

Get the Most Value From Your Damages Expert



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In disputes with an economic damages element, the involvement of your damages expert (e.g., economic, valuation, or accounting expert) will be among the more important components of your case, particularly those that go to trial. It is therefore imperative that attorneys engage experts very early in the process. Unfortunately, it is not uncommon for this important step to happen too late in the litigation process, creating potentially harmful effects to you and your client's success.

Too often, experts are not called until the last minute, and occasionally, they are involved just before expert disclosures are due. There may be a number of explanations, but one of the most frequently cited by attorneys is that the expectation—held either by counsel or their clients—that hiring experts later in the process minimizes costs. A similar derivation of this thinking is that hiring experts too soon may result in expensive fees that prove unnecessary if a case can be settled before expert disclosure is required.

The flaw in this thought process is that engaging your expert late in the process likely will cost you and your client more in the end, in both actual fees incurred and increased risk to the successful outcome of your case. On the flip side, bringing your expert on board early allows more effective control of fees and generally allows you to capitalize on the full spectrum of value that your expert can provide to the litigation process.

The role of a financial expert in damages cases

A damages expert is not an advocate for your client or your argument but instead is an advocate for their work and ultimate opinion. As such, it is critical that the expert takes the necessary time to review the evidence, perform research, and develop an independent, supportable and defensible opinion to be able to provide value

to your case. Accordingly, waiting too long to engage the damages expert could result in an expert who dramatically undermines the attorney's case, either by not being able to provide the opinions your case requires or by not having the time to properly develop their opinions and be prepared for examination.

Value of early collaboration

It is impossible to retain your damages expert too early, but it is all too possible to retain them too late. It isn't necessary that you designate your damages expert at the outset of a matter but, this does not suggest that you should not get your damages expert on board early (even if only as a consultant at the early stage). Doing so, and integrating the expert as part of your litigation team, provides valuable benefits throughout the litigation process from evaluating the claims to observing the testimony of the other side's fact and expert witnesses.

The following are just a few of the benefits provided by engaging your expert early:

- 1. Initial exposure analysis:** Very early in the process, your expert can, based on the facts and assumptions initially outlined, provide you with a rough analysis of what total damages may be under various alternative theories. This will enable you and your client to make informed decisions about how to, or whether to, move forward with litigation based on a risk-reward analysis. Your expert can also consult with you about relevant economic and financial matters and assist in creating a theory of damages that is logical and supportable.
- 2. Educating the attorney:** Your expert can help you understand complex financial and economic concepts that are relevant to the dispute at hand. One of the key benefits of having a subject-matter expert at your disposal is to interpret the technical jargon that will be used by fact witnesses and the opposing expert witness.
- 3. Assisting with discovery:** Your expert can help you develop discovery and documentation requirements associated with your case. Experts often assist in preparing requests for production, interrogatory requests and deposition questions for opposing experts and fact witnesses. Having an expert on board before discovery even begins will help you more effectively and efficiently navigate through the nuances, subtleties and shades of meaning that come with each industry-specific case. Your expert will be in the prime position to sift through the facts and help point out what issues are relevant to your case. Having your expert assist with developing discovery requests eliminates the possibility of finding out after discovery closes that you haven't asked for the information necessary to allow your expert to put together a buttoned up damages analysis.
- 4. Credible and defensible positions:** Time allows organization and familiarity with the underlying facts and documents of the case. The more organized your expert is, the better able they will be to attain command of all the facts in the case relevant to their opinions, and the less likely they will be surprised by documents that may

appear to undermine their opinions. Experts are much more effective with a judge or jury when they have had time to master the relevant material and can consider the facts from the client's perspective as well as potential arguments from the other side. It's not only necessary to think about affirmative arguments, but also to be able to anticipate the likely attacks that will be launched by the opposing side and to preemptively develop defenses. In the end, hiring your expert early allows for a more complete, cohesive and credible work product.

5. Cost effectiveness: Hiring an expert early allows their analysis and written report (if necessary) to be prepared at lower effective billing rates which translates into more manageable costs. Analyses and reports prepared in the normal course of business benefit from basic analysis and document review being performed by professionals with lower billing rates than your expert. The later an expert is engaged, the more personnel, including more high level (i.e., expensive) personnel, must be utilized to complete the analysis and report and prepare for testimony. Hiring your expert early does not mean that they must immediately begin spending significant amounts of time working on the case. But getting them in early allows the preliminary claims, basic facts and assumptions to marinate in their minds, providing your expert the ability to think through issues and develop ideas on how to approach the matter in a more cost effective manner.

Conclusion

As discussed, hiring experts early in the process of preparing your case allows you to capitalize on the valuable services your expert can provide at the outset, during discovery and throughout each subsequent stage.

Utilizing such services early can actually save you and your client time and money by making the discovery process more efficient and effective. Additionally, engaging your experts early allows them to do a better job in developing and documenting their opinions, ultimately adding strength to your case. While it may seem like a greater financial commitment, waiting too long actually often proves to be much more costly in terms of both actual dollars spent on your expert and more importantly, risk to the success of your case.

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