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"This opportunity was an excellent fit."

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(an expert in mechanical engineering)

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Neuroscience Is Taking a Stand in the Courtroom

Posted by Patricia Taylor on January 29, 2013 12:00 PM

If you watch the news, you hear more and more about concussions, traumatic brain injury (TBI) and a possible link to bizarre, sometimes criminal behavior. Just last month, former Kansas City Chiefs linebacker Jovan Belcher killed his girlfriend and then himself. Those who knew Belcher said his actions were atypical for his personality. Discussions ensued as to whether Belcher's crimes could have been triggered by chronic traumatic encephalopathy (CTE), a degenerative brain disease caused by repeated head trauma. Contact sport athletes and combat veterans often suffer from CTE, which resembles dementia and can lead to dramatic cognitive, memory and mood problems.

The ABA recently published an article about the growing use of neuroscience in the courtroom. Nita Farahany, professor of law and genome sciences at Duke University, has been tracking criminal cases involving neuroscientific evidence since 2004. To date, Farahany has found 2,000 cases where neuroscientific evidence was introduced, 600 in the year 2011 alone. These figures do not even address cases that don't reach trial.

According to Farahany, neuroscientific evidence is used most often for capital mitigation. Neuroscience also plays a significant role in competency hearings and the guilt phases of a trial. Farahany has found that 20% percent of trials using neuroscientific evidence resulted in "favorable outcomes" for criminal defendants, such as a reduction of charges or sentences, but has yet to fully exonerate a criminal defendant.

But not everyone believes the courtroom is the proper place for neuroscientific evidence. Stephen J. Morse, professor of law and psychiatry at the University of Pennsylvania, feels that neuroscientific evidence cannot address issues such as competence and responsibility. Morse argues that "brains don't commit crimes; people do," and that some lawyers are making "giant leaps" from the science to the evidence. "In the literature, lots of people are making extravagant claims about what [neuroscientific evidence] can do for us. They're based on insufficient or irrelevant science, or people are making moral inferences that the science does not entail."

Despite Morse's reservations, it would appear that neuroscientific evidence is becoming more and more common in the courtroom. In fact, the University of Wisconsin has joined Vanderbilt University in offering a dual degree program in neuroscience and law.

It remains to be seen whether effective and ethical use of neuroscientific evidence can attain the ultimate goal, which, according to some neuroscientists, is "not to try to explain or excuse criminal behavior, but to evaluate each defendant and customize a plan that serves their mental health needs as well as the need to keep the public safe."

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Witness Services Available

Posted by Patricia Taylor on January 23, 2013 12:53 PM

DRI members can now access the most comprehensive expert witness services available.

Thomson Reuters Expert Witness Services, the leading authority for locating and researching expert witnesses, and DRI, the country's largest professional organization of defense attorneys and in-house counsel, have joined forces to provide DRI's 22,000 members enhanced expert witness research and placement services.

With Thomson Reuters Expert Witness Services' network of more than 100,000 experts and DRI's Expert Witness Database of more than 65,000 experts, DRI members will have access not only to an expanded database, but also Thomson Reuter's expertise in locating, interviewing and hiring experts. Under this new alliance, specialized teams of lawyers and research professionals from both organizations will integrate resources, employing rigorous methodologies, literature analysis, case law review and other tools to find the best expert to meet the legal needs of DRI members. The vast array of specialties and subspecialties found within the combined databases ensures the right expert will be located and hired, not only in high demand areas of expertise, but also obscure and niche subject areas.

Using the information gleaned from the combined databases, Thomson Reuters can compile Expert Intelligence Reports for DRI members. Expert Intelligence Reports will integrate the resources of both DRI and Thomson Reuters Expert Witness Services into a single, interactive, comprehensive report detailing an expert's background and history.

"DRI and Thomson Reuters Expert Witness Services have two of the most extensive collections of expert witness information," said Tyler M. Howes, DRI deputy executive director. "Our combined offering provides a valuable resource in building a winning defense, whether finding an expert for use in a trial or conducting research on opposing counsel's witness. This will significantly expand the expert research and placement capabilities available to our members. We are proud to provide these capabilities to enhance our members' work as defense attorneys and in-house counsel."

"Our two organizations share the same goal: helping DRI members become more efficient, economical, creative and strategic in researching, finding and using expert witnesses in their cases," said Steve Anderson, senior director, Thomson Reuters Expert Witness Services. "This new effort combines and integrates our respective collections of millions of documents, including resumes, biographies, depositions, transcripts and more. In addition to the power of the combined databases, DRI members can access our placement specialists, whose relationships with experts, unique experience in key practice areas and proven processes can deliver the right experts and the most comprehensive expert research. We look forward to working with DRI to provide members with the best expert witness services available anywhere."

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California Supreme Court Examines the Reasons Underlying Expert's Opinion

Posted by Patricia Taylor on January 17, 2013 10:55 AM

In *Sargon Enterprises Inc. v. University of Southern California*, __ P. __, 2012 WL 5897314 (Cal. Nov. 26, 2012), the California Supreme Court affirmed the trial court's ruling, excluding the opinion of plaintiff's expert economist, who speculated that plaintiff would have become an industry leader, earning millions (possibly billions) of dollars but for the defendant's breach of contract.

Plaintiff, Sargon Enterprises, patented a dental implant that reduced the previous surgical procedure for dental implants. Sargon contracted with the defendant, University of Southern California (USC), to conduct a clinical study. The business relationship soured, and Sargon eventually sued USC for breach of contract. Even though Sargon's profits were approximately $100,000 in 1998, Sargon's expert projected that it would become an industry leader and, as a result, its lost profits as a result of USC's breach were comparable to the profitability of industry leaders, between $200 million - $1 billion. The California Supreme Court discussed the expert's methodology in calculating lost profits and its shortcomings at length in its opinion.

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The trial court excluded Sargon's expert testimony. The Court of Appeals reversed, and USC appealed to the California Supreme Court. The California Supreme Court reversed again, affirming the trial court's original ruling, excluding Sargon's expert. In so holding, the Court stated:

> 'An expert opinion has no value if its basis is unsound. . . Matter that provides a reasonable basis for one opinion does not necessarily provide a reasonable basis for another opinion. Evidence Code section 801, subdivision (b), states that a court must determine whether the matter that the expert relies on is of a type that an expert reasonably can rely on in forming an opinion upon the subject to which his testimony relates.' We construe this to mean that the matter relied on must provide a reasonable basis for the particular opinion offered, and that an expert opinion based on speculation or conjecture is inadmissible.

Thus, the Supreme Court stated that the trial court acts as a gatekeeper to exclude speculative or irrelevant expert opinion.

The California Supreme Court also cited a law review article and Evidence Code section 802:

> 'A witness testifying in the form of an opinion may state . . . the reasons for his opinion and the matter . . . upon which it is based, unless he is precluded by law from using such reasons or matter as a basis for his opinion. The court in its discretion may require that a witness before testifying in the form of an opinion be first examined concerning the matter upon which his opinion is based.' . . . The *reasons* for the experts' opinions are part of the matter on which they are based just as is the *type* of matter. (Italics added.)

With regards to lost profits, the Court stated that such damages must be proven to be "certain both as to their occurrence and their extent," but not with mathematical certainty. Lost profits cannot be recovered for a breach of contract if such damanges are not clearly ascertainable in both their nature and origin. In the case of unestablished businesses, lost profits are generally not recoverable as their occurrence is "uncertain, contingent and speculative." However, evidence of anticipated profits is admissible if the nature and occurrence can be proven with reasonable certainty. The Court agreed with the trial court that Sargon's expert's analysis relied on data that "in no way is analogous to [Sargon.]" As such, the trial court did not abuse its discretion by excluding the expert's opinion.

This case is significant for several reasons. First, it reminds state court judges of their gatekeeper duties. Second, it urges judges to not only look at the *type* of testimony, but also the *reasons* underlying the expert's opinion. As a result, this holding arguably expands the basis on which expert opinions may be analyzed or challenged in the state of California.

No Comments Tags: Expert Witness News & Links

Stealing Thunder and the Expert's Compensation

Posted by Patricia Taylor on January 14, 2013 10:07 AM

If you have any testimony or trial experience, you are probably familiar with the concept of "stealing thunder." Stealing thunder is a courtroom tactic where impeachable evidence is introduced during direct testimony as opposed to being exploited by opposing counsel during cross-exam.

The first study to assess the efficacy of stealing thunder was conducted in 1993, which supported the notion that stealing thunder was an effective method for minimizing negative information. Williams KD, Bourgeois MJ, Croyle RT: *The effects of stealing thunder in criminal and civil trials.* Law and Human Behavior 1993; 17:6:597-609. A subsequent study confirmed the power of stealing thunder as a litigation strategy. Dolnik, Lara and Williams, Kipling D., *Stealing Thunder as a Courtroom Tactic Revisited: Processes and Boundaries*, Law and Human Behavior, 2003, Vol. 27 Issue 3, p. 267.

In 2011, a Ph.D. student examined whether stealing thunder minimizes the impression of an expert as a "hired gun." Specifically, different litigation strategies for disclosing a highly-paid expert's compensation were studied. The researcher manipulated how and when compensation was disclosed as well as the way in which the information was disclosed, specifically, whether the expert refuted testimony of high compensation. The researcher expected that disclosing the expert's high compensation during direct examination would be the most effective as a typical example of stolen thunder. Surprisingly, preemptively disclosing the expert's high compensation turned out to be the *worst* strategy. The most effective strategy proved to be disclosing an expert's high compensation during direct examination *and* subsequently refuting it during cross examination. (In the study, the expert refuted simply by saying "I am charging the same amount that I would make if I was working in

my practice; the compensation I receive in my everyday work is the same fee I charge for being an expert witness.")

So, it seems it is important to disclose an expert's compensation, especially when it is high, but just as important to explain why the fee is high and/or the justification underlying the fee.

How have you presented testimony regarding your compensation? Is there a particular method you have found the most effective with a jury?

No Comments Tags: Expert Witness News & Links

Meet Daniela Jansen, IP Case Manager

Posted by Patricia Taylor on January 10, 2013 2:41 PM

I am thrilled to be part of the Thomson Reuters community. As a member of the TREWS team, I have been granted a unique opportunity to pursue my interest in science and technology, along with my passion for the law.

I began my career as an Electrical Engineer, having earned a Masters Degree in Computer Engineering and working for various large aerospace companies. The work was very stimulating and challenging. During those years my family grew - - I became the proud mother of three wonderful children. I then completed a second Masters Degree while working towards a Ph.D. degree in Electrical Engineering. Yet, as luck would have it, my husband's work moved from Southern California to Northern California and I was forced to take a break from the program. It was during this time that I resolved to pursue a long-held dream of going to law school. After passing the CA Bar on the first take, I practiced and taught law in Silicon Valley.

Despite being fairly new to TREWS, I can already tell that joining the team was an excellent decision. I see a well run company with great core values and I hope my background will allow me to make a positive contribution at Thomson Reuters.

No Comments Tags: Industry Spotlight

Hot Tubbing, Anyone?

Posted by Patricia Taylor on January 09, 2013 12:02 PM

The Australian judiciary system has an interesting and innovative approach for presenting expert testimony. Formally referred to as concurrent expert testimony, it is more commonly known as the "hot tub method" or "hot tubbing." Australian Justice Peter Heerey describes the hot tub procedure as follows:

> The procedure involves the parties' experts giving evidence in the presence of each other after all the lay evidence on both sides has been given. The experts are sworn in and sit in the witness box or a suitably large table which is treated notionally as the witness box. . . A day or so previously, each expert will have filed a brief summary of his or her position in the light of all the evidence so far. In the box the plaintiff's expert will give a brief oral exposition, typically for ten minutes or so. Then the defendant's expert will ask the plaintiff's expert questions, that is to say directly, without the intervention of counsel. Then the process is reversed. In effect a brief colloquium takes place. Finally each expert gives a brief summary. When all this is completed, counsel cross-examine and re-examine in the conventional way.

A law review article evaluates the strengths and weaknesses of the hot tubbing method and discusses its possible applicability to the American judicial system. Some of the benefits include:

- Focuses testimony on the actual issue in dispute/refine the area of dispute;
- Determining areas where opposing experts agree and disagree causes exclusion of superfluous testimony;
- Experts testifying simultaneously aids the finder in fact, especially in trials where experts' testimony may be separated by days or weeks;
- Contemporaneous testimony minimizes latter modifications, clarifications and qualifications of testimony;
- Placement of experts minimizes the adversarial relationship, helps experts relax and focus on the substance of testimony;

• Favored by many experts as more conversational, moving testimony away from attorney-led interrogation to more of a "structured professional discussion;" and
• Promotes judicial economy, reportedly taking half the amount of time of more traditional methods.

Much of the above list could be summarized to one overall notion: increased efficiency.

While there are numerous benefits, the hot tubbing method does have its critics. Some of the shortcomings of this method are described as:

• Experts will still be prepped by attorneys and are still susceptible to bias;
• The judge must be well prepared and willing to play the role of moderator or the process may degrade into "unproductive squabbles;"
• Disparities in the expertise of experts may result in the more "junior" expert deferring to the more "senior" expert; and
• Some experts may not be suited to the hot tub method based on personality or lack of conversational speaking ability.

In a survey of members of the Australian Administrative Appeals Tribunal, respondents felt hot tubbing should be used in cases where experts have the same level of expertise, would be discussing the same issues, and in situations where concurrent testimony would clarify complex issues and increase objectivity. Conversely, those same survey respondents felt hot tubbing should not be used in cases where experts did not have the same level of expertise or would not be discussing the same issues.

So, now that we are familiar with the process of hot tubbing, its benefits and its shortfalls, is it a method that would work in the United States? Similar to the Australian judiciary, the American system of expert testimony is adversarial and judges in both countries are largely generalists. However, Australian courts that rely on hot tubbing do no hear criminal cases and only conduct bench trials. Still, the author of this particular aricle concludes that it is a method worth exploring in America.

What do you think? Is hot tubbing a method that appeals to you? Do you think it would work in this country?

1 Comment Tags: Expert Witness Education

Contest Rules for 2013 Industry Trends Short Survey

Posted by Patricia Taylor on January 04, 2013 1:15 PM

These are the rules for the random drawing on 2/1/13 titled "Industry Trends 2013 Three Question Survey." Entry must be via the survey invitation sent on 1/7/13.

1. No purchase necessary.
2. Contest starts on 1/7/13 and ends no later than 2/1/13.
3. Thomson Reuters Expert Witness Services reserves the right to discontinue the contest at any time.
4. Void where prohibited by law.
5. Participants must be residents of the United States of America.
6. Contest open to those 18 and older.
7. Participants are bound by the Official Rules.
8. Entry is limited to recipients of our survey
9. One entry per person and each entry must be made separately.
10. All prizes will be awarded by TREWS as independent judges and the independent judges' decisions will be final.
11. Employees of Thomson Reuters and affiliates and family members are not eligible to win.
12. "Odds of winning will be determined by the total number of entries received."
13. The prize will be re-awarded if original prize winner forfeits.
14. Prizes are non-transferable and no substitutions or cash redemption will be made.
15. For a winners list, please check our blog posting dated 2/1/13, titled "Industry Trends 2013, 3 question survey drawing winner"

16. The estimated value of this prize is approximately 500.00.

17. Entries are the property of TREWS and none will be returned, including copyrighted material that shall become the property of TREWS.

18. Only one prize per person.

19. Not responsible for lost, late, illegible, misdirected, mutilated, incomplete or postage due mail or electronic or computer delays or malfunctions.

20. Winners may be required to sign an affidavit of eligibility and release from liability within 10 days of notification of any award or upon redemption of prize. Entry in the contest constitutes permission to use winner's name and likeness for publicity purposes, without further compensation, where permitted.

No Comments Tags: Contest Rules/Winners

What Constitutes Bias in an Expert Witness?

Posted by Patricia Taylor on December 21, 2012 9:37 AM

Researchers the Beth Israel Deaconess Medical Center and the Dare Institute recently conducted a study regarding what factors experts consider when assessing bias in other experts. Research participants (46 total) were almost exclusively psychologists and psychiatrists attending the annual meeting of the American Academy of Psychiatry and Law. Participants were asked to complete a questionnaire as to what situations they would deem as the most potentially biasing for an expert witness.

According to the results, participants identified two factors as having the highest potential for bias: (1) the frequency with which an expert will turn down cases that evoke personal discomfort; and (2) knowledge that a certain expert testified consistently for only one side (solely for plaintiff/prosecution or solely for defense).Those factors that were identified as least biasing included: (1) testifying expert who was also the treating expert; (2) assessment of opposing expert as a "hired gun"; and (3) expert's own assessment of his "happiness" in a given case when the expert feels he testified "appropriately" but the ultimate outcome was unfavorable (a seemingly unjust outcome).

As I noted, this study was limited to psychologists and psychiatrists. It would be interesting to see what experts in other fields consider biasing.

What do you think of the results? Does any of it surprise you? Would you rate the same factors as potentially biasing or not biasing? And what, if any, effect do you think these factors would have on a jury in assessing an expert's possible bias?

1 Comment Tags: Expert Witness News & Links

Are Expert Witness Fees At An All Time High?

Posted by Patricia Taylor on December 18, 2012 2:27 PM

ExpertPages has released its 2012 survey results, analyzing expert witness fees in a variety of fields. According to the survey, expert witness fees have reached new highs. . . *if* you can get the work. ExpertPages 2012 Fees and Practices Report was compiled from responses to a survey of 540 experts nationwide in fields such as accounting, automotive, business, employment, engineering, handwriting, health care, insurance, product safety, technology and forensics. Here are some of the highlights of the survey:

- Fees ranged from $187/hour for criminal/penal experts to $429/hour for experts in medical/surgical specialties;
- Experts in computers, Internet and technology and psychiatry charged an average of $414/hour;
- Experts in business and financial fields charged an average of $352/hour;
- Engineering, environmental and science experts charged an average of $263/hour;
- The Northeast leads the way in average hourly expert witness fees at $341/hour;
- Across the board, experts spend an average of 47 hours per assignment;

• Document and handwriting experts spent the least amount of time per assignment (11 hours) while computer, Internet and technology experts spent an average of 119 hours per assignment;
• "Expected earnings" for experts in computers, Internet and technology was $46,196 per assignment (compared to $42,000 in 2010), $30,644 for business and financial experts ($21,500 in 2010), $5,564 for investigative and forensic experts, and $4,472 for medical/surgical experts;
• Experts with 10 years or more of litigation experienced demanded, on average, 15% more per hour, worked on more complex cases, and earned more than 50% in fees per average assignment;
• An overwhelming majority of experts (98%) charge an hourly rate as opposed to a flat fee, with the exception of Forensic Document Examiners who tend to charge flat fees per document or per case and some physicians who charge flat fees for initial medical case reviews;
• 60% of experts charge a higher hourly rate for testimony;
• 37% of experts charge a lower rate for travel time;
• 62% of experts use written fee agreements;
• 53% of experts charge a minimum fee before accepting a case
• 57% of physicians spent more than 90% of their professional time practicing medicine and less than 10% as an expert;
• In many forensic fields, such as handwriting analysis and document examination, expert work is often full-time.

What do you think of these trends? Do you find any of these results surprising? Based on these survey results, will you be re-evaluating your fees?

5 Comments Tags: Expert Witness News & Links

Tis the Season. . . To Market Yourself!

Posted by Patricia Taylor on December 14, 2012 12:28 PM

The holiday season is upon us. Time for celebration, gift giving, gathering with family and friends. . . and a great opportunity for one last marketing effort before the end of the year. Take advantage of this opportunity. Consider doing one (or more) of the following:

1. Send holiday cards to existing, previous and prospective clients, enclose a business card;

2. If you blog, draft a "Year in Review" post, highlighting your achievements this year and discussing your goals or projects for 2013;

3. If you do not blog (or even if you do), consider drafting a letter or a newsletter, summarizing your professional achievements in 2012 and your plans for 2013. You can enclose this with your holiday card;

4. Review your 2012 marketing plan. What would you like to change for the new year? Did you reach your marketing goals for 2012? Why or why not?

5. Develop your marketing plan for 2013 including your use of social media, seminars/conferences to attend, presentations, networking, etc.

Happy Holidays . . . and happy marketing!

No Comments Tags: Expert Witness News & Links

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For Expert Witnesses

Building Your Business

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Kristin Nimsger on "Putting Customers First"

Posted by Patricia Taylor on April 10, 2012 8:18 AM

Kristin Nimsger joined Thomson Reuters early in 2012 as Managing Director and General Manager of Litigation Solutions, which includes Thomson Reuters Expert Witness Services. She brings with her a deep experience in the litigation services industry, and a deeper appreciation of the importance in providing industry leading customer service to our customers.

What attracted you to come to Thomson Reuters?

I feel privileged to be part of an organization that is so clearly dedicated to its customers and employees and their collective success. The key priorities unequivocally articulated by the leadership of the organization (and we clearly also walk the walk) begin with "put customers first". The organization is keenly aware that the key to future success and sustainability for Thomson Reuters requires us to form close relationships with our customers, listen to their needs and to respond quickly and completely while collaborating with each other and supporting the needs of the global talent that is crucial to delivering on that mission. As a highly engaged and enthusiastic member of the team, I have great appreciation for that mission and for the investment that is being made to deliver. I'm looking ahead to a bright future for our team, for our customers and for all the stakeholders of the organization.

What major developments do you see for TREWS (or the expert witness industry, or the broader litigation industry as it pertains to witnesses) this year?

I'm very excited to be part of the TREWS evolution as we take this business to the next level to best serve our clients with the most comprehensive solution set available for litigators. In the new world economy, law firms are facing intense pressure to drive down the total cost of litigation and to bring both efficiency and greater efficacy to the practice of law. Companies do not choose to enter into, or to continue, in litigation easily, given the intense scrutiny on the legal department as a cost center. When they do choose to proceed, they want the deck stacked in their favor to ensure they will achieve a positive outcome in the shortest time possible and with the least expense possible. It is expected that the process of selecting the right expert witness will be conducted with all due speed and precision, just as those expectations continue to rise for litigators as a whole. Thomson Reuters is committed to delivering a suite of solutions ensuring that firms can easily access all of information necessary to evaluate and find the just the right expert, to do it quickly, and to ensure that the expert is prepared to perform in the most effective manner possible.

How do you see TREWS' role in the expert witness industry?

In today's "new normal" economy business is increasingly complex, driven by technology, innovation, and sophisticated products and services. Litigation in this new environment reflects that sophistication and complexity. This reality means that expert witnesses are often brought to the center and the forefront of litigation matters. Corporations expect that the experts that

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their law firms (and they) select will be just that: expert in the subject matter of their case and expert at being an expert witness, delivering precise evaluations and opinions on complex topics. Thomson Reuters' Expert Witness Services will ensure that experts be matched with the cases for which they will be most effective, with the right tools and information to deliver on the needs of the law firms and corporations they serve.

What do you bring from your previous roles in the legal industry?

After leaving the practice of law, I spent about 11.5 years in the E-Discovery business, growing my former company to its position as one of the industry's leading service providers with offices in more than 20 countries. I spent the last 4+ years as President of that organization, leading it through the recent sale to private equity ownership. My time there got me up close and personal with law firms of all sizes and all around the world as they grappled with the changing litigation landscape and world of exploding discoverable digital information and communication. I also had the privilege of holding a vantage point which permitted close observation of the myriad models for interaction between highly litigated corporations and their outside counsel, experts and information service providers, while providing solutions and service to both. I hope and believe that these past experiences will help guide TREWS into the future as we deliver, integrated with the rest of the Westlaw Litigator solution set, comprehensive assistance to our expert and attorney customers.

3 Comments Tags: Expert Witness News & Links · Working with RTG

ARE PAPER RÉSUMÉS BECOMING A THING OF THE PAST?

Posted by Patricia Taylor on March 22, 2012 10:17 AM

Are paper résumés becoming a thing of the past? More companies are requesting a "video résumé" or a demonstration of the applicant's "web presence," often available by linking to social media pages (Twitter, Facebook, Tumblr, etc.). Keeping pace with demand, Westlaw Round Table Group now offers expert witnesses the opportunity to submit a virtual presentation to prospective attorney clients. More attorneys have been asking to view videos of potential experts before making a hiring decision. Michelle Loux, Senior Expert Services Coordinator with Westlaw Round Table Group, says that "clients are asking us for a little something extra," and a virtual presentation is "another way to promote and market yourself in a world that has become more technology driven." A virtual presentation allows our experts a chance to introduce themselves to attorneys, highlighting their past experience while simultaneously providing an opportunity for attorneys to evaluate the expert's credentials and demeanor.

Westlaw Round Table Group has made creating your virtual presentation simple and straightforward. If you have a video recorder, computer webcam or a smart phone, you have everything you need to create your video. Simply upload a brief (1-2 minute) video, focusing on your experience as an expert witness, similar to what you would choose to highlight in a cover letter. Then email your video presentation to laura.metlenko@thomsonretuers.com. If you don't have the required hardware, we can also record your video for you via Skype.

To ensure a professional, quality video, please consider the following tips:

(1) Limit your light sources. Choose artificial light and close your window curtains or turn off your overhead light and open the curtains;
(2) A good distance from the camera is two feet. Include your upper body by distancing yourself from the camera;
(3) Wear clothes that put the focus on you. Choose solid colors in pale, pastel or medium shades and make sure your clothes fit appropriately;
(4) Remove Distractions. Avoid white, reds, bright colors, small patterns, glittery fabric, excessive jewelry and dangly earrings as these items are distracting and may appear unflattering on video;
(5) Avoid saying "um," "like," or "you know;"
(6) Smile at the beginning of the video; and
(7) Stay relaxed and emit confidence.

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Laura Metlenko, Expert Services Coordinator, stresses that preparation is key to making a successful video. "This is your opportunity to tell attorneys what you can do, what you have achieved, where you shine," says Metlenko. "Be positive. Substance is most important. Your goal is: when an attorney hears this, he says: 'I want you on my team!'"

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Intellectual Property Vocabulary

Posted by Toby Edwards on November 16, 2011 1:40 PM

Many of our experts (and our attorneys!) have noted that witnesses new to intellectual property cases are often lost in a jungle of jargon and terminology alien to them. Aside from the communication challenges this causes between an expert witness and an attorney, valuable time is also spent by attorneys teaching expert witnesses what the various intellectual property litigation terms mean.

We asked our intellectual property experts and attorneys to send us key terminology they commonly used in intellectual property cases, with which they thought an expert witness, new to intellectual property litigation, should be familiar.

We'd love to add more vocabulary for this list. Send them to toby.edwards@thomsonreuters.com.

Claim Element: The scope of a patent is defined by its claims. The claim lists all the essential elements of the invention. Only if a product has all of these elements does it infringe a patent. The rights conferred by a patent need to be defined clearly, so as to put others on notice regarding what is and is not covered by the patent. To this end, every patent contains one or more "claims," which provide a definition of what is covered by the patent. Only things that meet the definitions of the claims infringe the patent.

Claim Construction: The outcome of an attempt at patent enforcement commonly hinges on claim construction, which is the court's accepted definition of specific terms used in patent claims. Claim construction disputes arise over both the definition of technical terms and semantic interpretation. Patent litigants often spend a lot of money on claim construction as it usually determines two root issues of every patent case: whether the plaintiff has a valid claim; and whether the defendant infringed the patent. A pivotal ruling regarding claim construction came from the Supreme Court in Markman v. Westview Instruments (1996) where the court ruled that the key question of claim construction was one of law within the sole province of the judge, not a jury.

Claim Chart: In a patent infringement lawsuit, the inventor must prepare a patent claim chart that describes how the accused product infringes the patent. Infringement claim charts, which are often referred to as "claim charts," typically show the language of a patent claim on the left side and a description of the infringing activity on the right side. Any given patent claim is only infringed if all of the characterizations on the left side are matched by (accurate) information on the right side.

Dependent vs Independent Claim: There are two basic types of claims:

- independent claims: claims that stand on their own; and
- dependent claims: claims which depend on a single claim or on several claims and generally express particular embodiments as fall-back positions.

Independent Claims are typically written with very broad terms, to avoid permitting competitors to circumvent the claim by altering some aspect of the basic design. A dependent claim further clarifies the independent or parent claim. In practice, dependent claims are often used to hone in on the inventor's preferred embodiment of the invention (e.g., the actual product design that the inventor intends to use.) Essentially, an independent claim broadly describes the invention, while dependent claim #1 describes the invention in a narrower aspect that more specifically describes the preferred embodiment, dependent claim #2 is narrower still, etc.

Prior Art (also known as state of the art): Prior art constitutes all information that has been made available to the public in any form before a given date that might be relevant to a patent's claims of originality. If an invention has been described in prior art, a patent on that invention is not valid. Information kept secret (for example, a trade secret) is usually not prior art, provided that employees and others with access to the information are under a non-disclosure

obligation. Prior art is generally expected to provide a description sufficient to inform an average worker in the field of some subject matter falling within the scope of the claim. Prior art must be available in some way to the public, and in many countries, the information needs to be recorded in a fixed form. Prior art generally does not include unpublished work or mere conversations.

Priority Date: (also known as a right of priority) This is a time-limited right, triggered by the first filing of an application for a patent or a trademark. The priority right allows the claimant to file a subsequent application in another country for the same invention, design, or trademark effective as of the date of filing the first application. When filing the subsequent application, the applicant must "claim the priority" of the first application in order to make use of the right of priority. The right of priority belongs to the applicant or his successor in title.

The Doctrine of Equivalents: is a legal rule that allows a court to hold a party liable for patent infringement even though the infringing device or process does not fall within the literal scope of a patent claim, but nevertheless is equivalent to the claimed invention. The Second Circuit Court of Appeals described its purpose as being to "prevent an infringer from stealing the benefit of the invention". Royal Typewriter Co. v. Remington Rand, Inc., 168 F.2d 691, 692 (2d Cir. 1948). See non-literal infringement.

Invalidity: An important limitation on the ability of a patent owner to successfully assert the patent in civil litigation is the accused infringer's right to challenge the validity of that patent. In order to obtain a patent, the invention must be useful, novel and non-obvious. Useful means that the invention is capable of serving a useful purpose. Novelty means that the invention was not fully disclosed in a single prior-art reference. The obviousness standard refers to the invention not being obvious to one skilled in the art to which the invention pertains on the basis of a single reference or a combination of references. If a patent is not useful, novel or non-obvious, it is invalid. In the United States, a patent is presumed to be valid. However, this presumption is rebuttable. One of the principal ways of overcoming the presumption of validity is to find prior art which is more relevant to patentability of the claims. Such prior art may, for example, take the form of prior patents or publications. Another approach to invalidating a patent is to prove that the invention was in public use or on sale in the U.S. more than a year prior to the date of the application. If one can prove that the invention was known or used by others in the U.S. or patented or described in a publication in any country before the invention thereof by the applicant, the patent is invalid. Furthermore, patent law requires that the specification disclose the invention in such a manner as to enable any person skilled in the art to which it pertains to make and use the same. It further requires that the disclosure reveal the "best mode" contemplated by the inventor of carrying out the invention. Failure to comply with either of these disclosure requirements can result in the patent being invalid.

As an initial step in evaluating the validity, it is frequently desirable to obtain a copy of the United States Patent and Trademark Office's "file wrapper," which contains a copy of the application and the communications between the applicant and the Patent and Trademark Office resulting in issuance of the patent. A review of the file wrapper frequently enables one to determine what rejections of claims were made by the patent office examiner, on what grounds those rejections were made, and what prior art was made of record. This generally provides some insight into what the examiner felt was patentable and what concessions or representations were made by the applicant.

Enablement: Enablement refers to the requirement that a patent application must disclose a claimed invention in sufficient detail for a person skilled in the art to carry out or create that claimed invention. The disclosure requirement lies at the heart of patent law. An inventor is granted a monopoly for a specified period of time in exchange for the inventor disclosing to the public how to make or practice his or her invention. If a patent fails to contain such information, the patent is unenforceable or can be revoked.

Obviousness: (or non-obviousness) One of the main requirements of patentability is that the invention being patented is not obvious, meaning that a person having ordinary skill in the art would not know how to solve the problem at which the invention is directed by using exactly the same mechanism. The Graham Factors, as set forth by the United States Supreme Court, help determine if the claimed invention is non-obvious. The Graham factors include:

1. the scope and content of the prior art;
2. the level of ordinary skill in the art;
3. the differences between the claimed invention and the prior art; and
4. objective evidence of non-obviousness.

In addition, the court outlined examples of factors that show "objective evidence of non-obviousness:"

1. commercial success;
2. long-felt but unsolved needs; and
3. failure of others.

Graham et al. v. John Deere Co. of Kansas City et al., 383 U.S. 1 (1966).

Markman Hearing: A Markman hearing is a pretrial hearing in a patent infringement case in which a federal District Court judge examines evidence from all parties on the appropriate

meanings of relevant key words used in a patent claim. The U.S. Supreme Court has held that the language of a patent is a matter of law for a judge to decide, not a matter of fact for a jury. A Markman hearing is sometimes referred to as a "Claim Construction Hearing." The evidence considered in a Markman hearing falls into two categories, intrinsic and extrinsic. Intrinsic evidence consists of the patent documentation and any prosecution history of the patent. Extrinsic evidence is testimony, expert opinion, or other unwritten sources. Markman hearings are important, since the court determines patent infringement cases by the interpretation of claims. A Markman hearing may encourage settlement, since the judge's claim construction finding can indicate a likely outcome for the patent infringement case as a whole. Markman hearings are before a judge, and generally take place before trial, but may also be held after the trial begins before jury selection.

Means-Plus-Function: A means-plus-function claim is a claim including a technical feature expressed in functional terms. For example: "means for converting a digital electric signal into an analog electric signal." A variant known as a "step-plus-function" claim style may be used to describe the steps of a method invention.
Prosecution history (or prosecution history estoppel) - Prosecution history estoppel is a term used in patent law to indicate that a person who has filed a patent application, and later makes narrowing amendments to the application to accommodate the patent law, may be precluded from invoking the doctrine of equivalents to broaden the scope of their claims to cover subject matter addressed by the amendments. With regards to prosecution history estoppel, the U.S. Supreme Court stated that it preferred a presumptive bar approach to the doctrine of equivalents. Under this approach, when a claim is amended, "the inventor is deemed to concede that the patent does not extend as far as the original claim" and the patentee has the burden of showing that the amendment does not surrender the particular equivalent. To succeed, then, the patentee must establish that:
1. the equivalent was unforeseeable at the time the claim was drafted;
2. the amendment did not surrender the particular equivalent in question; or
3. there was some reason why the patentee could not have recited the equivalent in the claim.
Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co., 535 U. S. 722 (2002).

Method Claim: A method claim (sometimes referred to as a "process claim") is a process, or series of steps or acts, for performing a function or accomplishing a result. Under a method claim, a patent is only infringed when a person or entity practices all claimed steps. Neither a physical device, such as a product that can be used to practice the method, nor instructions for practicing the method are infringing until they are used by a single person to perform all the steps together.

Apparatus Claim: An apparatus claim defines the invention in terms of its components or in terms of what the invention is as opposed to what it does. An apparatus claim describes a device that usually has active components. An apparatus claim may also be defined with means-plus-function elements. An apparatus claim differs from a method claim, because an apparatus claim generally describes the components of the device or system in terms of physical or structural characteristics. An apparatus claim is infringed by the actual device or system.

Field of Endeavor: For an invention to be eligible for patent protection, it must fall within a permitted field of endeavor. Historically, patents could only be obtained on technical inventions (physical arrangements, devices and apparatuses) while non-tangible or non-concrete inventions (for example, those related to games, medical treatment, algorithms, computer software and methods of doing business) were not patentable. This is no longer the case, especially in the United States. U.S. patents can now be obtained for anything made by man, provided that it produces a useful, concrete and tangible result, rather than just an abstract idea. As a result, computer programs and methods of doing business are now patentable. Other countries, most notably the European countries that are members to the European Patent Convention, are rather hesitant to allow patents in these fields.
Defining the "field of the endeavor" is not always an easy task. Simply being part of the same industry does not render an invention part of the same field. In order to provide guidance to the inventing community, the Federal Circuit has held that in considering whether a reference is from the same field of endeavor, one may look to explanations of the invention's subject matter in the patent application, as well as "embodiments, function and structure of the claimed invention."

Relevant Field of Art (or Field of Invention): A very broad description of the area of technology/industry into which the patent falls. This statement may include a paraphrasing of the applicable U.S. patent classification definitions. The statement should be directed to the subject matter of the claimed invention.

Analogous Art: For an application to be considered obvious, it must be "analogous" to prior art (a previous invention). A prior art reference is analogous only if it addresses the entire problem solved by the patent at issue. Two separate tests define the scope of analogous citable prior art:
1) whether the art is from the same field of endeavor, regardless of the problem addressed; and

2) if the reference is not within the same field of endeavor, whether the reference is still reasonably pertinent to the particular problem with which the inventor is involved.
Under the second test, a reference may be "reasonably pertinent" if it "logically would have commended itself to an inventor's attention in considering his problem." In Re Klein. In other words, if it has the same purpose as the claimed invention and relates to the same problem, it would be considered analogous art

Anticipation: Anticipation occurs when a prior art reference or event discloses all the features of a claim and enables one of ordinary skill in the art to make and use the claimed invention. In this situation, the claim is then said to lack novelty. The Federal Circuit Court defined anticipation as "a patent defense that must be based on a single prior art reference. For a claim to be anticipated, each claim element must be disclosed, either expressly or inherently, in a single prior art reference, and the claimed arrangement or combination of those elements must also be disclosed, either expressly or inherently, in that same prior art reference." 35 USC §102. Anticipation requires only one step to prove if a single prior art reference is available. If a single document teaches all elements of a patent, in the same arrangement, the single prior art reference can invalidate the target patent.

PHOSITA - Person Having Ordinary Skill In The Art (at the time of the invention) (also referred to as the person of ordinary skill in the art, the skilled addressee, person skilled in the art or simply the skilled person): The PHOSITA is a legal fiction unique to patent law, similar in concept to the fictional "reasonable person" used in tort and negligence actions. A PHOSITA is a person considered to have the normal skills and knowledge in a particular technical field, without being a genius. He or she mainly serves as a reference for determining, or at least evaluating, whether an invention is or is not non-obvious. If it would have been obvious for this fictional person to come up with the invention while starting from the prior art, then the particular invention is considered not patentable.
Additionally, the person skilled in the art is also used as a reference to determine whether an invention is sufficiently disclosed in the description of the patent or patent application (sufficiency of disclosure is a fundamental requirement in most patent laws), or in order to determine whether two technical means are equivalents when evaluating infringement.

Equivalent: if an invention (or prior art) performs the function specified in a claim, is not excluded by any explicit definition provided in the specification for an equivalent, and is an equivalent of the means- plus-function limitation, the prior art is an equivalent. Factors that will support a conclusion that the prior art is an equivalent are:
(A) the prior art performs the identical function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the specification;
(B) a person of ordinary skill in the art would have recognized the interchangeability of the prior art element and the corresponding element disclosed in the specification at issue;
(C) there are insubstantial differences between the prior art element and the corresponding element disclosed in the specification;
(D) the prior art element is a structural equivalent of the corresponding element disclosed in the specification. In other words, the prior art element performs the function specified in the claim in substantially the same manner as the function is performed by the corresponding element described in the specification.
A showing of at least one of the above-noted factors by the USPTO Examiner should be sufficient to support a conclusion that the prior art element is an equivalent.

Equivalent Structure: Equivalent structure has a very specific meaning in a means-plus-function setting. In order to identify an equivalent structure, the claimed function of a means-plus-function element and, the structure described in the patent specification that performs the function must be determined. Once this threshold determination is complete, only then can an equivalent structure be identified in the art relative to that of the patent specification. The factors discussed above in the discussion of "equivalent" set forth the required analysis for determining equivalence.

Literal Infringement: Literal infringement occurs when every element in the patent claim (each limitation) is found in the allegedly infringing device or process. If a claimed element is missing, then literal infringement is avoided. A "literal" construction of such a limitation may encompass only the disclosed structure and its equivalents. In the case of a claim with a "means plus function" element, the element is met literally when (i) an accused device performs the same function recited in the element, and (ii) the accused device embodies the corresponding structure, material, or acts described by the specification or an equivalent thereof.

Non-literal Infringement (also known as the Doctrine of Equivalents): Non-literal infringement (also known as the Doctrine of Equivalents) exists where there are no substantial differences between the infringing product and at least one claim in the original patent. The non-literal infringement requires that there be an impact on every limitation of at least one claim in the given patent, although they may not be precise and literally the same. If even one element within the patent claim did not have an element of being infringed, it would not qualify for the Doctrine of Equivalents. In other words, even if there is no literal infringement, a claim may be infringed under the doctrine of equivalents if some other element of the accused device or

process performs substantially the same function, in substantially the same way, to achieve substantially the same result.

Abstraction-Filtration-Comparison Test (AFC): A method of identifying substantial similarity for the purposes of applying copyright law. In particular, the AFC test is used to determine whether non-literal elements of a computer program have been copied. The AFC test was developed by the United States Court of Appeals for the Second Circuit in 1992 in the case Computer Associates Int. Inc. v. Altai Inc. The AFC test is a three-step process for determining substantial similarity of the non-literal elements of a computer program. First, the court must identify the increasing levels of abstraction of the program. The purpose of the abstraction step is to identify which aspects of the program constitute its expression and which are the ideas. By what is commonly referred to as the idea/expression dichotomy, copyright law protects an author's expression, but not the idea behind that expression. In a computer program, the lowest level of abstraction, the concrete code of the program, is clearly expression, while the highest level of abstraction, the general function of the program, might be better classified as the idea behind the program. Second, at each level of abstraction, material that is not protectable by copyright is identified and filtered out from further examination. Third, the defendant's program is compared to the plaintiff's, looking only at the copyright-protected material as identified in the previous two steps. It is then determined whether the plaintiff's work was copied.

Inventor: The person or persons who contribute to the claims of a patentable invention. An inventor has "intellectual domination" over the inventive process, and is not merely one who assists in its reduction to practice. The courts explain that "[t]he threshold question" of inventorship is "who conceived the invention." "Joint inventors" or "co-inventors" exist when a patentable invention is the result of inventive work of more than one inventor. Joint inventors exist even where one inventor contributed a majority of the work. Absent a contract or license, the inventors are individuals who own the rights in an issued patent. Status as an inventor dramatically alters parties' ability to capitalize on the invention. In the United States, a patent application must be filed in the name of the inventor(s). Intentionally failing to name, or incorrectly identifying inventors, can result in a patent being held invalid.

Conception: "the complete performance of the mental part of the inventive act", and "the formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is thereafter to be applied in practice.." An idea is usually not "definite and permanent" or "complete" where changes result from experimentation. In this case, other individuals who contribute to the formation of the "definite and permanent" idea are co-inventors.

The naming of inventors is very important for the validity of the patent. Ordinarily, the courts presume the named inventors are the inventors so long as there is no disagreement.Inventorship is a much more precise legal term. It is, obviously, the quality or state of being an inventor, but what differentiates an inventor from an author? The American Heritage Dictionary defines an "inventor" as someone who has produced or contrived (something previously unknown) by the use of ingenuity or imagination. The United States Patent and Trademark Office (USPTO) defines an inventor as someone "who conceived the invention. Unless a person contributes to the conception of the invention, he is not an inventor...."

Author: An author is someone who contributes to the final product. To determine authorship on a paper or article, the finished product and all who contributed to the creation of the article or paper should be examined. Thus, authorship will include the researchers who conducted the subject study, of course. It will also include anyone who contributed algorithms, equations, or figures used during the research. The term author is not synonymous with inventor. An inventor is someone who participates in the inventive step. An author might imagine an outcome or a solution, while an inventor shows the steps and mechanisms necessary to get there.

Conception: Conception is "the complete performance of the mental part of the inventive act" and it is "the formation in the mind of the inventor of a definite and permanent idea of the complete and operative invention as it is thereafter to be applied in practice[.]" Townsend v. Smith, 36 F.2d 292, 295 (CCPA 1930). "[C]onception is established when the invention is made sufficiently clear to enable one skilled in the art to reduce it to practice without the exercise of extensive experimentation or the exercise of inventive skill." Hiatt v. Ziegler, 179 USPQ 757, 763 (Bd. Pat. Inter. 1973). Conception has also been defined as a disclosure of an invention which enables one skilled in the art to reduce the invention to a practical form without "exercise of the inventive faculty."

Reduction to Practice: The embodiment of the concept of an invention. The date of this embodiment is critical to the determination of priority between inventors in an infringement case. There are two ways that an invention may be reduced to practice:

(1) By producing a physical embodiment of the invention, which is referred to as actual reduction to practice. For example:

- for an item of manufacture, provide a prototype or model of the invention;
- for a method, perform the method and confirm the results;

- for a composition of matter, synthesize or otherwise produce the composition.

(2) By filing a patent application, which is referred to as constructive reduction to practice.

Actual Reduction to Practice: requires that the claimed invention work for its intended purpose. The filing of a patent application serves as conception and constructive reduction to practice of the subject matter described in the application. Thus the inventor need not provide evidence of either conception or actual reduction to practice when relying on the content of the patent application. A reduction to practice can be done by another on behalf of the inventor.

Preponderance of the Evidence: The standard of proof required to establish invalidity of patents. Preponderance of the evidence, also known as balance of probabilities is the standard required in most civil cases. The standard is met if the proposition is more likely to be true than not true. Effectively, the standard is satisfied if there is greater than 50 percent chance that the proposition is true.

Clear and Convincing Evidence: In patent infringement cases, juries must find that "clear and convincing" evidence exists in order to invalidate a patent. This is an unusually high standard for a civil case, but is a lesser requirement than proof beyond a reasonable doubt applicable in criminal cases. Clear and convincing evidence is a higher level of burden of persuasion than a preponderance of the evidence. Clear and convincing proof means that the evidence presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality. In this standard, a greater degree of believability must be met than the common standard of proof in civil actions governed by the preponderance of the Evidence standard.

Ordinary Meaning: The ordinary (or customary) meaning of a claim term is the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention (i.e., as of the effective filing date of the patent application). Unless an express intent to impart a novel meaning to the claim terms exists, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art.

Definiteness: Patent law states that in order for a claim to be valid it must: (1) set forth the subject matter the applicant regards as his inventions; and (2) particularly point out and distinctly define the metes and bounds of the subject matter that will be protected by the patent. The Supreme Court's standard for interpreting the definiteness requirements is met only when the claims clearly distinguish what is claimed from what went before in the art and circumscribe what is foreclosed from future enterprise. This standard ensures distinction between prior art and the claim itself.

Abstract: The abstract is part of the patent application. The purpose of the abstract is to enable the United States Patent and Trademark Office and the public general

Tags: Expert Witness Education · Working with RTG

WRTG Announces iPad Winner!

Posted by Toby Edwards on June 16, 2011 4:53 PM

Congratulations to WRTG expert witness Mr. Joseph Ori of the Paramount Capital Corporation, Larkspur, Ca! He is our randomly chosen iPad winner. Mr. Ori, who is an expert in commercial real estate joined WRTG in 2009. He has 28 years of experience, and specialize in the field of commercial real estate with specific knowledge in the areas of finance, investment and development, capital markets and advisory services.Thank you Mr. Ori, for being a part of our international network of expert witnesses.

Tags: Working with RTG

WRTG Launches the Advisory Council of Experts

Posted by Toby Edwards on May 27, 2011 4:06 PM

Westlaw Round Table Group is proud to announce the launch of the Advisory Council of Experts. The WRTG ACEs are a collaborative group of highly experienced experts from many

industries, working with us in evaluating our current practices, developing new ideas to better assist our experts, and helping us to improve our expert services program. You can meet them all over the next few months in our newest blog feature "Expert Insight".

Tags: Working with RTG

Has the Expert Witness Economy Turned Around?

Posted by Toby Edwards on January 27, 2011 7:05 PM

Many economists are claiming that the U.S. economy is recovering, if unevenly. Corporate profits are up. The Dow Jones index has been rising steadily for a year, (at this writing) and is at 2008 levels. Credit is becoming more available, albeit slowly. The NAHB notes 2010 housing starts are up 6% from 2009. And, according to a NABE report, more companies are hiring employees again. But has that trend extended to expert witnesses? Are law firms hiring more expert witnesses?

The short answer is yes, but like all such economic analysis, the complete answer is more complicated.

2010 was, by most accounts, a rather flat year for the legal industry overall. But a closer look at the expert witness industry shows that the use of experts in 2010 was up from 2009, by almost 6%. The interesting development, however, was not the steady increase in the number of experts hired but rather when they were hired within the lifetime of the case and how they were utilized.

We have found that clients are retaining experts earlier on in the case life cycle. We also see experts being consulted earlier and more frequently as part of the case strategy development process, once retained. This has several implications for experts, including longer relationships with clients and their cases and the concurrent longer time commitments needed of the expert. In addition, we are seeing periods of down time between early case consultations and demand for reports, depositions, and court appearances.

There might be two causes for these developments. First, attorneys (and their clients) are becoming much more cost conscious. By hiring an expert early on, attorneys are spreading out the expert cost over time, and they might also limit costs as well by more efficiently planning their strategy based on the expert's early assessments. This latter point is supported by the trend towards settlement of cases. Second, we have repeatedly heard from our attorney clients that they want to find the best experts earlier, in case they don't settle and need to go to trial.

Last year WRTG saw a significant increase in retained experts over 2009, and based on quarterly trending data we predict an even more significant increase in 2011, as our clients come to WRTG earlier and more often for their expert witness search and referral needs.

Updating your profile with WRTG is the best way to ensure we can connect you with the right clients and the right cases in 2011.

For other trends in the expert witness industry, check out more postings on our expert witness blog.

Tags: Experts in the Field · Working with RTG

Protecting Expert Witness Credibility

Posted by Clark Johnson on January 22, 2011 1:05 PM

Expert witness placement specialists Steven Babitsky and James J. Mangraviti argue in their book *How to Become a Dangerous Expert Witness* that protecting one's credibility and credentials is a key part of becoming a strong expert witness. "To become dangerous," they write, "experts will want to avoid giving opposing counsel any unnecessary ammunition that can be used against them."

Here are some ways they advise you to bullet proof yourself:

Always tell the truth and call cases as you see them.

An expert witness should pay very close attention to every word in her CV to avoid holes or misrepresentation.
Be aware that everything the expert does in and out of the courtroom can and will affect the expert's credibility.
Be very careful how and to whom the expert markets herself.
Recognize that fees, fee schedules, bills and fee agreements will be scrutinized.
Be a "professional expert" by maintaining a confident, competent, and professional image.

Clark

Tags: Working with RTG

Calvin Johnson: WRTG Expert and Winner of the WRTG logo dowload contest.

Posted by Toby Edwards on January 04, 2011 2:57 AM

Congratulations to WRTG expert Calvin Johnson of Electronic Commerce Strategies. He is our winner of the Apple iPad for downloading our WRTG membership logo onto his web page.

Mr Johnson joined WRTG in 2005, and since then has been often consulted, and retained by our clients. An expert in Banking and Technology, Mr. Johnson proudly displays his WRTG membership on his business website.

Thank you Mr Johnson, for continuing to work with WRTG as a valued and respected expert.

You can find Mr Johnson, and thousands of other highly respected and experienced experts for all of your expert witness needs, by calling us at 202 595 2000, or through our web page www.roundtablegroup.com

Tags: Working with RTG

"Meet Kenneth Bradley, organizer of the Andrews Asbestos Litigation Conference."

Posted by Toby Edwards on October 05, 2010 5:08 PM

I am one of several folks who gets to represent Westlaw Round Table Group at the Andrews Asbestos Litigation Conference in New Orleans October 28th and 29th, and I am very much looking forward to it. I interviewed Kenneth Bradley, Sr Attorney Editor and conference organizer, about the conference, and what to expect. Here is his interview.

What are the usual attendees like?

Most of our attendees are lawyers who are active in asbestos litigation and many of those are trial lawyers, but some represent clients and never go to trial, especially those who represent companies that usually settle the lawsuits filed against them. Insurance companies often send representatives, since as you probably know, they have a lot to say about how lawsuits against their clients will be managed. Some of the defendant companies themselves send in-house counsel.

How has the conference changed since its inception? Have there been trends?

The issues in asbestos litigation, as far as liability, have been pretty well settled for sometime know. The conference usually focuses on teaching skills for being successful in lawsuits, from both the plaintiffs' and defendants' perspectives. Experts who can share the latest studies in medicine and industrial hygiene are big draws.

What do you enjoy most about the conference?

My professional satisfaction from planning and attending the conference is the chance to interact with the people most active in the litigation that Westlaw Journal: Asbestos covers. It leads to better coverage for my subscribers because of the contacts I make who turn into sources for developments in litigation.

Is there something specific about the upcoming conference you want to highlight?

This conference includes a presentation on an issue that has been weighing heavily on defendants and insurers. That is the imminent change in Medicare secondary payer reporting. Congress has shifted the burden for reporting settlements and damages paid to Medicare beneficiaries to the payers and many companies say they are having a difficult time figuring out just how the government expects them to comply with the requirements. There are steep fines involved for non-compliance.

We will also have a presentation from an attorney who this year successfully secured a $200 million judgment for his client against CertainTeed. He said it may be the biggest award in an asbestos case in California and people will be watching to see how it plays out on appeal.

What role do experts play at the conference?

Very often experts are on the faculty, for example, the speaker who will address the Medicare reporting requirements. But we've also had experts in medicine, science, industrial hygiene and actuarial issues related to determining parameters for damages awards.We've even had presentations on how to find and work with expert witnesses.

People who attend the conference who have expertise in these areas will have the opportunity to network with trial lawyers who are always looking to recruit new experts who can assist them in successfully prosecuting or defending asbestos lawsuits.

The Andrews Asbestos Litigation Conference is October 28th and 29th this year. You can more full details here.

Tags: Expert Witness News & Links · Experts in the Field · Working with RTG

Westlaw Round Table Group Announces New Case Referral Program

Posted by Toby Edwards on September 27, 2010 4:01 PM

Here at WRTG our vast network of experts is our greatest asset, and our greatest pride. Increasingly, along with WRTG referring thousands of experts to clients every year, our experts have been referring clients with cases to us! That level of confidence and collaboration is key to our success as the premier expert witness referral firm. And now, we are able to thank our expert witness colleagues who refer cases to us with a $500.00 referral bonus.

Its simple. Any WRTG expert that refers a client with a case to us, and that client retains and uses a WRTG referred expert for that case, will receive a payment of 500.00. You can get more information by calling our expert services team at 202 595 1338 or by emailing them, anytime.

Thank you again for helping us become the premier expert witness referral firm!

Tags: Working with RTG

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For Expert Witnesses

Building Your Business

Entries Tagged as Building your Business

Upcoming Expert Witness Seminars and Conferences

Posted by Patricia Taylor on October 19, 2012 9:39 AM

Have you had a chance to attend an expert witness conference or seminar? There are many to choose from, covering a wide array of topics. . . from expert reports, to testifying, preparing for depositions, and communicating technical information to juries. Some of these seminars are geared towards a particular profession or industry such as physicians or forensic scientists. Others are more general, addressing topics of interest to all experts involved in any area of litigation.

Check your calendars and make room in your schedule to attend one of these informative seminars, and don't forget to include it on your CV.

1. Conference of Consulting Actuaries

October 24 - 25, 2012

This seminar gives you a chance to hear an experienced attorney and actuaries present important aspects of being an expert witness. Several experts talk about preparation, depositions, and testimony. The speakers at this seminar illustrate the perils and traps that even the most experienced actuarial practitioner may run into when being deposed or cross-examined in a legal proceeding. If you would like to know what you might expect from testifying on actuarial issues in a legal proceeding, or just want to see some of your peers pitting their wits against an experienced attorney, this thought-provoking and entertaining seminar is not to be missed.

http://www.ccactuaries.org/opportunities/am2012/seminar.cfm

2. How to Become an Effective Expert Witness for the Jury

December 7, 2012

In this engaging 90-minute live audio conference, we will focus on strategies for delivering technical information successfully to become an effective expert for the jury. We will begin by exploring the fundamental roles (investigator, educator, and evaluator) that an expert witness or technical consultant plays in advancing a case narrative to influence a trial outcome. Next, we will delineate a preparation process for communicating concepts that jurors will remember, strengthening consistency between direct and cross examination and avoiding common mistakes that diminish the value of an expert's knowledge. Finally, we will examine the criteria jurors use to evaluate an expert witness - expertise, credibility, objectivity and credentials.

http://www.lorman.com/audio-conference/390695

3. Establishing Expertise as an Ethical Expert Witness

January 14 - 16, 2013

The training is designed for attorneys, domestic violence service providers and professionals

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For Expert Witnesses RSS Feed

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who are interested in being considered as expert witnesses in court cases involving domestic violence. This comprehensive, highly interactive training provides an essential foundation for expert witnesses in domestic violence cases.

http://www.utexas.edu/ssw/cswr/institutes/idvsa/expert-witness-conf/

4. How to be an Effective Medical Expert Witness

February 9 - 10, 2013

Participating physicians will learn how to become markedly more effective and significantly more valuable expert witnesses. Instruction will utilize four methods: lecture, questions & answers, videos of experts actually testifying in real cases, and mock trial demonstrations using student volunteers.

http://store.seak.com/how-to-be-an-effective-medical-expert-witness-february-9-10-2013/

5. Expert Witness Testimony for the Forensic Scientist

December 11 - 13, 2012

This seminar will serve as an overview of forensic science and its application with the trial process. Specifically geared toward practitioners, the content will focus on the proper execution of expert witness testimony in the fields of Biology, Forensic Chemistry, Forensic Identification, and Crime Scene Analysis. Experts in each field will discuss proper testimony within each discipline. Additionally, the ethical use of forensic evidence will be discussed and attendees will learn how to avoid ethical pitfalls as expert witnesses as well as how to combat many of the misconceptions regarding scientific evidence.

http://www.loyno.edu/professional-studies/certificate-programs/continuing-education-courses

6. How to Write a Bulletproof Expert Witness Report

November 8 - 9, 2012

This limited attendance, interactive workshop teaches you how to draft superior reports. Each attendee will be asked to submit in advance of the course a sample report for critique and use in the class demonstrations. Each attendee will be provided with a detailed 200+ page course handbook not available elsewhere. The course manual contains practical and specific bullet-point advice along with numerous examples of both poor and effective report language.

http://store.seak.com/how-to-write-a-bulletproof-expert-witness-report-november-8-9-2012/

7. The Role of the Expert Witness in Product Liability Litigation

December 4 - 5, 2012 & June 3 - 4, 2013

This seminar will address the critical issues that every person who may be, has been, or is, an expert witness must understand to assist both the attorney and the product manufacturer, regardless of which side the expert serves.

http://www.sae.org/pdevent/92054

8. How to Start, Build and Run a Successful Expert Witness Practice

February 7 - 8, 2013

This course is appropriate for physicians with all levels of medical-legal experience including prospective and novice expert medical witnesses. Physician attendees will learn from an experienced faculty in a step-by-step fashion how to start, build, and run a successful and ethical expert witness practice.

http://store.seak.com/how-to-start-build-and-run-a-successful-expert-witness-practice-february-7-8-2013/

9. AICPA Expert Witness Skills Workshop

January 24 - 26, 2013

This forum offers attendees the opportunity to fully participate in the process as it relates to expert witness testimony. You will receive case materials/reports in advance which will be the foundation for the week's training/preparation. You will develop and enhance the skills necessary to be an effective expert witness through practice and critique by attorneys, judges and others involved with the process. Targets CPAs.

http://www.cpa2biz.com/AST/Main/CPA2BIZ_Primary/ConsultingServices/PRDOVR~PC-EXPERT/PC-EXPERT.jsp

10. Financial Forensics/Forensic Accounting Clinic

December 11 - 12, 2012

Your clients', the courts', and the public's expectations reach far beyond your core expertise whether it's auditing, tax, business advice, valuation, litigation, or any other service.The clinic exposes you to some of the 250--300+ commonly applied financial forensics tools. This two-day primer exposes attendees to the key financial forensics tools and techniques deployed in civil

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(2/4/2013 at 12:05 PM)

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and/or criminal matters—tools and techniques that are applicable to auditing, tax, valuation, litigation, fraud, and virtually every aspect of CPA services. As appropriate, in-class exercises are integrated to reinforce learning objectives.

http://www.financialforensicsacademy.com/Academy/Clinic.aspx

**Editor's Note: Course descriptions are taken directly from the event website.*

No Comments Tags: Building your Business · Expert Witness 101 · Expert Witness News & Links

Thomson Reuters Expert Witness Services Launches Expert Witness 101

Posted by Patricia Taylor on July 09, 2012 12:49 PM

Today, Thomson Reuters Expert Witness Services (TREWS) officially launches Expert Witness 101, the first in a series of expert witness professional development courses. This free, entry-level course introduces new experts to key concepts of being an expert witness, including: what to expect when working with an attorney, how to market yourself and your expert witness business, and how to work with a referral service.

"For TREWS, this is our first step in becoming more for our experts than simply a referral service." said Toby Edwards, Manager of Expert Services at Thomson Reuters Expert Witness Services. "In addition to on-line education, we will provide our experts with a wide range of other professional development services, such as individualized conference alerts, litigation vocabulary classes, publications in over 30 areas of expertise, web site design and management services, and much, much more."

Expert Witness 101 is free, and features guest presentations from Rosalie Hamilton of Expert Communications, and Marvin Tenenbaum of Berkeley Research Group.

"Our clients demand more than just area expertise." says Steve Anderson, Senior Director of TREWS. "When they use our service, Litigators expect expert witnesses to understand more of the litigation process, and what the expert's role in that process is. It's just too important to go into a litigation matter with an untrained expert witness."

TREWS will be offering additional expert witness professional development classes later in 2012. One will introduce experts to report writing, and another will cover how to prepare for a deposition and testimony.

No Comments Tags: Building your Business · Expert Witness 101 · Expert Witness Education · Expert Witness News & Links

New Expert Witness Magazine Debuts -- The Expert Witness Chronicle Is a Valuable Tool for Expert Witnesses

Posted by Patricia Taylor on April 30, 2012 12:26 PM

A new magazine recently debuted, entitled *The Expert Witness Chronicle*, written and edited by the staff at Expert Witness Guru. Upon reading the first edition, I would recommend it as a valuable and helpful resource for expert witnesses. The magazine focuses on recent news pertaining to expert witnesses and includes a monthly column called the "Daubert Round-Up," which highlights federal court decisions involving Daubert.

The inaugural edition of the magazine includes a cover piece on the Frontline documentary criticizing forensic science and forensic experts. It also includes an interesting piece regarding the troubling trend of "designation without retention" with excellent recommendations of how to protect yourself and your professional reputation from this practice. Additionally, *The Expert*

Witness Chronicle includes "Event Alerts," informing readers of upcoming conferences and seminars.

You can download the first copy of *The Expert Witness Chronicle* for free here. I think you'll find it an interesting and informative read.

4 Comments Tags: Building your Business · Expert Witness Education · Expert Witness News & Links

Social Media – To Post or Not to Post?

Posted by Patricia Taylor on April 11, 2012 11:06 AM

Do you use social media in your expert witness business? Should you use social media as part of your expert witness business? There are many things to consider when evaluating the use of social media in your professional (and personal) life, including: 1) What social media networks should you use; 2) What kind and how much information should you share; and 3) Do the benefits of social media outweigh the possible negatives? The answer to all of these questions is: It depends.

A short time ago, many lawyers and expert witnesses were leery of social media. Now it is not uncommon for law firms to hire permanent staff members whose sole job is to manage the firm's social media networks. More and more expert witnesses are using LinkedIn and Twitter to network and advertise their services. Some experts have their own blogs where they can discuss any topic of their choosing. Still, some remain cautious about using social media. However, if you manage your use of social media prudently, it can be used to your advantage. Should you decide to use social media, it is imperative that you keep the following guidelines in mind:

1) Everything you post is public. Do not assume anything you post on LinkedIn, Twitter, Facebook, your blog or any other social media network is private, regardless of your privacy settings. Do not post anything on social media that you consider private. Assume opposing counsel will read your profile or posts;

2) Be consistent. Again, assume opposing counsel will research your virtual identity. You should not post anything that could be used against you during cross-examination;

3) Avoid posting about or commenting on past or present cases. Not only can this information be twisted by opposing counsel, you may also violate confidentiality provisions with your client; and

4) Avoid discussing controversial or inflammatory subjects that are inherently divisive such as religion, race, sexual orientation, etc. Always strive to be cautious and prudent. Good judgment will result in future employment opportunities as you will be considered trustworthy and professional.

If you are considering using social media but you are not sure where to begin, take some time to check out other expert witness blogs, Twitter and LinkedIn profiles. Compare and contrast. Which ones seem more professional to you and why?

If you use social media responsibly, it can be a tremendous boost to your business. Not only is it a good networking tool, it can also prove to be a valuable educational tool as well. Like the law, social media is ever-evolving, and you must stay on top of the trends if you choose to delve into this realm. Just remember, what happens on Twitter. . . does NOT stay on Twitter.

1 Comment Tags: Building your Business · Expert Witness 101

Expert Witness University

Posted by Patricia Taylor on March 22, 2012 10:32 AM

These days, just about every profession offers continuing education courses, and the expert witness industry is no different. A number of companies, in the United States and abroad, offer expert witness training and education in a variety of formats for both the experienced and novice expert witness. Courses range from report writing to cross-examination techniques to how to build a successful expert witness practice. Expert witnesses can benefit greatly from

interactive workshops and direct feedback from attorneys that many of these trainings offer. Below is a brief description of the leading expert witness training companies in the United States, Canada and Europe.

SEAK, INC.

SEAK, Inc. is headquartered in Falmouth, Massachusetts and was founded in 1980 by an attorney. SEAK offers a number of conferences, courses and training for expert witnesses in every industry, including its Annual National Expert Witness Conference. Experts can choose to attend a conference or a seminar or request one-on-one or small group training. SEAK trains experts in a variety of industries, including medical experts, and offers customized on-site training for small groups according to a client's specific needs. SEAK also offers many on-line courses and provides practice development training with courses on how to start, build and run a successful expert witness practice. Further, SEAK will train experts on how to effectively market themselves and will review the expert's curriculum vitae, website and marketing materials. Additionally, SEAK educates experts regarding testimony, deposition preparation and cross-examination strategies through mock examinations and videos of actual testimony with feedback from attorneys. For experts who need assistance writing reports, SEAK offers courses on effective report writing and will review and critique past reports. SEAK has trained over 20,000 lawyers, nurses, and expert witnesses in the last 10 years.

BOND SOLON TRAINING, LTD.

Bond Solon Training, Ltd. is the UK's leading expert witness training company. Similar to Seak, Bond Solon offers seminars, in-house training, conferences and on-line training courses. Bond Solon will also train experts in courtroom procedure. In conjunction with Cardiff University Law School, Bond Solon offers three expert witness certificates in civil, criminal and family law. In order to become certified, five days of in-person training is required. Report writing, courtroom skills and cross-examination courses are all required to obtain expert witness certification. Bond Solon also offers "business skill" training, which focuses on marketing, managing business relationships and analyzing cost factors involved with running a consulting practice.

THE ADVOCATES' SOCIETY/NATIONAL EXPERT WITNESS ACADEMY

The Advocates' Society is comprised of judges and lawyers and provides legal advocacy training. The National Expert Witness Academy is part of The Advocates' Society and is Canada's only expert witness certificate program. This three-day program focuses on practical exercises such as mock cross examinations, trial preparation, and report writing. An annual conference is offered where certification can be obtained.

LA TOUCHE TRAINING

La Touche Training is the sister company to Bond Solon. La Touche is Ireland's leading legal training company, specializing in "training non-lawyers in legal matters." La Touche has merged with and is now part of Central Law Training, the largest provider of legal education in Europe. La Touche offers training which is tailored to the client's specific needs. Additionally, La Touche offers courses in fraud investigations, report writing, courtroom skills, cross-examination skills and "oral hearing" procedure. Training involves practical exercises with feedback from attorneys.

Almost every profession can benefit from continuing education and training. Expert witnesses and consulting firms are no exception. Consider taking advantage of these opportunities. Not only will you learn a lot, it is also a great resumè builder!

5 Comments Tags: Building your Business · Expert Witness 101 · Expert Witness Education · Expert Witness News & Links

ARE PAPER RÉSUMÉS BECOMING A THING OF THE PAST?

Posted by Patricia Taylor on March 22, 2012 10:17 AM

Are paper résumés becoming a thing of the past? More companies are requesting a "video résumé" or a demonstration of the applicant's "web presence," often available by linking to social media pages (Twitter, Facebook, Tumblr, etc.). Keeping pace with demand, Westlaw Round Table Group now offers expert witnesses the opportunity to submit a virtual presentation to prospective attorney clients. More attorneys have been asking to view videos of potential experts before making a hiring decision. Michelle Loux, Senior Expert Services Coordinator with Westlaw Round Table Group, says that "clients are asking us for a little something extra," and a virtual presentation is "another way to promote and market yourself in a world that has become more technology driven." A virtual presentation allows our experts a chance to introduce themselves to attorneys, highlighting their past experience while simultaneously providing an opportunity for attorneys to evaluate the expert's credentials and demeanor.

Westlaw Round Table Group has made creating your virtual presentation simple and straightforward. If you have a video recorder, computer webcam or a smart phone, you have everything you need to create your video. Simply upload a brief (1-2 minute) video, focusing on your experience as an expert witness, similar to what you would choose to highlight in a cover letter. Then email your video presentation to laura.metlenko@thomsonreuers.com. If you don't have the required hardware, we can also record your video for you via Skype.

To ensure a professional, quality video, please consider the following tips:

(1) Limit your light sources. Choose artificial light and close your window curtains or turn off your overhead light and open the curtains;
(2) A good distance from the camera is two feet. Include your upper body by distancing yourself from the camera;
(3) Wear clothes that put the focus on you. Choose solid colors in pale, pastel or medium shades and make sure your clothes fit appropriately;
(4) Remove Distractions. Avoid white, reds, bright colors, small patterns, glittery fabric, excessive jewelry and dangly earrings as these items are distracting and may appear unflattering on video;
(5) Avoid saying "um," "like," or "you know;"
(6) Smile at the beginning of the video; and
(7) Stay relaxed and emit confidence.

If you are looking for guidance on content, we are here to help you with that as well. In general, you should focus on job-related commentary and avoid personal information (i.e. children, marriage, etc). Start by introducing yourself and briefly discussing your area of expertise. Focus on your expert witness experience, including previous testimony experience, both in and out-of- court (including depositions), previous consulting experience, presentations, conferences attended, papers or books published, etc. Try to conclude with something memorable such as a recent development in your industry, any awards you have received, a recent conference presentation, a recent study or publication, etc. Expert Service Coordinators will work with you on editing your video, both for technical issues and content, to ensure your video presentation is both professional and informative.

Laura Metlenko, Expert Services Coordinator, stresses that preparation is key to making a successful video. "This is your opportunity to tell attorneys what you can do, what you have achieved, where you shine," says Metlenko. "Be positive. Substance is most important. Your goal is: when an attorney hears this, he says: 'I want you on my team!'"

3 Comments Tags: Building your Business · Expert Witness News & Links · Working with RTG

Become An Expert in Expert Discovery

Posted by Patricia Taylor on October 14, 2011 2:54 PM

WRTG has previously posted about the changes to Rule 26 of the Federal Rules of Civil Procedure, which went into effect on December 1, 2010. As a result of the amendments to Rule 26, full discovery of draft expert reports or broad disclosure of communications between attorneys and expert witnesses is no longer permitted. Instead, draft expert reports and communications between counsel and expert witnesses are now protected by the work-product doctrine. While protection afforded by the work-product doctrine is solid, it is not impenetrable. However, the work-product doctrine does not extend to communications pertaining to (1) compensation for the expert's study or testimony, (2) facts or data that the party's attorney provided to the expert and that the expert considered in forming the opinions to be expressed, and (3) assumptions that the party's attorney provided to the expert and that the expert relied on in forming the opinions to be expressed. The third exception alone is vague and could open the door to discovery of attorney-expert communications.

As an expert, you should be aware of the discovery rules which affect your role as an expert witness in pending litigation. An excellent article about the parameters of expert discovery in light of the amendments to Rule 26 can be found here.

The expert witness who understands his role and how to effectively navigate through discovery is a true asset to an attorney and everyone involved in the litigation process

Tags: Building your Business

And, finally, no matter what you do at the event, FOLLOW UP! Collect business cards from everyone you meet and make sure to send them a follow-up e-mail or copies of your marketing materials that you think would be of interest to them. Send an "I'm sorry I missed you e-mail" to those on the registrant list that you did not have an opportunity to meet. Ask each of them if you can add them to your newsletter list (you DO have a newsletter, don't you?). If you are in their city, call in advance and invite them to lunch. Just find a way to stay in touch. After you make the investment to attend an event, keep gathering return on your investment by maintaining the relationships that started there.

Tags: Building your Business

Three Unusual Ways for Experts to Market Themselves

Posted by Toby Edwards on May 23, 2011 4:02 PM

If you have looked at the plethora of expert witness referral websites on the Internet lately, it would seem that expert witnesses are "a dime a dozen" - just throw a dart at a website and pick one in the expertise you need. But as an expert, you know the uniqueness and nuances that distinguish one professional in your area of expertise from another.

In order to successfully market yourself as an expert witness, you must do two things: (1) distinguish yourself, in the eyes of your potential audiences, from others in your field, and (2) find unique ways to market your distinct qualifications beyond the typical websites, trade show booths, direct mail and other techniques used by 99% of other experts. Here are three ideas to boldly go beyond the directory, where few experts have gone before:

(1) Share Your Knowledge.

Why are you hired as an expert in the first place? Because you know something that the attorneys need to know. If an attorney is approaching you for an engagement, chances are that attorney is practicing in your area of expertise. So are many others. So what not teach those attorneys about what you do? At the beginning of a case, much valuable time (and the client's money) can be saved if the attorneys already have a good grasp of the issues to be litigated. Remember that most attorneys are experts in the law, NOT in your area of expertise. They just happen to represent clients who have interacted with your industry or profession.

If attorneys are going to hire you, they usually want some face time with you. So give it to them before they have a need to hire you. If you travel to large cities, schedule a luncheon for attorneys who represent clients in your area of expertise. Search the Internet or local phone directories to find attorneys who practice in those areas and send them an invitation via e-mail. While you are educating them about your expertise, they are evaluating you as a potential expert. Next time they need someone, they've already had face time with you which puts you ahead of the game. If you have written books or articles, hand them out. If you don't travel often, a video conference or webinar is a viable alternative. You can mail or e-mail your materials as a follow-up.

For even more value to the attorneys, contact the state or local bar association and see if you can get CLE credit for your presentation that the attorneys can use to satisfy their requirements.

(2) Positioning

This is one of those marketing buzz words that has been floating around for the last couple of decades. But it can be very useful for experts.

Positioning basically means: what do you do or know better than anyone? Isn't that basically what an expert is? Ask yourself this question and drill down as far as you can go. For example, if you market yourself as a vascular surgeon, you are one of many. If you market yourself as a vascular surgeon who specializes in the placement of endovascular stents, or the risk of infection in the placement of endovascular stents, you are "positioning" yourself as one of a few as opposed to one of hundreds. Librarians, paralegals and other research professionals will typically use the most specific search terms first to see if anyone satisfies the most precise criteria. Be that one.

(3) Word of Mouth

Most attorneys understand the value of this marketing concept because, prior to the advent of the Internet, that was the primary means of client development - through referrals and word of mouth. But how often will an attorney engage in conversation (i.e., traditional word of mouth) about a specific expert on a specific topic? Probably not often enough to keep your expert coffers full.

But what about more "passive" word of mouth concepts? Have you testified in a case where the judge who wrote the opinion complimented you on your knowledge or your demeanor? Make copies of that portion of the opinion and print them on nice paper to mail to attorneys. Or cut and paste it into an e-mail and send it and/or post it on your website. Before doing so, contact the attorney who engaged you in that case and ask if he or she will add a personal note. (You might do this as a courtesy anyway to ensure that the attorney does not object.) Remember that almost all court opinions are public record and if you have been complimented in one, what better way to establish your knowledge and credibility?

While the tried and true means of marketing are probably still necessary evils, separate yourself from the pack with these more innovative ideas.

Tags: Building your Business

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"Finding Just the Right Clients, Right Now."

Posted by Toby Edwards on May 27, 2011 5:12 PM

Do you find it difficult to find attorneys with new lawsuits that need your expertise? Do you ever wish you could view a quick state of the industry? Have you ever found yourself wishing you could quickly locate high revenue companies that are experiencing significant increased litigation in your specialty area? With Monitor Suite and Opportunity Finder, your ability to find, target and pitch new clients and cases has just become easier.

Monitor Suite's litigation content can provide you with comprehensive profiles of companies, law firms, and attorneys that will allow you to:

- Learn who's handling what, and where.
  - Find prospective law firms and companies involved in heavy litigation in your areas of expertise, such as securities, product liability, and employment.
  - Determine which firms and attorneys are hired most frequently by a company

- Know the trends.
  - Analyze litigation trends to make informed decisions whether to target a new market.
  - Turn cold calls into high level strategic business discussions

Monitor Suite Litigation Content provides unparalleled ability to quickly analyze litigation to identify trends and new opportunities for your Expert Witness practice. Utilizing state-of-the-art technology and natural language models, Monitor Suite is able to extract and store the parties involved in cases, the attorneys and law firms representing the parties, the courts and judges involved, and the type of case at issue. Case type, or practice area, is based on the West Key Search taxonomy to make it easy to understand and translate to your practice area. With litigation spanning back from 2000-present, you can quickly identify developing trends in differing types of litigation and stay on top of emerging markets and new clients.

One of the unique benefits and features of Monitor Suite is the utilization of the West Company Authority File (WCA) to match and identify party names. The WCA is a proprietary database that contains company profiles for over 2.5 million public and private companies. With the WCA, you no longer need to guess over how a company, like International Business Machines, might be named in a case. Utilizing the alternate names contained in WCA, litigation involving International Business Machines or IBM will be identified and brought to your attention. In addition, WCA also tracks and monitors Parent/Subsidiary information, so you can quickly find all of the litigation involving a company and/or any of its subsidiaries. You don't have to research a company's corporate holdings, Monitor Suite automatically does it for you.

Monitor Suite also offers unparalleled breadth of coverage of litigation. All federal dockets from 2000 to present are covered in Monitor Suite. In addition, with 32 states and over 500 counties, Monitor Suite has the broadest state court docket coverage in the market.

Opportunity Finder:

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Tags: Building your Business

Making (and Marketing) the Most of Your Conferences

Posted by Toby Edwards on May 26, 2011 1:27 PM

One of the best marketing techniques for potential expert witnesses is face time. After all, the attorneys who hire you want to know more than what your CV tells them about you. They want to know what you look like, how you dress, your demeanor, and any other hundreds of criteria unique to each person's tastes and idiosyncrasies.

So where do you get the best return on investment for face time? Going to a conference or professional association meeting provides hundreds (or thousands) of opportunities to meet prospective clients. Obviously, attending meetings and conferences takes you away from your ability to bill hourly, and may also entail expenses for travel. So, of the many possible professional gatherings available to you, which do you choose to maximize your time?

First, start with yourself. If you haven't yet prepared a "fifteen-second introduction," now is the time. Every professional should be able to answer the question "What do you do?" in less than 15 seconds, which is the average human's attention span.

To formulate your answer, ask yourselves the following questions:

(1) What is your core competency? For example, not a "banking" expert, but a "consultant to community banks who helps them design compensation plans for their board of directors"

(2) What distinguishes you from others with the same competency? For example, I didn't just get my MBA in banking and teach at the local college, but "I was CFO of ABC Bank and served as President of the state association of community bankers."

Now that you have verbalized your core competency, think about other strategic choices.

First, what is the best way to publicize your core competency at the conference you choose? Some options include:

(1) Contact the conference about setting up a booth at the event. When done well, this will at least get you lots of foot traffic with your name prominently displayed. Experience has shown me that having a 'lure' of some type really helps get people to walk up to your display. This could be as simple as a bowl of candy or pens w/ your name on them, or a drawing for some cool gizmo like an iPod, maybe small post-it type pads of paper, again with your logo or company name, or even dinner for two a a nearby eatery.

(2) SPEAK! Contact any conference that would benefit from your knowledge and offer your time as a speaker at their next meeting. This is captive audience face time, so make good use of it.

(3) Whatever you do at the meeting, request a list of registrants from the event organizer as far in advance of the meeting as possible. Send each registrant an e-mail inviting them to visit your exhibit or to attend your portion of the program. Make sure they know you BEFORE they get there.

Regardless of how you make yourself known at the meeting, there are always the dinners and cocktail parties to navigate. Here are a few pointers to maximize those opportunities:

(1) Arrive early. if you are one of the first to arrive, you have two advantages: (1) there are fewer people there when you walk in, so with proper navigation skills, you can introduce yourself to each one of them; and (2) you have the opportunity to present yourself as a "host" by greeting people as they arrive. At the same time, don't make it your mission to meet everyone. From the list of registrants, you should have identified several key persons you would to meet. Focus on strategies to get yourself in front of those attendees. Everything else is gravy.

(2) Make sure your name tag tells people WHO, WHAT and WHERE. WHO are you? WHAT do you do? WHERE are you from? Remember your core competency: John Smith, Community Banking Consultant, Anytown, USA

(3) Don't spend your time with people you already know unless they are in a position to introduce you to someone or refer you to an engagement. You are there to create NEW opportunities for yourself.