

# COMMUNICATION... COMMUNICATION... COMMUNICATION!

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A litigator can hire a skilled economic damages' expert, but if that expert cannot concisely convey complex, financial topics in a succinct fashion to a judge or jury, then the litigator may win on liability for the client, but may not receive financial justice due to lack of clarity in the written report or testimony.

The determination of economic damages on a complex, commercial litigation matter (e.g., breach of contract or intellectual property infringement) involves accounting, economics, finance, and industry analysis. That is to say, the determination of economic damages involves numbers, the analysis of accounting transactions, financial issues, and economic theory. As such, it is important that the expert keep in mind that the audience, for whom he is communicating his opinion, will most likely not be well-versed in these topical areas.

Understanding the level of sophistication of the audience for whom testimony will ultimately be provided is important. Although the expert may be well-versed in his subject matter, he is ultimately a story teller of his opinion to the judge or jury. As such, his testimony needs to tell that story as simply as possible without compromising the level of rigor in ultimately concluding on his opinion. If a bench trial, the judge may, or may not be, well-versed in economic damages in a specific area. If a jury trial, jurors may resent being a juror or believe that the corporation is just trying to make more money by taking advantage of an individual or company. It is important that the witness understands how a juror views the company, and trial attorneys should spend time with the expert on how to discuss facts that will address juror concerns. Further, the expert will need to educate the jurors regarding the financial matters confronting them. Does the expert come off to the jury as an academic mouthpiece,

a "know-it-all", or as an individual who is just trying to assist the court in explaining the economic ramifications of the situation as succinct and simply as possible?

A well-written report is just as important as oral testimony. An expert's report must be clear, explanative, and grammatically correct. If not, opposing counsel will do their best to impeach the expert witness in trial testimony to raise doubt in the expert's opinion - whether or not the expert's opinion is solid and well-substantiated.

Litigators need to ensure that the expert they retain is not only well-versed in opinions of economic damages, but also likeable, as well as a good written and oral communicator. Anything less can compromise the litigator's efforts in receiving financial justice for his/her client.

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