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# EXPERT TESTIMONY: THE KEY TO WINNING COMPLEX LITIGATION

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MINI-ROUNDTABLE

# EXPERT TESTIMONY: THE KEY TO WINNING COMPLEX LITIGATION



## PANEL EXPERTS



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**Stefan Boedeker**, a partner at StoneTurn, has more than three decades of experience in providing economics and damages expertise in prominent litigation cases, specialising in statistical consulting. As a litigation and management consultant, he focuses on the application of economic, statistical and financial models to areas such as solutions to business issues, economic impact studies and complex litigation cases.



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**Kristofer Buchan**, a partner at StoneTurn, is an expert in applying empirical economic and statistical models to sophisticated issues raised in antitrust, class action, intellectual property and other complex business litigation matters. With more than 20 years of experience, he has served as an expert witness in disputes involving antitrust, intellectual property theft, false advertising, breach of contract and other disputes involving complex data.

### **CD: Could you explain the primary role of an expert witness in complex litigation?**

**Boedeker:** While providing testimony in an economic damages case, it is important to explain the link between the defendant's action and the plaintiff's injuries by establishing facts, causation and present credible damages models. By providing specialised knowledge to help clarify technical and complex issues for the judge and the jury, expert testimony can lend credibility to a party's arguments and play a crucial role in persuading the trier of fact.

**Buchan:** It is important to remember that the primary role of an expert witness goes beyond the presentation of specialised knowledge on damages or technical issues. It involves rigorously analysing data and underlying assumptions to deliver an objective, defensible opinion that withstands scrutiny. An expert's ability to present their analysis with clarity and objectivity can significantly influence the strategic direction of the case, including settlement discussions. By offering a balanced and well-reasoned perspective, experts help ensure that the legal arguments are grounded in rigorous, fact-based analysis, ultimately aiding in the fair and just resolution of the case.

### **CD: What factors should be considered when selecting an expert witness?**

**Boedeker:** The technical expertise of the expert is an important necessary requirement. In addition, a proven track record in the litigation setting is an additional asset. Communication skills and demeanour, such as composure and a calm presentation style, but also the ability to connect with the jury by avoiding technical jargon, are important soft skills. For the attorneys retaining an expert, it is also important to consider how the expert fits into their team, and ultimately cost considerations are often a factor as well.

**Buchan:** Critical when selecting an expert is identifying experts with desired qualifications and experience. Qualifications may include both academic and professional credentials. Equally important is the expert's prior experience testifying on the subject matter in court. It may be difficult to assess an expert's ability to testify through an interview process, so checking prior references can be a valuable tool.

### **CD: What steps should be taken to effectively prepare an expert witness for testimony?**

**Boedeker:** Preparation involves reviewing the case materials and the ability to explain the details but not lose focus on the bigger picture. It is important to understand key questions that may arise, which can be accomplished through multiple iterations of mock examinations. Depending on the experience level of the expert, a detailed familiarisation with the courtroom environment and the processes of direct and cross-examination may be necessary. Furthermore, experts must view themselves as an enthusiastic educator and teacher to the trier of fact and not an advocate to their client's case.

**Buchan:** Often, motions highlight key arguments opposing counsel and their experts intend to make at trial, so keeping the expert apprised of relevant motions can aid an expert's preparation as well as provide another potential source of strategic contribution via the expert's experience and knowledge. Running through mock cross-examinations can be useful, as can gathering insight from the expert related to their testimony preferences – do they prefer to use a whiteboard or Elmo? Some experts are more comfortable and can come across more favourable to a jury if they are standing at a whiteboard.

**CD: In your experience, how might the credibility of an expert witness affect a case?**

*“Alongside objectivity, transparency is essential for maintaining credibility and trust in expert testimony.”*

*Kristofer Buchan,  
StoneTurn*

**Boedeker:** An expert's credibility can significantly influence the jury's perception. If the jury trusts the expert, they are more likely to accept their testimony. An expert's qualification, prior experience and the ability to communicate effectively by helping the trier of fact understand complex information are the main factors affecting credibility. Besides technical expertise and subject matter knowledge, a factual, neutral and objective presentation style that avoids using hedging and evasive language are important aspects of how jurors' subjective assumptions about experts' credibility may be impacted.

**Buchan:** The likelihood that a judge or juror will accept an expert's testimony can often turn on whether the expert is perceived as credible. Credibility is established before and during testimony. Prior to testimony, the expert's qualifications, experience and quality of work product is a threshold to establishing credibility. During deposition and trial, the ability of the expert to keep calm under pressure, maintain professionalism and effectively convey their opinions in a clear and concise manner that is digestible by the trier of fact is critical to establishing credibility.

**CD: Could you outline some of the strategies experts can use to handle cross-examination effectively?**

**Boedeker:** The expert is part of a larger team, and being open for feedback and general coachability must be part of the preparation process. Experts should remain calm, stick to their area of expertise and avoid speculation. An expert must be prepared to clarify opinions and explain the basis for them, relying solely on evidence and sound reasoning without speculating to withstand challenges. Cross-examination literally starts at the deposition and experts must avoid changes in approach or opinions between deposition and trial. It is always a good

idea to memorise the key points from the deposition testimony.

**"An expert must be prepared to clarify opinions and explain the basis for them, relying solely on evidence and sound reasoning without speculating to withstand challenges."**

*Stefan Boedeker,  
StoneTurn*

**Buchan:** To handle cross-examination effectively, experts must remain focused, calm and prepared. They should stick to the facts, avoid speculation and ensure their opinions are rooted in sound methodology. Anticipating potential lines of questioning and practicing mock cross-examinations with counsel can help refine responses and build confidence. Experts should avoid over-explaining or deviating from the central issues, staying clear and concise. Acknowledging uncertainties when appropriate and maintaining composure is key to preserving credibility. Ultimately, effective cross-examination is about staying true to the evidence,

controlling the narrative, and demonstrating confidence in one's expertise and opinions.

### **CD: How can visual aids enhance expert testimony?**

**Boedeker:** Visual aids, such as charts, diagrams and models, can make complex information more accessible. They help juries grasp key concepts and can reinforce the expert's points, making the testimony more impactful. Besides demonstrating an expert's expertise and knowledge in a memorable way, a good visual aid will also help the judge or jurors to retain information and to recall facts more easily from memory.

**Buchan:** Visual aids are most effective when tailored to highlight specific points relevant to the case narrative. Strategically designed visuals can distil complex analyses into clear, relatable images, making it easier for jurors to connect abstract economic principles with the case's real-world context. Preparing visuals that evolve throughout the testimony and anticipate rebuttal questions can help demonstrate the expert's confidence and depth of knowledge while heading off expected areas of cross-examination.

### **CD: What ethical considerations should experts keep in mind during litigation?**

**Boedeker:** Experts must ensure their testimony is honest and based on sound principles by maintaining a high level of professionalism and competence. Evidence must be presented impartially and objectively with the main purpose of helping the trier of fact to make an informed decision. This means that opinions and conclusions should not be exaggerated or overstated. They should avoid conflicts of interest and remain impartial, focusing on providing objective analysis rather than advocating for one side. This can be accomplished by fully disclosing all relevant information provided to them, including case facts, context and any potential conflicts of interest.

**Buchan:** Alongside objectivity, transparency is essential for maintaining credibility and trust in expert testimony. Experts should disclose any assumptions, limitations or potential sources of bias in their analyses, providing a clear basis for their conclusions. Additionally, ethical responsibility includes a commitment to truth over advocacy; an expert should avoid aligning too closely with a party's position and instead focus on delivering reliable, fact-based opinions. Upholding these principles not only strengthens the expert's integrity but also contributes to a fair judicial process, where decisions are grounded in unbiased, well-supported analysis.

### **CD: What is the Daubert standard, and why is it important for expert testimony?**

**Boedeker:** The Daubert standard requires that expert testimony is both relevant and reliable. Courts evaluate the methodology used by the expert to ensure it is scientifically valid. Understanding this standard is crucial for both the selection and preparation of experts. The Federal Rule of Evidence 702 was amended on 1 December 2023 to clarify the standard for admitting expert testimony. The amendments were designed to address common errors in expert testimony, such as courts presuming that expert testimony is admissible. The new rule changes the burden of proof, whereby the proponent of expert testimony must demonstrate that it is more likely than not that the testimony meets the rule's admissibility requirements. Additionally, the expert's opinion must now be based on a reliable application of the expert's methodology and basis. Another change is that the court now has a gatekeeping function to ensure that only reliable expert opinions are presented to the jury.

**Buchan:** The Daubert standard is crucial for ensuring that expert testimony is based on sound science and is relevant to the case. Recent amendments to Rule 702 emphasise the court's role in scrutinising the reliability of methodologies and the fit between data and conclusions. An expert's

ability to demonstrate the scientific underpinnings of their methodology and opinions can be helpful in not only reinforcing the admissibility of the expert's opinions, but also adding credibility with the judge and jury.

### **CD: What trends are emerging in the use of expert testimony in litigation? Looking ahead, how do you see the role of expert testimony evolving in the next few years?**

**Boedeker:** I think that artificial intelligence (AI) and machine learning based, dashboard-like case management tools will be commonplace soon, to streamline the litigation process and how trial will be conducted. However, I do not think that testifying experts will provide opinions based on AI-generated insights because current AI processes lack transparency, and therefore cannot be replicated. Presenting expert testimony lacks credibility or even admissibility if it cannot be replicated, so we are unlikely to see AI used in this way.

**Buchan:** As litigation becomes increasingly complex, we see a rise in demand for experts who bring interdisciplinary insights that blend economics, data science and industry-specific knowledge to provide a holistic perspective. Additionally, there is a growing emphasis on experts with strong communication skills to make complex topics



accessible to diverse audiences. While AI tools may streamline case management, the expert's role in interpreting data and building narrative connections will remain crucial. Looking ahead, experts will need to not only master technical analysis but also engage effectively with judges and juries, as clarity and credibility will be paramount for persuasive testimony. **CD**