

Forefront

Q1

2016

Inside:

2. Forensic Accounting



4. Shareholder Disputes



6. Economic Damages



O'Keefe
Clarity. Results. Together.

When hands-on guidance and exceptional performance is a must, organizations turn to the experience of O'Keefe. We're your partner for success. Our culture of collaboration and problem solving is unmatched. We craft solutions that produce impressive bottom-line results... even in the most complex situations.

We invite you to learn more at www.okeefellc.com

O'Keefe
Clarity. Results. Together.

Forefront

Q|1
2016

O'Keefe Contributing **Managing Partners:**



Susan Koss
Partner and Managing Director

Ms. Koss specializes in litigation support, business valuation and forensic accounting services. Her knowledge and experience in litigation support includes breach of contract, lost profits, economic damages, and fraudulent conveyance matters. She has also performed numerous business valuations utilized in estate tax resolution, shareholder disputes, marital dissolution, and merger and acquisition transactions. Additionally, Ms. Koss has prepared complex financial analyses utilized in business turnarounds and bank workout assignments for clients.



Russell Long
Partner and Managing Director

Mr. Long specializes in litigation support, business valuation, turnaround consulting and real estate receiverships. Mr. Long is also responsible for leading forensic accounting teams in the investigation of "Ponzi" schemes and complex business matters. He has worked with the FBI, SEC and other law enforcement agencies providing investigative support including restructuring the accounting records in a large west Michigan bankruptcy case resulting in a \$25 million recovery. Mr. Long acts as a receiver for commercial & residential properties and is responsible for all aspects of the assignments including analysis, loan administration, construction, negotiating lien settlements and ultimate disposition strategy for assets. Prior to joining O'Keefe, Mr. Long was the founder and president of Russell D. Long, CPA, P.C., a business consulting and tax planning firm, where he developed business plans, organized proper accounting procedures, implemented exit strategies for shareholders, and represented clients in IRS examinations. Mr. Long currently serves on the Turnaround Management Association Board of Directors.



Andrew Malec, Ph.D.
Partner and Managing Director

Dr. Malec is a recognized expert with over 15 years of experience in providing economic analysis, valuation opinions, and litigation advisory services to litigators in complex, commercial matters. He has demonstrated experience in matters including, but not limited to, shareholder disputes, intellectual property, breach of contract, and securities litigation. Andrew has significant testimony experience and has testified in state and federal courts, as well as in arbitration proceedings.

INTEGRATING FORENSIC ACCOUNTING

By Susan Koss

People are intrigued when I tell them I am a forensic accountant. High profile cases like Bernie Madoff and Enron come to mind immediately for many people. These cases have spotlighted several things including the need for increased accounting regulation but also the need for forensic accounting services.

So what exactly is forensic accounting?

Forensic accounting is the integration of accounting, auditing and financial skills with investigative techniques and professional skepticism. Experience in the business world in positions such as staff accountant, controller or Chief Financial Officer is also pertinent. Relevant experience investigating irregular transactions and the ability to question something that just doesn't seem right are special talents. Forensic accountants must have good communication skills and healthy skepticism in order to effectively interact with parties involved as well as communicate findings and opinions in a clear and concise manner. The culmination of all these skills is integral to solving the puzzle that is the core of forensic accounting.

People sometimes confuse the role of an auditor with a forensic accountant. Because the role of auditors focuses on reasonable assurance that financial statements are free of material misstatements, they test financial transactions on a sample basis. An auditor reviews the books and records for reasonableness. A detailed review of the nature of every transaction is not the goal of an audit.

However, in a forensic accounting investigation, materiality is not a factor and does not impact the scope. Consequently, sample testing is generally not done in a forensic investigation. A review of all records for a time period is typically performed to determine trends and identify patterns. Transactions of all sizes can be reviewed. In fact, even the smallest transactions can lead a forensic accountant to a potential fraudulent scheme.

Forensic accounting services are performed for matters involving shareholder disputes, marital dissolutions, economic damages, fraud and white-collar criminal investigations, breach of fiduciary duty, professional negligence and bankruptcy among others. Shareholder disputes are very prevalent and frequently driven by an imbalance of power between the non-controlling and controlling shareholders or a stalemate among equal owners.

For example, a non-controlling shareholder may want a buyout of his/her interest and understands that to get to the true value potential issues must be addressed first such as:

- Excessive compensation and benefits paid to the controlling shareholder
- Personal expenses of the controlling shareholder, such as automobile, travel and entertainment, paid by the company
- Diversions of funds from the business to related parties of the controlling shareholder or payments to ghost (non-existent) employees and to fictitious vendors
- Diversions of business opportunities for the benefit of the controlling shareholder to the detriment of the non-controlling shareholder
- Non-payment of dividends or payment of inadequate dividends.

Such issues of concern often come to light in these types of engagements. The forensic accountant can determine the validity and extent of such issues by not only looking at the numbers but looking behind them as well. The forensic results could also uncover hidden assets, identify unreported income, or determine lost profits. Ultimately, a forensic accountant with solid experience, accounting and financial analysis skills can be invaluable in investigating and quantifying financial damages, but just as importantly, must be able to effectively and persuasively present his or her findings to the trier of fact.



UTILIZING EXPERTS IN SHAREHOLDER DISPUTES

By Russell Long



Identifying the nature of the conflict is critical to an equitable outcome. However, those embroiled in the dispute are likely engaged emotionally and thus, unable to assess the situation with fresh eyes.

Employing an expert early in the process increases the likelihood that a thoughtful, mutually beneficial resolution can be reached.

The nature of the initial response to the issues sets the tone for a resolution. An expert at the table early in any shareholder dispute focuses the parties on the resolution of the dispute as opposed to the unproductive posturing that usually results in litigation. The financial expert can assist in identifying goals, assessing risk, and allocating costs to the possible outcomes. During this process the expert draws upon experience to identify alternative resolutions that may not be readily apparent to the combatants. Those alternatives ultimately minimize or even eliminate the costs associated with litigation. An expert on both sides of a shareholder dispute in the pre-litigation phase can ensure that the focus is on the business ramifications of any given proposal.

Frequently a reasonable proposal can be crafted and fine-tuned between the two experts that the feuding parties can live with. The financial experts can offer advice regarding best practices that

protects interests and may actually obviate the need for litigation altogether. Even when litigation is unavoidable, that pre-litigation process of dispute resolution with a financial expert is instrumental in establishing a framework for a more successful litigation. The presence of a knowledgeable expert during pre-litigation negotiations transforms the relationship with the attorneys and can mitigate legal costs. The financial expert who has been part of the process from the earliest stages has a unique, and definitely valuable, perspective.

Financial experts are commonly accepted, integral voices in business litigation because they provide a realistic assessment of the damage options and manage the expectations of the various constituencies in the litigation process. When financial experts are brought into the dispute process early, their value to the business, the parties involved, and ultimately to a successful outcome increases considerably. Clearly procrastination can be an expensive strategy and one that your financial expert would advise against.

“Statistically Speaking”

By Andrew Malec, Ph.D.

A thorough economic analysis is required in computing economic damages on a complex, commercial litigation claim. Yet, many times we see our peers put forth economic analyses that are lacking in analytic substance.

By its very definition “economic damages” or “economic claim quantification” share one common word, “economic.” This is not by happenstance. As such, having an economics background and understanding statistics is necessary in truly understanding the economics of the claim(s) and; hence, the resulting quantification of economic damages.

Consider a breach of contract claim where a retained expert is sampling “out of pocket” costs associated with an alleged breach. Does the expert understand statistical sampling? Does the expert understand how to design a statistical sample such that the expert is not only picking a random sample, but also picking an optimum sample size in order to properly make inferences about the costs incurred [the population of costs]? Just because the expert may have prior auditing experience, it does not mean that the expert is educated or well-versed in using statistics in litigation consulting, which may not be uncovered until it is too late in trial testimony. On the surface, it seems easy. If the company incurred \$10 million in costs as a result of the breach of contract and the expert tested some of the invoices and the resulting associated payments, the expert may feel satisfied that he can testify regarding the \$10 million in costs due to the alleged breach of contract. However, this is not true if the expert did not test an optimally statistically designed random sample. The expert would be committing what economists call a Type II error. That is, accepting a false hypothesis as true. In the instant case, the Type II error is accepting that the amount of invoices tested are enough to make an inference that the remaining invoices that have not been tested are correct, when in fact there is no basis to make that statistical inference.

The above example highlights one tool of economics that is used quite frequently in ascertaining economic damages. Even if it is behind the scenes, the proper application of statistics, economic theory, and econometrics [the statistical application of economic theory] is necessary in computing economic damages.

By its very definition: [“ECONOMIC DAMAGES” OR “ECONOMIC CLAIM QUANTIFICATION”] SHARE ONE COMMON WORD, “ECONOMIC.”

A DECADE OF RESULTS

By Patrick O'Keefe
Founder and CEO

Every year we pick a few deals to be judged for our transactional excellence by our peers against our competition. For the tenth consecutive year we have been recognized as the top financial advisory firm for transactions in the merger & acquisition, turnaround, recapitalization and distressed transactions in the middle market. This is not an accident. We continue to attract outstanding professionals possessing an indefatigable attitude with business acumen to deliver extraordinary results in the face of uncertainty. For business owners who engage us in their most important transactions, representing often times a life's work, we continue to deliver unprecedented outcomes. This last November, in front of 300 of

our industry peers in New York, we were once again recognized for the industrial deal of the year.

We navigated through, in a very short time, a shareholder fight, a failed sale of a division, loan covenant violations, a credit freeze, untimely death of the owner, and a new management team to execute a recapitalization, resulting in a full payout to the incumbent bank seeking to exit, sale to the new management and a financial windfall to the Estate's college age beneficiaries who were looking at nothing for their father's work.

Many prospects for our services know how to evaluate cost but few understand value. O'Keefe, a value proposition in the face of uncertainty for your most important transaction, only if results matter.



News and Congratulations:



Judy Wallace has joined the organization as a Director in the Bloomfield Hills, MI office. With 30 years of professional experience in financial and operational capacities, Ms. Wallace provides clients with financial consulting services in areas including operational cost savings, cash flow management and improvement, due diligence and ERP system implementation and upgrade.

Prior to joining the firm, Ms. Wallace served as the V.P. of Finance and Operations for a privately-held business, managing all daily accounting, financing and operational activities. In addition, she worked in public accounting and auditing for nine years with a large CPA firm before moving to private industry. She has served as Treasurer for a number of local not-for-profit organizations supporting the local arts and educational communities.

Ms. Wallace holds a Bachelor of Arts in Accounting from Michigan State University Honors College and is a Certified Public Accountant. Ms. Wallace is a member of Association of Corporate Growth (ACG). She is also a member of the American Institute of Certified Public Accountants (AICPA) and the Michigan Association of Certified Public Accountants (MICPA).



Congratulations to Carolyn Riegler on her recent designation as a Certified Fraud Examiner (CFE) from the Association of Certified Fraud Examiners (ACFE).

The CFE credential denotes proven expertise in fraud prevention, detection and deterrence. CFEs are trained to identify the warning signs and red flags that indicate evidence of fraud and fraud risk. CFEs around the world help protect the global economy by uncovering fraud and implementing processes to prevent fraud from occurring in the first place.

CFEs have a unique set of skills that are not found in any other career field or discipline; they combine knowledge of complex financial transactions with an understanding of methods, law, and how to resolve allegations of fraud.



Congratulations to Matthew Rizzo on receiving his recent designation as a Certified Valuation Analyst (CVA) from the National Association of Certified Valuation Analysts (NACVA).

The NACVA supports the users of business and intangible asset valuation services and financial forensic services, including damages determinations of all kinds and fraud detection and prevention, by training and certifying financial professionals in these disciplines.



O'Keefe will be honored in January for Real Estate Deal of the Year and Restructuring Deal of the Year

Financial and strategic advisory firm O'Keefe has been acknowledged as the financial advisor for two transactions that were recognized by the turnaround community as the best deals of the year for real estate and restructuring.

Real Estate Deal of the Year: for the successful reorganization of a Northern Michigan golf resort, one of Golf Digest's Top Resorts. Despite the fact that the judge ordered a 363 sale, a reorganization plan was executed preserving ownership.

Restructuring Deal of the Year (From \$10MM to \$25MM): for the turnaround and sale of an automotive supplier. O'Keefe executed a recapitalization resulting in a full payout to the incumbent bank seeking to exit.

"We continue to achieve outstanding outcomes for ownership in light of uncertain circumstances. We are

proud to be recognized by our peers for developing creative solutions in unusual circumstances," said Pat O'Keefe, Founder and CEO of O'Keefe. "I am proud to be a part of a team of professionals that never loses sight of the finish line."

The M&A Advisor Turnaround Awards honor the top deals, firms and professionals in the distressed investing and reorganization industry. The awards will be presented on January 28th at the Awards Gala at the Colony Hotel, Palm Beach, FL. M&A Advisor is the preeminent organization recognizing excellence, honoring achievement, presenting thought leadership and facilitating connections among the world's leading dealmaking professionals.



Middle Market Forum

Save the Date!

4th Annual Middle Market Forum
Tuesday, February 23 | 7:30 - 9:30 am
San Marino Club | Troy

Macro-economic factors cause a great deal of uncertainty within the middle market. This reality is clearly reflected in an insightful economic survey of several prominent midwestern companies facilitated by O'Keefe. Paired with a recent study conducted by Northwood University, we will be addressing these issues of uncertainty and discussing advancing Michigan in a complex, global economy for 2016 and beyond.