



# How an Expert Witness Can Help You

by Michael Neidle

## **OVERVIEW**

The number of cases involving litigation today is substantial and it is important to understand the risk that you face in being sued and the role of the expert witness in this process. Since all lawsuits are precipitated by people and we deal solely with people, our chances of being sued are greater than average. You may either be the plaintiff or the defendant in a lawsuit. Having been involved as an expert witness on both sides, in several staffing cases, I can provide some insight as to what you should be aware of, how to proceed, how to maximize your chances for success as well as how to minimize your risk and exposure. If you are involved in a case you will likely have four classes of participants, the principals (plaintiff and defense), witnesses, the attorneys and

expert witnesses. We will focus on the later group.

To start with, you should do everything reasonably possible to avoid being sued, due to the cost, the distraction from running your business and the ancillary problems that stem from dealing with a lawsuit. It is axiomatic that in any lawsuit, the only one who is guaranteed to win is the attorney. You should therefore create and enforce sound legal contracts, policies and procedures for employees, clients and vendors wherever possible. You may include in your contract that the losing side will be responsible for the legal fees of the other party, if you take this tack however, recognize that if you lose you can double up on your legal costs. At times you must agree to sign someone else's

contract in order to do business with them, if so make sure you understand the terms, modify them to your needs or walk away from a deal that is unacceptable in terms of business risk.

When faced with a potential lawsuit try the mediation or arbitration route first and include such language in your contracts. The next best alternative is to settle the problem before going the legal route even when the cost appears to be a lot more than what you think is fair or justified. This also applies to what would be considered a frivolous lawsuit. We are familiar with numerous cases involving relatively small staffing companies, where the legal expenses have ranged from \$25,000 to well over half a million dollars and that is just through

the deposition phase and we have not even entered into the trial aspect. You can easily double this when you go to court and that is before considering damages and financial awards. If you settle before going to trial make sure to get a secrecy agreement as part of the settlement to discourage possible follow up lawsuits.

### **AREAS OF RISK**

Here are some of the areas from our own personal experience that one can find themselves subject to in a lawsuit: unfair termination, sexual harassment, breach of fiduciary responsibilities, disclosure of trade secrets, breach of contract, theft of company physical or intellectual property, discrimination, valuation of company stock, wage and overtime disputes.

Needless to say you must get the best legal advocates at the onset. As with the O.J. Simpson case, it was never about the search for the truth, as it was about the search for the best attorney. And the private sector simply had better lawyers than the LA. District Attorney could afford. Good lawyers and experts are not inexpensive, but if you are involved in a lawsuit this is no place to economize.

### **EXPERT WITNESS**

So the question is how can an expert witness help you if you are involved in a lawsuit?

First of all you need to find someone who is an expert in staffing and is very knowledgeable about the specifics of the case under consideration. For example if a lawsuit involves the valuation of a company stock for an exiting partner in an IT company, someone with experience in mergers and acquisitions for staffing

companies would be a good choice. Someone with general staffing knowledge would not be a good choice nor would a generalist in valuations. Someone who has done this for several IT staffing companies would carry the most weight as an expert here.

Secondly, you need someone with the credentials, maturity and experience to hold up under cross examination by a hostile attorney. This person must have the time and the ability to dig into the case in an effort to find the evidence that is needed to help defend your position. The opposition will look for every opportunity to trip up your expert and undermine your case. Don't help them by having someone who is over their head or inexperienced.

Next you need an expert who is also capable of reinforcing your case given the facts, not a disinterested third party, but someone who clearly knows the facts and how their analysis of the facts can be of assistance to you. Very few things are black and white in this world and facts often must be put into perspective. It is this interpretation of the facts in a case that can make the difference between winning and losing a case; i.e. "if the glove doesn't fit, you must acquit". You need someone who understands the case in detail, who can form an opinion about the case, can defend that opinion, is comfortable in an adversarial environment, can not be intimidated and will ethically but forcefully defend their ground.

Lastly, you need to have your attorney be directly involved with your industry expert. This is critical due to two important aspects of the law. The first involves attorney - client

privilege, namely that whatever is said between these two parties is protected, just as it is between you and the attorney. Secondly, your attorney needs to work with your expert regarding his understanding the facts and the nuances of the case and exposing your expert to likely areas of questioning and follow up. Your expert should be prepared to answer questions directly put to them, not speculate or be expansive, not go beyond their area of expertise and finally understand their role within the overall scope of the case.

So where do you find an expert such as this? Good attorneys first of all should have the ability to locate appropriate industry experts. You should also be able to get referrals from your own personal contacts and staffing and industry associations. In addition, you can do a Google search and network through people connected via sites such as Jigsaw or LinkedIn.

### **SUMMARY**

Avoid a lawsuit if you can, but if you are involved in one get the best people on your side. Your case rests upon the facts, the interpretation of those facts and the professionals who present your arguments. One of those people should be a staffing industry expert. Just as you would select the best attorney for your case, select an expert witness in a similar fashion.

---

Editor's Note: Mike Neidle, President of Optimal Management, Inc., started Optimal Management in 1994 ([www.optimal-mgt.com](http://www.optimal-mgt.com)), 650-655-2190 to mentor staffing owners and managers to maximize sales, profits and company value. He was Executive VP and Senior for Snelling and other staffing firms, as well as serving as CEO, CFO, and Marketing Director for starts up to Fortune 500 Corporations. He has an MBA and a chemical engineering undergraduate.