

## **ERNEST N. DIXON, CPA/CFF**

BERKELEY RESEARCH GROUP

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### **SUMMARY**

Ernest Dixon is a Managing director in the Phoenix office of Berkeley Research Group, LLC. Mr. Dixon has over 30 years' experience in accounting, auditing and consulting for Fortune 500 and middle market clients. Mr. Dixon is an expert witness in the interpretation and application of Generally Accepted Accounting Principles. Mr. Dixon specializes in commercial and criminal litigation matters that require forensic accounting or application of GAAP in complex business transactions. His work has included accounting investigations, white-collar criminal defense consulting, commercial litigation consulting, expert witness testimony, acquisition financial due diligence, professional malpractice claims, and business combination transaction structuring.

### **PROFESSIONAL HISTORY**

- Managing Director, Berkeley Research Group, LLC
- Managing Director, Navigant Consulting, Inc.
- Senior Manager, Arthur Andersen
- Senior Manager, KPMG

### **EDUCATION**

BA, Accounting      New Mexico State University, 1986

### **PROFESSIONAL ASSOCIATIONS**

- Certified Public Accountant, New Mexico
- American Society of Certified Public Accountants, Member
- Certified in Financial Forensics

### **SPECIFIC CASE EXAMPLES**

#### ***White Collar Matters***

- » White Collar Criminal Defense – Mr. Dixon was the non-testifying expert on US Attorney's Office criminal proceedings against former executives of a publicly traded managed care entity. The charges related to Medicaid fraud, and false statements to government agencies. The work consisted of detailed analysis of medical claims, calculations of medical loss ratios, use of encounter data for Medicaid ratemaking, and analysis of actuarial determined reserves and loss accruals.

- » SEC Investigation, Software Revenue Recognition – Mr. Dixon was the lead in performing an independent investigation concerning the revenue recognition related to software contracts, year-end cutoff issues, and the determination of revenue allocated to the delivered and undelivered elements of software and maintenance and support activities. The investigation included determining the appropriate application of SOP 97-2 and 98-9 (residual vs. uniform discount methods), determination of VSOE for the undelivered elements, renewal of maintenance and support contracts, and evidence of an arrangement.
- » White Collar Criminal Defense – Mr. Dixon has served as the non-testifying expert in complex Department of Justice and US Attorney's Office criminal proceedings. Work consisted of extensive analysis of transactions involving allegations of round-trip transactions, premature revenue recognition, and manipulation of reserves and accrued liabilities. This matter was successfully defended in trial during February – March of 2010.
- » SEC Enforcement Matter – Mr. Dixon served as a non-testifying expert in allegations of fraudulent schemes committed by the former Chief Financial Officer of a software company. The allegations consisted of premature revenue recognition, side-letter agreements, and round-trip transactions. The work consisted of preparing detailed analysis of identified transactions, identifying shortcomings in the independent investigation of identified transactions, analysis of auditor work papers to identify disclosure of transactions, and preparing rebuttal of SEC expert. Matter went to trial in May of 2011 and resulted in a mistrial. SEC subsequently settled its case with favorable terms to defendant.
- » SEC Enforcement matter – Mr. Dixon assisted counsel in successful settlement negotiations with SEC on disgorgement of ill-gotten gains related to allegations of insider-trading against a former CEO and CFO. Assistance provided was used to rebut SEC claims related to determination of stock sales proceeds, incentive cash and stock option compensation, and basis of vested and unvested stock holdings over a four-year period.
- » Asset/Money Tracing – Mr. Dixon assisted counsel in the forensic analysis of tracing tainted funds related to the FIFA bribery matter. Work consisted of tracing funds movement through various Brazilian and US financial institutions to quantify the potential of the existence of tainted funds over a three-year period, the timing of fund movement, and distributions to Brazilian FIFA officials.

### **Healthcare**

- » Expert Testimony – Mr. Dixon prepared an expert report and was deposed in connection with an analysis of healthcare claims submitted for reimbursement that were considered tainted by violation of rules (AKS), regulations (FCA), or other contractual terms. The work included forensic analysis of detailed general ledger financial data to identify payments to physicians, distributions of earnings to shareholders, and funds paid to a third-party marketing entity. Mr. Dixon's report restated the historical financial statements of the bankrupt entity to account for the tainted healthcare claims, and his report was utilized by a solvency expert. The matter was in United States Bankruptcy Court for the Eastern District of Virginia (Richmond Division).

### ***Financial Institutions***

- » Fraud Investigation – Ponzi Structure, Real Estate Development and Finance – Mr. Dixon was a lead in performing a fraud investigation related to accounting irregularities and fraudulent financing by a not-for-profit entity utilizing special purpose entities, complex charitable tax shelters, and affiliated for-profit subsidiaries. The investigation included analysis of real estate appraisals, cash flow models, and financing schemes. Financing structures included charitable annuities, limited liability corporations, limited liability partnerships and trusts. Tracing of flow of funds and sources and uses of cash to determine if a Ponzi scheme was being utilized.
- » Forensic Investigation, Special Purpose Entities – Mr. Dixon was involved in the investigation of accounting irregularities by financial institutions involved in using special purposes entities including synthetic leasing structures, hedging vehicles, partnerships, joint ventures and trusts issued debt-linked securities and related swaps and options. The investigation included the structure of various derivative instruments related to interest swaps, collateral puts and calls, and default scenarios.
- » Forensic Investigation, Securitization Trust – Mr. Dixon was a lead in performing an accounting investigation related to fraud in connection with an off-balance sheet securitization trust. This investigation consisted of the sale/transfer of financial instruments, accounting for trust revenue and fund disbursements through a “waterfall” calculation, determining recognition of losses to defaults, subsequent collections, and shortfalls in trust collateral.

### ***Stock Option Backdating***

- » Expert Consulting/Restatement – Mr. Dixon served as one of Navigant’s technical accounting experts for backdated stock options in initial investigations, and in separate post-investigation financial restatement projects. Mr. Dixon also served as a lead in post-investigation restatements in determining the cumulative effect of backdated stock options.

### ***Asset Impairment***

- » Expert Testimony – Mr. Dixon prepared an expert report and was deposed in the interpretation and analysis of the application of SFAS 121 on separate international lines of business in the United States District Court, for the Northern District of Georgia, Atlanta Division, in connection with a class action commercial litigation. Issues included assessment of impairment event, measurement and recognition of the impairment.
- » Fixed Asset Impairment – Mr. Dixon has expertise in asset impairment tests under SFAS 121 and SFAS 144. Mr. Dixon provided expert advice in the interpretation and application of accounting literature in determining the impairment event, measurement, and recognition of the impairment in the financial statements for long-lived assets and leased assets. Specific items addressed included the impact of proposed versus enacted legislative actions, quantification of environmental claims and assessments, identification of cash flows of specific assets, and assessment of the lowest level of identifiable cash flow stream in a business segment.

### ***Energy Trading***

- » Expert Testimony – Mr. Dixon prepared an expert report and testified concerning the fair value accounting (mark-to-market) of complex energy trading derivatives, in the United States District Court, Southern District of New York, in connection with a post-acquisition commercial dispute concerning the acquisition of an energy trading operation. Specific issues related to the use of valuation models, appropriate fair value adjustments/reserves, determination of operating revenues, accounting for a dual-trigger option contract, and the effect of fraudulent transactions on profit and loss.
- » SEC Investigation, Energy Trading – Mr. Dixon was the lead in performing an independent investigation concerning allegations of earnings manipulation and accounting irregularities Aquila, Inc., a large energy company. The investigation concentrated on accounting and reporting of mark-to-market earnings on energy and financial derivatives including OTC physical forwards, indexed futures, and other exotic derivatives (weather and rainfall); validation of forward pricing curves; adequacy of credit and liquidity risks; and settlement of closed positions. This investigation included an assessment of the risk management programs and infrastructure of the trading operation.
- » Litigation Consulting, Energy Trading – Mr. Dixon was a lead in performing the accounting investigation on the energy trading activities of the nation's then largest energy trading company. This investigation concentrated in identifying round-trip energy trades, improper accounting for pre-paid forwards, existence of off-balance sheet financing partnerships, and improper mark-to-market of energy related derivative contracts. This investigation determined the overstatement of revenues, improper recording of mark-to-market income, and improper income related to off-balance sheet partnerships and securitization transactions.

### ***Environmental Claims***

- » Expert Testimony – Mr. Dixon provided expert testimony in the quantification and accounting for funds and claims resulting from the environmental remediation costs, in Superior Court of the State of California, for the County of Los Angeles. Specific testimony related to the allocation and use of funds related to different insurance towers, and determination of remaining claims cost.

### ***Business Combinations***

- » Assisted financial buyers in the due diligence and transaction structure in several successful transactions, identification of deferred tax structures and deferred taxes created in leveraged re-capitalization acquisitions. Businesses included a mail order clothier, a national golf retailer, a beverage company, a national home improvement retailer, health maintenance organizations, and several independent power production facilities. Transaction sizes ranged from \$85 million to over \$1 billion.
- » Assisted strategic buyers in the financial due diligence and transaction structure for purchase and pooling methods of business combinations. Transactions included an electric turbine manufacturer, aero-space parts supplier, cross-border investments in United Kingdom/United States electric utility companies, and the purchase of generating stations in Europe and Asia.

- » Assisted in the spin-off of a \$500 million real estate finance company from a publicly held holding company.