

## It's Fun To Be an Expert!

by  
**William C. Cutlip**  
FSA, MAAA, FCA, CLU, ChFC, CPCU

Several years ago I began serving attorneys and their clients with financial evaluations and as an expert witness. Since then I have worked with more than 50 attorneys on over 100 cases. Each one has presented something new, with both attorneys and their cases introducing mind-stretching concepts. The opportunity to creatively apply my actuarial training and experience in new ways has been, well... fun.

I felt a little queasy when I first got into this. I mean, lawsuits, really! What I soon learned was that there usually are legitimate beefs and misunderstandings from both sides in disagreements. When people can't solve those problems with appropriate equity, then the lawyers and the courts step in. It also usually improves the way business is conducted in the future so that everyone can be treated fairly.

A sole practitioner generally fits well in this market. Potential conflicts of interest arise less often than in a large firm whose existing clients may become defendants in lawsuits. As a sole practitioner or member of a small firm you are more likely to have the opportunity to serve both plaintiffs and defendants. This balance best serves and preserves your reputation for independence in the eyes of the court.

If this field interests you, here are some of the things to consider.

1. Be comfortable with the case you're serving. You must always work a case from an independent standpoint. Bring your most critical eye to your work and look at all aspects. At the same time your attorney client will be seeking support from you. If you are uncomfortable with the case and the arguments being put forth by your client, refuse up front or bow out as early as new information dictates. You won't do your client or yourself any good if you don't believe that damage has occurred.
2. Do I have the stomach for this? Much of the work involves the financial evaluation of loss and advice for attorneys on the elements they should consider. Sometimes you will be called upon to give testimony, both in deposition and at trial. It is always a strongly adversarial situation. The attorneys on the other side have one clear goal. By the time they are finished with you, they want you to appear an idiot, a liar, or both. They'll say you have used questionable data and can have no idea what the future holds, so how can you put a dollar value to loss? Then, you may find friends who are serving as experts for the other side who have opinions diametrically opposed to yours but whose friendship and respect you want to retain.

In these situations you must set aside your emotions and realize that you ARE an expert and have brought your best analysis and judgment to bear. There will be

those who disagree, but focus on what you have considered, listen to the questions to see if you need to consider other things, and always answer honestly.

3. Always wear a white shirt. When I showed up for testimony on my first case, I found that a colleague in a different discipline, whom I had known for many years, was also an expert for my client. George had whiter hair and several years experience on me. He had been serving as an expert for some time as a post-corporate retirement vocation. I asked him what words of advice he would offer a neophyte. He smiled, looked me in the eye, and said, "Always wear a white shirt. That way they can't see you sweat." I now own several white shirts.
4. Tell the truth. Tell the truth. Tell the truth. This seems so obvious, but needs to be foremost in your mind. When you became an actuary, you brought the practice of truth-telling with you as a scientific model and personal set of ethics. You've always had an obligation to follow this as stated in our Code of Professional Conduct. You have a guide with an actuarial standard of practice, ASOP 17, which deals with how to conduct yourself as an expert witness.

Your attorney client is looking to you for your expertise. You may see flaws in the case or you may see that there's no case at all. Tell your client up front. It may cost you some work but it will save them and you in the long run.

5. Don't count on steady cash flow. This is an area of practice that is like the old Army maxim: Hurry up and wait! Attorneys may often (OK, usually) call at the 11<sup>th</sup> hour needing an expert and an initial report quickly. Then it could be several months before there's a new flurry of activity. Often, cases will go on for several years.

An expert's pay is never tied to a portion of the settlement awarded (by legal ethics and your own need to stay independent). But...when you get paid is tied to when you do the work and how quickly the attorney responds to your invoice. Some are good payers. Some take forever. Some rare ones think you should be paid only if they win. Be prepared for an uneven cash flow.

Nevertheless, this continues to be very interesting, challenging, and rewarding professional work. It means taking your actuarial skills and applying them in risk situations often unrelated to the insurance arena most of us have experienced. It's this application to new situations and the challenges they present which make the work, well...fun.

If you'd like to find out more about this avenue of practice or just swap stories, give me a call.