



### **Litigation Outlook: Making the Most of Cross-Examination**

Many business valuation experts spend a lot of time working on behalf of their clients in litigation. In cases of divorce, shareholder oppression or economic damages, a business valuator often serves as an expert witness in a deposition or trial, defending the valuation report as fair, impartial and accurate.

While all trial testimony is important, the cross examination of the valuation expert deserves special attention. Whether you're a lawyer involved in a case, or the actual plaintiff or defendant, it's important to know what to expect from your valuation expert in the cross-examination stage. Many trial veterans believe that testimony during cross-examination can make or break the case.

During cross-examination, the opposing attorney gets his or her turn to question the witness. The attorney's goal is basically to discredit the expert's testimony (see box). It's important that your expert answer questions in the proper manner, giving clear and direct responses. This attitude and delivery will go far in supporting your case.

#### **Difficult Questions**

A cross-examination is not supposed to be easy on the valuation expert. Some attorneys are very skilled at asking questions that put the expert on the defensive or make the expert appear to be biased. Difficult questions often assume facts that are not in evidence, or aren't even true. Frequently they include the opposing attorney's characterizations of the facts that may be unduly favorable to his or her clients.

Difficult questions fall into several categories: those that question the expert's training or experience, those that make the expert look weak or wrong, hypothetical questions, and questions that are out of the expert's area of expertise. Experienced experts know how to recognize difficult questions and handle them effectively.

### **Appropriate Answers**

In answering questions from the opposing attorney, your valuation expert should be coached to:

- *Answer only the question being asked.* The expert should not volunteer additional information.
- *Answer only questions that are clear.* Some questions are so complex they need to be rephrased or asked again.
- *Answer without guessing.* If the expert cannot remember something, he or she should say so. Experts should not answer speculative questions.
- *Finish answering each question.* If the opposing attorney tries to interrupt or stop the answer, the expert should ask to continue with his or her answer.

Because expert testimony requires a certain level of experience, we recommend that you rely on expert witnesses who are familiar with courtroom proceedings. Valuation experts who are familiar with the styles, skills and tactics of opposing attorneys can handle even the most blistering cross-examinations — and represent your case in the most favorable manner.

*The business valuation experts in our firm are experienced expert witnesses. If you would like to discuss upcoming litigation with them, please contact our office.*

### **What's the Point?**

During cross-examination, the opposing attorney will try to discredit the business valuator's expert testimony by attempting to establish that:

- The expert is unqualified.
- The expert didn't consider all the facts.
- The expert relied on erroneous facts.
- The expert's conclusions don't follow correct analysis of facts.
- The expert's testimony is inconsistent with prior testimony.
- The expert was biased or prejudiced and therefore shaded his or her perceptions or conclusions.

Rely on an experienced expert witness to handle the stress of cross-examination with ease, answering clearly and directly with a professional and courteous attitude.

*Source: Guide to Litigation Support Services, Practioners Publishing Company, 2003.*