FOREWORD

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Taking testimony from adverse experts is a tricky proposition—extracting what you want and bottling up what you don’t. Experts are advocates. They know more about their fields of expertise than you do. They can do real damage to your case. But you can do real damage to them, too. A strong cross-examination of adverse experts at trial can have a telling effect on the outcome of the case. Let’s not dwell on the effect of a weak cross.

Experts are, therefore, quite dangerous. Not just the other side’s experts—yours, too. Bad testimony from your expert will be used against your client. Consider the testimony of the plaintiff’s expert in Johnson v. SJP Management LLC, in which the plaintiff was suing for injury due to a defective elevator that allegedly closed on her arm:

Q: Can we agree that if there were a problem with the Lambda 3-D door detector, it would not fix itself?
A: No.
Q: We can’t agree with that?
A: We cannot agree on that.
Q: It could just miraculously be better the next day?
A: Miraculously be better the next day. You don’t understand all the things that are involved in that. I would have to be an expert to do that.
Q: Well, why don’t you tell me what specifically was wrong with the Lambda 3-D detector on the day of this accident, December 14, 2005?
A: I don’t know.

Who needs help like that?

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Even good expert testimony may be of no help—it still must satisfy Daubert, Frye, or whatever evidentiary hurdle has been erected in the governing jurisdiction. “Whatever may have been the standard in the pre-Daubert era, it is clear that an expert’s opinions are not admissible merely because the expert says, in effect, ‘trust me, I know.’”3 In the memorable words of Judge William G. Young of the U.S. District Court for the District of Massachusetts, every federal judge performing the mandatory Daubert gatekeeping function “asks three preliminary questions: First, is this junk science? . . . Second, is this a junk scientist? . . . Third, is this a junk opinion?”4 If the answer to any of these questions is “Yes,” your expert’s opinion is out, and your case may not survive the damage.

Expert evidence is a critical component of virtually every civil litigation. This volume collects the thoughts and experience of excellent advocates from around the country. It offers cogent insights and guidance from pre-engagement of the expert through preparation and testimony, or deposition and cross. It is an invaluable addition to every trial lawyer’s library.

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