P&A Petrini & Associates, P.C.
Counselors at Public Law

ARCADIS

WEST GROUP
LAW PLLC

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

IMLA 87th Annual Conference - October 2022
Portland, Oregon

Presenters:

Christopher Petrini, Esq.

Steven "Tip" Torres, Esq.

Greg Holness, P.E. Esq.

Introduction to Presenters



Steven "Tip" Torres, Esq.

- 20+ years of experience in municipal law, including construction and public-private partnerships
- Former City Attorney for Fall River, Massachusetts
- Served in U.S. Air Force as Nuclear Operations Officer
- Enjoys sailboat racing



Christopher Petrini, Esq.

- Founding principal of Petrini & Associates
- Focuses on municipal law litigation & public construction
- Served as Town Counsel / City Solicitor for multiple Massachusetts cities & towns
- Enjoys mountaineering



Greg Holness, P.E. Esq.

- Expert on construction claims & disputes
- Former attorney, project manager
- Prior employers: Connecticut DOT, design-build curtainwall subcontractors, & law firms
- Enjoys snowboarding & trail running

Utilizing Experts in Complex Cases

P&A Petrini & Associates, P.C.
Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

The use of experts has become more prevalent as the scale of litigation increases and the amount of factual information to review has multiplied.

The expert's role at trial is to provide specialized knowledge that assists the court/jury understand or decide some aspect of the dispute.

An expert can also help prepare for litigation and can assist in early dispute resolution efforts.

Utilizing Experts in Complex Cases

Petrini & Associates, P.C.
Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

Governed by Fed. Rule of Civil procedure 702 and state equivalents.

“A witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion…”

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C.
Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

1. Whether to hire an expert at all?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

1. **Whether to hire an expert at all?**
   a. **Does the case merit or require it?**
   b. **Will the other side be more likely to hire an expert if you hire an expert?**
   c. **Do the non-expert facts favor you more or less than an expert analysis might favor you?**

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

2. What type of expert do you want to hire?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

2. What type of expert do you want to hire?

   a. Which area(s) of specialty? Depending on issues in dispute, you may need more than one expert.

   b. Which level of experience? Do you want a professional testifier ("gray beard"), or do you want more of an operations person who may not have served much as an expert on the past. The gray beard may have more experience, but the non-professional expert may be more credible with the jury (less of a hired gun).

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

3. Once you make your expert selection, what do you do next?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

3. What type of expert do you want to hire?
    a. Meeting with client
    b. Meetings with attorney
    c. Review key documents
    d. Site visit?
    e. Coordination between expert's opinion and case theme.

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

4. Do you want the expert to be a consulting expert or a testifying expert under Rule 26?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

4. Do you want the expert to be a consulting expert or a testifying expert under Rule 26?

a. **Obtain preliminary opinion prior to making decision.**

b. **Obviously, you do not want a testifying expert who will have an opinion adverse to your client's position, but it may be helpful to have a consulting expert who has a differing opinion who can test your client's position and perhaps play devil's advocate.**

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

5. If litigation is filed, how and when do you disclose and use your expert?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

5. If litigation is filed, how and when do you disclose and use your expert?

a. **Early disclosure of expert report may yield a favorable and cost-effective settlement. But putting all your cards on the table early may have downsides as well, as it will give your opponent a roadmap/more information.**

b. **Once you are ready to disclose your expert, disclose by attorney-drafted expert disclosure pursuant to 26(b)(4) of Rules of Civil Procedure or by expert report?**

c. **Pros and cons of disclosure method chosen.**

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

6. Expert Depositions?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

6. Expert Depositions?

a. If you request leave of court to take the other parties' deposition, it is highly likely that the other side will make the same request.

b. Evaluate whether you want to utilize or avoid the element of surprise at trial.

c. A good deposition of the opposing party's expert may enhance the opportunity for settlement, or the opponent may decide not to call the expert at trial.

d. Consider whether to use the impeachment material at deposition or instead save it for trial.

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

7. Use of expert in discovery?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

7. Use of expert in discovery?
    a. Should your expert attend deposition of other experts?
    b. Attend deposition of key witnesses of other parties?
    c. Must consider municipal resources.

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

8. Should your expert testify at trial?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

8. Should your expert testify at trial?
    a. Consider pros and cons.
    b. How will your expert stand up under cross examination?
    c. How does he or she present himself or herself?
    d. Do they have a confident and sincere demeanor?
    e. Or do they seem nervous or insincere, and is there cross-examination material available (such as contrary or different testimony in other proceedings)?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

9. Cross examination of other expert?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

9. Cross examination of other expert?
    a. Strategies to consider.
    b. Sources to consult?
    c. Other reports, articles, opinions?
    d. Other depositions (was contrary or different opinion taken for other clients?)
    e. How much has expert been paid?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

10. Role of expert in dispute resolution?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

10. Role of expert in dispute resolution?

    a. Use in joint defense situations?

    b. Use to help prepare for mediation, identify key documents, discuss key settlement positions, and related issues?

    c. Bring expert to mediation?

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C. Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

Summary

- **Many issues to consider whether and how to use experts.**
- **Pros and cons to each issues must be weighed.**
- **If expert needed, selection of expert is most important decision.**
- **Value of a good expert can far outweigh cost, especially if their involvement brings about early resolution of dispute.**

Utilizing Experts in Complex Cases - Ten Top Issues to Consider

P&A Petrini & Associates, P.C.
Counselors at Public Law

ARCADIS

WEST GROUP LAW PLLC

Questions?

Feel Free to Contact the Presenters

Christopher Petrini, Esq.

Petrini & Associates, P.C.

cpetrini@petrinilaw.com

(508) 665-4310

Steven "Tip" Torres, Esq.

West Group Law PLLC

storres@westgrouplaw.com

(401) 371-3633

Greg Holness, P.E. Esq.

Arcadis

greg.holness@arcadis.com

(860) 817-7771