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**DISCOVERY CONSIDERATIONS
IN SPECIFIC CIVIL CASES**

2017 Edition

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Automobile Accident Cases

JEFFREY J. KROLL

Salvi, Schostok & Pritchard P.C.
Chicago

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I. [1.1] INTRODUCTION

Auto accident actions vary widely. Litigation may result from low-speed accidents involving two cars with soft tissue, whiplash-type injuries or from multi-vehicle collisions involving catastrophic injuries or death. Discovery in auto accident cases will allow the practitioner to learn that which he or she needs to know about the case to make a full evaluation of the case, including its size and potential value.

Every aspect of discovery can be applied to automobile accident litigation. However, not every case will require the use of all the discovery tools. Counsel, after carefully analyzing the relative strengths and weaknesses of his or her own case and that of the opponent and recognizing the ultimate objective, must determine what discovery will best serve the client's interests.

When effective discovery has been completed, the attorney should be in a position to intelligently evaluate all of the parties, witnesses, and evidence involved in the litigation and make an objective assessment of the relative strengths and weaknesses of his or her opponent's case.

Before beginning representation in an automobile collision case, the attorney should familiarize himself or herself with the Illinois Supreme Court Rules on pretrial procedure (Rules 201 – 224) and trials (Rules 231 – 243). This chapter cannot do justice to all of the intricacies and issues involved in written and oral discovery in an automobile collision case. Thoroughly reading and understanding the Supreme Court Rules will be a big step in successfully handling an automobile collision case.

II. [1.2] PRE-SUIT INVESTIGATION BY THE PLAINTIFF

Prior to issuing any written discovery and well before taking liability depositions, a lawyer handling an automobile accident case needs to engage in an in-depth investigation as to how the collision occurred. As discussed in §§1.3 and 1.4 below, this investigation will include obtaining records and visiting the accident site.

A. [1.3] Obtaining Records

The police report. A good place to start the investigation in an automobile accident case is to obtain all traffic and/or police reports and review them carefully. When reviewing these crash reports, the following questions should be considered:

- Has a traffic citation been issued? If so, what was the disposition of the ticket?
- Did a party plead guilty?
- Are there any supplemental reports?

- Was an accident reconstructionist called to the scene?
- Were photographs or videotapes taken of the scene and the vehicles?
- Was a diagram of the scene prepared?
- Were 911 phone calls made? If so, obtain a copy of the 911 phone call transcript.
- Is the name of the ambulance company on the report? If so, subpoena those records.

Police reports from the City of Chicago can be found at the Chicago Police Department's website at <http://home.chicagopolice.org/online-services/traffic-crash-reports>.

Witness statements. Statements should be obtained from any witnesses listed on the police report and any witnesses known by your client.

Medical records. The client should be asked to execute a medical authorization so that all of his or her medical records, including medical records prior to the accident that may disclose any preexisting conditions, may be obtained.

B. [1.4] Scene Visit

The initial investigation is not complete without a visit to the scene. While it is important to have an investigator or photographer obtain photographs or videos of the scene and the vehicles, no photograph or narrative will ever be an adequate substitute for an actual visit by counsel. Counsel should be keenly aware of the different distances involved and whether there were any potential obstructions to the visibility of any of the drivers. All of the buildings/landmarks in the area as well as the road conditions should be examined. If the accident involves a pedestrian, it is even more important to examine the area around the accident site since, for example, if there are schools, parks, or stores, a driver should be on a higher alert.

III. [1.5] WRITTEN DISCOVERY

Discovery in an automobile case should proceed with an eye toward accomplishing its intended purposes, which are (a) expediting the disposition of the litigation, (b) promoting fact-finding and the ascertainment of the truth, and (c) reducing surprise. *Kankakeeland Community Action Program, Inc. v. Illinois Department of Commerce & Community Affairs*, 197 Ill.App.3d 1067, 557 N.E.2d 277, 145 Ill.Dec. 507 (1st Dist. 1990).

In Illinois, a complete, good-faith exchange of discovery is presumed and “fractional” discovery is not permitted or tolerated by the courts. *Buehler v. Whalen*, 70 Ill.2d 51, 374 N.E.2d 460, 15 Ill.Dec. 852 (1977). As the First District Appellate Court noted, discovery is not intended to denigrate into a “battle of wits” between attorneys. *Farley Metals, Inc. v. Barber Colman Co.*, 269 Ill.App.3d 104, 645 N.E.2d 964, 967, 206 Ill.Dec. 712 (1st Dist. 1994).

A. Written Interrogatories

1. [1.6] Standard Interrogatories

Exchanging written interrogatories is the first discovery step utilized by attorneys to obtain information relating to the parties and the occurrence in question. A carefully crafted set of interrogatories can obtain information that will lead to the use of other relevant discovery to fully and adequately prepare the case.

On April 23, 1996, the Illinois Supreme Court approved standard interrogatories to be used in motor vehicle cases under S.Ct. Rule 213(j). The Committee Comments for S.Ct. Rule 213(j) note that “the practitioner is encouraged to utilize interrogatories approved by the Supreme Court pursuant to paragraph (j) whenever possible.” Committee Comments, S.Ct. Rule 213(j) (rev. June 1, 1995). Therefore, these are the interrogatories that should be utilized by the practitioner for an automobile collision case. However, a common mistake made by practitioners is not modifying the interrogatories to fit the specific case. There is nothing worse than an interrogatory that seeks irrelevant information that does not apply to one’s case. Candidly, there is nothing more discrediting to one’s preparedness, and ultimately work ethic, than the information requested being inapplicable or names from another case being used. A sloppy “cut and paste” job is embarrassing. Counsel’s time should be spent crafting the interrogatories carefully with the purpose of gathering information that is relevant to the case. For example, if one is dealing with an automobile case involving a corporate party, the interrogatories obviously should be modified and geared toward the corporate defendant.

Only counsel’s creativity and the numerical restrictions (see §1.7 below) provide limits to what information can be discovered through interrogatories. Information that can be obtained through interrogatories includes (a) the identity of witnesses, (b) the existence of witness statements, and (c) social security numbers (under separate cover) and drivers’ license numbers. Other areas of inquiry might include (a) the name of a party’s ophthalmologist, (b) information on possible automobile defects, and (c) admissions in traffic court. The only substantive restriction provided by Rule 213 is that interrogatories should be limited to the subject matter of the case. Any relevant information can be requested.

The standard interrogatories contained in the appendix to Rule 213 are set forth in §§1.37 and 1.38 below.

2. [1.7] Numerical Limits

S.Ct. Rule 213(c) restricts a party from serving more than 30 interrogatories, including subparts, except by agreement of the parties or by leave of court. The exception to this rule is the model interrogatories approved by the Illinois Supreme Court, which, including subparts, exceed 30. See §§1.37, 1.38 below. When making modifications to the model interrogatories to fit a particular case, the attorney should keep in mind the extent to which such modifications alter the approved model interrogatories and whether the 30-interrogatory limit is exceeded.

3. [1.8] Duty To Supplement Answers to Interrogatories

S.Ct. Rule 213(i) requires all parties “to seasonably supplement” or amend their answers or prior responses whenever new or additional information becomes available to them. As all parties have an affirmative duty to supplement their answers, there is no need to serve supplemental interrogatories to obtain such updated information. However, it may be beneficial to send opposing counsel reminders to seasonably supplement prior responses if new or additional information becomes available in the case.

Although counsel’s initially completed answers to the opponent’s interrogatories may have been “fully” completed in good faith, S.Ct. Rule 213(i) mandates that they be supplemented with additional information as it becomes known. This must be done in a reasonable amount of time after the information is or should be known. Having some type of tickler or tracking system to supplement answers on a regular basis is a must for any attorney handling an auto case. In addition, the client should be encouraged to send counsel letters/updates on his or her condition, and this information should be shared with the other side as soon as possible.

4. [1.9] Trial Witnesses

S.Ct. Rule 213(f) provides that upon written interrogatory a party must furnish the identities and addresses of witnesses who will testify at trial. The purpose of Rule 213(f) is to prevent unfair surprise at trial without creating an undue burden on the parties before trial. This rule divides witnesses into three categories, with separate disclosure requirements for each category. See §§1.10 – 1.12 below.

a. [1.10] Lay Witnesses

Pursuant to S.Ct. Rule 213(f), a “lay witness” is a person giving only fact or lay opinion testimony. For such a witness, the party must identify the subjects on which the witness will testify. The answer must give reasonable notice of the expected testimony. The lay witness category includes persons such as an eyewitness to a car accident. Committee Comments, S.Ct. Rule 213(f) (Mar. 28, 2002). For such a witness, the party must provide a sufficient description of the subjects on which the witness will testify to enable the opposing attorney to decide whether to depose the witness. *Id.*

The Committee Comments to S.Ct. Rule 213(f) indicate that a proper answer might provide

1. the path of travel and the speed of the vehicles before impact;
2. a description of the impact; and
3. the lighting and weather conditions at the time of the accident. *Id.*

Further, the Committee Comments indicate that the answer would not be proper if it said only that the witness will testify simply about “the accident.” *Id.*

b. [1.11] Independent Expert Witnesses

Independent expert witnesses under S.Ct. Rule 213(f) include persons such as a police officer, who will give testimony based on his or her investigation of a car accident, or a doctor, who provides opinion testimony based on his or her treatment of the plaintiff's injuries. Committee Comments, S.Ct. Rule 213(f) (Mar. 28, 2002). For witnesses in this category, the Committee Comments indicate that the party must identify the topics on which the witness will testify and the opinions the party expects to elicit. The Committee Comments provide further detail regarding the circumstances under which a brief or a more detailed statement of opinions will be required.

c. [1.12] Controlled Expert Witnesses

Controlled expert witnesses under S.Ct. Rule 213(f) include persons such as retained experts. Committee Comments, S.Ct. Rule 213(f) (Mar. 28, 2002). Such a witness can be counted on for full cooperation, so this rule requires the party to provide the subject matter on which the witness will testify, the conclusions and opinions of the witness and the bases therefore, the qualifications of the witness, and any reports prepared by the controlled expert witness about the case. *Id.*

The Committee Comments regarding controlled expert witnesses require that the party set forth "the gist of the testimony on each topic the witness will address." *Id.* A party may meet this disclosure obligation in part by incorporating prior statements or reports of the witness. *Id.*

5. [1.13] Preparing Answers to Written Interrogatories

In preparing answers to a client's interrogatories, the prudent attorney should assemble all available information and draft concise, truthful, and complete responses. This should be done with the client. Why with the client? A written interrogatory is directed to the actual knowledge and information available to both the attorney and the party the attorney is representing. *See, e.g., Battershell v. Bowman Dairy Co.*, 37 Ill.App.2d 193, 185 N.E.2d 340 (1st Dist. 1961). Therefore, the attorney must include not only the information received from the client but also the information gathered by the attorney. In many instances, S.Ct. Rule 213(e) has made answering written interrogatories a bit easier. A party may simply refer to or attach documents containing the requested information. However, it is improper to answer an interrogatory by attaching multiple, unidentified documents and expecting one's opponent to find the needle in the haystack and extract all of the pertinent information. *In re Blank*, 145 Ill.2d 534, 585 N.E.2d 105, 165 Ill.Dec. 709 (1991).

It should be kept in mind that the answers to interrogatories may be used for impeachment, as admissions, or for any purpose for which an affidavit may be used. In Illinois, written answers to interrogatories may be used to the same extent that a discovery deposition is used. S.Ct. Rule 213(h). Rule 213(d) also requires that the party to whom the written interrogatories are directed file a signed, sworn answer to each interrogatory. Answers that are returned unsigned do not satisfy this requirement.

B. [1.14] Requests To Produce

Another basic discovery tool available to the trial lawyer is the production request for documents, objects, or other tangible things from another party. A production request should conform to the requirements of S.Ct. Rule 214 and must be sufficiently specific so as to inform the opposing party of its obligation to produce. *See, e.g., People ex rel. General Motors Corp. v. Bua*, 37 Ill.2d 180, 226 N.E.2d 6 (1967). Generally, a written production request may be filed at the same time written interrogatories are directed to the opposing party. A production request should be broad enough to request any and all items in the possession of other parties and any documents that might be produced at the time of trial. For example, a document request may seek witness statements, photographs, videos, surveillance tapes, plats or diagrams, expert witnesses' reports, witnesses' statements, documentation of wage loss and medical items of special damages, repair and maintenance records of the vehicle, police reports, reports of an internal investigation by a company of its driver, etc. These requests should be tendered prior to taking the discovery deposition of the parties and the witnesses.

With the advent of computers, S.Ct. Rules 201(b)(1) and 214 have been extended so that the definition of a "document" now includes "electronically stored information." What that means is that trial attorneys should amend their standard requests to produce to include any and all information stored on computers and seek a protective order if that information is vital to the case. Rule 214 also provides that "if a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms."

S.Ct. Rule 204(a)(3) provides for a request to the opposing party to bring documents at the time a discovery deposition is taken. This provision affords counsel the opportunity to obtain an explanation of records or documents within the knowledge of the adverse party. To really benefit from this rule, counsel must receive the relevant records pursuant to Rule 214 in time to review the documents before the deposition. If the witness has not reviewed the records before the deposition, he or she may look foolish and be subject to an effective cross-examination at the time of trial. If the witness is prepared to discuss the records, counsel probably will learn more about his or her opponent's case and may gain a tactical advantage.

Once a request for production is served, the opposing party has 28 days to respond to that request. S.Ct. Rule 214. Rule 214(c) requires responding parties to produce documents "as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request." The rule provides that the party producing the documents furnish an affidavit indicating that the production is complete.

As with interrogatories, a party has a duty to seasonably supplement or update prior responses to requests to produce with any documents, objects, or tangible things that come into that party's possession after the initial production request is answered. S.Ct. Rule 214(d). This would include, for example, additional medical records and medical bills. Again, this requirement eliminates the need to propound supplemental requests to produce.

C. [1.15] Obtaining Records

S.Ct. Rule 204(a) provides for the issuance of a subpoena that commands the person to whom it is directed to produce documents or tangible things that constitute or contain evidence relating to any of the matters permitted in discovery. For example, the defendant's employment records may be used to establish what time the defendant left work or was due at work. Evidence that a defendant was behind schedule can be admissible in a case. *See, e.g., Huston v. Chicago Transit Authority*, 35 Ill.App.3d 428, 342 N.E.2d 190 (1st Dist. 1976). If the accident occurred at an intersection with a traffic light, a copy of the traffic light sequence should be obtained. If there is a possibility that the defendant driver was using a cell phone near the time of the accident, a copy of the cell phone record should be obtained from the driver's carrier.

D. [1.16] Request for Medical Examination

An independent medical examination of the plaintiff or the defendant may be useful in evaluating the injury to the plaintiff or the effect of a disability of the plaintiff or of the defendant on the accident. Careful consideration should be given to whether an independent medical examination is appropriate. Of course, any party calling the examiner to testify at trial must disclose that person as a controlled expert witness.

S.Ct. Rule 215 provides for a party to submit to a physical or mental examination by a licensed professional in a discipline related to the physical or mental condition at issue in the case. Such an examination can be arranged by agreement of the parties or by court order upon notice and upon a motion made within a reasonable time before trial. S.Ct. Rule 215(a).

The party requesting the examination shall pay the fee of the examiner and also shall be responsible for all reasonable expenses incurred or to be incurred by the party or person in complying with the court's order. S.Ct. Rule 215(b). A copy of the examining medical professional's report must be mailed to the attorneys for both the party requesting the exam and the party examined within 21 days of the completion of the examination. S.Ct. Rule 215(c).

E. Depositions**1. [1.17] Preparation Is the Key**

The right to take a defendant's discovery deposition is basic and fundamental in our adversarial system. *Slatten v. City of Chicago*, 12 Ill.App.3d 808, 299 N.E.2d 442 (1st Dist. 1973). Utilizing and maximizing this discovery tool to properly prepare one's case for trial provides an excellent opportunity to evaluate not only what the defendant driver is saying but also what he or she is *not* saying. The driver may be pinned down as to what he or she knows and does not know. Similarly, the deposition provides a unique opportunity to evaluate that person's appearance and demeanor.

PRACTICE POINTER

- ✓ A word of caution: There is no substitute for preparation. With the decline in the number of jury trials due to arbitrations and mediations, cases are won or lost on the amount of time devoted to the taking of many discovery depositions. Prepare, prepare, prepare.
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2. [1.18] Deposition Procedures

S.Ct. Rule 206(d) limits all discovery depositions to three hours, except by stipulation of all parties or by court order upon showing that good cause warrants a longer examination. This limit is one of the strictest in the United States. However, most depositions in automobile cases easily should be completed in less than three hours. In cases involving many parties, interpreters, or complex factual or medical situations, three hours may prove insufficient. Attorneys should anticipate these potential problems and agree among themselves on extending the three-hour limit or allotting time for questioning among the parties. If such an agreement cannot be reached, the attorneys should determine whether they can show good cause before seeking leave of court to extend the time for the deposition.

S.Ct. Rule 207 prevents deponents from using errata sheets to make changes to the form or substance of their answers other than correcting transcription errors.

3. [1.19] Use of Depositions

A discovery deposition can be used as an admission, as impeachment, or for any other purpose for which an affidavit can be used. See S.Ct. Rule 212(a). A statement made by a defendant in a discovery deposition will conclusively bind that party if the statement is deliberate, detailed, and an unequivocal admission. *In re Estate of Rennick*, 181 Ill.2d 395, 692 N.E.2d 1150, 229 Ill.Dec. 939 (1998), citing *Albright v. Parr*, 126 Ill.App.3d 464, 467 N.E.2d 348, 81 Ill.Dec. 648 (5th Dist. 1984). The use of evidence depositions is governed by S.Ct. Rules 206 and 212. Counsel should read and understand all rules relating to the taking and uses of discovery and evidence depositions.

4. Relevant Deposition Issues in Specific Auto Accident Settings*a. [1.20] Rear-End Collision*

Sections 11-601, *et seq.*, and 11-1301, *et seq.*, of the Illinois Vehicle Code, 625 ILCS 5/1-100, *et seq.*, provide restrictions on maximum and minimum speed and stopping. From the defendant's standpoint, deposition questions in a rear-end collision case should be designed to explore all of the plaintiff's actions before the occurrence took place. From the plaintiff's point of view, questions should be designed to eliminate all possible causes other than the defendant's negligence. See *Struthers v. Jack Baulos, Inc.*, 52 Ill.App.3d 823, 368 N.E.2d 148, 153, 10 Ill.Dec. 662 (2d Dist. 1977) (holding plaintiff was not contributorily negligent as matter of law when he rear-ended unlighted truck in "adverse weather and visibility conditions"); *Marynczak v.*

D & L Transport Co., 94 Ill.App.3d 381, 418 N.E.2d 972, 49 Ill.Dec. 952 (1st Dist. 1981) (holding that negligence was question of fact for jury when defendant rear-ended plaintiff on expressway).

b. [1.21] Sideswipe

The relative speeds of the vehicles, the positions of the vehicles, and the signals given by the drivers are all important considerations in determining whether a party can prevail on the liability issue in a sideswipe case. The Illinois Vehicle Code contains many sections that may be used by either side in a sideswipe case, including 625 ILCS 5/11-805 (signal by hand and arm or signal device), 5/11-703 (overtaking a vehicle on the left), 5/11-704 (when overtaking on the right is permitted), and 5/11-705 (limitations on overtaking on the left).

c. [1.22] Left Turn

Relevant facts in determining whether a driver was contributorily negligent in an auto case involving a left-hand turn include (1) whether the driver slowed his or her speed, (2) whether he or she attempted to avoid the collision, and (3) whether the driver applied the brakes. *See McRae v. Globetrotter Communications, Inc.*, 37 Ill.App.3d 408, 346 N.E.2d 1 (2d Dist. 1976). Also relevant is whether the driver indicated that he or she was intending to make a left-hand turn. *See Dooley v. Darling*, 26 Ill.App.3d 342, 324 N.E.2d 684, 694 (5th Dist. 1975). The section of the Illinois Vehicle Code pertaining to turn signals is 625 ILCS 5/11-804.

d. [1.23] Red Light-Green Light

When an auto accident happened in connection with a light change, the relative positions of the vehicles and visibility or the presence of obstructions are important in determining culpability. Also, counsel should review the particularities of the intersection with both the client and the adverse party. More important, counsel should obtain a copy of the traffic light sequences from the city or municipality.

e. [1.24] Auto-Pedestrian

Article X of Chapter 11 of the Illinois Vehicle Code, 625 ILCS 5/11-1001, *et seq.*, titled “Pedestrians’ Rights and Duties,” sets forth the obligations of pedestrians with respect to motorists as well as motorists’ obligations with respect to pedestrians. The critical areas of examination in this type of litigation include the specific location of the pedestrian and the auto, right-of-way, lookout, visibility, and traffic conditions.

f. [1.25] Auto-Bicycle

Article XV of Chapter 11 of the Illinois Vehicle Code, 625 ILCS 5/11-1501, *et seq.*, titled “Bicycles,” sets forth the applicability of the traffic laws to every person riding a bicycle. The critical areas of examination in this type of litigation include the specific location of the bicycle, right-of-way, lookout, visibility, weather conditions, and traffic conditions.

g. [1.26] Stop Sign-Through Street

Although the determination of who has the right-of-way, as defined in the Illinois Vehicle Code, is the critical question in stop sign-through street accidents, lookout also becomes an important factor. The timing of the accident is critical. The positions of the vehicles at first sighting, elapsed time and the distance traveled between the first sighting and the impact, and estimates as to speed are essential for making a circumstantial argument that the accident could not have happened but for excessive speed on the part of the vehicle on the through street. *See Hale v. Cravens*, 129 Ill.App.2d 466, 263 N.E.2d 593 (4th Dist. 1970).

5. [1.27] Types of Depositions

In discussing depositions, a distinction is often made between depositions of witnesses and depositions of parties. However, procedurally, nothing is different in taking these two types of depositions.

a. [1.28] Witness Depositions

In auto accident cases, there are two basic opinions on the subject of taking witness depositions. One view suggests that all potential witnesses should be deposed, while the second view suggests that only “unknown” witnesses or potentially adverse witnesses should be deposed. An exception to this second view must be made if there is a good possibility that a favorable witness will not be available for trial; in that context, certainly all would agree that a discovery deposition should be taken.

For example, assume that a police report contains statements of one favorable witness and one unfavorable witness. Although formal discovery concerns itself with the taking of depositions, from the trial preparation standpoint there is very little distinction between taking a statement and taking a deposition. If the potentially adverse witness is not willing to discuss the case by phone or to give an investigator a statement, it is advisable to subpoena that individual for deposition to determine what relevant testimony, if any, the witness may give at the time of trial. Failure to respond to the subpoena may subject the witness to contempt of court proceedings. Assuming that counsel has no idea what the witness may say, sound discovery practice dictates that an attempt be made to find out rather than waiting to be surprised by testimony at the time of trial. Once that witness’ testimony is of record, ample impeachment opportunity exists if the witness should subsequently change what has been said.

If the presumably favorable witness is unwilling to give a statement, counsel must cope with the very real question of whether the witness’ cooperation can be gained through a subpoena for a deposition. Each case is different, as are all witnesses. Each individual witness should be handled differently based on counsel’s expectations of the witness’ testimony, the degree of control counsel has over the witness, and counsel’s personal perception of the witness.

In some cases, it may be necessary to take the deposition of a treating physician. S.Ct. Rule 204(c) provides for the taking of such a deposition either with the consent of the physician or under a subpoena issued on court order. Unless the physician was retained by a party for the

purpose of rendering an opinion at trial, or unless otherwise ordered by the court, the doctor's fee should be paid by the party at whose insistence the deposition is taken. *Id.*

b. [1.29] Depositions of Parties

The most important concept to understand in an automobile accident is the time-speed-distance formula. The formula is as follows:

If a vehicle is traveling 60 miles per hour, it is traveling 1 mile per minute.

If a vehicle is traveling 60 mph, it is traveling 5,280 feet in 60 seconds.

If a vehicle is traveling 60 mph, it is traveling 88 feet per second.

Therefore, for each mile per hour, the vehicle is traveling 1.466 feet per second.

In *Thomas v. Price*, 81 Ill.App.3d 542, 401 N.E.2d 651, 36 Ill.Dec. 810 (3d Dist. 1980), the court took judicial notice of this mathematical formula. What is the significance of this formula? In simplistic terms, at 30 mph, a vehicle is traveling roughly 44 feet per second. At 60 mph, the vehicle is traveling just a bit less than 90 feet per second. This formula may be used to destroy a deponent's theory of the case. For example, if the defendant driver claims that he was 100 feet away from the intersection and "suddenly, within one second," the plaintiff appeared out of nowhere, the formula can be used to discredit his testimony and show that to cover 100 feet in one second, the defendant driver had to be traveling more than 60 mph.

Prior to any depositions, Illinois Pattern Jury Instructions — Civil Nos. 70.00 – 70.03 (I.P.I. — Civil) should be reviewed. Each is equally important to the duties of persons operating motor vehicles on the public highways of Illinois. Similarly, I.P.I. — Civil No. 60.01 should be reviewed. If a violation of a statute can be introduced under this instruction, it will greatly impact the ability to persuade the trier of fact.

Also, counsel should become familiar with Chapter 11 of the Illinois Vehicle Code, 625 ILCS 5/11-100, *et seq.*, which sets forth the Rules of the Road. Chapter 11 should be reviewed item by item to extract each and every statutory violation that may apply to the case.

When dealing with a case involving a truck driver or a trucking company, it is important to note that the federal government issues safety regulations that must be followed by the motor carrier and the driver. The federal motor carrier safety regulations can be found at 49 C.F.R. pts. 383, 385, 387, and 390 – 399. Title 49 has a number of sections that may apply to any particular case. One must carefully examine all of the sections prior to deposing the truck driver and/or the employer.

(1) [1.30] Preparing your own client for deposition

In preparing a client for deposition, counsel should emphasize the importance of discovery depositions in the eventual outcome of litigation. The client should be told that the opposing

attorney not only wishes to obtain information but also wants to evaluate the client as a potential courtroom witness. The attorney should simulate the deposition procedure by playing the adversary's role, which provides the opportunity to evaluate the client's courtroom performance even if the adversary does not cross-examine. The client should be told the subject matter to be discussed, and the importance of being consistent in testimony should be stressed. The client should be instructed to restrict his or her answer to the question asked. Finally, the client should be educated as to the importance of reaction time, stopping distances, location, and estimates of speed, distances between vehicles, and timing of the accident.

(2) [1.31] Preparing for an adverse party deposition

In addition to being designed to elicit facts regarding the accident and the injury, the deposition should be used as an opportunity to evaluate the party's credibility and the effect the party's testimony will have at the time of trial. Because depositions may be taken as if the party were under cross-examination, at least a portion of the deposition should be taken using cross-examination techniques. The attorney should be able to form a belief as to whether the deponent will be credible at trial as well as to ascertain whether the deponent becomes easily confused as to the facts or "follows" leading questions. In summary, in the deposition the attorney should strive to obtain the relevant facts and to evaluate the impact and veracity of the witness.

(3) [1.32] Taking the defendant driver's deposition

Below is a sample outline for deposing the defendant driver in an automobile accident case. Obviously, each case is different and should be prepared differently, but this outline will provide counsel with some basic deposition theory.

Background Information

***Q.* What is your name?**

***Q.* Were you ever known by any other names?**

***Q.* Do you have any aliases or nicknames?**

***Q.* What is your present address?**

***Q.* What addresses have you lived at during the past ten years?**

***Q.* What is your home telephone number?**

***Q.* What is your work telephone number?**

***Q.* What is your cell phone number?**

***Q.* Who was your cell phone provider at the time of the accident?**

***Q.* Do you have a website?**

***Q.* Are you on Myspace?**

***Q.* Are you on Facebook?**

***Q.* What is your social security number?**

NOTE: Prior to asking this question, go off the record to obtain this information.

***Q.* What is your driver's license number?**

***Q.* How long have you been driving?**

***Q.* Are there any restrictions on your driver's license?**

***Q.* Have you ever been licensed in any other state?**

***Q.* Has your driver's license ever been suspended or revoked?**

NOTE: Make sure you have a copy of the driver's background prior to the deposition. This can easily be obtained from the Secretary of State.

***Q.* What is your educational background?**

NOTE: If the driver is young or inexperienced, find out where the driver received driver's education.

***Q.* What have you reviewed prior to your deposition?**

***Q.* Are you familiar with the Rules of the Road?**

***Q.* Have you reviewed the Rules of the Road recently?**

***Q.* In order to obtain your driver's license, you had to familiarize yourself with the Rules of the Road; is that correct?**

***Q.* Are you employed?**

***Q.* Where?**

***Q.* What do you do?**

***Q.* Is a company vehicle provided for your use?**

Q. Do you have a company credit card?

Q. Do you have a company gas card?

Q. Do you have a company phone?

Q. Do you have a company beeper?

NOTE: The reason for the beeper question is that there is a line of cases finding that if someone is “on call,” there can readily be an agency relationship. *See, e.g., McClean v. Chicago Great Western Ry.*, 3 Ill.App.2d 235, 121 N.E.2d 337 (1st Dist. 1954). The same rationale arguably can be used for work-supplied cell phones.

Q. Have you ever worked in any capacity as a professional driver? If so, explain.

Q. Do you have a commercial driver’s license?

Description of Vehicle

Q. What is the make/model of the vehicle you were driving?

Q. What is the license number?

Q. How long had you driven this vehicle?

Q. What is the age of the car?

Q. What was the mileage on the vehicle?

Q. Was there any previous physical damage to the car?

Q. Subsequent to the accident, was there any physical damage to the car?

Q. Have you had previous accidents?

Q. Were there previous repairs to the car? If so, who made them?

Q. Were any photos taken of the car before the collision?

Q. Who owned the vehicle?

Q. What name is on the title?

Q. Was the vehicle leased? If so, who was the lessor and who was the lessee?

Q. Please identify for me all applicable insurance policies relative to the vehicle, indicating all policies under which you were covered.

Q. Did the company provide auto insurance for you?

NOTE: Evidence of liability insurance is proper to establish agency. *Pantaleo v. Our Lady of Resurrection Medical Center*, 297 Ill.App.3d 266, 696 N.E.2d 717, 231 Ill.Dec. 421 (1st Dist. 1998); *Boettcher v. Fournie Farms, Inc.*, 243 Ill.App.3d 940, 612 N.E.2d 969, 184 Ill.Dec. 93 (5th Dist. 1993).

[If the vehicle is not the driver's:]

Q. Did you have permission to operate the vehicle?

Q. Who gave you permission to operate the vehicle — the owner or someone acting on behalf of the owner?

Q. Were you a servant, agent, or employee of the owner at the time of the accident?

Q. What type of insurance coverage did the owner have?

Q. How often did you use this particular vehicle?

Q. Were you aware of its capabilities?

Q. What was the mechanical condition of the vehicle?

Q. Were you aware of any problems or defects this vehicle had?

Q. What were they?

Q. When was the vehicle repaired last?

Q. Who was responsible for the repairs?

Q. Was there any wording on the side of the vehicle?

NOTE: See *Stevenson v. Olds Sales & Service v. Industrial Commission*, 140 Ill.App.3d 703, 489 N.E.2d 328, 95 Ill.Dec. 107 (3d Dist. 1986). Such wording could go to the issue of agency and/or insurance coverage.

Visual Characteristics

- Q. Do you wear glasses or contacts? If so, for what purpose?**
- Q. Do you wear dark glasses?**
- Q. What is your eye doctor's name and address?**
- Q. When was your last examination in relation to the collision?**
- Q. Do you have any difficulty judging distances?**
- Q. Do you have difficulty with peripheral vision?**
- Q. Do you have difficulty with depth perception?**
- Q. Do you have difficulty with color blindness?**
- Q. Do you have difficulty with driving at night?**

Prior Moving Violations and Accident History

- Q. Have you ever had any prior moving violations? If so, what for, and what was the plea and disposition?**
- Q. Have you ever been convicted of a felony? If so, please explain when, where, and what for.**
- Q. Have you ever been convicted of any crimes involving dishonesty?**
- Q. With respect to this particular motor vehicle collision, did you receive any tickets, moving violations, or citations? If so, for what, and what was the disposition?**
- Q. What was your plea?**

NOTE: In *Hartigan v. Robertson*, 87 Ill.App.3d 732, 409 N.E.2d 366, 370 – 371, 42 Ill.Dec. 751 (1st Dist. 1980), the court found that a guilty plea was admissible. Also, according to *Spircoff v. Stranski*, 301 Ill.App.3d 10, 703 N.E.2d 431, 435, 234 Ill.Dec. 570 (1st Dist. 1998), “Illinois law is clear that use of a guilty plea itself is admissible as an admission against interest.”

- Q. Have you ever been involved in any driving collisions or accidents before the date of the occurrence? If so, please explain and give the date, time, and location of the other collisions, as well as whether there were any legal proceedings.**
- Q. Have you been involved in any driving accidents since the date of the occurrence? If so, please explain and give the date, time, and location of the other accidents, as well as whether there were any legal proceedings.**

Passengers

- Q.* Were there any passengers in your motor vehicle?**
- Q.* What were their names?**
- Q.* What are their addresses?**
- Q.* Where were they seated in the car?**
- Q.* Why were they with you?**
- Q.* Do you know if any of them witnessed the collision? If so, what did they tell you, and what did you hear them tell others?**

Trip Description

- Q.* Where were you coming from?**
- Q.* What time did you leave?**
- Q.* What was the route you took from the time you left until the time of the collision?**
- Q.* Please provide all directions and/or turns from the start of the trip to the location of the collision.**
- Q.* What was the ultimate destination of your trip going to be if the accident had not occurred?**
- Q.* What was the reason for the trip (be specific)?**
- Q.* When were you expected to be there?**
- Q.* Did you make any stops?**
- Q.* Why?**
- Q.* Did you ever change drivers?**
- Q.* Who paid for gas?**
- Q.* Did you use a gas card?**

NOTE: Use of a gas card could go to the issue of agency.

- Q. Who paid for the travel expenses?**
- Q. Did you have a radio on?**
- Q. Were you talking on a phone at the time of the occurrence?**
- Q. Were the windows open?**

Scene of the Occurrence

- Q. Had you ever been through this intersection before?**
- Q. Was this a residential or a commercial area?**
- Q. Describe what was at each corner of the intersection.**

NOTE: The above question is intended to elicit the driver's knowledge and understanding of the intersection.

- Q. How many lanes were there?**
- Q. Are there special-use lanes for right-hand or left-hand turns?**
- Q. Were there any vehicles in the area that might have blocked or obstructed your vision?**
- Q. Are there any lanes or shoulders where vehicles are allowed to park? If so, where do the lanes or shoulders end?**
- Q. Were there any vehicles that might have distracted you or contributed to causing this collision?**
- Q. Were there any vehicles that were parked there that you believe either caused or contributed to the accident in any way, shape, or form?**
- Q. Was anything obstructing your vision at the time of the accident?**
- Q. Was there any change in elevation that was relevant to this collision, whether behind you, in front of you, or to either side?**
- Q. With respect to the lanes, what was the width of the lane in which you were traveling?**
- Q. Were there markings separating the lanes?**
- Q. Were there stop lines?**

- Q.* Were there any crosswalks for pedestrian traffic?**
- Q.* Describe, in great detail, the contour/angle of this particular street/road.**
- Q.* Were there any vehicles that were turning in front of you?**
- Q.* What was the distance to the closest vehicle in front of you?**
- Q.* Where there any vehicles directly behind you? If so, at what distance?**
- Q.* As you approached the intersection, what did you observe?**
- Q.* Were there any obstructions, bushes, signs, or anything else that would have prohibited you from seeing my client's motor vehicle?**
- Q.* Were there traffic control devices at this intersection?**
- Q.* What was the speed limit?**
- Q.* Where were lights located?**
- Q.* Was there a turn arrow?**
- Q.* Where were all traffic control devices located?**

NOTE: It is imperative that you are familiar with the scene of the collision. Go there with your client. It is a major mistake to take a defendant's deposition without having a thorough understanding of the intersection. Photographs do not do it justice. You need to go there.

Surface and Weather Conditions

- Q.* Please describe the surface condition.**
- Q.* Was the road slippery?**
- Q.* Was it icy?**
- Q.* What was the temperature?**
- Q.* When was the last precipitation in the area?**
- Q.* Was it foggy outside?**
- Q.* Did the weather have any impact on your ability to see?**

Q. What was the position of the sun?

NOTE: Even if the sun is in someone's eyes, that does not relieve the driver of liability. *See, e.g., Duffy v. Cortesi*, 2 Ill.2d 511, 119 N.E.2d 241 (1954); *Barth v. Reichert*, 34 Ill.App.2d 472, 181 N.E.2d 609 (1st Dist. 1962).

Q. Did the weather conditions have any impact on the traction of your vehicle?**Q. Did the weather conditions have any impact on the accident?****Q. Did the weather conditions have any effect on your windshield?****Q. Was there sun?****Q. Was there rain?****Q. Was there glare?**

Lighting

Q. Please describe, in detail, the lighting at the intersection.**Q. How much lighting was there?****Q. Was there adequate natural lighting?****Q. Were there lights from buildings?****Q. Do you believe the lighting was sufficient in that area?****Q. Did the lighting or lack of lighting have any impact on your visibility?****Q. Did you have your headlights on?****Q. Did you have your fog lights on?****Q. Did you have your directional signals on?****Q. Did the plaintiff's vehicle have its headlights on?****Q. Did the plaintiff's vehicle have its fog lights on?****Q. Did the plaintiff's vehicle have its directional signals on?**

Alcohol/Drug Use

- Q.* Did you have any alcohol or take any medication or drugs before this occurrence? If so, in what amount and over what time period?**
- Q.* Did you consume any food during this time?**
- Q.* Where were you?**
- Q.* Did you pay by credit card?**
- Q.* Were you taken to a hospital after this incident?**
- Q.* Was there any blood work drawn from you?**
- Q.* What is your height and weight?**

Traffic Control Light

- Q.* I want to break down this incident. I want you to tell me the color of the traffic control light at different distances.**
- Q.* When were you able to first see the traffic control light?**
- Q.* At 200 feet, tell me what you observed.**
- Q.* At 150 feet, tell me what you observed.**
- Q.* At 100 feet, tell me what you observed.**
- Q.* At 50 feet, tell me what you observed.**
- Q.* As you approached the intersection, tell me what you observed.**
- Q.* Did the color of the traffic light ever change?**
- Q.* What was your distance from the intersection when the color of the light changed?**
- Q.* What did it change from and to?**

Location of Vehicles upon Approach

- Q.* Where were any vehicles that you can recall that you first saw as you approached the intersection located?**
- Q.* What was their distance relative to your car?**

Q. What was their distance relative to the traffic control light?

Q. What was their distance relative to any other landmark?

Time/Speed/Distance

Q. What was the speed limit?

Q. What was your speed from the first sighting of the traffic control light?

Q. Did your speed ever change?

Q. From the first time you saw the traffic control light to the time you reached it, how far did you travel?

Q. How much time expired?

Q. What was your speed at the first sight of the plaintiff's vehicle?

Q. What distance did you travel?

Q. What time expired?

Q. When you started to make the turn, what was your speed?

Q. What was your speed at impact?

Q. Did you brake/reduce speed? If so, when?

Q. Did you accelerate/increase speed? If so, when?

Defendant's Actions

Q. When did you first appreciate the danger?

Q. What did you do?

Q. What was your reaction?

Q. How did you attempt to communicate the danger to the other vehicle?

Q. Did you use your horn?

Q. Did you use your lights?

- Q. Did you use your brake?**
- Q. Did you veer?**
- Q. Where were your hands when you appreciated the danger?**
- Q. Where were you looking?**
- Q. Are you a “one foot” or a “two foot” driver?**
- Q. What did you do with your feet once you appreciated this danger?**
- Q. What evasive action did you take?**
- Q. What evasive action did you observe the plaintiff taking?**
- Q. Where was the point of impact on your vehicle?**
- Q. Where was the point of impact on the plaintiff’s vehicle?**
- Q. Where was the point of impact on the roadway?**
- Q. Did you attempt to avoid this collision? If so, how?**
- Q. Were there skid marks on the road?**
- Q. Where were the skid marks in relation to the point of impact?**
- Q. Where were you when you first applied your brakes prior to the collision?**
- Q. How long was it from the time you applied your brakes to the time of the accident?**
- Q. What was your speed at the time you first applied your brakes?**
- Q. What distance did you travel from the time when you first applied the brakes until the time of the accident?**
- Q. When was your last check or repair of your brakes?**

Post-Occurrence

- Q. Where was the stopping location of all vehicles?**
- Q. How far did your vehicle travel post-impact?**

- Q. How far did the plaintiff's vehicle travel post-impact?**
- Q. Which direction were you facing post-impact?**
- Q. Did you sustain any injuries?**
- Q. How was your vehicle removed from the scene?**
- Q. Did any ambulance personnel show up at the scene?**
- Q. Did any police personnel show up at the scene?**
- Q. Did you have any conversations with any police or ambulance personnel? If so, please state the individuals' names and addresses and the nature of the conversations.**
- Q. Did you call 911?**
- Q. What did you tell them?**

NOTE: The 911 tape should be obtained, if possible.

- Q. Were there any witnesses to the accident? If so, what are their names and addresses, did you talk to them, what did you tell them, what did they tell you, and did you overhear any conversations they had with anyone?**
- Q. Did you observe any gauge marks on the road?**
- Q. Did you observe any skid marks?**
- Q. Did you observe any debris on the roadway?**
- Q. Did you observe any damage to the plaintiff's vehicle?**
- Q. Was there any damage to your vehicle?**
- Q. Describe the damage to either vehicle you observed.**
- Q. Did you have your vehicle repaired? If so, how much was it?**

Photographs or Videos

NOTE: After going through many of these questions with the driver, photographs can be used at the end of the deposition to potentially contradict the defendant's statements. Specifically, go through the time-speed-distance equation and determine where the driver was up until the point of impact.

Opinions/Bases

NOTE: You want to elicit each opinion that this driver will have and the bases for those opinions, recognizing, of course, that many of these opinions and their bases will not be admissible in court because of lack of expertise. For example, is the subject matter appropriate for a lay opinion?

IV. ADDITIONAL DISCOVERY CONSIDERATIONS

A. [1.33] Case Management Conferences

S.Ct. Rule 218 provides for case management conferences, which may address all aspects, from the issues presented in the case to discovery, pretrial negotiations, and trial readiness. At case management conferences, the court will address the scheduling and completion of written discovery, oral discovery, and discovery relating to opinion witnesses. The rule provides that the discovery schedule must be set in a manner that ensures that opinion witnesses will be disclosed in time to allow the completion of discovery not later than 60 days before the court reasonably anticipates that trial will commence, unless otherwise agreed by the parties. S.Ct. Rule 218(c).

Rule 218 also requires the court to schedule subsequent case management conferences, which allow the court and the parties to review periodically the orders entered by the court and, if necessary, to modify them. Case management conferences allow the court to monitor more closely the progress of individual cases and thereby prevent abuse and delay in discovery. This should prompt practitioners to monitor their cases with greater regularity and with assistance in supervision from the court. Further, attorneys may use these conferences to address any concerns they may have about discovery, including time limitations on depositions or limitations on the number of interrogatories that may be propounded or depositions that may be taken.

B. [1.34] Enforcement of Discovery

S.Ct. Rule 201(k) provides that the parties shall facilitate discovery and attempt to resolve differences regarding discovery before presenting any dispute to the court. The rules require trial counsel to have personal consultation with opposing counsel when attempting to resolve discovery disputes before seeking relief. Every motion seeking relief must state that trial counsel has attempted personal consultation and that opposing counsel was either unavailable or unreasonable.

C. [1.35] Evaluation of Discovery

Once all discovery has been completed, the attorney should be in a position to evaluate the relative strengths and weaknesses of both his or her case and the opponent's case. Applying comparative-negligence theories to the expected testimony at the time of trial will allow counsel to estimate the percentage of negligence that a jury will allot to each party. The information gained regarding the damages aspect of the case should permit both sides to make an intelligent decision on the appropriate settlement value and jury exposure.

V. [1.36] STANDARD INTERROGATORIES AND REQUEST TO PRODUCE IN AUTOMOBILE CASES

The Illinois Supreme Court has promulgated approved interrogatories pursuant to S.Ct. Rule 213(j) for both plaintiffs and defendants in motor vehicle cases. They are included in §§1.37 and 1.38 below, and a sample request to produce is included in §1.39.

A. [1.37] Standard Motor Vehicle Interrogatories to Plaintiffs

Motor Vehicle Interrogatories to Plaintiffs

1. State your full name, as well as your current residence address, date of birth, marital status, driver's license number and issuing state, and the last four digits of your social security number.

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the occurrence that is the subject of the suit (hereinafter referred to simply as the occurrence).

3. State the full name and current residence address of each person not named in Interrogatory No. 2 above, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after the occurrence.

4. As a result of the occurrence, were you made a defendant in any criminal or traffic case? If so, state the court, the caption, the case number, the charge or charges filed against you, whether you pleaded guilty thereto and the final disposition.

5. Describe the personal injuries sustained by you as a result of the occurrence.

6. With regard to your injuries, state:

(a) The name and address of each attending physician and/or health care professional;

(b) The name and address of each consulting physician and/or other health care professional;

(c) The name and address of each person and/or laboratory taking any X ray, MRI and/or other radiological tests of you;

(d) The date or inclusive dates on which each of them rendered you service;

(e) The amounts to date of their respective bills for services; and

(f) From which of them you have written reports.

7. As the result of your personal injuries, were you a patient or outpatient in any hospital and/or clinic? If so, state the names and addresses of all hospitals and/or clinics, the amounts of their respective bills and the date or inclusive dates of their services.

8. As the result of your personal injuries, were you unable to work? If so, state:

- (a) The name and address of your employer, if any, at the time of the occurrence, your wage and/or salary, and the name of your supervisor and/or foreperson;
- (b) The date or inclusive dates on which you were unable to work;
- (c) The amount of wage and/or income loss claimed by you; and
- (d) The name and address of your present employer and your wage and/or salary.

9. State any and all other expenses and/or losses you claim as a result of the occurrence. As to each expense and/or loss, state the date or dates it was incurred, the name of the person, firm and/or company to whom such amounts are owed, whether the expense and/or loss in question has been paid and, if so, by whom it was so paid, and describe the reason and/or purpose for each expense and/or loss.

10. Had you suffered any personal injury or prolonged, serious and/or chronic illness prior to the date of the occurrence? If so, state when and how you were injured and/or ill, where you were injured and/or ill, describe the injuries and/or illness suffered, and state the name and address of each physician, or other health care professional, hospital and/or clinic rendering you treatment for each injury and/or chronic illness.

11. Are you claiming any psychiatric, psychological and/or emotional injuries as a result of this occurrence? If so, state:

- (a) The name of any psychiatric, psychological and/or emotional injury claimed, and the name and address of each psychiatrist, physician, psychologist, therapist or other health care professional rendering you treatment for each injury;
- (b) Whether you had suffered any psychiatric, psychological and/or emotional injury prior to the date of the occurrence; and
- (c) If (b) is in the affirmative, please state when and the nature of any psychiatric, psychological and/or emotional injury, and the name and address of each psychiatrist, physician, psychologist, therapist or other health care professional rendering you treatment for each injury.

12. Have you suffered any personal injury or prolonged, serious and/or chronic illness since the date of the occurrence? If so, state when you were injured and/or ill, where and how you were injured and/or ill, describe the injuries and/or the illness suffered, and state

the name and address of each physician or other health care professional, hospital and/or clinic rendering you treatment for each injury and/or chronic illness.

13. Have you ever filed any other suits for your own personal injuries? If so, state the nature of the injuries claimed, the courts and the captions in which filed, the years filed, and the titles and docket numbers of the suits.

14. Have you ever filed a claim for and/or received any workers' compensation benefits? If so, state the name and address of the employer against whom you filed for and/or received benefits, the date of the alleged accident or accidents, the description of the alleged accident or accidents, the nature of your injuries claimed and the name of the insurance company, if any, who paid any such benefits.

15. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons and/or vehicles involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address, occupation and employer of the person taking them.

16. Have you (or has anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or to the manner in which the occurrence complained of occurred? If the answer to this interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of the statement if written and/or recorded.

17. Do you know of any statements made by any person relating to the occurrence? If so, give the name and address of each such witness, the date of the statement, and state whether such statement was written and/or oral.

18. Had you consumed any alcoholic beverage within 12 hours immediately prior to the occurrence? If so, state the names and addresses of those from whom it was obtained, where it was consumed, the particular kind and amount of alcoholic beverage so consumed by you,

and the names and current residence addresses of all persons known by you to have knowledge concerning the consumption of alcoholic beverages.

19. Have you ever been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction, and the court and the caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

20. Had you used any drugs or medications within 24 hours immediately prior to the occurrence? If so, state the names and addresses of those from whom it was obtained, where it was used, the particular kind and amount of drug or medication so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of said drug or medication.

21. Have you received any payment and/or other consideration from any source in compensation for the injuries alleged in your complaint? If your answer is in the affirmative, state:

- (a) The amount of such payment and/or other consideration received;
- (b) The name of the person, firm, insurance company and/or corporation making such payment or providing other consideration and the reason for the payment and/or other consideration; and
- (c) Whether there are any documents evidencing such payment and/or other consideration received.

22. State the name and address of the registered owner of each vehicle involved in the occurrence.

23. Were you the owner and/or driver of the vehicle involved in the occurrence? If so, state whether the vehicle was repaired and, if so, state when, where, by whom, and the cost of the repairs.

24. What was the purpose and/or use for which the vehicle was being operated at the time of the occurrence?

25. State the names and addresses of all persons who have knowledge of the purpose for which the vehicle was being used at the time of the occurrence.

26. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required for each witness.

27. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of the occurrence and/or the injuries and damages claimed to have resulted therefrom.

28. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

ATTESTATION

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

_____, being first duly sworn on oath, deposes and states that he/she is a plaintiff in the above-captioned matter; that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

SIGNATURE

SUBSCRIBED and SWORN to before me
this ___ day of _____, [20__].

NOTARY PUBLIC

B. [1.38] Standard Motor Vehicle Interrogatories to Defendants

Motor Vehicle Interrogatories to Defendants

1. State the full name of the defendant answering, as well as your current residence address, date of birth, marital status, driver’s license number and issuing state, and the last four digits of your social security number, and if different give the full name, as well the current residence address, date of birth, marital status, driver’s license number and issuing state, and the last four digits of the social security number of the individual signing these answers.

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the occurrence that is the subject of this suit.

3. State the full name and current residence address of each person not named in interrogatory No. 2 above who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after the occurrence.

4. As a result of the occurrence, were you made a defendant in any criminal or traffic case? If so, state the court, the caption, the case number, the charge or charges filed against you, whether you pleaded guilty thereto and the final disposition.

5. Were you the owner and/or driver of the vehicle involved in the occurrence? If so, state whether the vehicle was repaired and, if so, state when, where, by whom, and the cost of the repairs.

6. Were you the owner and/or driver of any vehicle involved in the occurrence? If so, state whether you were named or covered under any policy, or policies, of liability insurance effective on the date of the occurrence and, if so, state the name of each such company or companies, the policy number or numbers, the effective period(s) and the maximum liability limits for each person and each occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

7. Do you have any information:

- (a) That any plaintiff was, within the five years immediately prior to the occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than personal injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;
- (b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of the occurrence? If so, state the name of each plaintiff so involved and state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (c) That any plaintiff has suffered any serious personal injury and/or illness since the date of the occurrence? If so, state the name of each plaintiff so involved and state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;
- (d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state the name of each plaintiff so involved and state the court and caption in which filed, the year filed, the title and docket number of the case.

8. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons and/or vehicles involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, and the name, address and occupation and employer of the person taking them.

9. Have you (or has anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with

regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this interrogatory is in the affirmative, state the following:

- (a) The date or dates of such conversations and/or statements;
- (b) The place of such conversations and/or statements;
- (c) All persons present for the conversations and/or statements;
- (d) The matters and things stated by the person in the conversations and/or statements;
- (e) Whether the conversation was oral, written and/or recorded; and
- (f) Who has possession of the statement if written and/or recorded.

10. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness and the date of the statement, and state whether such statement was written and/or oral.

11. Had you consumed any alcoholic beverage within 12 hours immediately prior to the occurrence? If so, state the names and addresses of those from whom it was obtained, where it was consumed, the particular kind and amount of alcoholic beverage so consumed by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the consumption of the alcoholic beverages.

12. Have you ever been convicted of a misdemeanor involving dishonesty, false statement or a felony? If so, state the nature thereof, the date of the conviction, and the court and the caption in which the conviction occurred. For the purpose of this interrogatory, a plea of guilty shall be considered as a conviction.

13. Had you used any drugs or medications within 24 hours immediately prior to the occurrence? If so, state the names and addresses of those from whom it was obtained, where it was used, the particular kind and amount of drug or medication so used by you, and the names and current residence addresses of all persons known by you to have knowledge concerning the use of the drug or medication.

14. Were you employed on the date of the occurrence? If so, state the name and address of your employer, and the date of employment and termination, if applicable. If your answer is in the affirmative, state the position, title and nature of your occupational responsibilities with respect to your employment.

15. What was the purpose and/or use for which the vehicle was being operated at the time of the occurrence?

16. State the names and addresses of all persons who have knowledge of the purpose for which the vehicle was being used at the time of the occurrence.

17. State the name and address of the registered owner of each vehicle involved in the occurrence.

18. Have you ever had your driver's license suspended or revoked? If so, state whether it was suspended or revoked, the date it was suspended or revoked, the reason for suspension or revocation, the period of time for which it was suspended or revoked, and the state that issued the license.

19. Do you have or have you had any restrictions on your driver's license? If so, state the nature of the restrictions.

20. Do you have any medical and/or physical condition which required a physician's report and/or letter of approval in order to drive? If so, state the nature of the medical and/or physical condition, the physician or other health care professional who issued the letter and/or report, and the names and addresses of any physician or other health professional who treated you for this condition prior to the occurrence.

21. State the name and address of any physician, ophthalmologist, optician or other health care professional who performed an eye examination of you within the last five years and the dates of each such examination.

22. State the name and address of any physician or other health care professional who examined and/or treated you within the last 10 years and the reason for such examination and/or treatment.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial and all other information required for each witness.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of the occurrence and/or of the injuries and damages claimed to have resulted therefrom.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each interrogatory, specify the legal basis for the claim as required by Illinois Supreme Court Rule 201(n).

ATTESTATION

STATE OF ILLINOIS)
) SS.
COUNTY OF _____)

_____, being first duly sworn on oath, deposes and states that he/she is a defendant in the above-captioned matter; that he/she has read the foregoing document, and the answers made herein are true, correct and complete to the best of his/her knowledge and belief.

SIGNATURE

SUBSCRIBED and SWORN to before me
this ___ day of _____, [20__].

NOTARY PUBLIC

C. [1.39] Request To Produce

The following is a sample request to produce:

In accordance with Supreme Court Rule 214, you are hereby requested to produce for inspection and copying the following items within 28 days (together with any transcripts, reports, memoranda, or recordings purporting to reflect but not to evaluate them):

- 1. any statement a party has given to some person or entity other than his or her attorney or insurer (to be produced by the person or entity to whom it was given or transferred);
2. the statement of any other witness, except parties to this action, non-treating experts, and drivers or other participants who may yet be sued because of the occurrence alleged;
3. all photographs, slides, or motion pictures taken subsequent to the alleged occurrence of Plaintiff, the vehicles, or other physical objects involved in or at the scene of the alleged occurrence;
4. all data as to the physical or mental condition of Plaintiff before and after the alleged occurrence, including, inter alia, injuries sustained in other accidents;
5. a list of the names, addresses, and specialties of all controlled expert witnesses, other than those who are identified as consultants who will not be called to testify at the trial of this cause, not otherwise called for in this Request To Produce;

6. copies of all personal federal income tax returns for Plaintiff for the year before, of, and after the accident at issue, with copies of all W-2 forms and supporting documents therein; in the alternative, IRS Form 4506 may be executed by Plaintiff, allowing Defendant to secure copies of these documents from the Internal Revenue Service;
7. any and all documents, papers, tangible objects, or physical evidence that the party responding to this production request intends to introduce into evidence or to use at the trial of the above-captioned matter;
8. any and all documents pertaining to any repairs performed or estimates for any of the objects allegedly involved in any of the activities alleged in the complaint, countercomplaint, and/or third-party complaint in this matter;
9. for any document being withheld based on a claim of privilege, a log containing the following information with respect to each and every document for which such a claim of privilege is being made:
 - a. the date on which the document was prepared or finalized;
 - b. the name and last known address of the author of the document;
 - c. the name and last known address of the recipient of the document;
 - d. a brief description of the subject matter covered in the document; and
 - e. the basis of the claim of privilege; and
10. an affidavit of the responding party stating whether the production is complete in accordance with this request and Supreme Court Rule 214.

If the attorney responding to this request to produce or the party to whom this request to produce is directed knows of the location of any documents or items requested, even though they are not in the attorney's or party's current possession, identify the location, custodian, and nature of such responsive documents or items pursuant to Supreme Court Rule 214.

Request is further made that you seasonably supplement the above discovery and all other discovery throughout the pendency of this case.

The word "party" shall, if referring to an individual, also include members of the immediate family and shall, if referring to a corporation, include its officers, directors, managing agents, and forepersons. No party is, by this order, required to disclose consultants, the order of intended examination of witnesses, or his or her attorney's communications with consultants.

Kindly advise of the costs in reproducing and/or copying these requested documents.