

PRESENTED AT

2016 The Car Crash Seminar

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Austin, Texas

**Defending Car Wreck Cases:
A Day in the Life.....**

**(Representing the Defendant in a Car Wreck Case – From
Initial Assignment to Closing the File)**

Ross S. Crossland

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The Initial Referral:

First Contact with Insurer:

The Friday afternoon phone call:

“I’ve got a new assignment for you....”

Default Judgments:

Your first contact with the file is a default judgment; try to find the easy route back to a ‘New Trial’.

If the ‘easy way’ doesn’t work, be wary of possible conflicts and coverage issues.

First Contact with Client (insured)

“I turned that over to my insurance company....”

“Isn’t it the law that.....”

“It ought to be the law that....”

First Evaluation for the Insurer:

First Conversation with the carrier after the first ‘in person’ contact with the Defendant.

Photograph: Consider politely asking for a photograph of your new client ‘for the file’. It can be useful to personalize the client in the eyes of the adjuster. (Note a similar recommendation for Plaintiff at time of deposition).

Impressions of the Defendant as a prospective witness. Remember that to the Claims Representative the entire matter is represented by a file, digital or paper, or both, and possibly photographs. With the increasing use of Software Programs to ‘assist’ carriers with evaluating their exposure, personalization in individualization of each case becomes increasingly difficult.

The Defense of the Case: On Paper vs. Real World (Claims Adjuster’s Perspective)

Deposition:

“I already told the Insurance Company what happened, why do I have to tell it again...?”

“I gave a written statement”

“I gave a recorded statement over the telephone”

Deposition Preparation:

“I already told the Insurance Company what happened, why do I have to tell it again...?”

“Tell me what to say...”

“Tell the Truth”

Plaintiff's Deposition:

Two Schools of Thought:

Cross Examine Fully:

In other words, use all you have, to put the matter in the most favorable posture for resolution prior to trial. (Mediation/Settlement).

Hold Back:

Retain at least some measure of damaging information for use at trial.

Evaluation:

The Three Perceptions of the Plaintiff:

To Plaintiff's Counsel:

To the Insurer:

To the Defendant:

Evaluation and input to the insurer. Be candid and honest (of course) and be cautious about any hidden agendas on the other end.

Evaluation and input to Opposing Counsel.

Pick the correct time and place, and evaluate your audience. If your working relationship with opposing counsel allows, have a frank discussion regarding both positives and negatives of your defense on both liability and damages.

Remember: The goal is to move closer together on the 'numbers' not further apart.

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