

## Trucking and Auto Injury Cases: Deposing Accident Reconstruction and Biomechanical Experts

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WEDNESDAY, JULY 11, 2018

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

Richard M. Goodman, Attorney, **Goodman Kalahar**, Detroit

Thomas C. O'Brien, Senior Counsel, **Miller Canfield Paddock and Stone**, Ann Arbor, Mich.

Ralph F. Valitutti, Principal, **Kitch Drutchas Wagner Valitutti & Sherbrook**, Detroit

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# **TRUCKING AND AUTO INJURY CASES: DEPOSING ACCIDENT RECONSTRUCTION AND BIOMECHANICAL EXPERTS**

**STRAFFORD WEBINAR | JULY 11, 2018**

# PRESENTERS



## **Richard M. Goodman**

Plaintiff's Counsel

Inter Circle of Advocates

Author of *Automobile Design Liability Published by Lawyers Cooperative*



## **Ralph Valittuti**

Defense Counsel

Birth Trauma Practice

National Counsel for Insurers and Major Healthcare Providers



## **Thomas C. O'Brien**

Civil and Criminal Cases

Both Plaintiff and Defense

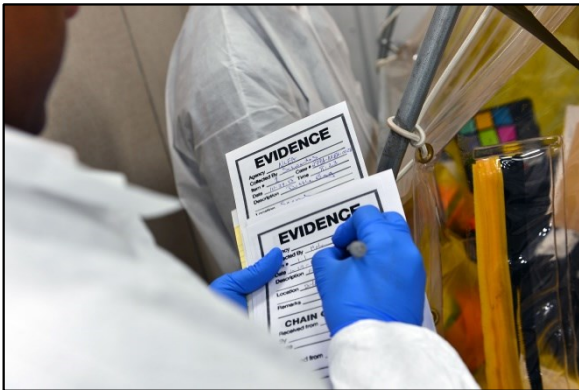
Taught Trial Practice for NITA, University of Michigan Law School and Institute of Continuing Legal Education

# RECENT TEXAS TRUCK CRASH

- \$89.6 million verdict
- May 2018
- Harrison County, Texas
- Icy road conditions
- Plaintiff's pickup truck loses control, crosses median, enters lane of oncoming traffic, struck by a truck owned by Werner Enterprises and operated by a student driver.



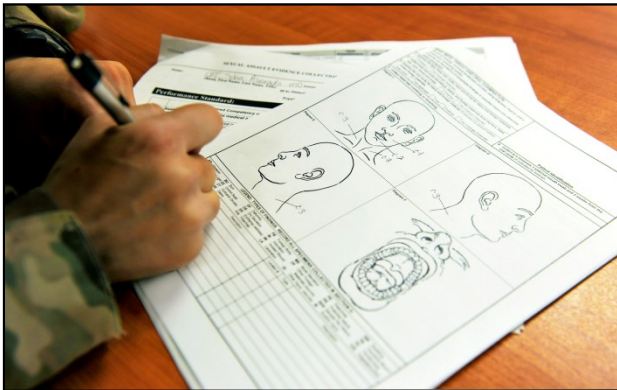
# THE ROLE ACCIDENT RECONSTRUCTION PLAYS IN TRUCKING AND AUTO CRASHES



- DePaepe V.GM: Getting the defense committed to the cause of Plaintiff's injury by deposing Defendant's expert early.



# SPECIAL CONSIDERATIONS THAT APPLY TO ACCIDENT RECONSTRUCTION EXPERTS



- Avoiding Sarcasm
- Medical Malpractice Example applicable to all complex litigation

# GOALS IN DEPOSING YOUR OPPONENT'S ACCIDENT RECONSTRUCTION EXPERT



- Defense Approach
- Plaintiff's Approach
- Opposing Defendant's in-house engineers or deposing the defense expert.
- Meek V. Crane Corporation

# SUBJECTS TO COVER WITH AN ACCIDENT RECONSTRUCTION EXPERT

**JOHN DOE**  
Full Address • City, State, ZIP • Phone Number • E-mail

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**OBJECTIVE:** Design apparel print for an innovative retail company

**EDUCATION:**

UNIVERSITY OF MINNESOTA City, State  
College of Design May 2011

- Bachelor of Science in Graphic Design
- Cumulative GPA 3.93, Dean's List
- Twin cities Iron Range Scholarship

**WORK EXPERIENCE:**

AMERICAN EAGLE City, State  
Sales Associate July 2009 - present

- Collaborated with the store merchandiser creating displays to attract clientele
- Use my trend awareness to assist customers in their shopping experience
- Thoroughly scan every piece of merchandise for inventory control
- Process shipment to increase my product knowledge

PLANET BEACH City, State  
Spa Consultant Aug. 2008 - present

- Sell retail and memberships to meet company sales goals
- Build organizational skills by single handedly running all operating procedures
- Communicate with clients to fulfill their wants and needs
- Attend promotional events to market our services
- Handle cash and deposits during opening and closing
- Received employee of the month award twice

HEARTBREAKER City, State  
Sales Associate May 2008 - Aug. 2008

- Stocked sales floor with fast fashion inventory
- Marked down items allowing me to see unsuccessful merchandise in a retail market
- Offered advice and assistance to each guest

VICTORIA'S SECRET City, State  
Fashion Representative Jan. 2006 - Feb. 2009

- Applied my leadership skills by assisting in the training of coworkers
- Set up mannequins and displays in order to entice future customers
- Provided superior customer service by helping with consumer decisions
- Took seasonal inventory

**VOLUNTEER EXPERIENCE:**

TARGET CORPORATION City, State  
Brand Ambassador August 2009

- Represented Periscope Marketing and Target Inc. at a college event
- Engaged University of Minnesota freshman in the Target brand experience

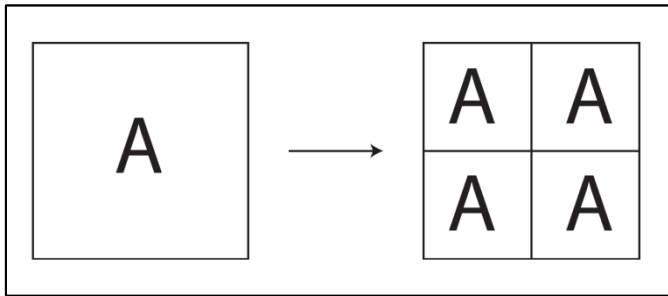
- Resume Attack

# SUBJECTS TO COVER WITH AN ACCIDENT RECONSTRUCTION EXPERT



- Flagpole Strategy

# SUBJECTS TO COVER WITH AN ACCIDENT RECONSTRUCTION EXPERT



- Departures from Protocol

# SUBJECTS TO COVER WITH AN ACCIDENT RECONSTRUCTION EXPERT



- Lack of Knowledge

# SUBJECTS TO COVER WITH AN ACCIDENT RECONSTRUCTION EXPERT



- Hired Gun

# SUBJECTS TO COVER WITH AN ACCIDENT RECONSTRUCTION EXPERT



- House of Cards



# SUBJECTS TO COVER WITH AN ACCIDENT RECONSTRUCTION EXPERT



- Direct Attack

## SUBJECTS TO COVER WITH AN ACCIDENT RECONSTRUCTION EXPERT

- *See, Effective Strategies for Cross-Examining an Expert Witness, 44 Litigation 26 (Fall 2017)*

# USING DEPOSITION ANSWERS

- Daubert Challenge
- Dispositive Motions
- Cross-Examination at Trial

# DEPOSITION STRATEGY

- Playing Strong Cards to Obtain Admissions or Impeach
- Setting the Stage for Admissions and Impeachment at Trial

# What Is The Subject Matter of Your Testimony?

## Accident Reconstructionist

**What**

Science  
Profession  
Business  
Occupation  
Licensure

Are You?

What was 1<sup>st</sup> job?  
What was 2<sup>nd</sup> job?  
Why quit?  
When?  
What % do you still work real job?  
Work job trained for?

**"I am an Accident Reconstructionist"**

**Not**

Who buys an Accident Reconstructionist?

Lawyers  
Trucking Companies  
Government  
Educational Institutions  
Insurance Companies

Two jobs  
Accident Reconstructionist ?

Read Government job description of job trained for, it does not include Accident Reconstruction

Solely for the courtroom

You get facts from others  
from whom?  
Do you personally interview?  
Take pictures – how many, when, where are pictures

**Report is just the hearsay itself**

No opinion based in part on hearsay

(or)

You are just giving the opinion of another

The hearsay is the opinion

Does the hearsay qualify under some other exception?  
Business records?

No?  
Not in the business?

**Scientific Demonstration**

Speeds, Angles, co-efficient of friction, weather what day observed

## Accident Reconstruction

Defined by what variables

Agreed facts

Defined by Physical laws

Did you average variables

Which laws

What is probable error rate

What variables disputed

Who has testified to facts used

What variables undisputed

Necessary to conclusion

How do you know which facts are true?

Independently checked against accident scene.  
Fixed measurement point?

Another expert?

Scientific Dispute

If another expert disagrees, not wrong

Agree/Disagree

### Foundation Reliability Requirement

Is your Accident Reconstruction reliable?

How have you tested it at the accident scene?

Does it comport with real world observations – same time, same lighting, conditions, same road surface conditions?

Has anyone reproduced your results?

**Who in the real world outside of the courtroom relies upon your Accident Reconstruction?**

Lawyers  
Law Enforcement

Manufacturing  
Trucking Companies

Airlines  
FAA

MDOT

- I. What is the specific scientific method that you are applying in the case?
- II. How are you employing a technique or theory?
- III. How can you prove your theory is valid? What is the error rate?

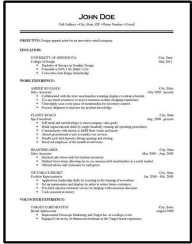
# DEPOSITION STRATEGY

- The Role of Biomechanical Experts in Trucking and Auto Crashes
- Ford Motor Seatbelt Case
- Be Your Own Expert First

# GOALS IN CONDUCTING THE DEPOSITION OF THE OPPONENT'S BIOMECHANICAL EXPERT AND SPECIAL CONSIDERATIONS

- Pin the Witness Down on Relevant Topics
- Chunk Long Answers into Usable Pieces

# SUBJECTS TO COVER WITH BIOMECHANICAL EXPERT



- Resume Attack



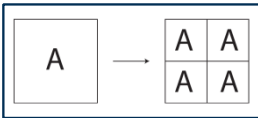
- Hired Gun



- Flagpole Strategy



- House of Cards



- Departures from Protocol



- Lack of Knowledge



- Direct Attack



# REHABILITATING AN EXPERT WITNESS AT DEPOSITION



- Frequency
- Approach with Accident Reconstruction and Biomechanical Experts

**THANK YOU**