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sides**



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Q: *Litigators*, do you find it easier to engage with solo experts or experts who work as part of a large consulting firm?



FRANCES DREYER

Partner, Johnson Winter & Slattery, Sydney

"It depends. The decider tends to be the volume of data and documents which need to be wrangled in order to form the opinion and the scope of the report required.

For questions which can be put at a level of principle with clearly defined assumptions,

solo experts can produce strong and beautifully concise reports. Often these experts have current industry experience and carry a "real world" perspective which is very compelling to the Court.

However, where the issues require the expert to interrogate large sets of data and documents, the consulting firms can tend to have the upper hand. They commonly have the software and other IT resources required to view, extract and manipulate large technical datasets and the manpower to carry out the review of large bundles of documents. In my experience it is often inefficient (or impossible) for solicitors to perform these functions to support an expert, as the identification of the relevant information can itself be a task requiring expert skill.

When the opinion required is extensive, the consulting houses are also able to bring teams into the project so that multiple streams of work can be progressed. For very large reports, this can be necessary in order to get the work done on time."

"Both groups present their own pros and cons.

Finding a solo expert who's the right person for a particular issue can often be an enormously time-consuming process; and solos also tend to be more challenging when it comes to matters of administration, like getting timely invoices.

With that said, there's nothing better than finding someone whose expertise perfectly matches your needs and, with my practice at least, that's tended to be with solos or smaller groups.

Large consulting firms have obvious advantages in that they have more people and can thus offer you more diversity of expertise. It's great to be able to make an inquiry and have someone generate a handful of potential matches right off the bat. Larger groups tend to be better at administrative tasks, as well.

However, I think there is a tendency in some larger groups to try to oversell and offer themselves as the experts on everything, even when they simply don't have the right person for a particular matter, and this can create problems down the road.

These days, I try to focus on smaller groups that give me the best of both worlds; real professionals with expertise across multiple fields, but not trying to be everything to everyone."



TY DOYLE

Partner, Smyser Kaplan & Veselka LLP, Houston

Q: *Litigators*, how, or in what ways, has your usage of experts changed in the last 5 or 10 years?



JAMES NOBLE

Partner, Carey Olsen,
Singapore

“Over the years, the nature of offshore litigation has evolved to tackle increasingly complex and multi-jurisdictional issues. It is now very common for experts (e.g. financial, accounting, foreign law experts) to be involved in proceedings in one way or another.

Technological developments and the various virtual platforms in which people can come together to discuss issues have made it much easier to reach out to experts and instruct them for proceedings.

This is perhaps most noticeable this year in light of the pandemic where travel restrictions have made it challenging for people to meet in person. In fact, I was just involved in the BVI's first virtual trial which required the use of Liberian law experts and our meetings with them have all taken place via Zoom.

Aside from this, I've also begun to see a change in the role of foreign law experts in proceedings.

In the past, one would expect issues of foreign law to be dealt with by way of expert evidence, with the parties being free to cross-examine the experts.

Now, some courts will allow issues of foreign law to be dealt with by way of submissions — dispensing with the need for cross-examination. This is convenient, but also means that it is important for the expert to have an exceptional grasp of the issues and to be able to provide the highest

standards of assistance to the Court, particularly given that their evidence will not be tested in the usual way. This is because (i) they will be evaluated solely on these written submissions as their demeanour and likeability are no longer in play; and (ii) their written submissions need to demonstrate a detailed understanding of the facts and the relevant issues in the proceedings in order to persuade the Court of their position.”

“Before the 2008 financial crisis, there was a limited pool of experts in the financial markets who would put their head above the parapet in legal proceedings against the investment banks.

Many former bankers still consulted back to the banks and did not want to be seen to be taking an adverse position against the hand that still fed them.

However, the financial crisis and the scaling back of the banks' operations gave rise to two significant changes.

First, there was a material increase in the number of experts who were willing to be instructed by parties bringing legal proceedings against the investment banks. Second, 'expert brokers' emerged who would, for a fee, identify former bankers who were



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experts in niche areas of the financial markets and who would otherwise be difficult to find.

These developments changed the landscape for claimants and their lawyers in connection with financial markets disputes. These changes are still with us today.”

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