

BEWARE OF SURVEILLANCE BY INSURANCE COMPANIES

Surveillance is playing an increasingly large role in defending against personal injury claims. Although many people—including jurors—may be offended by this invasion of privacy, surveillance is often used to expose supposedly fraudulent or exaggerated claims. **Many meritorious claims may be damaged or ruined by surveillance techniques and evidence.**

Keep your eyes open for strange vehicles in the area of your home, work and personal activities. Frequently, the surveillance takes place from a vehicle while you are at home or coming to and from work or engaging in activities with your family. If you see a suspicious vehicle, take down a license plate number and call us promptly. If you are inclined, call the police agency responsible for your area and report the suspicious nature of the vehicle. Keep in mind that the vehicle may be there and gone and come back over a period of several days or weeks.

Every personal injury case has the potential to involve surveillance. The surveillance is not always surreptitious; it can be as blatant as an insurance adjuster or a private investigator making a visit to a victim's home. It is important that you inform us of all contacts relevant to your claim and to give us a complete disclosure of all activities since the injury, including employment, household chores, travel and leisure activities.

A response that you "really have not worked" or "really have not played golf" must be clarified. Have you tried unsuccessfully to return to work? Have you been doing odd jobs for which you are being paid under the table? Have you played golf once but found it too painful to play again? Have you started playing golf again but a little less often than you used to?

Have you tried but failed to resume these activities—or have you actually resumed them but are trying to hide that fact? **In most cases, the plaintiff who has tried unsuccessfully to resume normal activities is perceived more favorably by jurors than someone who has not tried at all.**

It is unlikely that we will be aware that surveillance evidence exists until after your deposition, so you must understand the need to be truthful. It is unlikely that a case involving an injury to the lower back, for example, would be damaged because the plaintiff was photographed once bending down to inspect a problem with a car. But if he testifies that he has been unable to bend down since the accident, there is likely to be an attack on his credibility.

A minor incident documented by surveillance but forgotten by yourself can be explained as a minor memory lapse. Jurors know that everyone has them. But the plaintiff whose back injury prevents him from working will not be able to explain the week at Walt Disney World walking around with a toddler on his shoulders.

Care must be taken that any surveillance evidence presented is truthful and to protect from the damage that can be wrought by distorting, misleading and false evidence.