

EFFECTIVE DIRECT EXAMINATION OF EXPERTS

1. **Know why the expert is there** -- Experts are used to assist the trier of fact with questions of scientific, technical or other specialized knowledge. In reality jurors cannot serve as a scientific peer review group. Do not let your expert testify as if the jurors are in an advanced science class. Jurors will decide cases on the basis of which expert they believe. Where there is an expert on one side, there is usually an expert on the other side with a contrary opinion. Jurors do not solely pick winners on the basis of scientific virtuosity, they pick winners by evaluating credibility. Therefore, an effective examination of an expert involves establishing that expert's credibility.

2. **Effectively accredit the expert** -- Qualifications are important in establishing the credibility of an expert. Keep qualification time short. Qualification testimony should be directly connected to what is important in the case. Do not agree to stipulate to the expert's qualifications without an opportunity to let the jury hear the expert's prior achievements. Never exaggerate the expertise of an expert.

3. **Keep it short and simple** -- In a court room information is presented primarily by oral testimony. A little detail can go a long way. Avoid long narratives which are hard to follow and understand. If juries cannot understand testimony they will not believe in it. Use simple questions and seek simple answers. Complexity is confusing. To make testimony understandable use examples and analogies. Numbered lists are helpful in organizing testimony. Make sure the jury knows where you are calling before you go there. At the beginning of the expert's testimony there should be a brief explanation of why that

expert is testifying. The expert's conclusions should be provided before giving the basis for the expert's conclusions. The basis for the expert's conclusions should be used to provide credibility in support of the expert's conclusions. Too much detail is not effective. The emphasis should be on process to show the expert used sensible techniques in a knowledgeable manner. After an explanation of underlying work has been completed go back and repeat the conclusion which it supports.

4. **Be organized** -- Jurors appreciate an examination that proceeds smoothly and well-organized. It is easier to understand an organized presentation than one which is disorganized. If you do not appear organized, jurors will not have confidence in your case.

5. **Know the subject matter on which the expert will testify** -- To effectively present an expert the lawyer must possess a technical knowledge of the subject matter. This means reading selected technical journals and texts in the field, and working with your experts to establish this expertise.

6. **Use effective demonstrative aids** -- Make sure demonstrative exhibits can be understood. Make them simple and clear. Do not use too many since this will lead to confusion. Feature your key points. In a loss of profits claim a simple graphic can be effective. Large, easy to read, numbered lists can be helpful in making points.

7. **Use the expert as a teacher** -- Experts are explainers. Make sure your expert uses powerful language which is straightforward and unequivocal. Make sure your expert avoids language which qualifies or marginalizes his

opinions. Have your expert get out of the witness chair during direct examination and use a blackboard or other teaching aid. It is important for the jury to view the expert as a teacher. This establishes credibility.

8. **Use consensus for effective testimony** -- All fields of expertise involve different schools of thought. The more you can use consensus to establish your expert's views as mainstream, the more effective he will be. Acceptance and credibility are established by showing that your expert's opinions do not involve untested or radical theories. Make sure you are satisfied with your expert's methodology.

9. **Make sure your expert is prepared** -- Experts are busy people. Sometimes they come to court without adequate preparation. Do not let this happen. Do not hire an expert without knowing that expert's reputation for adequate preparation. Go through the expert's preparation with him to make sure it has been thorough.

10. **Use leading questions as necessary** -- Sometimes an expert can become over involved in details or stray from the testimony plan. Use leading questions to re-establish control. Leading questions can also be used to drive home key points.

11. **Satisfy the requirements for expert reports** -- Fed R. Civ. P 26 requires that you tender expert reports providing opinions and the basis for those opinions. Some federal courts have opted out of the rule and require expert reports by local rule. Most courts require that all matters that will be covered in expert testimony be provided in the expert report. This requires you to prepare for the expert's testimony at the time the report is being prepared. It is important to work

with the expert to prepare a report covering all matters to be brought out in direct examination. The expert is not the lawyer and cannot adequately determine this. The lawyer should meet with the expert and outline all points that should be included in the expert report.

12. **Know the law** -- The Federal Rules of Evidence should be have specific provisions concerning expert testimony. See, Fed R. Evid 702 -- 705. Many states have similar provisions. Make sure you know the legal standards for sufficiency of evidence in your jurisdiction. Many jurisdictions have different standards of proof in particular areas such as loss of profits awards. Make sure you are able to meet any challenges to your expert under *Daubert vs. Merrill Dow Pharmaceuticals Inc.*

13. **Don't screw up** -- You know what this means.