The Professionals of Focus Management Group regularly supply expert testimony and litigation support on behalf of debtor and creditor counsel related to the financial management and performance of companies, and also related to banking practices and procedures. This expert testimony and litigation support assists counsels to achieve the best outcomes for clients.

That said, there are differing approaches to the use of experts, and the eventual outcome of a case can be impacted by the approach selected.

**Case Example 1: Attending CFO Depositions**

In a recent case, a Focus Professional attended multiple days of Chief Financial Officer (“CFO”) depositions to assist counsel in responding immediately to new financial information brought to the table during the depositions. This allowed counsel to question the CFO in real time, without additional opportunity to prepare for questions.

In this same case, the Focus Professional attended Chief Executive Officer (“CEO”) depositions and immediately isolated discrepancies in the two officers’ understanding and testimony.

**Case Example 2: Providing Best Practices for Commercial Lending Institutions**

In another case, a Focus Professional provided written expert witness testimony regarding typical credit and lending management practices in financial institutions. This testimony highlighted best operational practices for commercial lending institutions—with specific reference to commercial lending policies and procedures—and was instrumental in enabling the counsel’s financial institution client to achieve a positive outcome.

In this real estate-related example, the Focus Professional’s expert testimony enabled counsel to undermine the opposing counsel’s arguments related to typical lending practices and procedures for construction loans. The settlement of this case occurred out of court and resulted in a substantial savings to the Focus client.

**FMG Litigation Support**

Expert testimony does not begin or end with the written expert testimony report. Focus Professionals are able to maximize a client’s outcome when we use our expertise to assist counsel in a variety of steps along the way to the final court decision. Our Professionals have provided the following types of litigation support:

- **Review of Discovery Requests** requests to provide expansion and fine tuning of the information requests submitted to the opposing party. In this capacity, Focus Professionals are able to use their experience in
Maximizing the Impact of Expert Testimony

business operations and management, coupled with their extensive knowledge of banking and restructuring management, to develop an information list that provides counsel with the data necessary to better approach the case.

- **Develop lines of questioning** for depositions to allow needed information to be gathered in a timely and efficient manner. Assistance in this category includes reviewing the materials already provided for inconsistencies or problems, as well as providing suggested topics and lines of questioning for counsel to utilize in the depositions.

- **Review deposition transcripts** for additional information requests. In this capacity, Focus consultants review existing depositions to identify financial, operating, or banking-related inconsistencies, issues, or openings that might be used by counsel to weaken the position of the opposing side.

- **Attend depositions to provide immediate feedback** to counsel regarding questions and information provided. This can be most helpful when the party being deposed is coming to the scheduled deposition with new or additional financial information or banking policies and procedures.

- **Prepare written expert witness reports** to be submitted to the appropriate court. These expert witness reports are developed based on a thorough review of the materials provided and always include substantial discussion with counsel related to the case.

- **Support written expert witness reports with depositions.** Focus consultants are experienced in giving depositions and are adept at understanding the intricacies of the case at hand.

- **Support written expert witness reports with court testimony.** Focus Professionals regularly provide oral testimony in support of their expert witness report.

While expert witnesses may join the process at various stages in the litigation, it is beneficial to fully involve the expert as early as possible. Focus’ extensive knowledge of business management and operations, and banking practices and procedures, allows us to serve as an integral team member for litigation support.

**Case Example 3: Providing Best Practices for Credit Management and Personal Guarantees**

A Focus Professional recently provided expert witness testimony regarding typical credit management and lending practices related to personal guarantees.

This testimony highlighted best practices for commercial lending—specifically, reliance by financial institutions on personal guarantees of borrowers, spouses and co-borrowers—and was able to open additional lines of questioning which assisted counsel in undermining the assertion of the co-borrower and the spouses as they attempted to eliminate their personal guarantees.

**Case Example 4: Reviewing Deposition Transcripts**

In another example, a Focus Professional reviewed discovery material and provided deposition support to counsel by developing lines of questions related to the subject company’s financial performance that would be material to the expert testimony Focus was requested to provide by lender counsel.

The information subsequently uncovered during the depositions assisted counsel in achieving the out of court settlement desired by the lender. In this case, a full written expert report was not required as a result of information uncovered during the depositions.
Oral Testimony Experience

Testimony from Focus Professionals is not limited to the traditional expert testimony reports and related litigation support. Using their expertise in a multitude of financial and operating management issues, as well as banking practices and procedures, our consultants regularly provide oral testimony to assist the Court in understanding the financial and operating activities of businesses.

Case Example 1: Receiver Testimony

In many cases, Focus Professionals have provided oral testimony to the Court in support of a lender’s request to appoint a receiver. In a recent example, a Focus Professional testified as to certain cash management and collateral management issues confronting a company.

This testimony assisted the Court in understanding why the lender was asking for a receiver to be appointed, and provided an opportunity for the Court to question an expert regarding typical cash management and collateral management processes. In this case, the testimony was detailed—lasting over an hour—and resulted in the successful appointment of a receiver.

Case Example 2: Cash Management Testimony

A Focus Professional provided in-depth testimony related to cash management at a large manufacturer in support of business management. The cash management testimony allowed the Court to better understand the cash management processes in place, and resulted in a negotiated short-term forbearance agreement between the company and its incumbent lender.
Learn More about our Expert Witness and Litigation Support Services

Focus Management Group is a leading business restructuring firm headquartered in Tampa, with offices in Atlanta, Chicago, Cleveland, Dallas, Los Angeles and Philadelphia. For more information regarding our expert witness and litigation support services, contact one of our experienced Managing Directors listed below:

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About the Authors

Juanita Schwartzkopf has 25 years of experience in commercial banking, and financial and risk management. Juanita has an extensive background in credit risk assessment and loan portfolio appraisal, as well as working with a variety of companies involved in insolvency proceedings. She has provided expert advice and witness for lenders and has worked with the company during bankruptcy. She has also worked with creditor groups during the reorganization process and with the company or its stakeholders through both court protected and out-of-court dissolutions and reorganizations.

Jeffrey Granger has over 20 years of experience in finance, operations and crisis management. Jeff’s experience includes strategic planning, financial restructuring, cash management, materials management and production scheduling. Jeff also has over 10 years of experience dealing with companies operating under various forms of court protection—both receiverships and bankruptcy proceedings. He regularly serves as a receiver and he has been involved in the bankruptcy process for entities in a variety of districts.