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Storytelling and Stick Figures: Tips on How to Effectively Present Scientific Evidence in Mass Tort Litigation

Q: COULD YOU DESCRIBE THE PROCESS OF PREPARING EXPERT WITNESSES FOR MASS TORT LITIGATION?

DAVID L. FERRERA: All federal courts and most state courts require a written expert report, which informs the opposing counsel months in advance of trial information about your experts, including their names and current affiliations, their qualifications, and their opinions. Following disclosure of the written report, most courts allow a pre-trial deposition of the expert.

There is an enormous difference between disclosing information in an expert report and preparing your expert witness for a deposition versus preparing your expert’s direct exam for a jury trial. The first two should be much more technical because only the lawyers and perhaps a special master (or, on rare occasions, a judge) will be involved. Purposes of the expert report and deposition include fairly disclosing the opinions the expert intends to offer and determining if the expert witness is qualified in a particular area. But once it is clear your expert will testify at trial, a lawyer must reconsider how to present this expertise and complex opinions into terminology that a lay jury will understand.

Q: HOW CAN YOU EFFECTIVELY EXPLAIN COMPLEX SCIENTIFIC CONCEPTS TO A JURY?

DLF: A jury often doesn’t have expertise in very dense scientific topics and mass tort trials can last for weeks or months, so your themes need to be memorable and easily digestible. Expert witnesses are often well-credentialed academics who hold Ph.D.s and have authored multiple publications in their field, but sometimes forget they need to teach at a basic level to share this knowledge with juries.

Often, you will work on these cases for years, so it’s easy to lose sight of the fact that not everyone is as immersed in these concepts as you are. Try delivering your presentation to someone in your office, such as a staff member or a lawyer who doesn’t practice in your area, to see if they understand what you’re saying or if the scientific terminology needs to be explained further.

Q: WHAT TYPES OF EXHIBITS RESONATE WITH A JURY?

DLF: In this multimedia generation where multitasking is a given, PowerPoints and visuals play a huge role in today’s trials. Simple graphics are critical, and they must be honest, not objectionable, and compliant with the Rules of Evidence. Juries often respond well to timelines, checklists, and colorful cartoons, such as those featuring stick figures. Graphics should incorporate drawings and symbols while avoiding too many words – three to four words per slide may be all the jury can absorb.

Q: ARE THERE ANY SPECIAL SKILLS THAT WOULD HELP LAWYERS NAVIGATE COMPLEX MASS TORT LITIGATION?

DLF: Storytelling is becoming a lost art, partially because there are fewer trials so that fewer lawyers have the opportunity to practice the art. We live in a passive environment, where we’re always accepting information from our smartphones, our headphones, etc. – even at the dinner table! You have to reorient your behavior to consider how best to turn around and give information back. The key to effective storytelling is simplicity, as the human mind can only absorb so much. Do your best to engage more than one of the jury’s senses—for example, bring in the product and have the jury hold it. Oral argument and witness testimony can be supplemented by catchy slides in the background.

Q: COULD YOU EXPLAIN THE NATURAL TENSION BETWEEN SIMPLIFYING THE FACTS FOR A JURY WHILE ENSURING THAT ALL OF THE SCIENTIFIC EVIDENCE IS ON THE RECORD?

DLF: Defense lawyers have a natural tendency to shoehorn in every fact because they have been working on the case for years and don’t know which facts the jury will respond to the most. Also, the importance of protecting the appellate record can’t be overstated. Defense lawyers will strive to introduce all of their points into evidence in order to be prepared for future appeals. This approach is often at odds with the need to simplify and distill your message to the jury. The Holy Grail is finding a balance between protecting the appellate record and simplifying the science into what a lay jury can reasonably absorb.



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