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## The Crucial Role of Valuation Expert Witnesses in Commercial Litigation

*In the realm of legal disputes, an expert witness can play a significant role in the resolution and outcomes. They bring specialised know-how, information, expertise and experience to assist the court in making informed decisions. Their contributions are particularly vital in cases involving complex issues.*

### Roles of Valuation Expert Witnesses

This article highlights the multifaceted roles and responsibilities of valuation expert witnesses, essential to the realm of commercial litigation.

#### *Assisting Legal Professionals During the Discovery Phase*

One of the crucial roles of an expert witness is to assist legal professionals during the discovery phase. This phase includes collecting evidence from the opposing party, which serves as the foundation for expert reports. Expert witnesses assist lawyers in methodically organizing and summarizing documents that inundate complex commercial litigation cases. This includes reviewing requested information compiled by independent valuers and scrutinizing documents submitted by management to the independent valuer.

#### *Streamlining the Deposition Process*

Expert witnesses enhance the efficiency of depositions, involving questioning of financial and management personnel. They function as skilled interpreters, assisting legal professionals in comprehending complex accounting language. This synergy streamlines the discovery process, enabling lawyers to formulate precise requests for evidence.

#### *Establishing Proof of Business Facts*

Valuation expert witnesses play a critical role in establishing the truth through review of business records, industry data, and market sources, of which they meticulously collect, comprehend, authenticate, and organize factual information. This serves as the cornerstone for expert opinions, which hold great importance throughout litigation. For instance, they may skilfully ascertain projected Compounded Annual Growth Rates

(CAGR) based on a company's revenue data and industry growth rates.

### *Calculation of Damages in Commercial Litigation Cases*

Furthermore, valuation expert witnesses are often entrusted with the task of valuing businesses or calculating damages in commercial litigation cases. In this capacity, they provide invaluable guidance to lawyers in determining the appropriate type of damages to calculate and the methodology best suited for the case at hand. This responsibility is intrinsically linked to their role in establishing proof of business facts. Specifically, damages recovery encompasses two distinct categories - actual losses and expected profits - both of which necessitate meticulous evaluation of the evidence presented, with a keen focus on demonstrating causation.

### *Strategic Development of Litigation Cases*

Beyond these responsibilities, valuation expert witnesses also wield a significant influence in the strategic development of litigation cases. Through a meticulous analysis of positions necessitating robust evidence, these experts are adept at identifying vulnerabilities within opposing expert opinions. This analytical acumen empowers them to propose alternative approaches and assumptions, thereby fortifying arguments presented by legal professionals. Consequently, this process serves to create resilient cross-examination strategies, ultimately augmenting the overall approach to litigation.

### *Provision of Expert Opinion Testimony*

Central to the role of a valuation expert witness is the provision of expert opinion testimony. Leveraging their specialized knowledge, educational background, and comprehensive training, these experts offer professional opinions on complex business matters. These opinions, crafted with precision and confidence, serve as guiding beacons for decision-makers, thereby facilitating their comprehension of complex subject matter. These experts present their opinions in a clear and accessible manner, ensuring that complex terms are readily comprehensible within the court setting.

### *Critiquing Opposing Viewpoints and Defending Valuations*

In the realm of litigation and arbitration, valuation expert witnesses often find themselves tasked with critiquing opposing viewpoints while concurrently defending their own valuations. The key challenge for valuation expert witness is that the practice of business valuation has no single authoritative source for established standards and analytical methods, thereby necessitating these experts to strike a delicate balance between informed judgment and prudent estimation. Consequently, valuation expert witnesses may find themselves compelled to respectfully dissent from the perspectives of other credible expert witnesses representing opposing parties. This divergence in interpretations or valuation techniques is an inherent aspect of their role.

### *Preparation and Submission of Written Reports*

An additional fundamental aspect of the role of an expert witness lies in the meticulous preparation and submission of written reports. These reports serve as comprehensive documents outlining the expert's opinions and the underlying rationale that informs them. Subsequently, these reports undergo a rigorous process of examination-in-chief, cross-examination, and re-examination, facilitated by legal counsel.

### **Challenges and Effective Strategies - A Valuer's Perspective**

In valuation disputes, valuation expert witnesses draw upon their extensive expertise to assess the value of businesses and quantify damages arising from breaches and infringement of intellectual properties. However, within this complex area, they must remain vigilant and adjust to challenges that may arise. By adopting effective strategies, these experts can enhance their effectiveness in the court setting.

#### *Navigate inconsistent facts*

One prevalent challenge involves the need to navigate inconsistent facts. It is imperative to thoroughly consider all available data, even if it appears to contradict an expert's established theories or models. Failing to account for conflicting data can undermine the expert's credibility and potentially lead to erroneous conclusions. For instance, if a revenue summary includes unearned revenue, it becomes imperative for the expert to recalibrate calculations for accuracy.

Overlooking such adjustments may inadvertently result in the overestimation of damage amounts, and in extreme cases, lead to the expert's exclusion from the proceedings.

### *Crucial Collaboration Between Valuation Expert Witnesses and Legal Counsel*

The success of a litigation strategy hinges upon the close collaboration between valuation expert witnesses and legal counsel. These valuation experts must engage in a close and harmonious partnership with lawyers to ensure that their analyses and conclusions align seamlessly with the overarching legal strategy. While lawyers are responsible for shaping the strategic approach, selecting the most suitable expert witness, and offering comprehensive support, the valuation experts contribute their quantitative analysis and sharp critiques of opposing methodologies. An open line of communication between these experts and legal counsel fosters a cohesive approach and bolsters the credibility of the expert's analysis presented in the courtroom.

### *Adherence to Defined Scope and Ethical Imperatives*

Valuation expert witnesses should adhere to the scope defined in the engagement letter. Diverging from the agreed-upon scope can have detrimental consequences, eroding the expert's credibility and potentially jeopardizing the entire case. For instance, if a financial expert is retained as a valuer, it is incumbent upon them to refrain from providing an assurance or attest opinion on financial information intended specifically

for financial reporting purposes. Such ethical boundaries must be vigilantly upheld to ensure the expert's integrity and the integrity of the case.

### *Integrity, Truthfulness, and Professionalism*

Above all, the guiding principles that highlight the role of expert witnesses, including valuation experts, are integrity, truthfulness, and professionalism. These experts bear a solemn and overriding duty to the court, embodying the virtues of honesty, sincerity, and trustworthiness in their testimony. To effectively convey the truth, valuation experts must invest the necessary time to thoroughly comprehend and clarify questions before offering their responses. Precision and accuracy are paramount, necessitating a singular focus on the immediate question at hand, while avoiding assumptions or any tendency to replicate legal professionals. If an expert is confronted with a question to which they lack a definitive answer, the principled response is to openly acknowledge uncertainty by stating "I don't know." Such forthrightness accentuates the expert's unwavering commitment to honesty. Furthermore, it is necessary for valuation experts to exercise restraint and abstain from engaging in contentious debates with legal counsel. Prompt rectification of any errors is of paramount importance, ensuring the preservation of the testimony's accuracy and reliability.

### *A Collaborative Endeavor for Optimal Outcomes*

Valuation experts must embrace and internalize their role as integral members of a collaborative team, harmoniously working in tandem with legal professionals to leverage their financial expertise for the benefit of the client. While the expert witnesses contribute their analytical expertise and technical insights, the lawyers diligently craft the legal strategy, assume leadership of the case, and provide unwavering legal support. The synergy between these distinct roles amplifies the credibility and persuasiveness of the expert's analysis within the courtroom setting.

### **Conclusion**

The role of a valuation expert witness in litigation and arbitration is multifaceted and unique. From their active contributions during the discovery phase to providing expert testimony, valuation experts use specialized knowledge to help decision-makers understand complex issues. They have a solemn duty to the court, and their impartiality, qualifications, and communication skills form the basis of their expert opinions' validity. By proactively navigating pitfalls and following recommendations, valuation experts enhance credibility, collaborate with legal professionals, and play a pivotal role in favorable outcomes in valuation disputes. In essence, these experts illuminate the complex landscape of commercial litigation and dispute resolution with their knowledge and dedication to truth and professional standards.