



Expanding your Discovery Arsenal & Proper Investigation of Claims

Presentation for Lockton Law Day - 2024

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DISCOVERY PLAN

Every case is different. Work out an initial plan with details of what information you need to properly investigation a client's case.

RULE 26(a)(1) INITIAL DISCLOSURES

Core materials in the dispute:

Any person with discoverable inform.
Description by category and location of documents;
Computation of damages (if any); and
Copies of insurance policies.

INTERNAL REVIEW OF DOCUMENTS AND CLIENT INTERVIEWS



ROGGS, RFAs, RFPs, DEPOSITIONS AND EXAMINATIONS

Our Rule based mechanisms under F.R.C.P./C.R.C.P. 31-36

INFORMAL DISCOVERY MECHANISMS

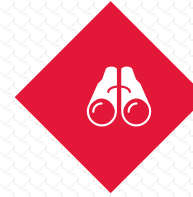
Information about parties and sometimes non-parties to solidify your investigation of all potential and available information to support the defense of your case or to assist with impeachment of a party

AREAS OF AVAILABLE INFORMAL DISCOVERY

PARTIES AND THIRD-PARTIES



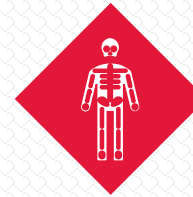
Public records, criminal records, other lawsuits, building permits, police reports and FOIA requests.



Social media searches, video surveillance, pre/post insurance information, academic transcripts.



Weather information, employment and personnel files, site visits and various state approved licenses.



Medical records, hospital/pharmacy sweeps, gym memberships, social security and other accident records.

HYPOTHETHICAL - Main Street Accident

SEVERAL PARTIES AND AREAS FOR INVESTIGATION

Troy McClure was a salesperson who worked for Rancho Relaxo Spa Products. On July 16, 2018, Mr. McClure was driving from lunch to a sales appointment in a company car when he was involved in a car accident.

While approaching the intersection of Main Street and Evergreen Terrace, Mr. McClure suffered a seizure and lost consciousness, causing him to accidentally push the accelerator. He veered the vehicle to the right side of the street, struck a cross walk pedestrian, Maude Flanders, and crashed through a concrete stone wall.

After going through the stone wall, the vehicle struck a customer standing outside the local Kwik-E-Mart, Sideshow Mel, and eventually crashed through sliding glass doors of the convenience store. Mr. McClure and Sideshow Mel survived the crash but, unfortunately, Ms. Flanders died of blunt force trauma. Sideshow Mel suffered a broken leg, pelvis and arm, and a concussion.



HYPOTHETHICAL - Main Street Accident

SEVERAL PARTIES AND AREAS FOR INVESTIGATION



The Springfield Police Department and paramedics were quick to the scene, where the two paramedics from the City of Springfield, Lenny Leonard and Carl Carson, attempted to resuscitate Ms. Flanders unsuccessfully.

Questions existed concerning the paramedics' first-aid practices, particularly with respect to what was done to save Ms. Flanders' life. Mr. McClure had been employed as a salesman for five years with Rancho Relaxo Spa Products. The company was not aware of his seizure condition. It was later determined that Mr. McClure's treating physician prior to the accident, with whom Mr. McClure had treated numerous times for his seizure condition, is Nickolas Riviera, MD.

The concrete wall in question was owned by and on the property of Kwik-E-Mart. The purpose of the wall was to reduce sound from the busy intersection at Main Street and Evergreen Terrace, as well as to protect the building and parking lot from any vehicular accidents. The Kwik-E-Mart had been open for 15 years. The concrete wall was built 5 years ago at the request of the City of Springfield.

HYPOTHETHICAL - Main Street Accident

SEVERAL PARTIES AND AREAS FOR INVESTIGATION

Litigation was pursued by numerous parties, including the family of Ms. Flanders, as well as Sideshow Mel, for personal injuries and damages sustained from the accident. Kwik-E-Mart pursued property damage to the wall and convenience store. Both the Estate of Ms. Flanders and Sideshow Mel pursued claims against Troy McClure and Kwik-E-Mart. Claims were also brought against Mr. McClure by the Kwik-E-Mart owner, Apu Nahasapeemapetilon, an Indian immigrant and recent new citizen of the United States, for the property damage.



WHO OR WHAT NEEDS TO BE INVESTIGATED?

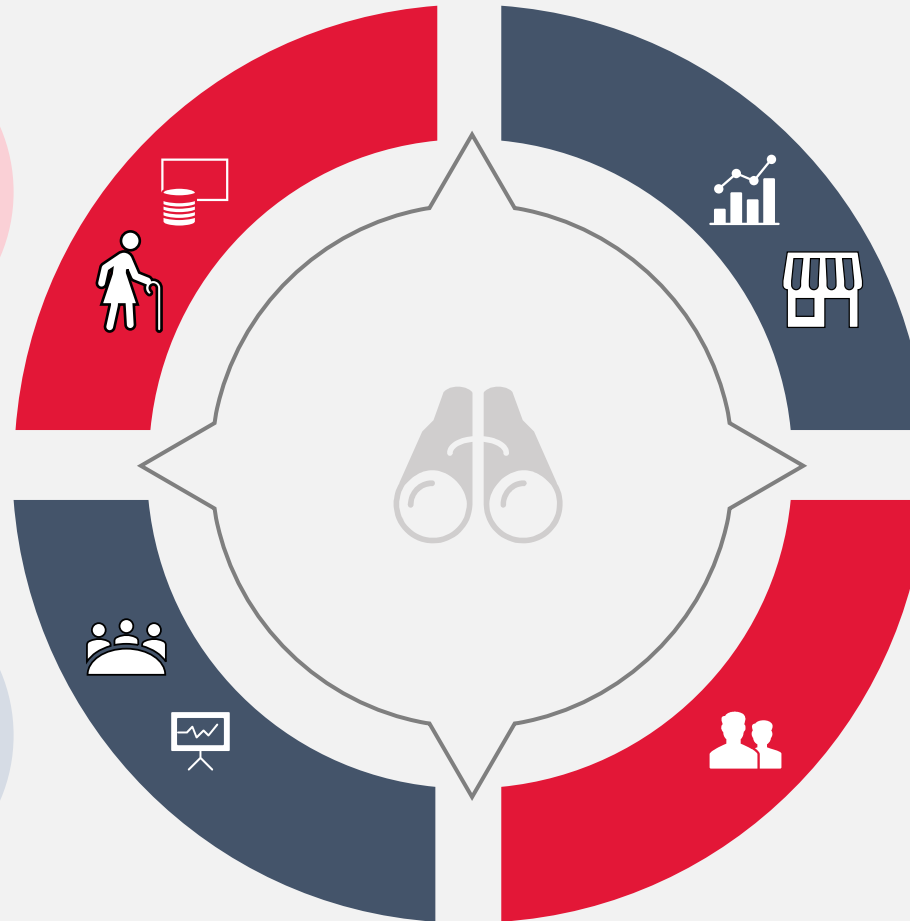
ENCOMPASSING PERSPECTIVE

PERSONAL INJURY PLAINTIFFS

PROPERTY OWNER WITH
DAMAGED PROPERTY AND
PREMISES LIABILITY CONCERNS.

RANCHO RELAXO AND
EMPLOYMENT OF MR.
MCCLURE

CITY AND LOCAL GOVERNMENT



GENERAL INVESTIGATION INFORMATION FOR THE ACCIDENT

- Police and Accident Reports
 - Motor Vehicle Accident report from Police
 - Any additional “official” and complete Police Report and Investigation due to the death (Police body cameras)
- Maintenance/construction records (CDOT)
- Third Party Retained Investigative Reports
 - Witness statements
 - Pictures of the accident scene
- Site Visit
- City Street Surveillance Cameras or Business cameras
- Google and YouTube search/capture google map
- NOAA weather information



MAUDE FLANDERS



- Medical Records
 - Obtain Release from the Estate
 - Accident Medical Records
 - Any pre-existing and relevant records?
 - Death Certificate and cause of death from county morgue
- ISO (prior insurance claims) & subpoena for claims
- CCEF/PACER search for other lawsuits
- CoCourts search for criminal and civil histories
- Social Media profile leading up to accident
- Google search on victim
- Fitness wearables and data
- Gym memberships
- Subpoena current and past employment information if no release can be obtained
- DMV records

SIDESHOW MEL

- Obtain medical, insurance, tax and employment releases if possible
- Medical Records
 - Accident Medical Records
 - Any preexisting and relevant records?
- ISO (prior insurance claims) & subpoena for claims
- CCEF/PACER search for other lawsuits
- CoCourts search for criminal and civil histories
- Social Media profile leading up to accident and post-accident
- Google search on victim
- Video surveillance



- Hospital and pharmacy sweeps
- Fitness wearables and data
- Gym memberships
- Subpoena current and past employment information if no release can be obtained
- DMV records
- WC Claim? Obtain from carrier, employer or attorneys assigned to claim
- Medical or other financial liens? Check UCC filings on Secretary of State website search
- Business owner? Check name under Secretary of State business search
- National/State park passes
- Academic transcripts, if claiming reduced education or reduction in earning capacity

TROY MCCLURE



- Obtain medical, insurance, tax and employment releases if possible
- Medical Records
 - Accident Medical Records
 - Any pre-existing and relevant records. Focus on seizure, but anything else?
- ISO (prior insurance claims) & subpoena for claims
- CCEF/PACER search for other lawsuits
- CoCourts search for criminal and civil histories
- Social Media profile leading up to accident and post-accident
- Google search
- Subpoena current and past employment information if no release can be obtained
- DMV records
- WC Claim. Obtain from Division of WC, carrier, employer or attorneys assigned to claim.
- Medical or other financial liens? Check UCC filings on Secretary of State website search
- Business owner? Check name under Secretary of State business search
- Consider extensive background history from outside companies (Truthfinder)
- Cell phone data and records. Texts/Call Logs, App Data, Location Data, Health Data and Metadata
- Subpoena Bank accounts

RANCHO RELAXO SPA PRODUCTS

- Capture company website details
- Complete WC file on Mr. McClure
- CCEF/PACER search Westlaw/LexisNexis name search for prior decisions for other lawsuits
- Social Media profile for the company?
- Google search
- Subpoena Mr. McClure's current and past employment information
- UCC search on company
- Obtain business filings from Secretary of State
- Subpoena company tax records
- Subpoena company bank accounts
- DORA search for any professional licenses for operation (medical)



APU & THE KWIK-E-MART

APU

- ISO (prior insurance claims) & subpoena for claims
- CCEF/PACER search for other lawsuits
- CoCourts search for criminal and civil histories
- Social Media profile leading up to accident and post-accident
- Google search
- Subpoena current and past employment information if no release can be obtained
- Subpoena INS file and records
- Subpoena tax records and bank accounts
- Third-party background profile

KWIK-E-MART

- All property records from county (property assessment)
- Permit search from county, to build wall (contractor/architect information)
- ISO on business and subpoena insurance carrier file
- Lexis Accounting Search
- UCC search/Secretary of State search on SOS
- Social media/Google search
- CCEF/Pacer search for other lawsuits
- Subpoena tax and banking records
- Any other licenses to operate business (liquor/OTC drugs)



CITY OF SPRINGFIELD, OFFICERS AND PARAMEDICS

- Permits pertaining to road construction and concrete wall
- Licenses for Kwik-E-Mart
- DORA search on Lenny and Carl
- Google search on Lenny, Carl and officers
- CORA/FOI request on accident
- CORA/FOI request to CDOT
- Subpoena City's carrier (if not self-insured)
- Subpoena employment files of Lenny, Carl and officers
- CCEF/Pacer on other litigation matters
- Westlaw/LexisNexis search on the City
- Social media posts of accident and/or intersection
- Interview officers



DR. NICK RIVIERA



- DORA search on medical license
- SOS for any businesses
- UCC search (personal and business)
- ISO search
- Subpoena malpractice carrier (if known)
- Social media
- Google search
- CoCourts search
- CCEF/Pacer for other lawsuits
- LexisNexis Public Records
- Third-party background check
- Check CDLA archives

ADDITIONAL DISCOVERY TIPS

Subpoenas: Many of the subpoenas discussed above could involve issuing a foreign subpoena, or involve a discovery fight because you do not have a release.

Releases: Send early.

Witness Interviews: Good old-fashioned telephone interview of any disclosed/known witnesses should also be standard protocol.

Written Discovery: Propound interrogatories strategically; focus on RFPs. Any admissions you could get for summary judgment?

Site Visits: Important for MVAs/slip and falls.

Timelines/Charts: Version of events – inconsistent stories; important dates – treatment, etc.; good depo prep.

Medical Records Chronology: Do yourself if possible.



**QUESTIONS?
& THANK YOU**