

Some Trends

QR quickreadbuzz.com/2019/10/16/expert-witness-michael-pakter-some-trends/

National Association of Certified Valuators and Analysts

October 16,
2019



QUICKREAD

HEAR IT HERE...FIRST!™—NEWS FOR THE FINANCIAL CONSULTANT



Expert Witness Industry Revenues

IBISWorld, an economic and industry source used by valuation and damages professionals, issues an economic report on the expert witness industry. In this article, Michael Pakter, an expert, discusses industry revenue trends—which are mixed—and also how that may affect current and prospective valuation and damages experts.



Resources:

[Expert Witness Bootcamp](#)

[The Truth, The Whole Truth—Storytelling and Persuasion](#)

Introduction

IBISWorld^[1] defines the expert witness industry as the provision of witnesses to offer expertise and specialized knowledge within subject areas in court cases.^[2] IBISWorld defines an expert witness as a specialist consultant engaged by a law firm to provide expert opinion pertaining to a specific legal case and notes that these expert witnesses usually provide expert witness services as a supplement to their occupation as a university academic, consultant or industry specialist, earning a significant share of their income when a legal case goes to trial and they are required to testify and provide evidence.

Expert Witness Hours and Rates

According to the Expert Pages (a unit of the Advice Company) and its 2019 Expert Witness Fees and Practices Survey Top-Line Data Report,^[3] serving as an expert witness or consultant in litigation is not an everyday, full-time activity for most experts (nor is retaining an expert typically a regular activity of most lawyers) and therefore keeping abreast of the latest trends in expert witness fees and practices can be daunting.

The Expert Pages Survey conducted an online survey of professionals identified as expert witnesses or litigation consultants and received more than 700 responses from experts in numerous fields throughout North America from October 15, 2018 through February 7, 2019. Several established survey findings are:

- 19% of expert witnesses currently work full-time for a firm primarily involved in expert witness work; 35% currently work full-time for a firm not primarily involved in expert witness work, but spend some time on expert witness work; 20% of expert witnesses are semi-retired from their normal profession and spend some time on expert witness work; and 15% of expert witnesses are fully retired from their normal profession and spend some time on expert witness work.
- Most expert witnesses spend only a portion of their time performing expert witness/litigation consultant work.
- Nearly all expert witnesses (98%) are paid, at least in part, on an hourly basis for their expert work.
- Almost nine out of ten experts (87%) say their work involves some travel time away from their primary workplace, but the clear majority (61%) spend less than 10% of their time away from their workplace on an assignment.
- Almost seven out of ten respondents (69%) have been performing expert witness/litigation consulting work for more than ten years, while only five percent have less than three years' experience.
- 10 to 19 years was the median years of experience of an expert witness/litigation consultant, but more expert witnesses answered that they had more than 20 years of experience than any other range.

- Over half of the expert witness survey respondents (54%) take on less than ten assignments each year, while fewer than one in ten (eight percent) takes on fifty or more assignments annually.
- More than one in four (27%) expert witnesses spend 10% or less of their professional time doing expert witnesses/litigation consulting work, making them classically “occasional” experts, while approximately half as many expert witnesses (17%) spend almost all their time as full-time expert witnesses.
- Overall, more than half (57%) of the expert witnesses averaged between ten and forty-nine hours on each engagement. Notably, 10% spend more than 100 hours and two percent spend more than 250 hours on engagements.
- There is great variation in the fees charged based upon the expert’s field of expertise. One third (35%) of respondents reported a general rate of less than \$300 per hour. With another third (31%) reporting their general hourly rate between \$300 and \$400 per hour. An additional third (34%) charged in excess of \$400 per hour.

Of the group of expert witnesses charging more than \$400 per hour, 17% charged in the \$400–\$499 per hour range; nine percent charged in the \$500–\$599 per hour range; five percent charged in the \$600–\$699 per hour range; and three percent charged more than \$700 per hour. Utilizing an average of the ranges, the ExpertPages Survey estimated the average fee overall was \$367 per hour, which was up from \$341 per hour in 2017, an increase of \$26 (or 7.6%) per hour.

- More than four in ten experts (41%) earn more than \$10,000 on each expert engagement. Only one in three experts (32%) earns less than \$5,000 per typical assignment. A small percentage of experts (five percent overall), expect to earn over \$50,000 on a typical case.^[4]
- 31% of ExpertPages Survey respondents increased their general hourly-rate or per-case fee in the past year; 60% had not; and 10% had not yet but planned to do so.

Industry Growth

IBISWorld expects that over five years to 2019, industry revenues are expected to increase at an annualized rate of three percent (as a result of an expanding economy that has better enabled consumers, businesses, and governments to engage in costly litigation) and that this trend is expected to continue into 2019, with revenue projected to rise 3.3% (encouraging a wide range of experts to offer services to law firms), though current predictions of a possible recession by economists may affect this number. IBISWorld further expects revenue for the Expert Witness Consulting Services industry to increase at an annualized rate of 2.6% over five years to 2024.

However not all data is in uniform agreement about expert witness rates. The Expert Institute^[5] seemed to note a contrary trend—a decrease in hourly expert witness rates, speculating that this finding could have resulted from their larger sample size of data in

2017 more accurately reflecting the true levels of fees. The Expert Witness Fee Report published by the Expert Institute in 2018 noted that fees across the board had decreased, with the average national price for case reviews falling by four percent, deposition appearances by six percent, and courtroom testimony by six percent. That report found that the 2017 average national fee for initial review was \$356.15—a \$15.85 decrease from 2016. The 2017 average national fee for a deposition was \$447.93—a \$27.07 decrease from 2016. The 2017 average national fee for courtroom testimony was \$477.70—a \$29.30 decrease from 2016.

Over five years to 2019, IBISWorld expects the number of industry operators to increase to 3,392 companies and, since most industry players are self-employed sole operators, the number of employees is expected to grow to 4,584 individuals. Although most industry operators are owner-operators, the number of employees per establishment is projected to increase slightly over the next five years, as clients seek firms that offer full-service and value-added solutions.

IBISWorld reports that, while expert witness consultants will benefit from strengthened demand from law firms, higher corporate profits, a larger number of civil cases, and greater per capita disposable income and increased competition has constrained profit growth, a trend that is expected to continue.

Industry Divisions

In their reports on the industry, IBISWorld splits the expert witness industry into five distinct, major categories: economic experts; experts in energy mining and geology; medical and safety experts; agricultural, fisheries, and biological industries; and other uncategorized areas which feature a range of diverse and highly specific fields. In the future, operators are expected to hire more workers specialized in diverse areas of expert witness consulting; firms will offer more services to clients and compete more effectively in the industry; and expanded service offerings will likely enable industry operators to charge higher rates, supporting correspondingly higher margins.

While there are no major players in the industry, IBISWorld notes there are several consulting firms that specialize in providing expert witness consulting services.^[6] Further, full-service public accounting firms and management consultants provide a range of services to clients in addition to expert witness services, including: auditing, strategy consulting, human resources consulting, and information technology consulting.

Geographical Distribution

IBISWorld notes that the West is home to the highest concentration of industry establishments in the U.S. (an estimated 32.7% of total expert witnesses are in this region) and California's massive economy helps support the highest industry establishment

concentration in the U.S. (containing 27.6% of industry locations alone). The large concentration of high-growth technology and finance firms located in the San Francisco Bay Area produces a larger share of expert witness revenue, establishments, and employment than any other state.

Expert witnesses are also concentrated within the Mid-Atlantic region (12.1% of industry establishments) where the financial service sector has historically been centered in New York City (with the highest number of Fortune 500 companies). The Mid-Atlantic region is also home to Washington, D.C. where most federal agencies are based. Consulting services in these two cities target the industry's largest and highest value corporate and government clients.

Fees and Billing Procedures

According to SEAK's National Guide to Expert Witness Fees and Billing Procedures (covering medical and non-medical experts):[\[7\]](#)

- 74% of expert witnesses require an up-front retainer and the median initial retainer fee for an expert witness is \$2,000.
- The median hourly fee for file review/preparation for all non-medical expert witnesses is \$245.
- The median hourly fee for file review/preparation for all medical expert witnesses is \$350 (43% higher than for non-medical experts).
- The median testimony hourly fee for medical expert witnesses is \$500/hour.
- The median testimony hourly fee for non-medical expert witnesses is \$275/hour.
- On average, expert witnesses who testify mostly for defendants command higher fees than expert witnesses who testify mostly for plaintiffs.
- Expert witnesses who testify mostly for plaintiffs are significantly more likely to require an up-front retainer.
- Almost half (47%) of expert witnesses require a signed retention agreement prior to initiating work on a case.
- 53% of all expert witnesses have a cancellation policy whereby they retain all or a portion of a deposition or trial appearance fee for cancellations made within a certain specified time prior to the scheduled date.
- 33% of all expert witnesses charge a minimum number of hours for deposition testimony.
- 31% of all experts charge a minimum number of hours for trial testimony.

Summary

In summary, most reports indicate expert witness hourly rates will increase over the coming years, with expert witnesses in extremely specific technical fields and/or expert witnesses retained to work on the highest-profile cases earning higher than average fees. California,

New York and Washington D.C. provide the most opportunities for expert witnesses. However, while expert witnesses will benefit from strengthened demand from law firms, higher corporate profits, a larger number of civil cases and greater per capita disposable income, increasing competition has constrained and is expected to continue to constrain growth in revenues.

Michael D. Pakter has more than 40 years of experience in accounting and forensic accounting, business economics and investigations in numerous industries and diverse engagements, including more than 20 years of experience in economic damages and business valuations. He has submitted expert reports in several jurisdictions and testified in arbitrations, regulatory proceedings and litigated disputes. State, Federal and Bankruptcy Courts, as well as arbitral bodies, have recognized him as an expert in accounting, financial analysis, forensic accounting, economic damages, business valuation and business economics.

Mr. Pakter is a Certified Public Accountant, registered in the State of Illinois. The AICPA has recognized him as additionally Certified in Financial Forensics and Management Accounting. He earned the NACVA Certified Valuation Analyst designation having completed its business valuation specialty program and its Master Analyst in Financial Forensics designation having completed its business and intellectual property damages specialty program.

The Association of Insolvency and Restructuring Advisors has awarded him its Certified Insolvency and Restructuring Advisor and its Certification in Distressed Business Valuation. He is a Certified Fraud Examiner and a Chartered Accountant with undergraduate academic education in accounting, auditing, commerce and business economics.

Mr. Pakter can be contacted at (312) 229-1720 or by e-mail to mpakter@litcpa.com or www.litcpa.com.

[1] IBIS World Industry Report (OD4885): Expert Witness Consulting Services in the U.S. (July 2019); Dmitry Diment; IBISWorld International, Los Angeles, CA.

[2] This does not include in-house expert witnesses from firms that have a general counsel or legal team.

[3] "ExpertPages.com, 2019 Expert Witness Fees and Practices Survey Report". The eight-page Top Line Report of the Survey—including a demographic "Portrait" of a typical expert witness—is available for free download in PDF format at <https://connect.expertpages.com/2019-topline-report/> The full Survey Report (\$150) is available for purchase on Amazon.com.

[4] Detailed information for Fees—by Field of Expertise—contained in ExpertPages comprehensive 2019 Cross Tab Report released in May 2019.

[5] <https://www.theexpertinstitute.com/expert-witness-fee-report-facts-figures-trends-in-2017/>

[6] The IBISWorld Report provides additional information on two such companies—Charles River Associates (CRA) and FTI Consulting, Inc.

[7] SEAK, based on Cape Cod, Massachusetts, is a continuing education, publishing, marketing, and consulting company founded in 1980 and having trained well over 30,000 expert witnesses, physicians, lawyers, and nurses. According to its website, “SEAK has been proudly helping professionals succeed since 1980. SEAK is proud to have assisted tens of thousands of expert witnesses, physicians, and other professionals”.