

A Budget-Savvy Approach to Litigation Support

A good expert witness is more than experienced and knowledgeable. He or she is also practical and realistic about cost issues. Clients and attorneys should discuss the budget upfront. If there's room in the budget to pay for an expert witness to support your conclusion, he or she should initially perform a preliminary analysis to help determine whether (or not) it's cost effective to pursue litigation. In some cases, it makes more sense to settle out of court. Cost also can affect the scope of the engagement and the type of reporting format.

Discussing these practicalities before commencing work is imperative to meeting everyone's needs and expectations. Conversely, failure to address cost issues can lead to misunderstandings and frustration.

Example: An attorney represents Company XYZ, which builds and sells 18-wheel truck trailers. Last year, XYZ received a number of deliveries of defective aluminum from Supplier ABC. As a result, XYZ has incurred damages from selling trailers made with these defective materials to its customers, and it sues ABC for damages.

XYZ's attorney engages a valuation expert to quantify economic damages. He provides a preliminary range of estimated economic damages, as well as an estimate of the cost to perform a more detailed, defensible conclusion and testify in court. The attorney considers the probable damage award -- and the likelihood of winning the case -- and decides that it's not cost effective to pursue litigation. Instead, she forges a settlement with ABC's attorney without having to disclose the expert's damages estimate.



Scrimping on Expert Costs Is a Losing Proposition

When it comes to hiring expert witnesses, cheaper is rarely better. Fortunately, the best experts know how to be flexible and cost conscious. They won't compromise on quality, which puts clients at risk of causing a *Daubert* challenge, but they know how to work within a budget. They also know when to decline or withdraw from a case if the client's expectations aren't within the cost requirements.

Reporting Options May Not Significantly Lower Costs

A common misconception is that you can limit expert witness fees simply by limiting the size or scope of the expert's written report. However, in most cases, the source of expert witness costs comes from gathering and analyzing the data to arrive at the expert's opinion, not from reporting his or her findings.

The length of a report -- or whether you even need one, depending on state rules if in a state court -- is more often a strategic decision rather than a cost decision. It's important for the expert to explain to the attorney and client the breakdown of expected work between the actual determination of the damages (or rebuttal) and the reporting of these damages.

Collaboration and Flexibility Are Effective Ways to Lower Costs

When clients have limited budgets, the attorney and expert can work together to brainstorm creative ways to minimize the costs without compromising the quality of the expert's analyses. For instance, sometimes internal accounting personnel can be given a template to fill out to collect financial data in-house, rather than rely on the outside expert to gather the data. Then the expert's role is to analyze the schedules prepared in-house. The use of internally prepared schedules is generally disclosed in the expert's schedule of assumptions and limiting conditions, however.

These days, cost is always a consideration. Always be honest and upfront about cost with your experts -- and expect the same in return. Gryphon Valuation Consultants has assisted many attorneys and their clients with a variety of litigation issues, including expert witness services. Please contact us at (702) 870-8258 for more information

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