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[And The Defense Wins](#)

[This Week's Feature](#)

[Legal News](#)

[DRI News](#)

[New Member Spotlight](#)

[DRI Cares](#)

[Quote of the Week](#)

[Legislative Tracking](#)

[DRI CLE Calendar](#)

## DRI Publications

[Insurance Bad Faith-2010](#)



## Links

[About DRI](#)

[Amicus Briefs](#)

## This Week's Feature

### Litigation Lessons Learned from the Real Housewives

by Noelle M. Natoli-Duffy, *Foley & Mansfield, PLLP, Los Angeles, CA*

As all new parents will tell you, newborns tend to keep you up at night. Having just returned from maternity leave, I was amazed at the variety of reality shows in the early morning hours. And, more so, amazed that once I returned to work, I could apply some of the lessons I learned watching television to the practice of law, and in my case specifically, trucking defense. One particular series of shows, aka *The Real Housewives of...* enlists housewives from various metropolitan cities and gives the viewer a glimpse at the everyday life of a homemaker—assuming the everyday homemaker wears Louboutin shoes, shops at Louis Vuitton, and has a staff of personal stylists, jewelers, nannies, hairdressers, makeup artists, and publicists.

But even if you are not *anything* like a “Real Housewife,” you can still learn a lesson or two, especially in the area of law, where the gossip, infighting, and gamesmanship are not unlike a catfight on reality TV. As we all know, all that fighting costs our clients serious amounts of cold hard cash, and causes attorneys to suffer from more stress-related health conditions than most other professions. Here are a few observations and tips that I believe will save time and money for you and your clients:

**1. An invitation to the White House is not just a formality.** Play by the rules. Follow the rules of court, the rules of professional conduct and show respect to the judicial process. Request copies of the insurance company and/or trucking company’s reporting guidelines annually and comply with their deadlines and billing requirements. If there are no formal, written guidelines, ask the person handling the claim what his or her preferences are, and then exceed those expectations.

**2. Don't be tardy to the party.** Show respect for your profession and attend all court appearances, conferences, hearings, and depositions on time, if not early. You can often find time to engage opposing counsel in conversation that will build a rapport and help establish your credibility when settlement discussions come up later. Take the time to find out whether plaintiff’s counsel is aware of the critical issues in a trucking case. Are you going to be dealing with a straight-forward personal injury case or one dealing with negligence per se claims involving regulatory violations stemming from wholly unrelated (but factually similar) citations.

**3. Don't wake a sleeping baby.** Unless you are doing so for a strategic purpose, do not draw attention to issues of which plaintiff’s counsel might be unaware. Avoid producing witnesses and documents that might raise a negligent hiring claim. If the trucking company isn’t the target defendant, do not take actions that will bring it to the attention of opposing counsel/cross-defendants.

**4. It's all about the purses or the shoes or the bling.** Find out what legal issues in the case are most important to the opposing party and

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focus your efforts on those. Do not waste time and money on discovery issues that bear no relevance to any of the causes of action claimed by the plaintiff or the defenses you might bring. If the facts are adverse, consider admitting liability early in the case and spend your time reducing the plaintiff's claimed damages by way of economists, doctors, life care planners, and vocational rehabilitation experts.

**5. Don't bring a gun to a christening.** Pick your battles. If you develop an ongoing vexatious relationship with opposing counsel, you will find yourself in court over minor discovery issues that otherwise could have been worked out with a phone call or a handshake. (See rule #3.) At the same time, make sure the opposing side knows that when an issue is important to you, you are going to fight to the bitter end.

**6. The fashion show is never about the fashion.** It is important to network with industry leaders so that you can rely on the advice of your friends and colleagues when novel legal issues arise. Research is expensive and clients do not like to pay to educate you on the law. Have a rolodex of friends in the transportation industry you can call to ask questions and bounce ideas off of them.

**7. Sometimes the invitation says hats are required.** Pay attention to the small print. Plaintiff's records, especially medical and employment records, often include some great gems that you can use in your defense. Do not wait until the last minute to go through those records or you may be forced to spend a lot of money ordering additional records on an expedited basis, deposing treating doctors and employers at the last minute and hiring experts (such as biomechanical and human factors experts) late in the case.

**8. Doing body shots in Mexico isn't always the wisest decision.** Don't just "go with the flow." Create a discovery plan and a budget and stick to them. Try to anticipate the flow of discovery in the case, based on the allegations being made and the factual information available to you. Your pre-trial report shouldn't announce that you need to retain three additional experts, conduct a scene inspection, and depose five additional percipient witnesses that your investigator just found. While your theory of defense will develop naturally as the case moves forward, defense costs shouldn't triple every time you get within two months of trial.

**9. Bringing your own case of Pinot Grigio to the party is just plain tacky.** Be professional and polite, even when opposing counsel doesn't show you the same courtesy. Reputation goes a long way.

**10. Money can't buy you class.** Do not make assumptions about your clients, the plaintiffs, or other counsel based on their education, socioeconomic background, or any other stereotype. By doing so, you can misjudge your opponents, underestimate their talents, and miss critical issues that could have been developed in discovery. Just because your driver only has an elementary school education does not mean the jury will not be impressed by his 30 years of practical experience in the industry. Likewise, do not assume the jury will be impressed by the shiny suit and zip code of plaintiff's counsel, just because he or she is a self-professed "trucking lawyer" who practices in Beverly Hills. We all put our pants on one leg at a time—unless, of course, you happen to be wearing Louboutins.

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[Back...](#)