

Retaining a Business Resumption Planning Expert Witness (Part 1 of 2)



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[Return to the article](#)

In the first article of a two-part series, Leo A. Wrobel and Sharon M. Wrobel list essential traits that qualify an expert witness for testifying in court cases. They begin by focusing on the primary qualification: thorough knowledge of the field. How can you assess whether a potential expert witness is sufficiently knowledgeable? The authors explain how knowledge can be both provable and demonstrable

Over the last several years, we've endeavored to find tips for the contingency planner that are just slightly off the beaten path. One of these topics is what to do if you're ever called to testify in a lawsuit as a contingency planning expert.

Considering the depressed state of the economy (which may serve to encourage such legal action) as well as the normal and ever-present prospect of "Rambo litigation," we believe that even low-level contingency planners should have at least an idea of what could happen if their organization were sued. Moreover, contingency planners should be aware of how to find and retain a contingency planning expert witness if one is needed in the event of a negligence suit against your organization

NOTE

Please understand that we're not attorneys and we're not dispensing legal advice. But we own or have owned companies that have been involved in litigation of many types. We've worked with dozens of lawyers and some of the most high-powered law firms in the U.S. We've both been called to testify in lawsuits, so we speak from personal experience. For example, Leo is often called as an expert witness for other people's companies in telecommunications company [disputes](#). Sharon once had to testify due to being Corporate Secretary and part-owner of another company, and still plays a major role in one of the companies we own. We mention all this only to establish the fact that we've been to this rodeo

Lawyers are important in any legal action, but expert witnesses also play a major role in the U.S. judicial system. Experts presented in the course of a legal proceeding can significantly enhance the prospects for plaintiffs (the people or organizations bringing a suit) or defendants (the people or organization defending against a suit), and expert testimony often radically changes the course of a case. Both plaintiffs and defendants make use of expert witness testimony. Engaging the right expert is no small matter

Most people think of retaining expert witnesses based on rather narrow criteria. The old adage about buying real estate says that the three most significant factors to consider are "location, location, and location." Such a narrow focus isn't appropriate when selecting, retaining, or acting as an expert witness. You can't automatically assume that the most important criteria are "knowledge, knowledge, and knowledge." Credentials are the first clue, but you need to consider much more when retaining an expert

Factors in Selecting an Expert Witness

One of the foremost factors in choosing an expert witness is his or her ability to digest and assimilate complex technical facts, draw a conclusion, and present it in an understandable manner to non-technical people (that is, a judge and/or a jury). A number of criteria best describe the ideal candidate

- Knowledge
- Communications skills
- Personality
- Trustworthiness

- Honesty
- Humble and earnest demeanor
- General credibility

Valuable traits such as openness, honesty, and a genuine desire to help a jury or judge understand a case go a long way; these should never be overlooked or underestimated. With the exception of knowledge, which can be checked and verified easily, the other traits are much more nebulous and difficult to measure. Later in this series, we'll impart a few tips for judging those capabilities. For the moment, we'll begin with knowledge, which is the first and simplest skill set to assess when evaluating an expert witness, or when presenting yourself as one.

Assessing Expert Knowledge

To assist a judge or jury in deciding a case, an expert must have extensive knowledge, training, or experience in the field in which he or she will testify. If the issue involves analyzing the actions of a licensed professional, for example, at the very least the testifying expert should be licensed in the same area. The expert's level of experience should match or exceed that of the professional whose conduct is at issue. In the business resumption planning field, for example, one item to look for is Certified Business Continuity Professional (CBCP) certification, available from the Disaster Recovery Institute.

It's also important to look at where and how the professional has excelled in his industry. How long has he been involved in the business? Has he published any relevant books or trade articles? Where has he practiced? What kind of employment record does he have? To which professional organizations does he belong? (For the business resumption planning field, look for organizations such as the Association of Contingency Planners.)

As an example of the level of expertise you need to seek, consider the following statement of qualifications that Leo presented in an actual case in which he served as an expert witness in a telecommunications dispute.

Introduction to Direct Testimony of Leo A. Wrobel, Jr.

Q: PLEASE STATE YOUR NAME FOR THE RECORD.

A: My name is Leo A. Wrobel, Jr.

Q: BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A: I am the President and CEO of TelLawCom Labs Inc.

Q: WHAT IS YOUR EDUCATIONAL BACKGROUND AND WORK EXPERIENCE?

A: I have over thirty years' experience in the telecommunication industry. I hold degrees in Telecommunications Systems Technology and Electronics Systems Technology from Los Angeles City College (1977, 1978) as well as a degree in Business and Public Policy from the University of Texas at Dallas (1983). My employment history began with nine years of special services experience for the U.S. Air Force and for AT&T Long Lines. After AT&T, I accepted a position with Dallas-based Lomas & Nettleton Information Services, then the largest mortgage banker in the world, as Manager Network Planning and Engineering. There I was responsible for the first microwave hop shot in Dallas to a financial organization, and was also the first in Dallas to run T1 telephone traffic over the public cable television system (1985, Warner Amex). At one time or another I managed all three telecom departments for Lomas, which included Data, Voice, and Network Engineering with staffs from 12-25. In 1986, I formed Premiere Network Services, Inc. to provide specialized telecommunications disaster recovery services to Fortune customers and Texas state agencies. I was a pioneer in carrier co-location, since Premiere was the first company in the United States to locate a computer disaster recovery company in a central office.

Over the years, I expanded my professional practice to include consulting and seminars on telecommunications. I am the author of twelve books, beginning in 1990 with *Disaster Recovery Planning for Telecommunications* (Artech House Books) and including other titles such as *Understanding Emerging Network Services, Pricing and Regulation* (Artech House Books, 1995), which I coauthored with Mr. Eddie Pope, former Chief of Staff to Chairman Robert Geisler of the Texas P.U.C. I also authored *The MIS and LAN Managers Guide to Advanced Telecommunications* (IEEE

Press, 1999). My most recent work is *Business Resumption Planning, Second Edition* (Taylor Publishing Inc., 2008). I have published over 600 trade articles for a list of telecommunications, cable and other publications too numerous to mention

I have conducted telecommunications seminars on Emerging Broadband, Telecommunication Policy, and other topics for over 30,000 attendees in the previous twenty years. I have spoken at such noteworthy forums as the ICA SuperCom conference, ACUTA, CCMI McGraw Hill, IAEM, ACI, and many others. I have appeared on television news programs as an expert on telecommunications policy and technology, including KLRU Austin's *Austin @ Issue* program. I have lectured on telecommunications and disaster recovery overseas as well, in such places as Tel Aviv, Israel and Santiago, Chile. In 1993, I conducted a special assignment with Texas Instruments, which resulted in the largest SONET/ATM network ever installed in Texas (Texas PUC Docket 7757). This assignment involved a three-way partnership with Texas Instruments, GTE, and Southwestern Bell Telephone Company (SWBT), with significant participation by the Public Utility Commission of Texas.

I'm a member of the Independent Telephone Pioneers of America and an IEEE member. In addition to my technical and professional achievements, I was elected as a City Councilman (City of Ovilla, Texas) from 1987-1995 and Mayor from 1995-1997. During these ten years as a public servant I approved and negotiated franchise agreements with all the major utilities including gas, cable, and electric; negotiated two new telephone exchanges for the City; and established the City's first full-time police force. I also computerized City Hall, oversaw the operations of the City's water services franchise, and was even responsible under the charter of this General Law City to act as municipal judge in the absence of the City's normal magistrate. I chose not to run again in 1997, having accomplished my goals and feeling that 10 years of public service was a good round number. Finally last year I expanded my Disaster Recovery Planning practice, and I also serve as CEO for a second firm, Dallas-based b4Ci Inc.

Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of my testimony is to demonstrate that XXX has engaged in at best improper conduct and at worse outright fraud with regard to its data gathering, tracking, and reporting practices. My testimony is designed to reinforce the complaint already filed and to prove that the Complainants could not have known about these issues even with the exercise of reasonable due care and attention.

Get the idea? By virtue of 30 years in the business, the expert witness in this case had accomplishments to showcase and was credible as far as knowledge was concerned

It's not sufficient for an expert merely to say that she has the proper training and experience. She must prove her expertise with hard evidence [and] by showing educational degrees, licenses, work history, membership in professional organizations, accomplishments, published articles in trade journals, and/or awards or recognition by others in and out of the field. *If the expert cannot back up her declared expertise, she may be barred by the judge from testifying.*

Summary

If only knowledge were the only criterion! But much more is required in order to be successful in court. In part 2 of this series, we'll discuss six more must-have traits for an expert witness in the area of business resumption or disaster recovery planning. We'll also talk about how to find an expert witness, how much expert witnesses typically charge for their services, and what to do if you're called to testify

Leo A. Wrobel has more than 30 years of experience with a host of firms engaged in banking, manufacturing, telecommunications services, and government. An active author and technical futurist, he has published 10 books and more than 400 trade articles on a wide variety of technical subjects. In 1986, Leo pioneered carrier collocation by placing the first computer disaster recovery center inside a telephone central office. Leo served 10 years as an elected mayor and city councilman (but says he is better now). A sought-after speaker, he has lectured throughout the United States and overseas and has appeared on several television news programs. Leo is presently CEO of Dallas-based TelLAWCom Labs Inc. and b4Ci, Inc. Contact Leo at 214-888-1300 or email leo@b4ci.com.

Sharon M. (Ford) Wrobel conducted extensive publishing and regulatory research for her former employer (a

*nationwide telephone company), a function she continues today as vice president of business development for b4Ci, Inc. Sharon was a major content contributor to Leo's book *Business Resumption Planning, Second Edition* (Auerback Publications, 2008), coauthored his book *Disaster Recovery for Communications and Critical Infrastructure* (Artech House Books, 2009), and has published dozens of trade articles under her own name. Sharon attended the University of Maryland and El Centro College in Dallas, where she trained as a registered nurse before joining Leo in his businesses. Sharon also served honorably as a public official, accepting appointments to the city's Planning and Zoning Commission and Historical Commission. She can be reached at sharon@b4ci.com.*
