

Getting the most from a jointly retained expert

Cost reduction. Increased speed. Greater likelihood of resolving a dispute. These are some of the potential benefits for disputing parties who agree to jointly retain an expert.

The bad news, however, is that unexpected delays and increased costs may be incurred by clients if key terms of the expert's retainer are not clarified in advance.

Types of disputes where a joint retainer may be used include shareholder disputes, matrimonial disputes, disputes related to estate litigation or commercial disputes with a damage quantification component.

The following considerations can help both sides get the most from their chosen expert:

To find a mutually acceptable expert, one party typically submits a list of potential experts and the other selects an expert from this list. When preparing this list, consider whether there is an actual or perceived conflict with any of the experts.

Think ahead about how the report will be used. An expert report can be prepared



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on a "without prejudice" basis to assist the parties in resolving the dispute, or it can be prepared for use in court. In situations when a report is prepared on a without prejudice basis and the dispute is not resolved, the parties can then retain their own experts to prepare a report for use in litigation. Binding reports should ensure they do not contravene any arbitration or other regulations.

Determine the level of assurance required by the report. There are three different types of business valuation reports, which provide increasing levels of assurance. As expected, the cost of these reports typically increases with the level of assurance. In deciding on the level of assurance required, the anticipated cost should be balanced with the purpose of the report as well as the prefer-

ences of the users.

Clarify shares or assets being valued. Clarify in advance the exact assets being valued. This may include a complete interest in a company, a partial interest and/or shareholder loans.

Establish the valuation date. The relevant valuation date can be before or after an important event. This date should be agreed on by both sides in advance as it can affect the value depending on whether an event occurred before or after the valuation date.

Save time by specifying legal or other valuation provisions. Specific legal or other provisions that affect how the assets or shares are to be valued can be specified. In a shareholder dispute, as an example, it may be appropriate to specify that no minority discount is applicable. If these terms cannot be agreed on, calculations can be prepared using several different scenarios such as with and without minority discounts.

Payment of fees: A process for the payment of fees should be established including who will be responsible for paying the fees,

how the cost will be allocated between the parties as well as when the fees will be paid.

Be specific on financial statements and needs for adjustment. Clarify whether the financial statements are to be accepted for purposes of the valuation or whether adjustments are required. This would be applicable when the parties would like an issue treated differently in the valuation than in the financial statements. A good example of this is revenue recognition, which may need to be adjusted when preparing a valuation. One other common adjustment is management remuneration. Depending on the circumstances, the expert may be required to make a determination.

Specify communication policies: To ensure that everyone is satisfied with the process and in order for the expert to maintain an appearance of independence each party should be copied on correspondence with the valuator. It is also recommended that each party should have access to the information

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Accident Benefits/Insurance Defence Lawyer Position

Miller Thomson LLP, one of Canada's leading firms in the field of insurance defence, is seeking an associate to join our Insurance Practice Group in the Waterloo Office. Our Insurance Practice Group offers a full range of services to the insurance industry and includes lawyers who are recognized leaders in areas of property and casualty claims, automobile accident benefit claims, life and disability insurance. We are looking for a highly motivated person who wants to build a successful career in insurance defence with a focus on automobile accident benefits.

The successful candidate will have 3-5 years of accident benefits/insurance litigation experience and excellent academic credentials. Superior drafting and advocacy skills are also required. The individual will support senior partners on various files as well as be responsible for the independent handling of files in all areas of accident benefits.

Interested candidates should apply in confidence with a cover letter, resume and law school transcript to the contact listed below. Candidates may be requested to submit a writing sample.

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RGA INTERNATIONAL CORPORATION, TORONTO COUNSEL

RGA International Corporation is a subsidiary of Reinsurance Group of America, Inc., based in St. Louis, Missouri. RGA is a recognized leader in the global life insurance industry, with over \$2.1 trillion of life insurance in force and assets of approximately \$16 billion.

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Candidates should have a minimum of three to five years' experience in corporate, transactional or regulatory law gained either in-house or in private practice, knowledge of commercial laws, experience in international law or business or in a multi-national organization, experience with life insurance transactions and regulations, and a working knowledge of life insurance company operational infrastructure.

Experience with life reinsurance regulations and practices, familiarity with data protection issues, experience in employment law, working ability in languages other than English and involvement in industry working groups would be preferred but are not essential.

Qualified individuals seeking a fast-paced and dynamic environment in a growing company are invited to apply for this position by contacting:

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Lawyers who really love Macs



HI-TECH

**LUIGI
BENETTON**

Special interest groups pop up around all sorts of things, so it isn't surprising that about 50 lawyers spent a recent weekend in Florida talking about how to run a law office using Apple Macintosh computers.

MILOFest, named after the MILO Google group (Macs In Law Offices), welcomed a gaggle of lawyers who "think different" from their Windows-using brethren.

Victor Medina, a New Jersey family lawyer with Medina, Martinez and Castroll, LLC, spearheaded MILOFest. Medina is what Apple calls a switcher. "I used to build my own PCs," says the Windows defector of his computer experience.

Defector may be too strong a word, since he runs Windows in emulation on his Mac in order to use the document assembly package HotDocs. "There's no decent document assembly software for the Mac," he admits.

Dealing with the Mac's limitations as a legal computing platform proved as important a subject to MILOFesters as lauding its strengths. Baltimore, Maryland's Scott Palmer, a former computer programmer aiming to start his own intellectual property practice, decries the performance of Remote Desktop on the Mac, calling its Windows sibling "screaming fast."

In his view, the Mac-only Microsoft Entourage compares poorly with the Windows-only Microsoft Outlook. "Entourage is not an enterprise product," he says. (Note: Several news outlets report that Microsoft will resur-

Thinking of switching to a Mac?



Want to know more about using Macs in a legal practice? Check out these MILO links:

- ➔ **MILO Chat Weekly (podcast)**
<http://www.miloweekly.com>
- ➔ **MILOFest:**
<http://www.milofest.com>

BARBARA QUINN / DREAMSTIME.COM

“**[W]hat is out there that I can use to increase billable time or smooth out my workflow so that I don't have to repeat steps...?**”

rect Outlook for the Mac in 2010.)

Another switcher, Nashville, Tennessee entertainment lawyer Stephen Weaver utters the most common complaint: "I still miss the more sophisticated legal-specific practice management programs," he says.

But MILOFest was far from a gripe session. Lawyers shared tips on how best to deal with the dearth (both real and perceived) of software for the legal industry. In fact, MILOFest's Canadian presence consisted of two practice management solution vendors: Markham, Ont.'s Marketcircle Inc. and Vancouver's Themis Solutions Inc.

The two take different courses to delivering their systems to lawyers. Marketcircle's Daylite software, intended as a general-

purpose business management system and sold with a law office template, installs on Macs and iPhones. Its server component completes a Microsoft Exchange-type setup.

Unlike Marketcircle (a Mac-only shop), software developers tend to put off tailoring software for the Mac, so developers like Themis avoid that approach. Its product, Clio, resides on the internet (a.k.a. "the cloud") instead of individual computers. Subscribers need only possess a standards-compatible web browser (which ships with every operating system) to use it.

This software-as-a-service (SaaS) approach makes a lawyer's choice of computing platform irrelevant, so as SaaS grows, it erodes Microsoft's long-held dominance of business computing.

MILOFesters have moved their practices to the cloud to varying degrees. Some lawyers share files and other information using services like BaseCamp and Google Docs. Others use cloud-based time and billing applications.

Yet others, like Woodridge, Illinois public sector and employment lawyer Kevin Camden, are moving substantial parts of their practices into the cloud. For instance, Camden claims he is

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Top M&A trends for 2010

The top 10 mergers and acquisitions (M&A) trends for 2010, according to Torys LLP are:

1. Buying green will grow
2. Just saying no may get easier in Canada and harder in the U.S.
3. Canadians will go shopping
4. Carving out assets will get messy
5. Power to the people: heightened shareholder activism will continue
6. Private equity: baby-stepping its way back to the M&A table
7. Media and telecom assets will change hands
8. More biopharm M&A in 2010, but healthy or distressed?
9. Not a Pandora's box: national security review of foreign investment in Canada will be limited
10. Are we there yet? Expect a longer, bumpier ride in Canadian merger reviews

The full report is available at:

<http://www.torlys.com/Publications/Documents/Publication%20PDFs/MA2010-1.pdf>

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LexisNexis® Canada Welcomes


LINC ROGERS

New National Editor
Commercial Insolvency Reporter

LexisNexis Canada Inc. is pleased to announce that **Linc Rogers**, a partner in the Restructuring & Insolvency Group with Blake, Cassels & Graydon LLP in Toronto, is the new National Editor for the *Commercial Insolvency Reporter*.

Mr. Rogers is an experienced insolvency lawyer whose practice focuses on all aspects of commercial reorganizations, distressed acquisitions, debtor-in-possession (DIP) financing and security enforcement. As a key member of the Blakes U.S. initiative team, he helped establish the firm's Chicago office; while there he focused on Canada/U.S. cross-border transactions and gained familiarity with U.S. bankruptcy law. He was also primarily responsible for cultivating and maintaining business relationships with restructuring and insolvency professionals throughout the Midwest United States. Since returning to Toronto in 2007, Mr. Rogers has been involved in a number of high-profile engagements in a variety of industry sectors.

Mr. Rogers is a member of the Education Oversight Committee of the Turnaround Management Association and was appointed as program co-ordinator and executive member of the Insolvency Law Section of the Ontario Bar Association. He has published extensively in Canadian, U.S. and international periodicals and is a frequent invited speaker at conferences and seminars throughout Canada and the United States.

LexisNexis Canada Inc. wishes to thank **Virginie Gauthier**, of Ogilvy Renault LLP, for her editorial leadership and contributions during her past two years as National Editor of the *Commercial Insolvency Reporter*. She will continue her involvement with the Reporter as a member of the Editorial Board.

For further details of *Commercial Insolvency Reporter*, go to www.lexisnexis.ca/bookstore

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Agree on terms at the start of process to avoid issues

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and documents sent to the valuator so they can deal with concerns regarding the information provided at the beginning of the process rather than after a report has been issued.

Provisions for draft reports: It is typical to prepare a draft report prior to the final report for commentary by both parties. Provisions should be included for the manner, as well as the timing, in which comments are to be forwarded. In my experience, it is preferable to have comments forwarded in writing in the interests of efficiency and to ensure there is a record of issues raised.

Once the above decisions are

made, the valuation process can be clarified, including the timing of each step in the process, who will be responsible for providing the information, the number of meetings that will be held and who will attend. This will establish a timeline to complete the report. This step is usually performed in conjunction with the expert retained.

Provisions should also be made for the issuance of a final report. This will include clarification regarding the circumstances when the draft report will be updated based on comments received, or finalized without changes made.

While unanticipated issues often arise in the course of a mandate, if the parties can

agree on important terms regarding the process at the beginning of the mandate, the likelihood and the impact of these unanticipated issues can be reduced. This increases the chance that a dispute will be resolved to the satisfaction of both parties in an efficient and cost-effective manner.

Peter Weinsten is a chartered accountant, chartered business valuator and has specialist designation in investigative and forensic accounting. He is a partner at Stern Cohen Valuations Inc., the firm's specialist practice, which encompasses business and intellectual property valuation and litigation support services.