

Value in Engaging Experts Early for the Plaintiff Attorney

Plaintiff attorneys are often approached by potential clients regarding circumstances that resulted in personal injury or property damage. As many plaintiff attorneys work on a contingency basis, they only get paid if their client is successful. The attorneys must make difficult decisions on the merits of the case and their chance for a favorable outcome, often before many of the facts of the case are fully known. Invariably, attorneys will sometimes be presented with matters that involve technical details that require expert knowledge to fully evaluate. This forces the plaintiff's attorney to make decisions on matters in which they may not feel entirely qualified/educated. But on the other hand, an attorney will not typically wish to engage and pay for the services of an expert at this early stage. After all, they may not accept the case and any money spent on an expert would be lost. This can put the plaintiff attorney in a difficult.

The risk to a plaintiff attorney is significant. Not only may they engage in a lawsuit with questionable technical merits, but we have also seen multiple occasions where the plaintiff has been dishonest with their attorney. The attorney subsequently files a lawsuit and begins to accumulate significant expenses. Only when the case proceeds and experts are engaged does the attorney learn that his case is meritless. This risk, again, can be largely mitigated with an early engagement of an expert to provide a quick sanity check of the case's merits and the veracity of the alleged events. The following examples show how a plaintiff's attorney can be assisted in making educated decisions and to avoid being misled.

The first example involves a simple meat thermometer. This is a common cooking device that consists of a long probe that can be inserted into the meat being cooked to determine the inner temperature. At the other end of the probe is a simple dial gauge that shows the temperature. The dial is often protected by a glass cover that is crimped into the sheet metal base of the dial gauge. In this particular instance, the thermometer was being used to measure the temperature of a pot of boiling liquid (sugar water). According to the plaintiff, the glass cover suddenly exploded and ejected glass particles which injured his eye. The attorney accepted the case, filed suit, and proceeded without an expert at first. Upon reaching out for engagement, we were able to examine the facts, including several photographs of the broken thermometer, and inform the attorney that his client was, unfortunately, being dishonest. Several factors led to this conclusion. First, it was impossible for the inner portion of the dial gauge to retain any pressure that could lead to ejected glass. The seal between the glass cover and the metallic base was not, and could not be, airtight to the extent needed. Second, the far end of the temperature probe where the dial gauge was located would be at a much lower temperature than the tip of the probe in the liquid. It simply would not get very hot (which is why it can be removed by hand without the user being burnt). Less heat means less pressure build up in the gauge. Simply put, the alleged accident sequence was physically impossible. The pictorial evidence was also considered. Here, the photographs showed that several pieces of the broken dial gauge glass were still contained within the gauge. This, again, did not match the plaintiff's description. How could glass shards, which were ejected into someone's eye remain on the device? Again, the facts did not add up. Unfortunately, at the time of our inquiry, the case was nearing completion of the discovery. The attorney had already expended his time

and effort to reach that stage in the case to simply learn that he did not have a defensible position. Examination of the facts and evidence by the expert took less than an hour.

In the second example, the plaintiff was alleged to have suffered significant hand injuries when a long-reach butane lighter he was using to set off fireworks exploded in his hand. The plaintiff presented to his attorney the suspect lighter as evidence. The long-reach lighter is of the style with a handle and trigger on one end and an extended neck where the flame was produced. According to the plaintiff, the neck of the lighter exploded while his hands were nearby to block the wind. However, it is impossible for the neck of the lighter (a simple formed sheet metal cylinder) to retain any pressure and explode. There is an open longitudinal seam running the length of the neck and, of course, the end of the neck is open to allow the flame to exit. A very simple analysis shows that the plaintiff was being dishonest. Worse yet, an examination of the subject lighter showed witness marks where the sheet metal neck had been pried apart to look like it had exploded. To a layperson, the plaintiff's story appeared to be legitimate. The appearance of the lighter was compelling. But, again, a quick evaluation by a qualified expert was very informative. In this case, the plaintiff was not injured by the lighter. He was injured by the fireworks he was setting off. Unfortunately, this conclusion came too late for the plaintiff's attorney to avoid losing money on the case.

Another example involved the fall from a short step ladder which resulted in significant injuries to one of his ankles. The plaintiff believed that the ladder collapsed while he was standing on it due to a manufacturing defect. Photographs of the damaged ladder, however, told a different story. The deformation of the ladder indicated quite clearly that one of the smaller legs (on the opposite side of the steps) buckled. The user was working on a narrow sidewalk with a drop off to the adjacent grass. Based on the deformation, it was concluded that the plaintiff accidentally shifted the ladder to where one of the legs was temporarily unsupported. As he shifted weight onto the leg, the ladder was no longer on level ground resulting in the ladder collapsing. The accident was unfortunate but there was no identifiable manufacturing defect for which to file suit.

Another common pre-engagement activity will be to do a quick review of applicable codes and standards. Most building and similar codes are effective at the time of construction (or renovation/repair). But codes are constantly be revised and expanded. This leads to a situation where something may seem to be out of code, because it does not apply to current standards, but it was (and is) perfectly acceptable based on when it was made. In these cases, the merits of a case may hinge upon the applicable code. A preliminary code review may require a bit more effort than either of the two preceding examples, but again it can be more than worthwhile to the attorney who is trying to make a decision on whether or not to take on a case.

Of course, any time an expert is making a preliminary evaluation of the facts and merits of a case at its earliest stages, there is always the chance that their opinions will change as discovery proceeds. The risk of accepting a 'bad' case cannot be eliminated, and the attorney should recognize that their expert may need to revise their opinions. But it is our belief that the benefits far outweigh the disadvantages to performing an initial evaluation.

If you are an attorney and are considering taking on a case which has a mechanical engineering aspect and you would like to get a preliminary evaluation of the merits to the case, please contact us at Aither Forensic Engineering. We are always willing to discuss the potential matter, take a quick look at the details, and provide our preliminary thoughts – prior to engagement. We feel that the value to our clients



and to ensure that we are taking on assignments which have legitimate value is well worth the time and effort.

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