



Preparing the plaintiff to be deposed in the automobile case

The defense basically asks the same old innocent sounding questions. Beware the traps

BY STEVEN P. GOLDBERG

“The battle, sir, is not to the strong alone; it is to the vigilant, the active, the brave.”

— Patrick Henry

I was more than 30 years younger than I am now. I had prepared my client for her deposition in her car-crash case. I wondered if one of the lawyers in the insurance defense law firm was named “Scrooge” because the firm name was “Leach, Biesty, and McCreavy” – a name right out of Dickens. I could feel the evil all around me. It was my first time defending a deposition in an automobile accident case.

My opponent was just as inexperienced as me, and he was reading from a multiple-page form that was essentially a long list of questions. I watched as he asked each question and checked off boxes on his form when he completed each question. He rarely asked a follow-up question. He just stuck to the “script.” A few days later, I was at the in-house counsel’s office for Farmers Insurance Company and watched their lawyer do the same thing with *their list*. By the end of the week, I realized that the questions were pretty much the same and that it was possible to prepare your client exceptionally well for the deposition in an automotive case because you pretty much know in advance exactly what will be asked. The questions are designed to box the plaintiff into giving testimony that will benefit the defendants’ experts and attorneys at trial.

Not much has changed. The defense basically asks the same old innocent sounding questions.

This article will help the plaintiff’s lawyer to prepare his or her client to recognize the worst of these sneaky little questions and to help them respond to them properly at their deposition.

We will not delve into defense questions/strategies that are common to other types of accidents such as how to respond to questions regarding medical care and treatment or wage loss. The focus for this article is on issues peculiar to vehicular accidents.

Of course, you must tell your client how to dress, you must familiarize your client with the admonitions of a deposition and explain to them what a deposition is and how it is a critical stage. If your client is haphazard about the upcoming deposition, he or she will do poorly. You need to impress upon them the importance of the deposition process.

I recommend that you not use commercially available videotapes to prepare your client for the depositions. This is an opportunity for you to develop a trust relationship between you and your client. Use it.

Visit the scene

Tell your clients to revisit the accident scene before the deposition takes place. If you tell them to do it, then they will. Have them take note of the directions, north, south, etc., and of landmarks and of the number of lanes all around, not just on their side of the roadway. The witness needs to be familiar with the scene. If you haven’t been there yourself and don’t have great photos of the scene, then you’d

better go there too before you prepare your witness for the deposition.

Explain “trick questions”

Preparation equals vigilance. In effect, you should be warning your client about what they should expect to hear and explain the tricks involved in these questions and how to avoid the defense’s traps. You need to explain the types of questions that the witness will hear which are designed to win the case on the issue of liability.

Liability

The witness must be aware that the defense questions are calculated to place blame on the plaintiff. If they can establish even some degree of comparative fault, it will benefit the defense in the future, so the plaintiff must be forewarned. Explain to the witness that there will be questions about his or her trip on the day of the accident. There will be questions regarding the time that they left until they arrived at the place of the accident. There will be questions regarding the route that was taken and the speeds that their vehicles were traveling as well as the traffic conditions, weather conditions, etc. These questions are calculated to get answers allowing the defense to argue that the plaintiff wasn’t driving safely at the time of the accident – perhaps, speeding. I recommend that you wear a wrist watch with a sweep second hand so that you can familiarize the witness with a sense of “time.” People generally are not



familiar with the actual length of two seconds, five seconds or even 15 seconds. By showing them that a second is a relatively long period of time, by saying for example, “one Mississippi, two Mississippi, three Mississippi,” the witness will become more comfortable and cognizant of the times involved.

Where were you looking?

There will be questions regarding how long one was driving in his own lane and when lanes were changed, and questions about the perceptions of the plaintiff. A very insidious question begins with “Where were you looking when...”

This question will be asked by the defense at many places during the deposition. Where were you looking when you turned the corner? Where were you looking when you were two car lengths from the accident? Where were you looking when you felt the impact? Just before impact?

You must review with your client that when a person properly drives an automobile, he doesn't just look at one spot. The witness must explain to the defense attorney that it would be impossible to know exactly where he was looking at an exact place and time because when one drives, one is continuously glancing at mirrors, out the windshield, out the side window with his eyes darting about as he drives.

The witness must be educated as to how to estimate during the deposition, i.e., how to provide a proper “range” to respond to questions like, “How long did it take you to travel the distance from the corner to the accident?” Or, “how many car lengths were you pushed upon impact?”

Merely seeing vs. taking notice

When is the first time that you saw the vehicle involved in the accident? This is another trick question. The witness must understand that *noticing something* means it was perceived or observed versus *just seeing something* because it is visible. One may be driving along on the freeway seeing various visible vehicles and yet not

pay much attention to them until an accident occurs. The witness will explain how she took *sharp notice* versus just seeing them. Otherwise, the defense experts may argue that the plaintiff was inattentive since she should have seen the vehicle well before the accident actually occurred.

Injuries and damages

Next, you will need to explain the types of questions that the witness will hear which are designed to win the case on the issues of damages and injuries. These questions are calculated to minimize plaintiff's injuries at time of trial. It is essential that they properly respond and properly explain the nature of their injuries and how their injuries *were consistent with the forces of the accident*. Don't let these questions box your client in.

Injury consistent with accident forces

Explain to your client that the injuries complained about must match up with the forces of the accident, i.e., the impacts and movements involved in the accident. Questions like the following will be asked: How many impacts did you hear? How many impacts did you feel? How much time passed between each impact? What part of your vehicle was struck by other vehicles? Was your car moved? In what direction was it moved? How did your body move inside your car during the accident? How were you sitting before the accident occurred? Did your body strike anything inside the vehicle during the accident? What parts of your body were injured in the accident? Was there any warning of the impending accident such as horns blowing or tires screeching? Was your foot on the brake at the time of the accident? How were you sitting?

Modern seats and cabins

These evil little questions are calculated to box your client into giving testimony that will make it possible for the defense to minimize damages at time

of trial. They are designed to box the plaintiff into giving testimony that she was sitting with her back right square up against the seat, her knees and feet planted straight in front of her and, if the plaintiff is the driver, the hands were at the 10:00 and 2:00 position on the steering wheel while being seatbelted with a modern 3-point seatbelt.

Explain to the witness that in the cabin of modern automobiles, much research has gone into designing seats and the interior of automobiles so that serious injury is avoided.

Usually, however, that is *not how the injured party was sitting* at the time of injury and because he or she was either turned or turning in the seat or leaning to the right or left, the forces caused by the other impacting vehicles and acting on your client had a much more complicated “twisting” component. People don't just sit quietly in their seats. They move to their right or left and move and reach forward or to the side in order to change a CD in their CD player, change the radio setting, reach for their purse, move something on the front seat, open the glove box, put the visor up or down. The lawyer needs to explore this with the client in order to determine what movements were being made by the plaintiff at the time of the accident.

How did the vehicle move? Your body?

Likewise, when a vehicle is struck in such a manner that it does not simply move forward, but rather spins or moves to the right or left, then your client's body will be subject to a twisting impact, and maybe more than one of them.

Good luck convincing a jury that your client's knee was injured in a collision without any direct trauma or twisting forces to the knee. Therefore, during your preparation for the plaintiff's deposition, you must review in detail how your client was sitting in the vehicle and how his or her body moved upon the different impacts. The injuries *will* be consistent with the facts of the accident, but you need to review it all with them so they



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understand how to deal with these questions.

Most folks don't remember if their body moved backwards upon impact or forward upon impact or which came first. The defense questions are calculated to box the plaintiff into the wrong answer. Don't let that happen. The plaintiff needs to be honest and say that they remember moving in both directions but that it happened so quickly they don't remember which direction they were moved first.

What happened inside the car?

Did their body strike anything inside the vehicle after or during the accident? This is a question that also needs to be reviewed before the deposition. The plaintiff needs to recall as best they can

whether they struck an armrest, seatbelts, the steering wheel, a window, windshield, a console, the dashboard, the roof, the head rest, the seat, the gear shift, a mirror so that these injury forces are not overlooked. Have the client remember where their bumps and bruises, cuts and scrapes were. Did air bags deploy? Did that cause injury such as a burn or eye trauma?

Conclusion

Be vigilant. Take as much time as necessary to prepare your client for his or her automobile accident deposition. These cases need preparation. Your client can't go into the deposition unprepared. It is a nightmare to watch a plaintiff give testimony that is inconsistent with his or her injuries and in such a manner that

they can later be saddled with comparative fault because they were tricked by these questions.

A friend of mine, Bob Reback of Reback McAndrews, once said that "We don't often win our cases at our clients' depositions, but we can sure lose them at their depositions."



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