Reflections of a Maritime Engineer Expert

Editorial Note. It is always interesting for Academy members to hear the experiences of others. In particular to see that much of our advice is to be found in this short article.

Introduction

Although I have been giving expert evidence for over 30 years, the only conclusion I draw is that it does not get easier. A reason for this must be that the expert gets older and counsel younger! Unless you are fortunate enough to possess a photographic memory recalling what is in the bundles when being cross-examined, fades with age. However, this is offset, or should be offset by experience.

"Try not to speculate or guess when answering a question"

This brief paper passes on some points worth remembering if an expert is to give evidence.

Preparation

Before even drafting his report, an expert should ask himself or herself – is this really my subject? Are the solicitor’s instructions clear and ones I am comfortable in addressing. If not, then first tell your instructing solicitor where you may be uncomfortable. If any doubt, stop now. Giving evidence on a subject on which you are uncomfortable is a grave error.

Once over the first hurdle, complying with and understanding your instructions, an expert needs to read – and read again – the Civil Procedure Rules Part 35 (CPR 35). The Rules set out in a clear manner what the duties of an expert are.

An expert’s report should follow the general lines:-
• Ensure that instructions from your solicitor are followed, making clear areas which your report does not address and say this in your report.

Giving Evidence

If you don’t understand the question, say so. I have always found it a bit of a nightmare when counsel starts a question along these lines – ‘Now I know this is not your case, but supposing for a moment it was not the case that...’. Such questions are convoluted and hypothetical. The best thing to do is approach the judge or arbitrator and say you do not understand the question.
Listen carefully to the question. In essence, there are five answers to a question. These are:-

- Yes
- Yes, but
- No
- No, but
- Don't know.

It is far better to be asked by counsel – 'Would you mind expanding on your answer', than go rambling on.

Many experts are uncomfortable because they do not understand the system. Take time out to attend an arbitration or court hearing particularly if you have not given evidence before.

Do not allow yourself to be hurried in answering a question.

If counsel interrupts your answer during cross examination then ask the judge or arbitrator if you can finish answering the question.

Try not to speculate or guess when answering a question. If you don't know or don't remember, say so. Giving evidence should not be a test of memory as much as of your knowledge. An expert should not be afraid to ask to refer to his notes or other documents to refresh their memory. Remember of course that if you refer to notes these will be discloseable.

Do not attempt to engage in a battle of wits or 'play games' with counsel, the court or arbitrator panel. Do not be argumentative. Try and co-operate with everyone. This will not be seen as a sign of weakness – to the contrary. A reluctant or recalcitrant witness is of little or no value, even to their own side.

When giving evidence, try and look at the judge or arbitrators – not the barrister who is asking the questions. It is also a good idea to try and speak slowly and watch and see if a judge or arbitrator is writing that he or they can keep up with your answer. If there is a transcript avoid gestures, nodding of head etc which cannot be recorded for future review.

If you become confused, say so – it will be obvious to everyone there anyway. Take your time; collect your thoughts; restart and correct any errors or confusion.

Do not refer to conversations you may have had with counsel or instructing solicitors. These conversations may be privileged. Of course, you may confirm you have discussed the case with counsel but not describe such discussions.

Never make frivolous remarks even relating to yourself.

Never allow yourself to become annoyed or irritated – keep cool!

Once you are engaged in a case be careful not to discuss the case with your instructing solicitor or counsel in any public area.

Finally, if you can remember a few of these points when actually giving evidence you have done well. It is always worth going through your own check list before giving evidence.

Experience of Other Countries

Experts based in this country may find that they are called to give evidence in another country. In this case it is of course essential to make yourself familiar with the duties of an expert in that country.

I have been involved with cases as an expert in various countries including USA, Greece, Sweden, Republic of Ireland, South Africa, Belgium and the Netherlands. While there is inevitably a stress factor giving evidence in any country, I can say that the most searching and demanding system is, in my opinion to be found in this country – be it High Court or arbitration. I think the standard of preparation for a case by solicitors is high and I am constantly impressed by the quality of barristers in this country.

"Do not play games with counsel"

In summary:-

- Follow instructions from your solicitors or a judge or arbitrator.
- Follow the requirements of an expert as set out in the CPR35.
- Keep your report concise and clear.
- Answer the question, even if you do not like it.
- Do not answer the question if you do not understand it.
- Do not be argumentative. Conceding a point is not a sign of weakness – to the contrary.
- Try and co-operate with everyone.

Served with various shipping companies from 1959 to 1973. Sailed as Chief Engineer and holds a 1st Class Combined Steam & Motor Certificate.

Joined Lloyd's Register of Shipping as an exclusive surveyor – abroad and in head office. After this, responsible for the technical management of two tanker fleets and two offshore supply vessels.

As a consultant represented various class societies and statutory authorities for 10 years. Also represented the Salvage Association.

Fifteen years experience in the 'offshore' industry.

Spent 30 years as an expert witness and 7 years as a full Member of the London Maritime Arbitrators Association and is a Member of the Baltic Exchange.