



VALUATION

BY JEFF STEGNER

How to select an effective expert witness

Valuation services – the careful estimation of the value of estates, businesses, legal damages and stock options by a certified public accountant – are in high demand these days. Perhaps nowhere is this service needed more than in the realm of litigation, where economic damages are often sought by one or both parties in a lawsuit.

As every attorney knows, most litigation is complex and aspects of it can be difficult to explain to juries, including the economic aspects of a case.

Attorneys with courtroom experience are good at communicating with juries and can perform amazing feats of verbal reduction using analogies, context changes, scenarios and empathetic language to persuade jurors of their client's cause.

Expert witnesses must have some of the same skills while being equally adept at translating very complex calculations into terms that the average person can understand. This involves not only the objective numbers themselves, but also courtroom strategies.

Disputes related to contracts, occupational fraud, employment, intellectual property, shareholder complaints, tax liability

and many more issues routinely faced by businesses all require different strategies in pre-trial and trial settings. Your expert witness should be dialed into this reality and should be able to offer you alternatives for testimony.

For example, in an arbitrated dispute involving shareholders, where millions could be at stake, the trier of fact may ask for alternatives from a damages expert. The expert should be able to offer alternatives if requested. Before offering options, a good expert will consider whom they are working with, whether it is a group of financially savvy arbiters or a jury, and act accordingly.

A good expert witness should seldom see the inside of a courtroom. That's because the support they provide in pre-trial documents and testimony should always be geared to the favorable settlement of cases. If and when circumstances require the expert to go to court, the witness must be and appear to be objective and independent to the trier of fact and be able to explain complex issues in simple, clear terms.

If you're in the market for an expert witness specializing in valuation, or for any other type of expert, here are some sugges-

tions and things to consider that can help you find experts that meet your needs:

- Test the expert's knowledge – Don't take the word of references and testimonials. Interview the expert and probe to find out what he or she knows about the subject at hand. Ask for anecdotes from previous cases, and give scenarios to the expert to find out how they would handle the case. Review any taped testimony the witness has previously given.

- Check for egotism. Plaintiff attorneys love to cross-examine egotistical expert witnesses because they are easier to entrap. Make sure your witness can remain accurate and open to critique of his or her methods and assumptions. Witnesses should be able to give impartial and unemotional answers in all forms of testimony.

- Is the expert flexible and accessible? Does the expert work for a firm that supplies the latest technology to its professional staff making them more responsive and available when you need them? Or is it difficult to make contact with them?

- What is the expert's track record? Find out how many cases the witness has participated in and the win/loss record of the cases in which he or she appeared in court? What

is the expert's experience in mediation and arbitration as well as standard civil cases?

- Independence and objectivity. CPA valuation experts are required by their profession to demonstrate objectivity and independence in order to continue to hold a license to practice accounting. While others may in fact be objective, the CPA credential adds value for you and your client and mitigates professional liability risks.

- Check references. This is part of any reasonable due diligence on behalf of your clients.

- Compare prices. Some experts are more expensive than others. But don't sacrifice quality for price. Assign a staff member to survey the Internet or other venues to find median rates for the area of expertise you need, and select a quality expert that comes close to it.

Using these measuring sticks, attorneys can select and utilize the services of expert witnesses in any technical area and ensure that they receive high levels of knowledge and service at reasonable cost.

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