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 — including practices and procedures related to real estate lending. 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: Providing Best Practices for Commercial Lending Institutions**

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 the commercial real estate lending policies and procedures related to construction financing, including appraisals, construction draws, maturity dates, and personal guarantees. This testimony was provided in a written and an oral format 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.

**Case Example 2: Attending Depositions**

Focus professionals have unique experience in a variety of areas related to real estate management and are able to specifically target questions and deposition support to the unique aspects of the real estate transaction under review.

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.
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:

- **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 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**
  - Develop lines of questioning for depositions 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**
  - 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**
  - 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.

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

- **Deposition Preparation**
  - Support written expert witness reports with depositions. Focus Consultants are experienced in giving depositions and adept at understanding the intricacies of each case.

- **Court Testimony**
  - 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.

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.
Maximizing the Impact of Expert Testimony: 
Assisting the Lender in Real Estate Transactions

When Focus Can Assist in the Process of Oral Testimony

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.

Irrespective of the type of expert witness work required, Focus Professionals stand ready to assist companies, lenders and counsel during the real estate work out process. The experience of Focus Professionals in real estate, lending, and work out strategies, uniquely qualifies Focus to provide the type of expert testimony and reports that augment the work out process.
Focus Management Group is a leading business restructuring firm headquartered in Tampa, with offices in Atlanta, Chicago, Cleveland, Dallas, and Los Angeles. For more information regarding our expert witness and litigation support services, contact one of our experienced Managing Directors listed below:

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Jeffrey “Jeff” Granger has over 25 years of experience in finance, operations and turnaround management. Jeff’s experience includes strategic planning, financial restructuring, cash management, materials management, and production scheduling. Jeff has held numerous positions as interim CFO and COO in a variety of fields, ranging from manufacturing, to healthcare, distribution and service industries. He is known for his practical approach to managing the complexities of the insolvency situations proceedings, and his straight-forward method of dealing with all parties.

Juanita Schwartzkopf, CFE, CPA, has over 25 years of experience in commercial banking, financial management and operations and systems management. Throughout Juanita’s career, she has handled diverse crisis management and asset recovery situations involving bankruptcy, dissolution and liquidation. Juanita has held key management positions that include CFO and Senior Vice President in a variety of industries, such as manufacturing, agriculture, lumber, flooring, consumer finance, sporting goods, apparel and electronics.

Juanita was awarded an M.B.A. from the University of Wisconsin in 1987 and a Bachelor’s degree in Accounting from Carthage College in 1981. She is a Certified Fraud Examiner and holds a CPA certification.