

# Building The Defense Case

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# Case Evaluation and Case Investigation

- What Is It We Are Evaluating? *Information*
  - Facts Re: Plaintiff or Defendant Fault
  - Facts Re: Co-Defendant or Third-Party Fault
  - Facts Re: Employer Fault
  - Facts Re: Pleaded Defenses
  - Nature and Extent of Injuries/Damages

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# Early Investigations

- Fruitful Investigations – The Earlier The Better
  - Before Witnesses Scatter to the Four Winds
  - Before Evidence is Lost or Destroyed
  - Before Memories Fade
  - Before Witnesses Lose Interest in Helping
- Easier, Less Expensive, Usually Unhindered

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# Informal Investigation

- Witness interviews conducted by counsel and/or investigators
- Scene visits and documentation
- Gathering information available from public records (e.g. policy reports, court records, etc.)
- Information available via the Internet
- Background investigations on plaintiff and key witnesses

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# The Importance of Fact Gathering Over Legal Maneuvering

“It is better to have good facts than good law.”

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# Building The Defense With Focused Discovery

- Informal Discovery Is Great, But It Only Goes So Far
- Focused Discovery on Key Issues to Limit Exposure
  - Discovery Plans Help You Stay Focused
- Preparation is Key For Useful Results

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# Pre-Trial Motions to Limit Issues for Trial

- Don't Waste Time and Money on Useless Procedural Motions
  - Investigate *The Facts*
- Use *The Facts* For *Useful* Motions (MSJ)
- *In Limine* Motions – Quality Not Quantity

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# Offer of Judgment – C.C.P. §998

- Step One: Realistic Evaluation of the Case
- When to Make a §998 Offer – Early or Late?
- Allocation in Multi-Party Cases
- Terms to Avoid

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