

Claims and Litigation

PREPARING FOR DEPOSITIONS

Ground Rules for Witnesses

An essential component of the litigation process is the deposition. Depositions are the opportunity for each party to the litigation to ask the opponent questions regarding the incident and the claims and defenses alleged. A deposition is a questions and answer session. The answers are given under oath and recorded by a court reporter. A witness convicted of lying is subject to criminal liability.

At the outset of the litigation, all documents regarding the incident and construction project should be compiled and sent to the attorney representing the company. This should include contracts, work logs, progress photographs, safety minute meetings and incident reports. The documents will be used to prepare the defense of the company and at the company's deposition. Also, the names of employees on the jobsite on the day of the incident should be secured.

➤ **Who Should Appear:**

Identifying the proper witnesses to appear at a deposition is important. Generally, the company owner or manager will be asked to testify regarding any relevant contracts, work records and documents. If a foreman was assigned to the worksite where the incident occurred, he or she would be an appropriate witness. Likewise, if any employee was a witness to the incident, that employee's testimony would likely be requested. Reasonable out-of-pocket expenses are subject to reimbursement by the insurance carrier.

➤ **Preparation:**

Before the deposition, an attorney representing the company will meet with the witness to prepare for the deposition. During the meeting the attorney will review with the witness the facts of the case and all documentation. The attorney will also review the rules for depositions. It is important to remember that the witness is not attending the deposition to tell a story or volunteer information. The witness is there to answer the questions presented in the most concise manner possible. The witness should not guess or speculate. If

Do:

- Answer truthfully
- Say "I don't know" or, "I don't recall" is that is the case
- Wait until the entire question is asked
- Ask for a break if needed

Don't:

- Guess or speculate
- Volunteer information
- React emotionally

there is something the witness does not know or cannot remember, that should be the answer. Many times, depositions take place years after the event. Thus, it is not uncommon for the witness' memory to have faded.

➤ **At the Deposition:**

Depositions are not ordinary conversations. The attorney for the plaintiff, the party bringing the lawsuit, will ask the questions. When the question is complete, the witness gives the answer. Although many times the witness will know what the questions is before it is complete, he or she must wait for the complete question since the court reporter cannot record two people at the same time. Likewise, the answer must be verbal. A nod or shake of the head cannot be recorded.

At the deposition, the witness will be represented by counsel, the attorney with whom he or she previously met. Before the deposition starts, the basic rules will again be reviewed. During the deposition, the attorney may object to a question. If an objection is made, the witness should wait until the lawyer indicates the question can be answered.

While the deposition may seem intimidating to the witness, with proper preparation, it will not be difficult. The witness must be reassured that he or she is attending the deposition as a representative of the company and that there will be no personal liability or other repercussions against the witness as a result of the testimony.

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