Plaintiffs Lawyers – A Secret Exposed

WHAT THEY DON'T WANT YOU TO KNOW!

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PREFACE

Lawsuits are a fact of life. All organizations are at risk. It is impossible to eliminate that risk. You can only mitigate it. That's why you buy insurance and have training programs and operational policies and procedures directed at mitigating risk.

Okay, so I've told you nothing new.

The fifteen seconds or so that it took you to read the opening paragraph was a waste of your time; right?

Well, if you think so, this is the point at which the waste-of-time ends.

This is your wake-up call!

One of the key components of your organizations risk mitigation efforts is the purchase of liability insurance coverage. When all else fails insurance has your back. Gives you the warm and fuzzies right?

Yeah, I know, you're thinking I'm wasting your time again as this is standard business practice.

Well, as you'll soon realize, what you are about to learn will raise the hair on the back of your neck and challenge your confront zone.

This is the pivot point.

The filing of a lawsuit triggers the legal process known as discovery. What does the term discovery mean? In the simplest terms, it means that any case related factual information that is possessed by your organization or an employee is subject to disclosure and examination by the plaintiff or plaintiffs. Discovery is conducted as part of the plaintiffs' preparation for trial.

Discovery is the legal process that opens the door to a multidimensional range of plaintiff demands. The scope of those demands is governed by state and federal court civil procedure rules.

Yes, there are constraints.

These demands include Interrogatories, Request for Admissions, Motions to Produce, access to real property, and witness depositions, etc.

For plaintiffs' each element utilized by them, in the discovery process, is designed to uncover the strengths and or weaknesses of their case; that is, your strengths or weaknesses. The focus is on exposing the strengths or weaknesses of your employee witness or witnesses.

I mentioned legal constraints.

Take note of the following.

The difference between each device utilized in the discovery process and a deposition is your lawyer will guide you through the

preparation of your responses. For example, your answers to questions contained in Interrogatories, etc. Your written responses will be carefully crafted, reviewed and approved by your attorney prior to submission.

Whew! You realize that this support is critical.

You aren't pleased that you were subjected to a lawsuit, but you're feeling better knowing that you have this kind of legal defense support.

However, the taking of a witnesses' deposition is an entirely different process and exposure. Your witness is largely on their own.

While the response to every device utilized in discovery is important the *big dog*, the *gorilla* in the room, is the witness deposition.

The deposition, as is all written responses, is given under oath. But the deposition is oral, freewheeling, with an open question and answer format. And if multiple trial lawyers, representing multiple plaintiffs, are asking questions, imagine what your witness will be subjected to.

Unlike the preparation of written responses your defense attorney, under the rules of procedures, can't figuratively hold a witnesses hand during the deposition process.

Depending on the rules of procedure, your defense attorney may be limited to offering objections for the record, limited in conducting cross-examination or precluded from conducting same or offering any support to your witness.

This is a caveat. You need to know this fact.

The deposition is a serious, in-depth, interrogation of your witness. Depositions may last a few minutes or a week or longer depending on the complexity of the case.

Your witness can be either the link that discloses weakness or strength. Weakness can produce a catastrophic financial loss that can put you out of business.

Clearly, the deposition is where you must have strength.

Each employee witness must understand the process and prepared to testify.

To the unprepared or under prepared witness a deposition is literally an imaginary minefield; hidden mines, disguised as questions, are everywhere. If your witness verbally steps on an imaginary mine the result could be a financial disaster for your organization.

Insurance policies have limits…juries don't!

A civil lawsuit and accompanying process including the deposition is a world that few witnesses have ever experienced or are prepared for.

What do you think? Class "A" office space and a formal conference room filled with lawyers dressed in expensive business suits, some smiling, some frowning and a court reporter tapping on a strange machine.

Tick tock. Tick tock!

Your witness enters this environment in what they perceive as a lion's den with what may be little to no pre-deposition preparation. This is a substantial weakness that you may not be aware.

Is this disclosure contrary to your assumptions? Surprised?

How would you feel?

You don't like lawyers. You don't want to be there. Your think that your job is at risk. You try to protect it. So, you lie, distort and misrepresent the facts as you know them.

Tick tock. Tick tock.

If your defense attorneys first meet up with your witness is a five-minute face-to-face, in the hallway outside a conference room, just prior to the deposition, I can assure you that unless you have conducted your own pre-deposition preparation your witness is unprepared to give testimony. Regrettably, this occurs.

This is the secret that plaintiffs' lawyers don't want you to know and are prepared to exploit to the limits.

The minefield is set.

The general assumption is that your defense attorney will prepare each employee witness for his or her deposition prior to same. You assume that your insurance company knows the importance of pre-deposition witness preparation.

And that assumption is correct; they do know.

After all, it's their money at risk. That is unless the jury verdict exceeds your policy limits.

And, you assume, that every defense attorney knows the importance of witness pre-deposition preparation as well.

And the latter assumption is also correct.

Hey, you're doing good, your assumptions are correct.

But, there's that but again.

But, will every defense attorney be guided by that knowledge?

No!

Will insurance company oversight ensure witness pre-deposition preparation?

Maybe.

Whose responsibility is it, knowing this weakness exists, is it to ensure that each of your employee witnesses is properly prepared to give testimony in a deposition?

You are at risk.

Is it your responsibility?

Or, do you roll the dice and trust your assumptions?

You may have already experienced a witness deposition gone upside down and did not fully understand why. There may be a multitude of other reasons why the deposition went bad but if your employee was unprepared that could be a contributory factor. Maybe your attorney had properly prepared your witness and the witness just warped out and no amount of preparation would have helped; that has happened.

This is the real world.

But the lack of or insufficiency in pre-deposition witness preparation can be a contributing factor when depositions go bad.

Defense attorneys are slammed for time and corners may be cut. Recognition of this potential deficiency in pre-deposition preparation and its importance to your case puts you at substantial risk.

Remember, trial lawyers are poised to exploit the unprepared witness.

Don't send an employee to a deposition without knowing that he or she has been properly oriented to the entire process and prepared to testify.

The checklist included herein is a place to start.

This checklist is provided as a free supplement to the book: *How to Prepare for a Deposition—A Manual for Management*. This book should be in the library of every private sector business owner and senior executive. It contains concise reference material on *how to* mitigate the potential for a catastrophic financial loss when embroiled in a civil lawsuit.

Easily learn how to orient an employee witness to the entire deposition process and prepare your witness prior to testifying in a deposition. Included in the book is a complete *Employee Pre-Deposition Preparation Program;* an easy to use step-by-step guide.

Teach your employee witnesses the purpose of a deposition, what to expect, lawyer questioning tactics, and how to comport themselves, etc.

The information that follows is a checklist of very basic information to which each employee witness should be oriented as part of their pre-deposition preparation. This is the very minimal information your witness needs to know.

The referenced book contains more detailed instructions providing an in-depth conceptual overview, instructions, and guidelines. Reduce witness apprehension. Orient each witness to the process, build up their self-confidence and respect for your organization.

You can use the following information to mitigate the risk of a really bad outcome either during settlement negotiations or at trial.

Prepare for success.

THE CHECKLIST

1.0 Plaintiffs and Defense Attorneys:

1.1 Plaintiff's Attorneys represent the party bringing the lawsuit. Depending on the complexity of the case there may be multiple plaintiff's attorneys present. Only plaintiff's attorneys may ask questions. Plaintiffs' attorneys are essentially looking for four basic things:

1. What the witness actually knows about the negligence alleged and what story the witness will tell related thereto if the matter goes to trial.
2. Pin the witness to a specific account and explanation of what they know and their knowledge of facts. They want to know what the witness will testify to at trial.
3. What kind of witness the witness makes: intelligent, well-spoken, knowledgeable, sincere, straightforward, honest, etc.
4. Here's the biggie: catch the witness lying, obfuscating, etc., thus letting the jury and judge know that the witness can't be believed.

1.2 The Defense Attorney represents the party sued and is usually hired by the insurance carrier. A defense attorney may not ask questions in a deposition and may only object to a question asked by a plaintiff's attorney and then only for the record. A judge will decide if the question is sustained or not. That ruling determines if the question and answer may be used at trial. The defense attorney will instruct the witness to answer or not answer a question to which he has objected.

2.0 Witnesses

A potential witness is anyone who is known or believed to have knowledge of or information related the matter pending and or who is known or believed to have, custody and or control of records or other information related to the matter pending.

Witnesses subpoenaed to testify at a deposition are placed under oath by a court reporter and questioned by the plaintiffs' attorney about their knowledge of the matter under inquiry.

Each witness is on their own in a deposition and at trial. Therefore, they must be prepared to testify. Such preparation is often neglected.

No matter what you are told — the deposition is not simply a question and answer session. A deposition is an interrogation and a serious legal action; tensions may arise. Tension may be the result of a lawyer's attitude and questioning tactics or the attitude and gamesmanship of the witness or both.

For the unprepared or underprepared witness, the experience may become an unnerving, nasty, aggressive exchange between the questioning lawyer and themselves.

Most unprepared witnesses will be apprehensive if not full out fearful. You owe it to them, and yourself, to ensure that they are not only prepared but that you have someone work with, answer their questions, and accompany them to the deposition.

3.0 The Court Reporter

Court reporters are authorized to administer oaths and certify deposition transcripts. All witnesses are placed under oath prior to testifying. All questions and witness answers are recorded by the court reporter and the session may be audio and or videotaped.

4.0 Caution

Giving sworn testimony at a deposition is not simple nor is it fun. This is a serious legal exercise. The potential for a catastrophic financial loss may exist. The witness must be prepared to testify if the potential for any financial loss is to be mitigated. In most cases, the deposition is the most important occurrence in a case. It sets the framework for trial testimony and potential exploitation.

5.0 How to Dress For a Deposition

1. If the witness works in an office wear normal business attire.
2. If the witness wears a uniform wear it. Just be sure the uniform is clean and neat.
3. In either of the noted situations do not overdress.
4. It is essential that a witness feels comfortable as dressed.

6.0 How to Act At a Deposition

1. An appearance as a witness, at a deposition or a trial, is a serious matter and should be treated as such.
2. A witness must conduct themselves, at all times, in a manner that respects the process. Be polite, courteous, and respectful at all times in or out of a conference room, a courthouse, or a courtroom.
3. No smoking, gum chewing, joking, loud talking, and laughing in or out of a conference room, courthouse, or courtroom.
4. Confidently sit or stand erect when being deposed or at trial.
5. Don't discuss your testimony with anyone other than a defense attorney and or the company representative. Any discussion with either one or both of these parties should be out of earshot of others.

7.0 What a Witness Can Expect

At a deposition, each witness is the center of attention. But, don't be surprised if the defense attorney does not introduce you to the people in attendance and explain why they are present. The plaintiff's attorney may do the introductions if the defense attorney neglects to do so, but don't expect it.

If not introduced you are at a distinct disadvantage. You won't know who the players are; the psychological advantage goes to the plaintiffs'. You will be vulnerable to exploitation.

If your witness just met your defense attorney in the hallway and he gave you his one-minute speech on how to comport yourself during the deposition you are further disadvantaged. Your witness is now a high-level risk that could do irreparable damage to the case.

Generally, the plaintiffs' attorney will take the lead and kick off the session and inform the witness of the following facts and then ask some common questions.

8.0 Plaintiff's Lawyers Opening Statement

1. Inform the witness that they are under oath.
2. That the court reporter will record every question and answer. Instruct you to clearly verbalize your answers and not use head nods for positive or negative answers.
3. You will be advised that you will have the opportunity to read the transcript of your testimony and make corrections. Be

careful with your answers. It's important to be as accurate as possible when you give an answer. You are not going to remember everything. But any changes you make to the transcript can be commented on by plaintiffs' attorney should the case to go to trial.

4. Depending on the jurisdiction, and rules related thereto, there could be additional information and direction provided.

8.1 Common questions

Examples:

1. What is your full name, date of birth, social security number, current address, places you've lived, home and mobile phone numbers, email addresses, all social media accounts and passwords, and the domain names of all websites?
2. Any arrests, and or convictions for a felony or misdemeanor, the specific charges, dates, jurisdiction, and sentence?
3. Tell me all claims or lawsuits you've been a party too.
4. Did you prepare for this deposition, and if so how, where and by whom? What were your instructions?
5. Have you discussed this lawsuit with anyone other than your attorney? If so, who, when, where, and what was discussed?
6. Have you signed any statements or affidavits or given any recorded interviews related to this lawsuit? If yes, to whom, when and where.
7. Have you sent or received any emails related to this lawsuit? If so, identify the person who sent you an email or to whom you sent an email and identify the sender or recipient, what was discussed, date and details? Do you have copies of same?
8. Have you posted any information about this lawsuit on any social media sites? If so, names the sites Including descriptions, comments, yours or others, and photographs were taken by you or others.
9. Was another person present when you discussed this case with you attorney? If so, who, when, where and what was discussed?

10. Have you ever been deposed before or testified in a court proceeding? If so, was the subject civil or criminal? What was your status: plaintiff, the defendant, or witness? What was the nature of the case?

These questions are but a small sample of questions that could be asked. The type and depth of questions will be influenced by the nature of the case and witness answers.

9.0 Examples of Questioning Techniques

9.1 Open-end questions stimulate longer answers and find more details:

1. These type questions usually start with words like what, why, how, tell me and describe.
2. These type questions are seeking knowledge.

Examples:

1. Tell me what you were doing at the time of the accident.
2. Describe how you reacted in more detail.
3. Tell me what happened next.
4. Why did you...

9.2 Probing questions: used to acquire greater detail:

1. Clarify an answer.
2. Getting information when a person is avoiding the answer to a question.

Examples:

1. What exactly do you mean by...?
2. What exactly did the other driver do...?
3. What exactly did you do....?
4. Explain what you mean by that...?

9.3 Leading questions used to elicit a specific answer like "yes" or "no".

Examples:

1. Isn't it true…?
2. Isn't it a fact…?
3. Won't you admit…?
4. Won't you concede…?
5. Wouldn't you agree…?
6. You were driving at a speed that was too great for conditions right?
7. You were distracted when texting correct?
8. Isn't it true that you have not been truthful in answering my questions?

10.0 Guidance on How to Answer Questions

1. Come prepared knowing records and facts inside out.
2. Tell the truth.
3. Make no assumptions about anything.
4. Smile and look the questioning attorney in the eye when answering a question. Speak slowly, calmly and confidently.
5. Never joke in a deposition with anyone.
6. Never chat with a plaintiff's attorney before or after the deposition. He or she is not your friend.
7. If the defense attorney begins to speak stop speaking until he or she has completed their remarks. If he or she is making an objection he or she may instruct you not to answer a question.
8. Some lawyers play psychological games with a witness via their attitudes, types of questions, and tactics. Don't fall into any traps. Refresh your memory on questioning techniques and remain alert.
9. If asked, admit that you were prepared for the deposition.
10. Never let the plaintiffs' attorney get you angry.
11. Always maintain your composure. Never show anger or hostility it shows weakness. That weakness may be exploited in the course and scope of the deposition. Remain calm and courteous.
12. Don't let the plaintiffs' attorney put words in your mouth. Sometimes, if a number of questions are asked in quick succession, the plaintiffs' attorney may summarize your testimony and in the process include both facts that are correct

and incorrect and ask if it is substantially correct. This is a trap. Don't fall for it. Don't agree and point out how you have been misquoted. Always listen carefully when the plaintiff's attorney is talking. The defense attorney may offer his own summary of your testimony.

13. Wait for the lawyer to complete his or her question. Do not interrupt or anticipate the question or its intent. Listen carefully to each question asked. Be sure you understand the question prior to answering. Take your time, answer the question, and stop talking. For example: if asked, "Do you know what time it is?" Don't answer "Yes, is it 2:30." The correct answer is "Yes". You weren't asked, "What time is it?"
14. The purpose is to truthfully answer a question but to say as little as possible in so doing. For example: if "yes" "no" or "I don't recall" will answer the question then that is your answer. Do not clarify, ad lib, quantify, qualify, or define.
15. If you don't know the answer to a question say so. Best to say "I cannot recall" vs "I don't know."
16. If you don't understand a question say that you don't and ask for a clarification.
17. Don't guess at what you think the meaning of a question is. Just answer the question if you know the answer.
18. Keep your answers as short as possible. Don't volunteer information.
19. Don't give an opinion unless the defense attorney instructs you to do so.
20. Don't answer compound questions. For example: "Where were you when the fire spread severely burning your neighbor and why were you not present?" This type question should trigger an objection from the defense attorney. If the attorney does not object the witness should ask that the question is broken into two parts and asked one at a time.
21. Don't speculate or guess on facts unless your attorney instructs you to do so. Simply state that you will not speculate or guess about facts.
22. Never answer a question about "Why" someone did or did not do something. Calls for speculation and your attorney should object and instruct you not to answer. Answer only if instructed to do so by your attorney.
23. Never answer questions about records of any type unless you have seen them.

24. If a question is confusing to you never ask the plaintiff's attorney to clarify by asking if he or she means "X" or "Y. You may provide information not thought of. Just ask for clarification if you don't understand. Don't assist the other side.
25. Do not answer statements. Only answer questions. Example: "Everyone in the shop knew that an accident like this one was going to happen". This is not a question it is a statement and is designed to get your emotional response. Don't take the bait. Do not nod your head in agreement with questions or statements and don't fill in the blanks if the attorney can't seem to find the words.
26. Never lie or obfuscate.
27. Never attempt to explain or justify an answer.
28. Never promise to get the information you do not have at hand unless instructed to do by the defense attorney.
29. If, during the course and scope of the deposition, you realize that you gave an incorrect answer to a previous question immediately interrupt the deposition and ask to correct the mistaken answer. It's ok to ask to have the record read back.
30. Ask for a break if you need one.

11.0 Summary

This overview and witness instructions checklist is only a partial view of a witness's pre-deposition preparation. *How To Prepare for a Deposition—A Manual for Management* is a must-have resource for every executive. 43 unique checklists offer easy-to-use guidelines and a six-segment pre-deposition preparation orientation program is included.

Learn How To:

1. Recognize defense attorney weaknesses in witness pre-deposition preparation, the cost, and risks.
2. Properly prepare a witness to testify.
3. Survive a deposition.
4. Prepare a backup plan if defense attorney deficiencies exist.
5. Mitigate witness fears and insecurities.
6. Develop witness self-confidence, organizational respect, and trust.
7. Mitigate the potential for a catastrophic financial loss.
8. And much, much, more...

ABOUT THE AUTHOR

Ernest C. Blount has served at policy making levels in both public and private sector positions: In the public sector as a municipal chief of police and in the private sector as chief security officer for a publicly held corporation. His experience encompasses comprehensive senior executive management, the conduct of criminal and civil investigations and litigation support as a consulting and testing expert.

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Comments or Questions are Welcome.
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Also, Check Out:

"Occupational Crime Deterrence, Investigation, and Reporting in Compliance with Federal Guidelines".

"How to Develop a Corporate Compliance Program — Essential Elements". Boost the probability of Compliance with U.S. Sentencing Commission, Chapter Eight, Sentencing of Organizations Sentencing Guidelines.

"How to Recognize and Manage Workplace Substance Abuse". A quick reference guide for management and supervision on how to identify and manage workplace substance abuse. Learn how to establish and document reasonable suspicion triggering a for-cause drug test and mitigate legal risks.