

# NOT EVERYONE IS AN EXPERT

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In November's column we discussed the case of *Tuckerman v. Doles*, involving fraud by the seller of a collector car. In that case, one of the defendant's arguments on appeal was that the trial court erred in permitting a certain individual to testify as an *expert* for the plaintiff.

Reliance on experts has a long history. In his epic the *Aeneid*, the Roman poet Virgil stated *experto credite* – "believe an expert." Lawyers frequently follow that advice – or at least encourage juries to. They call upon the services of "expert witnesses," persons who from education or experience possess special knowledge about a particular subject not possessed by the average person.

Because of their perceived status and the fact that they are allowed, unlike most other witnesses, to offer opinions, experts carry great weight in court. There is thus often heated debate over whether a particular individual is *qualified* to be an expert on the issue or issues presented in a case.

## Send In The Experts

In the *Tuckerman* case, the Ohio Court of Appeals followed a local rule that "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."

This determination is made by the trial judge. It generally involves two questions. The first is whether the subject so distinctly relates to some science, profession, business, or occupation that it is beyond the knowledge of the average layperson. If so, the second question is whether the proposed witness has sufficient skill, knowledge, or experience in that field that his or her opinion will probably aid the judge or jury.

Most courts would probably view the valuation and restoration of collector cars to be matters beyond the knowledge of the average layperson. This leaves the issue of the qualifications of the proposed expert.

In the *Tuckerman* case, Tuckerman called Michael Blankenship to testify about repairs Blankenship made to the automobile. Doles objected, arguing that Blankenship was not qualified to give expert testimony because he was sixteen years old at the time he repaired the automobile, had not graduated from vocational school and was not supposed to be doing regular customer work, was not a full-time employee of any automobile repair operation, and was not a certified mechanic.

The referee overruled the objection, permitting Blankenship to testify as an expert.

In upholding the trial court's decision, the Court of Appeals noted that, while Blankenship's qualifications were clearly not those of a mechanic with twenty years of experience, the evidence indicated that he had an extensive knowledge of automobiles for someone his age. Further, Blankenship had personally worked on the Firebird and therefore knew from facts perceived by him the extent of repairs necessary to restore the automobile to the state represented in the advertisement. The appellate court further noted that the referee had taken Blankenship's age, experience and qualifications into account when weighing the value of his testimony. Moreover, Blankenship's testimony concerning the condition of the automobile had been supplemented by the testimony of other and more experienced mechanics.

## Calculation of Damages

With such testimony, the Court of Appeals also upheld the trial court's award of damages to Tuckerman. In cases of fraud, the injured party is entitled to the difference between the actual value of the car at the time of the purchase and its value if the car had been as it was represented to be. This difference may be shown by evidence of what it cost to repair the vehicle.

Here, Tuckerman had offered into evidence receipts showing she paid approximately \$3000 to restore the Firebird to the condition represented in the fraudulent advertisement. Doles failed to object to the admissibility of the receipts or to present evidence to contradict the sums they reflected.

## Under the Microscope

Ironically, although experts often know a great deal about a particular subject, the scope of their expertise may be quite narrow and specific. For example, in its March 22, 1990 decision in *Palmer v. Lapp*, the Superior Court of Pennsylvania concluded that an appraiser of motor vehicles was not qualified to appraise an antique horse-drawn hearse. As the educator Nicholas Murray Butler once advised a commencement audience, "an expert is one who knows more and more about less and less."

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