

Avoiding deposition disasters

Editor's Note: The Nassau Academy of Law will offer a program on Depositions as part of their annual Bridge-the-Gap Program to be held January 22-23, 2011.

As the contested facts in a negligence case are crucial to forming the basis of or blocking a potential summary judgment or other motion, asking more questions and preparing your client to answer those questions is more important than ever. The deposition testimony is also extremely important to both plaintiffs and defendants in evaluating the strengths and weaknesses of their case and in trying to start or successfully conclude settlement negotiations. Attorneys now take advantage of the relatively new deposition rules to broaden the scope and detail of their questions. If witnesses are not prepared to answer those questions, many claims or defenses may be weakened or lost.

The following are some suggestions for asking additional questions concerning potentially important issues in several types of negligent cases, and for attorneys representing the witnesses to prepare them to answer these questions. The answers of the witnesses to these additional questions, along with the usual routine questions, should be closely followed by counsel. The answers may suggest many additional questions that could lead to additional useful information. The goal of the deposition is to ask all pertinent questions, especially because you will rarely have another opportunity to do so.

Concerning the Force of the Impact

- Movement of plaintiff within vehicle
- Physical contact of plaintiff with interior of vehicle
 - Damage to the interior of the vehicle or windows
 - Use and effectiveness of restraints
 - Pre-accident position of plaintiff in vehicle
 - Pre-accident adjustment of seats and restraints
 - Pre-accident distance of plaintiff from dashboard and steering wheel
 - Effectiveness of restraints during accident
 - Discharge of airbags
 - Bruises, bleeding, or damage to clothing from impact

Concerning Prior Accidents

- Did each current doctor ask plaintiff about injuries, and treatment of injuries from prior accidents
- Did plaintiff tell each current doctor about injuries, treatment or disability from prior accidents
 - Hospital visits, medical treatment,

- Scope and extent of prior treatment and disability
- Last treatment for prior accident

Concerning Serious Injury Threshold (Insurance Law § 5102(d))

- Details of work and leisure activities in year before accident
- Frequency and intensity level of those activities
 - Efforts to resume activities
 - Medical advice concerning resumption of activities
 - Details asked by and provided to treating doctors about scope of work activities
 - Reason for disability from work activities
 - Availability of limited duty work or special accommodations at work
 - Receipt of unemployment or disability benefits prior to, at time of, and subsequent to accident
 - Applications for other jobs
 - Taking civil service written or physical exams
 - Child care or other family duties performed
 - Present activities

Other Questions

Concerning Disability

- Family doctor
- Other health insurance
- No-fault denial or cut-off
- Are bills being submitted to or paid by other insurance
 - Travel for business or pleasure
 - Attendance at any type of school or training
 - Injections as part of treatment
 - Exact circumstances of first visit to health care facility
 - Home exercises when given and extent performed
 - Utilization of braces or other medical devices
 - How travel to work or to medical offices
 - Stairs at home

Slip-and-Fall Cases

- Visibility of defect (or distraction from it)
- Familiarity with area
- Alternative routes
- Distractions, e.g., cell phone, iPod, texting
 - Exact location of defect and exact nature of defect
 - Damage to footwear, clothing, and anything carried

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