

Guidelines For Your Deposition In A Personal Injury Case

INTRODUCTION

You, as a client, have either filed a lawsuit or been sued by someone and your attorney has advised you that your deposition will be taken at a certain date and place. You have heard the word “deposition” used by your lawyer and possibly you have heard some reference to it from friends or other sources. This is the point in your particular lawsuit where you first become directly involved in the adversary system of our judicial process.

Although this booklet goes into detail about the taking of your deposition, it is important to remember to follow these basic concepts (unless told otherwise by your attorney). A deposition is as important as your direct testimony in the courtroom in front of a judge or jury. The deposition proceeding is usually an informal one in the offices of either your attorney or the attorneys for your opponent. The proceeding will be recorded by a court reporter and your testimony taken under oath. The purpose of a deposition is for the attorneys to find out facts and circumstances of which you have knowledge in regard to the particular case in which you are involved. Listen carefully to the questions being asked of you and allow the questioner to complete his or her question before you answer. This allows you to give as complete and accurate an answer as you can and also gives your attorney a chance to object, if necessary, to protect your interests. Thinking about the question and your answer before you answer will be great help. Above all, answer the questions accurately and truthfully. The truth, even though you might have some concept that it hurts your case, is your protection later in the proceedings against having to change some of your previous statements. Do not volunteer information unless it is necessary to completely and accurately answer the question.

What a deposition is, and what things you should know about it, are, naturally, of great concern to you. The purpose of this booklet is to help explain the procedures and nature of a deposition and, hopefully, to limit your concern about having your deposition taken. It is also to assist you in knowing what, if any, advance preparations you should make to effectively assist your attorney at the taking of your deposition.

The information and guidelines set forth in this booklet are just that – guidelines. In the taking of your deposition, you should, as throughout your entire case, be guided and counseled by the instructions of your lawyer. Your lawyer will expand upon the particular circumstances surrounding your deposition as necessary to adequately represent you.

As you read this handout, additional questions may occur to you. Use page ____ to jot down these

questions and take them with you to your next meeting with your lawyer.

SECTION I: GENERAL INFORMATION

Question: What is a deposition?

Answer: A deposition, sometimes called a *discovery procedure*, is a lawful method whereby the opposing lawyer discovers what you know about your own case through your answers to a series of questions she will ask you.

The main difference between just talking about your case and giving a deposition is that you will take an oath and swear to tell the truth. Also, a deposition may later be introduced as evidence in court.

A deposition is generally taken after your case has been filed in court and before the actual trial.

Question: Why is my deposition being taken?

Answer: Your deposition is being taken so that the opposing lawyer can determine what you know about the facts and details of the case.

A deposition enables the lawyers to form an impression and to make an appraisal of *you*, *what* you have to say about your case, and *how* you say it.

Question: Who will be present when my deposition is taken?

Answer: Your lawyer will accompany you. The lawyer or lawyers representing the party or parties you are suing or are being sued by will be there. An official court stenographer will also be present to record what is said during the deposition. The court stenographer is also called a “court reporter,” but a court reporter is *not* a newspaper reporter. In this instance, the word “reporter” means “stenographer.”

Question: Will there be any publicity in connection with my deposition?

Answer: In the vast majority of cases, there is no newspaper or television publicity. If your case is one of public interest, your attorney will protect you from unnecessary publicity.

Question: Does the taking of my deposition mean my case is going to trial soon?

Answer: Not necessarily. Your attorney will estimate the expected trial date.

Question: Is the deposition conducted like a trial?

Answer: No. It usually takes place in a lawyer’s office. If it takes place in a courtroom, it just happens to be the most convenient place for everyone to meet.

Question: How does the deposition begin?

Answer: The official court stenographer will ask you to raise your right hand and take an oath to tell the truth. The general language of the oath is: “Do you swear to tell the truth, the whole truth and nothing but the truth as you shall answer to God?” You will, of course, answer “Yes.”

If, for reasons of religious belief, you cannot take an oath, you will not be required to do so. Your lawyer will explain this to you and will answer any questions you might have on this subject. After the oath has been administered, you will be questioned by the other lawyer.

Question: If a deposition is not the actual trial of my case, why will an official court stenographer be there?

Answer: Everything you are asked, and the answers you give, will be taken down in shorthand or by machine. By law, only an official court stenographer is permitted to do this. The deposition may later be transcribed (typed into a book) by the stenographer. Depositions may also be audio or video recorded as well.

It is important that you answer truthfully and to the best of your knowledge. It will be difficult for you to make any major changes in your testimony once you have testified and the court reporter has recorded it.

Question: Will any other person connected with my case be present during the taking of my deposition?

Answer: Not ordinarily.

Question: Will I be told about the lawyer who will ask me the questions?

Answer: Yes. Your lawyer will discuss with you the type of questioning usually conducted by the opposing attorney. He may even tell you about her personality, attitudes, tone of voice, speed of questioning, and so on. If the opposing lawyer asks questions in rapid-fire order, do not let her cause you to give rapid-fire answers. You should answer questions at your own pace.

Question: Will more than one lawyer be asking me questions?

Answer: This will depend on how many parties you have sued. If additional parties involved in the case are represented by different lawyers, each one of them may be permitted to ask you questions.

Question: Will a deposition be taken from anyone else connected with my case?

Answer: Probably. Your lawyer will take depositions if and when he feels it is necessary to do so.

Question: How long does a deposition take?

Answer: This depends on the particular case and the lawyer asking the questions. Ask your attorney to estimate the time for your particular deposition. You should arrange your schedule so that you will not be hurried or rushed for time when you testify.

Question: Is there some special way I should be dressed at the deposition?

Answer: Yes. Wear plain, neat and comfortable clothing — similar to what you would wear if you were going to court.

Women should avoid using heavy facial makeup and wearing costume jewelry.

If you have suffered scar formations from your injury, *do not* cover them with cosmetics.

Question: Will I be permitted to smoke during the deposition?

Answer: Probably not. Most government and private offices are non-smoking environments today.

Question: If the deposition is unusually long, will I be permitted to go to the washroom or just take a break?

Answer: Yes. You should be as comfortable as possible at all times. Tell your lawyer, *in advance of the deposition*, about any personal problems or physical conditions which require special attention. He will arrange the necessary recess.

Question: Can I bring anyone with me to the deposition?

Answer: Ask your lawyer in advance, and he will tell you who may or may not accompany you during the deposition.

Question: Is there some special way I should conduct myself at the deposition?

Answer: Yes. Be courteous. Never become angry, antagonistic, hostile or sarcastic. Avoid answering questions with questions.

Do not become overly friendly with, or tell jokes to, the opposing lawyer or the court stenographer. A deposition is an important and a serious proceeding.

Even if the lawyers sometimes engage in informal talk among themselves or with the court stenographer, you should avoid taking part in these conversations.

Question: Will there be some special order to the questions I will be asked?

Answer: The deposition will cover about eight to ten general areas of information, but not necessarily in the order given here:

- (a) Your personal history and background.
- (b) The facts of the accident.
- (c) The injuries you claim to have suffered as the result of the accident.
- (d) The medical treatment and care you have received.
- (e) The complaints you now have resulting from the injuries you received in the accident.
- (f) Your ability or lack of ability to partake in your usual daily activities.
- (g) What effect your injuries have had upon your ability to work and to enjoy your off-work activities, such as hobbies and sports (bowling, tennis, swimming, hunting, etc.).
- (h) The damages (money) you lost, paid, or owe as the result of the injuries you claim to have suffered.
- (I) A complete history of all illnesses or injuries that you have suffered before and after the date of the present accident.

Question: At the deposition should I relate any conversation I heard about the character of the party I am suing, or anything anyone has told me about the accident?

Answer: No. Privately you should relate these details to your attorney. What other people told you or what you overheard is generally not admissible evidence. However, after investigating what you heard or what was told to you, your lawyer may find admissible evidence and, perhaps, witnesses.

Question: What if the opposing lawyer interrupts the completion of my answer to a question by asking me another question?

Answer: Your lawyer will keep the record straight. He will recognize that you have not been permitted to complete your answer and will make the necessary comments for the record. Your lawyer may not be interested in having you complete your answer. He may ask you if you care to complete your answer, or he may decide that your interrupted answer is all opposing counsel is entitled to receive under the circumstances. If completing your answer is vital to your case, your lawyer will make it possible for you to finish.

Listen carefully to what your lawyer says during the deposition, and be guided by his instructions to you and his remarks to the stenographer or the opposing lawyer.

Question: If my deposition is not transcribed, how will the insurance company know about me, my case or my testimony?

Answer: The opposing counsel will furnish the insurance company with a review of your testimony and her personal appraisal of you, your injury, how you testified, and her opinion of the value of your case.

The opposing lawyer and the insurance company will decide whether to settle your case or wait for a trial and a verdict.

Question: What if the court stenographer makes a mistake in recording my testimony?

Answer: If your deposition is transcribed, you and your lawyer will be able to read it and check it for errors. Your lawyer will know what to do if the deposition is inaccurate.

Stenographic errors can be avoided if you are careful not to talk at the same time someone else is talking. It is almost impossible for the court stenographer to record overlapping conversations. Speak loudly enough to be heard and clearly enough to be understood. Occasionally, the court stenographer may ask you to spell a word or a name in order to prevent errors.

Question: Will the opposing lawyer try to trick or confuse me with his questions?

Answer: This is a general misconception brought about by what you may have seen on television or at the movies. If the opposing lawyer's questions are of this nature, your attorney will be quick to recognize it. He will take the proper measures to prevent the continuation of this method of questioning.

Question: Would it be a good idea to memorize my testimony so I won't forget what to say?

Answer: Do not memorize your testimony. A deposition is not a memory contest. Do not bring papers or lists of items you want to remember. If your lawyer wants you to bring anything to the deposition, he will ask you to do so.

Question: Is there some special way in which I should answer questions?

Answer: Yes. You should be truthful. If you adhere to the truth, you will be better able to remember the details.

Think before you answer. Consider every question in three steps. First, you hear it. Second, you think about the answer in your own mind. Third, you will give the answer audibly.

Answers should be brief and in direct response to the question. Do not ramble on, giving answers to questions which have not been asked. Many questions can be answered with a simple "yes" or "no."

Take your time. Listen and understand the question. Consider the answer. Then state the answer. Speak clearly and loudly enough for those in the room to hear you. Do not nod your head in answer to a question. The court stenographer may not know what you mean.

Question: Must I answer every question the opposing lawyer asks?

Answer: Yes, unless your attorney enters an objection, or if you do not know or remember the details involved in the question. *Do not make up answers.*

Question: If I do not remember certain facts or figures and I am asked about them, what should I say?

Answer: Say that you do not remember, or words to that effect. If you can give a reasonable approximation, then you may do so. For example: "about twenty feet," "about thirty-five miles per hour," "about 2 p.m." If your answer is based on an estimate, then say that it is an estimate. If you cannot make a reasonably accurate estimate or you do not recall the particular fact or facts, then simply say so.

Question: What is an objection?

Answer: If you are asked a question that your lawyer considers improper, he will say "I object." The word "object" when spoken by either lawyer is your signal to stop talking. *You must never volunteer to give an answer if your lawyer has made an objection.* The lawyers may want to clear up a point or make certain the question or answer is proper. This is not a signal for you to attempt to explain something. You should remain silent until you are instructed by your lawyer to continue with your testimony.

Question: What if I think I should not answer the question, but my lawyer does not make an objection?

Answer: Answer the question. Your lawyer is present in order to protect your interests, and he knows when to enter objections. You should never say "I object" or "off the record" in order to explain answers.

Question: What if the opposing lawyer fails to ask me certain questions that I think are important?

Answer: The opposing lawyer will ask you those questions she feels are important. *Do not volunteer facts or answers to questions you have not been asked.* For example:

Q: What is your present residence address?

A: My present residence address is 5 West Elm. I have lived there for ten years. I work at 5674 West Broadway and my employer is Henry Hopkins. I have worked there for four years.

You were asked to give 'only your *present residence address*. The answer should be given simply: "5 West Elm." Stop talking. Wait for another question. If you continue giving answers to questions you have not been asked, the deposition will be unduly long and disorganized.

Question: Will I be permitted to talk to my lawyer during the deposition, and before I answer certain questions?

Answer: Avoid doing this. Everything said at the deposition will be recorded by the court stenographer. If you do ask your lawyer questions, he will undoubtedly say "off the record" to the court stenographer and will talk to you; however, this may create doubt and suspicion where none should exist. Your lawyer will tell you to answer the question to the best of your ability. If you do not know the answer, then say so.

Question: What should I do if I did not hear the question or did not understand what the opposing lawyer meant?

Answer: Simply say that you didn't hear or that you didn't understand the question. The opposing lawyer will then ask either the court stenographer to reread the question to you or he will rephrase it until you do understand it.

Question: What if I realize during the deposition that I have given an incorrect or inaccurate answer to a previous question?

Answer: You may ask that the particular question you are concerned about be read back to you. You should also ask that your answer be read back. Then think carefully about any change you wish to make in your testimony. The opposing lawyer may ask questions about the change in your testimony in an attempt to discredit your corrected answer.

Question: If I am asked: "Did you talk to your lawyer before coming to this deposition?" what should I say?

Answer: The truth. "Yes" if you did, and "No" if you did not. It is most probable that you went over the details of your case with your lawyer. There is absolutely no reason for you to hide the fact that you did talk to your lawyer before coming to the deposition.

Question: What if the opposing counsel asks: "Did your lawyer tell you what to say at this deposition?"

Answer: Your lawyer will not tell you *what* to say. He will tell you to testify truthfully and to the best of your ability and knowledge. He will prepare you for your deposition by referring to reports, notes and other documents in your file and will review the facts in order to refresh your recollection.

Question: Is it permissible for me to talk to my lawyer outside of the deposition room during a break or when there is a lull in the questioning?

Answer: It is best not to talk about your case at any time except in answer to questions during the deposition. Do not discuss your case in lobbies, waiting rooms, washrooms and so forth. Some things you say may be misinterpreted by others. When the deposition is concluded, stop talking.

SECTION II: PERSONAL HISTORY AND BACKGROUND

Question: What has my personal background to do with this case?

Answer: A great deal. A deposition is a search for truth. You may be asked questions concerning your marital and divorce history, how many children you have, their names and ages, your age, where you were born, where you have resided in the past, your schooling and educational background, your employment history, if you have ever been in jail—and many similar questions. Your lawyer will object to any questions he considers improper.

Question: If there is something in my personal history which happened a long time ago, how can I keep the incident from coming out?

Answer: The only *positive* protection you can rely on is to confide in your attorney. Unburden yourself of the worry you may have regarding incidents that occurred in your life. It is quite possible the incidents have nothing to do with the issues in your case and can be kept out as a matter of law. If you disclose your concern to your lawyer, he will evaluate the problem, review its importance and advise you how the matter can best be handled. Obviously, if you fail to tell your lawyer, the matter may come out during the deposition and he will be unprepared, and thus unable, to come to your assistance.

Question: This accident was not my fault. Why are these questions concerning my personal life so important?

Answer: A lawsuit makes some areas of your life an open book. The questions about your personal life may have nothing to do directly with the accident — indirectly, they may have significance. These questions have to do with who you are, how your accident has presently affected your life and how your life may be affected in the future.

Question: What is so important about my past divorce or remarriage history?

Answer: You must accept the fact that certain information you consider "your business" is no longer completely private and may be significant and proper areas for questioning. You should keep in mind that your attorney must know these details *before* your deposition is taken.

All information given to your lawyer is confidential. If you fail to tell your attorney everything he needs to know, he may be unable to enter an objection to information which would ordinarily be inadmissible. He will not be able to fully protect your rights at the deposition if he is not fully informed.

Question: What significance is attached to the places I have lived in the past?

Answer: The purpose of learning your past residences (in some cases all the way back to your date of birth) has to do, among other things, with any possible claim or accident you may have had in the past. *Any previous injuries may affect your present case.* You must reveal these previous injuries to your attorney so he will know how to deal properly with these facts.

Insurance companies maintain a thoroughly documented index of all claims and lawsuits. This information is cross-referenced under your name, place of residence and other similar categories.

Question: Will I be asked if anyone ever sued me or if I was ever a party in a lawsuit?

Answer: Yes. If you are asked such questions, be prepared to answer truthfully. Be sure you tell your attorney about any lawsuits in which you were either the suing party or the person against whom the lawsuit was filed.

Do not allow your lawyer to be surprised at your deposition by the fact that you were sued or sued someone else. *Discuss any of these facts in advance of the deposition.*

SECTION III: FACTS OF THE ACCIDENT

Question: What will the opposing lawyer ask me regarding the facts of the accident?

Answer: The questioning regarding the accident will probably start with the day, date, time and place it occurred. Thereafter, the questions will relate to *how* it occurred and what happened to you personally. Be prepared to answer questions about everything you know about the accident. *Do not attempt to fill in details you do not know.*

Question: Will the opposing attorney skip from one subject to another?

Answer: Every lawyer develops his or her own particular style of asking questions. Some skip from one subject to another and others follow a definite pattern. You can avoid confusion by paying close attention to the questions asked.

Remember, you always have the right to have a question repeated or clarified if you do not hear or understand it. If you stick with the facts as you know them, no amount of skipping around should confuse you.

Question: How specific will the questions be that are asked of me?

Answer: This, of course, will depend upon the lawyer taking the deposition. Whenever possible, you should answer specific questions with specific answers.

Some lawyers may be purposely vague; others may be very specific. Some lawyers will dwell at great length upon what appear to be minor details. Your attorney will know when to enter an objection to questions that are vague. If the opposing counsel asks detailed questions, your own

lawyer may determine it best not to enter objections. He may be learning a lot about your case that he otherwise might not learn.

Question: Before my deposition is taken, is it proper for me to visit the place where the accident happened?

Answer: Yes, if it is conveniently located. Do not travel out of town to visit the place of your accident without first checking with your attorney.

If you do visit the scene of the accident, estimate the distances involved (how far certain points were from you and from other points). Observe the location of highway and road markings, signs, places of business, street lights, traffic lights and all other such objects.

Question: The accident happened so quickly I can't remember all the details. What should I do about that?

Answer: Take time to think about how the accident happened. Review the details in your own way. Retrace your activities. Take yourself back as far as necessary to piece together the events before, at the time of and after the accident.

Question: The accident happened so long ago I can't remember all the details. What should I do?

Answer: Your lawyer has many details in his file that you are probably unaware of. With your permission, he has obtained police, hospital, medical, employment and other records. When he reviews your case with you, he will go over these items and will assist you in recalling the details you may have forgotten. Do not panic. Be calm. Refresh your memory.

Question: How should I review what happened in my accident?

Answer: Go over such things as where you had been before the accident. What was the weather like? What were you doing? Where were you going? Why were you going there? What route did you take or how did you get to the place of the accident? How long did it take you to get there? How far did you travel? How were traffic conditions? As you think about these general questions, the details will probably come back to you.

Question: Will I be asked questions about the car I was operating or was riding in?

Answer: Yes. Be prepared to answer such questions if you know the answers. If not, your lawyer will probably have this information in your file.

It is likely that you will be asked if the car had an automatic transmission, seatbelts, a stick shift, power steering, power brakes; if the lights were on or off; if it was a four door or convertible, and other similar questions relating to the type of car and its condition. You may be asked about the tires on the automobile and if the windshield wipers were working. Was the radio on? Was the heater or air conditioner working? Which windows were up or down? When and where did you purchase the car? Was it in good working condition before the accident?

Question: What measurements should I be prepared to talk about?

Answer: Generally, the length and width of your car, the width of the streets involved, the distance you were from certain objects such as intersecting streets, traffic lights, other vehicles, crosswalks, street markings, traffic signs, curbs, edges of the pavement, etc. You should be aware of the posted speed limits at the time of the accident, how fast or slow you were traveling, if you were stopped and for how long.

Question: I didn't measure these things when the accident happened. How can I know them at the time of the deposition?

Answer: Answers to these questions relating to distances and other measurements need not be exact. Your best estimate will be sufficient if you can be reasonably accurate. Your lawyer may have exact measurements, but he will not expect you to memorize and know them to the inch. When he prepares you for your deposition, he will review these details with you.

Question: If the center of the roadway was not marked, how can I tell where I was in the roadway at the time of the accident?

Answer: Think about how close or how far your vehicle was from the curb or edge of the roadway on your right. Compare the width of your own car to the width of the roadway. Recall (if you can) cars that approached, passed, or were behind you before, at the time of, or after the accident.

Question: Is it important to recall sounds (like horns or the squealing of tires) or other such matters?

Answer: Yes. Tell your lawyer what you saw, heard and even smelled. He will determine the importance of every detail, and he will relate these details to your whole case.

Question: What should I be prepared to say about the police officer or officers who came to the scene of the accident?

Answer: What the police officers said to you and to the other parties will be important. Did the officers take photographs or make measurements of skid marks? Did they obtain the names and addresses of witnesses? Before your deposition, tell your lawyer about the investigations made by the police officers.

Be sure to tell your attorney when and if you signed anything for the police or any other person at the scene, in the hospital or at your home. If you did write or sign a statement for the police or any other investigator, you should try to remember what was written in the statement — and tell your lawyer all about it. If you have a copy of the statement you signed, be sure to give it to your lawyer.

Question: Must I know the exact compass directions like east, west, north and south?

Answer: If you cannot recall the directions, your lawyer will be able to assist you. Were you headed uptown, downtown, or crosstown? Were you going in the direction of a certain community or away from it? If you can read a map, you should use one when reviewing the details of the accident at home or with your attorney. By doing so, you will be able to pinpoint your location and the direction involved as well as the other streets or roadways in the area where the accident occurred.

Question: I realize you cannot cover every single question I might be asked, but are there other areas of questioning that I should know about?

Answer: Yes. These are other general areas you should think about when you review your case in your own mind:

- (a) Where in the roadway or in the intersection did the impact occur?
- (b) Where did the vehicles come to rest after the impact?
- (c) Did you see any dirt or debris in the roadway from the vehicles after the collision?
- (d) Where was the debris located?
- (e) Where was the damage to your vehicle?
- (f) Where was the damage to the other vehicle or vehicles?
- (g) Were the vehicles moved from the place of collision before the police arrived?
- (h) Did you notice any skid marks from the vehicle or vehicles involved (including your own)?
- (i) Where were these skid marks? What was the length of the skid marks?
- (j) What were you doing and where were you looking just before the collision occurred?
- (k) Was there any change in the speed or movement of your vehicle before the collision?
- (l) Was your vehicle moved in any direction because of the impact? Which way? How far?
- (m) Were there other vehicles at or near the scene of the collision (where were they and what were these vehicles doing)?
- (n) If you were stopped before the collision, how long were you stopped? Pretend you are stopped, look at the second sweep hand on your wristwatch or clock and try to judge the time lapsed.
- (o) Do you remember the type of road surface?
- (p) What parts of the vehicles contacted each other?
- (q) Did you apply your brakes? Did you blow your horn? Did you swerve? Did you go straight ahead?
- (r) Was the contour of the roadway hilly, level, curving or straight?

Question: Will I be asked at the deposition to make a drawing of the scene of the accident?

Answer: Probably, so be prepared to do so. Try to make a rough sketch at home. Make streets wide enough to allow room to put cars and other objects in proper location and perspective. You are not expected to prepare an artist's drawing. Talk it over with your attorney. He may not want you to make a sketch at the deposition. Be guided by what your lawyer advises you to do.

SECTION IV: INJURIES AND MEDICAL TREATMENT

Question: Will the opposing lawyer know what injuries I received in the accident?

Answer: In some cases, yes. In others, no. Assume that she does not know about your injuries. You will then be better prepared to discuss them in detail.

Question: How will I recognize the questions that have to do with my injuries?

Answer: There are several key questions, one or two of which will probably be asked: "What happened to you?" or "Were you injured?" or "What injuries do you claim you received as the result of this accident?"

Question: What questions will I be asked concerning my injuries?

Answer: There are approximately four general categories of information relating to your injuries that you will be questioned about:

- (a) The specific areas of your body which you claim were injured.
- (b) The hospital, medical and other care you received.
- (c) Your complaints of pain and disability.
- (d) Your present condition.

Question: Is there some special order I should follow in discussing my injuries?

Answer: Yes. If you sustained injuries to several areas of your body, then discuss them in their anatomical order—from your head on down to your toes. You will be better able to recall the injuries you suffered if you follow this anatomical order.

Question: What if the particular injury or injuries no longer give me any difficulty. What do I say about that?

Answer: The truth. For example:

Q: How long did you have these pounding headaches?

A: They lasted for about three months following the accident.

Q: And I take it you have had no trouble with headaches since that time is that correct?

A: That is correct.

Question: Will the lawyer go through each of my injuries?

Answer: Yes. The lawyer will probably take each area of the injury and go through the same process of questioning you about it. Answer truthfully to each series of questions regarding each injury. Do not exaggerate or minimize your injuries or complaints.

Question: If an injury still bothers me and I am not asked fully about it, what do I say or do?

Answer: Follow the questions carefully. If you have described each injury and the lawyer fails to ask you about any particular one of them, do not be disturbed. For example:

Q: Does your fractured knee still bother you?

A: Yes.

If the lawyer asks no further questions regarding your knee, *do not offer* to give any further answers. Your lawyer will cover your complaints thoroughly at the time of trial if the case is not settled. Assume you will be asked to describe your complaints fully and be prepared to do so.

Question: How thorough should my answers be if the particular injury does bother me and am asked about it?

Answer: As thorough as the question requires you to be. For example:

Q: How does your knee bother you now?

A: It is painful to bend it. The pain shoots up my thigh and down my leg. I am unable to kneel—at work or at church. It swells up at the end of the day. I can't climb ladders as I did before. At times, it gets so painful I limp.

Q: Does your knee ache every day?

A: No.

Q: When doesn't the knee ache?

A: When I am off my feet. Usually on my days away from work.

If the particular injury no longer bothers you, say so. For example:

Q: How does your right shoulder bother you now?

A: It no longer bothers me.

Q: When did it stop giving you difficulty?

A: It cleared up about two weeks after the accident.

Q: What difficulty did you have with the right shoulder during the two-week period following the accident?

A: It ached and I had pain when I lifted it or moved it.

Question: Will I be required to show scars or injuries if exposing that part of my body may be embarrassing to me?

Answer: No. If the opposing side desires to know about such scars or injuries, they will request a medical examination. But as embarrassing as it might be, you should answer questions truthfully and honestly regarding these areas of your body. Every effort will be made to avoid sensitive situations. You must bear in mind that injuries that you refuse to discuss cannot be evaluated by the opposing lawyer or the insurance company.

Question: If I have an injury that is best demonstrated by walking or going through some particular motion, should I do so?

Answer: Only if you are asked to by your lawyer or by the lawyer asking you the questions.

Question: If my injury is visible and can be shown without disrobing or creating an embarrassing situation, should I offer to exhibit it?

Answer: You should *not offer* to do so.

If asked, then you may show it without hesitation. Anything that will help the lawyers understand your problem will assist them in assessing the injury and the effect it may have on the value of your case.

Question: If the opposing lawyer wants to feel the lump, scar or deformity, should I comply?

Answer: It depends on its location and your willingness to permit it. There is a sincere desire to know the extent of your injuries, and if feeling the injured area will add to the lawyer's

knowledge of the problem, it should be permitted. Your attorney will object if he feels the opposing counsel's actions are inappropriate.

Question: If, at the time my deposition is being taken, I have pain as the result of any of my injuries, should I say so?

Answer: Yes, if that is the truth.

Question: Will I be asked about the medical or hospital treatment I received?

Answer : Yes. Questions relating to this subject usually follow a discussion of your injuries.

You will probably be asked when you received medical or hospital treatment, who or what institution gave it, and the type of treatment given.

Question: Must I know the names of the doctors and hospitals and exact dates of confinements, visits and treatments?

Answer : Yes, if the information is requested. Your attorney will verify the dates for you from the information she has in your file before you go to the deposition. If you cannot recall exact dates of treatment, give an estimate of the date of the initial examination and the number of subsequent visits, and the general period of time covered.

Question: If my lawyer referred me to a doctor or doctors for examination, should I tell about that if I am asked to do so?

Answer: Yes. Your lawyer has a right to send you to doctors to help him evaluate your injuries. If it was a friend, relative or your family doctor who recommended another doctor, say so. If it was your lawyer, say so.

Question: If I am asked what the doctor or doctors did for me, am I permitted to answer?

Answer: Yes. You may tell what they did for you and the treatment recommended, as well as all medicine prescribed or administered.

Question: Should I see my doctor or doctors and talk over any injuries or have another examination before I go to the deposition?

Answer: Only if your lawyer recommends that you do so. Ask him.

Question: Will I be asked about medical examinations performed by doctors who are not involved in the treatment and care of my injuries?

Answer: Yes. Answer truthfully about such examinations. Be sure you tell your own lawyer about any examinations which were done at work, for life insurance, health and accident insurance or other reasons.

Question: Will I be asked how I got to the hospital or the doctor's office?

Answer: Yes. If someone took you or you were taken by ambulance, you should say so. If you drove yourself to the doctor, do not hesitate to admit it. If you went by taxi or in a public conveyance, say so.

Question: Will I be asked about illnesses or operations which had nothing to do with any accidents?

Answer: Yes. You should not *volunteer* information about operations or illnesses. Discuss them only if you are asked questions about them.

Question: What questions will I be asked about injuries I suffered before or after the date of the present accident?

Answer: You may be asked to describe the injuries you received, what complaints of pain you had and how long the pain persisted.

Question: If I was injured before or after the present accident and I did not file a lawsuit but was paid by the insurance company, how should I answer if I am asked?

Answer: The manner in which you answer the question will depend on exactly what you are asked. For example, the opposing lawyer asks:

Q: Have you ever filed a lawsuit in which you claimed damages for personal injuries?

A: No.

Q: Have you ever suffered any injury before or after the date of this accident?

A: Yes.

If you *deny* having filed a lawsuit or *nude a claim* when in fact you did, you may needlessly impair or completely destroy your right to recover damages in your present case. Search your memory carefully and thoroughly for any lawsuits, claims or injuries you suffered (regardless if you were or were not paid), and report them to your lawyer.

SECTION V: THE DAMAGES CLAIMED

Question: What does the word "damages" mean?

Answer: Damages are the dollars you lost, paid or owe as the result of the accident. Be prepared to talk about the cost of first aid, ambulances, medical and hospital care and treatment, drugs and appliances (crutches, braces, etc.), nurses, lost income or wages, property damage (your automobile, personal effects, clothing, luggage, etc.), therapy treatments, transportation expense to and from the doctors and special help at home during the period you were confined or unable to care for yourself or family

Question: Are bills I have not yet paid counted in adding up the damages I incurred?

Answer: Yes.

Question: At the time of the accident! carried insurance that paid my hospital and doctor bills. Can I still claim these bills as damages in my case?

Answer: Yes. Any exceptions will be explained by your attorney.

Question: If I lost time from work, but my employer paid me, what should I say?

Answer: If you are asked specifically "Were you paid for the time you claim you lost from work?" then your answer should be "Yes." (If you used up vacation or accumulated sick leave time, be sure to tell your lawyer before going to the deposition.)

Question: Will I be asked if I am paid by the hour or if I am salaried, on commission, etc.?

Answer: Yes. Be prepared to answer with detailed information regarding your loss of income; the days, weeks or months you lost from work, and overtime pay or bonus arrangements.

In answering questions regarding your rate of pay, your answers should be based on your gross paycheck (the amount of your check before deductions for income tax, social security, union dues, etc.). For example, if your paycheck before deductions is \$350 per week, you should say "My weekly pay is \$350 per week." *Your take-home pay may be \$325 or less*, but in discussing your wage loss at the deposition, you should always refer to your weekly, semimonthly or monthly pay as being \$350, \$400 or \$600—whatever your *gross* paycheck is.

Question: The time I lost was not all at once. I lost some time right after the accident, and then I lost a day every now and then. Will I be required to give exact dates?

Answer: Yes. The more accurate you are, the more reliable will be the damages you claim. Your employer keeps an attendance record in order to prepare the payroll. Ask him to give you a letter setting forth the exact days or hours you were off, the reason for the particular absence, and your rate of pay at the time of the absence.

Question: Will I be paid for the time I lost from work to come to the deposition?

Answer: If you filed the lawsuit, you will not be paid.

Question: My accident occurred while I was on the job, and I received Worker's Compensation for the time I was off. Also, my doctor bills were paid by the Industrial Commission or Compensation Insurer. Will I be asked about Worker's Compensation payments?

Answer: You should not volunteer information concerning a Worker's Compensation claim. Your lawyer will object if he deems it necessary to do so. He will explain the law to you and how these questions should be answered if you are asked.

Question: Will I have to bring my tax returns to prove my loss of income?

Answer: Only if your attorney says you should.

Question: Should I bring all of my bills to the deposition?

Answer: No. You should give all bills connected with your accident, whether they are paid or unpaid, to your attorney.

