

Forensic Accounting – More Than You Think

Presented by:

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Pathway to Forensics

- ***Introduction***
- ***Objectives***
- ***Definition***
- ***The Business***
- ***The Process***
- ***The Application***
- ***Case Studies***
- ***Source Materials***



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WELCOME !



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Howard Zandman, CPA/CFP, CFFA



- **Partner with Habif, Arogeti & Wynne, LLP**
- **More than 35 years experience**
- **Majority of that time dedicated exclusively to the area of forensic accounting and litigation support.**
- **Has managed a wide variety of cases including fraud and damages quantification**
- **Testified many times in both Federal and State Courts**
- **Regularly presents to groups, including, GSCPA, NACVA, and others – Current member of NACVA Executive Advisory Committee**
- **Licensed as a CPA in the States of Georgia, New York and Florida**
- **Authored the “Small Business Section,” of the CPA’s Handbook of Fraud and Commercial Crime Prevention, “Business Interruption Basics”, “Not Exactly CSI”, “Delay versus Lost Profits Damages”, and other articles.**



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Who Are You

- ***Your Credentials***
- ***Your Experience***
 - ***Number of Years***
- ***Your Interest in this Session***
 - ***Understanding of Field***
 - ***A & A Credit***



Objectives

- ***To Understand what is “Forensic Accounting”***
- ***To Understand the Business of Forensic Accounting***
- ***To Understand the Investigative Process***
- ***To Understand the Litigation Process***
- ***Practice Tips***

Disclaimer

Opinions expressed are mine and not necessarily those of my firm. They are not intended to override anything that might otherwise be printed in the various AICPA Practice Aids.

Definition of Forensic

- ***“Belonging to, used in, or suitable to courts of law”***

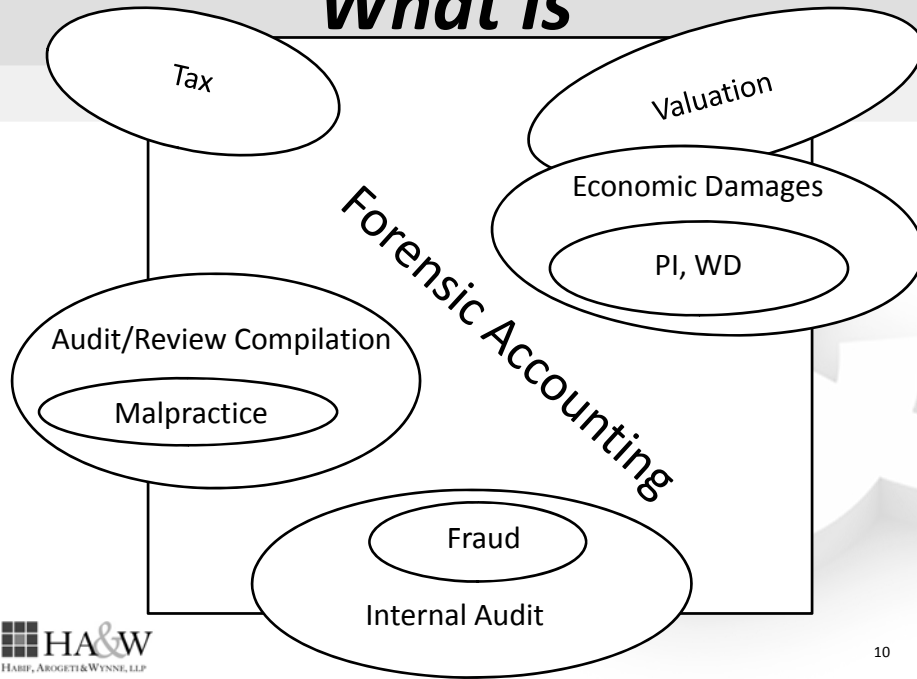
What is Forensic Accounting

■ **The relation and application of accounting knowledge and financial skills to a business problem within a legal environment.**

“Forensic Accounting” provides an accounting analysis that is suitable to the court which will form the basis for discussion, debate and ultimately dispute resolution”.




What Is





Business of Forensics


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What is a Forensic Accountant

Skills of a Forensic Accountant

- ***The application of financial knowledge and accounting skills, in conjunction with investigative techniques, to investigate disputes that are financial in nature***
- ***Trained to look “beyond the numbers” and communicate financial information clearly in a courtroom setting***

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What is a Forensic Accountant

Skills of a Forensic Accountant

- ***Familiarity with legal concepts and procedures***
- ***Be able to identify substance over form***

What is a Forensic Accountant

Forensic Accountant Skills

- ***An investigative mindset***
- ***Investigative strategies and techniques***
- ***Interview skills***
- ***Rules of evidence***
- ***Lateral thinker***
- ***Negotiation strategies***
- ***Excellent communicator***
- ***Courtroom experience***



"As most of you know, our company treasurer won't be with us for the next fifteen annual meetings."



"Not a lot of clues, Chief! We found one footprint."

Where are Forensic Accountants

- ***Engaged in public practice***
- ***Corporations***
- ***Boutique firms***
- ***Insurance company personnel***
- ***Law Firms***
- ***Bank staff***
- ***Law enforcement***
- ***Other government agencies***
- ***Other misc organizations***



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A Forensic Accountant What we do

- ***Internal Auditing***
- ***Tax Accounting***
- ***Valuation Professionals***
- ***Litigation Support***
 - ***Economic Damage Quantification***
 - ***Corporate Internal Investigations***
 - ***White Collar Crime Investigations***



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Business of Forensics

Roles of the Forensic Accountant

Investigation and analysis of financial evidence in a business dispute;

Development and use of investigative methodologies to assist in the analysis and presentation of financial evidence;

Communication of investigative findings and opinions (reports, schedules, expert witness testimony); and

Maintain independence – be an advocate for your opinion not for the position of the client.

Business of Forensics

“An Investigative Mentality”

- ***In order to properly perform these services a forensic accountant must be familiar with legal concepts and procedures. In addition, the forensic accountant must be able to identify substance over form when dealing with an issue (e.g. cash flow vs. financial statement presentation).***

Business of Forensics

Definition of a Financial Audit

- ***The review of financial statements of a company by a CPA leading to an independent opinion on the fairness of those statements which adds credibility to the implied assertions by management.***

Business of Forensics

Auditing Vs. Forensic Accounting

Opinion on management's financial statements

- ***Rely on management representations***
- ***Concept of materiality***
- ***Work from sample of data***
- ***Financial statement oriented***


Definitive investigation of specific issues

- ***Attitude of heightened skepticism***
- ***Detail matters***
- ***Review all relevant data***
- ***Uncover the facts, tell a story***

Business of Forensics


Auditing Vs. Forensic Accounting

<ul style="list-style-type: none"> ▪ GAAP/GAAS must be adhered to - checklist orientation ▪ Verification of the past or overview ▪ Focus on expected patterns & transactions ▪ Ongoing client relationship 	<p style="text-align: center;">An intuitive process is applied</p> <ul style="list-style-type: none"> ▪ Investigate the events surrounding specific transactions/activities ▪ Focus on unusual patterns & exceptions ▪ Independent, reactive
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Involvement of the Forensic Accountant

- **Business Economic Losses**
- **Business Interruption / Other Types of Insurance Claims**
- **Personal Injury / Wrongful Death Claims**
- **Shareholders' and Partnership Disputes**
- **Contract Disputes**


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Involvement of the Forensic Accountant

- ***Matrimonial Disputes***
- ***Mgmt/Employee Fraud Investigations***
- ***Criminal Fraud Investigations***
- ***Professional Negligence***
- ***Mediation and Arbitration***

Role of the Forensic Accountant

- ***Investigate and analyze financial evidence***
- ***Develop computerized applications to assist in the analysis and presentation of financial evidence;***
- ***Communicate findings in the form of reports, schedules and exhibits; and***

Role of the Forensic Accountant

- ***Assist in legal proceedings, including:***
 - ***Giving a deposition,***
 - ***Assist at opponents deposition***
 - ***Prepare visual aids to support trial evidence***
 - ***Testify in court as an expert witness***

The Process

Professional Guidance

AICPA Authoritative Standards

- **SSCS 1**
 - **Rule 201**
 - **Professional Competence**
 - **Due Care**
 - **Planning and Supervision**
 - **Sufficient Relevant Data**
 - **Rule 202**
 - **Integrity and Objectivity**
 - **Understanding with Client**



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Professional Guidance

AICPA Authoritative Standards

- **SSCS 1**
 - **Rule 102**
 - **Conflicts**
 - **Rule 302**
 - **Contingent Fees**
 - **Rule 301**
 - **Confidential Client Information**
- **SSVS 1**



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Professional Guidance

AICPA Non-Authoritative Guidance

Practice Aids

- **96-03 Communicating in Litigation Services Reports**
- **98-02 Calculations of damages from Personal Injury, Wrongful Death and Employment Discrimination**
- **03-01 Consulting Services Special Report**
- **04-01 Engagement Letters for Litigation Services**
- **05-01 A CPA's Guide to Family Law Services**



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Professional Guidance

AICPA Non-Authoritative Guidance

Practice Aids

- **06-01 Calculating Intellectual Property Infringement Damages**
- **06-02 Preparing Financial Models**
- **06-03 Analyzing Financial Ratios**
- **06-04 Calculating Lost Profits**
- **08-01 Independence, Integrity and Objectivity**
- **09-01 Introduction to Civil Litigation**
- **10-01 Serving as an Expert Witness or Consultant**

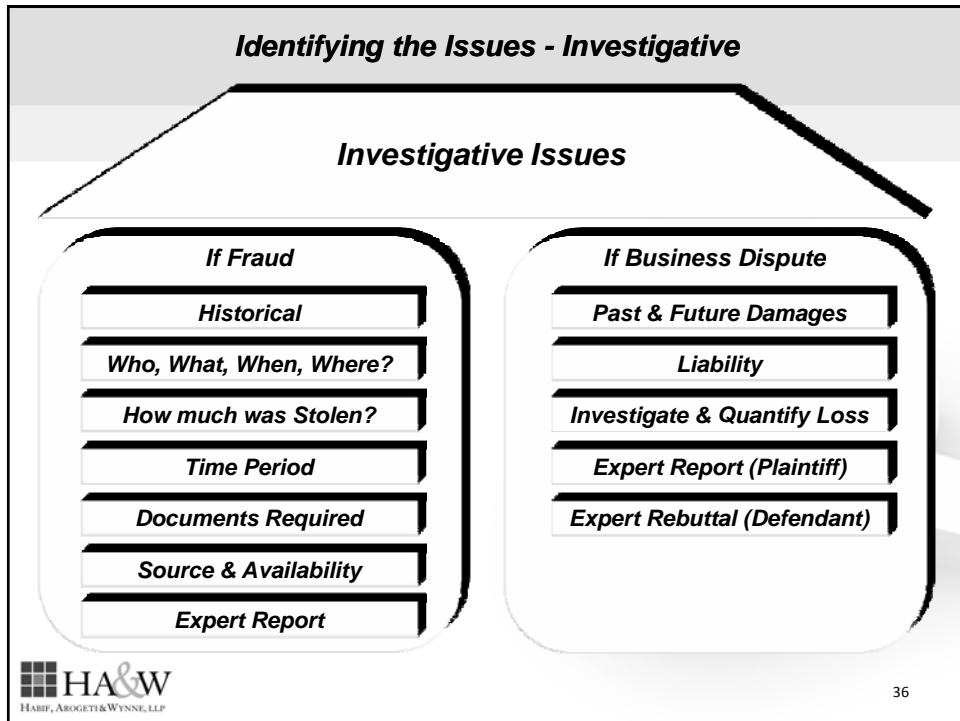
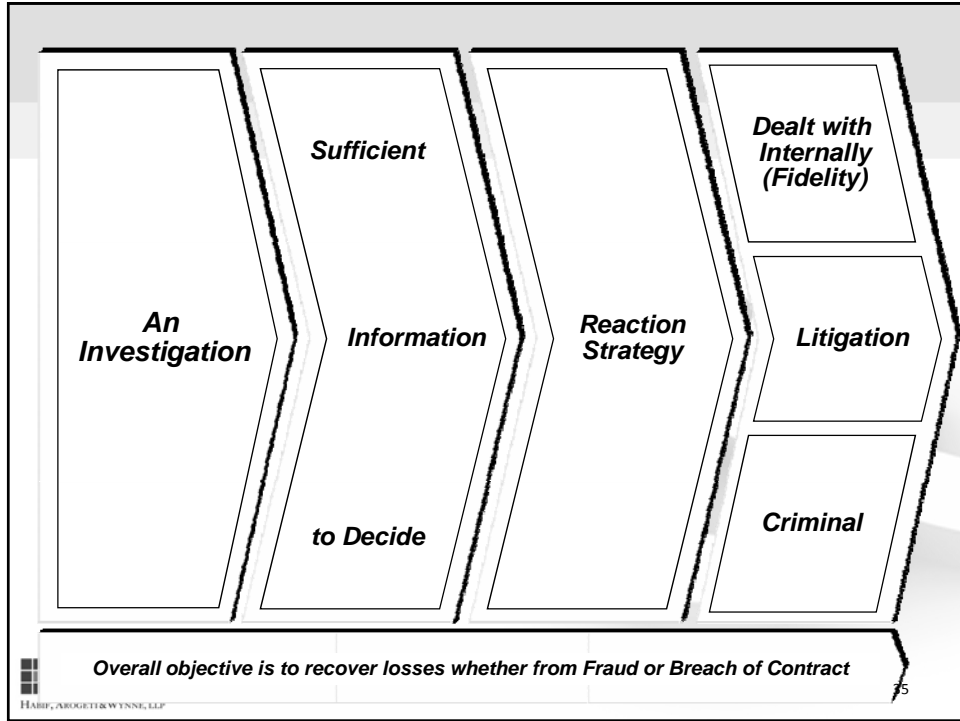


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Planning the Engagement

- ***Accepting the engagement***
 - ***Conflict checks***
 - ***Discussion with client and/or client's attorney***
 - ***Client understanding of scope***
 - ***Engagement Letters***
- ***Information gathering***
- ***Interviewing***
- ***Discovery***

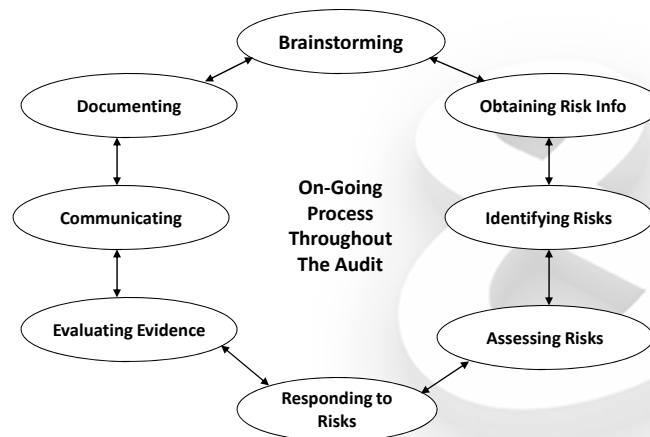
The Investigative Process




Investigative Process

- **SAS 99**
 - applies to audits of all nonpublic entities, private companies, non-profits, government units, etc.
- **Why auditors fail to detect fraud**
- **Fraud in the accounting system**
 - Misappropriation of Assets
- **Managing earnings**
 - Misstatement from fraudulent financial reporting
- **Red Flags**
- **Fraud v. Damages**
 - Healthy degree of skepticism

Investigative Process Fraud Audit Process






The Litigation Process


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Litigation Process

- *Where do engagements come from?*
- *Why do you get retained*
- *How does one get retained*
 - *Relationships Matter*
 - *Curriculum Vitae ("CV")*
- *When does one get retained*



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Litigation Process

Managing the Case

- **Maintenance of file data**
 - **Notes**
 - **Emails**
- **To checklist or not to checklist?**
 - **Consulting expert vs.**
 - **Testifying expert**

Litigation Process

Understanding the Rules

- **Pleadings**
 - **Complaint (and Amended Complaint)**
 - **Motions**
- **Discovery**
 - **Interrogatories**
 - **Requests for Production**
 - **Requests for Admissions**
 - **Depositions**
 - **Subpoenas**

Litigation Process

Understanding Requirements

- **Reports**
 - **Know your jurisdiction**
 - **Family Court**
 - **State or Local Courts**
 - *Civil v Business v Criminal*
 - **Federal Court**
 - *Civil v Criminal*




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Litigation Process

Understanding Requirements

- **Federal Rule of Evidence (“FRE”)**
 - **Rule 702 – Article VII**
 - **Opinions and Expert testimony**
 - *Daubert / Kumho Tire*
- **Federal Rule of Civil Procedure (“FRCP”)**
 - **Rule 26(a)(2)(B) – Amended Dec 2010**
 - **Expert Discovery – Reports**
 - *Basis of opinion*
 - *Information relied upon*
 - *4 years of testimony*
 - *10 years of publications / presentations*



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Credentialing Organizations

- **Certified in Financial Forensics (“CFF”)**
 - AICPA
- **Certified Forensic Financial Analyst (“CFFA”)**
 - NACVA
- **Certified Fraud Examiner (“CFE”)**
 - Association of CFE
- **Certified Forensic Accountant (“Cr FA”)**
 - American College of Forensic Examiners



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Litigation Stories

The Application

- **Construction Cases**
 - Fun Park delay
 - Garage collapse
- **IP Cases**
 - Accounting firm “trade secrets”
 - Electronics software delay
 - Use of similar logo
 - Generic drug manufacturer



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Litigation Stories

The Application

▪ **Lost Profits**

- *Major golf resort hotel affected by Hurricanes Katrina and Wilma*
- *Industrial drum recycling plant destroyed by fire*
- *Gov't sponsored military charter air carrier sued by another for "putting it out of business"*
- *Metal recycler opens new plant, has fire and claims lost profits*



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Litigation Stories

The Application

▪ **Fraud**


- *Major FL grocery chain succumbs to produce buyer*
- *Dissipation of assets by former spouse*
- *Major car dealership "gives" cars away*
- *Investment loss*

▪ **FINRA issues**


- *Broker – Dealer swaps*
- *Broker Churning*



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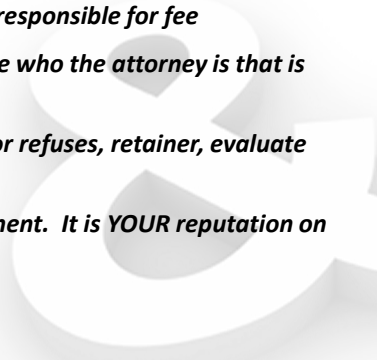
PRACTICE TIPS



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Practice Tips

- *As accountants, we have a wide array of capabilities. However, do not step into the pile unless you know what the pile is made of*
- *Understand who your client is and who is responsible for fee*
- *Always get hired by the attorney. Evaluate who the attorney is that is hiring you*
- *Ask for retainers. If client negotiates on, or refuses, retainer, evaluate strength of client and case*
- *Carefully evaluate the last minute assignment. It is YOUR reputation on the line*



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Source Materials

- **SSCS 1**
- **SSVS 1**
- **AICPA Practice Aids**
- **Litigation Support Services**
 - **Practitioners Publishing Company (“PPC”)**

Source Materials

- **Litigation Services Handbook**
 - **The Role of the Financial Expert**
 - *Weil, Frank, Hughes and Wagner*
- **Recovery of Damages**
 - **For Lost Profits**
 - *Robert L. Dunn*
- **The Comprehensive Guide to Lost Profits Damages**
 - *Nancy J. Fannon – editor*
- **Measuring Business Interruption Losses and Other Commercial Damages**
 - *Patrick A. Gaughan*

Questions and Answers



THANK YOU:

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