

## Peaks and Valleys for Expert Witnesses

No matter which field of expertise you specialize in, as an expert witness you will experience peaks and valleys in the number of cases you are retained to opine on in a given year.

This may lead you to question your marketing efforts. And that is not, in and of itself, a bad idea. Your marketing plan should be reviewed every six months anyway. But your marketing program may not be the problem -- it may be the economy. Yes, even expert witness practices are subject to the effects of a bad economy.

Why, however? Let's take a look at this question in depth. For most businesses, a bad economy or slow economy translates to lower sales and thus lower profits overall. Experts are not exempt from this common phenomenon.

When the economy slows, certain aspects of litigation do, in fact, increase. A case in point is the payment of debt. Business and individuals can have difficulty paying their debts in a bad or slow economy, sometimes resulting in litigation. As a consequence, some experts in the fields of forensic accounting and economics may actually see an increase in their retaining percentage.

One would initially think slower business might mean cost cutting on safety or reduced staffing causing overworking of employees, and higher productivity demands by management causing haste and a greater margin for error or bad judgment. Moreover, while some of this may occur, these are not the main reasons for a reduction in the retention of experts. When business slows, the incidents of product failure, construction accidents, personal injury, etc. slow with it. It comes down to simple math -- less opportunity equals fewer occurrences.

Experts who have been practicing for several years, through bad or slower than usual economies, report having experienced increased negotiation of expert fees. Attorneys and referral agencies will actively negotiate in an attempt to lower the expert's hourly fee. "It's not personal; it's just business."

"The worst part of a tight economy is a lack of funds to properly represent clients [President Carmen Roberto of the Ohio State Bar Association]. As a defense attorney he has had to forego hiring his own expert witness and relied on cross-examination of the prosecution's witness. A possible upside is that tools like mediation, designed to ease court dockets, are being used now to save money." ("Economy has ripple effect on lawyers," J.D. Bruewer, October 5, 2010, [www.limaohio.com](http://www.limaohio.com).)

There you have it from the source: Attorneys do cut back on expenses in a bad economy and may even forego hiring an expert that they would otherwise have hired in a better economy. This equates to a lower retention rate for experts. That said, and with all due respect to Mr. Roberto, this is generally a big mistake in most cases. As Melvin Belli Sr. said, "The cost may be high to employ the expert, but it may be well higher not to employ one. Indeed, counsel who chooses to proceed without an expert may be flirting with malpractice." (Melvin Belli Sr., *Trial Magazine*)

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