

**BROOKS L. HILLIARD**

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**PROFESSIONAL EXPERIENCE**

**1980 to Present      Business Automation Associates, Inc.  
President and Consulting Principal**

Provides information systems, Internet strategy and management consulting and expert witness services to a wide variety of industries and professions. In his role as an information systems consultant, he has evaluated and recommended enterprise computer systems (including "E.R.P." systems) and networks from all of the computer industry's major hardware and software suppliers. This experience includes experience with and knowledge of products from Microsoft, IBM, Hewlett-Packard, Compaq, Oracle, Sun, Novell, J.D. Edwards, Epicor, Baan, Computer Associates and many others.

**1965 to 1980**

Has had various line and management positions for several major computer companies including ITT-Courier, Wang, Harris, Informatics and others where responsibilities included designing, developing, marketing and supporting a wide variety of computer products used in both business and government applications. Previously worked in software development for business, military and scientific applications, including work on early NASA space missions.

**OTHER PROFESSIONAL EXPERIENCE**

Professional speaker, specializing in Internet topics, for trade association and corporate meetings.

Commentator on computer issues for the nationally syndicated Marketplace news program on Public Radio International.

Faculty Associate, computer systems and programming for the Arizona State University School of Business and Seminar Leader for the American Management Association.

**EDUCATION**

MBA, emphasis on small business management and marketing, Harvard Business School  
SB, mechanical engineering, Massachusetts Institute of Technology

## **LITIGATION RELATED EXPERIENCE**

### **Computer System Non-Performance**

Several projects relating to the non-performance of business-oriented computer systems and misrepresentation or computer system capabilities. Most engagements for the plaintiff (i.e., the business with the malfunction system), however several have been for the defendant (i.e., the system and/or software supplier). Produced opinion letters and affidavits, gave deposition and trial testimony and participated in successful settlement negotiations.

### **Missing, Destroyed and/or Fraudulently Created Data**

Several assignments involving the recovery and/or reconstruction of lost or destroyed data. Most such assignments have been part of non-computer-related disputes, where the data loss or modification of computer data was believed caused by one of the parties in an effort to falsify or destroy evidence. Areas of law have included insurance bad faith, organizational break-ups, embezzlement of funds, etc. Produced opinion letters and affidavits, gave deposition and trial testimony and participated in successful settlement negotiations.

### **Intellectual Property**

Multiple assignments relating to the use of computer hardware and software technology alleged to have been wrongfully appropriated. Have undertaken extensive pre-trial analysis and review dealing with "look and feel", software copyright and trade secret issues. Produced opinion letters and affidavits, and gave deposition and trial testimony.

### **Antitrust**

Involved as an expert in a private antitrust suit requiring opinions on the structure of a portion of the software industry, buyer behavior, business practices of software developers and the competitive positions of the relevant industry participants. Produced an opinion letter and gave deposition testimony.

### **Computer Equipment and Software Valuation**

Multiple assignments requiring the evaluation of computer, telecommunications and networking equipment, plus "packaged" computer software, specialized/custom computer software and other related electronics equipment/systems. Situations have involved insurance valuations, bankruptcies, and business split-ups. Have prepared written opinions and given depositions and courtroom testimony in matters that have required valuation at replacement cost, "fair market" value and liquidation value.

### **Negligent Development of "Mission Critical" Control Software**

Control software for a large item of industrial equipment was negligently developed by a major multi-national software firm. A loss of life resulted when the machine activated during a routine maintenance operation. Opinions and testimony covered the nature of the negligence, what should have been done and why, the consequences of the negligent effort, and why the software developer should have known (by following its own internal quality standards and procedures) how to accomplish the development properly. Produced opinion letters and affidavits and gave deposition testimony.

### **Criminal**

A federal bank fraud matter relating to unauthorized electronic funds transfer. Assisted in pre-trial discovery relating to the desirability of entering into a plea agreement.

### **Regulatory**

Several assignments relating to protest of a governmental award, a utility rate dispute, employment termination of a "whistle-blower" and immigration status of a computer professional. Produced opinion letters and affidavits, and gave deposition and testimony before a judicial panel.

### **Software Development**

Several matters relating to unfulfilled commitments made by developers of software for both business and non-business applications. Produced opinion letters and affidavits, and gave deposition testimony.

### **Procurement Irregularity**

One assignment where a firm was attempting to rescind a large computer contract surreptitiously signed by the former executive of a subsidiary company which did not need and could not use the systems contracted for. Produced letter and assisted in preparation for successful settlement negotiations.

## **PUBLICATIONS**

Brooks L. Hilliard, *Buying a Computer for Your Growing Business, An Insider's Guide*,  
Dow Jones-Irwin.

Publisher: *CEO's Web Review* newsletter, *Management Consultants' Web Review*  
newsletter (current) and *Business Automation Bulletin* newsletter (1981-1995)

**PROFESSIONAL AFFILIATIONS & AWARDS**

Certified Management Consultant (CMC), certified by the Institute of Management Consultants, Washington, D.C. (international certification)\*

Certified Computing Professional (CCP), certified by Institute for the Certification of Computing Professionals, Des Plaines, IL (international certification)\*

Member, Forensic Expert Witness Association

Member, Arizona State Bar Technology Task Force

Member, Arizona Software Association

Current or past member of the Board of Directors for the Arizona Chapter of the Institute of Management Consultants, the Arizona Harvard Business School Alumni Association, M.I.T. Club of Phoenix, the Arizona Chapter of the National Conference of Community and Justice (formerly the National Conference of Christians and Jews), Devereux Foundation (Arizona Advisory Board), Junior Achievement of Central Arizona and the Phoenix 100 Rotary.

\* Brooks Hilliard is one of fewer than fifteen consultants in the world to be dually certified as both a CMC and CCP, and the only one of these to be an actively practicing expert witness.

**LITIGATION RELATED EXPERIENCE**

Case: Oracle Corporation Securities Litigation  
Matter: Class action relating to accuracy of public statements about software capability made by software firm during class period.  
Responsibilities: Reviewed public statements and record of software functionality during class period, prepared report and gave deposition testimony.  
Date/Status: Currently ongoing (2009)  
Attorney: Coughlin, Stoia, Geller, Rudman & Rollins

Case: Auto dealers (multiple cases) v. Ford Dealer Computer Systems  
Matter: Multiple contract disputes relating to applicability of contract provisions to allegedly required computer system replacement.  
Responsibilities: Examined nature of system replacement and meaning of terms of art in contract, prepared reports and testified in multiple depositions and arbitrations.  
Date/Status: Currently ongoing (2009)  
Attorneys: Counts & Bonacci (3 matters); Johnson DeLuca & Kennedy (6 matters)

Case: Appeal of DLT Solutions, Inc.; Armed Services Board of Appeals.  
Matter: Dispute relating to government cancellation of a long term contract "for convenience".  
Responsibilities: Reviewed functional similarity of software leased by government and software by which it was replaced, prepared report and testified at hearing.  
Date closed: 2009  
Attorney: Looney, Cohen, Reagan & Aisenberg for appellant

Case: Wenner v. Columbus IT Partner  
Matter: Contract dispute involving attempted implementation of Microsoft AX software, alleged by plaintiff to have been unsatisfactorily performed.  
Responsibilities: Reviewed history of attempted implementation, prepared report and gave deposition testimony.  
Date closed: 2008  
Attorney: Duane Morris for plaintiff (customer)

Case: Agilisys v. Vipond  
Matter: Computer forensics, examined authenticity of e-mails and other electronic documents, prepared report and testified at trial.  
Date closed: 2007  
Attorney: Fennemore Craig

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Case: ePlus v. SAP America  
Matter: Patent infringement relating to software functionality and methods.  
Responsibilities: Analyzed multiple alleged prior art systems, prepared report and gave deposition and trial testimony.  
Date closed: 2006  
Attorney: Hunton & Williams (plaintiff)

Case: Vanstar v. AT&T Technologies  
Matter: Contract dispute relating to payment for allegedly inadequate services provided by subcontractor and need for remedial services performed by prime contractor to meet customer requirements.  
Responsibilities: Examined record of services performed and results, gave deposition testimony.  
Date closed: 2005  
Attorney: Bingham McCutcheon (defendant)

Case: Broadband Management Solutions v. Dish Network Service  
Matter: Contract dispute relating to adequacy of software implementation services provided to customer by software developer.  
Responsibilities: Reviewed record of services performed and resulting software functionality, and gave deposition testimony.  
Date closed: 2005  
Attorney: Ballard, Spahr, Andrews & Ingersoll (defendant)

Case: Texas Health and Human Services v. National Heritage Insurance  
Matter: Contract dispute relating to services provided by government contractor.  
Responsibilities: Investigated nature of services provided relating to whether they were covered by contract, reviewed quality of services provided, and gave testimony in arbitration hearing.  
Date closed: 2004  
Attorney: Attorney General for the State of Texas (plaintiff)

Case: Advance PCS v. Cap Gemini Ernst & Young  
Matter: Contract dispute relating to quality of software development  
Responsibilities: Analyzed quality of services provided and software delivered, and gave deposition testimony.  
Date closed: 2004  
Attorney: Steptoe & Johnson (plaintiff)

Case: Subia v. Benefit Direct  
Matter: Contract dispute involving non-payment for services alleged by defendant to have been unsatisfactory  
Responsibilities: Reviewed background and prepared expert report  
Date closed: 2003  
Attorney: Robbins and Green for plaintiff (vendor)

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Case: Amkor v. PeopleSoft and Deloitte Touche  
Matter: Contract dispute involving alleged non-performance of software and disputed implementation  
Responsibilities: Prepared professional opinion, trial pending  
Date closed: 2002  
Attorney: Duane Morris for plaintiff (customer)

Case: Chart One v. NetCube  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Reviewed opposing expert materials  
Date closed: 2004  
Attorney: McGrane Greenfield for defendant (vendor)

Case: IBS v. Information Insights (dba The Mesa Group)  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Reviewed opposing expert report and prepared rebuttal report  
Date closed: 2004  
Attorney: Goodman and Associates for defendant (vendor)

Case: Scottsdale Insurance v. Computer Science Corporation  
Matter: Contract dispute, involving alleged non-performance of software  
Responsibilities: Prepared professional opinion  
Date closed: 2004  
Attorney: Greenberg Traurig for defendant (vendor)

Case: Seaba, et al. v. MesoSystems  
Matter: Intellectual property dispute  
Responsibilities: Reviewed opposing e-discovery expert report and associated materials, assisted with deposition of opposing expert  
Date closed: 2003  
Attorney: Modrall Sperling, et al. for plaintiff

Case: Three Five Systems v. J.D. Edwards and MSS Technologies  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Researched, prepared report and testified at AAA arbitration  
Date closed: 2004  
Attorney: Greenberg Traurig for plaintiff (customer)

Case: Computer Research v ISBN and Scottrade  
Matter: Intellectual property dispute  
Responsibilities: Conducted e-discovery on computers and prepared expert report  
Date closed: 2003  
Attorney: Minor and Brown for defendant

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Case: Ellis v. Bowles, Rice, et al.  
Matter: Attorney malpractice dispute  
Responsibilities: Reviewed e-discovery request by plaintiff and testified at rebuttal hearing  
Date closed: 2003  
Attorney: Swartz and Stump for defendant

Case: Murphy Hoffman v J.D. Edwards  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Prepared professional opinion and gave deposition testimony  
Date closed: 2003  
Attorney: Seigfried, Bingham, Levy, Selzer and Gee for plaintiff (customer)

Case: Davis Advertising v. US Interactive  
Matter: Contract dispute, involving alleged non-performance of intranet application  
Responsibilities: Prepared professional opinion and testified at mediation  
Date closed: 2003  
Attorney: Cedrone and Janove for plaintiff (customer)

Case: Beneteau USA v. Baan  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Prepared professional opinion and testified at AAA arbitration  
Date closed: 2003  
Attorney: McNair Law Firm for plaintiff (customer)

Case: Atlas Roofing v. PeopleSoft  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Prepared professional opinion and gave deposition testimony  
Date closed: 2003  
Attorney: Duane Morris for plaintiff (customer)

Case: Radiant Systems v. Precision Tune Auto Care  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Prepared professional opinion and gave deposition testimony  
Date closed: 2002  
Attorney: In-house counsel for Precision Tune Auto Care (customer)

Case: Microphotonics v. Hung  
Matter: Intellectual property dispute  
Responsibilities: Conducted forensic analysis of data on hard disk drive and prepared professional opinion  
Date closed: 2002  
Attorney: Squire, Sanders & Dempsey for defendant

Case: Summit v. Baan S.E. Technologies  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Prepared professional opinion; testified in deposition and trial  
Date closed: 2002  
Attorney: Foster Johnson McDonald Lucero Koinis for plaintiff (customer)

Case: Dorskocil v. J.D. Edwards  
Matter: Contract dispute, involving alleged non-performance of software and disputed implementation  
Responsibilities: Prepared professional opinion and testified at arbitration  
Date closed: 2002  
Attorney: Locke, Liddell & Sapp for plaintiff (customer)

Case: Wright Medical Technology v. PeopleSoft  
Matter: Contract dispute involving inability to deliver licensed software  
Responsibilities: Prepared professional opinion and testified at arbitration  
Date closed: 2001  
Attorney: Duane Morris for plaintiff (customer)

Case: Motorola v. Neely, et al.  
Matter: Trade secrets dispute  
Responsibilities: Prepared professional opinion, assisted with examination of opposing expert  
Date closed: 2000  
Attorney: Brown & Bain for defendant

Case: New Standard v. Symix [now Frontstep]  
Matter: Contract dispute involving non-performance of computer software  
Responsibilities: Prepared professional opinion and prepared for trial  
Date closed: 2000  
Attorney: Buchanan, Ingersoll for plaintiff (customer)

Case: Pinal County v. J.D. Edwards  
Matter: Contract dispute involving non-performance of software  
Responsibilities: Prepared professional opinion and testified at arbitration  
Date closed: 2000  
Attorney: Jones, Skelton & Hochuli for plaintiff (customer)

Case: SC&T International v. Maxiswitch  
Matter: Intellectual property dispute  
Responsibilities: Conducted research and testified at deposition and trial  
Date closed: 1997  
Attorney: Karp, Huerlin & Weiss for plaintiff

Case: Hale v. Computer Corner  
Matter: Improper repair of computer system  
Responsibilities: Conducted research prepared report was deposed and testified at trial  
Date closed: 2000  
Attorney: Crider, Calvert & Bingham for plaintiff (customer)

Case: Julian v. Atlantic Design  
Matter: Contract dispute involving non performance of process control software  
Responsibilities: Conducted research and was deposed  
Date closed: 1996  
Attorney: Atkinson, Haskins, Nellis, Boudreaux, Holeman, Phipps & Brittingham for plaintiff (customer)

Case: Pioneer v. Sunbelt  
Matter: Contract dispute involving non performance of software  
Responsibilities: Conducted research and testified at deposition and trial  
Date closed: 1995  
Attorney: Goldstein, Kingsley & McGroder for defendant (vendor)

Case: Camelback Resort v. IMSI Computer  
Matter: Contract dispute involving non-performance of software  
Responsibilities: Conducted research expert and prepared opinion letter  
Date closed: 1994  
Attorney: O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears for plaintiff (customer)

Case: Pinnacle Peak Investment v. Fritche  
Matter: Intellectual property (trade secrets) dispute  
Responsibilities: Conducted research and prepared opinion letter  
Date closed: 1994  
Attorney: Vaughn & Becker for defendant

Case: Phoenix Union High School District v. Information Associates  
Matter: Contract dispute involving non-performance of software  
Responsibilities: Conducted research  
Date closed: 1992  
Attorney: Jennings, Strouss & Salmon for plaintiff (customer)

Case: Graham v. State of Arizona  
Matter: Wrongful termination ("whistle-blower" regarding non-performing software)  
Responsibilities: Conducted research and testified at deposition  
Date closed: 1993  
Attorney: Law Offices of J. Stephen Dix for plaintiff

Case: Stewart Title v. Continental Systems  
Matter: Contract dispute involving non-performance of software  
Responsibilities: Conducted research and testified at deposition  
Date closed: 1991  
Attorney: O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears for plaintiff (customer)