



Defending the Adjuster's Deposition

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MAY 8, 2026

Should the Adjuster be Deposed?

- Is there a fact issue?
- Duty to defend?
- Underlying case tried or settled?
- Is there coverage?

How to Prepare?

- Know the file
- Know the law
- Know the Adjuster

Know the Facts

- Strengths
- Weaknesses
- Inconsistencies

No surprises

Maintaining a Claim File

- Prepare to be cross-examined on any entry in your claim notes
- Keep commentary on the parties objective

Use the Adjuster's file as a Template

Preparation for the deposition



Make sure there are no surprises!

Adjuster's Mental Status?

Over Confident	Terrified	Pliable
• Limiting answer to the question	• Extra time preparing with the file	• Slow down
• Not trying to win the case today	• Extra time preparing for cross	• Listen to question
		• Listen for objection

Factual Context of Deposition

- File – what do the documents say?
- Previous testimony
- What is next in evidence?

Legal Context of Deposition

- What are legal issues in the case?
- What does Adjuster know that affects the issue?
- Filter the questions carefully

Legal Context: Bad Faith



- ▶ Liability “reasonably clear?”
 - ▶ Conflicting Evidence?
 - ▶ Information that was not provided?
 - ▶ Additional policy defenses still at issue?
- ▶ Do not have to prove the Adjuster was correct, just that there was a “reasonable basis” for their position

Multiple Preparation Sessions

Plan Enough Time with the Adjuster to:

- Familiarize them with the file and overall background of the case
- Address an inconsistencies or challenges
- Mock examination of the Adjuster

Preparation: The Basics

“Stay in your lane”	• The Adjuster should not opine on underwriting issues
Only Personal Knowledge	• Okay to say “I don’t know” if outside scope of Adjuster’s knowledge
Review Document	• Slows down the deposition • Keeps question in context
Deposition Rules in the Forum	• Prepare your Adjuster for quirky local rules

Preparation: Deposition Tactics

▶ **Hypothetical Questions**

- Make sure the Adjuster recognizes there are many factors to consider and that there may not be the necessary information to respond

▶ **Wait for Objections**

▶ **Same Answer to Same Question**

- Prepare the Adjuster for repeated question with slight variations

▶ **Mischaracterize Prior Testimony**

- Have Adjuster correct misstatements by opposing counsel – (i.e., if opposing counsel tries to summarize the adjuster's prior response)

Positions in Other Cases

- Counsel should be aware
- Adjuster needs to know
- Nothing is done in a vacuum

Know Your Stuff

- Regulations
- Law
- Company Policies

Avoid Being Easy



- Don't just agree with platitudes

- Insured's interest comes first
- Construe policy against insurer
- Company policies standards

- Wandering off from areas you know

- Watch corporate representative depositions

Preparation: Theme of the Case

- ▶ Adjuster needs to support the theme
- ▶ Frame your theme so the Adjuster can support



Appearance



- What you wear

- Facial expression

- Be professional

- Open
- Not argumentative
- Polite
- Thoughtful and methodical

Corporate Representative Depositions

- ▶ Are the topics clear?
- ▶ Which topics will the Adjuster respond to?
- ▶ Any additional information your Adjuster needs?
- ▶ Does the corporate deposition differ from the factual deposition?



Objections

- Pay attention
- Let lawyer get involved
- Privileges

Questions?

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