

So, You Want to Be a Quantum Expert Witness?

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Getting to Know James

1. What were your job experiences before you became a quantum expert witness?

I started work for a small company in the UK who did a lot of smaller projects, including high-end commercial fit-outs, mainly in and around London. I then made a jump to Hong Kong, once qualified, where I worked for Davis Langdon and Seah. I found that rather restrictive, I don't think I was really cut out for a company like that. I then moved on to Contract Administration work for Shimizu, in China. I found that I much preferred the contractual type roles and stuck with those kinds of roles until I 'fell' into Expert Witness work.

2. What was your first foray into expert witness work, and what made you decide to stay in this career?

My first real expert role was for a project in the US. I was just handed the role internally at EC Harris, I didn't really think about it and just got on with the work. It wasn't really until I had to travel to Washington in the US to give a deposition that it really struck me exactly what I'd let myself in for. But then, I found that I quite enjoyed the sparring with the lawyer and it wasn't as intimidating as I'd imagined.

3. What do you enjoy and dislike most about expert witness work, and why?

I enjoy the feeling that you are getting deep enough into the details that you are coming up with the “right” answer. It’s a little hard to describe, but it’s not often that you can dig so deep into the details that you really feel you know them in depth and can give an opinion from a position of knowledge. Expert reports allow you to do that.

What don’t I like? I don’t like the build up to giving evidence. It’s a stressful time, though so far (fingers crossed), it has never turned out to be as problematic as you build yourself up for!

Being an Expert Witness

4. What is the role of a quantum expert witness?

The quantum expert’s role is to provide the tribunal or court with independent valuations that allow them to value the claims depending on the way that they decide on liability. Generally, the expert should give valuations based on both parties’ positions, in order to help the tribunal.

5. What do clients look for in a quantum expert witness?

I think clients look for someone that either they, or the lawyers, have faith in, and that they think the tribunal will also have faith in. This is why it is important to build up relationships with lawyers in the market, as their recommendations are often very important to the clients.

6. At which stage of the dispute do you think an expert’s involvement should commence, in order to reap the maximum benefits of having an expert on board, and why?

In short, as early as possible. If the pleadings have all been done and submitted and then the experts are called in, the opportunity for the expert to have input into the pleaded case has been lost and the expert is then largely stuck with the basis that the client has adopted. The expert can change the method of assessment to some extent, but they cannot fundamentally alter the approach of the claims. Being involved earlier can allow the client to reassess their claim methodology.

7. What do you consider to be the common pitfalls/mistakes in giving expert evidence?

Some of the common pitfalls are:

(a) Giving opinion on liability. It can be very easy, based on pleadings to say, there is no liability therefore I am not valuing it. This helps nobody, not even your own client, because if the tribunal decides there is liability, they only have the evidence of the opposing expert on which to base their assessment.

(b) Taking information on face value can be a pitfall as well. If you base your analysis on information that you haven’t tested yourself, you can find that by the time you give evidence that information could have been discredited, meaning your assessment is no longer valid.

(c) Supporting a case that you really don’t believe in. It’s easy enough to write things in your report that you don’t necessarily really agree with, but you will be found out very soon when giving evidence if the case you are supporting is unsustainable.

This list could go on and on, it is very easy to shoot yourself in the foot, but I will leave this here.

8. What makes a good quantum expert report and how do you effectively produce one?

There are a few things that I think go into making a good report. First off, we deal with the pleaded case, with facts, with assumptions, and with opinions. I think it is very important to keep these all separately identified. I do this by putting them into different sections within my report. It’s really important not to mix facts, assumptions and opinions.

Cross referencing is also very important. I have just finished a commission where the other expert only directly linked about ten pieces of information on which he’d relied. We literally spent about a week trying to work out what information he has relied on, how he had used it, and what he was trying to say with it. I certainly think that this made his report less convincing to the arbitrator, as it was so difficult to follow.

Make sure that figures can be easily followed. One of my rules in drafting is that figures should always come directly from another, referenced, source. You should never do calculation “off sheet”, for example, taking figures from two separate sources and just putting the sum of the two figures into the report. The expert, when in the witness

box, may find that hard to follow and explain under the pressure of cross examination.

9. What makes a good quantum expert testimony and how do you effectively prepare for a hearing?

I think the simple answer is preparation. Knowing your own report as well as the other expert's report is very important. Opposing counsel will often take you to parts of your report and try to take them out of context or the like and ask you very specific questions. If you know your report well, you can possibly take them to the part that puts context around the issue.

I had an example previously where I had taken the average of some of the claims due to the small discrepancies between the parties. The opposing expert said that potentially, that could have made a difference of US\$ X hundred thousand if in all instances the claimant (my client) upped their claim to 5% more than the respondent's assessment. Only a page later in his report, he acknowledged that it wasn't the case and that in fact some of the claims were higher and some were lower. But because I knew that was there, I just took their counsel to that paragraph and said "Yes, but that's not the case here, is it?". It cut that line of questioning off completely.

10. Projects are becoming more complex and multi-disciplinary. What challenges do you face when working on such projects? How do you manage/overcome these challenges?

On large, complex, projects, keeping the right level of detail across all sections of the report is a challenge, as is ensuring that you are consistent in the approach taken to all assessments. More so because you will likely have multiple people working on the different sections of the report. It is therefore very important to have regular update sessions with the key team members to make sure that everyone is following the same approach. It is also important to set a framework for the drafting of the report to ensure consistency.

11. Construction disputes are seeing increasingly vast amounts of data in recent years. Has this changed the way you approach expert witness work? How do you effectively manage large amounts of data?

It seems to me that firstly there is an increase in the amount of data being provided, but it also seems to me that many lawyers are intentionally making it difficult for the other side to review that data, but that unintentionally

leads to their own experts having more trouble dealing with and managing the data.

I have definitely increased the use of databases and converting PDF documents into Excel to allow uploading it into a database. This does lead to a slight issue sometimes that it is difficult to effectively deal with that data during the cross examination, as you usually don't have the native files available for everyone to work with during the hearing.

It has become increasingly important to organise your own files and provide detailed footnotes and the like to allow referencing from the documents on which you are relying to the bundles of disclosed documents.

The Future of Expert Witnesses

12. What do you think will be the greatest challenges facing quantum experts in the next ten years?

I think, if the construction industry can embrace technology (though there is no guarantee that this will happen) then the expert's role could be greatly simplified if much of the 'data-crunching' can be automated. I recently spoke on a webinar, and one of the issues that was raised by an eminent international arbitrator was the level of fees of the experts. So much reliance is put on the experts and they have to deal with so much data, that fees can easily run into millions of dollars. I think there will be a push in the coming years to reign in those costs.

13. In a world of advanced technology (big data, artificial intelligence, automation, 3D/4D/5D BIM etc.), do you think the role and/or work of the quantum expert witness will evolve in the next ten years? In what ways and why?

As I mentioned above, I think that automation within the industry and greater use of software will have an impact on the way that data is managed and the amount of time spent doing mundane data analysis will be drastically cut. However, I don't think that the underlying role of the expert (especially in quantum terms) will change fundamentally, in respect of giving a valuation based on their experience and industry knowledge.

14. What skills or traits do you recommend aspiring expert witnesses develop in order to stay relevant for the next ten years?

I think the skills and traits will fundamentally remain the same. You will need to be an experienced industry expert

– you need a broad range of experience, you need to have integrity, you need to be able to remain independent, and you need to make sure that you are not afraid to roll your sleeves up and get into the detail of the data.

Communication is also a key ingredient, if you can't write a good report, you will always be playing catch up with those who can, so as an aspiring expert, ask the expert you're supporting to allow you to take a leading role and soak up the massively important experience that they can impart on you.

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