensic analysis.

The analyst should have a general understanding of each account on the company’s financial statements. And, the analyst should have a more thorough understanding of the more material accounts on the company’s financial statements.

Consider, for example, the company’s accounts receivable. The analyst may need to understand:

1. if company management considers the stated accounts receivable balance to be collectable,

2. how long the accounts receivable typically remain outstanding,
3. what client/customer accounts are included in the accounts receivable account balance,
4. if the accounts receivable balance is related to the company revenue or to some other business activities, and/or
5. other similar issues.

Questions that relate to each and every account balance on the company’s financial statements are not included in the list below. This is because the number of questions that relate to each individual account on the financial statements would be beyond the scope of this discussion.

**Historical Financial Results**

1. If applicable, provide a copy of the independent accountant’s letters to the company management for the past five years.
2. Describe the accounting principles used by the company (e.g., revenue recognition methods, cash versus accrual basis, and property accounting methods).
3. Have there been any changes in the accounting principles applied in the preparation of the company financial statements over the past five years?
4. How do the current accounting principles compare to the accounting principles used by other competitor companies in the industry segment?
5. Explain all significant year-over-year changes in the financial statement accounts (e.g., the interviewee may explain changes such as (a) a 50 percent annual increase in accounts payable, (b) a 15 percent annual decrease in revenue, or (c) the gross margin improved from 30 percent of sales to 40 percent of sales).
6. Describe any nonrecurring or extraordinary income or expense items recorded during the past five years.
7. What plan does the company have for capital expenditures during the next 12 months?
8. Has the management or the board of directors received any offers to buy the company during the past five years? If so, describe the details of each offer or provide a copy of any written offers received.
9. Have any of the stockholders personally guaranteed the company loans? If yes, explain.
10. Describe any short-term and long-term sources of credit and how they were used over the past five years.
11. Is the company’s current capital structure (a) sustainable and (b) expected to change over the next five years?
12. Has the company complied with all of its outstanding loan covenants? If not, explain why.
13. Discuss the company’s dividend history and the outlook for future dividend payments.
14. Summarize any assets owned by the company that may be classified as (a) nonoperating assets or (b) excess assets. That is, are there any assets that do not contribute to the primary operations of the company (e.g., cash and cash equivalent balances that may not be needed for future working capital or capital expenditures)?
15. Describe all of the company’s intangible assets and of the company’s contingent liabilities that are not recorded on the company’s balance sheet.

**QUESTIONS RELATED TO SPECIFIC EVENTS THAT MAY IMPACT THE COMPANY**

1. These questions are intended to help the forensic analyst to identify the most significant events that impacted the company or business interest in recent years. These questions are also intended to help the analyst to identify the significant events that may affect the company or business interest in the near future.
2. Does the company operate with any license, permit, franchise, or other agreement that permits the company to operate—either at the total entity level or at a particular location level? Which of these licenses, etc., are private party agreements? Which of these licenses, etc., are government-issued agreements?
3. How important is location to the company’s results of operations? Could the company move its facilities and still maintain its planned results of operations? What type of impact would a facility relocation have on the company’s planned results of operations?
4. What type of intellectual property does the company own or operate. Specifically, what patents, copyrights, trademarks, and trade secrets does the company own or operate?

5. What procedures does the company employ to protect its intellectual property?

6. What would be the expected impact if the company lost the right to (or ability to) operate its intellectual property?

7. Does the company either inbound license or outbound license any of its intellectual property? If so, please provide copies of all such licenses.

8. What are the most significant long-term contractual agreements that the company has entered into? For example, consider these types of long-term agreements: supplier agreements, customer/client agreements, executive employment agreements, noncompetition agreements, joint development agreements, joint venture agreements, etc. Please provide copies of each of those agreements. Have any such agreements even been unexpectedly terminated or violated? If so, please describe the impacts of that unexpected agreement termination or violation.

9. How important are the company’s banking relationships? How stable are the company’s banking relationships? How frequently does the company change its banking relationships?

10. What are the company’s principal sources of debt capital? What are the agreements (i.e., notes and debt indenture agreements, bond indenture agreements, long-term leases) that document those financing arrangements? Has the company ever violated the terms of any of these financing arrangements? If so, what were the consequences of such violations?

11. In the last five years, has the company participated in any mergers, service line or entity acquisitions, service line liquidations, or service line divestitures? Please describe each such transaction. Please describe the impact of each such transaction.

12. In the last five years, has the company implemented a restructuring of its long-term debt or a recapitalization or reorganization of its capital structure? Please describe each such transaction. Please describe the impact of each such transaction.

13. Does the company maintain confidentiality agreements, nondisclosure agreements, nonsolicitation agreements, or any similar agreements with any of its employees? If so, which employees—and how were these employees—selected? Please provide copies of those agreements. Has the company ever had to enforce these agreements? If so, how?

14. In the last five years, has the company been involved in a taxation audit or dispute at any level? Has the company been involved in a regulatory agency audit or dispute at any level? Has the company been involved in an environmental audit or dispute at any level? If so, how was each of these audits or disputes resolved? What was the impact of each of these audits or disputes?

15. During the last 10 years, was the company involved in any litigation (as either plaintiff or defendant) involving competitors, merger or acquisition parties, contract counterparties, financial institutions, government agencies, or similar parties? If so, please describe the claims of each litigation matter. Please describe the resolution of each litigation matter.

16. During the last 10 years, was the company involved in any litigation (as either plaintiff or defendant) involving any member of company management, any company director, or any current or former shareholder? If so, please describe the claims of each litigation matter. Please describe the resolution of each litigation matter.