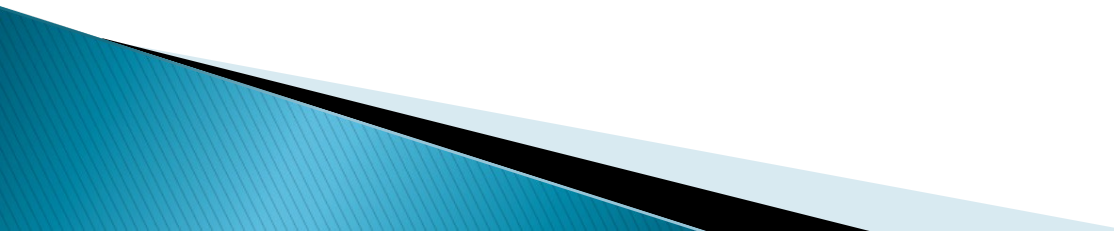


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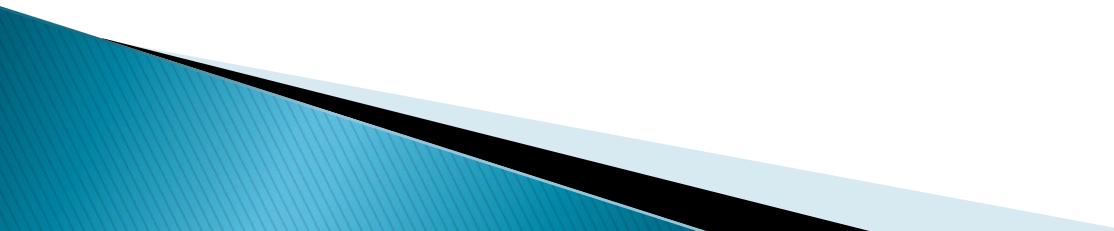
# THE CORPORATE DESIGNEE DEPOSITION – HOW TO SELECT AND PREPARE

Protective Insurance Company  
Carmel, Indiana  
October 3-4, 2018

# PROPER SELECTION AND PREPARATION OF CORPORATE DESIGNEE IS A MANNER TO COMBAT THE REPTILE THEORY AND ESCALATING VERDICTS

- ▶ This person is the FACE OF THE COMPANY.
  - ▶ Testimony is the COMPANY'S VOICE . . . forever.
  - ▶ It impacts the evidence that goes before the jury.
  - ▶ It frames the issues to the ACCIDENT not the COMPANY.
- 

# TODAY'S TOPICS/GOALS

- ▶ Considerations for selecting a corporate representative.
  - ▶ Factors that increase credibility.
  - ▶ Importance in light of the Plaintiffs' focus on the COMPANY.
  - ▶ Tips/Techniques.
- 

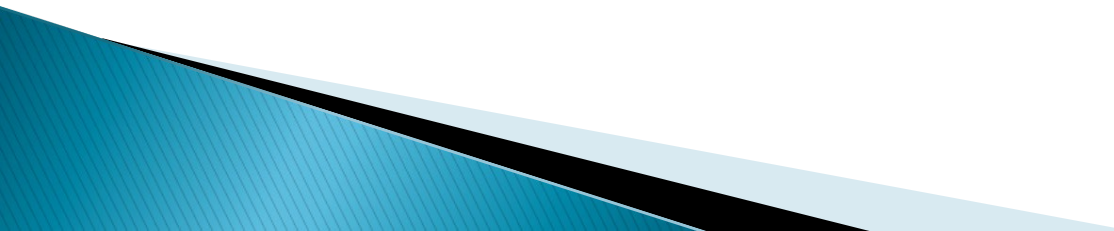
# DOES YOUR COMPANY HAVE A DESIGNATED CORPORATE REPRESENTATIVE?

- ▶ What was your selection process?
- ▶ What was your training?
  - Educate?
  - REAL Mock Cross Examination?
  - Video?
  - Review Company's website?
- ▶ TAKEAWAY: YOU NEED TO!

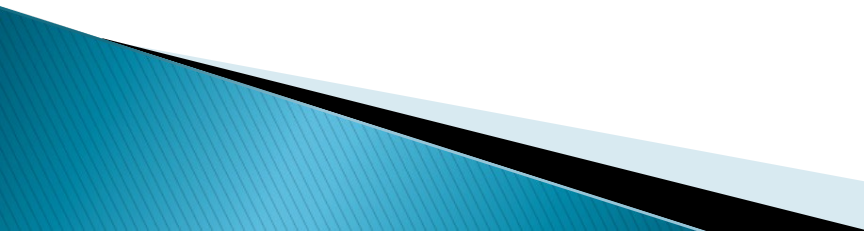
# SELECTION OF THE PROPER CORPORATE DESIGNEE



## CHARACTERISTICS THAT INCREASE CREDIBILITY

- ▶ Likability/Relatable/Charisma.
  - ▶ Technical Knowledge.
  - ▶ Adequately Prepared.
  - ▶ Consider Venue/Diversity.
- 

# IMPORTANT CRITERIA FOR SELECTING CORPORATE REPRESENTATIVE

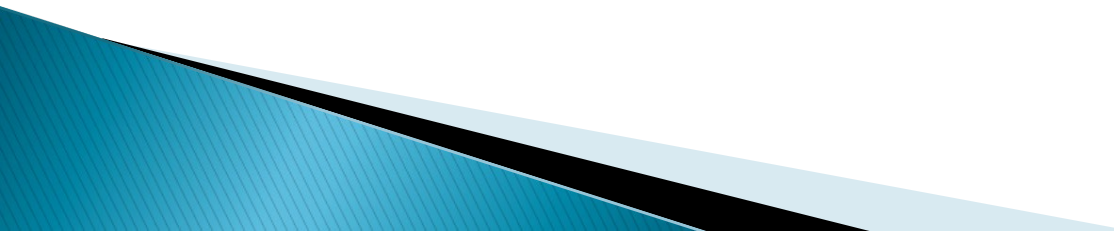
- ▶ Will this person be testifying at trial?
  - ▶ Knowledge of Company history?
  - ▶ Person's work history/resume?
    - Positions held
    - Knowledge of Company
  - ▶ Is the person WILLING to be the corporate representative?
    - Impacts proper preparation?
    - Does the person sound like a COURTROOM JUKEBOX/COMPANY SHILL?
    - Does the representative have the qualities that communicate credibility?
      - Confidence
      - Knowledgeable
      - Position/title
- 

# CHARACTERISTICS THAT INCREASE CREDIBILITY

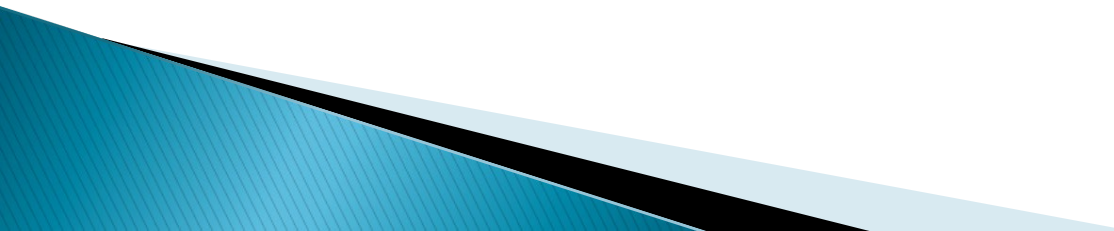
- ▶ **Style of Answering – Reinforces Perceptions of Honesty**
  - Short, direct, clear and consistent.
  - Respectful and courteous – doesn't lose their cool.
  - Sincere – not appear biased or corporate.
  - Powerful Speech – fluid speech, minimizing hedges, “umms.”
  - Consistent on direct *and* cross.
  
- ▶ **Content**
  - Gives good with the bad.
  - Within scope, knowledge or expertise.
  - Familiarity with the information.
  - Can answer the tough questions without hesitation.
  - Knows when to say “I don't know.”



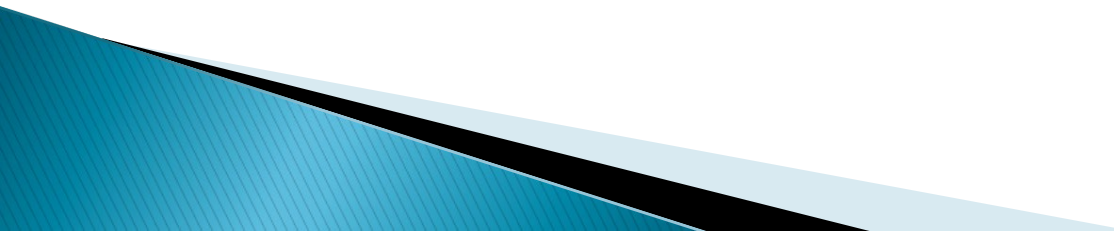
# PLAINTIFF'S FOCUS ON COMPANY; NOT ACCIDENT

- ▶ Has the Company been SET-UP in Driver's deposition?
    - Feel responsible?
    - Lack of proper training/coaching?
    - Equipment?
    - Work Practices?
    - Plaintiff will inform the driver how much the Company made on the load versus how much the Driver made for that load.
  
  - ▶ How do you protect the divide between COMPANY and DRIVER?
- 

# PLAINTIFF'S FOCUS ON COMPANY; NOT ACCIDENT

- ▶ Focus on Company Policies
    - Safety Policies
    - Training
    - Maintenance
    - Driver Background Checks
  
  - ▶ Post-Accident Investigation
    - Procedures to test the driver
    - Choices made
- 

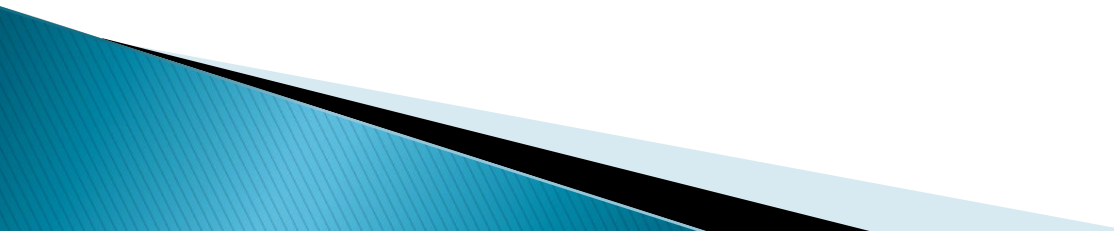
# CONSEQUENCES OF FOCUSING ON COMPANY

- ▶ The Defendant's conduct threatens everyone's safety (yes, yours too, juror).
  - ▶ A proper verdict for the Plaintiff will reduce that danger.
  - ▶ If a proper verdict for the Plaintiff is not given, the danger will not only continue but increase.
- 

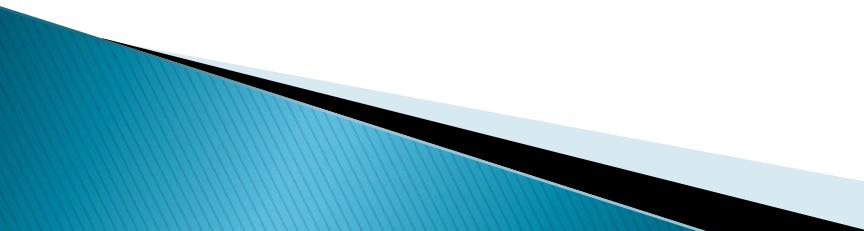
# HOW TO PREPARE

- ▶ Preparation sessions
  - When?
  - How many?
  - Document review? (provide in advance)
  - Real Mock Cross-Examination?
  - Video?

# PREPARATION TIPS/TECHNIQUES

- ▶ Educate Corporate Representative to Facts of Case.
  
  - ▶ Develop Themes
    - Simple
    - Memorable
    - Repeatable
  
  - ▶ Affirmative Messaging: What are the three things you want the jury to remember?
    - Headlines for witness' puzzle piece in your case story
    - Helps jurors understand, organize, remember and repeat them
    - Safety net on cross-examination
- 

# PREPARATION TIPS/TECHNIQUES (cont'd)

- ▶ What are questions concerned about? (deer in the headlight)
    - Uncover anxieties that impede performance
  - ▶ Document Review
  - ▶ Develop list of difficult/trap questions (e.g., reptile approach) and conduct a real cross-examination:
    - Do you agree that safety is paramount?
    - Isn't it dangerous to put drivers on the road without the proper training?
    - You have an obligation to ensure safety?
    - You have a duty to put safety first?
    - Maintenance is always a top priority?
    - Reducing risk is always a top priority.
  - ▶ Develop messages for each difficult question
- 

# PREPARATION TIPS/TECHNIQUES (cont'd)

- ▶ Don't agree to absolutes
  - “Not necessarily”/“Not always”/“It depends”
  - “Generally, Yes”
  - “Certainly, in some situations”

# GENERAL SAFETY RULE ATTACK ANSWERS

- ▶ Consumer/Patient/Employee safety is your top priority, correct?”
- ▶ “You have an obligation to ensure their safety, right?”
  
- ▶ Option 1: General Agreement (not absolute)
  - Answer: Safety is certainly an important **goal**, yes.
  - Answer: Safety is **ONE OF** our many concerns, of course.
  
- ▶ Option 2: Request Specificity
  - Answer: Safety in what regard? Can you please be more **specific**?
  - Answer: In what **circumstance** are your referring to?



**SAFETY IS MY GOAL**  
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# SPECIFIC SAFETY RULE ATTACK ANSWERS

- ▶ If you have factors A, B, and C, then the safest thing to do is conduct/choice X, correct?
- ▶ Answers:
  - It depends on the **specific circumstances**.
  - It depends on **full picture**.
  - Not necessarily, as every **situation** is different.
  - That is **not always** true.
  - I would **not agree** with the way you stated that.
  - That is not how I was **trained**.
  - That is not how **it works**.

# GENERAL DANGER RULE ATTACK ANSWERS

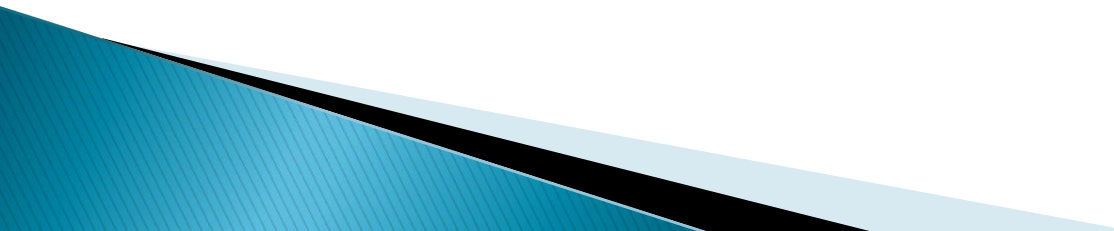
- ▶ “It would be wrong to needlessly endanger someone, right?”
- ▶ “You would agree that exposing someone to an unnecessary risk is dangerous, correct?”
- ▶ “You always have a duty decrease risk, right?”
- ▶ Answers:
  - I don’t understand **what you mean** by “needlessly endanger.”
  - That is a **confusing** question; **can you define** “needlessly endanger?”
  - I don’t understand what you mean by “unnecessary risk;” can you please be **more specific**?
  - That is a very **broad** question, what **specific circumstance** are you referring to?

# SPECIFIC DANGER RULE ATTACK ANSWERS

- ▶ To avoid risk/danger/harm, you should always never do conduct/choice X, right?
- ▶ Answers:
  - It depends on the **specific circumstances**.
  - It depends on **full picture**.
  - Not necessarily, as every **situation** is different.
  - That is **not always** true.
  - I would **not agree** with the way you stated that.
  - That is not how I was **trained**.
  - That is not how **it works**.

	<b>departments</b> 7:1,24	66:
9	<b>departs</b> 99:11	87:
	<b>depends</b> 16:20,24	13
	17:17,19,23 18:2,6	14
	49:13 53:13,17 54:3	16
	54:5,14 60:5 65:19	19
9	65:22,25 66:1,7,17	1
	67:16 72:23 73:2	<b>dif</b>
	90:22,23 101:25	4
	109:20 111:4	<b>dif</b>
7	112:15 115:6	2
16	123:14 129:20,22	.
4	136:8 138:1 139:7	
	140:2,16 141:13	
	149:23 153:9	<b>d</b>
7	155:10 157:2	
	158:13 159:16	<b>d</b>
8	160:19 176:21,24	<b>d</b>
	203:13	<b>d</b>
	<b>deposition</b> 1:14 3:22	<b>d</b>
	4:10,11,12 10:21,22	

# PREPARATION TIPS/TECHNIQUES (cont'd)

- ▶ Teach factors that increase/decrease credibility
    - E.g., Volunteering
    - E.g., Evasiveness
  - ▶ Follow Counsel Objections
- 

# PREPARATION TIPS/TECHNIQUES (cont'd)

- ▶ Practice, Practice, Practice
  - Don't underestimate the necessity of Q&A
  - Don't overwhelm witness
  - Multiple sessions for lessons to stick

# Q&A

