

Forensic Science, Forensic Accountants' Engagement and Litigation Outcome

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Abstract: Forensic accountants focus on the reconstruction and independent evaluation of economic issues. These professionals can help shape the scope and direction of investigations and enhance the potential for a successful settlement or trial result. The objective of this work is to critically examine the application of forensic accounting in litigation engagements. The survey design was used in this study with a sample size of 100 consisting of accountants/auditors, corporate workers and legal practitioners. The simple random technique was utilized in selecting the sample size, while the ANOVA (F-test) was employed in the data analysis. The findings of the study revealed that there is significant relationship between the forensic accountant's report and the attorney's judgment in a litigation case; and also, between the time of hiring a forensic accountant and the outcome of litigation process. Based on the findings, it was recommended that Attorneys should engage forensic accountants early enough whose expert witness and opinion from their objective investigations will determine the successful outcome of the litigation.

Keywords: Forensic Accounting, Forensic Science, Attorney, Litigation process, Investigation Procedure.

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I. Introduction

Attorneys can use forensic accountants to assist in translating complex financial issues into a more understandable manner. Frequently, these financial issues are a key factor in the ultimate outcome of the lawsuit. In today's computerized society, the attorney's deployment of forensic accountants to inquire, identify, investigate, test, examine, analyze and interpret financial documents and data is required more than ever before. With the forensic accountants acumen in the financial arena, and a sleuth mentality, this brand of accountant has been compared to Sherlock Holmes, the fictional London based detective famous for his astute logical reasoning and adept forensic science skills. Similarly, the forensic accountant is proficient at investigating, identifying and analyzing financial information, in conjunction with determining the people associated with the case, in an effort to follow the money. Ultimately, the financial forensic results could uncover hidden assets, identify unreported income, determine lost profits, or aid the attorney in whatever specific financial issues the case requires (Polinsky, et. al., 2001, [1]).

There are several definitions of forensic accounting, one such definition being the art & science of investigating people & money. In this manner, financial forensic tools, techniques, and methodologies are employed in tandem with an investigation of the people, many of whom may initially appear to be unrelated to one (or both) of the litigants. Often, the money-related deception, which can occur through journal entries, financial statement manipulation, and other fraudulent methods, cannot be detected without the forensic accountant having an understanding of the people involved. The application of forensic accounting involves a combination of special financial skills, such as accounting, auditing and finance, along with certain non-financial qualities, such as persistence, creativity, judgment, discretion and concise communication skills. This collection of attributes, combined with an inquisitive mind, enables the forensic accountant to investigate and assess the financial merits, as well as the integrity, of the distinct aspects of a litigation case for the attorney. By integrating these varied disciplines, the forensic accountant's examination of both the financial and non-financial information can furnish the retaining attorney with invaluable insight at every juncture during the case, as additional events occur or facts become known. Some of the types of litigation cases where the forensic accountant can be of assistance include shareholder/partner disputes, matrimonial dissolutions, breach of contract, lost profits and damage calculations, white-collar criminal investigations, breach of fiduciary duty, estate litigation and in the bankruptcy arena (Lyman, 2002, [2]).

The timing of when the forensic accountant is hired can play a vital role in the outcome of the case. Hiring the forensic accountant as early as possible allows the forensic accountant to assist the attorney in a variety of ways, including making a preliminary determination as to the merits of the litigation. Due to the

unique circumstances of each case, the forensic accountant's role can differ from one assignment to another, and may even change as a case advances through the litigation process.

Against the background, this study is undertaken to buttress the forensic accountants' role in litigation process. Are there special skills needed to carry out litigation engagements by forensic accountants; what are they? Are there procedures required in the admissibility of evidence obtained via investigation; what are they?

This study sets out to achieve the following objectives:

1. To describe the investigative skills utilized in a forensic accounting assignment.
2. To investigate the relationship between the forensic accountants' report and attorney's judgment in a litigation engagement.
3. To highlight the procedures of investigation performed by the forensic accountant.

1.1 Research hypotheses

The researcher has formulated three hypotheses for testing:

Hypothesis I

Ho: There is no significant relationship between the forensic accountant's report and the attorney's judgment in a litigation case.

Hypothesis II

Ho: There is no significant relationship between the time of hiring a forensic accountant and the outcome of a litigation case

1.2 Organization of the study

The rest of the paper is organized in four sections. The theoretical framework as well as review of relevant literature and empirical reviews on the subject matter is contained in section two, section three identifies the research methodology, and section four represents data presentation, analysis and discussion of finding while conclusion and recommendations are stated in section five.

II. Theoretical Framework/Literature Review

This paper is hinged on the Punishment-Deterrence Theory of Punitive Damages. "Damage" was deemed to be the loss caused by one person to another, either to his person, property or relative rights, through design, carelessness or default, while 'damages' are the indemnity recoverable by the injured party from the party who has caused the injury. The general theory upon which the law allows damages for the violation of a civil right is based upon the doctrine that where a civil injury has been sustained the law provides a remedy that should be commensurate to the injury sustained. The classic law and economics account of Tort liability: actors will have incentives to take reasonable care (i.e. cost effective reasonable precaution) as long as they are forced to pay for the harms that are caused by their unreasonable risks. Compensation is the fundamental principle governing the award of damages.

Damages are given as an indemnity to the person injured, not as a punishment to the wrongdoer. Assumptions of this theory is that, i) actors will in fact pay compensatory damages in each instance in which they take unreasonable risks and cause harm to others, ii) compensatory damages can be set accurately to reflect the total cost of the harm inflicted and iii) damages are given as an indemnity to the person injured not as a punishment to the wrongdoer. Exemption occurs when, accompanied by fraud, gross negligence, malice or oppression and therefore such damages are sometimes awarded as a punishment to the offender. Forensic accountant therefore is obliged to value the magnitude of the loss in terms of cost to the person injured.

2.1 Forensic science: a conceptual framework

Forensic science is the application of scientific methodology, knowledge and principles to the resolution of legal questions, whether criminal or civil. This definition, generally consistent across the forensic science literature, is intentionally broad. There are, in fact, many different forensic sub-disciplines, including (but certainly not limited to) criminalistics, crime reconstruction, forensic pathology, forensic anthropology, forensic toxicology, forensic odontology, forensic entomology, forensic mental health (psychology and psychiatry); and forensic criminology. The most common and recognizable type of forensic scientist is the criminalist. Criminalistics is the division of forensic science dedicated to the recognition, examination, and interpretation of physical evidence using the natural sciences, logic, and critical thinking. Criminalists are generally associated with the examination of physical evidence conducted in police or government funded forensic laboratories. They also comprise a majority (53%) of the cases found in the present study. The first crime laboratory scientists were actually referred to by job title and general description as "criminologists" (Association of Certified Fraud Examiners, (ACFE), 2008, [3]).

When there is a criminal complaint, law enforcement investigators are responsible for conducting the corresponding criminal investigation. This involves gathering evidence of all kinds, interviewing witnesses, and

developing potential suspects. Responding law enforcement agencies have a duty of care- an obligation to be competent custodians of the criminal investigations they initiate and any evidence that supports or refutes allegations of criminal activity against accused suspects. This implies a duty of care that should include determining what happened; whether or not a crime has actually taken place; and identifying and arresting any criminal perpetrators (Polinsky et al., 2001, [1]).

Forensic examiners, however, are responsible for corresponding scientific investigation- acting as an objective foil to any case theories that might arise from any source. The unique role of the forensic examiner is ultimately that of an educator to decision makers in the justice system, including investigators, attorneys, judges, and juries. (Polinsky et al., 2001, [1]) also describe the forensic examiner as a “handmaiden of the law”, while recognizing the potential for conflict between the goals of science and criminal justice system: “Forensic science is science exercised on behalf of the law in the just resolution of conflict. It is therefore expected to be the handmaiden of the law, but at the same time this expectation may very well be the marina from which is launched the tension that exists between the two disciplines.”

While the justice system necessarily sets two legal sides against each other, objective examiners are not meant to take up the cause of either. In fact, their only theoretical value to the legal process is with respect to their objectivity. Forensic examiners are ostensibly employed only because of their oath to advocate for the evidence and its dispassionate interpretation- nothing more. They must be capable of demonstrating that they have no emotional, professional, or financial stake in the outcome. In other words, they cannot be paid to guarantee findings or testimony favorable to their employer, nor can their advancement be connected to the success of one party over another. This is separate from being compensated for time spent performing analysis, writing reports, and giving testimony. It should also be stressed that the forensic examiner is not intended to be a decision maker in the justice system – despite some misinformed fictional portrayals to the contrary. They do not decide guilt or innocence, they do not rule on the admissibility of evidence in court proceedings, and they do not typically have the power to make arrests. This is intentional, as the goals of the forensic examiner with respect to explaining the strengths and limits of the evidence must remain ideologically separate to maintain any semblance of impartiality (Association of Certified Fraud Examiner (ACFE), 2004, [4]).

2.2 Civil Litigation

Civil litigation involves a myriad of different types of cases. In all civil cases, the plaintiff attempts to establish that the defendant violated contractual or legal rights causing a loss to be suffered. When a contract is involved, the focus is on interpreting the contract. Many contracts are written in language that can be interpreted in more than one way. An expert, often an attorney, may be hired to interpret the contract. The contract may include accounting terms that must be interpreted by the forensic accountant. For example, the contract may provide that the plaintiff get a certain percentage of the profits of a business, without stating clearly how those profits are to be measured. The dispute would focus on what measurement method is the fairest for measuring profits or what measurement method the parties had in mind when the contract was signed. In forming an opinion, the forensic accountant would consider the facts of the case and industry practices in measuring profits (Association of Certified Fraud Examiners, (ACFE), 2008, [3]).

Contract disputes might also revolve around allowable reimbursable expenses. It may be that a defendant was reimbursed for expenses that were not reasonable or necessary for the business. For example, an employee may have included as operating expenses excessive entertainment costs or personal expenses. The defendant also may have hired a relative who either billed excessive amounts for services performed or did no work at all.

In contract disputes or civil actions involving suppliers, contractors, employees, customers, competitors, and others affecting the organization, the organization as plaintiff must first establish that there was a violation of its rights, such as a breach of contract or a contract infringement. Subsequently, the plaintiff must establish three basic elements. According to the (Association of Certified Fraud Examiners, (ACFE), 2008, [3]), these three elements include proximate cause, reasonable certainty, and foreseeability

a. Proximate Cause

As the plaintiff, the organization seeks a damage award to compensate it for the economic loss that it suffered on account of the defendant's action. To recover damages, the plaintiff must show that it was the defendant in the case who proximately caused the damage. Proximate cause is the most direct cause involved; it need not be the only cause of the damage. A cause-and-effect link- age between the defendant's action and the damages suffered by the plaintiff must be shown. A contractor (the defendant) provided substandard maintenance on equipment. Because of breakdowns during a three-month period, customers experienced delays in receiving orders. The question before the court was whether the contractor's poor maintenance was the proximate cause of the loss of the customers who experienced delays. The forensic accountant's expert witness report attempted to show that there was proximate cause. Customer ordering patterns during the two-year period

before the delay period were contrasted with the two-year period afterward. The forensic accountant also measured the extent of the damages caused by the contractor's failure. Some of the plaintiff's marginal customers were lost due to poor service, and some of its loyal customers reduced their orders. The defendant's expert attempted to show that the customers went elsewhere for the products for other reasons, such as competitors offering lower prices for higher-quality goods. The defendant also attempted to show that if the plaintiff organization had been properly managed, there would have been no delays.

b. Reasonable Certainty

The rule of reasonable certainty permits recovery of damages only if they are reasonably certain to have resulted from the injury received. The forensic accountant does not have to measure damages exactly to the penny. The plaintiff must demonstrate a rational basis for the damage computation. The damages are calculated on the basis of certain assumptions. Statistical methods often are used in this regard.

c. Foreseeability

The final element the plaintiff must establish is the foreseeability of the damages the plaintiff supplied. For example, lost profits must have been foreseeable at the time the wrongful act was committed. In the case of a breach of contract, the lost profits must have been foreseeable as a natural result of the breach at the time the contract was made. The plaintiff's attorney will try to impress on the court that a reasonable person could have foreseen damages for nonperformance of the contract, or any other wrongful act. The forensic accountant for the plaintiff will testify that the lost profits or damages were foreseeable and that the measurement of the damages is reasonable. The defendant's attorney will hire a forensic accountant with a different opinion.

2.3 The forensic accountant investigation and report

The research of (Greenwood et al, 1977 [5]) stated that over 50% of traditional street crimes are solved based on information provided to the responding officer by the victim(s), and that in cases where incomplete or unusable information is provided by a victim, most are not subsequently solved through investigative efforts. Other research has likewise shown that little is gained through police effort to aid in offender apprehension following the commission of a crime have specifically stated that 'investigatory follow-up work, the gathering of physical evidence, and the ferreting out of criminals through detective work, play a relatively unimportant role in identifying and apprehending offenders.'

Nonetheless, the role of the investigator in computer crime cases will be much more important in clearance and arrest rates than information presented to him or her by the responding officer, victims, or witnesses. Due to the veiled nature of the techniques associated with computer crime and even the actual victimization itself, much effort will seemingly be expended in order to identify evidentiary facts, interpret clues, follow leads, and gather data to make a compelling case against the suspect(s). In addition, the PERF study recommended that officers work to locate witnesses through a neighborhood canvass; a similar procedure can be fruitful in an organizational context where computer crime has occurred (Krause, 2002, [6]).

The scope of the investigation can be expanded to include interviews with other persons who might provide qualitative information related to pressures, demands, constraints, motives, and rationalizations that affect behavior. Accordingly, a sense of how the organization shapes and impels behavior may be captured, and can thereby assist the investigator in better comprehending possible stimuli for crime commission. Information, Instrumentation, and Interviewing. (O'Hara & O'Hara, 1980, [7]) have written that there are three components of the criminal investigation: information, instrumentation, and interviewing. While technology and technique might change, these fundamentals persist across time and are therefore worthy of delineation.

Information simply refers to the fact that criminal investigation is centered around the gathering, organizing, and interpreting of data directly or tangentially related to the case. Second, instrumentation is related to forensic science and the specific techniques afforded to crime-solving investigators. For example, technological advances such as biometrics, DNA analyses³, and audio/video data processing will continue to enhance the accuracy of law enforcement in clearing cases. Third, interviewing involves the process of soliciting and lawfully extracting information from individuals who are knowledgeable about the circumstances of a crime in some capacity.

These three fundamentals have been and will continue to be utilized in the investigation of traditional offenses in the US in a relatively straightforward manner. However, their application to computer crime is less clear and seemingly more nuanced. Information accumulation will continue to be the 'bread-and-butter' of the investigation of these nontraditional crimes. In fact, the skill of the investigator is largely rendered irrelevant if he or she is not provided with enough useful information to move toward case clearance during the course of the investigation. Similarly, even the most adept investigator will encounter difficulties

if information culled during its course is incomplete or generally inapplicable. With this in mind, though, instrumentation and interviewing – which are simply other methods to gather information – should be executed in a distinctively different manner.

Instrumentation in investigating financially-related crimes involving computer systems primarily revolves around the tracking and analysis of records and logs to determine discrepancies or irregularities in the normal order. For example, money laundering with the use of computers concerns the process of concealing the source of illegally-obtained money and often involves the creation, fabrication, or alteration of documents to create a legitimate paper trail and history (Lyman, 2002' [2]). Financial institutions are presumed to keep detailed records of all transactions, currency exchanges, and the international transportation of funds exceeding a certain amount. Additionally, the Bank Secrecy Act of 1970 requires these institutions to maintain records that 'have a high degree of usefulness in criminal, tax and regulatory investigations and proceedings' and authorizes the Treasury Department to require the reporting of suspicious financial activity which might be related to a law violation (Webster, 1980 [8]).

Another example testifies to the importance of instrumentation when dealing with computer-related wrongdoing. Before the exponential growth of the Internet, the investigation of credit-card fraud often involved accurate identification by witnesses and the collection and identification of condemning physical evidence. When an offender made a purchase at a retail establishment through the use of a fraudulent credit card for payment, sales clerks and store employees trained in accurately observing and remembering physical and behavioral details of perpetrators were able to assist in the investigation. Catching an offender in possession of the fraudulently-acquired merchandise was also easier since purchases were made in a physical location. Finally, the handwriting sample obtained when the goods were signed for, and fingerprints left at the scene of the crime, also served as corroborating evidence. With the advent and growth of electronic commerce, however, the assistive role of witnesses and physical evidence – sources of information previously (and even heavily) relied upon – has now been largely eliminated. Combined with inter-jurisdictional complications, a deficiency of available investigatory resources, and the fact that these crimes occur in such an unconstrained and unregulated manner in cyberspace, the problem is further confounded. Investigators of computer crime must consequently pursue other avenues of inquiry and learn to master information retrieval from these sources, or else continue to struggle in their case clearance attempts. The third component - interviewing appears to be less salient as a direct method to investigate computer crime, largely because the victim is often unaware (either immediately or even for a great length of time) that a crime has occurred and that harm has resulted. Information useful in the solving of these cases is sometimes only identified after ferreting through reams of data on a computer system, and often the victim's only role in these investigations is to report the crime and provide access to the data storage machines. Furthermore, witnesses in computer crime are relatively rare since these offenses tend to occur behind closed doors (Rosoff et al., 2002, [9]). The only witnesses in most cases are those who commit the crimes either individually or collectively, and therefore other techniques to gather information must be utilized (Lyman, 2002, [2]).

Interviewing, then, may provide indirect utility for the investigator – such as insight into the motives and possibly the specific techniques employed, particularly if the offender was an 'insider.' Motive for a crime such as embezzlement (the siphoning off of funds from an employer by an employee – often through the use of computer systems (Lyman, 2002, [2]; Rosoff et al., 2002, [9])), for example, might stem from organizational variables – such as pressure from supervisors or managers to demonstrate productivity or effectiveness, or from a 'culture of competition' that permeates the enterprise (Coleman & Ramos, 1998, [10]). It might also stem from individual-level variables such as a personality characterized by laziness, vengeful inclinations, a tendency to mock authority, or an inability to deal with stress in a pro-social manner (Skogan, and Antunes, 1979, [11]; Krause, 2002, [6]).

III. Research Methodology

This study in its present volume employs the survey research design. The data was obtained from both primary and secondary sources, where the data analyzed were collated using the questionnaire instrument administered on a sample size of 100 respondents randomly selected from the entire population of accountants, auditors, top management staff, and legal practitioners in Cross River State. To verify the reliability of the measuring instrument (questionnaire) developed for the purpose of this study, it was subjected to pre-trial tests. The reliability of the questionnaire instrument was revealed by the accuracy of the questions formulated and the degree to which different respondents give consistent answers.

The data collected were presented in tabular forms after summarizing and classifying them. The tabulated data was then analyzed using the simple percentage method to compare the responses. A higher percentage mean acceptance while a lower percentage means rejection and the formulated hypotheses tested using the Analyses of Variance (ANOVA) statistical method at 5% level of significance

IV. Test Of Hypotheses

Hypothesis I

Ho: There is no significant relationship between the forensic accountant's report and the attorney's judgment in a litigation case.

Hi: There is a significant relationship between the forensic accountant's report and the attorney's judgment in a litigation case.

Table 1: The significant relationship between the forensic accountant's report and the attorney's judgment in a litigation case

Response	Accountants/ Auditors	Top Management staff	Legal practitioners	TOTAL
SA	10	5	15	30
A	5	5	10	20
D	5	4	10	19
SD	5	3	10	18
U	5	3	5	13
ΣX	30	20	50	100
ΣX^2	200	84	550	

Source: Computation from responses to Question 1

Table 2: ANOVA analysis of the significant relationship between the forensic accountant's report and the attorney's judgment in a litigation case

Source of Variation	DF	SS	MS	F-Ratio	F- Critical
Between Group Treatment	2	93.33	46.665	7.57	3.89
Within Groups Treatment	12	74	6.17		
Total	14	167.33			

F- Critical value of 5% level of significance with degree of freedom 2 to 12 is 3.89

Source: Researcher's computation.

Decision/ Inference:

Since the calculated value of 7.57 is greater than the critical value of 3.89, we reject the Null hypothesis (Ho) and accept the Alternative Hypothesis (Hi). It is therefore upheld that there is significant relationship between the forensic accountant's report and the attorney's judgment in a litigation case.

Hypothesis II

Ho: There is no significant relationship between the time of hiring a forensic accountant and the outcome of a litigation case

Hi: There is a significant relationship between the time of hiring a forensic accountant and the outcome of a litigation case

Table 3: The significant relationship between the time of hiring a forensic accountant and the outcome of a litigation case

Response	Accountants/ Auditors	Corporate Workers	Legal practitioners	TOTAL
SA	11	6	14	31
A	6	4	10	20
D	3	4	10	18
SD	5	4	6	15
U	5	2	10	16
ΣX	30	20	50	100
ΣX^2	216	88	532	

Source: Computation from responses to Question 2

Table 4: ANOVA analysis of the significant relationship between the time of hiring a forensic accountant and the outcome of a litigation case

Source of Variation	DF	SS	MS	F-Ratio	F- Critical
Between Group Treatment	2	93.33	46.665	7.34	3.89
Within Groups Treatment	12	76	6.33		
Total	14	169.33			

F- Critical value of 5% level of significance with degree of freedom 2 to 12 is 3.89

Source: Researcher's computation.

Decision/ Inference:

Since the calculated value of 7.34 is greater than the critical value of 3.89, we reject the Null hypothesis (H_0) and accept the Alternative Hypothesis (H_1). It is thus advanced that there is significant relationship between the time of hiring a forensic accountant and the outcome of a litigation case.

V. Summary And Conclusion

Engaging a forensic accountant early in cases involving complex economic issues can lead to success. The attorney and forensic accountant can partner to efficiently and effectively tackle a case on all fronts. The forensic accountant can provide detailed and effective lines of cross-examination for depositions while assisting the attorney with interpreting and understanding an opposing expert's report and opinions, thus strengthening defense counsel's position both in settlement negotiations and at trial.

Although Cost is often the primary reason attorneys may delay initiating a financial assessment or damages evaluation. However, a different skill set and level of understanding, which may be beyond that of the attorney, is often needed to interpret an opposing expert's findings or detect errors or erroneous assumptions in written discovery. Delay in retaining a forensic accountant may adversely impact case outcome.

Based on the findings, the following recommendations are proffered:

1. Management of Corporate organizations should engage the services of a forensic accountant in litigation and investigation as soon as possible to help translate complex financial scenario and situations into understandable form for both managers, Attorneys, Juries and Judges.
2. Attorneys should engage forensic accountants early enough whose expert witness and opinion from their objective investigations will determine the successful outcome of the litigation case.
3. Forensic accountants are to get equipped with legal parameters of each case before proceeding in the litigation process or investigation. This would help them understand the steps necessary and acceptable for admissibility of evidence obtained.

The researcher suggests that a study be conducted to critically x-ray the challenges faced by forensic accountants during litigation engagements.

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