

Optimizing Use Of Damages Experts In Multi-Defendant Lawsuits

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Multi-party litigation provides co-defendants with an opportunity to optimize the use of damages experts. Such environment, by its nature, necessarily encourages joint expert retention and fee sharing. Why? No defendant wants multiple repetitive expert opinions on damages – it is a waste of time and it will bore the jury. Additionally, no defendant wants to take the chance of there being divergent defense expert opinions on damages. Competing opinions could undermine the credibility of *all* defense opinions on a particular subject simply because they are not unified. Opinion considerations aside, the sheer cost of damages experts provides great incentive to share in their fees. But coordinating joint retention and fee sharing can be a challenge at times. Here are some suggestions to streamline such an arrangement.

Do Not Wait For Others To Obtain Authority

There is no telling when other defendants will obtain authority to retain a particular type of damages expert. Even if counsel for all defendants agree on a particular candidate to recommend for retention, do not condition your expert retention on other defendants obtaining authority to do so. Other parties may not be able to obtain authority for damages experts until the time of expert designations, which (a) is too late to provide the expert ample time to prepare for deposition, and (b) may foreclose your opportunity to conduct an independent medical examination of the plaintiff depending on expert and party availability prior to that expert's deposition.

Set A Payment Plan At The Outset

In a case involving only two defendants, it is easy to split and pay an expert's bills as a case proceeds. Where there are numerous defendants sharing an expert, however, things can be much more complicated. The timing of retention may vary, which effects the number of shares for fee splitting. Also, an expert is not going to want to keep track of payments from numerous parties. It may therefore be easiest for everyone to simply have one party pay the expert directly up until the time of expert designations. At that

juncture, the parties should know who ultimately has authority to retain a particular type of damages expert, and who does not. The party who has been paying an expert's invoices up until that point can then begin to seek reimbursement from the other defendants who are retaining that same expert. And, moving forward, each of those same defendants will know the percentage of an expert's bill they will be responsible for paying on future invoices. In any event, you should have your payment plan in place as soon as the expert is retained.

Prioritize Document Management

Making sure an expert has all necessary documents for document review is key to any defense. In a shared retention scenario it will also be important to avoid duplicating document productions to an expert. Let the other parties sharing in the retention of an expert know what you are sending the expert. Additionally, consider keeping a shared living spreadsheet of all documents co-defendants provide to a joint expert for the life of the case. It keeps everyone organized and it eliminates the need to create a separate expert file index.

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