HEYL ROYSTER VOELKER & ALLEN, P.C.

TRUCKING

FALL 2020 NEWSLETTER

INTRODUCTION

2020 has posed many challenges, and we've all had to adapt to a new way of life. Despite COVID-19, the trucking industry continues to move freight. Final-mile delivery, e-commerce, and various grocery stores and hospitals thrived early on during COVID-19. Dry van, refrigerated, and flatbed loads have continued to improve as the economy has improved, yet there is much room to get back to normal. Uncertainty remains, and many pundits believe it may take two years before the industry functions at normal levels.

Despite many of the challenges, the industry experienced widespread notoriety given America's truck drivers continued to provide the necessary support to help all of us live "as normal as we could" in light of the changing landscape associated with the impact of COVID-19. As plaintiffs' lawyers have systematically worked to villainize the industry, it was an extremely valuable time to promote a positive public image of the industry. Once COVID-19 is removed from the American landscape, the challenge remains to continue to change the narrative about the industry. That responsibility rests with all of us – truck drivers truly are American heroes.

As the trials and tribulations of trucking litigation move forward, we do have some good news to report. On June 18, 2020, Iowa enacted legislation which prevents plaintiffs from being awarded for past medical expenses that exceed what doctors and hospitals are actually paid or may be owed for the treatment provided. Iowa has moved closer to Indiana, while Illinois, Missouri, and Mississippi allow plaintiffs to submit for jury consideration the amount billed. We are now handling trucking litigation in at least five different states (Illinois, Iowa, Missouri, Indiana, and Mississippi), and our work continues to grow. It is always best to not only hire experienced trucking litigators but also trucking litigators who are intimately familiar with the nuances associated with a particular litigation locale.

Our latest Newsletter contains articles from three extremely talented trucking litigators. Partner Nate Henderson practices in Illinois and Missouri. He has authored an informative article associated with the impact of the Reptile upon litigation generally. Partner Tyler Pratt handles trucking litigation throughout Illinois and is well versed in e-discovery issues that are continuing to increase in importance in more significant trucking cases. His article focuses upon a recent trend by plaintiffs' lawyers seeking to take the deposition of the insurance agent or broker in litigation. The last article is written by Devin Taseff, who works extensively with me and is an extremely talented young lawyer. Devin writes an article about being proactive in dealing with the Reptile by filing a Motion for Protective Order, in light of the recent Northern District of Indiana decision in *Estate of Richard McNamara v. Navar,* No. 2:19-cv-109, 2020 U.S. Dist. LEXIS 70813 (N.D. Ind. Apr. 22, 2020).

As always, we are extremely grateful for the relationships that we have forged with you. We always need to work together as a team to achieve positive outcomes. Each of us has a unique role to fill – we are never any greater than the sum of our parts. HEYL ROYSTER continues to focus on building our expertise in trucking litigation so that we can continue to serve the interests of the industry we so proudly represent.

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THE INFESTATION OF THE TRUCKING INDUSTRY: LAWYERS, SNAKES, AND POLITICIANS

By: Nathan Henderson, nhenderson@heylroyster.com

Nearly everyone knows the fear. You are driving down the interstate and you find yourself caught between two semis pulling trailers. There is another one in front of you. Their imposing size and speed, combined with the feeling of being trapped, quickens your pulse. You grip the wheel a bit tighter and your eyes widen.

The fears we experience in this situation and the instinct to survive make trucking litigation particularly susceptible to the use of Reptile Theory-based tactics by Plaintiffs' attorneys. The Reptile Theory has been increasing in use since David Ball and Don Keenan wrote *Reptile: The 2009 Manual of the Plaintiff's Revolution* (Balloon Press, 2009). The theory, as applied to the trucking industry, aims to convince jurors that the trucking company and its drivers are a danger on the road and to society overall. Plaintiffs' attorneys create a threat that could cause harm to the juror, their family members, and everyone else on the roadways. They then rely on the primitive portions of the jurors' brains to instinctively react, ignoring all logic and reason, looking for a solution to the threat presented to them. The case becomes less about the facts of the accident at issue, and more about the unsafe practices of the company, its drivers, and the industry overall. In order to protect themselves and every other driver from these dangerous companies, the jurors are asked to send a message that unsafe practices will not be acceptable. The only message that will reach the companies? A large verdict.

The Reptile tactic begins early in the case, often with the Plaintiff's initial pleading. The Complaint will generally reference violations of safety rules or unnecessary dangers to society. It may contain allegations of negligent hiring, negligent supervision, or a lack of training. The Complaint may even list prior accidents of the driver or safety violations of the company. The goal at this stage is to expand the case beyond the accident, creating a narrative of systematic safety violations and danger to all, not just the Plaintiff.

The most crucial time in the creation of the Plaintiff's reptilian narrative is the discovery portion of the case. Beyond the deposition of the driver, the deposition of the company's safety director and/or corporate representative is used to set forth safety rules and establish the company's failure to abide by them. This is accomplished primarily through the asking of seemingly benign questions with "obvious" answers and broad hypotheticals. Taking this approach, the Plaintiff's attorney takes the abstract safety rules and, through the use of documents, the testimony of the defense's witnesses, experts, and other evidence, shows the jurors at trial that the company is unsafe and needs to be stopped. The worst part of the Reptile Theory is that it works, and more and more Plaintiffs' attorneys are utilizing it against the trucking industry.

Economics of the Reptile

A new study conducted by the American Transportation Research Institute (ATRI), *Understanding the Impact of Nuclear Verdicts on the Trucking Industry*, was released in June 2020. The study compiled "litigation data for 600 cases to statistically analyze the key metrics of large verdicts in the trucking industry." *Id.* at p. 14. In 2010, the year after Ball and Keenan were published, the study identified less than ten cases with verdicts over $1 million. By 2011, that number exploded to sixty such cases, and in 2013, over seventy. *Id.* at p. 15. According to the research, from 2010 to 2018 the size of verdict awards increased 51.7% annually while the standard rate of inflation and healthcare costs grew only 1.7% and 2.9%, respectively. **The study found that the average size of a verdict increased from $2,305,736 in 2010 to $22,288,000 in 2018. *Id.* at p. 18.**

In an article published earlier this year, Don Keenan spoke to the increase in verdicts through the use of the Reptile. He stated:

> "It's undeniable that the verdicts have gone through the roof…But in my humble opinion, the roof was too short for a number of years…Now we're getting all the damages. The cases haven't gotten any better; the lawyers have gotten far better at being able to persuade the jury what justice in this country is all about." https://www.law.com/dailyreportonline/2020/05/14/Reptile-co-author-don-keenan-says-big-verdicts-reflect-justice/

Jurors are Awarding More Money, More Often

The Academy of Truck Accident Attorneys disputes the findings of the ATRI study. "The real problem is that insurance minimum limits haven't been updated in over 40 years. Taxpayers end up paying for the lifetime care of trucking victims when at-fault motor carriers should pay…Large truck companies don't have to pay the few $10 million+ verdicts, they have insurance to cover this. But the trucking companies with only minimum insurance can't pay for the harm they cause," said Michael Leizerman, co-founder of the Academy of Truck Accident Attorneys, a non-profit with more than 700 members. This opinion appears to be shared by some legislators as well.

Pending Legislation

The Moving Forward Act was introduced in the U.S. House of Representatives as a plan to spend more than $1.5 trillion that would impact nearly every aspect of the American life. Part of the Act, the "Investing in a New

Vision for the Environment and Surface Transportation in America Act," or the INVEST in America Act, is a proposed infrastructure bill that would invest $500 billion to rebuild and improve the American infrastructure. For obvious reasons the standalone bill had the support of the trucking industry; however an amendment has been added that could have an adverse impact on that industry.

The Garcia Amendment, introduced by Representative Jesus "Chuy" Garcia, a Democrat from Illinois, increases current insurance liability requirements for commercial vehicle drivers from $750,000 to $2 million. Illinois Democrat Representative Mike Bost, who worked as a truck driver and manager of his family's company Bost Truck Service for 13 years prior to entering politics, countered with an Amendment of his own, attempting to remove the Garcia Amendment, believing that the Amendment would be detrimental to smaller carriers. The Bost Amendment was blocked by House Democrats without even a vote and the Act, including the Garcia Amendment, moved forward to a vote in the House on July 1, 2020.

The Moving Forward Act passed the House by a vote of 233-188, sending the Act to the Senate. Republicans currently hold 53 seats in the Senate, compared to the Democrats' 45 seats. An additional two Independents both caucus with the Democrats. Because of the Republican control, the Moving Forward Act has a rocky road ahead. Should the unlikely occur and the Move Forward Act pass a vote of the Senate, the White House has made it clear that it will never become law. It is expected that if the Senate passes the Act, President Trump would likely veto it.

Battling the Infestation

If the Moving Forward Act fails to become law, it is doubtful that Democrats will abandon their attempt to increase minimum insurance liability requirements for commercial vehicle drivers. It is likely to continue to be added to bills until it becomes law, particularly so if Joe Biden is elected President. Regardless of its fate, the Reptile tactics of Plaintiffs' lawyers will continue to drive up the value of accidents involving commercial vehicles. As these values continue to rise, it can be expected that the number of Plaintiffs' attorneys filing the cases will also increase, as will their quality. The majority of trucking cases present as relatively easy money for the Plaintiffs' Bar. They are cheaper to develop than many other areas of law, and as explained above, they present the ideal environment for the Reptile to thrive.

Hope is not lost. The trucking industry needs to seek counsel from attorneys who are not only experts in handling trucking litigation, but who also understand the proper way to handle this dangerous and complicated litigation strategy. This begins with the ability to recognize when the Reptile Theory is being deployed against them.

A review of the Complaint will generally signal to an attentive defense attorney that their client is being attacked with the Reptile technique. Such Complaints will involve counts that make issue of the company's safety standards, while minimizing the underlying accident to only a symptom of a much larger threat. These Complaints will often list any and all known incidents (accidents, citations, etc.) involving both the driver and the company, regardless of their relevance to the facts of the case. Consideration must be given to the preparation of motions to dismiss any portions of the Complaints that expand the issues involved. A successful Motion to Dismiss can destroy the Plaintiff's Reptile before it can develop.

The depositions of a company's corporate representative and its driver have the potential to either win or lose a case. Preparation of the witness is critical. The defense attorney must be willing and able to spend as much time as necessary to prepare these witnesses for their depositions. Prepare. Prepare. Prepare. These witnesses are generally not familiar at all with the litigation process, nor are they able to anticipate how their answers to seemingly easy questions can be used against them. These depositions take skill, experience, and patience to defend. The defense attorney cannot sit idly by while their witness is unknowingly turned against themselves. It is necessary that the attorney understands the techniques and goals of the Plaintiff's attorney, has a plan to protect the witness, is able to make the proper objections to the inappropriate hypotheticals their client will be asked, and can effectively limit the case to the relevant issues.

These depositions also provide the defense with the opportunity to humanize the company in the eyes of the juror. The Reptile strategy depends in large part on the painting of the company as an evil wrong-doer. Time and effort are required to establish that the company is one that is concerned with safety, contributes positively to their community, and is nothing to fear. It needs to be clear that safety is important. Defense of these cases is also greatly helped by making the driver of the vehicle relatable to the juror. The drivers work hard. Their job is hard. They have families and friends they care about and they recognize the importance of performing their jobs safely. By creating a connection between the drivers

and the jurors, the Plaintiff will have a difficult time making the case about the juror and not the driver.

It is necessary that these cases be defended by attorneys that understand the trucking industry, enjoy the work, and have the ability to establish strong rapport with the truck drivers. Plaintiffs' attorneys are good story tellers. That skill wins them cases. It is time that defense attorneys become proactive and develop a narrative that stays with the case from the time of the accident through trial. Failure to adapt and appropriately respond to the techniques of Plaintiffs' attorneys will only result in ever-increasing values for cases small and large.

YOU ONLY HAVE HOW MUCH INSURANCE?!

PROVE IT – I NEED TO DEPOSE YOUR INSURANCE BROKER!

By: Tyler Pratt, tpratt@heylroyster.com

Introduction

With nuclear verdicts dramatically on the rise, it is no surprise that plaintiffs are looking closer at the amount of insurance procured by motor carriers. Despite Rule 26 of the Federal Rules of Civil Procedure requiring defendants disclose a copy of any applicable insurance policies, some plaintiffs have recently questioned whether defendants are being truthful about the amount of insurance available. Some have even gone to the extent of requesting the deposition of the defendant's insurance broker or employee responsible for procuring insurance. These tactics are usually nothing more than a fishing expedition designed to intimidate defendants and their insurance carriers. After all, it generally benefits defendants to have more coverage available and defendants have no incentive to withhold this information. This is particularly true in cases involving catastrophic losses where defendants are most susceptible to excess verdicts. This article will highlight the most common minimum insurance limits required by the Federal Motor Carrier Safety Administration (FMCSA) Regulations, plaintiff's requests, and some strategies defendants can employ to counter these requests.

FMCSA Minimum Insurance Requirements

Under Section 387.7, no motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility. The minimum insurance required for motor carriers is governed primarily by the nature of the carrier (i.e., private, for-hire, freight forwarding, etc.), and type of cargo.[1] Specifically, the FMCSA requires:

Type of Freight	Minimum Limits
Non-hazardous freight in vehicles under 10,001 lbs.	$300,000
Non-hazardous freight in vehicles over 10,001 lbs.	$750,000
Oil moved by For-Hire & Private Carriers	$1,000,000
Other Hazardous Material moved by For-Hire & Private Carriers	$5,000,000

Although not required to do so, motor carriers often obtain insurance above these minimum thresholds. While there may be a number of reasons for doing so, when a plaintiff learns that the motor carrier only has the minimum, or slightly above the minimum, the amount of available insurance often becomes a target for dispute. This dispute is amplified when plaintiffs become "surprised" that a motor carrier's insurance coverage appears incongruent with its size/solvency. In other words, plaintiffs may be under the impression that a company with several hundred drivers, tractors, and trailers *should* have millions, or even tens of millions, of dollars in liability coverage *and* excess policy coverage. When they do not, this causes plaintiffs great consternation and results in them requesting the depositions of insurance brokers and/or employees responsible for procuring insurance.

Plaintiff's Requests / Theory

In cases involving catastrophic losses, plaintiffs often try to establish they need to depose a defendant's insurance broker or the person responsible for procuring insurance to ensure they know the full amount of insurance coverage available. As evidence to support their need, they claim the motor carrier maintains such a small amount of coverage despite their apparent size and solvency in comparison to other trucking companies of similar size. These unfounded assertions are often raised after the plaintiff learns about the motor carrier's financial status and are simply unwilling to accept it as true. Consequently, they use the guise of ensuring they know the full amount of insurance to mask their real motive—to pierce the corporate veil to personally recover against the officers, directors, and/or shareholders by claiming the motor carrier was intentionally underinsured and/or undercapitalized. The plaintiff will consider this a victory if they can convince the court they need this information, are able to conduct discovery related to this information, can use this information to embarrass and harass defendants, and ultimately increase their settlement position. In situations where these assertions are unfounded, it is important for a defendant to illustrate that such request is nothing more than an unproductive fishing expedition designed solely to intimidate the defendant. Given the sensitive nature of the information that

may be exposed, it is critical for defendants to set forth a forceful response.

Defendant's Response

While each case is different, there are many arguments that can be used to refute a plaintiff's request that they need to depose a defendant's insurance broker. Here are a few of the more common arguments to consider:

- Certified copies of insurance policies were previously produced
- Plaintiff never previously objected or the request is untimely
- Plaintiff failed to establish why it is necessary or relevant to the allegations in the Complaint
- Plaintiff failed to cite any supportive case law
- It is unnecessary to determining punitive damage claims, if asserted, as insurance is not an asset or liability in calculating net worth
- Plaintiff cannot discover whether defendant is underinsured because he has not properly set forth the allegations in his Complaint to pierce the corporate veil
- Plaintiff cannot establish defendant is underinsured because defendant procured the minimum amount required and there is no case law requiring defendant to procure more
- Depending on the jurisdiction and type of agent in question, an insurance broker or captive agent may not owe a fiduciary duty to procure adequate insurance for the defendant and that duty may not extend to the plaintiff.

While each case and situation is different, the bottom line is that defendants need to be in a position to illustrate that they have sufficient insurance, that they complied with all the rules and laws, and that plaintiff's requests are nothing more than a gamesmanship tactic designed to cast defendants in a negative light. Plaintiffs are not trying ascertain the truth regarding the available insurance coverage, they are simply trying to gather more financial facts to demonize the defendant and further their David versus Goliath narrative.

Conclusion

Although these requests have become a trendy fad and plaintiffs are quick to threaten them, especially with the growth of nuclear verdicts, there are reasonable and practical arguments to refute them. In fact, only a few of these requests are justified and actually come to fruition. Consequently, defendants should not be intimidated by or apprehensive of plaintiff's unfounded contentions. Instead, defendants should be prepared to highlight the unreasonableness of plaintiff's request and their own compliance with the rules and laws. If they want the motor carrier to prove their insurance is inadequate, make them first prove why their request is valid!

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[1] *See* 49 CFR 387.9. Please note that at the time of this article, 49 CFR 387.33, which sets forth the minimum insurance limits for motor carriers of passengers, was suspended.

KILL THE REPTILE BEFORE IT HATCHES: USE OF PROTECTIVE ORDERS TO PRECLUDE OR LIMIT REPTILE THEORY QUESTIONING

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As so many motor and insurance carriers are unfortunately aware, the Reptile Theory is an increasingly common means by which plaintiffs transform a five-figure case into a six-figure case, and a six-figure case into a nuclear verdict. By posing hypothetical questions to a driver, safety director, or other witness regarding "safety rules," attorneys skilled in the art of Reptile-Theory questioning lead witnesses into committing to a higher, fictitious standard of care that they then "prove" the witness violated. This is designed to communicate to juries: (1) that "safety" is the "purpose of the civil justice system" and (2) that "fair compensation can diminish . . . danger within the community."[1] The purpose of such questioning is "to give jurors [a] personal reason to want to see causation and dollar amount come out justly, because a defense verdict will further imperil them."[2] Ultimately, Reptile Theory questioning is designed to influence jurors to decide the case using their primitive, "reptile" instincts rather than the law or the accident facts.

While our attention concerning the Reptile Theory is often on its effects on juries *at trial*, a more effective strategy to limit or outright preclude plaintiffs' use of Reptile Theory questioning is to challenge it at the outset *of discovery*. The success of Reptile Theory questioning relies on the defendant's answers, and so the ideal means of opposing the Reptile Theory is to prevent plaintiffs' counsel from asking such questions in the first place. Federal Rules of Civil Procedure 26(c)(1) provides an effective, but underutilized tool: the pre-deposition Motion for Protective Order.

Motion for Protective Order Under Rule 26(c)(1)

Fed. R. Civ. P. 26(b)(1) provides that "[u]nless otherwise limited by court order . . . [p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." If a court determines that the proposed discovery is outside the scope permitted by Fed. R. Civ. P. 26(b)(1), then it "must limit the frequency or extent of discovery otherwise allowed by these rules[.]" Fed. R. Civ. P. 26(b)(2)(C).

Fed. R. Civ. P. 26(c)(1) authorizes district courts to issue a protective order, for good cause shown, to "protect a person from annoyance, embarrassment, oppression, or undue burden or expense." Among the tools available to trial courts in granting such protection are "forbidding the disclosure or discovery[,]" Fed. R. Civ. P. 26(c)(1)(A), and "limiting the method and manner in which discovery is to be sought." *Frasier v. U.S.*, No. 1:19-cv-00019, 2019 U.S. Dist. LEXIS 183065, 2019 WL 5418119, at *7 (N.D. Ind. Oct. 23, 2019), citing *Olivieri v. Rodriguez*, 122 F.3d 406, 409 (7th Cir. 1997).

The party seeking a protective order must demonstrate that good cause exists for its entry by making a "particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements." *Ball Corp. v. Air Tech of Mich., Inc.*, 329 F.R.D. 599, 603 (N.D. Ind. 2019) (internal quotations omitted), quoting *Gulf Oil Co. v. Bernard*, 452 U.S. 89, 102 n. 16 (1981). "Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Ball Corp.*, 329 F.R.D. at 603. (internal quotations omitted), *quoting Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

With these discovery principles in mind, we can analyze common Reptile Theory questioning employed by the Plaintiffs' bar, in order to demonstrate to the Court through a Motion for Protective Order that it lacks any valid discovery purpose.

Example of Common Reptile Theory Questioning

(i) Employed Against Driver In Case Involving Alleged Hours of Service (HOS) Violations

- Safety is your top priority, correct?
- As a commercial driver, you have an obligation to ensure that you drive safely, right?
- In fact, you have a duty to put safety first, do you not?
- To ensure safety, as a commercial truck driver, you must follow the federal rules governing hours of service, correct?
- And would you agree that if someone violates those safety rules and causes an accident, then they should be held responsible for their actions?

(ii) Employed Against Safety Director in the Same Case

- Would you agree with me that as a safety director of a motor carrier, public safety is always a top priority of both you and your company?
- Would you also agree that as a safety director, it is your obligation to ensure that your drivers do not endanger other motorists?
- Would you agree that you do everything you can as a safety director to ensure public safety?
- To ensure safety, your drivers must follow the federal rules governing hours of service, correct?
- And your company has its own policies for supervising its drivers' hours of service, correct?
- And would you agree that if your company did not follow these policies, and one of your drivers violated the hours of service rules and caused an accident, your company should be held responsible?

It is clear from this common pattern of Reptile Theory questioning that its goal is not to elicit objective facts about the accident at hand but rather, to get the witness to commit to a higher, fictitious standard of care using questions that are difficult, if not impossible, to answer in the negative without sacrificing credibility. Hence, the key to defeating the Reptile is to ensure that such questions are precluded or limited in scope prior to taking such crucial depositions.

Proven Effectiveness

The Northern District of Indiana recently granted the defendants' (driver and carrier) pre-deposition Motion for Protective Order under Rule 26(c)(1) on the grounds that questioning the driver, a lay witness, about "safety rules" using "generalized hypotheticals" would fall outside the scope of permissible discovery. *Estate of Richard McNamara v. Navar*, No. 2:19-cv-109, 2020 U.S. Dist. LEXIS 70813 (N.D. Ind. Apr. 22, 2020). In entering a protective order prohibiting plaintiff's counsel from asking questions regarding the existence of and purpose for alleged "safety rules," the Court reasoned that: "The purpose of a deposition is to discover the facts. Hypothetical question that

are designed to obtain opinions are beyond the scope of the deposition of a lay witness." *Id.* at *6.

The defendants' arguments in *McNamara* are instructive as to how defense counsel should structure their briefs in support of a pre-deposition Motion for Protective Order. The defendants in this case first described both the nature and purpose of Reptile Theory questioning and provided practical examples of specific questions typically asked by the plaintiff's counsel in previous depositions. *Id.* at *4-5. The defendants then argued that such questioning, including hypotheticals regarding the driver's knowledge of various purported "safety rules," merely constituted an attempt to impose a heightened, arbitrary standard of care on the driver. *Id.* at *5. Hence, the defendants concluded that such questioning lacked any tangible connection to the scope of permissible discovery. *Id.* Furthermore, the Court rejected the plaintiff's argument that this line of questioning was likely to produce discoverable information as conclusory and unsupported.

McNamara instructs defense counsel to challenge Reptile Questioning before plaintiffs' counsel has a chance to employ it in a crucial deposition. Doing so will require plaintiffs' counsel to address the underlying purposes behind such questioning before the Court, which at the very least creates an opportunity to educate the judge on Reptile issues well in advance of settlement discussions, motions in limine, and trial.

Conclusion

Overall, a pre-deposition Motion for Protective Order under Rule 26(c) provides an effective, yet underutilized tool at defense counsel's disposal to limit or outright preclude Reptile Questioning in crucial depositions. As the case law on this issue continues to develop, carriers and their counsel should consider a Motion for Protective Order wherever they anticipate questioning regarding "safety rules" posed through hypotheticals, and argue pursuant to the reasoning of *McNamara* that such questioning lacks any valid discovery purpose. In doing so, defendants and their counsel will increase the likelihood of killing the reptile before it hatches. Even if the Motion for Protective Order is not granted, it serves to educate the Court about the tactic likely to be used in discovery. Once you have deposition testimony conveying the scope and purpose of the tactic, you can then seek to renew your Motion for Protective Order and/or begin filing Motions in Limine attempting to bar the line of questioning in further depositions or at trial.

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[1] David Ball and Don Keenan, Reptile: the 2009 Manual of the Plaintiff's Revolution, at 29-30

[2] *Id.* at 39.

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