

USE OF THE FORENSIC ACCOUNTANT IN THE DISCOVERY PROCESS

By David H. Glusman, CPA, DABFA CFS

As the litigation process has gotten more detail-oriented and somewhat cumbersome, it has become increasingly common for attorneys to call upon forensic accountants. Forensic accountants assist in the legal process by providing the skills necessary to provide analysis of great volumes of financial data. Often the forensic accountant will assist in extracting data that meets certain criteria, to attempt to prove or disprove the underlying point of litigation. This is especially true when there is an allegation of fraud.

Forensic accountants also provide economic analysis of damages in a variety of cases. In any of the various aspects ~~for~~ of using a forensic accountant, the use of his or her skills can be of great value to the attorney and the litigant if the forensic accountant is consulted early on in the process. Attorneys routinely comment that they don't like accounting, don't really understand tax returns, and would rather not deal with numbers. Forensic accountants are strong in all of these areas. More importantly, the forensic accountant is familiar with the documents, or type of documents, that are likely to exist in a business environment. This assists the trier in making a factual determination as the case goes forward. In many circumstances, the ability to obtain the correct information during the early part of the discovery process may lead to an early termination of litigation in favor of either the plaintiff or the defendant, depending on what has been uncovered.

For this reason, as well as the necessity to "get your hands around" the facts of the case as early as possible, it is most desirable to make discovery and interrogatory requests

early on, and in a concise and consolidated fashion. Even more importantly, if a deposition of an individual with some knowledge of financial transactions is going to be held, a forensic accountant's assistance will be invaluable in the preparation for the deposition notice, including advice on which documents should be brought to the deposition and/or which documents should be requested in advance discovery. The role of the forensic accountant may provide an opportunity to confront that particular witness during the litigation process, and assist in uncovering the relationship between documents and facts. The forensic accountant is prepared to analyze the documents as well as oversee the attorney's thought process in order to gain a sufficient understanding of the underlying financial and/or tax implications to the transaction or the issue to come before the court.

By consulting with the forensic accountant early on in the case, several things can be accomplished. First, an attorney can identify the skill sets needed as well as the particular expert or experts that should be utilized. Second, the attorney may eliminate the possibility of conflict – or retention by the opposing party – of his chosen expert. Lastly, and most importantly, the attorney will obtain the input required and be able to formulate the most appropriate thought process when additional discovery requests can be made, in the early stages of litigation. Any additional issues that may arise can be included in the complaint and a better understanding of the economic issues can be determined from an outside, independent point of view.

Often the expert is brought in at a relatively late date and discovery may already have been partially completed with deadlines for completion of discovery approaching, it may be more difficult to get the appropriate data and documents that would make the expert's position clearer, more concise and ultimately easier to sell to the trier of fact. Sometimes the assistance can be as simple as rewording the draft of a discovery request or a set of interrogatories. Often, an entirely different and additional area of discovery or interrogatory may be suggested by the expert, which ultimately will lead to better information at an earlier point in the litigation process.

The ability for the attorney to be best served will come from an early contact with the appropriate forensic accountant and engaging that accountant and utilizing the forensic accountant services during the earliest stages of litigation process.