

The Inspector SpeaksSM

Do You Need a Construction Expert Witness? What do they do?

Because construction claims are so complicated and require particular skills, the use of an expert witness is almost mandatory.

Most states and the federal government allow an expert witness to testify if that testimony is something that is not within the common knowledge of the everyday person.

That is, if the work that is being evaluated is something that a reasonable person would not be able to evaluate, and an expert in that particular field could aid in that evaluation, then that expert's testimony is allowed.

In other words, expert testimony is allowable when the conclusions to be drawn by the arbitrator, judge or jury depend on facts that are not common knowledge to men or women whose experience or study enables them to speak with authority; or when the conclusion to be drawn for the facts as well as the knowledge of the facts themselves, depends on professional or scientific knowledge or skill not within the range of ordinary training or intelligence.

It is easy to see that workmanship in the construction area is not something that is normally within the realm of everyday knowledge. Certainly, cracks and shades of color are things that can be testified to by anyone. But the reason for cracks, or when cracks might arise, is not something that can be testified to by a layperson. In this regard, you might consider the use of an expert to testify.

Further, most courts and arbitrators believe that both parties will see things differently. Even if we assume that everyone is telling the truth, the truth is not always viewed the same by all parties. The use of an expert, one who is somewhat independent, could lend a great deal of weight to your particular viewpoint.

Finding & Qualifying the Expert

Finding an expert in the construction area is really not that hard, but finding a competent expert is.

If we are dealing with plumbing, the expert witness should be a person with plumbing expertise. Similarly, if we are dealing with another sun-trade, it would be wise to have an expert who has that particular expertise. You should also distinguish between remodeling and new construction. These requirements are self-explanatory. However, a more important aspect of the expert's ability would be his background and experience.

An expert witness should be someone who has substantial credits in the particular field. Has the expert written any articles, lectured or trained anyone in the field?

Another major item of importance is the credibility of the expert, as well as his ability to communicate. Many experts truly are good craftsmen, but do they have the ability to communicate their knowledge and expertise, as well as convince the arbitrator, judge or jury of their position?

You may wish to contact local trade associations to find people who have lectured, trained or even advocated certain positions before regulatory agencies and legislative bodies - people who have been on the "firing line" and know the art of convincing others with words.

You should be wary of using the same expert over and over again. You do not want an expert who is only a witness. Remember; the expert should be one with expertise in testifying.

Don't forget to find out if the expert has rendered opposing opinions previously.

Don't Delay

It is advisable to contact an expert immediately upon the possibility of a claim arising.

Although an expert usually is thought of as someone who testifies at a trial, and expert's unbiased opinion can greatly aid you and your attorney in negotiations. Further, you and your attorney will need to prepare for trial in the event that negotiations break down. In that case, the expert's aid and advice will be of great value.

Another important aspect of using an expert is determining and evaluating the other sides claims, including the other side's expert

Opinions

The use of an expert witness greatly aids you in the preparation and conduct of litigation or arbitration. You should engage the expert at the earliest moment that the likelihood of a claim arises. The expert should be one who not only has credentials of expertise in the particular field, but one who can communicate that expertise and his or her opinion with credibility.



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