



SIKICH FORENSICS ACADEMY

200 West Madison – Suite 3200
Chicago, Illinois
February 7th, 2018



ACCOUNTING TECHNOLOGY ADVISORY

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PROGRAM AGENDA

- 1:45 – 2:00 pm Check-in
- 2:00 – 2:50 pm Strategies for Filing Successful *Daubert* Motions on Damages and Accounting Experts
- 2:50 – 3:10 pm Break
- 3:10 – 4:00 pm Best Practices for Conducting Whistleblower Investigations
- 4:00 – 6:00 pm Networking

HOUSEKEEPING ITEMS

- Office space and security reminders
- Attendance certificate and survey will be emailed to you upon completion of the program
- This program has been approved for 2.0 hours CLE credit in Illinois and Minnesota.
- This program has been approved for 2.0 hours of CPE credit for accountants
- For attorneys, please remember to provide your respective state bar numbers for attendance list
- If you have any questions or comments, please email Eileen Keeley (eileen.keeley@sikich.com) or Bob Shields (bob.shields@sikich.com)
- Handouts & Evaluations

**STRATEGIES FOR
FILING SUCCESSFUL
DAUBERT MOTIONS
ON DAMAGES
AND ACCOUNTING
EXPERTS**



Shawn Fox,
 CPA/ABV, CFA®, ASA
*Managing Director,
 Dispute Advisory*

SHAWN FOX

- **Education**
 - BBA in Accounting from the University of Iowa
- **Experience**
 - Shawn has more than 20 years of experience providing forensic accounting and litigation services as an expert witness services to organizations and their counsel.
- **Contact Information**
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NICHOLAS H. CALLAHAN



Nick Callahan, JD,
Partner,
Barack Ferrazzano
Kirschbaum & Nagelberg LLP

- **Education**

- BS from the University of Wisconsin-Madison
- JD from Northwestern University

- **Experience**

- Nick is a litigation partner who splits his time between his firm's Chicago and Minneapolis offices. Much of his practice involves accounting, valuation, and financial-focused disputes, including corporate governance and shareholder disputes, merger and acquisition disputes (both pre- and post- closing), securities cases, and bankruptcy litigation. His experience include trying more than 30 jury trials, bench trials, and arbitrations.

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Allen Woolley, JD

Partner
Locke Lord LLP

W. ALLEN WOOLLEY

Education

- AB from Dartmouth College
- MA and JD from Duke University

Experience

- He has handled a wide a variety of complex commercial, bankruptcy, environmental, employment, and product liability matters in both state and federal courts and has recognized as a “Leading Lawyer” in the areas of commercial litigation, class action/mass tort defense law, toxic torts defense law, and product liability defense law.

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**Robert J.
Shields, Jr.**

*Director,
Forensic Investigations*

ROBERT (BOB) J. SHIELDS, JR.

▪ Education

- BS, Illinois Benedictine College (Benedictine University)
- MS, DePaul University

▪ Experience

- Bob served as an FBI Senior Executive and has more than 20 years of experience within the FBI in diverse regional and executive leadership positions. Bob leads investigations of cyber intrusions, fraud, insider threats, employee misconduct, computer forensics, risk assessments, and makes recommendations to improve business processes.

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OUR PANEL



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Nick Callahan, JD
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Kirschbaum & Nagelberg
LLP*



Allen Woolley, JD
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***DAUBERT* STANDARD**

- Is the expertise and testimony of the expert witness relevant to matters at issue in the trial?
- In *Lantec*, the Tenth Circuit applied Rule 702 and held that under *Daubert*, courts measure reliability of scientific evidence by considering:
 1. whether the technique can and has been tested;
 2. whether the technique has been subject to peer review;
 3. the known or potential or potential error rate of the technique;
 4. the existence and maintenance of standards controlling the technique's operation; and
 5. whether the technique has gained general acceptance in the scientific community.
- *Kumho Tire* added that *Daubert* also applies to technical and other specialized knowledge

COURT'S GATEKEEPER FUNCTION ROLE

- The trial court should evaluate:
 1. the expert's qualifications;
 2. the relevancy of the testimony; and
 3. the reliability of the analyses and opinions.
- Federal Rule 702 requires that the expert's scientific, technical or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue
- Rule 702 of the Federal Rules of Evidence states that a trial court may allow expert testimony only if it is:
 1. based on sufficient facts or data;
 2. the product of reliable principles and methods; and
 3. delivered by an expert who has reliably applied the principles and methods to the facts of the case.

ILLINOIS RULE 702 TESTIMONY BY EXPERTS

- “If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs.”
- The *Frye* test is referred to as the “general acceptance” test

STRATEGIES FOR FILING SUCCESSFUL *DAUBERT* MOTIONS ON DAMAGES AND ACCOUNTING EXPERTS (1 OF 2)

- Expert witness qualifications
- Expert witness opinions outside of his/her area of expertise
- Unreliable data relied upon the expert witness
- Methodology or procedures used by the expert witness
- Errors in calculations
- Invalid assumptions used by the expert witness
- Unreliable results
- Untested, biased, or inadmissible evidence

STRATEGIES FOR FILING SUCCESSFUL *DAUBERT* MOTIONS ON DAMAGES AND ACCOUNTING EXPERTS (2 OF 2)

- Opinions for not being relevant to the case
- Opinions for not being scientific or technical in nature (for example, a simple mathematical calculation)
- Opinions based legal theories or remedies not available in the jurisdiction
- Opinions because they will help the trier of fact understand evidence or determine a fact at issue
- Expert testimony because it would usurp the role of the fact finder or court (e.g. by opining on the law, assessing credibility, etc.)

BEST PRACTICES FOR CONDUCTING WHISTLEBLOWER INVESTIGATIONS

 SIKICH.

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PATRICK (PAT) COTTER



Patrick Cotter, JD

*Partner,
Greensfelder, Hemker, &
Gale P.C.*

- **Education**
 - BA, Illinois State University
 - JD, New York University School of Law
- **Experience**
 - Pat is the leader of the Greensfelder Government Interaction/White Collar Practice Group and is based in the Chicago office. He assists clients dealing with an array of government agencies. Pat is a former federal prosecutor and longtime white-collar defense attorney. He has represented clients in matters involving financial, environmental, antitrust, FCPA, and cyber-crime issues.
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PATRICK (PAT) MURPHY



**Patrick Murphy,
JD, CPA, CFE &
CAMS**

*Prescient Comply
Vice President
Investigations*

- **Education**
 - BS, DePaul University
 - JD, Loyola University School of Law
- **Experience**
 - Pat's experience include more than 26 years of experience with the FBI supervising complex white-collar crime and public corruption cases. He leads in-depth due diligence investigations. Pat also provide investigative support for litigation matters and assist clients with internal investigations of fraud, theft and corruption.
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WILLIAM (BILL) R. POKORNY



William R. Pokorny,
JD
Partner,
Franczek Radelet P.C.

- **Education**
 - BA, Augustana College
 - JD, University of Chicago Law School
- **Experience**
 - Bill is a partner in the Chicago office in the labor and employment, K-12 education, and higher education practice groups. He helps employers and educational institutions achieve their goals in legal disputes and has significant experience in the areas of wage and hour litigation, discrimination and civil rights, employee benefits, leave, benefits and accommodation claims.
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Mark D. Pollack, JD

*Partner,
Paul Hastings LLP*

MARK D. POLLACK

- **Education**

- BA, University of Michigan
- JD, University of Michigan Law School

- **Experience**

- Mark is a partner and chairs the firm's litigation practice in the Chicago office. He concentrates his practice in the areas of white-collar criminal defense, complex commercial litigation, internal corporate investigations, and compliance counseling. He began his litigation practice as an Assistant U.S. Attorney in Chicago.

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JAMES (JIM) SULLIVAN



James Sullivan,
JD, CIG, CFE
*Director,
Investigative Services*

- **Education**
 - BS, Illinois Benedictine College (Benedictine University)
JD, John Marshal Law School
- **Experience**
 - Jim served as the Inspector General for the Chicago Board of Education for twelve years. He conducts investigations of alleged fraud, evaluates systems and procedures for control weaknesses, and recommends appropriate controls to prevent fraud.
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WHISTLEBLOWER

- A person who exposes any kind of information or activity that is deemed illegal, unethical, or not correct within an organization that is either private or public.
- The information of alleged wrongdoing can be classified in many ways: violation of company policy/rules, law, regulation, or threat to public interest/national security, as well as fraud, and corruption.
- Most whistleblowers are internal whistleblowers, who report misconduct on a fellow employee or superior within their company through anonymous reporting mechanisms often called hotlines.
- External whistleblowers report misconduct to outside persons or entities. In these cases, depending on the information's severity and nature, whistleblowers may report the misconduct to lawyers, the media, law enforcement or watchdog agencies, or other local, state, or federal agencies.

Source: <https://en.wikipedia.org/wiki/Whistleblower>



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