

The Damages Case: Building Expert Proof

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SCBA TRIAL ADVOCACY SEMINAR

"There are three kinds of liars: liars, damn liars, and expert witnesses."

Mark Twain.

"For every plaintiff expert, there is an equal and opposite defense expert."

First Law of Litigation Dynamics

"I am an expert because I say I am."

Don Henley of The Eagles

Using Experts to Prove Damages at Trial



Treating / Medical Experts

Diagnose injuries, explain causation, and describe treatment, prognosis, and limitations.



Life Care Planner

Develops a comprehensive plan for future medical care, therapies, equipment, assistance, and related costs across the plaintiff's lifetime.



Vocational Rehabilitation Expert

Evaluates the plaintiff's work capacity, job options, and the impact of injuries on the ability to work and earn income.



Economist

Quantifies the financial value of past and future losses, including lost earnings, benefits, and the cost of future care, in today's dollars.

EXPERT TESTIMONY SUPPORTS



Injury & Treatment

WHAT HAPPENED AND THE MEDICAL CONSEQUENCES



Future Care

WHAT THE PLAINTIFF WILL NEED GOING FORWARD



Loss of Earning Capacity

HOW THE INJURY IMPACTS THE ABILITY TO WORK AND EARN



Human Impact

THE REAL-WORLD EFFECT ON THE PLAINTIFF'S LIFE



Statutory Scheme re Damages

CCP §§ 2034.010-2034.730

Civil Code §§ 3281, 3283, 3333, 3355,
3359, 1431.2, 377.34, 377.60, 377.61,
1793.2/1794 (Beverly Song/Lemon
Law)

Statutory Scheme re Experts

Evidence Code §§ 720-721; 800-
802, 805, and 352

Subject to Challenge (MIL/352)

801 Experts

Experts by virtue of their specialized knowledge, education, background, training, experience, certification.

Example: Medical doctors; economists/CPAs; engineers; A/R; human factors; medical billing; biomechanics.

Evidence Code § 801 governs expert opinion when subject beyond common experience and opinion rests on appropriate factual foundation.

801 Experts

Sargon Enterprises, Inc. v. USC (2012) 55 Cal.4th 747: Leading civil authority re Evidence Code §§ 801(b) and 802. Trial court = gatekeeper re expert opinions and may exclude for unreasonable source material, unsupported reasoning, or speculation.

People v. Sanchez (2016) 63 Cal.4th 665: Case-specific hearsay relied on by expert can't be presented as true unless independently proved or by hearsay exception.

Kennemur v. State of California (1982) 133 Cal.App.3d 907: Interpreting expert-discovery statutes, held that substance of expert's expected opinions must be disclosed in depo. "Close the Kennemur Door."

800 (lay) Experts

Experts by virtue of their knowledge, education, background, training, experience, certification.

Examples: **co-workers**, **HR**, **supervisors**, business owners, HR, auto mechanics, school-teachers, police officers.

***Evidence Code § 800** permits a nonexpert to give an opinion if it is rationally based on the witness's perception and helpful to understanding the testimony.*

800 (lay) Experts

Schreiber v. Estate of Kiser (1999) 22 Cal.4th 31, 35–36, defines percipient expert witness as, “someone who has acquired, independently of the litigation, personal knowledge of relevant facts, and whose training, skill, and experience enables them to form an opinion about those facts.”

Hanif v. Housing Authority (1988): Parents of injured child regarded as lay experts re value of attendant care.

Epochal Enterprises, Inc. v. LF Encinitas Properties, LLC (2024): Owner of orchard business qualified to address number/value/prices of plants.

People v. Coleman (1963): Auto mechanic qualified to testify about tool values based on familiarity with cost and use.

CASE EXAMPLE 1: MVC

Operative Facts

Plaintiff is 42 year old working mom and wife

Defendant is commercial trucking company (big rig)

Rear-end MVC – total loss plaintiff car

Liability is **undisputed**

Cervical spine injury C4-5

Fusion surgery

Prior history of cervical spine complaints

Plaintiff corporate VP earning \$150k per year

Howell damages: \$465k

Causation disputed b/c Plaintiff delayed seeking medical care

CASE EXAMPLE 1: MVC

What damages must the evidence allow jury to determine?

What physical injury did collision cause?

Was the fusion reasonable and necessary?

What limitations remain after surgery?

What economic losses resulted?

How has the injury changed plaintiff's life?

Which consequences will continue?

CASE EXAMPLE 1: MVC

Economic Damages (CACI 3900-3903; 3903A, C, D, E; 3906)

Past medical expenses

Future medical care

Past lost earnings

Future loss of earning capacity

Loss of household services

Other injury-related expenses

CASE EXAMPLE 1: MVC

Non-Economic Damages (CACI 3902; 3905; 3905A; 3906)

Physical pain

Mental suffering and emotional distress

Physical impairment

Inconvenience

Loss of enjoyment of life

Disfigurement or surgical scarring

CASE EXAMPLE 1: MVC

WITNESS FRAMEWORK MEDICAL HARM (both parties)

Damage witnesses	Area to be covered
Medical treaters	Diagnosis, treatment, causation, prognosis
Lay witnesses (e.g., home health care worker, family, friends, co-worker, spvsr.)	1 st hand observations re changes in function, behavior
Retained medical experts (may be plaintiff or defense side)	For Plaintiffs: Typically a retained <i>treater</i> For Defendant: Retained for litigation analysis.
Vocational or rehabilitation expert	Both sides

CASE EXAMPLE 1: MVC

WITNESS FRAMEWORK ECONOMIC HARM (both parties)

Damage witnesses	Area to be covered
Economist (both sides)	Past, future LOI, loss of earning capacity, present cash value, loss of household services
Lay witnesses (e.g., HR, co-workers, boss); health insurer/health provider custodian of records re amounts paid	1 st hand observations re changes in work ability, performance, reasons for leaving job; amounts paid for medical care

Medical Damages/Howell/GG Section 985/etc.



Know the Experts

Know the facts

Liability

Causation

Damages

Know the Experts on both sides

Review records to narrow list

Research MDs

Litigation history? Trial testimony? Depos?

Publications?

Pre-depo meeting?

Non-retained v. Retained?

(**different DISCLOSURE & FILE requirements**)

QUESTION FOR THE GROUP

How do goals of Plaintiffs and Defense attorneys differ?



Know the records

Client Interviews/updates
Medical Records (Summary min.)
Records Updates
Billing records/liens



Know the medicine

- Spine
- Orthopedic (limbs)
- TBI
- Esoteric (CPRS, etc.

QUESTION FOR THE GROUP

What are resources you have used?



Think and prepare
from Day One

No. Blue. Sky.



- Don't fear the topic
- Become an expert
- Learn the lingo (terms of art)
- Know the materials
- Propound meaningful discovery



Every

Expert

is

About

Damages

What's your initial impression of me?

- | | |
|-------------------|-------------------|
| 1. pretty | 21. humorous |
| 2. cute | 22. peaceful |
| 3. smart | 23. creative |
| 4. caring | 24. attractive |
| 5. calm | 25. charismatic |
| 6. hardworking | 26. cheerful |
| 7. polite | 27. dramatic |
| 8. easy-going | 28. helpful |
| 9. nice | 29. generous |
| 10. trustworthy | 30. innovative |
| 11. cool | 31. honest |
| 12. talkative | 32. lovable |
| 13. friendly | 33. mature |
| 14. brave | 34. popular |
| 15. aggressive | 35. realistic |
| 16. funny | 36. reliable |
| 17. perfectionist | 37. romantic |
| 18. picky | 38. strong |
| 19. crazy | 39. wise |
| 20. talented | 40. extraordinary |
-

Retained Expert as Exhibit Resource

Use the expert before trial to select exhibits that make the opinion clear, reliable, and admissible

The retained expert helps answer: What must the jury see to understand why this opinion is sound?

1. Attorney identifies the trial problem



What fact, assumption, calculation, or medical conclusion will the jury need help understanding?

2. Expert translates the opinion



The expert explains what visual proof best teaches the opinion without overstating the evidence.

3. Attorney and expert select exhibits



Choose timelines, imaging, anatomy, records, tables, charts, or demonstratives that support the testimony.

4. Exhibit becomes trial testimony



Opinion plus exhibit plus foundation plus clear jury takeaway.



How the expert helps the attorney choose exhibits

Expert assistance is strategic, not decorative.



Clarify

Which exhibit most clearly explains the opinion?



Support

What source documents, data, or testing support it?



Foundation

What testimony authenticates and explains it?



Pressure test

What assumptions or vulnerabilities will defense attack?

Practice point: The exhibit should serve the opinion. It should not replace the expert's reasoning.



- Here's what I need to prove
- Does the evidence support that?
- Do your opinions support that?
- Explain the factual basis for those opinions.
- What do you need me to understand?
- Where should I be looking?
- What do you need from me?
- What about this?

o v e r c o m e

non-retained expert barrier





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The spinal surgeon's proof map

C4–5 cervical fusion | From prior symptoms to prognosis

01

BASELINE & TIMELINE

What was present before—and what changed?

Map prior cervical complaints against the post-collision care timeline.

SHOW

**PRIOR RECORDS •
CARE TIMELINE**

02

OBJECTIVE FINDINGS

What supported the C4–5 diagnosis?

Explain the examination and imaging findings at the injured level.

SHOW

**EXAM • PREOPERATIVE
IMAGING**

03

SURGICAL DECISION

Why was fusion recommended?

Connect the findings to the procedure and what the surgeon observed.

SHOW

**RECOMMENDATION •
OP REPORT**

04

OUTCOME & PROGNOSIS

What symptoms or care remain?

Address recovery, restrictions, prognosis, and future care.

SHOW

**FOLLOW-UP • POST-OP
IMAGING**

CAUSATION PRESSURE POINT

Prior complaints + delayed care: make the timeline, changed findings, and the surgeon's causal opinion explicit.

KEEP THE LANES CLEAR

SURGEON: diagnosis • medical causation
Treatment • prognosis

PATIENT / LAY WITNESSES: daily function
ECONOMIST: earnings • household services

CASE EXAMPLE 1: MVC

Operative Facts

Plaintiff is 42 year old working mom and wife

Defendant is a city park ranger driving a city owned vehicle

**Plaintiff riding a bicycle on her way to work on a path also used
for vehicles that abuts a city park**

Liability is **disputed (immunity)**

Cervical spine injury C4-5

Fusion surgery

Prior history of cervical spine complaints

Plaintiff corporate VP earning \$150k per year

Howell damages: \$465k

Causation **disputed** b/c Plaintiff delayed seeking medical care

How Does This Change the Analysis?

BEFORE



AFTER





The End

Need something else?
Just reach out

- rbale@dbbwc.com
- 916-379-3500
- October 2026: SCBA Trial Advocacy Program
(one hour MCLE)