

**THOMAS C. LAWSON, CFE, CII** Certified Fraud Examiner\*; Certified International Investigator\*\*

**SERVICES:** Design & Implementation of Human Resources Management Systems; Factual Employment Screening Programs; Expert Testimony in Improper Employment Screening, Negligent Hiring/Retention/Supervision/Training and Compliance with the Fair Credit Reporting Act/Privacy in the HR & Employment Screening Context. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500.

**VENUES :** Law; Medicine; Government (DOD, FDIC, RTC Contractor Status); Law Enforcement (Local, State & Federal); Banking; Casinos; Securities; Sports; Professional Associations; Qualified Individuals

**EXPERIENCE :** Mr. Lawson is recognized as the First known Improper Employment Screening and one of the earliest known Negligent Hiring/Retention/Supervision/Training Expert Witnesses. Mr. Lawson founded APSCREEN in 1980, the oldest continuously operated Factual Employment Screening Firm in the U.S. and is also qualified to testify on HR Management Issues, White Collar Crime/Fraud; Factual Due Diligence; Internal Theft and FCRA/CCRA Compliance, Investigative & Public Record Research Standards of Care.

**Listed in ALM Legal Experts since 1993.**

***“one of the industry’s true gurus”***

*-BACKGROUND SCREENING AND INVESTIGATIONS – Managing Hiring Risk From the HR and Security Perspectives”  
(Published by Butterworth – Heinemann [Elsevier]) by W. Barry Nixon, SPHR and Kim M. Kerr, CPP*

***“(APSCREEN)...They are, in my humble opinion, probably the best in the world”***

*-Lee Lapin, The Whole Spy Catalog, 1995*

Currently, a sitting member of the Editorial Review Board of FRAUD Magazine. Developed Employment Screening for the Resolution Trust Corporation/Primary Employment Screening Contractor - RTC/Lincoln Savings; Contract Asset Investigator of record - Charles Keating matter.

A regularly published author, and nationally recognized speaker, author of and referenced by others in extensive published works on employment screening & related issues, Mr. Lawson also created a comprehensive set of factual employment screening guidelines developed also for the Resolution Trust Corporation as published in the White Paper, a Journal of the Association of Certified Fraud Examiners. Other notable published references include Business Week, Los Angeles Times, Orange County Register, Orange County Business Journal, as well as CBS syndicated talk radio, and interviews with ABC’s American Agenda; NBC’s EXTRA!. Mr. Lawson takes great pride in his service as Chairman Emeritus of the award winning Orange County Chapter of the American Society of Industrial Security, 1990. In over 30 Who’s Who’s, including Who’s Who in America. Authored interpretation and application of FCRA/CCRA Compliance Guidelines for ACFE and related Credit Reporting Industries - Recognized Expert.

**Retained Cases: 38. Sworn Testimony Experience: (2) Trials (15) Depositions (See Pages 16 & 17, Below).**

**PROFESSIONAL ASSOCIATIONS:**

*American Society for Industrial Security (ASIS)  
Life Member, Association of Certified Fraud Examiners (ACFE)  
Society for Human Resource Management (SHRM)  
Professionals in Human Resources Association (PIHRA)  
National Public Record Research Association (NPRRA)  
Council of International Investigators (CII)  
World Association of Detectives (WAD)  
World Investigators Network (WIN)  
Founding Member, Public Record Research Network (PRRN)  
Forensic Expert Witness Association (FEWA)  
Founding Member, National Association of Professional Background Screeners. (NAPBS)*

**BUSINESS:**

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# Publications – Thomas C. Lawson

Since establishing my factual employment screening and consumer reporting agency business in 1980, and my Negligent Hiring/Retention/Supervision/Training expert witness practice in 1984 and since background screening did not become an industry until the mid-to-late 1990's as a frequent writer and public speaker on the topic, according to the statements of others and to my belief, I was involved in the early development of what is now the background screening industry. Much of what has been written on the topic of background screening has been predated by my writings and speeches on the topic, evidenced by the list below. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. My knowledge of this industry, the service, the sources and the applicability to Human Resources Management and business in general is evidenced and supported by a successful 38+ years established in the top tier of the genre. My list of mentors includes: Richard D. Rogge, SAC, FBI (Ret.); Frederick J. Petersen, Esq. SA, Resident Agency, FBI (Ret.); James Powers, Esq. SAC, FBI (Ret.); Emmett J. Michaels, (Former) Supervising Special Agent, FBI; Matthew White Mitchell, Esq. Former Special Agent, FBI; Maj. John G, Lyle, Jr. USMC, U.S. Diplomatic Courier Corps, USMC/CIA Liaison Officer, Longest Serving Marine in Viet Nam; Ted L. Gunderson, SAC, FBI (Ret.).

## HR.Com

July 17, 2017, in the *Featured Research/EXCELLENCE ESSENTIALS Section - Critical Ethical Considerations in Employment Screening* by Thomas C. Lawson

## The Complete Workplace Violence Prevention Manual – James Publishing, Inc. :

1994 Edition, Chapter 6 – **Pre-Employment Screening** by Thomas C. Lawson

1997 Edition, Chapter 6 – **Pre Employment Screening (Revised/Updated)** by Thomas C. Lawson

## The White Paper, A Journal of the Association of Certified Fraud Examiners

Volume 8, Number 6 (1994/1995) - **Factual Employment Screening** by Tom Lawson

Volume 8, Number 3 (1994) - **Asset Searching For Recovery Actions, Part One** by Thomas C. Lawson

Volume 8, Number 4 (1994) - **Asset Searching For Recovery Actions, Part Two** by Thomas C. Lawson

Volume 12, Number 3 (1998) - **How the New Consumer Credit Reporting Reform Act Affects Fraud Examiners** by Tom Lawson

## FRAUD Magazine (Also, Longest Serving Member, Editorial Review Board)

May/June, 2008 – **Civil Litigation Checks, The Misunderstood Background Check Component**, by Tom Lawson

April, 2011 - **Employee Background Roulette: Hirer, Beware**, By Robert Tie

March, 2017 – **Protected**

## The Los Angeles Times:

March 5, 1990 – **Screening Workplaces Door**, Interview by Leslie Berkman

May 16, 1994 – **Investigative Firm Keeps Eye on Ethics**, Interview by Debora Vrana

February 1, 1994 – **Singles Check Potential Mate to Avoid Becoming a Pawn**, Interview by Leslie Knowlton

**Business Week Magazine**

**September 24, 1990** – Looking for a Job, You May Be Out Before You Go In, Interview by Jeffrey Rothfeder

**Orange County Business Journal**

**September 27, 1993** - Employment Screening Today – A Travelers’ Advisory, by Thomas C. Lawson

**December 6, 1993** – Screening your Employees the Right Way, by Thomas C. Lawson

**OC METRO MAGAZINE**

**January, 2007** – Protected

**Books – Extensively Quoted**

**1992** - Privacy for Sale, by Jeffrey Rothfeder

**1995** - The Whole Spy Catalog, by Lee Lapin

**2008** - BACKGROUND SCREENING AND INVESTIGATIONS – Managing Hiring Risk From the HR and Security Perspectives” (Published by Butterworth – Heinemann [Elsevier]) by W. Barry Nixon, SPHR and Kim M. Kerr, CPP

**Active Human Resources Management Forums & ListSrvs**

With regard to research materials specifically used in my continuing education on the topic, please see the list of active LinkedIn, ListSrvs and other related business groups associated with my profession: This list comprises the active daily involvement with my profession, and I am active with these groups on a daily, weekly, and monthly basis in different capacities. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500.

Background Screening and Due Diligence Jobs and Promotions

Background Screening and Due Diligence Professionals

Better Background Screening

COMPLIANT BACKGROUND SCREENING PARTNERS, LLC

ConcernedCRAs

Credit Bureau Reporting & FACTA 312 Compliance

DEFENSE AND AEROSPACE CONNECTIONS

Diploma Mill Experts - Accredibase

Due Diligence and Screening Services

ERE.net

Employment Background Check

Employment Screening Best Practices

FCRA Compliance

Forensic Expert Witness Association

HR & Talent Management Executive

Human Resources Career Best Practices

Human Resources Professionals Worldwide

Identity Theft

International Background Screening Forum

Linked:HR (#1 Human Resources Group)

National Human Resources Association

OCEAN - Orange County Executives And Networkers

Orange County Chapter

Orange County Human Resources

Protected

SHRM Networking Group

Tenant Coordination Forum

The Recruiter Network - #1 Group for Recruiters

We Are Orange County!<sup>TM</sup> (WAOCTM) - California

Whine & Dine Networking Group

*The following is a list of intensely active ListServe-based Human Resources Management Forums, involved with on an hourly basis:*

CalHR – Yahoo Group  
PIHRA -Professionals in Human Resource Management

**The following is a general list of publications, other than those specifically attributable to my own writings and that which has been written about me using my principles, and contributing to my general and specific knowledge of the topic:**

Counsel of International Investigators Journal, Focus International: “The Art of the Background”, Author Steve L. Kirby, CII, CFE

California Employment Law Monitor

Workplace Violence Prevention Institute – Complete Workplace Violence Prevention Manual 1994, 1997 Editions

Protected

The 1990 Employer – Modern Hiring Practices and Employer Responsibility for Avoiding Negligence in the Hiring Process – Littler Mandelson, Fastiff & Tichy

California Labor Law Digest – Chapter 18 Negligent Employment Practices

BLR’s Quick Guide to Employment Law - Federal & 50 States, Washington DC

Employment Screening and internal Investigations – Seminar for Corporate Counsel and Human Resource

Professionals – Sedgewick, Detert. Moran & Arnold

Matthew Bender – 1994 Edition - Employment Law Desk book – Hiring Section – Background Checks Section,

Employment Screening Section, Negligent Hiring & Retention Section

The Safe Hiring Manual – Lester S. Rosen, Esq.

Business Background investigations – Cynthia Hetherington

Background Screening & investigations – W. Barry Nixon, Kim M. Kerr

Employment Screening – Primary Source Pamphlet – Matthew Bender

**Groups addressed repeatedly on associated topics since 1982 (Keynote Address and/or Seminars):**

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Personnel & Industrial Relations Association (PIRA) – Multiple Districts

Professionals in Human Resource Management – (PIHRA) Multiple Districts

Association of Certified Fraud Examiners (ACFE)

Protected

Institute of Real Estate Management (IREM) – Multiple Districts

Research Security Administrators (RSA)

American Society for Industrial Security (ASIS)

Background Investigator Conference – Pre-NAPBS

**Paid Educational Assignments:**

**Lorman Education Services in concert with:**

**Littler, Mendelson Fastiff & Tichy , Sweet & Crawford, Klein DeNatale:**

*Employee Discharge and Documentation in California*

**Klein, DeNatale, Goldner, Cooper, Rosenlieb & Kimball:**

*Internal Investigations of Employment Issues in California*

*Crimes, Criminals and False Credentials,: The Role of Background Screening in Keeping Your Workplace Safe*

**Paid Assignment with National Business Institute in concert with:**

**Greenberg & Bass:**

*Managing Information Risks in California*

**Cases as Retained Expert**

**FCRA Compliance**

**Smith v. General Information Services**, CASE NO. 1:17-CV-Protected lodged in: U.S. District Court for the Eastern District of California. Another case in a series of actions against this behemoth background check company Defendant for a "middle name" case where the Defendant erroneously reported criminal records irrelevant to the Plaintiff through failure to review the middle names discovered in cases identified in the San Luis Obispo County Superior Court (where the Plaintiff never lived); failed to even review the records provided by the court for name and DOB match and then reported the unassociated cases to its end-user employer resulting improper candidacy elimination. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. Even though Defendant voluntarily entered into a Consent Order issued by the Consumer Financial Protection Bureau and paid a \$10.5 Million fine for erroneously reporting on over 7,000 Consumers over the 5-year period pre-dating the Consent Order, and failing to implement a CFPB-mandated middle name match algorithm to prevent erroneous reporting and blatantly violating the FCRA by failing to employ "reasonable procedures to ensure maximum possible accuracy" and purveying a public record that was supposed to be "complete and up-to-date", it sent out an erroneous report on the Plaintiff resulting in damage to Plaintiff including loss of employability and becoming homeless as a result of the erroneous report. Case pending. Employed by Plaintiff's Counsel, Devin Shao Fok, Esq.

**John Giddiens v. LexisNexis Risk Solutions, Inc.**, C.A. No. 12-CV-02624-LDD in the U.S. District Court for the Eastern District of Pennsylvania. This is a landmark case which centers around

allegations that defendant a Consumer Reporting Agency by definition failed to comply with the Fair Credit Reporting Act by improperly reporting an expunged criminal conviction on the Plaintiff and “other class members” and which caused Plaintiff’s candidacy to be improperly eliminated based on the erroneous consumer report provided to the end-user client decision maker. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. There are special circumstances which involve a class of potentially thousands of additional plaintiffs because the Defendant did not comply with the Fair Credit Reporting Act, in that it failed to “ensure maximum possible accuracy” (FCRA Sec. 607), or ensure that the report provided to the end-user client decision maker was “complete and up to date” (FCRA 613a2). Employed by Plaintiff’s Counsel James Francis, Esq. of Francis & Mailman (Philadelphia, PA)

**Jane Doe (etal) v. First Advantage (LNS) Screening Solutions, ChoicePoint Workforce Solutions & Family Dollar Stores (etal)** Cause # 2014-ccv-60070-4 In the County Court at Law No. 4, Nueces County, TX. A difficult case where the Plaintiff was sexually assaulted in a retail store by a store employee who upon which a background check by the Co-Defendants was provided which failed to report prior relevant convictions. Case Pending Employed by Defense Counsel, Robin R. Gant, Esq. KANE, RUSSELL, COLEMAN & LOGAN, P.C.

**Lorenz v. KEOLIS [etal]** Clark County (Nevada) District Court – Case # A014-707695-C. Case involves KEOLIS Bus Driver hired with past violent criminal behavior which resulted in significant previous incarceration. Driver physically assaulted an elderly man who was a passenger on his bus which resulted in grievous injury. Defendant KEOLIS hired ApplicantCare® /a service of General Information Services (GiS) to provide the background report and the ApplicantCare®/GiS report failed to identify a reportable conviction for Armed Robbery Conviction from 20 years earlier but for which the final case adjudication did not occur until 7 days after consent was given, in writing for the background check. Nevada had a 7 year statutory reporting limitation and the Government Agency that let the Bus Contract had a 10-year background check requirement policy making the subsequently discovered conviction reportable for either 3 years and 7 days or 7 days, depending on which reporting standard is employed, but certainly reportable under BOTH standards. Case Pending. Employed by **Plaintiff** Counsel, Elizabeth E. Coleman, Esq. Law Offices of Farhan Naqvi.

**Keesha Goode etal v. LexisNexis Risk & Information Analytics Group Inc.,** C.A. No. 2:11-CV-02950, in the U.S. District Court for the Eastern District of Pennsylvania. This is a landmark case where the Plaintiffs, Keesha Goode and Victoria Goodman were denied employment because of erroneous and inaccurate information maintained about them in the ESTEEM® Retail Theft Database, Expert was retained to advise the court of the history of such databases and to opine on such databases’ wholesale inconsistency with the Fair Credit Reporting Act. Under the \$2.38 Million settlement, LexisNexis has suspended its ESTEEM® database which lead plaintiffs Keesha Goode and Victoria Goodman to claim it had classified them as thieves . They agreed to implement stricter requirements in an effort to protect consumers in the event it resumes the use of the database for employment background purposes. Employed by Plaintiff’s Counsel James Francis, Esq. of Francis & Mailman (Philadelphia, PA) and Sharon M. Dietrich of Community Legal Services

**Verso Paper (etal) v. HireRight Solutions (etal)** United States District Court, Central District of California Case # Protected. Verso Paper hired HireRight to conduct background checks of its prospective employees. HireRight provided a background check report on Thom Williams that neglected to identify William’s conviction for embezzlement in Lee County, MS 5.5 years earlier.

Williams was hired and subsequently embezzled \$10,235,000 from Verso Paper. Case settled after Expert's report. Employed by Plaintiff's Attorney, Michael W. Basil, Esq./Clausen Miller.

**Connor v. First Student & HireRight (etal)** Superior Court for the County of Los Angeles Case contends that no proper ICRAA-based consent was obtained by First Student, a School Bus Transportation Company prior to running background checks on its drivers after the firm was acquired. Case resolved by summary Judgment, which was overturned by the Appeals Court on August 12, 2015. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. Case recently adjudicated in favor of **Plaintiff** by the California Supreme Court. Employed by Plaintiff's Counsel, Sundeen, Salinas & Pyle, Hunter Pyle, Esq. For more on this Landmark case visit:  
[www.courts.ca.gov/opinions/documents/S229428.PDF](http://www.courts.ca.gov/opinions/documents/S229428.PDF)

**Maria D. v. Comcast; KROLL Backgrounds America (etal)** Sacramento County Superior Court 03AS05745 (California)Complex case involving the negligent hiring of an employee, a convicted sex offender, who, while employed by a Comcast subcontractor sexually assaulted the Plaintiff, a legally incompetent, partially blind, and partially disabled female. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500.Expert was retained to assess the performance of the primary background screener, KROLL and it's subcontractor since it was alleged that, upon secondary review of the criminal records of the primary county researched, the KROLL sub-contractor was determined to have missed a criminal record which could have precluded the employee from being hired, *imprimis*. Case settled after Expert so advised, Employed by Defense counsel to KROLL Subcontractor, CIC Employment Services, Inc.; Paul Clauss, Esq. of Lewis Brisbois, Bisgaard & Smith

**McCoy (etal) v. Embassy Suites (etal), Security America, Inv. v. Credential Check Corporation & Wholesale Screening Solutions, Inc.** Case # 13-C-1523 consolidated with CA No.14-C-1213 in the Circuit Court of Kanawha County, West Virginia. Case involves McCoy, the victim of theft of property from her Embassy Suites hotel room by a security guard employed by Security America and screened by Credential Check Corporation (CCC) and Wholesale Screening Solutions (WSS), two Consumer Reporting Agencies. Expert was retained after this long litigated matter which involved the convenient assertion by Defendant Credential Check Corporation's Expert Witness that because of a proposed and false 'industry standard' reporting limit of 7 years, Defendant CCC was liable for failing to report a prior felony conviction on the thief which was readily available at the Kanawha County Court Clerk's public counter and through its public terminals, both key industry terms. Expert was retained to opine on the Standard of Care in West Virginia with regard to background checks for Security Guards which imposes a standard of "no felonies" and for which the State of West Virginia is silent of any reporting limits for the reporting of criminal convictions for employment purposes and thus defers to the December 4, 2003 amendment to the Federal Fair Credit Reporting Act, which eliminated the prior 7-year limit on the reporting of criminal convictions. FCRA Sec. 607 requires that a Consumer Reporting Agency "maintain proper procedures to ensure maximum possible accuracy" and under Sec. 613a2 requires that if any adverse item of public record is reported that could adversely affect employment that the record be "complete and up to date". WSS further complicated its defense by employing a well-known expert that asserted a different 'industry standard' of 10 years which conflicted with CCC's Expert's assertion of a 7-year 'industry standard' also which was also patently incorrect, given the controlling State and Federal statutes regarding this specific reporting requirement for security guards in West Virginia. Finally, CCC's CEO testified that prior to being in the background check business he was an executive in a Security Guard Company, and the cross-Defendant/Plaintiff, Security America testified that the CEO knew

and was informed (directly) of the company's specific background screening needs and evidencing that he knew or should have known what the requirements were for Security Guard background checks in West Virginia. Case Settled right after Expert's Disclosure. Employed by Security America Defense Council Rita Biser and Tonya Shuler, Esq. of Moore & Biser, P.C.

**Adan v. Insight Investigations** United States District Court for the Southern District of California, Case # 3:16-Protected. (Opinion: You can't make this stuff up) Case involved non-compliant reporting of multiple erroneous criminal conviction records on Plaintiff to an end-user which included illegal, unverified database criminal information in the form of the reporting of dismissed cases. Instead of following FCRA Sections: 607 (employing reasonable procedures to ensure maximum possible accuracy) & 613 (ensuring that any record reported that could adversely affect employment must be complete and up to date) as well as California Civil Code Section 1786.17 (7) and verifying that the criminal files did not belong to the Plaintiff, it "counselled" the *Plaintiff* on how to go to the court to obtain a document that suggested that as the result of Identity Theft, the files were erroneously reported! In actuality, that meant that the Defendant relied on the *Plaintiff* to prove that the files were not his instead of the legal way to validate a record as a Consumer Reporting Agency, namely; seeking enough identifiers from the end-user prospective employer during the initial discovery of the criminal files to verify that the discovered files did not belong to the Plaintiff which was their duty under all applicable statutes, above. In fact, a subsequent simple internet check of the Criminal Defendant Indices by an employee of the Defendant identified a middle name that did not match the Plaintiff's middle name but before that simple discovery, the Defendant didn't even attempt and never attempted to learn the Plaintiff's middle name and did not learn of it until long after the erroneous and illegal report was provided to the end-user. The Defendant did not learn of the Plaintiff's middle name until the Plaintiff told Defendant what his middle name was during reinvestigation. Had Defendant sought Plaintiff's middle name and matched that middle name with the court records that would have easily dissuaded the reporting of the erroneous information between the Defendant and the End-user, *imprimis*. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. The seeking of the middle name was crucial since both the first name and the last name and the date of birth matched that of the Plaintiff's, so the other identifiers left to confirm the files match would have been middle name, signature and/or physical description, all components available both from the Plaintiff, had he been asked by the Defendant's end-user client after Defendant should have asked it; and in the court's criminal files and usually found on the case cover sheet, the police report or in other places in the files. During discovery, both the Defendant and its end-user failed to provide copies of the original report, failing to meet the 6-year industry standard for document retention created under the statute of limitations controlled by FCRA Section 618. Both were subpoenaed and both said that they 'could not find the report'. Defendant's End-User also stated on record that it did not consider the erroneously reported criminal information in consideration of rescinding the offer of employment to Plaintiff but could not find the original report to explain why what was reported would *not* have adversely affected Plaintiff's candidacy. Case settled. Employed by Plaintiff's Counsel, Devin Fok, Esq. of DHF Law, LLC.

### **Employment/Negligent Hiring/Negligent Retention/Negligent Supervision/Negligent Training:**

**Jane Doe v. United States Youth Soccer Association (etal)** Santa Clara (California) Superior Court Case # 113CV238994, Case involves a national youth soccer sanctioning association failing to mandate and enforce an established background screening program which included LiveScan reporting from State Criminal Repositories. This failure resulted in the hiring of an unqualified youth soccer coach with a specific conviction that would have precluded him employment with the

affiliate and which resulted in the repeated sexual abuse of a minor child and who is presently incarcerated for the crimes. Expert's assignment was to opine on said failure to conduct the readily available background check and to conduct special research in response to the California Appellate Court's instruction to Plaintiff's counsel to determine what a state Department of Justice LiveScan record would have reported had a LiveScan report been run on the perpetrator, had the affiliate used the available LiveScan service and if the expunged record of the subject's specific conviction would have been reported by the Department of Justice, Case Settled for \$8.2 Million. Employed by Plaintiff's Counsel, Estey & Bomberger, Steven Estey, Esq.

*Allie v. LA Fitness* Orange County Superior Court 70-18-08(California). This was a case where an unscreened applicant was negligently hired by a health club, and was provided keys to the club in order to reside in the club until his apartment was ready to occupy. The day he was hired, he went to a local bar, befriended a just turned 18 year old female, invited she and her girlfriend to the club to go into the Jacuzzi. They went to the club willingly, and the Defendant escorted the Plaintiff to an upstairs locker room where he sexually assaulted her. The case settled after less than 2 hours of the expert's deposition testimony (stopped in progress by Defense Counsel) when the tendered settlement offer of \$30,000 was increased to \$180,000. Employed by Plaintiff's Counsel, Kevin Gallagher, Esq.

*Wishum v. RiteAid* Los Angeles Superior Court BC 209910 (California). Case involved the negligent hiring of an autonomous, uniformed Security Guard with a conviction history for Sexual Assault. The Defendant was hired to act as a uniformed Security guard in a satellite Drug Store, without the benefit of a competent background check, even though the company had a policy in place to screen its applicants. Willful non-compliance with the company policy was evidenced by the Company's failure to simply validate a California "Guard Card" which was tendered by the applicant during the job interview, and, if researched, would have been determined to have been "revoked" because of prior sexual assault and Arson convictions. Within two weeks of hire, the Defendant sexually assaulted a 13 year old girl. He was administratively "suspended" but continued to remain in his position as autonomous Security Guard, in light of the suspension, at the instruction of his supervisors, while the sexual assault complaint was "investigated". Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. Shortly after the first assault, the Defendant identified the Plaintiff, a 14 year old girl as a shoplifter, as a ruse to intimidate her. He escorted her to a sequestered, locked interview room, handcuffed her, and sexually assaulted her. Upon arrest and conviction, and after the matter was brought before the Court, an offer in the hundreds of thousands of dollars was tendered by the co-Defendant. After 7 hours of the expert's deposition testimony, the co-Defendant increased their settlement offer (sealed). Employed by Plaintiff's Counsel, Brian Panish, Esq. of Greene, Broillet Taylor, Wheeler and Panish

*Mycom v. Persona* Alameda Superior Court CO8024943 (California) This case involved the placement of a temporary worker by the Defendant, into the Plaintiff's firm, without the benefit of a background check. The temporary employee embezzled money from the Plaintiff's firm, after being placed by a Temporary Agency as an Assistant Controller. Had the Defendant conducted even the most rudimentary background check, which would have included a reference check with a prior employer, it would have learned that the temporary employee had a history of theft. The case settled after the expert's opinion was rendered through Declaration, primarily because of the fact that the Defendant touted that it's "temps" were "thoroughly referenced and screened". Employed by Plaintiff's Counsel, William P. Flugelhorn, Esq.

**O'Malley v. Camelview Domestic Placement Service/ Carol Hasher (etal)** Maricopa County Superior Court CV 2001-004644 (Arizona). This case involved the placement of a male Nanny to care for two male children. The Nanny molested both of the boys, and is currently incarcerated. The Defendant failed to conduct thorough reference checking and background screening, since one of the Nanny's listed references identified in a subsequent interview that the subject had molested her child. The subject had prior convictions for child molestation. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. The case settled shortly after expert's assessment for an amount between \$1 and \$2 Million. Employed by **Plaintiff's** Counsel, James R. Husenfarfel, Esq.

**Audra F. v. Camelot Park** Kern County Superior Court 234190 RA (California). Case detail requested not to be divulged. – Negligent Hiring matter. Case settled after expert's Declaration. Employed by **Defense** Counsel, Jay Lloyd Rosenlieb, Esq.

**Perez v. Fitness West** Maricopa County Superior Court CV2001-014050 (Arizona). This Negligent Hiring/Negligent Retention case involved a Night Manager/Security Guard hired by the 24-Hour Health Club Defendant. The employee was discovered to have been residing in an abandoned Air Conditioning duct on the roof of the Health Club. Upon discovery of this, the Defendant admonished the employee for living in this manner and asked him to remove himself from the makeshift residence. As a retaliatory act, Plaintiff alleges that the employee sexually assaulted, and murdered (by bludgeoning) a female patron, in the Women's steam room, then wrapped her body in a rug, dragged the decedent into the alley, next to a dumpster and set the rug-wrapped corpse on fire. Upon interviewing the employee, the Phoenix Police Department took him into custody and charged him with the murder. Shortly after the arrest, additional charges for another, unrelated murder were filed against the employee. Plaintiff alleges that the Defendant failed to conduct a routine background check on the subject in the initial hire, and in a subsequent re-activation of his employment with the Health Club, as well as violated its own internal hiring policies which, if followed might have precluded the hiring of the employee, *imprimis*. The matter was settled after expert's deposition. Employed by **Plaintiff's** Counsel, Messrs. Herbert Fly and Burt Rosenblatt, Esq.

**Johnson v. Totally Secured, Inc.** Los Angeles County Superior Court BC 239684 (California). Case involved a determination as to whether or not "reasonable care" was exercised by a Security Guard service "to the Stars" in the hiring and maintenance of their front line Security guard employees. It was alleged that two security guards were hired with extensive criminal backgrounds, which manifested in the physically aggressive handling of multiple routine security matters, resulting in injury and mistreatment to civilians and employees of client's of the Defendant. Two of the co-Defendants had violent acts convictions in their records, which should not have been ignored, and would have been discovered prior to hiring, if a competent background check was undertaken by the Defendant. Case settled after Assessment rendered by Expert. Employed by **Plaintiff's** Counsel, Randy Renick, Esq.

**Treick v. St. Jude's Ranch for Children** Clark County, NV District Court, A493499. Case involves civil prosecution of the Defendant for Negligently Hiring Larry M. Wisenbaker, referred to by the Clark County District Attorney as "the most prolific serial sex offender we have ever prosecuted in the State". Wisenbaker is presently serving four consecutive life sentences for the sexual molestation of several boys while serving as a "cottage parent" in this home for disadvantaged children, Case settled for \$5.4 million after Expert deposition, Employed by **Plaintiff's** Counsel, G. Dallas Horton, Esq.

**Perez v. Stanley Bostitch (etal)** United States District Court, for the Western District of Texas, San Antonio Division, Civil Action # SV-06-CA-0144-FB. Case involves a failure to properly screen an autonomously based, vehicle-assigned employee with a history of drunk driving. The employee, while driving a company vehicle, on non-company business during non-regular business hours, was involved in an auto accident, while legally intoxicated which resulted in two deaths. Case settled, Employed by **Plaintiff's Counsel, Shiree Salinas, Esq.**

**Barajas v. Mental Health Systems** San Bernardino County Superior Court (California) Case # SCVSS 107724. Case involves the negligent hiring, retention and supervision of an employee, issued a vehicle to perform autonomous job duties. While in said vehicle, employee was involved in an automobile accident which caused physical injury to the Plaintiff. Case settled. **Employed by Defense Counsel Vivian I. Schmaltz, Esq. Counsel to Ademco Insurance Company**

**E-FAB, Inc. v. Accountants, Inc.** Santa Clara County Superior Court (California) Case # 1-05-CV-048045. Case involved the negligent hiring and placement of a temporary accounting person who later became a permanent employee, and, who, over a period of time embezzled in excess of \$1.5 Million from the Plaintiff. This was a significant case in that, through deposition, the temporary accounting industry was exposed as concerns the lack of an identifiable standard of care, as it relates to the conducting of background checks, versus simple referencing, and, further exemplifies that an implied background checks policy is created when a temporary agency recognizes the need to conduct background checks, including criminal records checks, when they create a consent form specifically designed to obtain consent from a candidate, for such a purpose., and then obtained said consent. In this case, the perpetrator was convicted of the embezzlement, and served prison time for the offense. Germane facts included a failure on the Defendant's part to conduct a criminal conviction check, which would have precluded the perpetrator from being assigned, since she had a conviction for Welfare Fraud discoverable within the consumer reporting agency and FCRA reporting limit of 7 years, which was 4 years prior to the applicant filling out the application form, and lying on the form as to the existence of the criminal record. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. Case settled, after Expert's Deposition, amount undisclosed, original damages sought were between \$1.8 and \$2 Million. **Employed by Plaintiff's Counsel, Christian B. Nielsen, Esq. on behalf of defacto damaged employer E-FAB, Inc.**

**SMITH v. Wal-Mart Stores, Inc.** Clark County District Court (Nevada) Case # A508273. Case involves Plaintiff's entering the Wal-Mart store, and promptly slipping and falling because of negligently managed produce which created a fluid hazard. Plain old "slip & fall" case is significant in that Negligent Supervision/Negligent Training is asserted, since management failed to properly respond to the incident, violating internal policies, and the First-Aid kit was empty! Case settled after Expert report. **Employed by Plaintiff's Counsel, G. Dallas Horton, Esq.**

**Loughney v. Del Taco, Inc.(etal)** Clark County District Court (Nevada) Case # A522818. Case involves a patron of this fast-food establishment, who, upon attempting to be a good citizen ,and intervene on other patrons, exhibiting vulgar behavior in front of his family, was vehicularly assaulted (run over) by the drunk & vulgar patrons, and, which an assertion of Negligent Supervision and Negligent Training was asserted because of Del Taco's failure to observe and respond, and provide first-aid treatment the victim, while on premises. A peculiar matter, which will test the theories of the extent of a proprietor's duty to adequately prepare its staff to respond to incidences of

assault, resulting in injury that occurs on a proprietor's premises. Case settled. Employed by Plaintiff's Counsel, G. Dallas Horton, Esq.

**Gallegos v. Nickels and Dimes Incorporated dba Tilt Family Entertainment Center (etal)** 341<sup>st</sup> Judicial District Court of Webb, Texas, Cause # 2009VCQ001547 D3. Negligent Hiring/Supervision/Training Case involves an 11-year old girl who was sexually assaulted by 19-year old Francisco Alvarado, an employee of Nickels and Dimes Incorporated who operates a shopping mall (Tilt) arcade in Laredo Texas. Had the arcade conducted any simple background checks on its entry level employees it would not have discovered that Mr. Alvarado impregnated a 15 year old girl in the same back office where he raped Leslie Gallegos about a month earlier, nor would it have discovered criminal sexual assaults on record prior to his age of emancipation, (18 years). What was discovered is that the arcade, part of a national enterprise that owns and operated 170 locations conducts no background checks on its entry-level employees, but recognizes the needs for background checks as the manager level, a seriously flawed policy. Essentially, had the arcade simply spent a little time to reference the prior employer, it would have learned the Mr. Alvarado was terminated for abandoning his job, and thus, his candidacy would likely have been eliminated. The primary assertion is against the flawed policy of not conducting background checks on entry-level employees which eliminates foreseeability as to any adverse act on the one hand, but established that any adverse act could be foreseeable on the other hand. The Human Resources Manager for the national enterprise, and thus responsible for the flawed policy is aware of numerous advisements as to the conducting of background checks at all levels, but ignored same. Case settled. Employed by Plaintiff's Counsel, Kelly Forester, Esq., and Matthews & Forester

**Novak v. Pizza Hut (etal)** Superior Court of the State of California, San Diego County, Case # 37-2009-00085596-CU-PA-CTL. Case involves the hiring of Nicole Fisk, a Pizza Hut Pizza Delivery Driver, Fisk had a history of blackouts and marijuana use. While on a Pizza delivery, Fisk blacked out crossed over the center line and collided with the Plaintiff's head-on causing several and permanent injuries to both mother and daughter. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. Expert was retained to assert a Negligent Hiring claim component insofar as it was determined that Pizza Hut had a zero-tolerance drug use policy, but had no drug testing procedure in place to enforce the policy, and failed to conduct a reference check on Fisk, who, was determined ex-post facto to have been terminated from her prior job for the effects of off-hours marijuana use. Jury verdict was in favor of the Plaintiff in the amount of \$10.8 million. Employed by Plaintiff's Counsel, John Gomez, Esq.

**Harrell/Johnson v. Budget Lodge** 201<sup>st</sup> Judicial District Court, Travis County, TX, Case # D-1-GN-08-003398. Case involves the hiring the Douglas Wayne Ward as a hotel manager. Ward sexually assaulted a 10 year old boy and criminally threatened the boy's friend with death. Ward was convicted of multiple crimes and is serving a 25 year prison sentence. Case centers on the hiring of a convicted sex offender by the hotel 9 years prior to the hiring of Ward. The 9-year, convicted sex offender was the person responsible for hiring Ward. The Hotel is part of a small national chain and ignored the need to conduct background checks, or follow any reasonable standard of care in the hiring, retention, training and supervision of hotel employees in such a manner as to be unable to assure the safety and security of the hotels and their patrons. Case settled. Employed by Plaintiff's Counsel, Stephen W. Stewart, Esq.

**Dean v. Pike Electric** U.S. District Court for the Western District of Kentucky at Louisville, Civil Action File No. 3:10-CV-652-H. Case centers on Pike Electric Company, a Public Utility who

originally hired and retained Gary Burgess in multiple capacities as a field employee. Burgess was a confirmed Alcoholic. Pike Electric had retained Burgess and allowed Burgess to drive company trucks while Burgess and the equipment were on loan to another utility company even though Burgess had been involved in an incident where he recklessly drove a company truck which led to Burgess' placement by Pike in an Alcohol rehabilitation program. Subsequent to completion of the program, and as a result of a relaxed alcohol testing and monitoring, Burgess was again authorized to drive a company vehicle, even though Pike originally did not allow him to operate company equipment, and had other employees drive him to job assignments in the field. During work hours, and while on the job, Burgess consumed large quantities of alcohol, drove a company truck in a severely drunken state and caused a multi-vehicle accident resulting in injuries to the Plaintiffs. Case settled. Employed by Plaintiff's Counsel, Donald K. Brown, Esq. Krauser & Brown Law Firm

**Butler v. Blaine Burnett Hodge, Superstition Mountain Mental Health Center (SMMHC, Inc.) & Healing Hands Health Care et al** Superior Court of the State of Arizona, for Pinal County, Case # CV-209-03584. Case centers on the egregious sexual assault of Plaintiff Butler by a presently incarcerated Blaine Burnett Hodge. Hodge had a prior felony record, was inadequately screened and was hired as an Independent Contractor by Nursing Registry Helping Hands then placed in a residential mental health facility owned by SMMHC, Inc. where Plaintiff Butler was a residential patient. During the graveyard shift and while completely unsupervised Hodge intimidated Butler using the threat of evicting Butler from the facility to force the assault, after Butler, who had a history of prior sexual abuse commencing when a young girl had no other place to live. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. Claims for Negligent Hiring and Negligent Supervision form the underlayment for the claim against Hodge; the Registry (Helping Hands) and Negligent Supervision by the facility owner, SMMHC, Inc. Butler was cognizant enough to retain the clothing she wore during the assault which contained physical evidence of the assault and which led to Hodge's conviction and incarceration. Testimony from Helping Hands also evidenced an egregious violation of Arizona Health Care recordkeeping law in that upon closing its doors, it failed to maintain its employee and contractor records, prior to expiration of the 4-year statute. Case settled. Employed by Plaintiff's Counsel Robert F. Clarke, Esq.

**Linda Fournier v. Yellow Cab (etal)** Superior Court, State of Arizona, Maricopa County, Case # CV 2011-019407. Case centers on a taxi cab driver who in a fit of road rage beat to death the passenger of a vehicle who was waiting for the taxi cab to leave the parking space that the victim's spouse, the victim and the victim's granddaughter were waiting for in the parking lot of a shopping mall. Case Settled after Expert's Report was submitted. Employed by Plaintiff's Counsel: Kleinman, Lesselyong & Novak; Frank Lesselyong, Esq.

**Jane Doe (etal) v. Ledesma & Meyer, San Bernardino School District (etal)** San Bernardino County Superior Court Case # CIVDS1007001. Case centers on a twice convicted child sexual predator and registered sex offender, who was hired as the assistant construction superintendent with unlimited access to middle-school children to oversee construction of a new middle school in San Bernardino County, California. The offender befriended a 13 year old girl and coerced her on multiple occasions to have forced sex with him. Subject was subsequently convicted and is presently incarcerated with a minimum 24-year term of confinement. The offender was the son-in-law of one of the owners of the construction company and who was aware of the registration but still placed the offender in a position of autonomy, resulting in the specified acts. Further complications arose when the school failed to include the parents in discussions with school and City law enforcement after the matter was disclosed to school authorities by a close friend of the victim.

Allegations comprise Negligent Hiring, Retention and Supervision as well as Negligence on the part of the additionally named parties, Case Settled during Expert's Deposition after Expert cited California law had been violated over 300 times which required the Defendant to seek permission from the school before employing registered sex offenders on campus. Employed by Plaintiff's Counsel – LisaMarie Urtnowski, Esq. of McDermott & Associates

**O'Brien v. Dominos Pizza (etal)** Iowa District Court for Jasper County Case # LACV 118531. Case involves a pizza delivery driver who, while returning from delivering a pizza hit and killed the Plaintiff, a 14-year old boy. The assertions of negligent hiring, supervision and retention center primarily around the Dominos franchisee ignoring the driver's driving report which contained more than ten violations within the prior three years inclusive of driving on a suspended license multiple times, and where Domino's hiring policy called for the elimination of candidacy if a candidate had more than three violations in the preceding three years. Case Settled. Employed by Plaintiff's Counsel, Van Plumb, Esq.

**Hazel Ahmad v. American Medical Response (AMR)** Riverside Superior Court, Case # RIC1210559. Case involved Plaintiff's assertion that she was sexually assaulted in the back of an ambulance while having massive heart attack while en route to the hospital by the attending EMT. The EMT's history involved being terminated from another ambulance company employer for sexually harassing a trainee inside of an ambulance while on the job. EMT's prior history included assertions of identical –type (as Plaintiff's) sexual assault by a 13-year old patient while riding in the ambulance and where the local police department declined to prosecute, but where, 5 years later the young victim, upon becoming emancipated gave testimony, under oath that she was in fact sexually assaulted by the EMT. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. Testimony revealed that the care and concerns over potentially deviant EMT behavior were well addressed at the Corporate level with policies and procedures in place but that didn't translate well to the field. Further, Plaintiff's expert assertion was that insufficient on-boarding of the EMT was undertaken by the Defendant. Of interest was the fact that the EMT was co-employed by the Defendant and the terminating ambulance company and upon termination from the other ambulance company, the EMT testified that he was not even asked why he was terminated before AMR increased his employment to full time, after he requested it. Plaintiff's expert asserted that had AMR known of the reason for his termination they would not and should not have advanced him to full time status in an ambulance. Case Settled. Employed by Plaintiff's Counsel Jennifer Fiore, Esq of the Law Offices of Mary Alexander & Associates.

**Baker v. Banda, Pacesetter, ADESA, [etal]** Travis County (Texas) District Court, Cause No, D-1-GN-15-001523. Case involved a Driver placed by a nationwide temporary personnel service into their client's vehicles for the purpose of shuttling auctions cars to and from the auction site and other places. Temp Agency failed to identify driver-licensed-based driver limitations and prior violations which, by policy would have eliminated him from candidacy. Driver engaged Plaintiff in a careless accident which caused serious harm to Plaintiff. Case Settled. Employed by Plaintiff Counsel, Donald I. Crook, Jr. Esq. Law Offices of Wayne Wright.

## Miscellaneous Significant Cases Served:

### Credit/Privacy:

**Howell v. Nissan Motor Acceptance Corp.** United States District Court, for the District of Arizona, CIV 02-0962 PHX RCB. Case involved Plaintiff allegations that Defendant improperly reported information relative to an outstanding obligation owed by Plaintiff to credit bureaus, which resulted in the damaging of Plaintiff's ability to obtain new lines of credit. Case settled. Employed by Defense Counsel William M. Auther, Esq. BOWMAN & BROOKE, LLP

**Walters v. Bedell** Los Angeles County Superior Court BC 243352 (California). Case involved Invasion of Privacy. Secrecy requested. Expert assessment expedited settlement in this matter. Case settled. Employed by **Plaintiff/Cross-Defendant** Counsel: Christine Lyden, Esq.

### Investigative Standard of Care – Jury Trial:

**Caserta v State Farm Insurance/National Insurance Crime Bureau** San Diego Superior Court GIC 739803 (California). Case involved retention of Expert to determine if the Standard of Care for field investigations was violated by Defendant, National Insurance Crime Bureau. Plaintiff tendered an allegedly fraudulent claim to State Farm, which was rejected because it failed to meet the legitimacy tests of the Special Investigations Unit of State Farm. Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500. State Farm referred the matter to co-Defendant NICB, an industry supported neutral investigative body for supplemental investigation concerning the claim. Plaintiff Caserta alleged the Defendant violated the Standard of Care for field investigations by alleging that the female field investigator “roughed-up” the Plaintiff and his family. The field investigator was, at all times accompanied by the San Diego Police Department when visiting the Plaintiff and his family. The matter was presented to the jury, which rendered an 11 to 1 verdict in favor of the Defendant. Polled jurors indicated strong belief in the Defendant’s position, and believed, unequivocally, the testimony of the Expert. Employed by **Defense Counsel, Messrs. Stanley Calvert and William Roberts, Esq.; Wilson, Elser, Moskowitz, Edelman and Dicker, LLP.**

### “Textbook” Fraud/Internal Theft/Bank Procedures Malfeasance:

**Eurobath & Tile Co., Inc. v. Zamborski & Eurobath & Tile Co., Inc v. Home Federal Savings & Loan Assn, Zamborski (etal)** Orange County Superior Court (1988) Case # 534803 (California); and Orange County Superior Court 571799. Case involved a bookkeeper/”controller” for the Plaintiff who methodically “raised” the amount of his paycheck each two weeks in the amounts of \$5,000 and \$6,000 respectively, over a 39 month period of time, effectively “embezzling” over \$300,000. Additionally, the Defendant stole checks from the mail, and endorsed them with the company’s name, and then his own name and deposited them into his personal bank account at Home Federal Savings, through the automated teller machine. One of the items converted was a California State Tax Warrant which he signed and deposited in his personal account. The case was successfully prosecuted, confessions were obtained, assets recovered, and liquidated, and the Plaintiff’s made whole. A landmark case was decided against the receiving bank, Home Federal Savings, as they were held to a basic audit and review standard insofar as accepting 2-party checks without proper scrutiny of the items for “deposit applicability”. Furthermore, the case exemplars, and experts reports in their entirety were later incorporated into the training manual for investigators with the California State

Controller's office, by John Henry, Chief Investigator. Employed as Investigator/Auditor and Expert of Record by Plaintiff's Counsel, James Baroni, Esq.

**History of Sworn Testimony for Jurisdictions Requiring Same:**

Court Testimony:

1. *Eurobath & Tile Co., Inc. v. Zamborski & Eurobath & Tile Co., Inc. v. Home Federal Savings & Loan Assn, Zamborski (etal)* Orange County Superior Court (1988) Case # 534803 (California); and Orange County Superior Court 571799
2. *Protected*

Deposition Testimony:

1. *John Giddiens v. LexisNexis Risk Solutions, Inc.*, C.A. No. 12-CV-02624-LDD in the U.S. District Court for the Eastern District of Pennsylvania
2. *Allie v. LA Fitness* Orange County Superior Court 70-18-08(California)
3. *Protected*
4. *Perez v. Fitness West* Maricopa County Superior Court CV2001-014050 (Arizona)
5. *Treick v. St. Jude's Ranch for Children* Clark County, NV District Court, A493499
6. *Novak v. Pizza Hut (etal)* Superior Court of the State of California, San Diego County, Case # 37-2009-00085596-CU-PA-CTL
7. *Protected*
8. *Hazel Ahmad v. American Medical Response (AMR)* Riverside Superior Court, Case # RIC1210559
9. *Caserta v State Farm Insurance/National Insurance Crime Bureau* San Diego Superior Court GIC 739803 (California)
10. *Eurobath & Tile Co., Inc. v. Zamborski & Eurobath & Tile Co., Inc. v. Home Federal Savings & Loan Assn, Zamborski (etal)* Orange County Superior Court (1988) Case # 534803 (California); and Orange County Superior Court 571799
11. *Protected*
12. *E-FAB, Inc. v. Accountants, Inc.* Santa Clara County Superior Court (California) Case # 1-05-CV-048045
13. *Adan v. Insight Investigations* United States District Court for the Southern District of California, Case # 3:16-CV-02807-GPC-WVG.
14. *Protected*
15. *Jane Doe v. United States Youth Soccer Association (etal)* Santa Clara (California) Superior Court Case # 113CV238994

Designation of Thomas C. Lawson as Expert without the knowledge or approval of Thomas C. Lawson incurs a Designation Fee of \$2,500.