

# How to Drive a Witness Chair *without cracking up*

Casualty Loss Reserve Seminar  
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# Antitrust Notice

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It is the responsibility of all seminar participants to be aware of antitrust regulations, to prevent any written or verbal discussions that appear to violate these laws, and to adhere in every respect to the CAS antitrust compliance policy.



# Speakers

- Chap Cook, FCAS, MAAA- MBA Actuaries, LLC
- Andrew Gifford, SVP, General Counsel & Secretary General Re Corporation
- Joe Herbers, ACAS, MAAA, CERA, Pinnacle Actuarial Resources
- Mike Toothman, FCAS, MAAA, Actuarial & Risk Consulting Services
- Debbie King, FCAS, MAAA, Republic Group



# Deposition and trial imperatives

➤ Never, ever lie

➤ Generally, avoid absolutes, exaggerations, and generalizations



# Deposition vs. trial

- At a deposition you can't win the case --
  - but you can lose it
- At a deposition you look and speak to the opposing attorney
- At a deposition there is only cross-examination; the direct examination will come at trial or hearing



# Deposition vs. trial

- At a bench trial, look and speak to the judge
- At a jury trial, look and speak to the jury
- At an arbitration hearing, look and speak to the panel
- At a regulatory hearing, look and speak to the person who will make the decision





# Deposition and trial imperatives

- Be professional in behavior
- Assume you will be videotaped –
  - And dress accordingly!
- Speak into the microphone and don't let your voice drop off at the end of sentences



# Deposition and trial imperatives

- Insist on complete preparation by your attorney
- You will never know enough to wing it
- Discuss with your attorney the objectives for your testimony
- Goals for deposition may vary from presenting your case fully in hopes of reaching a settlement, to avoiding sound bites that could hurt the case.
- Ideally, know how your testimony fits into the entire case





# Deposition and trial imperatives

- Always wait 5 seconds before answering
  - Think about your answer
  - Give your attorney chance to object
    - Pay careful attention to your attorney's objection
  - Silence is okay; there is no need to speak if there is no question pending



# Deposition and trial imperatives

- Never guess!
  - If you aren't sure, say you don't recall
- "I don't know" is also an acceptable answer  
(unless the topic needs to be revisited at trial/hearing)



# Deposition and trial imperatives

- Never answer a question unless you understand it
  - You may ask to have it repeated
  - You may ask for clarification



# Deposition and trial imperatives

- Don't accept compound questions
  - You may request clarification, or separation
  - Your attorney should pick up your lead
  - Don't answer these questions with "Yes" or "No"
  - Sometimes you might choose to answer the portion of the question you wish to answer, but be careful if choosing this option



# Deposition and trial imperatives

- Never, ever let an opposing attorney “get to you”
- Anger is your enemy
- If you are calm and polite, the opposing attorney will be [correctly] seen by a judge or jury as a Bully who has no good points to make



# Deposition and trial imperatives

- Don't volunteer information to the other side -- unless your attorney tells you to
- Don't help the other side's work: it is not your role to help the opposing attorney to improve her bad question





# Deposition and trial imperatives

- If a cross-examining attorney mis-states your prior testimony, say “that is not what I said” Your attorney should pick up on it
- Cross-examining attorneys do this a lot!
- Beware of questions that include phrases such as:
  - “so what you’re saying is that...” or
  - “let’s make sure I understand what you said...”



# Deposition and trial imperatives

- If you are asked about what you said on, for instance, page 37 of your report, request a copy of the entire report, so that you can read it exactly, in context
- A trial is not a memory test!
- It can be very effective to read portions of your report into the transcript verbatim, particularly if the opposing attorney has mischaracterized it



# Deposition and trial imperatives

- Keep in mind the scope of your engagement
- Stay within your expertise
- Stay within your report or affidavit,  
unless your Attorney instructs otherwise
- If a question is outside your scope, reply “that is outside my scope” unless your attorney does it for you
- It may be advisable for you and your attorney to limit your scope in order to avoid troublesome areas



# Deposition and trial imperatives

- Re-read your report. Be **able** to explain your assumptions and calculations in laymen's terms – even though your attorney may at times want you to use actuarial jargon for obfuscation
- Re-read the opposing expert's report – whether you are a fact witness or expert witness
- Refresh yourself on ASOPs
- Refresh yourself on relevant basic principles, like a textbook or a definitive paper



# Difference between deposition and trial – an Exception

## Competent Work, Bad Result

- CA did reserve studies for an MGA
- Insurer relied on the CA's reserve studies
- Everything went south
- Insurer sued MGA and CA



## Competent Work, Bad Result



- In his deposition, CA had documentation of everything
- Documented Questions to MGA about data, and their replies
- Each Assumption, and why he made them
- Comprehensive Peer Review, with comments and initials
- *In this case, the deposition could close the matter*