

Alert | Equine Industry Group



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Considerations for Selecting Expert Witnesses in Equine Litigation

Selection and Timing

Expert witnesses are commonplace in equine litigation. Typically, an expert will be needed to provide opinions and testimony on issues such as causation, standard of care, custom and usage in a particular horse industry or discipline, damages, and mitigation. Identifying and retaining the most qualified expert in the subject matter of the case, and who meets the client's litigation budget needs, may be critical. The expert should be retained sooner, rather than later, since the expert's input early on in a case will help guide the client's and counsel's litigation strategy.

There are many expert referral services available, and many experts in the equine industry promote their services online. Word of mouth referrals and recommendations from other attorneys, the clients, and other informal sources are also commonplace. To assess the qualifications of an expert, start by obtaining the expert's resume and investigating any previous cases for which the expert was retained. It may also be helpful to obtain reports the expert has authored in similar cases, and research whether the expert has ever been excluded from offering any opinions in previous litigations. If readily available, transcripts from hearings, trials, and depositions in which the expert has testified may be reviewed. Because choosing the right expert is key, counsel and client should consider interviewing several candidates before deciding. An expert with real life industry experience is preferred. An expert who is engaging, effective at story-telling, easy to understand, and conversational will generally have a leg up on establishing credibility with the trier of fact.

Some experts may “phone it in,” and rely on the cache of their reputations rather than hard work and digging into a case. Consider asking targeted questions while interviewing candidates to assess an expert’s propensity for such reliance. If there is any indication of lack of diligence trial counsel should not recommend such an expert to her client, since the expert’s lack of diligence will eventually reveal itself, and deep-six the client’s case either at deposition, or on cross examination at trial.

Qualifications for the Subject Matter

While state and federal rules of evidence have differences, most states have adopted the Federal Rules of Evidence, including the rules relating to expert witnesses. To this end, Rule 702 of the Federal Rules of Evidence broadly defines an “expert” witness as one whose “scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.” This definition recognizes that depending on the subject matter of the case, a person’s training, experience, and other “specialized” forms of knowledge may be just as important as formal education in determining whether the expert’s opinions will be admissible.

Reliability of the Opinions

Under Rule 702, expert testimony is admissible if it is based on sufficient facts or data; is the product of reliable principles and methods; and the expert has reliably applied those principles and methods to the facts of the case. Rule 26 of the Federal rules of Civil Procedure governs the content of expert reports, and many states have adopted Rule 26’s requirements. Under Rule 26 (a)(2)(B), the expert’s report must include, among other things: (i) a complete statement of all opinions the witness will express and the basis and reasons for them; and (ii) the facts or data considered by the witness in forming the opinions. The key to admissibility is the reliability of the expert’s opinion. Opinions that are conclusory, speculative, or based on unreliable methodology or insufficient facts or data are inadmissible, because they do not assist the trier of fact.

As with most forms of civil litigation, equine litigation can be very expensive, and the cost of expert witness reports, depositions, and trial testimony only adds to the client’s bill. Although an expert witness may be the “centerpiece” of the client’s case, trial counsel still holds the reins, and bears primary responsibility for executing an effective litigation strategy. Careful selection of the expert, diligence by the expert in investigating the case and preparing his opinions, and cooperative collaboration between counsel and expert in preparing the expert to testify at a deposition and at trial, may go a long way toward an effective case strategy.

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