

HOW TO WIN A LAWSUIT – A GOOD EXPERT IS WORTH THEIR WEIGHT IN GOLD



In today's complex world, a growing number of lawsuits hinge on an expert's opinion. So the matter of who testifies as an expert witness in your legal case does make a difference. Fortunately – due in no small measure to the new code of procedure – it is now possible to influence this.

Was that construction job performed professionally? Was the interest rate in line with the market rates? Did a construction project on the neighbouring plot really reduce the value of your property? These are all questions that can make or break the outcome of a lawsuit. But these are also the sort of questions that the court – lacking the requisite specialist knowledge – doesn't attempt to answer itself; instead, it bases its decision on an expert opinion. This begs the question of whether a party in a lawsuit can ensure that the expert is someone whose opinion can really be trusted. In our experience, the answer is increasingly yes.

Before filing suit, see a notary public

Anyone has the right to have an expert assigned by a notary public before the lawsuit starts. In these cases, the notary public – like the court – chooses the person deemed most qualified to give an expert opinion from the register of expert advisors. How can an expert opinion obtained in this way be useful?

Firstly, it enables the party involved to obtain an independent expert's opinion even before the lawsuit has got under way. In possession of this, the

concerned party then has the opportunity to decide not to file at all if necessary. Secondly, because the other party does not necessarily know about the expert's opinion obtained through the notary public, it can be used selectively: if the lawsuit is filed, then the party that requested the opinion only needs to use it when it serves its own interests.

Another important consideration is that although the party ordering the expert's opinion has no say in which expert is appointed, in the request it can set out its expectations relating to the expert. This makes it possible to ensure that the expert assigned by the notary public is genuinely competent, and the expert witness testimony is not misleading.

Private experts: whose opinion is it anyway?

Under the old rules of litigation procedure, courts treated a private expert's opinion as essentially being the opinion of the litigating party who engaged the expert. In other words, the private expert's opinion may have influenced the court, but it had no real weight when it came to deciding the outcome of the lawsuit.

The rules of procedure that took effect last year, however, led to a radical change in this situation. Now, if somebody substantiates its position with a private expert's opinion, the court is obliged to accept that opinion unless it gives cause for concern. An opinion may be seen as giving cause for concern if the other party puts forward another expert's opinion

that reaches exactly the opposite conclusion – this, however, is a pricey defense strategy. An expert opinion can also give cause for concern if it contains a blatant error. But since judges are not usually conversant with the issues addressed in the expert opinion, there is no certainty that an error which is obvious to a professional will also be treated as such by a court.

Legal disputes in the construction industry – the special expert's opinion

When it comes to planning and construction contracts, an older but lesser-known law permits the use of what is referred to in Hungarian law as a 'special expert'. A decision by the Board of Completion Certificate Experts (TSZSZ) can usually be requested if the parties dispute the completion of a construction work. Besides giving an opinion on whether the work has been completed professionally and in keeping with the terms of the contract, and accordingly what fees can be legitimately claimed, the TSZSZ expert is also authorised to state a position

regarding the enforceability of securities (e.g. guarantee, pledge) associated with the contract.

The opinion of a TSZSZ expert also carries a lot of weight in a court case, being equal in status to the opinion of a court-appointed expert. What's more, a TSZSZ opinion brings additional advantages in the lawsuit for the party that presents it as evidence. For example, the court has to expedite the procedure, and if it awards the amount stipulated in the TSZSZ expert's opinion, this becomes enforceable regardless of whether or not the other party appeals.

Which should I choose?

It's better to examine the above options on a case-by-case basis, and consider your overall strategy for the case when deciding what kind of an expert the litigating party should rely on for assistance, and when. By choosing a good expert you can put yourself in a winning position even before the lawsuit has started. And this not only improves the chances of winning the case, but can also help to reach an out-of-court settlement (thus saving on both costs and time).