

MEALEY'S™ LITIGATION REPORT

Insurance Bad Faith

Ricky's Believe It Or Not: Part Two

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Commentary

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In the January 26, 2015 edition of this publication, I shared a collection of excerpts from documents authored by attorneys. Given the sheer volume of paper which crosses my desk in reviewing claims for coverage and bad faith, I inevitably come across some very humorous (though not intentionally so) mistakes in the various documents reviewed. This month, I share some of the funniest entries I've seen in deposition transcripts and medical records.

Excerpts From Actual Depositions

Q. *When did y'all get married?*

A. *Back in — somewhere between '92 and '94.*

So if my math is correct, that would be some time around '93?

Insured: I saw that her rear end was up in the air, where she slammed on her brakes right the car in front of her, and I slammed on my brakes and I slid a little bit, and my rubber bumper bumped her rubber bumper, and it was the front driver side of my car hit the back passenger side of her car, and I wasn't even going two miles an hour, so it wasn't very of a hard bump.

We are talking about a car accident here, right?

Q. *Okay. But at some point your insurance company was notified?*

A. *In a timely and fashionable manner, yes.*

Perhaps a jaunty letter on Gucci stationery?

Q. *By the way, were the normal meetings typically on a specific day? That is, first Monday of every —*

A. *I believe it was first Monday of every week, I believe, unless, you know, people had different schedules and then they would reschedule for another day.*

Q. *Move it a day one way or the other?*

A. *One way or the other.*

Q. *But the typical meeting was the first Monday of every week?*

A. *Right.*

I guess if that day wasn't convenient, you could always schedule it for the second Monday of the week.

From a deposition of an owner of an assisted living facility:

Q. *Okay. How often do residents come in and out of the property?*

A. *They live there.*

Q. *Okay. What is the turnover as far as residents living on the property?*

A. *The what?*

Q. *Like when a new resident moves in, when a resident moves out, how often does that happen?*

A. *Normally, they live there until they die.*

Q. Okay. Is there – I'm not familiar with the business, but is there a general length of time that the residents are there for?

A. They could live – they could live there until they're dead. They want to live, not dead. There is no time.

Q. Okay.

A. As long as they want to.

Mr. Smith, you've signed a 3 year lease. If you're not dead by then, I'm afraid you'll have to move out.

Q. Okay. And, when you were getting this pending – when you got this work order and it was pending, is one of the reasons you thought it had to be fixed, because of its condition related to the safety of passerbyers?

A. I believed it was more cosmetic looking to the people that lived at the Fountains when they were pulling into the property.

Come again? Passerbyers? Cosmetic looking?

A. . . . We're of the opinion we sell our plans, for what the buyer gets, for much too less money.

Far too worse grammar.

From a witness deposition:

Q. Have you ever been deposed before?

A. No.

Q. How many times have you been deposed?

A. Several. I don't know how many.

Sometimes it pays to follow up on negative answers.

Q. In terms of your residence, how often do you live there?

I'm guessing pretty often.

From a deposition of a claims adjuster:

Q. I just wanted to clarify that when you do your investigation and your inspection, that's at the bequest of [the Insurer]?

Nothing like receiving a posthumous assignment to do an inspection and investigation.

Q. Okay. It's possible that you did, in fact take your hand off and put your hand on the mat?

A. Yes.

I'm not sure what's more impressive, the question or the answer.

Cross-examination of a witness:

Q. Mr. [Witness], my name is [Attorney]. I represent Mr. [Client]. I have a few follow-up questions and mine are really going to jump around because I'm not asking all those same questions again, all right, so if you'll apologize for me.

Apologize? For what?

Excerpts From Actual Medical Records

Pulse rate beats 92 per minutes regular. Blood pressure 129/61 mm/Hg on the left in the seated position. The patient weighs 696 lbs, height 5'3".

Where to begin? 696 lbs. at age 13? Beats 92 per minutes regular? What?

The patient states that the pain in his knee is a 3/10 on a scale of one to ten.

So that would be 3/10 of 1 or .3? Not much pain.

His pain has continued to persist and he is seeking care at this clinic.

I would have said, "His pain has persisted to continue. . . ."

When asked where his headache is located he states that it feels as if it is on the entire part of his head.

Well, that certainly narrows it down.

- **WARNING SIGNS OF A STROKE: Call 911 if you have any of these warning signs:**
- Sudden numbness or weakness of the face, arm, or leg, especially if only one side of the body.

- Sudden confusion, trouble speaking or understanding.
- Sudden trouble walking, dizziness, loss of balance or coordination.
- Sudden severe headache with no known cause.

Gee, I started to feel numb on one side of my body, so I picked up this pamphlet that says I'm supposed to do something, but I'm confused and can't understand it. Oh, well, I guess I'll be OK.

History: The patient is here for preoperative paperwork for heart removal from the right ankle.

Talk about a deformity!

... Heart is of good quality and quantity.

I guess that means he has one heart.

From a "Neck Questionnaire" from a brain and spine physical therapy center:

Please score the following activities as follows:

1=able without difficulty, 2=able with some limitation, 3=difficult, 4=very difficult, 5=unable

1. Able to sleep through the night 1 2 3 4 5
2. Have pain below the tip of the shoulder 1 2 3 4 5

The patient marked "5" in response to the second activity. So if I'm reading this correctly, she is unable to have pain below the tip of the shoulder?

From a report of a compulsory medical examination:

Hands / Wrists / Digits: Demonstrated is what appears to be a largely full and unrestricted range of motion with no functional deficits. Note is made of loss of the tip of her left thumb distally as a result of an injury as an infant.

I'm no doctor, but isn't it kind of impossible to lose the tip of your thumb proximally?

Later in the same report:

The mechanism of injury is that of a motor vehicle accident occurring on April 1, 2008. She was the restrained driver of her vehicle, suffering a frontal impact. She reports injuries to multiple areas including headaches, neck, back / low back, left shoulder, left knee and left ankle.

I bet an injury to the headache is really painful. Or is it? Perhaps it's like turning down the air conditioner. Does that make it warmer or colder?

From a doctor's examination:

Fairly severe cyanosis is noted to the feet below the ankle.

Can you imagine if her feet were cyanotic above the ankle?

From a life care planner's report:

The patient states he suffers from constant shoulder pain, which he describes as a 3 out of 6 on the 1 to 10 scale for pain.

What?

From a physical examination:

The patient describes moderate exercise activities (at least until this accident.). Or function include standing and light labor activities. No utilization of tobacco products. 810 alcoholic beverages per week on average. 20 cups of coffee per week. Patient describes job as quite stressful.

810 drinks a week? Well, that's only 115 a day. That should take care of that stressful job!

From a chiropractor's notes:

SUBJECTIVE: Miss [Patient] related that since the last visit, her lower back pain and low back stiffness have stayed more or less the same.

OBJECTIVE: Compared to the last visit, the muscle spasm in the lower back has not change significantly, the tenderness in the lower back has remained more or less unchanged and the

trigger point activity in the lower back has remained more or less unchanged. . . .

ASSESSMENT: She is progressing as expected.

This is progress?

From a doctor's report on examination of a patient:

Past Medical, Family, and Social History:

Patient admits to the following surgeries:

discectomy, appendectomy. Patient states they have had past foot / ankle problems. [Patient] admits to the following past foot problems: 4 – never smoker Diabetes Cancer[.]

I hear that never smoker Diabetes Cancer is painful!

Conclusion

I hope you enjoyed reading these as much as I did. Stay tuned for Part Three. ■

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