



# (EXPERT)<sup>3</sup>

## ***Three Collaborating Experts Power the Defense Against a Challenging Claim***

February 2019 - Every case presents a challenge to a litigator. There is always some set of facts, a legal issue or a witness concern that costs you a few hours of sleep or, at a minimum, causes you to proceed with caution when introducing a line of deposition questioning or deciding whether to raise a particular argument with the court. You navigate these matters relying upon your experience and professional judgment and come out the other side a little bit sharper and more seasoned.

Occasionally, however, litigators encounter a matter that involves truly unique circumstances. In these settings, the thought process becomes how am I going to move the ball from point A to point B? Your client, rightfully so, looks to you for answers. A tremendous sense of satisfaction therefore results when you rise to these moments and protect your client's interests. You emerge anticipating the opportunity to encounter the next big challenge. Recently, our firm had the good fortune of being involved in such a matter. And, with the significant assistance of three very intelligent, conscientious and insightful experts, the ball was successfully moved from point A

to point B.

The case arose from a roofing project. The claimant alleged sustaining life altering respiratory injuries resulting from the inhalation of airborne chemical agents associated with a roofing adhesive. Our client was the contractor performing the roofing project.

The unique issue presented by the case was that the claimant was not located onsite at the time of exposure. Rather, the claimant was positioned within an air-conditioned building located adjacent to the building where our client was performing the roofing project.

In order to defend the claim, a determination needed to be made as to the level of the claimant's exposure and how that exposure related to published permissible exposure limits for the chemical agents at issue. This determination involved modeling the movement of the chemical agents through the open air from the site of the project to the roof of the building occupied by the claimant and then through the HVAC system of that building to the claimant's location.

Our defense strategy required a multifaceted and inter-dependent analysis requiring the collaboration of experts from distinct fields of study. In the absence of performing a reliable and supportable analysis, a genuine risk existed that a trial jury would speculate as to both the level of the claimant's exposure and the resulting injuries. Accordingly, the stakes were high to get it right.

Our firm retained three experts in support of the clients defense. The retained experts

practiced in the fields of HVAC engineering, industrial hygiene and pulmonary critical medical care. The subject analysis required these experts

to interact and rely upon one another's work product to a significant degree. Initially, reliance was placed upon the pulmonary/critical care expert to identify the chemical agents contained within the roofing adhesive used by our client that could have potentially caused the claimant to experience his alleged symptomology. Armed with that information, the industrial hygienist was able to model the open-air movement of the identified chemical agents and ultimately determine the concentration of these agents within the vicinity of the HVAC system intake located on the roof of the building occupied by the claimant.

At this point, a sizable obstacle remained. The concentration of the identified chemical agents at the HVAC roof intake was undoubtedly different from the exposure levels experienced by the claimant

within the building. To bridge this gap, the HVAC engineering expert performed a comprehensive evaluation of the building's HVAC system. This involved consideration of both the amount of outside air being introduced into the system and the dilution of that air as it traveled through the HVAC system to the claimant's location.

The expert's analysis resulted in the quantification of the outside air concentration in the vicinity of the claimant on the day of the

incident. The industrial hygienist utilized the concentration developed by the HVAC engineer to quantify the concentration of the chemical agents in claimant's vicinity.

The industrial hygienist was then able to perform a comparative analysis between the exposure levels experienced by the claimant and the permissible exposure levels published by OSHA. Finally, our pulmonary/critical care expert incorporated the exposure levels developed by the industrial hygienist into his opinions concerning whether the claimant's asserted permanent and life altering respiratory injuries were caused by an exposure to chemical agents associated with the subject roofing adhesive.

The medical expert's opinion as to the impact of the claimant's exposure was the culmination of a long and involved collaborative process.

The result was an intricate yet common sense analysis that provided a critical component of the defense against the claimant's assertions of injury. Most importantly, the client's interests were protected against the risk of juror speculation at trial and the dangers associated therewith.

Practice points were both learned and reinforced throughout the litigation:

- Be flexible in your approach to every case. It was critical in this matter to have our client's experts work collaboratively. Adopting a more traditional approach of working with each expert independently would have left critical gaps in the defense and would have most likely precluded the development of the opinion addressing the ultimate issue – the impact of the alleged exposure sustained by the claimant.
- Be a great listener. As a litigator, you need to consistently test the soundness of expert opinions. This can only be accomplished through careful listening. In this matter, an even greater premium was placed on listening as the overlap of each expert's opinions was critical. Gaps between the opinions needed to be identified and bridged.
- Never lose sight of the juror's perspective. No matter how complex the subject matter of expert opinions, those opinions will need to be communicated in a clear and concise manner to a jury if the matter goes to trial. Ask questions that you think a typical juror may have. This will require you to get over your fear of asking unsophisticated questions. Your job is to assist in making the expert opinions as trial ready as possible. At trial, many questions and concerns that a juror may have about the case will likely be of the unsophisticated variety. Get them all out on the table when communicating with your expert.
- Be a facilitator. One of our primary contributions to the client's defense was the creation and maintenance of an environment for the experts to exchange information and opinions. Many conference calls were held involving multiple experts. During the calls, we paid careful attention to ensuring that each expert had what was needed from the other experts to move forward. We also encouraged some debate as the best course to pursue. Finally, we made certain that each expert reviewed and commented upon the draft reports prepared by the other experts. In sum, our firm did everything necessary to keep the experts on the same page.



As a result of the development of the expert opinions as described, we stood ready to proceed to trial at the conclusion of discovery. That level of preparedness impacts settlement discussions and case values and provides our clients with the defense they expect and deserve.

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*Joe Ciampoli is a Partner at the law firm of Thompson Becker, L.L.C. located in Cherry Hill, NJ. The firm's practice focuses on the representation of design professionals, environmental professionals and contractors.*

*Thompson Becker L.L.C.  
Ten Melrose Ave.  
Woodcrest Pavilion, Suite 400  
Cherry Hill, NJ 08003  
856-616-8886  
[www.thompsonbeckerlaw.com](http://www.thompsonbeckerlaw.com)*