

# **2014 SEAK, Inc.**

## **Survey of Expert Witness Fees**

**-AGGREGATE RESULTS ONLY-**

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**JAMES J. MANGRAVITI, Jr., ESQ.**

**STEVEN BABITSKY, ESQ.**

**NADINE NASSER DONOVAN, ESQ.**

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# INTRODUCTION

This summary report has been prepared to provide the reader with detailed expert witness fee and billing information using a large sample size (almost 1,000 experts-many of whom had more than one area of expertise). All survey information was provided by the responding experts in May of 2014.

## ANALYSIS OF AGGREGATE SURVEY RESULTS

### Expert Rates

Expert rates have increased modestly since SEAK's last survey in 2009. Average fees for testifying at trial have increased a total of only 2.9% over this five year period for an annual increase of less than 1%. On the other hand, average fees for file review and case preparation have increased 12% over five years, or 2.5% per year. Average hourly fees for depositions are up 6.4% over the past five years for an annual increase of 1.2%.

**Recommendation:** *Experts should review their fees annually and most should consider periodically increasing these fees.*

### Retainers

81% of experts require an up-front retainer. This is up from 74% in SEAK's 2009 Survey. The average retainer has increased 17% to \$3,048. Of the experts who require retainers, 75% have at least a portion of this retainer be non-refundable. This is up from 70% in 2009.

**Recommendation:** *Experts should ask for an up-front retainer. Given that more than 4 out of 5 experts require a retainer, this will not be seen as an unusual requirement. This retainer should be at least partially non-refundable, as is the practice of 3 out of 4 experts. Experts should review their retainer requirements annually and most should consider periodically increasing such retainer amounts.*

### Daubert and Qualifications Challenges

For most experts, legal challenges to their opinions' admissibility remain relatively rare. Fully 80% of those surveyed did not face such a challenge in the last five years. This is similar to the 2009 results in which 78% of experts surveyed did not face such a challenge in the previous 5 years. Successful challenges are even rarer. Of the subset of experts (20%) who reported being challenged, only 14% of these experts reported that one or more challenges were successful.

**Recommendation:** *For many types of experts, Daubert and other admissibility challenges can be expected to be quite rare. Other experts can routinely expect to face Daubert challenges. However, because the ramifications of exclusion can be devastating, vigilance is recommended to avoid and defeat such challenges.*

## Cancellation Charges for Deposition and Trial

Almost half of the experts surveyed charge cancellation fees for late notice cancellation of deposition (48%) and trial (47%). This is down slightly from 2009 (53%).

**Recommendation:** *Charging cancellation fees is a common practice. The authors suggest that experts reserve the right to charge cancellation fees, but that they only actually charge the client such fees to the extent that they are actually damaged by the late notice cancellation. Where possible, cancellation fees should be written off as a professional courtesy to build good will with and positive word of mouth from retaining counsel.*

## Rate Increases

A full 34% of surveyed experts reported that they did not raise their rates in the last 5 years. Of the 66% of experts who reported raising their rates, these experts were **66 times more likely to report that raising their rates was a good decision rather than a decision that backfired.**

**Recommendation:** *Experts who haven't raised their rates to market rates should consider doing so. The odds are heavily in favor of this being a good business decision.*

## Advanced Payments for Depositions and Trials

Approximately half of experts surveyed require advanced payments for depositions (53%) and trials (45%)

**Recommendation:** *Getting one's money up front is an excellent way to avoid collection difficulties. Approximately half of experts do this, which means it is a common practice that a large number of attorney clients do and will agree to. The authors recommend that experts emulate this common practice.*

## Minimum Charges for Depositions and Trials

Approximately half of the experts surveyed have minimum charges for depositions (53%) and trials (50%). These average \$1,463 for depositions and \$2,406 for trials.

**Recommendation:** *Minimum charges for depositions and trials are commonly charged. Whether this is appropriate for any particular expert depends upon the circumstances and the location of the trial testimony (i.e. what kind of travel is required?). Minimum charges can be controversial and may be challenged. The authors do not recommend charging minimums unless there is a compelling reason to do so.*

## Written Retention Contracts

34% of experts do not require retaining counsel to sign a written retention contract. A large majority of experts (66%) do require retaining counsel to sign a written retention contract.

**Recommendation:** *A well-written retention contract can eliminate or mitigate much of the risk involved in expert witnessing (financial, reputational, etc.). A large majority of experts require counsel to sign such contracts. The authors strongly recommend that every expert utilize a well-written retention contract.<sup>1</sup>*

### **Collection Difficulties**

A large majority of experts (63%) report that they ultimately collected all of the fees owed to them in the last 5 years. A significant minority (37%) reported at least one instance of an ultimate failure to be paid.

**Recommendation:** *Expert witnesses can be expected to experience collection difficulties every once in a while. This is a manageable problem if sound business practices and a well thought out retention agreement are utilized.*

### **Conclusions**

Every expert's business practices are somewhat dependent on their unique situation. That said, seeing how other experts conduct their business and charge for their work can be very instructive. It is the hope of the authors that this report will assist experts in making optimum business decisions.

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<sup>1</sup> See for example [SEAK's Expert Witness Retention Contract](http://www.seak.com) available for download from [www.seak.com](http://www.seak.com)

## 2014 SURVEY RESULTS IN AGGREGATE - ALL EXPERTS

Number of Experts Responding In Survey	1931
Hourly <b>Fee for Testifying</b> in Court AVERAGE	\$ 451
Hourly <b>Fee for Testifying</b> in Court HIGH	\$ 5000
Hourly <b>Fee for Testifying</b> in Court LOW	\$ 125
Hourly <b>Fee for Case Review/Preparation</b> AVERAGE	\$ 333
Hourly <b>Fee for Case Review/Preparation</b> HIGH	\$ 1000
Hourly <b>Fee for Case Review/Preparation</b> LOW	\$ 80
Hourly <b>Fee for Deposition</b> AVERAGE	\$ 427
Hourly <b>Fee for Deposition</b> HIGH	\$ 4800
Hourly <b>Fee for Deposition</b> LOW	\$ 125
Percentage of Experts Generally <b>Requiring Up-Front Retainer</b>	81%
Percentage of Those Experts Who Require Up-Front Retainers Whose <b>Retainers are at Least Partially Non-refundable</b>	75%
<b>Retainer</b> AVERAGE (of those who require retainers)	\$3,048
<b>Retainer</b> HIGH (of those who require retainers)	\$20,000
<b>Retainer</b> LOW (of those who require retainers)	\$ 50
Percentage of Experts Who Were <b>CHALLENGED</b> at Least Once Under <b>Daubert/Frye or for qualifications</b> During the Last 5 Years	20%
Percentage of Those Challenged Who Were <b>EXCLUDED</b> under <b>Daubert/Frye or for qualifications</b> at Least Once During the Last 5 Years	14%
Percentage Charging <b>CANCELLATION FEES for Trial</b> Late Notice Cancellations	48%
Percentage Charging <b>CANCELLATION FEES for Deposition</b> Late Notice Cancellations	47%
Percentage <b>RAISING RATES</b> during Last Five Years	64%
Percentage of Those who Raised Rates Reporting that <b>RAISING RATES Backfired</b> Because They May Have Priced Themselves out of the Market	1%
Percentage of Those who Raised Rates Reporting that <b>RAISING RATES Was a Good Decision</b>	66%
Percentage Usually Requiring <b>Deposition Payment in Advance</b>	48%
Percentage Usually Requiring <b>Trial Payment in Advance</b>	45%
Percentage Usually Requiring <b>Minimum Charge for Depositions</b>	62%
Average Minimum Deposition Charge for Depositions (for those with minimums)	\$1,463
Percentage of Experts Usually Requiring <b>Minimum Charge for Trial</b>	50%
Average <b>Minimum Charge for Trial</b> (for those with minimums)	\$2,406
Percentage Usually Requiring Counsel to Sign a <b>Written Retention Agreement</b>	66%
Percentage Reporting Ultimate <b>Failure to be Paid</b> in Last Five Years.	37%

## SURVEY RESULTS BY AREA OF EXPERTISE

The list of the specialties/areas of expertise covered in SEAK's complete 2014 expert witness fee survey and the number of responses for each specialty are as follows:

- Accident Reconstruction-34
- Accounting-36
- Actuarial-2
- Acupuncture-5
- Addiction Medicine-5
- Adoption-1
- Advertising-1
- Agriculture-3
- Allergy and Immunology-2
- Ambulatory Surgery-2
- Anesthesiology-10
- Appraisal – Business-8
- Appraisal - Personal Property-13
- Appraisal - Real Property-8
- Appraisal and Valuation-24
- Aquatics Safety-2
- Arbitration/Mediation-6
- Arborist-12
- Architecture-20
- Athletics and Recreation-5
- Audio-2
- Audiologist-1
- Automotive-3
- Aviation and Aerospace-8
- Banking -11
- Behavioral and Social Sciences-7
- Biomechanics-7
- Building Inspection-4
- Business Damages-17
- Business Operations-5
- Business Valuation-15
- Cardiothoracic Surgery-3
- Cardiovascular Disease-12
- Chemistry/Chemicals-10
- Chiropractic-8
- Chiropractic Neurology-4
- Clothing/Apparel-1
- Colon and Rectal Surgery-4
- Communications-4
- Computers-19
- Construction-47
- Construction Defects-51
- Correctional Healthcare-4
- Cosmetology-1
- Criminalist-2
- Critical Care Medicine-3
- Dentistry-10
- Diabetes-3
- Diagnostic Radiology-4
- Disability Evaluation-16
- Disaster Recovery-2
- Dispute Resolution-2
- Document Examination-10
- Dogs-2
- Dram Shop and Alcohol Services -3
- Earning Capacity-10
- Economics-19
- Education and Schools-8
- Electricity-6
- Electrodiagnostic-8
- Electronics-7
- Elevators and Escalators-1
- Emergency Medical Toxicology-1
- Emergency Medicine-29
- Emergency Preparedness-2
- Employment-13
- Endocrinology-5
- Engineering-18
- Engineering – Agriculture-2
- Engineering – Automotive-2
- Engineering – Biomedical-4
- Engineering – Chemical-6

- Engineering – Civil-32
- Engineering – Electrical-14
- Engineering – Geotechnical-6
- Engineering – Mechanical-39
- Engineering – Software-3
- Engineering – Structural -13
- Environmental-13
- Equipment and Machinery-14
- Explosives-1
- Failure Analysis-15
- Family Medicine-15
- Financial-21
- Fire-12
- Firearms and Ballistics-3
- Food-4
- Forensic Pathology-3
- Forensic Psychiatry-11
- Forensic Psychology-11
- Forensic Science-21
- Franchising-1
- Fraud-23
- Funerals/Cremation-2
- Gastroenterology-2
- General Practice-3
- General Surgery-6
- Geology-4
- Geriatric Psychiatry-2
- Geriatrics-9
- Gynecological Oncology-2
- Gynecology-6
- Hand Surgery-4
- Hematology-6
- Hepatology-1
- HMO-2
- Horses-2
- Hospice/Palliative Care-6
- Hospitalist-7
- Hotel and Restaurant-9
- Human Factors-10
- HVAC-4
- Hydrology-3
- Indoor Air Quality-4
- Industrial Design-3
- Industrial Hygiene-4
- Infectious Diseases-5
- Information Technology -4
- Insurance-21
- Intellectual Property-21
- Internal Medicine-22
- Internet-6
- Investigation-13
- Laboratories and Testing-2
- Land Surveying-2
- Landscape Design-1
- Law Enforcement/Criminal Justice-8
- Legal-11
- Legal Nurse Consulting-16
- Life Care Planning-28
- Long-Term Care -6
- Management-9
- Manufacturing-4
- Maritime-10
- Marketing-4
- Maternal and Fetal Medicine-3
- Medical Devices-9
- Medical Management-11
- Mental Health-7
- Metallurgy-3
- Meteorology-2
- Midwife-2
- Mining-3
- Mold-5
- Neonatal and Prenatal Medicine-2
- Nephrology-1
- Neurological Surgery-7
- Neurology-22
- Neuro-Ophthalmology-1
- Neuropathology-2
- Neurophysiology-2
- Neuropsychiatry-3
- Neuropsychology-17
- Neuroradiology-4
- Noise-1
- Nuclear Medicine-1
- Nuclear Science-1
- Nurse-21



- Nurse Practitioner-4
- Nursing Homes-11
- Obstetrical-1
- Obstetrics and Gynecology-12
- Occupational Medicine-17
- Oncology-6
- Ophthalmology-13
- Optometry-1
- Oral Surgery-3
- Orthopedic Surgery-35
- Orthopedics Non-Surgical-13
- OSHA-16
- Otolaryngology-3
- Otology -1
- Pain Medicine-23
- Pathology-5
- Pediatric Critical Care Medicine-1
- Pediatric Emergency Medicine-1
- Pediatric Neurology-1
- Pediatric Ophthalmology-1
- Pediatric Psychiatry-2
- Pediatric Pulmonology-2
- Pediatric Urology-1
- Pediatrics-6
- Pharmaceutical Research-2
- Pharmacist-9
- Pharmacology-8
- Pharmacology – Clinical-5
- Photography/Imaging-1
- Physical Medicine and Rehab-28
- Physical Therapy-2
- Plastic Surgery-4
- Plumbing-2
- Podiatry-1
- Police Practices and Procedures-7
- Premises Liability-17
- Preventive Medicine-3
- Products Liability-11
- Psychiatry-17
- Psychology-29
- Public Health-1
- Pulmonary Critical Care Medicine-2
- Pulmonary Disease-3
- Radiation Oncology-1
- Radiology-5
- Real Estate-24
- Reproductive Endocrinology-1
- Rheumatology-2
- Risk Management-9
- Safety-32
- School Safety-3
- Securities and Investments-9
- Security -15
- Sleep Medicine-3
- Slip, Trip and Fall-16
- Social Work-4
- Spine Surgery and Spine Care-12
- Sports Medicine-10
- Statistics-5
- Technology-8
- Telecommunications-9
- Thoracic Surgery-4
- Toxicology-19
- Transportation-12
- Trauma Surgery-3
- Travel and Tourism-2
- Urology/Urological Surgery-2
- Vascular Surgery-4
- Vascular/Interventional Radiology-3
- Veterinarian-1
- Video-2
- Vocational Rehab-21
- Warnings and Labels-2
- Wound Care-13

**To obtain full results with detailed data on each of the 230+ areas of expertise listed above please [click here](#).**