

David Moes

Managing Director

Contact Details

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Professional History

- Secretariat
- Ankura
- Navigant
- Andersen Worldwide

Education

- University of Wisconsin
BBA Accounting and Finance

Accreditations

- Certified Public Accountant
(Licensed in Illinois)
- Member, Illinois CPA Society
- Member, American Institute of
Certified Public Accountants
- Associate Member, American Bar
Association

Current Position

Mr. Moes is a senior testifying expert with the Disputes and Forensics practice of Secretariat International. He has extensive consulting experience in commercial litigation, forensic investigations, bankruptcy and restructuring, tax litigation and complex damage analysis and modeling. Prior to joining Secretariate, Mr. Moes held senior leadership positions and served clients globally with Ankura and Navigant. He began his career as an auditor with Arthur Andersen and became an equity partner in their Strategy, Finance and Economics practice. Some of his experience is detailed below.

Complex Damage Analysis

- Engaged as a testifying expert and submitted an expert report in a dispute between limited and general partners concerning accounting for intercompany transactions and earnings payouts. Will testify in 2023.
- Engaged as testifying expert in ICC arbitration of a cost-sharing agreement between two chemical manufacturers. Filed two expert reports on damages and testified in 2019.
- Damages expert in defense of a consumer class-action in the car rental industry. Expert report and deposition testimony in 2018, case was resolved on summary judgement on behalf of defendants.
- Damages expert in a failed merger in the premium finance industry. Prepared expert report in anticipation of trial. Case settled in 2019 prior to deposition.
- Engaged as a testifying expert by an investor-owned water utility on accounting and financial issues in a breach of contract case brought by an Illinois municipality. Prepared expert reports and submitted deposition testimony.

- Engaged as testifying expert on financial damages in a merger dispute involving claims of Material Adverse Effect. Case settled prior to testimony in Delaware Chancery Court.
- Engaged as a testifying expert by a major manufacturer of mining equipment in a post-acquisition dispute concerning the accounting for closing balance sheet. Matter successfully settled prior to testimony.
- Engaged as testifying expert on accounting and tax issues on behalf of minority interests in restaurant venture. Prepared expert report and deposition testimony in private arbitration in 2020.
- Engaged as a testifying expert on accounting and damages in a consumer class action on behalf of purchasers of prescription pet food. Evaluating profitability of manufacturers and retailers in determining appropriate damages and supporting class certification.
- Engaged as a testifying expert by the City of Chicago to quantify damages as a result of fraudulent bidding for a major city contract. Case settled in early 2017.
- Engaged by the City of Chicago to perform an independent evaluation of the financial impacts of a settlement between the City and outside concessionaire for future parking meter revenues under an existing licensing agreement. Testified to the results of our analysis in a public hearing to the City Council of Chicago and addressed questions from Aldermen. Subsequently calculated and opined on savings under the settlement to the Corporation Counsel for presentation to City Council.
- Engaged as testifying expert by a Fortune 100 industrial equipment manufacturer in arbitration over working capital adjustment in sale of logistics business. Matter was successfully settled in 2012.
- Engaged by a major gas utility to testify on accounting and damage issues in connection with a regulatory investigation of performance-based rate making. Issued two expert reports and testified in front of Illinois Commerce Commission in 2012.
- Engaged as a testifying expert by a major wholesale distributor to present a damage claim in a breach of contract matter with a significant customer. Matter successfully settled prior to testimony in 2011.
- Engaged as a testifying expert by a major financial institution to defend alleged damages by investors in a Ponzi scheme. Required detailed analysis of movement of funds and custodial arrangements. Case settled in 2010 prior to testimony.
- Engaged as a testifying expert and submitted expert report in the London Court of International Arbitration in defense of damage issues concerning the valuation of structured credit products held by a bankrupt hedge fund. Issued two expert reports and testified in June 2009.
- Engaged as a testifying expert in a post-acquisition dispute concerning a disputed earn-out in the electric utility industry, including appropriate financing structure for acquired entity. Deposition testimony in 2007. Case was successfully settled in 2008.
- Engaged as a testifying expert by a major pharmaceutical company to analyze accounting issues in a post-acquisition dispute. Case successfully settled in 2007.

- Engaged as a consulting expert by counsel to the sole Managing Member of a bankrupt hedge fund to value investor positions and support early redemption claims.
- Engaged as a testifying expert to determine breach of contract damages for a food manufacturer due to the delay in the installation of major processing equipment. Testified in District Court in Wisconsin.
- Engaged as a testifying expert by an industrial gas manufacturer to develop a damages model concerning a cost-sharing agreement with a joint venture partner. Submitted deposition testimony in 2005. Case was settled prior to trial.
- Engaged as a testifying expert by a Big 4 accounting firm to address GAAP and GAAS issues in connection with the audit of a bankrupt major retail concern. Primarily focused on addressing inventory accounting issues. Case was settled prior to depositions and trial.
- Engaged as a testifying expert by a major telecommunications firm to prepare detailed accounting analyses of product line profitability for use in the appeal of unit-value assessed property taxes in multiple jurisdictions. Performed detailed cost allocations and prepared alternative valuation models. Case was settled prior to trial.
- Engaged as a testifying expert in a post-bankruptcy fee allocation dispute. Collected and analyzed detailed accounting data and developed detailed cost allocation model. Submitted deposition testimony in 2003. Case was settled prior to trial.
- Engaged as a testifying expert and submitted expert report in a case involving the economic substance of a disputed services contract. Matter was decided favorably on summary judgment.
- Engaged as testifying expert and prepared a detailed cost accounting study and damages model regarding the disputed development costs of an MBO system installation for a government contractor. Assisted in successful settlement negotiations.
- Engaged as consulting expert by numerous clients, including a large telecommunications company, a multi-national manufacturer and an apparel manufacturer to prepare insurance claims for recovery of Year 2000 remedial costs under first-party insurance coverage. Engaged as testifying expert on damage issues.

Tax Litigation

- Engaged as a testifying expert on accounting and financial issues in defense of the determination of taxable gain in a purchase transaction. Submitted two expert reports to U.S. Tax Court and testified in 2019.
- Engaged as a consulting and testifying expert by a Fortune 50 international corporation to analyze various internal financing arrangements. Analyzed the detailed accounting for profitability and cash flow for multiple segment businesses in the international corporate structure; loan portfolio, valuation of taxable entities, payment performance and cash management systems. Also prepared financial analyses of debt levels in support of economic determination of appropriate debt and

equity levels in capital structure. Prepared numerous expert reports in anticipation of testimony. Matter settled in 2016 in advance of U. S. Tax Court trial.

- Engaged as a testifying expert by a major Illinois healthcare system to defend property tax exemptions. Analyzed system accounting records to account for charitable care and community benefits. Prepared expert report. Case on hold pending legislative action on property tax exemptions in Illinois.
- Prepared valuation reports for use in defending internal financing strategies of a major international corporation and its subsidiaries.
- Engaged as a consulting expert by a major accounting firm to assist in the analysis of various alleged tax shelters and tax products in response to an investigation by the IRS and U.S. Attorney General.
- Engaged as a consulting expert by an international manufacturer to provide consultation and litigation support services in a dispute involving a significant tax-sharing agreement. Required international discovery, development of pro-forma profit and loss statements and support of technical tax and economic experts.
- Engaged as a consulting expert by a major international manufacturer of grocery products, pet food and other manufactured goods to prepare valuations of inventory, unpatented technology and trademarks in a Section 338 dispute with the Internal Revenue Service. Responsible for detailed revenue and cost accounting analyses and supporting economic expert valuations. Case involved two separate trials in U.S. Tax Court and assistance with successful appeals.
- Assisted international manufacturer in the defense of certain valuation issues in a post-acquisition dispute with the IRS. Responsible for preparing the underlying financial analysis to support intangible asset valuations and preparing expert report. Case was settled favorably prior to testimony.
- Assisted a large package-handling corporation in the defense of “sham” transaction allegations, including financial analysis of the subject transactions, preparation and delivery of multiple expert reports and extensive attorney assistance and support during the trial in U.S. Tax Court.
- Developed detail analysis of pricing policies, margins, and business history of a German computer distributor in connection with transfer pricing issues raised by German government. Assisted client in developing strategy and presented findings directly to German Government. Assisted economic analysis. Case was settled with no transfer pricing adjustments.
- Developed a pricing analysis with detailed documentary evidence to obtain a favorable customs ruling in the Netherlands for a multinational manufacturer. Involved obtaining records from vendors in the Far East and U.S. and customers throughout Europe. Analysis presented directly to Dutch customs authorities in Rotterdam.

Forensic Investigations

- Engaged as the financial advisor to a bankrupt hedge fund by the Trustee for the estate. Led a team of forensic accountants and financial advisors responsible for identifying and accounting for fund assets, tracing and supporting all historical fund transaction activity, creditor account analysis, supporting claims against third-parties, providing support for regulatory financial and statutory accounting requirements and management and operation of the estate. Prepared and submitted declarations in support of litigation against the fund insiders and testified in multiple depositions in various matters resulting from this retention.
- Engaged as a consulting expert by the Redeemer Committee of investors in a distressed fund complex to perform a forensic investigation of the remaining fund assets in order to assess remaining cash flows to satisfy redemption schedule. Performed significant accounting review of private equity holdings of fund manager.
- Engaged as a privileged consultant on behalf of the auditor of a bankrupt Chinese manufacturer that had allegedly defrauded investors in a reverse merger. Analyzed GAAP and GAAS issues and assisted in drafting of expert report.
- Engaged as a consulting expert by a distressed hedge fund to examine accounting and valuation issues resulting from investment transactions, recapitalizations and customer account activity.
- Engaged as corporate representative of dissolved off-shore hedge funds to address factual issues in an on-going sanctions matter. Testified as fact witness in evidentiary hearing.
- Engaged as a consulting expert to a major bank administrator/custodian of various investment advisors to analyze investor transactions and other financial activity with regards to investments in a massive Ponzi scheme. Responsible for addressing issues related to cash tracing, fund accounting, account valuation and potential claw-backs.
- Engaged as a consulting expert by the trustees of multiple major mutual fund companies to conduct investigations of the fund accounting, internal controls and compliance functions in response to allegations of improper trading practices, including market timing. Reported directly to the trustees on the results of our investigation and recommended process and system changes.
- Engaged as a consulting expert by the Audit Committee of a distributor of office products to conduct an independent investigation of accounting irregularities at a foreign division. Accounting issues included vendor rebates and allowances, appropriate reserve accounting and APB 20 and SAB 99 disclosure issues. Prepared and delivered confidential report to Board and outside counsel.
- Engaged as a consulting expert by a major telecommunications company to conduct a forensic investigation of fraud and abuse claims in the conduct of a federally funded program to install telecommunications equipment in public schools. The focus of the investigation was the appropriate accounting for billed equipment inventory under the "E-Rate" program.
- Engaged as a consulting expert by the Chief Compliance Officer of a major mutual fund company to develop a program to ensure compliance with SEC Regulation 38a.1 and report to Trustees. Led a

team of consultants evaluating internal controls and compliance processes and developing monitoring tools and reporting protocols.

- Engaged as a consulting expert by a Big-5 accounting firm to provide litigation support services in the defense of accounting malpractice issues. Responsible for directing a team of consultants in the retrieval and review of discovery data, analysis of critical GAAS and GAAP issues, forensic accounting and preparation of financial models and damage analyses.
- Engaged as a consulting expert to analyze due diligence performed by the management of the venture capital arm of a major computer leasing firm. Analyzed hundreds of loan files and created a standard analysis model. Case was successfully settled prior to developing damage models.

Antitrust and Price Fixing

- Assisted joint defense team in the preparation of detailed accounting, economic and financial analyses for use in the defense of price-fixing allegations in the food additive and agrochemical industry. Required detailed analysis of transaction history and pricing modeling. Extensively involved in successful settlement negotiations.
- Engaged as consulting expert by an international agricultural products manufacturer to prepare financial and economic damage calculations in defense of a national class-action price discrimination matter. Supported agricultural economist in the preparation of damage models.
- Engaged as testifying expert on cost accounting issues in the defense of a Robinson - Patman antitrust matter in the toy manufacturing industry. Prepared numerous quantitative damage scenarios to assist in successful settlement of all substantive issues.

Testimony Experience in the Last Four Years

- Deposition testimony in private arbitration on accounting and tax issues in a minority investor dispute (May, 2020).
- Testified in ICC Arbitration as expert accountant in disputed shared services agreement on behalf of the claimant. (The Dow Chemical Company, Claimant v. Olin Corporation and Blue Cube Operations, LLC, Respondents. ICC Case No. 23957/MK. December 2019).
- Testified in U.S. Tax Court as expert accountant in the determination of taxable gain in purchase transaction on behalf of the petitioner. (Tribune Media Company v. Commissioner of Internal Revenue Service. Docket No. 20940-16, October 2019).
- Deposition testimony on damages in defense of consumer class action. (Marshall Maor, individually and on behalf of all others similarly situated v. Dollar Thrifty Automotive Group et. al. 1:15-CV-22959-JEM U.S. District Court Southern District of Florida, 2018).