

Long Island Business NEWS

Expert Witnesses Prove Costly

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Expert witnesses may be litigation's best example of a necessary evil: You can't make a case without them, but they can blow holes in budgets.

Despite the devastating recession, expert witnesses still command big fees. Bigger than ever, according to some insiders. It's a financial quandary for attorneys, who've suffered tough economic times like everyone else yet know they can't win a courtroom's hearts and minds without sacrificing an arm and a leg.

Attorney Sandra Radna, of Northport law firm Radna & Androsiglio, said expert witness fees are "absolutely" higher than ever, and "I don't think it's proportionate to the rest of the economy."

"Experts who have been successful in court have a reputation, and charge more money," Radna said, citing fees as high as \$15,000 for a single day of testimony.

Radna, who specializes in personal injury, medical malpractice, real estate closings and family court cases, and has used experts in practically all those cases, said fees can soar because witnesses, particularly those in medical fields, charge for the entire day, whether that day is one hour or five hours.

That's a sticky wicket for lawyers who are often compelled to engage professional witnesses. For instance, Radna noted, attorneys must solicit expert testimony before medical malpractice suits are even filed. "In order to determine if there was medical malpractice, you have to attach a 'Certificate of Merit' saying you had the case reviewed by a medical expert who determined malpractice occurred," she said. "You can't file a suit without that certificate."

And once the suit is filed, an expert had better take the stand on your behalf, Radna added, or "you're going to lose."

How then, can attorney's control spiking costs? Radna said her firm has found savings by efficient time management, paying for only half-days by making sure witnesses are called at a specific time. "We usually have a good idea of what day the doctor is going to testify," she said. "And judges are aware how difficult it is for doctors to clear their schedules to come testify, so they try to accommodate that."

Joseph Ortego, of Jericho's Nixon Peabody, cited several moving parts in the cost of expert witnesses. "When you need experts. What kind of experts you need. How long you need them and what you need them for," Ortego noted. "These are all variables."

He doesn't agree with the idea that experts cost more than ever, though Ortego understands the misperception. "Experts have always been a significant factor in the cost of defending or prosecuting any type of litigation," he said. "But I think it's become a cost-conscious world now, with regards to litigation."

One surefire method of controlling these costs, according to Ortego, is avoiding "professional witnesses" who earn livings testifying in court

cases. These experts possess an appetizing combination of legal experience and product/market knowledge, Ortego noted, but pump their fees proportionately – and carry another potentially devastating risk.

"If a juror hears that a witness has testified 22 times and last year made over \$375,000 testifying in product liability cases, what does the juror think?" he said.

Whenever possible, Ortego employs "fresh witnesses" who can't be tarnished by the opposition and, in practical terms, come much less expensive. There are several ways to find them, he added, noting numerous companies that manage a firm's stable of experts.

However, Ortego said he generally chooses to find experts on his own. "I find it better to research myself and find the people who fit in best for my case," he said.

O'Leary also doubts experts cost more than ever, though he agrees that rates go up with experience. "If you've never been admitted to a court and an attorney is taking a chance on you, you're going to command a lower rate," he said. "But after you've had five cases and cut your teeth, you're able to charge more competitively."

For his own services, O'Leary considers his fees modest. "The industry rate is typically \$250 to \$450 an hour, and if the attorney is on the lower end of that, I will be, too," he said.

O'Leary also agreed the more an expert testifies, the less effective he or she becomes. "Some experts go from courtroom to courtroom every week," he said. "After a while, you just become a hired gun."

Whether a witness is experienced or not, one costly mistake, according to Radna, is cutting corners on witness preparation for bottom-line reasons. "It's important not to skimp and try to save money by not meeting with your experts before the trial," she warned. "You have to meet with them so they understand your case and you understand their testimony."

Every litigator has to face facts that costs can be high, Radna added. "But if I don't meet experts beforehand and prepare, I'm not going to be able to question them in a useful way in front of the jury."

Expert witness companies are not hurting for business, though. Brentwood native Patrick O'Leary, who founded the dating site MatchMaker.com in 1990 and sold it to search-engine stalwart Lycos for \$45 million in 2000, is currently operating ExpertWitness.com, an online database of legal analysts, litigation consultants and expert witnesses.

Based in Texas, ExpertWitnesses offers state and practice-area search functions and is one of several expert witness enterprises O'Leary has founded. It boasts a roster of about 2,000 experts, according to the boss, himself an experienced witness on Internet-related matters who is personally "admitted to court" as an expert about four times a year.