

HOTELS, RESORTS

The expert witness plays a crucial role under the US system of jurisprudence and can have a significant impact on the outcome of any legal dispute, many of which are often decided on expert evidence. As part of this month's Expert Witness Profile, *Lawyer Monthly* takes a look at the work of expert witnesses in the field of hospitality and timeshares. To this end, we speak to the President of Straightline Hospitality Corporation in California, Kenneth C. Free.

Please introduce yourself and your role.

The focus of Straightline is to provide real estate development consulting services for hotels and related property types. Our clients on the consulting side of the business are mainly developers who are quite competent, but who lack knowledge concerning the world of hospitality. Hotels, resorts, timeshares, spas and the like are very unique businesses which blend real estate, branding, and significant operating components and consequently are minefields to develop for the uninitiated.

What drew you to become an expert witness?

I have always loved the hotel business, starting as a teenager growing up in Las Vegas, where in the 1960's my best friend and I used to sketch out the mega-hotels we wanted to develop when we grew up. Ultimately, I got my undergraduate degree in Hotel Administration and graduate degree in Finance and over the years worked for three major hotel companies, the last of which was Hilton Hotels Corporation where I was one of the senior real estate executives charged with worldwide responsibilities. When I left Hilton, I founded Straightline, and through a fortuitous sequence of events immediately obtained some significant clients- at the time primarily in timesharing since I had gotten Hilton into that business. In 1995 I was approached

concerning acting as an expert in a dispute involving a party who sought to exit bankruptcy through a plan of reorganization which relied upon converting a failed hotel into a timeshare project. The lenders were disputing this plan and, when I investigated it, I agreed with them that the plan not only provided insufficient redevelopment capital, but also would have effectively resulted in a failed timeshare project where before had existed simply a failed hotel. Anyway, that was the start of my expert witness practice which has since blossomed into quite a success.

What are the main types of cases you are called to work on?

They are all civil suits in the hospitality arena. About half involve disputes concerning failed projects, oftentimes involving feasibility issues or business interruption damages. The remainder concern standard of care issues in the operating environment. I am lucky to have progressed through the operations side of the business earlier in my career so oftentimes I am qualified to opine on those issues. Some cases are hybrids, such as a recent one where I was defense expert in a case involving the adequacy of window locks, the maintenance responsibilities of the operator, and the specification responsibilities of the franchisor. I also get called on some very unique cases which don't fit any particular category other than that they involve hotels.

What are the main challenges you face and how do you navigate them?

I don't run into any great problems on the expert side- just typical ones such as managing to expectations and facilitating communications with my clients. I guess I could add that since I am engaged in a number of unique cases there is the challenge of ramping up knowledge and strategies in those instances. For example, one of my cases involved a dispute between a wind farm which proposed to install 325-foot turbines at the property line on a ridge overlooking a valley where a timeshare resort was to be built. The resort developer felt that these giant machines would negatively impact sales velocities for the timeshare intervals because of their imposing look, noise, and ice-throw in the winter. In that case, as plaintiff's expert, I had to think through the best rationale for an aggressive and supportable report and testimony. In another case, a primary insurance company and a reinsurer were in dispute concerning indemnity, where the critical factor was the meaning of the word "condominium" in a destination resort context. In other words, despite the legal definition of the word, what was the colloquial, generally accepted, meaning? I had to put my thinking hat on for that one and ultimately prepared what I thought was a well-considered expert report on the defense side.

& TIMESHARING

Have you been involved in any high-profile cases?

Oh yes. I was defense expert representing the Arab Republic of Egypt in a notorious case involving a developer suing for land condemnation at the International Center for the Settlement of Investment Disputes in Paris. The developer had proposed building the world's largest timeshare resort, together with casino, marina, and other components, in a politically volatile location on the Gulf of Aqaba. My opinion was that the plan was infeasible as proposed. In another instance I was engaged as expert representing two London barristers who were sued and were countering the brother of the world's richest man in New York Supreme Court. The primary dispute involved whether the barristers, as agents of that individual and his 220-corporations, had looted his assets through a scheme of self-enrichment. I was able to prove that the barristers' compensation was appropriate to their employ. This was pertinent to my expertise in that the primary assets around which the disputes arose were large world-famous hotels.

How valuable to the law do you think expert witnesses in the field of hospitality and timeshares are?

Hospitality law, at least in the USA, is established, if a bit of a back-water discipline. Most attorneys and judges can work through the issues, even if they aren't regularly employed on hotel cases. Timesharing, on the other hand, is a very unique animal. Both the industry and the law in most jurisdictions have been evolving to account for the very particular circumstances of that business. Therefore, in the case of hospitality, mainly the hotel side of it, I act as a business counterpoint to the existing knowledge-set of the attorneys. In

the case of timesharing disputes I almost have to act as a professor in teaching everyone on our side the business so they can effectively pursue the case without stumbling.

What can knowledge of this sector bring to a civil case?

It goes without saying that knowledge of the business brings quick and usually meaningful responses to questions or issues. In my case, I am fortunate to have worked my way through the business- I've been hands-on in hospitality operations, finance and real estate development, in both major companies as well as my own entrepreneurial practice. Therefore, for the right cases I can be highly efficient and wear the persona of credibility. In my little corner of the world - hospitality expert witnesses - I have discovered that a big portion of my hospitality expert fellows emerged from public accounting or other cross-industry disciplines and, frankly, they don't really understand the business particularly well. They make mistakes - sometimes egregiously so. I won't get into detail here, but I have in my repertoire some great examples of failure to correctly opine because of insufficient industry-specific knowledge. **LM**

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