

# FALKENBERG IVES LLP



## Thomas F. Falkenberg, Partner

Thomas F. Falkenberg is a founding partner of Falkenberg Ives LLP and serves as the firm's Managing Partner. He is a member of the firm's professional liability and commercial litigation practice groups. He was previously at Williams Montgomery & John Ltd., where he served on the firm's Executive Committee until the time of his departure. Mr. Falkenberg focuses his practice on defending accountants, lawyers and brokers, as well as providing significant risk management guidance to accounting firms. He is "AV Preeminent" peer review rated by Martindale-Hubbell, reflecting the highest peer recognition for ethical standards and legal ability. Mr. Falkenberg has been selected by his peers for inclusion in Illinois Leading Lawyers for commercial litigation and professional malpractice defense law.

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### Practice Areas

- Accountants' Liability
- Commercial Litigation
- Professional Liability

Mr. Falkenberg formerly practiced as a partner at a large Chicago law firm and working in house as senior litigation counsel for Arthur Andersen LLP. He currently serves as special counsel for Grant Thornton LLP and acts as general counsel for numerous mid-sized accounting firms. He also served as the risk manager for General

Star Insurance Company's accountant insureds.

Mr. Falkenberg has tried to verdict more than 40 cases, and has participated in more than 100 arbitrations as both an arbitrator and litigant. He has defended more than 200 lawsuits against accountants and other professionals.

Mr. Falkenberg has represented both accounting firms and individual accountants in state and federal courts throughout the United States, as well as before many state licensing and accounting boards, the American Institute of CPAs (AICPA) and the Securities and Exchange Commission (SEC). He also has represented individual defendants in professional negligence matters and corporate defendants in commercial and tort cases. His clients include "Big 4" accounting firms, many large regional firms and many of the largest accounting firms in Chicago, as well as accountants insured by the largest insurers of accountants.

Mr. Falkenberg regularly assists insurers and accounting firms in improving their risk management programs and providing hotline services to their insureds, as well as conducting seminars and lectures and drafting on liability and risk management issues.

### Education/Bar Admissions

Mr. Falkenberg received a B.B.A. in accountancy in 1987 from the University of Notre Dame, where he was a member of the Beta Alpha Psi Accounting Honor Society. He received his J.D. in 1990 from Notre Dame Law School. Mr. Falkenberg served as an adjunct professor of accounting at the University of Notre Dame from 1988-1990. He also is a licensed real estate broker.

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Mr. Falkenberg was admitted to the Illinois bar in 1990 and also has been admitted to the following federal trial courts:

- U.S. District Court, Northern District of Illinois (including the trial bar)
- U.S. District Court, Eastern District of Wisconsin

## Professional Activities

Mr. Falkenberg is active in various professional and civic organizations, including:

- American Bar Association
- Chicago Bar Association
- Illinois State Bar Association
- Defense Research Institute
- Professional Liability Underwriting Society

## Recent Publications and Speaking Engagements

- *Ethics and Internal Investigations*, Zurich North America legal department, June 2017.
- *Liability Issues Facing Estate Planners*, DuPage County Estate Planning Council, February 2017.
- *Technical Defenses to Auditor Malpractice Claims*, CNA, September 2016.
- *Liability Issues Facing Accountants*, BDO Seidman Alliance USA Conference, May 2015.
- *Risk Management Issues for Accountants*, BDO Seidman Alliance Midwest Meeting, August 2014.
- *Risk Prevention for the Accounting Professional*, Pearl Insurance and GenStar Insurance Company, January 2013.
- *Don't Pass the Buck: Management's Responsibilities During the Audit and Accounting Process*, CNA's National Defense Panel, October 2011.
- *Client and Engagement Acceptance*, CNA Insurance Company, webinar, November 2010

## Representative Matters

- *Lutkauskas v. Ricker, et al.* Illinois Supreme Court  
2015 IL 117090 Appellate Court of Illinois, 1st District, 2013 IL App (1st) 121112  
Obtained complete dismissal of accounting firm defendant based on privity and res judicata grounds. Subsequently obtained affirmance of the dismissal at both appellate and supreme court level.
- *Chestnut Corp. v. Pestine, Brinati and Gamer*  
Circuit Court of Cook County, Ill.  
Defended accounting firm on claim for negligent misrepresentation in first reported case involving the Illinois Accountant Privity Act.

# FALKENBERG IVES LLP



- Partner v. Grant Thornton, LLP  
American Arbitration Association  
Won decision for accounting firm client in wrongful termination lawsuit brought by a partner. Panel found in favor of client on all counts.
- Petra Financial Advisors v. Baker Tilly Virchow Krause, LLP  
Circuit Court of Hennepin County, Minn.  
Obtained favorable settlement on behalf of accounting firm in claim of audit negligence arising out of a large ponzi scheme.
- Dougherty v. Zimble U.S. District Court, Northern District of Illinois Obtained summary judgment for accountant client in defense of fraud and negligence lawsuit arising out of the sale of a business.
- In re Nicor Securities and Exchange Commission Represented KPMG in an SEC investigation.
- Stop-N-Go Stores of Madison v. Virchow, Krause & Co.  
Circuit Court of Dane County, Wis. Obtained summary judgment for accounting firm client in defense of lawsuit alleging negligence in conducting an audit. Summary judgment granted based on contractual limitations period in client engagement letter.
- LaFlamboy v. RSM McGladrey, Inc.  
Circuit Court of Cook County, Ill. Obtained summary judgment for accounting firm client in defense of lawsuit alleging negligent tax services.
- Phippen v. Wineberg & Lewis  
Circuit Court of Cook County, Ill. Obtained summary judgment for accounting firm client in defense of lawsuit brought by professional basketball player alleging negligence.
- Bank of America v. Frost, Ruttenberg & Rothblatt  
7th Circuit Court of Appeals Obtained a motion to dismiss based on an accounting firm not owing a duty to a client's lender that was affirmed on appeal.
- First American Bank v. Blackman Kallick LLP  
Circuit Court of Cook County, IL  
Obtained summary judgment for accounting firm based on the statute of limitations for tax preparation services.