

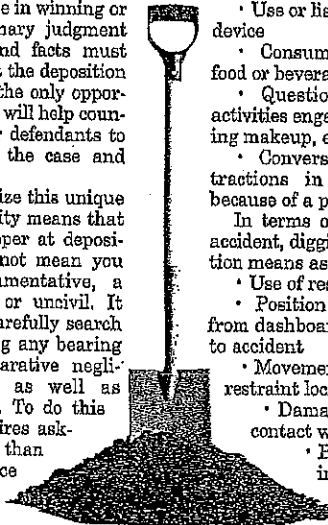
Personal Injury/Workers' Compensation Law

Digging Deeper at Depositions

Establishing the facts in a negligence case at a deposition is more important than ever before. The appropriate facts can determine liability and preserve, limit or expand the scope of the damages.

Establishing the appropriate facts means carefully phrasing each question and exploring potential follow-up questions based on the answer. Covering all important facts or claims may make the difference in winning or defeating a summary judgment motion. Background facts must also be explored at the deposition as this is usually the only opportunity to do so and will help counsel for plaintiffs or defendants to properly evaluate the case and prepare for trial.

To properly utilize this unique one time opportunity means that you must "dig deeper at depositions." This does not mean you need to be argumentative, a "Rambo" litigator or uncivil. It means you must carefully search for the facts having any bearing on liability, comparative negligence, causation, as well as potential damages. To do this properly now requires asking more questions than ever as insurance carriers demand more details



about a claim, injury or disability.

Digging deeper means thorough questioning and going beyond the usual questions. They should include "distractions" prior to or during an accident, including:

- Area under observation by plaintiff
- Familiarity with area
- Use of cell phone for telephone call or texting
- Use or listening to GPS device
- Consumption of any food or beverages in the car
- Question any other activities engaged in (applying makeup, etc.)
- Conversation or distractions in the vehicle because of a pet or children, etc.

In terms of the happening of the accident, digging deeper at the deposition means asking about:

- Use of restraint devices
- Position of seat and distance from dashboard or seat in front prior to accident
- Movement by the plaintiff before restraint locked him/her in position
- Damage to clothing from any contact with the vehicle
- Bruising, scarring, bleeding or loss of consciousness because of body movement in the

vehicle

Treatment after an accident:

- Cell phone calls to family, friends (or lawyers) after an accident (while at scene)

- Cell phone or other pictures taken by any of the above

- Conversations with witnesses, parties, police, ambulance attendants, bystanders or friends or relatives who may have come to scene after an accident

- First complaints made and first-aid received at the scene of an accident

- How transported into the ambulance

- Complaints at the Emergency Room

Emergency Room

- History given to ambulance attendants and/or at the Emergency Room

- X-rays, MRIs or CT scans taken at the Emergency Room

- Braces or other devices provided at the time of discharge from the Emergency Room

Digging deeper at depositions also means exploring the time and cost of any follow-up treatment, including:

- Length of time until follow-up care
- Contact with family doctor seeking care or referral to other medical personnel

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DEPOSITIONS ...

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- How they found the subsequent treatment facility

- Relationship of the person recommending the facility to the plaintiff and to the facility

- How and if they made appointment for the facility

- How they traveled to the facility for the first visit

- If anyone accompanied them to the initial visit

- Medical history given at the time of the first visit, verbally or on a written questionnaire

- Questions asked about medical history by each medical provider and the answers given by the plaintiff

Concerning prior injury and/or disability, it is extremely important to "dig deeper."

- Details concerning the happening of the prior accident and impact and property damage to the vehicles

- Emergency Room treatment

- Follow-up care, including physical therapy or consultation with specialists

- No-Fault carrier

- X-rays or MRI films taken

- Prior legal proceedings, depositions or pleadings

- Attorney who represented Plaintiff

It is also a good idea to "dig deeper" by asking about the family or personal doctor from the time of the prior accident until the time of the subsequent accident.

If there is a claim of inability to work or to return to work or a long absence from work, it is important to ask about the exact nature of the duties. Which do they have problems with? Did they make any request for light or limited duty or part-time work? Do any-

Do they work overtime? Do they leave work early because of pain or medical appointments? Do they use any devices to help them work? It is also important to ask them about what they were able to do, even on a more limited basis, at home, travel, in terms of their hobbies or childcare.

Digging deeper at depositions also requires them to be questioned about their activity level prior to and after the accident. Specifically:

- Activities they were completely unable to do after the accident and for what period

- Activities they are still completely unable to do at time of deposition

- If a doctor told them not to attempt these activities

- If they attempted any of these activities on a limited basis

- How frequently they engage in these activities prior to the accident or location did they engage in them

- Did they make an effort to maximize their recovery

- Were there any other reasons for their illness or inability to recover

- Were they given any stretches or exercises to do to mitigate the injury and help achieve partial or full recovery

- Were they given any devices to minimize injury or help achieve recovery

- When was their last treatment

- When is their next visit

- Was there any treatment recommended to them that they have had

Kenneth J. Landau is a partner in the firm of Sheyna, Dachs, Sauer & Dachs, LLP, concentrating in negligence, insurance and medical malpractice cases on behalf of plaintiffs. He is a past Dean of the Nassau Academy of Law and the host of the weekly radio show *Law You Should Know*, broadcast Mondays at 4:00 p.m., Tuesdays at 1:00 p.m. and Sundays at 7:00 a.m. on 90.3 FM radio, WHPC or www.ncc.edu/whpc. Free

TIPS ...

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Court's schedule, so do not pre-pay for specific days.

13. At trial, do not talk over your witness when your witness is testifying. Doing so may create an inaccurate record; the court reporter cannot record two people speaking simultaneously.

14. Try not to talk above the jury

Use language lay people understand.

15. Do not stare at the jury while you are questioning the witness.

16. Always try to be timely. Remember: the jury's time is important to them.

17. Stand up when you object.

18. Avoid nodding your head when your witness is being cross-examined.

Hon. Denise Sher is an Acting Justice of the Supreme Court, Nassau County.

LAW YOU SHOULD KNOW

every MON at 4 PM or TUES at 1 PM or SUN at 7 AM

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