

Checklist: Deposing the Driver in an Auto Accident

1. PERSONAL BACKGROUND

- All names ever used
- Present and past residences for 10 years
 - If the deponent has rented a residence, get the name and address of landlord.
- Birth date
- Social security number
- Complete marital history
 - If there is a previous marriage, get information sufficient to locate the past spouse. Usually a divorced spouse is quick to tell you the flaws of character or adverse facts of the ex-spouse.
- Military history
 - When
 - Where
 - Rank and military occupation
 - Military serial number
 - What type of discharge
 - If there is military history, ask whether ever hospitalized in the military (and when, where, and what for). If dishonorably discharged, get all information you can, in the hope of obtaining records of charges.
- Employment on accident date
 - Who with
 - What done on accident date
 - When done on accident date
 - Questions on employment on the date of the accident are not for purposes of establishing the extent of injuries and damages. (Cover that with a separate checklist on injuries; see §31.6 for a damages checklist to add to your deposition if needed.) This inquiry should find out whether the deponent driver was possibly within the scope of employment on the date of the accident.

2. VEHICLE BACKGROUND MATERIAL

- Choose your words according to which side you are on. For example, plaintiff's counsel should refer to the "crash" or use other impact words instead of "accident"; defendant's counsel should say "accident" or use other neutral words of causation.
- Description of your vehicle (which you were driving)
 - Make
 - Model
 - Year

- Color
- Owner of your vehicle
 - If the deponent is not the owner, get exact reasons the deponent was driving this vehicle, and with what permission.
- Motor vehicle licenses you held
 - Duration
- Your experience in operating vehicles generally
- Your experience before accident date in operating your vehicle
- Maintenance done on your vehicle in the past year on items critical to the accident (such as brakes, lights, turn signals)
 - Prior safety checks of equipment, or problems with the equipment.
 - Who has the repair records on your vehicle and service records
 - When and where brakes were last inspected (and records)
 - Was every relevant mechanical element of your vehicle the car in perfect order?
 - Ask about each separately (“Were the brakes in perfect order before the crash?” and “Were the lights . . . ?” and “Were the wipers . . . ?”).
 - What was not in perfect order on your vehicle
 - How long you had known that the element was not working perfectly or correctly
 - Last time you actually walked around and saw that the turn signals were working

3. SITE BACKGROUND MATERIAL

- Site of collision
- Your familiarity with site
 - Your prior knowledge of traffic controls at the site
 - Your prior experience in stopping or obeying traffic controls there
 - Your prior experience in stopping for other traffic there, or otherwise having to be observant or modify behavior because of other traffic there
- Character of area (residential, commercial, open farmland)
 - Ask what could be expected in an area of this character. For example, “You knew that farm trucks could enter onto the highway, didn’t you?” or “You knew that children sometimes go into the streets in residential areas, didn’t you?” or “You knew that on route 101, cars might slow down suddenly because of traffic congestion, didn’t you?”

4. EVENTS AND SITUATION BEFORE IMPACT

- Determine whether deponent was fatigued, not by asking directly but by determining the events of the day.
- What time you got up that day
- What you did that day before the collision
- Any intoxicating liquors taken
- Any drugs or medicines taken
- Date and time of accident

- Get the deponent's confirmation of your version of the date and time.

- Exact route from departure to accident site
 - Starting point and time
 - Destination
 - Expected time of arrival
 - Purpose of trip
- Weather and visibility
- Traffic condition
- Passengers in your vehicle
 - Any that were related to you
 - Any that were co-workers or otherwise closely connected
 - When each was picked up into vehicle
 - Why each passenger was in the vehicle
 - Location of each passenger in the vehicle
 - What each passenger was doing prior to the impact
- All physical characteristics of roadway and intersecting roadways at the accident site.
 - Repeat to deponent the exact route from departure to site, as he gave it to you earlier in the deposition, and now ask the following.
- Speeds you were driving at various points approaching the site
- Posted speed regulations and traffic control signs you saw
- Movements from one lane to another before seeing the other vehicle
- Speed your vehicle was going just before you saw the other vehicle

5. FIRST SIGHTING OF OTHER VEHICLE

- Position of the other vehicle (TOV) in relation to any geographical landmark when TOV was first seen
- Position of your vehicle in regard to that same geographical landmark when TOV was first seen
- Position of your vehicle in regard to other geographical landmark when TOV was first seen
- Distance of your vehicle from TOV when TOV was first seen
- Speed of your vehicle when TOV was first seen
- Estimated speed of TOV when TOV was first seen
- Description of TOV
 - Make
 - Model
 - Year
 - Color
- Existence of additional vehicles in the area and what those vehicles were doing
- All movements of your vehicle from first sight of TOV until impact
- All movements of TOV from first sight of TOV until impact

Did your vehicle slow down from the time you first saw TOV until the time you hit each other?

- When
- Where
- How much

If TOV slowed down from the time you first saw it until the collision

- When
- Where
- How much

Any signal given by TOV

- When
- Where
- What

Any signal given by your vehicle

- When
- Where
- What

Distance of your vehicle from TOV when any signal was given

Awareness of any reason for TOV or your vehicle to stop, such as other traffic or person or sudden obstruction in highway

Stop sign or traffic control signal involved, if any

- Distance from it when you first saw it
- Any obstruction of vision between you and traffic signal
- Any obstruction of vision between TOV and traffic signal
- Was it working?
- Was it in good condition?
- Was it red, green, or yellow for you?

• If the deponent denies traffic signal was red, then pursue full inquiry as to all traffic moving in the vicinity and the area of accident, in any direction.

Pedestrian involved, if any:

- Where did pedestrian come from?
- Any obstruction of vision between you and pedestrian
- Any obstruction of vision between TOV and pedestrian

Exact amount of time (how many seconds) from when you first saw TOV until impact

6. THE IMPACT

At the moment of impact

- Exact position of TOV on the roadway
- Exact position of your vehicle on the roadway

• Seek admission that your vehicle struck the other car from the rear, from the side, or straight on.

- Parts of each vehicle that came together
 - What part of TOV vehicle was involved
 - What part of your vehicle was involved
- Every movement of all vehicles after moment of the impact
- How fast your vehicle was traveling at the moment of impact
- How fast TOV was traveling at the moment of impact
- If TOV was at rest at any time before impact
 - Distance between vehicles when TOV stopped
 - How long after the other vehicle stopped until your vehicle stopped
- If your vehicle was stopped at any time before impact
 - Distance between vehicles when your vehicle was stopped
 - What TOV did after your vehicle stopped
- If your vehicle brakes were applied
 - Exactly when and where
 - How far your vehicle traveled after the brakes were applied
- Attempts you made to move your vehicle right or left to avoid impact
- If horn of any vehicle was sounded, where each vehicle was then located

7. AFTER IMPACT

- Relative to the roadway, after vehicles came to rest, exact position of
 - Your vehicle: angles and directions of vehicles
 - TOV: angles and directions of vehicles
- Relative to each other, after vehicles came to rest, exact position of each vehicle
- After the vehicles came to rest immediately after the collision
 - Were the vehicles moved?
 - Who moved them?
 - When moved?
 - Where moved to?
- All physical damage sustained by both vehicles: type and location of damage
- What happened after the accident
- Did the police come to the scene?
 - When
 - How many officers and what each did
- Other emergency units on the scene
 - Fire department vehicles
 - Ambulance
 - Tow trucks
- Any conversation with any person on the scene after the collision
 - Other driver
 - Any passenger
 - Any bystander or witness

- Police
- Firemen
- Ambulance attendants
- Tow truck operators

- Remember that conversational “sound bites” may get in as “excited utterances” or “res gestae” so ask whether the person was excited and exactly when the conversation occurred.

- What you saw at the accident site
- Nature of any skid marks
 - Direction
 - Length
 - Characteristics
 - Vehicle involved
- Where the vehicles were taken after the collision
- What collision damage to either vehicle has been repaired
- Where the are vehicles now
- Who has control of the vehicles now
 - Request inspection on the deposition record if you want to look at the vehicle now.
- Traffic charges and disposition
- Any personal injuries you received because of the collision
 - Refer to separate checklist on bodily injury questions.
- Other persons hurt in the collision
 - Who
 - What seen
 - What aid given by you
 - What aid given by others
- Any photos taken of scene or car
 - If photographs are available, and you want to get them into evidence, confirm the reasonableness of the reproduction, then introduce them into evidence.
- Any models or diagrams been made of the accident
 - Have them marked for identification, confirm the reasonableness of the reproduction with the witness, and otherwise lay a foundation, and say “I introduce into evidence Exhibit P3” (or however it’s identified).
- Any newspaper reports about the collision
- Any reports given to your employer
- Anything from the scene or either vehicle taken and retained by you or your insurer or employer
 - What
 - Who has it

- Request inspection on the deposition record.
- Any written or recorded statements made by you
 - Who has original and any copy
- Request inspection on the deposition record.

8. WITNESSES TO COLLISION

- Get sufficient detail so that you can always have an investigator find the witness. Ask for the exact name, address, phone number, employer, job title.
- Describe the person
 - Height
 - Weight
 - Hair
 - Race
 - Other identifying information
- Where the witness was at the time of the collision
- What the witness saw
- What the witness did
- What the witness told you
 - If you represent the defendant, and the plaintiff did not appear to be injured seriously, get what the witness saw about that.

9. HOW AND WHEN PLAINTIFF LEFT THE SCENE

- Details of how, when and with whom the plaintiff left

10. REVISITING TO THE SCENE

- Since the accident, have you been back to the scene?
 - When
 - Why
 - With whom
 - What was done
 - Who did it

11. INSPECTION BY OTHERS OF THE SCENE

- Since the accident, has anyone inspected the scene?
 - When
 - Why
 - With whom
 - What was done
 - Who did it

12. WITNESS'S RECOLLECTION

- What you used to refresh your recollection so you would be able to testify today

- Demand to see anything used to refresh recollection.

13. AVOIDING SURPRISES

- Anything else about how or why the collision happened that I have not asked about
- Anyone else who know about how or why the collision happened
- Any photos or maps of the scene that I have not seen here today