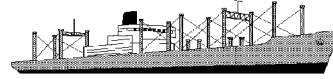




Rollin' On [®]



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EXPERTS, CO. SIZE, ATTY FEES, AND LAWN MOWERS

Expert Witnesses: Hired Guns

In some cases, there will be a need for expert witnesses. For example, you may need a CPA where income and expenses of a business are in issue and where there is a question as to the extent of damages. You may need an appraiser where business and land valuations are in dispute.

You can obtain a measure of comfort by employing an expert. However, what usually occurs is that both sides then hire experts, and then your case can come down to a battle of the experts, going *mano a mano*. If that is the case, then your comfort level can transcend into crisis if your expert is not up to par. A good case with a bad expert can be disastrous. A bad case with a good expert can also be disastrous, since the expert has to work with what he has.

Mark Twain once said to first know your facts, then distort them as much as you wish. Of course lawyers wouldn't do that (just checking to see if you're awake).

Once you get to trial, there's a good chance you'll get into the Joe Friday/Dagnet approach of "just the facts ma'am".

If you hire an expert, there is also the personality issue. You hear the story about the attorney who got upset because he liked the opposing expert who was making his point during pretrial matters. The expert had a great personality, and the attorney knew that he liked him, and since he was on the other side, then once he got to trial he was toast. So there's more to getting an expert than just

The Obligatory Disclaimer

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checking out the resume, or curriculum vitae, as people like to call it today.

And remember the scene from the movie *Mash*, where Radar tells the Colonel during the football game that the other side's wringer has spotted his wringer. These experts often know each other, and they can help exploit the weaknesses. Then again, that's a two-edged sword.

Finally, you have to guard against the expert who has a grudge for whatever reason against the other expert. You can't have your hired gun out of focus due to whatever. You need to keep your eye on the ball, and settling scores with some other expert is not in the cards.

The Bigger They Are: The Harder They May Fall

Some big names have been in the news lately. Walmart is being sued for overtime wages by thousands of present and former employees. The favorite place to shop, based on revenues and size, is now also the favorite place to bash.

FedEx *Ground* is being sued by drivers who claim that they should be treated as employees instead of as independent contractors. Meanwhile, FedEx *Express* treats most of its comparable drivers as employees.

Nike is being accused of mistreating workers in third world countries. Regardless of your size, you can face a mountain of trouble.

Attorney Fees Provisions: One sided clauses with two-sided consequences.

You see the clauses all the time, these nice little clauses that say that if

you don't do what is required, you will be responsible for attorneys fees and costs. At times they seem a little draconian in tone. They are frequently one-sided, in that they do not state that they do apply to both sides. But pursuant to Oregon law, where an attorneys fees clause is one-sided, it automatically applies to both sides.

So if you're the author and you're going to get aggressive with whatever it is that you've got going on, be aware that sometimes these things can come back to bite you.

Lawn Mower: Heaven on Wheels

Growing up, it became clear to me early on that there were two types of tractors, John Deere in one category and all others falling into the other category. My parent's house was green. Later on, my father and four other farmers saved the local John Deere dealership from closure, the primary motivation being to have a local service and repair facility. They eventually added another dealership to the fold.

In my city life I always wanted a John Deere lawn mower. We have a large lawn and I did not know of anyone who had a similar size lawn who used a walk-behind mower. I could do without that distinction.

Meanwhile, my lovely spouse told me that I needed the exercise and to forget about the riding mower. My birthday rolled around last spring, and I announced that I would find my own birthday present this year. It's nice to have the green machine on the premises. Then again, they say that the difference between men and boys is the cost of their toys.

That's all for now. Until next time, keep the cargo *rollin!*

Short Bio

Admitted to the state bars of Oregon, Alaska, Florida and Massachusetts. Practicing law for over 25 years and emphasizing transportation law, business law and related litigation.