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Expert Consulting for Litigators

ACTIONABLE INSIGHT FOR LITIGATORS, INSURERS, AND CORPORATE COUNSEL

- Litigators, insurers, and corporate counsel may not have the training and experience to select technical experts.
- Failures and accidents do not occur because codes or standards are violated; they occur because the underlying scientific principles are violated.
- Failures and accidents increasingly involve complex multidisciplinary issues because of the increasing use of advanced materials and fabrication processes that occur on the job site (spray foams for example).
- The initial information about a failure or accident upon which the required experts/disciplines are identified are often misleading and seldomly clearly depict multidisciplinary issues.
- Dr. Fildes has seen many situations in which narrowly focused domain experts have missed the real underlying cause of a failure or accident, situations in which experts misinterpret science (especially chemical test results) outside their domains, and situations where experts claim violation of codes or standards caused a failure or accident whereas the true underlying scientific principle that was violated implicated a different cause.
- Some firms have scientists/engineers on staff to overcome these challenges. This may not be practical or attractive for other firms, in which case Dr. Fildes offers a flexible alternative.

This content is based on Dr. Fildes' scientific experience, He is not an engineering or lawyer and does not practice engineering or the law.

INTRODUCTION

When science and engineering are pervasive in litigation disputes, lawyers find themselves having to decide what expertise they need, and they may lack the insight and experience to make the best decision. Technical issues in litigation run the gamut from straightforward to complex and multi-disciplinary. The realities of a case are not under anyone's control, but the effective discovery of those realities and the framing of their meaning and implications are the foundation of achieving a superior outcome and minimizing costs. Authoritative investigation results provide attorneys and their clients with reliable insight and the best basis to manage their risks through settlement, or the successful prosecution of their case.

In addition to conducting scientific investigations, John Fildes, Ph.D. also provides highly unique and valuable experience through consulting for litigators, insurers, and corporate counsel. Dr. Fildes' consulting addresses the issues of selecting an expert, the appropriateness of investigations methods used, the reliability of the data, the degree to which the data meets standards of care that are applied by courts, and services aimed at corporations and corporate counsel to help avoid and defend litigation claims involving technical issues.

Dr. Fildes' consulting is based on his experience: **CEO** of an $18 million professional engineering firm (Packer Engineering) with over 130 staff members; **President** of a not-for-profit institute (Institute of tribology and Coatings) and **founder and leader** of its for-profit scientific and engineering consulting subsidiary (ITC Experts), having taken these organizations from concept to annual revenues of over $6 million and a staff of over 25, and complying with professional licensing requirements, Government FARS and audits, and insurance industry reporting requirements; **Leader** of a startup product design firm (Packer Technologies Inc.), having merged two companies to achieve a run rate of $3.5 million within six months; **A leader** of a $10 million contract research laboratory at Northwestern University; **A senior professional** in the Roy C. Ingersol Corporate Research Center of the $4.5 billion Borg-Warner Corporation.

Consulting For Litigators and Insurers

Investigations related to insurance claims and litigation, be they large of small, are about asking questions that illuminate the key issues and answering them clearly in a way that is authoritative and compelling. The primary desire in litigation, insurance claims resolution, and intellectual property disputes is to cut costs while improving outcomes. The only sure way to do this when technical issues are involved is to have an investigation that provides superior insight in a manner that is actionable. Dr. Fildes' consulting is based on achieving these goals.

Identification of the key technical issues in a case is essential to engaging experts with the right experience and expertise. Dr. Fildes' experience and expertise is unusually broad as demonstrated by his bio at the end of this article and by his CV available at www.jfildes.com.

John's broad experience comes partly from his doctoral education in physical chemistry because the principles of physical chemistry underlie much of the engineering disciplines; partly from his lengthy experience as a researcher at leading companies, universities, and institutions; partly from his lengthy R&D experience with modern analytics; and partly from his having led scientific/engineering firms conducting numerous litigation-related investigations in most technical disciplines.

John has been a gatekeeper in corporate R&D and has been used for establishing the state of the art by Government Agencies. This unique experience is highly valuable for litigators and insurers because scientific gatekeeping and identifying the scientific state of the art are the best ways to accurately identify the key technical issues early in a litigation or insurance dispute. This ensures that experts with the right experience and expertise are hired, that the detailed analysis and testing is properly focused, that the investigation results are reliable, and that the investigation can be explained with confidence and in a way that makes sense to non-technical people

It is common for there to be uncertainty and issues involving the appropriateness of the selection of a material, material compatibility, the conditions to which the material was subjected, the adequacy of the design, the adherence to codes and standards, and the adequacy of installation methods and of maintenance frequency and procedures. It may not be enough to first reach out to an expert in a narrow technical domain. The incidents Dr. Fildes has investigated are often characterized by being multidisciplinary in scope, complex, and involving uncertainty and missing information. Dr. Fildes often deals with materials that are no longer made or that are no longer available for testing, that have been used in a non-conventional

manner or environment, and with situations involving poor and incomplete documentation.

Dr. Fildes has helped litigators and insurers overcome the challenges they face in dealing with these issues and in successfully resolving cases that had appeared to be very challenging or highly unfavorable.

For Corporations and Corporate Counsel

Dr. Fildes also offers unique services aimed at corporations and corporate counsel, and insurers who proactively help insureds reduce their risk exposure, to help avoid and defend litigation claims involving technical issues.

Manufacturers face a complex and diverse array of litigation issues, and it is not uncommon for companies to handle each litigation claim in an autonomous way. Assign the case to one of numerous outside litigators who then obtain the required experts and who oversee the technical investigation. Whirlpool, for example, had over 200 outside product liability defense firms.

Whirlpool gained control of its litigation by identifying three core technologies that were often involved in their litigation and that were repetitive. This allowed Whirlpool to dramatically reduce the number of outside litigation firms, gain efficiency in case cycle time, and achieve early resolution more often.

Dr. Fildes offers a consulting service to corporate counsel, insurers, and litigators to help companies do what Whirlpool did. Dr. Fildes' physical sciences (physics and chemistry) based investigation approach, coupled with the expert witness experience and corporate R&D background allow him to help companies analyze their products and litigation to identify the key technical issues and underpinnings and to recognize the commonality across cases provided by these underpinnings.

This insight as to the key technical underpinnings and commonality across cases allows the development of a deep base of technical knowledge in these focused areas. This prevents duplication of effort that is common with the autonomous approach to cases, it provides a starting point in a case that is far up the learning curve, and it cuts costs and improves outcomes. It also provides a unique approach to seeking early resolution of cases.

Dr. Fildes uses the following process.

Defining the Technical Issues – For each core technical area, Dr. Fildes helps identify the underlying key technical issues. Dr. Fildes can do this because he has a broad physical-sciences base of experience, superior analytical skills, and skill in finding relevant information from numerous sources, especially industry studies that often seem unrelated but really are probing the same underlying science. Dr. Fildes conducts broad, first-pass research to gather information from prior related cases, trade association publications, patents, manufacturer's marketing materials and reports, and Internet blogs and forums to establish the key technical issues.

Establishing What is Known About the Technical Issues – Dr. Fildes then uses focused, comprehensive research coupled with top-notch analysis to fill the information gaps that will exist in the relevant available information to develop a deep understanding of the key technical issues. Manufacturers publish studies and universities conduct applied research. Relevant research likely exists and can provide 60% to 80% of the insight that may ultimately be gained. Conducting a search of this nature and the analysis are skills that are central to industrial R&D, but not to product liability and accident investigations.

Reliably Defining Testing and Costs - This process ensures that existing knowledge will not be

recreated, a reliable work plan is established, work is coordinated, cost is reliably estimated, and that the testifying experts ,who are eventually used if full discovery is needed, focus on their core technical competencies.

One outcome of this approach is that it places companies in an excellent position to screen claims and to achieve early resolution because this approach has already established the key issues involved. Companies can use this insight to assess who is likely to prevail, and what it will take and cost to prevail to set a reasonable basis for settlement that is supportable, authoritative, and compelling to the claimant. This approach also provides a superior basis for assessing the quality of the work and results of expert witnesses.

The overarching technical concepts that were identified also provide the key to effectively framing and communicating the results of the technical investigation, as well as the production of reports and courtroom presentation materials. This approach produces clarity and reliability, and greatly assists making the technical issues easily understood by ordinary people.

An example of how Dr. Fildes has used this approach is in the building products industry. A diverse family of products had litigation involving odors and fires. Each case appeared to be technically autonomous, but by using the approach outlined above, Dr. Fildes identified a few core technical issues and developed significant technical insight into the underlying principles of each of those areas, which allowed the company to far better understand materials issues, installation issues and operator training, and product specification.

Bio for John Fildes, Ph.D.

Dr. Fildes is a doctoral scientist who has conceived, organized, and conducted $28 million of projects including R&D, litigation expert investigations, and collaborations involving Government labs, large defense companies, and leading universities.

Dr. Fildes was also CEO of an $18 million professional scientific/engineering consulting firm; president of a not-for-profit R&D institute; founder and leader of a $6 million scientific/ engineering consulting firm; leader of a $3.5 million startup product design firm; leader of a $10 million contract research lab at Northwestern University; a senior professional in the $4.5 billion Borg-Warner Corporation Research Center.

Product Failures Expertise

Friction; Abrasive Wear, Adhesive Wear, Testing, Friction Measurement, Wear Prevention, Lubricants, Oil Quality Monitoring, Solid Lubricants, Hard Protective Coatings, Decorative Coatings, Paint, Electroplated Coatings, Corrosion, Electrochemical Corrosion Measurement, Ice Prevention; Gas Sensors, Carbon Monoxide Detectors; Product Design Procedures.

Materials & Process Expertise

Composites for Aviation, Buildings and Civil Construction: Thermoset and Thermoplastic Resins and Adhesives, Resin Transfer Molding, Autoclaving, Impedance Spectroscopy; Use of Composite Materials and Spray Foams Made On-Site In Construction; Roadway Chip Sealing, Water Treatment; Intelligent Process Control.

Chemistry & Chem Processes Expertise

Prediction Of Materials Properties, Stability, And Compatibility; Chemical Exposure; Chemical Process Equipment Failures.