2015 Virginia Beach Bench Bar Conference

Selected Topics in Personal Injury Litigation

Presented by: **Shapiro, Appleton & Duffan, P.C.**

Moderated by: Hon. Glenn R. Croshaw- Presiding Judge for the Circuit Court of the City of Virginia Beach

I. Sources of Recovery and Liens
II. Negotiating and Litigating Damages
III. Five Tips For Deposing Expert Witnesses
IV. Deadly Sins in Depositions

Damages in Personal Injury

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I. Sources of Recovery and Liens

A. Collateral Source Rule

a. Codified under §8.01-35, which states:
§ 8.01-35. Damages for loss of income not diminished by reimbursement.
In any suit brought for personal injury or death, provable damages for loss of income due to such injury or death shall not be diminished because of reimbursement of income to the plaintiff or decedent from any other source, nor shall the fact of any such reimbursement be admitted into evidence.

b. Case law supporting the statute:

i. A person who is negligent and injures another 'owes to the latter full compensation for the injury inflicted[,] . . . and payment for such injury from a collateral source in no way relieves the wrongdoer of [the] obligation." Acuar v. Letourneau, 531 S.E.2d 316, 320 (Va. 2000) citing Walthew v. Davis, Adm'r, 111 S.E.2d 784, 788 (Va. 1960).

ii. A tortfeasor's obligation to the plaintiff is not diminished by plaintiff's receipt of insurance payments, social security benefits, public and private pension payments, unemployment compensation benefits, vacation and sick leave allowances, and other payments made by employers to injured employees, both contractual and gratuitous. Schickling v. Aspinall, 369 S.E.2d 172, 174 (Va. 1988).

Note: This rule usually applies to health insurance paying for medical bills, but is obviously not just limited to that scenario (as referenced in the case law cited above). In simple terms, this means that in Virginia, a liability insurance company cannot consider the fact that a claimant has health insurance or other *collateral source* paying when negotiating fair compensation for the claimant's injuries.

c. This is very different than NC law and other states that have passed laws essentially abolishing the collateral source rule.

d. Practical applications

i. Worth mentioning when no collateral source is available

ii. Insurance carriers/adjusters assume there is collateral source under most circumstances.

B. Insurance Coverage

The topic of insurance coverage is extremely broad and day-long seminars are routinely given that focus on all of the intricacies surrounding the types of coverage, ways coverages can be stacked or combined, and what coverages may apply to a particular situation or set of circumstances. The following is just going to briefly touch on a few of those concepts to give an overview of the entire topic.

Insurance coverage often drives the value of a case. Very few people have the assets to pay for a verdict or settlement that is in excess of their insurance coverage, and very few attorneys will spend the time and money litigating a case against an individual for damages of this nature. Nor should they, as any verdict reached may be hollow (dry well theory) or a nightmare to collect (judgment enforcement is another ball of wax). Plus, there is always the possibility that the defendant could declare bankruptcy, leaving the claimant and his attorney out of luck. When a person has serious or catastrophic injuries, the first and most important task of the attorney is to figure out what insurance coverage may be available.

a. Codified under §46.2-472 of the Virginia Code, which states in relevant part: "every motor vehicle owner's policy shall... 3. Insure the insured or other person against loss from any liability imposed by law for damages, including damages for care and loss of services, because of bodily injury to or death of any person, and injury to destruction of property caused by accident and arising out of the ownership, use, or operation of such motor vehicle or motor vehicles within the Commonwealth... This state also imposes minimum limits of $25,000 due to bodily injury per person, per accident, $50,000 minimum limits per accident for two or more people, and $20,000 minimum limits for property damage per accident." [additional auto liability provisions are found in Title 38.2 Chapter 22 of the Virginia Code]

b. In plain English... in Virginia, the minimum limit of a bodily injury policy is $25K.

The liability insurance policy (the policy of the at-fault party) is always the first place to look in order to cover damages of the injured party. If the liability policy is adequate, then other sources of insurance never come in to play. For most routine soft-tissue injury cases without additional complications, an unusual course of medical treatment or a high amount of lost wages, the $25,000 minimum limits are adequate. Unfortunately attorneys don't tend to get hired on the easy cases, so often you need to look to other sources of insurance coverage.

c. Uninsured or Underinsured Motorist Coverage (UM/UIM) is provided for in §38.2-2206 of the Virginia Code. The same minimum limits apply to UM/UIM as mentioned in the

discussion above about liability insurance. So, as long as your client has car insurance, even if the person that caused the accident doesn't have any insurance at all, or it was a hit-and-run scenario and the at-fault party cannot be identified, you know that your client will at least have $25,000 available in coverage. Always check your client's own policy to determine what might be available.

Note: UIM is offset by the amount of liability coverage available. If there is $25K in liability coverage and $25K in UIM coverage, then there is a complete offset, and the UIM exposure is $0, so the total amount your client has available is only the $25K of liability coverage. Contrast that with a scenario in which there is $25K of liability coverage and $50K of UIM coverage. The UIM carrier gets an offset of $25K of liability coverage, limiting their exposure to $25K. So the total amount to your client is now $50K ($25K liability, $25K UIM).

d. Resident-Relative situations and stacking- If the above is Insurance law 101, the resident relative rule and the stacking of insurance policies is definitely an upperclassman course. Without sliding in to a long discussion on what all of that means, if you're interested in learning more about this, I encourage you to take a seminar on UIM coverage offered by NBI or another organization.

   The very short rule on resident relatives is that if the injured has a relative (not a girlfriend/boyfriend or roommate, but relative) that has a separate auto insurance policy, and that relative is also a resident of the same household as the injured party, the injured party can look to that relative's policy for an additional source of insurance coverage if the liability policy AND the UIM policy are both inadequate. This is one main reason why insurance companies always want to know who is living in the home with their customer when deciding what to quote you. If you live in a house with your 5 brothers, and none of them are on your policy, your quote is likely to be higher on a large policy because that exposes your insurance company.

   There are also some instances where you can stack policies if there are multiple vehicles and drivers that are insured on the same policy, but this is rare under most anti-stacking language and is a separate seminar entirely.

e. Medpay- Medical Payments coverage, or medpay for short, is a special type of coverage, separate from the liability or UM/UIM coverages mentioned above that is available to people who are injured in an accident and that carry this type of coverage. Usually the medpay is relatively low $1,000 or $2,000 is the norm, but I've seen scenarios where people have $10,000 or more in medpay on their policy. Medpay can, and should be used to pay down any outstanding medical bills that the injured party may have, and while an attorney can help a client get their medpay, they cannot take a fee for doing so. You should ask the client for a copy of his/her policy to see if they have medpay

coverage available to them. Usually just sending the insurance company proof that the medical bills are higher than the medpay amount available is enough to get the medpay for the client.

C. Claims against Recovery

a. Medicare- Get familiar with MSPRC (stands for Medicare Secondary Payer Recovery Contractor). The law establishing the lien is 42 U.S.C.A. 1395y.

The bottom line is that if you have a client with Medicare, and Medicare paid for all or some of their medical bills that were incurred as a result of an accident, Medicare has a lien that needs to be respected and reimbursed, or the client and your law firm can be held accountable. The subject of Medicare liens can occupy another entire seminar, but there are three rules to follow to keep yourself out of trouble:

i. Review the conditional payment summary that Medicare/CMS (Centers for Medicare and Medicaid Services) will send you for accuracy and review it with your client. Many times, Medicare will include doctor's visits and treatment that was not related to the personal injury case for which you represent the client, particularly if your client has other medical issues that are being handled at the same time of the treatment for his or her injuries.

ii. Make sure the client understands that Medicare must be paid back for the amounts that they paid out for the client's treatment. On some occasions, the client will not want to pay back his or her medical liens, putting you as the attorney in an awkward position. While there may be some obligations to give the client their money over a particular medical provider that is owed money, Medicare is <u>not</u> one of those situations. Pay the Medicare lien back.

iii. If the Medicare lien is more than the available amount of coverage, there is a process to contact Medicare and request a reduction of their lien.

b. Worker's Compensation- There are occasions where the injured party will have both a Worker's Compensation case and a 3rd Party Liability case arising out of the same event. For example, Plaintiff is a delivery driver for Norfolk Florist, and while on the clock making a delivery he gets rear-ended by a negligent driver. He has a worker's compensation claim because his injuries occurred on the job, but he also has a claim against the negligent driver.

i. The Worker's Compensation insurance carrier is entitled to a recovery for services paid under Virginia Code §65.2-309.

ii. Frequently, the personal injury attorney will work with the worker's compensation attorney in order to resolve the worker's compensation lien. If a lien goes unsatisfied, future worker's compensation benefits can be withheld from the client and/or the client can be sued civilly for failure to satisfy the lien.

iii. In the cases where the insurance coverage is limited, a common occurrence is for the worker's comp carrier to accept a third of the available funds, the

personal injury attorney accepts a third and the client accepts a third. Any deal can be negotiated however.

c. Medical Provider liens.
    i. Statutory minimums are provided by §8.01-66.2, which basically guarantee a minimum amount can be recovered by certain classes of medical providers based on the care and treatment they give to a person who receives a settlement from an insurance company based on that treatment.
    ii. $2,500 in the case of a hospital or nursing home, $750 for each physician, nurse, physical therapist, or pharmacy, and $200 for each ambulance service on the claim of such injured person are the statutory minimums.
    iii. Hospitals and doctors still will often find other ways to protect themselves in addition to this statute, such as making their patients sign assignments before treatment, or sending letters to the client's attorney asking the attorney to guarantee payment.

    You could end up winning the battle but losing the war if you try to stick a provider with the statutory minimums and don't impress upon your client the importance of paying the providers what they are owed.
    iv. Negotiations- most providers would rather negotiate their bill than sue a client for a breach of contract or in collections. Most won't negotiate unless they know there is a limited amount of coverage available however.

    Some law firms ask for reductions automatically, others ask when they need them. Two schools of thought.

d. Health Insurance liens and ERISA.
    i. First establish if the provider is ERISA or non-ERISA.
    ii. ERISA health insurance providers need to be paid back.
    iii. Non-ERISA providers should be paid back as well, but the obligation is not as clear, and USUALLY not on the attorney.
    iv. See collateral source rule... a client with a health insurance provider that is not claiming subrogation rights is the best scenario for the client and for you.
    v. Remember frequent fliers in your area. If you do a lot of this work you will see many of the same providers, and if you establish a bad reputation with them, they'll remember it.

II. Negotiating and litigating the Damages- Plaintiff's perspective

A. Direct Negotiations with Insurance Claims Representatives

The first person that you will likely speak with on the defense side of a personal injury case is the insurance claims adjuster, or simply adjuster for short. This is the person that may have already opened up a claim by the time you have been hired, may have spoken with your client before you were retained and might have even taken a recorded statement from your client. For most of the cases that you resolve, this is the only person from the defense that you will speak with, and many smaller cases are resolved at the adjuster level before suit is filed.

From a plaintiff attorney's perspective, the adjuster is the first line of defense. Many adjusters have been doing their jobs for years and have a very good understanding of the value of a case, but very few of them have much authority to make final decisions or operate outside of very strict parameters. Notwithstanding the above, it is your job as a plaintiff's attorney to work with the adjuster to the extent that you can, and understanding their position and authority can save you some headaches when the negotiations aren't going very well in the future.

Once the client is done with medical treatment and has reached a point of maximum medical improvement (MMI) then the claim is ripe for a demand. Many attorneys handle the demand process differently, but I like to present the majority of my case, the medical bills I'm claiming, the records that support the bills, my client's lost wage information and anything else that I think would be relevant to the adjuster to decide my case. I provide a cover letter to accompany all of the materials where I lay out my case for the adjuster. Once everything is organized, I send the package to the adjuster.

Do not be afraid of bad facts. If your case has a problem, such as a gap in medical treatment, an unusually large amount of medical expenses, or some other obvious issue, acknowledge it with the adjuster during your conversations or your letter, and give an explanation if there is one. Do not try to ignore issues that could be readily explained just because you perceive them as bad.

Typically, the adjuster will take between two and three weeks to get back to you with an offer to settle your case, or a letter denying the claim. If and when an offer is made, remember this is just a starting point. Often the offer is laughably small, but you can gain a lot of information based on the strength of the first offer, especially if it is from a company with which you regularly do business. The adjuster usually needs to see incremental movements in offers and counter-offers in order to get authority to settle a case. This might mean that you spend what you view as an inordinate amount of time negotiating when all you really want to do is get to the point. But remember, sometimes the process, even if it sounds silly, needs to be respected.

Remember that you also must share any offers that are made with your client, unless you have your client's explicit authority to reject all numbers below a certain amount, or accept all numbers above a certain amount. There are ways to discuss this with your client, and it is always good to talk to your client in the terms of what he or she is going to pocket when all bills, liens and fees are paid,

rather than the gross amount of the settlement. Telling your client the insurance company has offered $20,000 to settle her case without first telling her in advance that $20,000 may only mean $10,000 in her pocket can set you up for problems. Do the best you can to understand what all of the outstanding bills are before you begin negotiations so that you can accurately represent to your client what numbers they are likely to see.

On some occasions, after you file a lawsuit, the file will change hands from one adjuster to another adjuster, who will take over throughout litigation. The new adjuster may try to take one lass pass at settling the case before they have to hire a defense attorney to answer your complaint. Usually this number will be slightly higher than the last number offered to you by the previous adjuster, but not by much. Once the defense attorney has the case, you must get the defense attorney's permission to speak directly with the adjuster in reaching a negotiated settlement. Most defense attorneys are more than happy to give you that permission. Remember, the defense attorney almost never has any authority to agree to a settlement, so the adjuster remains the person with the checkbook and your main target for resolving a matter.

B. Lay Witnesses

Lay witnesses, particularly in cases of disputed liability, are critical components to your case. In fact, lay witnesses often are the difference between a case settling and a case not settling. Most accidents, particularly two vehicle car accidents are "he-said, she-said" cases unless fault can easily be determined from just viewing the scene of the accident (a car going the wrong way down a one way street). Even rear-end cases can sometimes not be what they appear. For this reason, unrelated third-party witness to an accident is usually the person that will carry the most credibility with a jury and with the claims adjuster, so it is a good idea to know what this person saw.

Make an effort to contact the lay witnesses. You can believe that the insurance company will, particularly if you do not. Often a client will tell you that there were witnesses, but won't have had a chance to get any of their names or contact information, assuming the police officer that investigated the scene or the store employee that took the report gathered those names. This can be a dangerous assumption. Many times, the police officers do not interview or take the names of witnesses on what seems like a routine accident, and employees of a defendant store may not be that interested in taking down the contact information of people that will ultimately hurt the defendant in litigation. It is usually too late by the time the client has come to see you, but please remember to ask the client if there were any witnesses and any way they might know of to get in touch with them.

Assuming you do have the contact information for a lay witness, make sure you contact that person. I like to not only interview them, but get them to send me an email or sign an affidavit—something in writing—describing what they saw in their own words. This way, even if they are not called to testify for another year, you have memorialization of their observations that can be used to refresh their recollection. I will routinely send the email or affidavit to the adjuster in the negotiation phase

of the case because I do not find any value in trying to hide the ball. In fact, these documents may help you settle an otherwise difficult case.

C. Experts

Experts are (usually) paid witnesses that are used to help a jury understand a topic that is not readily understandable. Experts are frequently used in complex cases, such as medical malpractice, products liability, or accident reconstruction on major automobile accident cases. Experts can also be used for other purposes, such as economists that are used to explain present value of future wage losses, grief counselors, and other less common areas.

Experts must be disclosed to the defense pursuant to the deadlines established on the scheduling order. In addition to simply disclosing the identity of the expert, you must also give a fairly through summary of the opinions that you expect the expert to give at trial. John Crane motions have almost become standard fare in medical malpractice cases, because one side always alleges that the totality of an experts opinion and/or the materials that the expert has relied upon were not properly disclosed by the deadline, and experts are moved to be disqualified or their opinions severely limited. The best way to get around this is to make sure that your expert addresses all of the areas that you need that expert to address WELL in advance of the deadline, and that the expert has a chance to review his or her expert designations before you submit them to opposing counsel.

Experts can be tough to deal with, somewhat inaccessible, and very expensive to hire. Many feel that experts are essential to their case, and in some cases (like medical malpractice) they are... but in other cases experts might be more trouble than they are worth. Remember the jury is going to assume that anyone paid by one side to work on a case is horribly biased... so even if that expert you retained to testify about the supervision a coach should give to his players on the football field seems like a good idea, you might be paying an expert that adds nothing at all to your case. Spend wisely! Lots of initials after the last name and a 20 page CV might not mean anything if the expert isn't actually giving relevant or valuable testimony.

D. Demonstrative Evidence

There is not a lot to say about demonstrative evidence other than it is important to use demonstratives particularly in your trials. Anytime you can show the jury what you or a witness is referring to, it makes it that much more memorable when the juror is deliberating on your case. Remember to test out any computer or technology based demonstratives to make sure they work before the trial, and make sure you handle and perceived issues with demonstrative exhibits at pretrial motions so you don't end up creating otherwise avoidable appealable issues in your trial.

Demonstratives can also be used during mediation presentations in an effort to help persuade the opposing side or the mediator. Do not overlook the importance of this, as demonstratives in mediation presentations are often as effective --if not more effective-- than jury presentations.

E. Wrongful Death Actions

As expected, wrongful death actions are among the most serious types of personal injury lawsuits that a Plaintiff will handle. Virginia Code §8.01-50 deals with wrongful death in Virginia. The family members that contact you are often very emotional and very angry, and you may find yourself serving in a role as "counselor" as much as "attorney" in the beginning. Having said that, there are many things to do from a legal representation standpoint, and you should start by making sure you are speaking with the administrator of the estate for the deceased.

One of the first questions you should ask of a prospective client is whether or not they have been appointed as the administrator for the estate of the deceased. The administrator of the estate is the person that has been appointed as the personal representative of the state under Virginia Code §64.2-454, or the natural mother of the deceased in a fetal death case, and is the person that has decision making authority over the claim. That statute provides that, where an executor of the estate has not been appointed, an administrator may be appointed solely for purposes of bringing a personal injury or wrongful death claim on behalf of the estate or its beneficiaries. Such appointment may be made by the clerk of the circuit court in the county or city where jurisdiction and venue would have been appropriate in the same action had the decedent survived. This person is usually a close family member of the deceased, and ultimately should be a person that is in tune with the statutory beneficiaries.

When there are multiple statutory beneficiaries (the people that would receive the proceeds from a wrongful death case), there can be a situation where all of the family members will contact you separately to ask you about the case. I strongly suggest that you direct them to the administrator of the estate so that you are dealing with one client, not several.

Another consideration for wrongful death cases is whether or not you have a wrongful death matter or a survivor's case. The wrongful death claim is generally the claim brought by the statutory beneficiaries for the sorrow, mental anguish, lost financial support to the family, loss of services to the family, medical bills incurred and funeral expenses. (See See Va. Code § 8.01-52 et seq.) A survival claim, by contrast, is simply a claim for personal injuries sustained by the decedent prior to his or her death, which may be brought or continued by the decedent's personal representative following his or her death. See Va. Code § 8.01-25. As a result, damages awarded in a wrongful death action generally are awarded directly to the decedent's beneficiaries, whereas damages from a personal injury survival action pass through and are deemed assets of the estate. See Antisdel v. Ashby, 279 Va. 42, 50 (2010).

Wrongful death settlements need to be approved by the court, and each individual statutory beneficiary has the option of hiring his or her own attorney for their interests. Much more can be said about wrongful death than can be covered here, but please start with the statute in the event that you are handling a wrongful death case, and also read an article by David Irvine of Tremblay and Smith (a VTLA member and Richmond attorney) that can be found online is also a good resource for the basics.

FIVE TIPS FOR DEPOSING AN EXPERT WITNESS

By Patrick J. Austin

Shapiro, Appleton & Duffan

TIP #1 – PREPARATION – CRITICAL FOR ANY SUCCESSFUL DEPOSITION

- **Research the Expert**
  - **Review the expert's own authored publications and articles, prior deposition transcripts; declarations, web sites, license histories, seminar presentation materials, etc. Essentially, get as much information as you can on the expert.**
  - **Don't assume that the expert's CV is 100% truthful.**
  - **Good sources: TrialSmith,**
- **Know the subject matter**
  - **Have a general understanding of what the expert specializes in and why they have been retained in the case (e.g., the medicine in a medical malpractice case, the applicable published professional standards and governmental regulations of a standard of care expert, the defendant's in house procedures, etc.)**
- **Know your case facts**
  - **Review deposition testimony, discovery documents, physical evidence, pleadings and motions, etc. prior to deposing the expert.**

TIP #2 – TALK WITH YOUR OWN EXPERT

- **It's worth the time and money.**
- **Your expert can highlight some of the weaknesses and flaws in the opposing expert's report.**
- **Your expert can help bring you up to speed on terminology and complex concepts that may form the basis of the opposing expert's opinion.**

TIP #3 - DETERMINE YOUR DEPOSITION STRATEGY

- **Going in to the deposition with the game plan helps you better structure your questions and a better focused deposition.**

- **Get enough information to exclude the expert?**
- **Get testimony that may be favorable to your case?**
- **Expose the expert's flaws?**
- **Get key information for trial?**

- **EXCLUSION OF THE EXPERT[1]**

  1. Qualifications: In general subject, and as to specific opinions individually.

  2. Foundation: Basis of opinions improper or without support in the evidence: i.e. assumes facts not in evidence, based on improper matter.

  3. Scope: Opinion on matter not properly subject to expert testimony: i.e. legal opinions, lay opinions, issue for jury ("reasonableness") or opinion not disclosed at deposition.

- **EXPLORE FOR FAVORABLE OPINIONS:**

  1. Agreement with non-retained experts: (nature of injury and treatment; economic losses or basis of losses.

  2. Agreement with client's testimony.

  3. Agreement with obvious facts of importance: i.e. information in documents or omitted from documents; admissions of defense witness.

  4. Reverse hypothetical: Assume facts are as plaintiffs will state.

- **EXPOSE WEAKNESSES OF THE DEFENSE**

  Purpose: Expose the lack of qualifications, personal flaws, or improper basis, assumptions, calculations, or reasoning of the expert to show defense either procedural, foundational, or substantive Achilles' heel of expert or their case.

  Risk: Time to correct errors or misstatements and devise explanations for facts, and incorporate into opening statement, evidence, and expert's direct.

  Benefit: Expert may be dropped or limited.

- **KEY POINTS FOR EXAMINATION AT TRIAL**

  1. BIAS: Financial motives, micro and macro.

  2. SET UP IMPEACHMENT: To statement subject to impeachment by prior testimony, publication, or other words of expert.

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[1] *Outline: Strategies for Deposing and Examining Experts*, Rick Simons, FURTADO, JASPOVICE & SIMONS, Dec. 10, 2014.

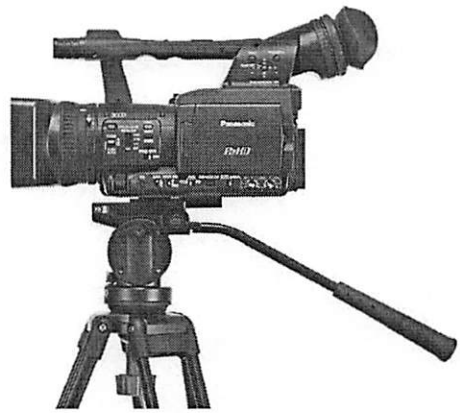
3. FIND THE WEAK LINK: 1 good hit is better than prolonged and detailed cross exam on every point, i.e. out on a limb, careless words, defer to jury.

TIP #4 – INCLUDE A SUBPEONA DUCES TECUM[2] WITH YOUR EXPERT DEPOSITION NOTICE

- **In a perfect world, you would have all materials that the expert relied upon prior to the deposition through expert disclosures or requests for production. However, it's better to be safe than sorry.**
- **Go through, on the record, what the expert brought with her and why and mark it as one or more exhibits.**
- **Make sure to ask an expert if there is anything that she did not bring that is responsive to your request, and why.**

TIP #5 – TAPE THE EXPERT DEPOSITION

- **Virginia Supreme Court Rule 4:7 authorizes the recording of depositions.**
- **The subtle reactions during questioning can be extremely helpful in determining whether the expert will be effective at trial.**
- **Gives you the option to play portions of the expert deposition during opening or closing.**



[2] SDT's are governed by Rule 4:9A of the Rules of the Supreme Court of Virginia.

Depositions: Deadly Sins

Richard N. Shapiro

Increasingly, pretrial depositions form the cornerstone of jury trials. Very few physicians and even top experts are available for jury trials and therefore attorneys are required to present depositions in one form or another. Having had the experience of trials in many southeastern state and federal courts, there are certain truths to depositions that can be stated to assist those handling personal injury cases. And there are deadly sins to be avoided.

I. TYPE OF DEPOSITION - MATCHING FOR THE WITNESS

Is this particular witness best presented by videotape or regular deposition means before the jury? That question sometimes is not a question that stands alone because counsel must consider this deposition in light of other depositions to be presented at the jury trial. For example, how many of your depositions will be videotaped and how many would not be videotaped? A witness that is super-articulate and you already know makes a great appearance you would probably want to videotape (contrasted with a witness with a foreign accent, for example) this is true. But in the context of the other depositions you are presenting, you don't want all of your depositions by videotape. Why? Because having handled many jury trials, and having discussed this with many judges, jurors visualize they are in their living room easy chair, or subconsciously visualize this, and after a certain amount of video coming from a TV monitor the sleep reflex comes into play. You must step away from your

case and say to yourself: Is this a scintillating deposition, and will my jurors be captivated? If you are dealing with page after page of medical notes in a doctor's records, contrary to popular belief this is not scintillating testimony for a jury. So the best tip here is to offer a mix of depositions because even a deposition that is read by two attorneys, for whatever strange reason, is more interesting to people on a jury than staring at a TV monitor and listening to videotape after videotape testimony. And in the case that has substantial value, consider having a teacher, professor or even a professional actor read witness testimony.

II. THE LENGTH OF THE DEPOSITION

Record producers of modern music consider how many seconds pass before the hook of a song. Trial attorneys must consider how far into a deposition the key testimony of a doctor or other expert witness will first appear. Will you get your key direct examination within the first 20 minutes? Or it will be over an hour? If it's over an hour, no one on the jury will still be paying careful attention and may miss the import of what you are trying to drive at. So consider the length of the deposition and/or have a definite plan in mind about designating the deposition so that you will get to the point in the first 20 minutes of the testimony of the witness involved. In a complicated case shortening that examination can be difficult but the work is all on counsel. You must take the time in advance of the deposition to synthesize the key material and organize your examination.

This does not sound revelatory, but if you are the one presenting the witness, you must take the time to do an examination outline before the deposition. I often first draft out the chapters for the key points that I want

before I start drafting the entire examination. Then I can look down at the page and consider exactly where I am in drafting examination so I'm not jumping all over the place. This is also a good idea because if you are the presenter of personal injury evidence, you want to have a couple key questions always on your chapter list like "Reasonable degree of medical probability?" and when you're dealing with medical bills, "Are all of the medical expenses reasonable and necessary and related to the underlying personal injury event?"

Any good editor will tell you anyone can go on for a long time, but a great writer can do the same thing in a much shorter & succinct way and that goes for examination design also.

III. HANDLING, RESPONDING TO OBJECTIONS

Typically in the Commonwealth of Virginia, substantive objections to deposition testimony are reserved, and I believe most judges would agree that even if that substantive objection was not stated during the deposition itself, it can be raised later.

The rule is vastly different for form of the question objections like leading. When you travel out of town to a deposition of a witness, and you are met with an objection to the form of the question like "Leading" you have to listen to your opponent's objection. You need to rephrase the question to state it in a non-leading way or else you may be met with an objection later at a pretrial designation hearing, and have the unfortunate ruling that you cannot use some key testimony simply because you didn't rephrase it at the time you took that deposition. That is definitely the deadly sin that you can easily overcome. Also, if you're taking an expert

witness deposition out of town and there's a chance the deposition is going to be used at trial, listen to objections if they go to a lack of foundation or something like that because if you're not bringing that witness to trial, and the objection is registered and can be corrected, you must correct it in a follow-up series of questions at the deposition.

IV. FAILURE TO INTRODUCE KEY EXHIBITS OR DOCUMENTS

Sometimes it seems like we must be mind readers to be trial attorneys. By that I mean we have to almost forecast what documents or exhibits will be extremely important at the trial many months away if we are conducting a deposition out of state or where a witness is unavailable and the deposition will be used instead of their actual testimony. Months before trial it's hard to know exactly which document or exhibit may be critical, but when you are preparing for a deposition of a witness, that has the possibility of being used at trial (because under the rules you may be able to use the deposition due to the residency of the witness, or the unavailability of the witness for trial), a deadly sin is to not get a key document or exhibit identified and into evidence with that witness particularly if that witness is the only likely one that can authenticate and serve as the proponent of that document or exhibit for trial.

While you are mindful of keeping your deposition organized and concise, you must err in favor of getting any relevant documents admitted through that witness or else you will have trouble at trial if no other witness can vouch for the document or exhibit. And it doesn't matter if the opponent objects to your reference to the exhibit, but you want the exhibit made a part of the deposition even if the other side objects.

V. WHEN LEADING IS APPROPRIATE

A deadly sin for a proponent of a deposition is to not understand when you are allowed to lead a witness by rule. For the plaintiff, you are always allowed to lead the defendant in the case or any defendant corporate representative, by rule. If you are the defendant in a case you are allowed to lead the plaintiff the adverse party. But keep in mind that in a corporate representative deposition where you are conducting a corporate designee, they are by definition an adverse party and counsel for the plaintiff may lead the witness.

Sometimes in terms of trial persuasion it's best to design most of your examination in a non-leading fashion even if the rules permit leading and to only use leading questions where they are necessary. It all depends on your style but that is how I advocate doing depositions of corporate representatives in most cases.

VI. VIDEOTAPED DEPOSITIONS–SPECIAL CONSIDERATIONS

When you're involved in injury litigation that has some document intensive issue, such as a corporate representative deposition where you have many exhibits, there is an efficiency method to use so that the jury is not bored with witnesses reviewing numerous exhibits and here is how I advocate it taking place. The witness is sworn in and you discuss with opposing counsel that before the videotape operator begins the videotape portion of the deposition, you want to go through all of the exhibits with the witness to determine and confirm the witness can identify and authenticate

each one, before any videotaping commences. In this fashion you can take your time, get all of your exhibits marked and identified and it is already a valid deposition it's just not going to bore the jury on the videotape. When that preliminary part of the deposition has been completed and everything is ready, you then swear the witness in on the videotape and don't need to fumble around with many exhibits. To orient the jury it is good to mention on the record of the videotaped part that you took a few minutes to have the witness identify and review a series of exhibits and you might show them to the witness or simply hand them during the videotaped part.

VII. SUMMARY EXHIBITS IN DEPOSITIONS

Avoid the bored juror sin. In personal injury, when you have a series of medical visits to a doctor, and you know that you can't go through every visit with the doctor, a good idea is to create a typed summary of the visits. If you have any notes about the type of care rendered it should be very objective so it will not be objectionable to an opposing attorney. An example of a summary to use with the medical doctor in a personal injury deposition is set forth below and this can take various formats. A deadly sin is to go through every visit with a doctor when there are multiple visits in excess of ten. It is much better to start with the first couple visits, show a summary chart, and then cut to the chase of an important visit later on or to then ask an opinion about whether the doctor believes the care is causally related to a certain personal injury event.

VIII. RESIDENCY OF WITNESS ON THE RECORD-

When you were traveling to a deposition that is out of state or even near the state border, and there is any chance that that witness is unavailable you need to establish on the record the residence address of the witness. I have reviewed depositions of the other attorneys when they were conducting the doctor or other expert, and there was no initial examination about the residence of the witness or whether the witness would likely be available at the trial. You need to cover this if it is any type of a question mark for that particular witness.

IX. PRE-MARKING EXHIBITS AND BATES STAMPING

I try to go to depositions with all of my exhibits already pre-Bates stamped even if I don't have individual exhibit stickers on the materials. Adobe Professional will automatically add Bates stamping to scanned documents even after they are scanned. We use this tool a lot in our office and particularly even if there is a telephonic deposition it is critical to have each document with the Bates stamp so there is no confusion on the telephonic record as to what you are referring to. Even if you don't have an exhibit sticker on each page you know what you are referring to.

I've tried to cover a number of the deadly deposition sins in one way or another in this outline and some of the documents we will use to avoid these sins are set forth below.

MEDICAL CARE SUMMARY

[redacted]

DOI – 5/11/[redacted]

5/31/12 – 6/7/12	**Sentara Medical Group, Gary Snider, M.D.** Initial treatment family practitioner Cervical MRI referral Referral to Pain Management
6/13/12 and 1/30/15	**Sentara Norfolk General Hospital** 6/13/12 - Cervical MRI 1/30/15 – Cervical MRI
7/3/12 – 2/13/13	**APM Spine & Sports Physicians, David Levi, M.D.** Referral to Physical Therapy Epidural Injections 2/4/13 and 2/13/13 Referral to Neurosurgeon Referral for Cervical MRI
7/25/12 – 8/17/12	**SNGH Ghent Physical Therapy** Physical Therapy
2/25/13 – 4/8/13	**Neurosurgical Specialist, Jeffrey Laurent, MD.** Neurosurgical consult 3/5/13 – **Surgery** - C7-T1 Laminectomy, partial facetectomy, and foraminotomy, with flouroscopy
2/27/13 and 3/5/13	**DePaul Medical Center** 2/27/13 – Pre–op Chest X-ray, EKG-ECG, Hematology 3/5/13 – **Surgery** - C7-T1 Laminectomy, partial facetectomy, and foraminotomy, with flouroscopy

Medical Care Summary

[redacted]

Counseling and Human Resources (Brown) -	02/28/07,02/15/07,01/31/07,01/17/07, 01/03/07, 12/20/06,12/07/06,11/22/06, 11/14/06,11/08/06, 10/25/06,10/11/06, 07/05/06, 06/07/06, 06/10/06,06/21/06, 05/24/06, 05/10/06, 04/28/06, 04/12/06, 03/29/06, 03/25/06, 03/15/06, 03/01/06, 02/17/06, 02/15/06, 02/08/06, 01/25/06, 01/03/06, 12/20/05, 12/06/05, 11/25/05, 11/09/05, 10/27/05, 10/18/05, 10/11/05
Richmond Orthopedics (Fleming) -	12/05/06,09/11/06, 08/02/06,06/28/06, 02/27/06, 01/24/06,11/02/05
Southampton Memorial Hospital (ER) -	09/22/05
SouthSide Oral and Facial Surgery -	0/17/05
Adv. Orthopedic Center-PT (Kelo) -	9/6/06, 1/11/06,12/29/05,12/14/05, 12/05/05, 11/21/05, 11/16/05
Central Virginia Health Services (Neff) -	10/11/05,10/04/05, 09/27/05
St Mary's Hospital (Radiology) -	01/31/06, 10/02/07
Commonwealth Radiology -	05/08/06, 01/31/06
Slone Chiropractic Clinic -	01/22/07,01/24/07,01/26/07,01/30/07, 02/02/07,02/05/07,02/07/07,02/12/07, 02/14/07,02/19/07,02/21/07,02/26/07, 03/07/07, 07/06/06,06/29/06,06/27/06, 06/22/06,06/20/06,06/15/06, 06/13/06, 06/08/06,06/01/06, 05/30/06,05/25/06, 05/23/06, 05/18/06,05/16/06,05/11/06, 05/11/0605/06/06,05/05/06,05/04/06, 04/27/06,04/25/06,04/20/06, 04/18/06, 04/17/06
Chippenham J. W. Medical Centers -PT	04/20/06, 04/18/06, 04/11/06, 04/06/06, 04/04/06, 03/31/06, 03/28/06, 03/23/06, 03/20/06, 03/16/06,
Magee Rosenblum Plastic Surgery -	05/26/06

Sheltering Arms Hosp. -PT	01/31/07, 01/24/07, 01/17/07, 01/10/07, 12/27/06, 12/20/06, 12/13/06, 11/15/06, 11/08/06, 11/01/06, 10/25/06, 10/19/06, 10/11/06, 10/04/06, 09/20/06
Retreat Hospital - (ER)	08/02/06
Insight Physicians (Corcoran) -	01/23/07,10/27/06
Virginia Southside Psychiatric (Koduri) -	08/06/07
Southern Physical Medicine (Bonner) -	1/14/08,12/4/07,11/13/07, 10/01/07, 08/13/07, 07/16/07, 05/30/07, 04/30/07, 04/02/07, 3/5/07, 2/5/07
Open MRI of Richmond -	01/31/07
John Randolph Medical Center (ER) -	07/25/07

IN THE CIRCUIT COURT OF THE COUNTY OF WASHINGTON

JIMMY L. HALE,

Plaintiff, CIVIL ACTION
FILE NO. CL11-27

vs.

NORFOLK SOUTHERN RAILWAY CO.,

Defendant.

VIDEOTAPED DEPOSITION OF

MARK M. DUDLE

10:30 a.m.

December 11, 2013

1170 Peachtree Street
Suite 800
Atlanta, Georgia

Marcia W. Welch, CCR-A-172

① Documents ID'd first
② video second

APPEARANCES OF COUNSEL

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Also Present: Steve A. Tucker, Esq.

Videographer: Spencer Bush

INDEX TO EXHIBITS

(Exhibits were previously marked and have been returned to Mr. Shapiro for distribution to all parties.)

Documents first ↓

DEPOSITION OF MARK M. DUDLE
December 11, 2013

(Reporter disclosure made pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Council of Georgia.)

(Exhibits 1A and 1B was marked for identification.)

MARK M. DUDLE

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SHAPIRO:

Q. Could you please state your full name, sir?

A. Yes, sir, Mark Munson Dudle.

Q. And are you an industrial hygienist with Norfolk Southern?

A. Yes, I am.

Q. And today we're here in Atlanta, Georgia, to conduct your deposition in a case called Hale versus Norfolk Southern. Have you been advised of that?

A. Yes.

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Q. And I have spoken with counsel and what we are going to try to do is review documents first before we go on video record and ask you if you can identify certain documents, okay?
A. Okay.
Q. So I'll really wait for the routine sorts of questions about the nature of this deposition until after we complete this process, okay?
A. Okay.
Q. We have produced for counsel a whole bunch of documents and certain ones they have identified you may be able to identify. This stack here (indicating), and Mr. Loftus can comment, if he would like, on the record, but they are Numbers 1 and then 4 through 7.
They have stickers. They are not really stapled. The attorneys kind of have to figure out what is what?
MR. LOFTUS: Yes. I will say that those were prepared in advance based on your list, and we would like to give him the opportunity to go through them.
MR. SHAPIRO: Okay.
Q. (By Mr. Shapiro) So if you would like, you can just look and say I'm looking at a date or

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Number 1 and you can tell me if you can identify it.
A. This is Exhibit 1 from the Virginia Bridge Company dated August 23, 1937. I have seen this document. It is my understanding that it is a company document.
Q. Okay. We can flip that -- if you want to turn each document over so we have identified Number 1 as a company document that was in the files. We are on Number 4 now or should be.
A. Are these tabbed in any way?
Q. Let's see.
A. Here we go.
Q. That was all part of Number 1, all that.
A. Okay. This is Exhibit 4. It is for Norfolk And Western Railway Company, Pocahontas Division, Superintendent's Bulletin Notice. It's dated March 7th, 1980. It is my understanding this is a company document.
Q. Thank you, sir. Take a look at Number 5.
MR. LOFTUS: Just for clarification, it's a Norfolk and Western Company document.
THE WITNESS: It is titled Norfolk and Western Railway Company.
Q. (By Mr. Shapiro) Okay. And Norfolk and

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Western Railway Company was merged into Norfolk Southern Railway Company at a point in time?
MR. LOFTUS: Objection. This is beyond the scope of his knowledge and topic.
Q. (By Mr. Shapiro) Can you answer?
MR. LOFTUS: You can answer. That is my objection.
THE WITNESS: It is my understanding that Norfolk and Western and Southern Railway Company merged.
Q. (By Mr. Shapiro) You can go ahead and look at the next document, please.
A. This is titled Norfolk and Western Railway Company, Standard Material Containing Asbestos As Of 1981.
Q. Should be a number of pages through to the next exhibit number.
A. My understanding is that is a company document.
Q. Thank you. Okay. We are now on Number 6.
A. Number 6 has no title. It is dated October 3, 1983, it looks like. It is my understanding that is also a company document.
Q. Okay. And Exhibit Number 7 -- is Exhibit

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Number 7 there?
A. There is just Exhibit A behind Exhibit 7.
Q. I think -- oh, yes. They're numbered or lettered A through 0 and they should be Asbestos Task Force minutes in the title.
If you can flip through all of those and tell us whether you can identify those as company documents, please?
A. This is minutes of the Asbestos Task Group meeting in Alexandria, Virginia, November 3, 1983.
Q. I think to save time, if you can flip through all those pages -- I think the rest of the pages in front of you would go letter A all the way through O which would be 1987 and should be Asbestos Task Force minutes on each of the dates reflected?
A. These appear to all relate to the task force. It is my understanding they're company documents.
Q. Okay. So you have reviewed A through O under Number 7?
A. Yes.
Q. All right. Now let's turn your attention to what we marked as Number 18, and it has a title, Asbestos Safety Program, on the first page. And can you identify what that document is in its entirety,

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please?
A. This is Exhibit 18, entitled Asbestos Safety Program for Norfolk Southern Corporation and Subsidiary Companies. I do not see a date.
Q. Was that a program that, it's your understanding, was adopted as part of the Asbestos Task Force on planning?
A. I think it is a document that was a result of the company task force.
Q. Okay. And so that is a Norfolk Southern business document also?
A. That is my understanding.
Q. That is Number 18. Then we were going to show you Numbers 36, 37 and 38. I think this first stack, it has 36. Somewhere in the middle, you will see it is marked 37. The first one, just for the record, starts with Employee Right To Know Program and the second should -- I think it is just an attachment of the same asbestos safety program but you will have to tell me there, Number 37?
A. 36 is the Employee Right To Know Program, May, 1988.
Q. So you completed 36 which was the Right To Know Program for Norfolk Southern?
A. Yes.

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Q. Now you're looking at a document we marked as 37?
A. 37.
Q. Is it a duplicate of what we already looked at, Number 18, or is this a different document? Maybe it has more attachments.
A. I can't tell you if it is exactly the same. It appears to be.
Q. Okay. And the title, again, on Number 37 was, just for the record?
A. Asbestos Safety Program for Norfolk Southern Corporation and Subsidiary Companies.
Q. And then I think the last major document we have here is marked Number 38 and it has a title NS Respiratory Protection Program, 1987, on the cover page. Can you identify that, please?
A. Exhibit 38 is entitled Respiratory Protection Program, and on the second page, issued October, 1987. It is my understanding this is a company document.
Q. Okay. I'm sorry. I have the diesel exhaust reports here. I think -- I don't think we have a sticker on this. I have got a list I will give you after -- I have got it as 43.
On the record, we will state we are

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skipping around on the exhibit numbers, both sides, because we have different witnesses identifying different documents. I'm going to put a 43 on this.
What I have marked as --
MR. LOFTUS: Here it is. You had it.
Q. (By Mr. Shapiro) So what we have marked as Exhibit 43 is a stack of documents which were produced to us by counsel for the railroad, and I want to ask you if you can flip through all of those. They all should relate to diesel exhaust fumes in some way. I think some are reports from workers. There are a few letters mixed in there.
Let's go off the record?
(Discussion ensued off the record).
MR. SHAPIRO: Let's go back on. So he has identified the whole stack of documents we marked as Number 43 as company documents.
MR. LOFTUS: Let's go back off the record.
(Discussion ensued off the record).
Q. (By Mr. Shapiro) Let me go back on the record. So, Mr. Dudle, as an industrial hygienist for the railroad, you have identified each of the documents just now as records that were maintained

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either by Norfolk and Western Railway Company or Norfolk Southern Company for each of these documents, correct?
A. Yes.
MR. SHAPIRO: At this point, I move the documents in, of course, but that is a substantive ruling later.
MR. LOFTUS: And we will reserve objections to admissibility later.
MR. SHAPIRO: I'm ready to go with the video if you're ready. You ready, Mr. Videographer?
Now, if you would just start a new page break in same document when you prepare this.
(A recess was taken.)

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MR. LOFTUS: I'm going to state an objection to the format of this deposition as improper under the governing rules. We have been told there is going to be some information shown on a monitor next to the witness. The witness is going to have to crane his neck to look at it. I don't know what that information is. It has not been disclosed.

I would like a standing objection to the format of the --

MR. SHAPIRO: Absolutely.

MR. LOFTUS: -- of the deposition. Also, I would like to reserve all substantive objections as to admissibility to the extent any of this would ever be shown to the jury because a court has to rule on the admissibility of information that the jury may see that may appear on that monitor.

MR. SHAPIRO: Understood. Yeah. As far as the witness -- and, Mr. Dudle, I'm directing this to you, too, if there is anything on there you can't see, we will make sure you can see it. We will turn the

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monitor and let you look at it. We want you to be able to identify anything.

Just like if I put it on a little easel, we have to make sure you see what we're showing you, okay? All right.

Let's re-swear the witness in and do the video intro.

THE VIDEOGRAPHER: This is --

MR. SHAPIRO: Well, before he does that, also, I marked earlier as 1A and 1B the two deposition notices. One is the corporate representative deposition notice indicating -- the railroad has indicated we're addressing subjects 1, partially, 2, 3, 4, 23 and parts of 24 today, and also 1B is a general deposition notice including by videotape of the witness.

THE VIDEOGRAPHER: This is the beginning of the videotape deposition of Mark Dudle. Today's date is December 11, 2013, and the time on the video record is 10:55 a.m.

Would the court reporter please swear in the witness.

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MARK M. DUDLE

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. SHAPIRO:

Q. This is Rick Shapiro representing the Plaintiff, Mr. Hale, and could I ask you your full name, please, sir?

A. Yes. It is Mark Munson Dudle.

Q. And, Mr. Dudle, today is December 11, 2013, and we are conducting your deposition as a corporate representative for Norfolk Southern, correct?

A. My understanding.

Q. And I have had the opportunity to take your deposition before. I don't know if you remember that. Do you?

A. I do not.

Q. Okay. In getting ready for today's deposition, you had an opportunity to meet with one or more of the attorneys representing the railroad, correct?

A. Yes.

Q. And earlier, before we went on the video record just now, is it true that we went through a

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number of documents that you reviewed and were able to identify a number of them as exhibits to this deposition?

A. Yes, I did identify them.

Q. Okay.

MR. SHAPIRO: Mr. Videographer, if you want to bring in the monitor there.

Q. (By Mr. Shapiro) In this deposition, if you can see the screen, Mr. Dudle -- you might have to lean forward there. You're speaking for the railroad, not just yourself, right, as a representative today?

A. That's my understanding.

Q. I just asked you a moment ago if you met with the attorneys to get ready for this deposition. You reviewed documents and items involved that might come up in the subjects today, didn't you?

A. Yes, I did.

Q. So on the subjects that you're going to address, you're speaking on the knowledge base of the entire railroad?

A. That is my understanding.

Q. You have testified as a representative for Norfolk Southern many times before, haven't you?

A. I have testified 25 to 30 times.

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Q. Okay. Now, you are an industrial hygienist, right? Can you tell us what that is?
A. Yes. Industrial hygiene is the identification, evaluation and control of workplace exposures.
Q. You understand that I represent Mr. Hale who claims he worked for the railroad from 1966 to 2001?
A. Yes, I understand that.
Q. He worked for Norfolk and Western Railway Company which later was merged into Norfolk Southern Railway Company?
A. That's my understanding.
Q. As for the subjects that I'm going to cover today, so we all know what I plan to cover, the subjects that we agreed upon at least in general terms between counsel, we are going to talk about asbestos on locomotives and cabooses if there was any, correct?
MR. LOFTUS: I object to that. This witness is not offered for all of the topics for today's --
MR. SHAPIRO: It was part of Number 1. Okay.
Q. (By Mr. Shapiro) Anyway, in Numbers 2 and

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3, you're going to address occupational health dangers involving asbestos or diesel fumes, correct?
A. Correct.
Q. And railroad worker health or safety complaints about diesel fumes. We talked about that earlier before the video, correct?
A. Yes.
Q. And the topic of the National Institution of Occupational Safety and Health asbestos standards and synergy between asbestos and cigarette smoking, correct?
A. Correct.
Q. You read Mr. Hale's deposition?
A. No.
Q. What did you do to research what Mr. Hale's claims are in this case?
A. I reviewed documents.
Q. Okay. Well, you understand that Mr. Hale claims his lung cancer was caused by cigarette smoking, diesel fumes and asbestos dust?
A. Specifically, I'm -- I know that the concern was lung cancer. I understand that these are the claimed exposures.
Q. Okay. I want to go through the basics of industrial safety involving asbestos and diesel fumes

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with you now. And what is industrial hygiene?
A. The identification, evaluation and control of workplace hazards.
Q. Okay. What is a certified industrial hygienist?
A. That is an industrial hygienist that has experience and expertise and has passed the board certification exam.
Q. And you are a certified industrial hygienist?
A. Yes, I am.
Q. And you have been employed with Norfolk Southern since 1992?
A. Correct.
Q. And my understanding is you have a college degree and a Masters, correct?
A. That's correct.
Q. And you had a concentration in industrial hygiene in your Master's Degree?
A. Yes, that's correct.
Q. I want to ask you if you agree with this statement on the monitor: A company must assure that the breathing air is safe for its workers. Do you agree with that?
A. A company must provide a reasonably safe

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workplace for employees.
Q. Would you agree it includes keeping the breathing air safe for workers?
A. I would say that is part of it.
Q. Would you agree that the engines must be safe to operate without unnecessary danger of personal injury as part of the duties of a railroad?
A. Yes.
Q. Okay. And then railroad workers breathing air must be safe without unnecessary danger of personal injury as part of providing a reasonably safe place to work?
MR. LOFTUS: Object to form.
MR. SHAPIRO: Noted.
THE WITNESS: This is not a great format for me to be -- trying to listen to your questions while I'm reading it off of this. I'm having -- I've never been deposed like this before.
Q. (By Mr. Shapiro) We will do our best, okay? It is no different than having a flip chart right next to you where I flip the pages.
A. But it is different than listening to your question and then trying to specifically address your question.