

When the Story's in the Numbers

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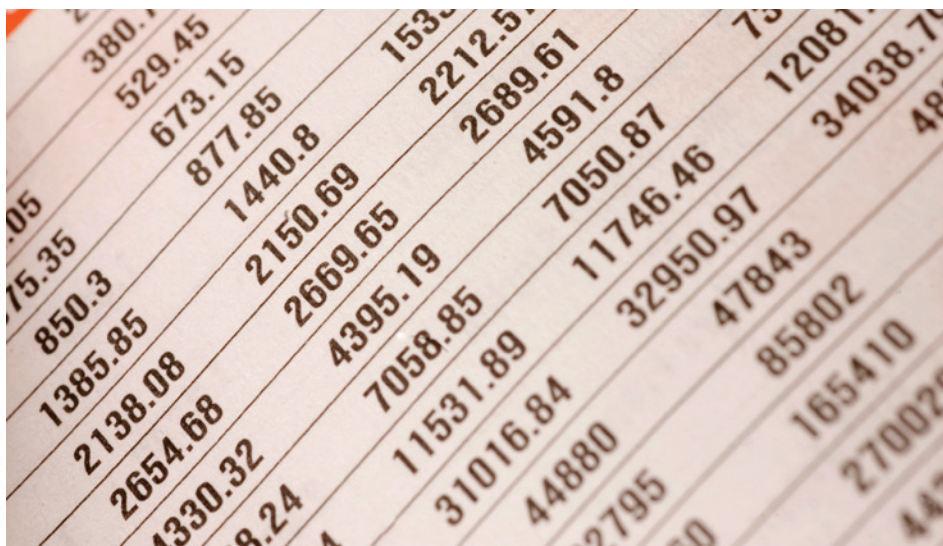
Litigation

Two days before Christmas Day, counsel calls a forensic accountant with the good news that his client just won a verdict. Next up is the punitive damages phase, with counsel having just received a large volume of defendants' financial information. Within two weeks, the forensic accounting expert testifies in deposition and at trial, and the client is awarded the maximum amount allowed for punitive damages. Now, that's a happy ending.

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, a forensic accountant is wired to interpret complex financial information and communicate findings frequently. This leaves you with more time to focus on legal strategy. Backed by the requisite credentials, a forensic accountant can assist you in the following ways:

Pre-filing assessment

If you want 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 you should review and which line items require the most focus. If the case involves whether accounting rules were complied with, the forensic accountant can translate jargon, explain the rules, interpret financial reports, public filings and disclosures, or adjust your initial thoughts on the merits of a potential claim. In organizing the strengths and weaknesses of the case, you can ask the forensic accountant: What do I still need to know?

Pre-filing analysis

Is there a case? For example, you may be considering filing a com-

plaint for violation 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, a forensic accountant can evaluate the completeness of and the consistency between the relevant data, such as time-punch records, time cards, 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.

Formulating Strategy and Discovery

Trained in professional skepticism, a forensic accountant 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 racket, 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 you on a lost earnings case arising from employment discrimination, retaliation or wrongful termination. Based on an understanding of the facts, the forensic accountant will advise you that documents useful for the damage calculation or for evaluating the claim include proof of past wages like tax returns, 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 you think the other side is possibly holding back on producing all relevant documents, the forensic accountant can provide insight. Potentially confusing financial information can be translated into a roadmap for you to connect the dots earlier in the litigation.

Expert Witness Role

With cases often turning into a battle of experts, a 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 odds of success at trial. They can prepare you for depositions by constructing questions to 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 you (and the judge) process financial or accounting theory. For trial, given their keen familiarity with the evidence and strong belief in their opinion, forensic accounting experts can 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.

Punitive Damages Phase

Some cases enter a punitive damages phase, which requires you to prepare and present an additional phase of the trial very quickly—typically overnight. Plaintiffs counsel cannot get punitive damages discovery until the jury returns a special finding entitling them to the 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 no preparation time. Working with a forensic accountant with experience in preparing and presenting punitive damages analyses or evaluating such analyses is a plus, if not a must, when trying a case with a punitive damages potential.

As an advocate, you know and anticipate certain factual and legal conclusions during the litigation and ultimately at trial. While you may know what questions need answers, how to get to those answers may not always be clear. A forensic accountant can fill in the blanks. 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 your planned legal arguments. This helps you prepare for the possibilities at deposition and trial—and stay on track to a happy ending.

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In Practice articles inform readers on developments in substantive law, practice issues or law firm management. Contact Laurel Newby with submissions or questions at lnewby@alm.com.

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