Testifying as an Expert Witness

Pitfalls and Best Practices
Speakers

• Thomas S. O'Donoghue, Jr. - CTP, FGMK LLC (moderator)
• Geoff Richards - Canaccord Genuity Inc.
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• John T. Dorsey - Young Conaway Stargatt & Taylor, LLP
• Nicholas K. Lagemann - Sidley Austin LLP
• Michael Nestor – Young Conaway Stargatt & Taylor,
I. LAY TESTIMONY OF A PROFESSIONAL OR EXECUTIVE NOT ADMISSIBLE AS EXPERT TESTIMONY REGARDING SOLVENCY

- Process of reasoning
- Evidence of skill/expertise
- Understand what is necessary to “qualify” as an expert witness

[See Exhibit 1]
II. KNOW YOUR DEPOSITION TESTIMONY AND ENSURE THAT IT IS CORRECT

- What did you say at deposition?
- Make absolutely sure that it is accurate.
- Central to credibility.

[See Exhibit 2]
III. WHAT YOU TAKE TO THE STAND CAN BE REVIEWED AND USED BY OPPOSING COUNSEL AT TRIAL

• Never take documents/scripts to the stand when testifying.
• Damages credibility and may impact case.

[See Exhibit 3]
IV. WITNESS OUTLINES CAN “NEVER” BE TAKEN ANYWHERE, PARTICULARLY NOT ON THE STAND

- Example 2: No scripts or outlines permitted on stand (or in courtroom).

[See Exhibit 4]
V. VOIR DIRE – MAKE SURE THAT YOU ARE, IN FACT, QUALIFIED TO TESTIFY AS AN EXPERT

- Ensure that you are qualified.
- Failure to be qualified can impact ability to be qualified in the future.

[See Exhibit 5]
VI. KNOW WHAT IS REQUIRED TO BE QUALIFIED AS AN EXPERT

- “Are you qualified” – Example 2

[See Exhibit 7]
VII. DILIGENCE, DATA AND RELEVANCE

• Ensure that report relies upon supported and meaningful data, testing and analysis.

[See Exhibit 7]
VIII. INSUFFICIENT TESTING/DATA – PART II

[See Exhibit 8]
IX. CORRECTED REPORTS

• Good?
• Bad?
• Ugly?

[See Exhibit 9]
X. BE AN EXPERT ON BEING AN EXPERT

• Understand Models, Benefits and Critiques

[See Exhibit 10]