

The Court Day

“If you tell the truth you don’t have to remember anything.”

Mark Twain

Presuming that I do not go to the insurance company armed with reports and settle the case for a specific figure the *case* will then come up for hearing. On the day in question you will be asked to come to court to give evidence on how the accident happened and say how the injuries have affected your lifestyle. It is quite possible that you may have a doctor on the other side who states that you are not as you say or that the opposing barrister may ask you questions which cast doubt on the truth of what you say. This should not surprise you as it is the function of an opposing lawyer in an adversarial system to try to establish that your evidence is less believable than the evidence of their own witnesses. However I would impress upon you my Golden Rule that when giving evidence always make sure that your testimony is your own testimony based on your own honest beliefs. Do not stray from the truth and do not try to guess why the other side are asking the question.

I would like to deal specifically with your time in the courtroom. I am presuming that you have already been in the courtroom prior to the hearing date and seen how things are done. It is always a good idea to bring along someone to provide a bit of support a family member or friend. Presuming you apply a little bit of relaxation therapy to yourself and await your turn you will eventually be called to give evidence under oath in a small little chair in a small box at a remote and apparently isolated part of the courtroom. You may be forgiven for wishing that the system was less formal and more friendly.

As a rule you are quite entitled to read extracts from your diary or file and give direct evidence in this way. Again I would emphasise that it is most important that you make notes in your diary in such a way that they are clearly explicable in hindsight to yourself. To put it briefly you will be asked firstly by the lawyer on your side how the accident happened and what your injuries were and how the effect you. When you have given this evidence you will be “cross examined” by the lawyer on the other side. If you keep in mind that it is his function to cast doubt on your evidence you should not be intimidated by his questions.

If I could make some general observations about the day in court:

- you will be first be “called” by your lawyers (you will have met these in advance on the morning of the hearing day when you will be asked about your case);
- when you go up to give your evidence you will be asked to take an oath or affirmation;
- having seated yourself you are first asked questions by your own side. The rules of evidence will allow you to refresh your mind from a written document where that note was contemporaneous with the event being recorded. You should, however, tell your own legal team in advance that you are referring to the diary;

- the next phase of your stay in the witness box is by far the most notorious....

CROSS EXAMINATION

and sometimes it can be very cross

- I believe that the best advice that you could have is to turn to face the Judge, address all answers to the Judge, and never look at the person asking the questions;
- speak slowly and clearly and try to be heard (particularly by the Judge);
- think before you answer a question;
- give yourself time to answer and make sure the understand the question;
- do not involve yourself in an argument with either the lawyer or (and especially) the Judge;
- if you do not understand the barrister ask him to clarify the question;
- if you do not hear him tell him and ask him to repeat the question;
- if you are not being allowed to answer questions or your replies are being restricted you should insist on being allowed to clarify your reply .“Your Lordship I would like to clarify my reply!”
- try to avoid yes/no replies by prefacing it with your opinion;
- ignore antagonistic remarks or aggressively phrased questions and answer the question or restate your opinion.

At the end of the day if you are dissatisfied with the decision reached in your case you may decide to appeal to a Higher Court, if you do you must make the decision promptly and let us know so that we can put in the appeal within the given time limit,

AFTER HEARING SETTLEMENT

When a case is settled or an award is made by a judge the question of costs payable by the other side arises. If you are successful in your case the other side are obliged to pay party/party costs. We would refer you to our letter of retainer which set out the costs which are payable by you to us. However, the other side are obliged to pay an additional sum in costs to us and also to discharge or pay off any outlay that you have incurred in running the case. We enter into negotiations with them in order to agree these costs and in the event of not reaching agreement there is a mechanism whereby the costs are decided by an arbitrator known as the taxing master. In essence, we draw up a listing of all of our expenses incurred on your behalf and send it to the other side. If they are not happy to discharge all of the costs as set out and we are not in a position to agree them with them we can then refer the matter for a decision to the taxing master. This procedure can take up to three months in that you have to get a hearing before the taxing master who will then make the final decision. In the event of the taxing master not accepting all the costs that we have submitted the balance costs will have to be discharged by you out of your settlement monies.