

FORENSIC ACCOUNTING IN THE CONTEXT OF LITIGATION

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Bates Research

Introduction

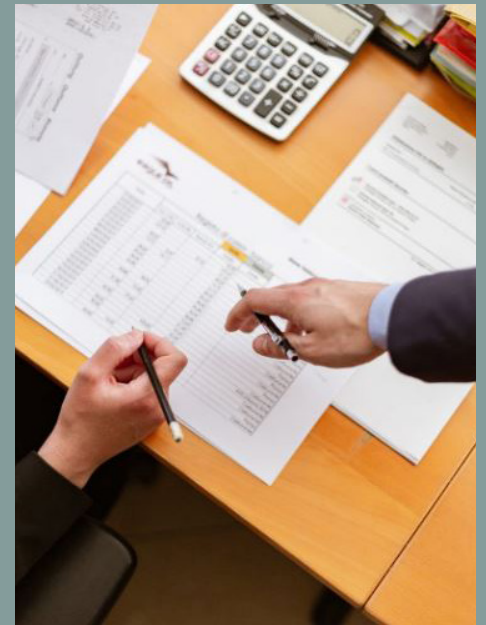
The American Institute of Certified Public Accountants defines forensic accounting as the application of specialized knowledge and investigative skills possessed by CPAs to collect, analyze, and evaluate evidential matter and to interpret and communicate findings in the courtroom, boardroom, or other legal or administrative venue. In civil litigation where the narrative includes financial information, a forensic accountant delivers analytical clarity while providing accounting, financial and investigative expertise. So, whether measuring damages or assisting early in the discovery process, forensic accountants are frequently engaged to interpret complex financial information and communicate their findings clearly and concisely. This leaves the retaining attorneys with more time to focus on their legal strategy. Backed by relevant client service experience and requisite credentials such as CPA, CFF, CVA and CFE, a battle-tested forensic accountant is a vital component of a successful financial litigation team. Here are a few ways how:

Pre-Filing Assessment

If retaining counsel wants to bounce ideas off a financial expert, a forensic accountant with the relevant expertise can assist in early case investigation and assessment. For example, if the potential case involves a partnership dispute about revenues, a forensic accountant can provide insight on what documents should be reviewed and which line items require the most focus. If the case involves determining compliance with accounting rules, the forensic accountant can translate jargon, explain the rules, interpret financial reports, public filings and disclosures, or adjust the team's initial thoughts on the merits of a potential claim. In organizing the strengths and weaknesses of the case, retaining counsel can ask the forensic accountant: What do I still need to know?

Pre-Filing Analysis

Is there a case? In the first instance, retaining counsel may be considering filing a complaint for violations of wage and hour laws or preparing a defense to such a complaint. A forensic accountant with the relevant analytical expertise and experience with damage models can provide feedback that might give a more accurate picture. Used to breaking down big data and synthesizing what's needed, the forensic accountant can evaluate the completeness of and the consistency between the relevant sets of data, such as timekeeping records and payroll records. Once the data is validated, the forensic accountant dives into critical analysis, ultimately developing financial models proving or refuting anticipated claims. Given the volume of data, a forensic accountant leverages the power of sophisticated software to get the job done.



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Formulating Strategy and Discovery

A forensic accountant, trained in professional skepticism learned from auditing standards, can look at the facts and assist in anticipating opposing angles and shaping strategy by looking at scenarios formed by the underlying data. Like an elite tennis player who sleeps with her tennis racquet, a forensic accountant lives and breathes financial information. A forensic accountant, therefore, can assist by identifying what documents should be requested through discovery, or recommend appropriate questions or responses for interrogatories.

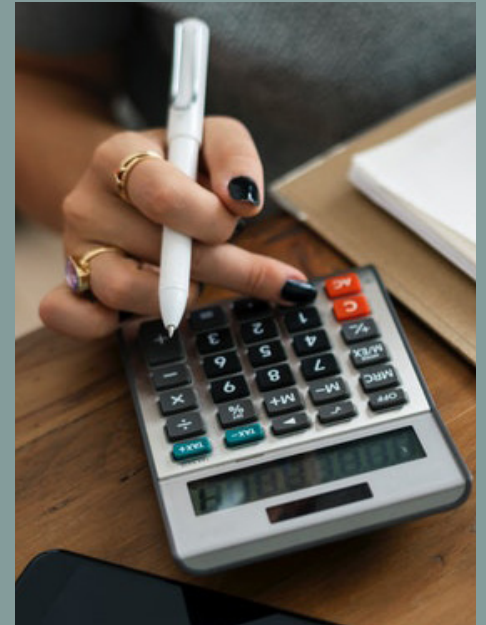
Let's suppose a forensic accountant is assisting on a lost earnings case arising from employment discrimination, retaliation or wrongful termination. Based on an understanding of the facts, the forensic accountant will provide advice on what documents are relevant and useful for the damage calculation or for evaluating the claim, such as proof of past wages and pertinent employment records, among others. For a breach of contract case, the forensic accountant can articulate what documents might be considered or relied upon, or expected to exist, based on a reading of the contract. If there is reason to believe that the other side is possibly holding back on producing all relevant documents, the forensic accountant can provide insight. Furthermore, potentially confusing financial information can be translated into a roadmap to connect the dots in the early stages of litigation.

The Forensic Accountant as Expert Witness

With cases often turning into a battle of experts, the retained forensic accountant takes on added roles, including writing an expert report, critiquing the opposing expert's opinions and testifying in deposition or at trial. Forensic accounting experts can identify strengths and weaknesses in the opposing expert's analysis, possibly increasing or clarifying the odds of success at trial. They can help by preparing counsel for depositions by constructing questions designed elicit relevant testimony or to confirm the meaning of certain evidence. Seasoned forensic accountants are likely to be skilled writers as well, articulating technical concepts with needed simplicity while helping counsel and the trier of fact process financial or accounting theory. For trial, given their keen familiarity with the evidence backed up by strong technical and analytic skills, forensic accounting experts can also create effective demonstrative exhibits. And with relevant credentials honed by years of frontline experience, they welcome the opportunity to teach the jury—using numbers to tell the story and creating an emotional connection to the case at issue.

Punitive Damages Phase

Some cases enter a punitive damages phase, which requires counsel to prepare and present an additional phase of the trial very quickly—typically overnight. Plaintiff's counsel cannot obtain punitive damages discovery until the jury returns a special finding entitling them to the



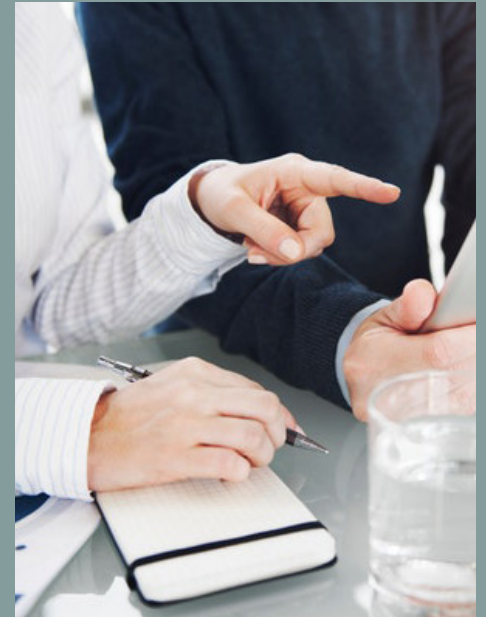
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information, and that information, which is financial in nature and sometimes voluminous, needs to be digested for value assessment almost instantaneously. Conversely, defense faced with a punitive damages phase must be able to predict and respond to a plaintiff's punitive damages case with virtually zero preparation time. Working with an experienced forensic accountant to prepare and present punitive damages analyses or to evaluate such analyses is a plus, if not a must, when trying a case with a punitive damages potential.

Staying on Track

As an advocate, counsel knows and anticipates certain factual and legal conclusions during the litigation and ultimately at trial. While counsel may know what questions need to be answered, the way to get to those answers may not always be clear. A forensic accountant can fill in these blanks for counsel. After all, perhaps more than any other type of evidence, optimized financial information can play a key role at mediation and trial. Trained to remain objective, a forensic accountant can provide answers while communicating findings that may support or limit planned legal arguments. This helps counsel prepare for the possibilities at deposition and trial—and stay on track to a successful outcome.

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About Bates Group's Forensic Accounting Services

Bates Group's forensic accounting experts assist attorneys and their clients along with senior management of organizations by resolving financial or accounting disputes, calculating or critiquing economic damages, writing expert reports, and testifying in deposition and at trial as an expert witness. We serve our clients in the following roles: as damages experts who calculate economic damages such as those relating to wage and hour disputes, partnership disputes, breach of contract, lost profits, and lost earnings; as accounting experts who evaluate allegations of accounting malpractice, determine whether an entity's financial statements were prepared in conformity with accounting rules, evaluate the financial condition of an entity, or interpret and communicate the significance of accounting and other financial information; and as forensic accountants in a non-litigation setting who investigate allegations of fraud and assist in filing a proof of loss, or reconstruct and decipher business transactions based on available evidence.

About Bates Group

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