

An Expert Witness

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[\(10\)](#) » [Gauge Control](#) » [Gearbox Design Ratings](#) » [An Expert Witness](#)

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Vol. 17 #2, July 1990

At some time in your career, you may be asked to be an expert witness in some pending legislation involving the plastics industry. If you have the chance, do it. You will learn a great deal about the U.S. justice system, and hopefully will help a client who is in need of your expertise for the success of his case.

Litigation in our industry usually involves patent infringement, theft of trade secrets, product liability or specific performance. Each of these categories has its interesting aspects.

Patent law is probably the most interesting. The expert is expected to report on the "obviousness" of an invention. Prior art and a knowledge of the requirements for patent ability will often be key parts of the expert's testimony. Unfortunately, many patent cases are heard by judges who have a weak technical background and little understanding of the patent law. The job of the expert is to reduce a complex art or science into "easy to understand" testimony.

In changing jobs, many employees are in a position to, and are often charged with revealing trade secrets. What is a trade secret? While the law may be specific in definition as to what constitutes a trade secret, it may also be vague in the determination of whether or not it constitutes an advantage and if there is public knowledge of the information or process.

Product liability is generally sad litigation. Most cases involve injury or death during some aspect of the plastic process. Are the rules of 'strict liability' to apply in the case? Will you, as the expert, be up to watching an injured party or bereaved family member testify on one side while you testify on the other?

Specific performance is a growing field for law suits. Did the machinery or plastic perform as guaranteed? If not, why not? What are the terms of a guarantee? These are some of the questions the expert is asked to help answer for the client.

The expert is expected to do a great deal of research for background information during the period of "discovery" in a case.

He or she may then be deposed, spending from a few hours to several days being continually asked hypothetical questions with serious consequences for the case if the answers given are not accurate and consistent with the answers to be given later in trial. "Legal tactics" play a big part in depositions.

While most cases never come to trial, the expert must be prepared and will be given a scripted direct examination. The opposing attorney, however, will try to discredit his or her credentials and testimony by a cutting cross examination. This is no place for the feint-hearted. The expert needs to be ready for trial, the most difficult aspect of any case.

Tough and time consuming? It certainly is. Rewarding? Definitely. Worth doing? Absolutely.

—Robert B. Gregory

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