

The Negligence Corner

1. **Dealing With Damages At Depositions**

by Kenneth J. Landau

Whether you anticipate that your negligence case may be dismissed by (a threshold) motion, settled or proceed to trial, questioning the plaintiff closely and preparing them to answer questions about damages is more important than ever. Moreover, the recent amendments to the Uniform Civil Rules concerning the conduct of depositions allow defense attorneys greater freedom in asking questions and require greater preparation by attorneys for plaintiff to attempt to object to questions.

The following are suggestions for framing possible questions to plaintiffs and for which they should be prepared by their counsel to answer to maximize recovery and reduce the possibility of dismissal.

At the scene of the accident:

- complaints concerning injuries
- bleeding or bruises
- loss of consciousness
- force of each impact
- movement of vehicles after impact
- deployment of airbags
- movement of plaintiff within vehicle
- position of plaintiff before and after impact
- use of seat belts
- restraint provided by lap and shoulder belts
- extent of damage to each vehicle
- damage to clothing
- first aid or bracing at scene

After the accident

- how left the scene
- first medical attention

- conversation with any relatives, friends or attorneys before medical attention
- who recommended doctor or facility
- contact with family doctor
- complaints at hospital or first visit
- history requested and given of accident and prior accidents or disabilities
- x-rays and their results
- who made appointment for facility
- names and types of doctors seen on first visit

follow-up treatment

- nature of treatment
- braces, devices, medication
- did treatment help
- cut off of no-fault benefits
- collateral source billed for treatment

activities after accident

- confinement to bed
- confinement to home
- inability to work
- attempts to return to work
- accommodations requested at work
- nature of work as reported to doctor
- daily activities while not working
- activities missed for first 90 days after accident
- visits to family doctor
- trips or courses taken
- who plaintiff lives with
- did they provide elder or child care given
- outside help provided to them

later treatment and disabilities

- discharge from care
- recommendations given
- any not followed or still being considered
- complaints, findings at last visit
- future visits scheduled or planned
- daily routine
- trips or courses taken
- limitations at work, home or in other activities
- were limitations recommended by doctor

-home exercises or stretches performed or recommended

-devices used at home and for how long

other accidents

-prior injuries, accidents or impacts

-prior x rays or MRI s

-subsequent accidents

-family medical history

-prior or other disabilities

-prior testimony, reports, ER visits or treatment concerning prior or subsequent accidents

-prior or subsequent gym memberships or recreational activities

-prior or subsequent applications for disability

-prior occupations