

States Wrestle with Immunity

By Robert Ambrogi

States that have considered the civil immunity of expert witnesses disagree on the answer. While some say that immunity is essential to ensure an expert's objectivity, others reason that shielding an expert may have the opposite effect. Here is how the states line up.

Immunity for Experts

- § Washington. In *Bruce v. Byrne-Stevens & Associates Engineers, Inc.*, 113 Wash.2d 123, 776 P.2d 666 (1989), the state Supreme Court held that witness immunity protected an engineering expert witness from liability.
- § North Dakota. In *Riemers v. O'Halloran*, 2004 N.D. 79, 678 N.W.2d 547, 2004 ND 79 (N.D. 2004), the Supreme Court held that witness immunity protected a forensic accounting expert from being sued.

No Immunity for Experts

- § California. In *Mattco Forge, Inc. v. Arthur Young & Co.*, 5 Cal. App. 4th 392, 6 Cal.Rptr.2d 781 (Cal. App. 1992), the court ruled that witness immunity did not shield an accounting expert witness from a claim for professional malpractice. More recently, in *Lambert v. Carneghi*, ___ Cal.App.5th ___ (Cal. App. 1/11/08), the court refused to grant immunity to a real-estate appraisal expert. In April, the California Supreme Court turned down an appeal of that decision.
- § Connecticut. In *Pollock v. Panjabi* (Conn.Super. 2000) 781 A.2d 518, the court said that the policy of having witnesses speak freely would not prevent a party's lawsuit against its own witness.
- § Louisiana. In *Marrogi v. Howard*, 805 So.2d 1118 (La. 2002), the Supreme Court ruled that an expert who provided pretrial analysis and litigation support services was not immune from suit.
- § Massachusetts. In *Boyes-Bogie v. Horvitz & Associates* 14 Mass.L.Rptr. 208, 2001 Mass. Super. Lexis 582 (Mass.Super.Ct. 2001), a trial judge ruled that the doctrine of witness immunity did not bar a negligence suit against an expert retained to provide litigation support services.
- § Missouri. In *Murphy v. A.A. Mathews*, 841 S.W.2d 671 (Mo. 1992), an en banc court held that an expert who provided negligent litigation support was not protected by witness immunity.

- § New Jersey. In *Levine v. Wiss & Co.*, 478 A.2d 397 (N.J. 1984), the Supreme Court ruled that a court-appointed accountant was not immune from suit.
- § Pennsylvania. In *Panitz v. Behrend*, 632 A.2d 562 (Pa. Super. 1993), the court held that expert medical witnesses have absolute immunity for their testimony. But in *LLMD of Michigan Inc. v. Jackson-Cross Co.*, 740 A.2d 186 (Pa. 1991), the Supreme Court ruled that the doctrine of witness immunity did not bar a professional malpractice action by the party who hired the expert.
- § Texas. In *James v. Brown*, 637 S.W.2d 914 (Tex. 1982), the court held that a negligent diagnosis by a psychiatric expert may be actionable.

One other state to have considered the issue is West Virginia. Although not directly deciding whether to apply expert immunity, the Supreme Court of Appeals ruled in a 2002 case, *Davis v. Wallace*, 65 S.E.2d 386 (W. Va. 2002), that a lawsuit brought by a party against its expert could not be held to be frivolous or in bad faith, given the decisions from other states allowing such suits.

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