



Insurance Fraud Matters: Should You Hire a Forensic Accountant?

by Chris Hamilton, CPA, CFE, CVA, DABFA

Much of the work done to establish and quantify fraud against insurance companies is done by investigators inside the affected insurance company. They have internal audit and investigative units that are populated with talented and experienced professionals. To the extent that their internal investigation can be resolved without legal action, an outside firm is not needed. However, if litigation is initiated to recover losses (civil court) or prosecute a suspected crime (criminal court) an outside firm is often used – although in significantly different ways depending on the court.

Civil Court

In matters where the forensic accountant has been retained by the insurance company to assist in civil litigation, the services to be provided are like most other cases - discovery, data analysis, damage calculations, and expert testimony and assistance at trial, arbitration, and settlement conferences. However, the forensic accountant has a client (the insurance company) that is unique. As noted above, this “client” has very likely already established much of the evidentiary record without the assistance of the outside firm. Discovery has often already been completed and even loss calculations are done by internal staff and resources.

If that is the case, why is an outside firm needed? Ultimately, the client needs an independent expert who is capable of telling the story to the judge and/or jury. A decision is made by counsel that the case is strengthened by bringing in an outside, independent, and objective professional to review the case and arrive at an opinion that can be communicated to a trier of fact in a persuasive way. The danger in these cases is that the expert is hired and expected to accept the work, analysis, and conclusions of the client. This is usually driven by the desire for expediency if the expert is hired at the last minute and/or a desire to save money. An experienced expert will not allow this expectation to dictate the work as the case may ultimately be harmed. In fact, short-circuiting the work probably defeats the purpose of hiring an outside expert.

An effective expert must be allowed to review all the available information and independently arrive at conclusions and opinions that will be presented at trial. Insurance fraud cases that are developed by insurance company personnel usually result in greatly simplified discovery and analysis by the expert. The resulting opinion may be easier to obtain but minimizing the independence and objectivity of the expert defeats the purpose of retaining the expert.

Criminal Court

The role of a forensic expert in criminal insurance fraud cases is usually a much different role than in civil court. In a criminal case, the insurance company generally develops the case and provides the evidence to a prosecutor who then makes the decision to pursue the case. A forensic accountant is generally hired, if at all, by the defense counsel to evaluate the case and assist in defense strategy.

It is also common to retain forensic accountants after a guilty verdict has been reached. In many jurisdictions, the sentencing phase will be impacted by the amount of the fraud. Sentencing guidelines are driven by the amount of money involved in the fraud. Therefore, defense counsel may be motivated to hire an expert to show that the amount of money involved is less than what the prosecution is alleging. If the defense can prove that the fraud was smaller than alleged, the severity of the sentencing may be significantly impacted. It is a limited use of forensic accountants but, depending on the circumstances, worth every penny.



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