

EXPERT WITNESSES: CONSTRUCTION CASES

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EXPERT WITNESSES: CONSTRUCTION CASES

WORKING WITH YOUR CONSTRUCTION EXPERT

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Dedication

THIS BOOK IS DEDICATED

To the authors' wives, Carolyn Westberg, Judi Warren, and Mary Fuchs, whose continued encouragement and support have contributed immeasurably to our writing of this book.

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Philip R. Croessmann, AIA, Esq.

Preface

As a litigator, it is unusual to have an opportunity to undertake a comprehensive study of a particular subject. Writing this book was a wonderful exploration of the role of the expert. Two underlying themes developed throughout the process. First, expert testimony has the potential for abuse and the courts are given great latitude to control the use of experts. Second, it is an area that is littered with pitfalls for the unwary attorney. This book attempts to serve as a practical guide to the practitioner by not only setting forth the law relating to the use of experts, but by highlighting those areas where counsel needs to pay particular attention in preparing for trial. The book is organized in a sequential order. It starts with the basic question of “do I need an expert” and proceeds through the process of working with the expert to present the expert’s testimony at trial. This order allows the practitioner to go directly to the chapter that corresponds with the phase of the trial with which he or she is dealing.

With respect to the issues discussed, the book does not take a generic approach to the rule of law. A complete survey of the law in every jurisdiction was beyond the scope of this book. Instead the authors attempted to discuss in detail the approach taken by a few select jurisdictions that represented opposing views. The hope was that by contrasting the rules adopted in various states, one can begin to discern the competing philosophical approaches taken by the court. In this way, a lawyer will be better equipped to argue a position in his or her own jurisdiction and to address trends that may be developing.

In addition, the authors tried to address the practical problems encountered in hiring and working with an expert. Experts are not lawyers and counsel must carefully control the hiring, use, and preparation of the expert. An attorney cannot expect the expert to prepare for trial alone. As can be seen, in almost every chapter, a lack of involvement by the lawyer will certainly jeopardize the admissibility of the expert’s testimony. To this end, the authors have outlined the issues that need to be addressed at each phase of the litigation and added practical guides and checklists. These guides were developed by both lawyers and experts to give a balanced view of what is expected on both sides.

Finally, the book tries to bridge the theoretical application of the law with the hands-on task of conducting a trial, by giving real life examples of testimony, report and pleadings. Often the admissibility of an expert’s testimony will turn on subtleties in the phrases and words used by the expert in his or her testimony. With these real life examples, a practitioner can actually see examples of how it should and should not be done.

This book provides an important tool in the construction litigator’s toolbox. The in-depth and practical advice is a must read for both beginning and seasoned practitioners.

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