



A **Crash Course** in Virginia Automobile Injury Cases
Revised Edition

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Automobile
Injury Cases

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THE WARREN FIRM

VIRGINIA INJURY LAW

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Introduction

If you are reading this book, you probably fall into one of two categories: those who have recently been injured in an automobile accident, or those who know and care about someone who was. This book was written especially for you. However, for those readers fortunate enough to have avoided an accident thus far, this book is also addressed to you. Having spent my entire career devoted to personal injury law, I have come to realize that information is a powerful sword. Being informed could mean the difference between a six figure settlement, or no case at all.

Automobile accidents do not discriminate. Informed or not, you are equally likely to be injured in a collision. However, taking the time to understand your options either before or after an accident has occurred could dramatically affect your future circumstances in a positive way. This book will provide you with the information you need to best navigate your circumstances towards recovery. Please understand that nothing in this book is intended to replace legal advice. **Legal advice can and will only be given to you by the attorney you have hired.** This book is also not intended to be a “do it yourself book,” to allow you to handle your case on your own.

This book will provide you with information on two important topics. First, you will learn how to evaluate your need to hire a Virginia automobile accident attorney and when and how to do so should you decide that an attorney is needed. Additionally, you will gain

important insight into the insurance business. This information is critical to the success of your case.

Remember, not all attorneys are suited to handle your injury case. You must put some effort into researching who you hire. You want a knowledgeable attorney willing to go into battle on your behalf, and a battle is exactly what your case against the insurance company will be. You should not believe that the insurance companies are looking out for your best interests. A good attorney, however, will be a strong force on your side. I believe that this book will provide you with the information and confidence needed to make an educated decision.

Part 1

How to Hire an Attorney for a Virginia Automobile Collision Case

Do I Need an Attorney?

Before you can decide which attorney to hire, you first need to answer the

question, “Do I even need to hire an attorney?” To make an informed decision, there are a few things to consider.

1. Insurance companies and their employees handle personal injury cases all day every day. They are experts in their field and understand how to go about settling your case. However, they also are businesses looking to make a profit; the less money they pay out in claims, the more profit they make. Therefore, they want to settle your case for as little as possible. Insurance companies will employ various tactics aimed at getting you to accept their minimum offer. Common tactics they may employ include:

A. Stalling

Insurance companies often engage injured parties in a waiting game. They realize that time is of the essence for many personal injury victims. For example, an injured person who is unable to work will quickly discover that bills continue to pile up, in spite of the fact that they have no income. This monetary pressure creates a sense of urgency for many, and knowing this, insurance companies will often slow down their processes to try to pressure a victim into settling his or her case.



B. Rushing

While this is the opposite of the first tactic, it is also employed by insurance companies. The idea behind rushing is to get to you to settle your case as quickly as possible, either before you know the full extent of your injuries, or before you have been properly informed as to whether or not you need an attorney. They will often ask you to give a recorded statement and provide them with a medical authorization so they can access your medical bills and records. Based on this information, they will attempt to settle the case with you, while trying to convince you that they will treat you fairly and that you do not need an attorney. People often realize later that they are, in fact, not being treated fairly when it comes time to discuss settlement of the case.

C. Trying to Assign Some Blame to the Victim

Virginia is a contributory negligence state. This means that if you are in any way responsible for the collision, you are not entitled to be compensated. Insurance companies will be looking for any reason to assign blame, however minimal, to you, as the victim, in an attempt not to have to compensate you. This is one of the reasons they often rush to get you to make a recorded statement. They are hoping to use your statement as proof that you were in some way partially responsible for the collision.

- 2. A personal injury case is ultimately worth what a jury will award you at trial.** Juries are made up of

seven random citizens in the county or city in which the lawsuit is filed. No one, including attorneys who handle personal injury cases every day, can tell you the amount a jury will decide to compensate you.

But an attorney that predominately handles personal injury cases will be able to provide you with guidance based on the facts of your case. Also remember, that the insurance company's goal is to pay you as little as possible. They handle hundreds, if not thousands, of cases similar to yours every year. They know firsthand the range of settlements and verdicts.

As a victim handling the case on your own, you have no experience and no way of knowing what the appropriate settlement value is. While no one can tell you what an individual jury will do, an experienced attorney can work on your behalf to determine a likely range that a jury may award. An attorney will also be able to assess the risk of a jury ruling unfavorably against you.

3. Handling a personal injury case often involves dealing with several types of liens. If you handle your own case, you will most likely not know how to identify certain liens on your case or how to resolve them if they do exist.

A *lien* is a legal claim that someone else (usually a company) makes in order to get paid later for whatever they have done for you. In personal injury cases, these are usually liens for medical expenses.

Liens you may encounter as the injured party include:

A. Health Insurance Liens

You may be required to reimburse your health insurance for bills they paid. This is a very delicate area that requires specific knowledge to assess. Many health insurance policies are now written to allow the company to recover payments if you receive compensation for bills in a personal injury case. This process is called *subrogation*. While Virginia has an anti-subrogation statute, the Virginia law is superseded if the policy is written under the Federal ERISA Statute. Some health insurance companies will claim they are entitled to reimbursement, even if this is not the case.

B. Medicare Liens

If you are a Medicare recipient, and Medicare paid for your medical bills, you will be required to pay back Medicare from any settlement you receive. Starting July 1, 2009, Medicare began enforcing a provision that provides for money to be withheld from settlement for any future medical treatment that is related to the automobile collision. Medicare liens are currently handled by a government contractor. The amount of the lien can be negotiable in some situations.

C. Medicaid Liens

Similar to Medicare liens, Medicaid recipients who have injury related medical bills covered by

Medicaid, must also reimburse Medicaid. Medicaid is a state-run program and not nearly as flexible as Medicare when it comes to negotiating liens; however, negotiation can be successful **in limited instances.**

4. Professional insurance adjusters negotiate cases all day long on behalf of insurance companies.

Without an attorney working on your behalf, you will need to make sure that you are extremely comfortable negotiating with these professional adjusters. This requires the ability to stand firm and not simply accept what the insurance company tells you the value of your case is.

5. Without an attorney, you severely handicap the possibility of one of the only and most powerful leveraging tools available to you: the ability to file a lawsuit. While you can file suit without an attorney, it will be **extremely difficult to litigate the case on your own.** Virginia has very strict time tables, procedural rules and evidentiary rules. The courts enforce the rules and requirements whether you are aware of them or not. Without an experienced attorney working with and for you, you can actually harm your case. If you miss a deadline, of which you are unaware, you may so severely harm your case that you no longer have a case.

The bottom line: good representation is not expensive when you consider what no representation can cost you. You would not consider treating yourself

medically in order to avoid paying a physician or building your own house unsupervised in order to avoid paying a contractor, unless you had the necessary expertise. Handling these types of situations requires specialized knowledge gained from years of training and experience. Hiring an attorney for a personal injury case should be viewed from the same perspective.

After reading the above information, you may be convinced that one should always hire an attorney. While it is always a good idea to consult with an attorney about your situation – most attorneys will be happy to discuss your case and options with you free of charge – there *are* instances in which you will be better off without one. If your case involves minimal doctor visits with very limited medical bills, you most likely will not be dealing with enough of the complexities explained above to obligate the cost of an attorney's expertise.

What Will the Attorney Charge?

Most attorneys that regularly handle personal injury cases do so on a contingency fee basis. This means the attorney's fee is a percentage of the recovery. If there is no recovery, there is no attorney's fee. Even though there is no fee, you will still be responsible for the costs, or what the attorney had to pay to other parties while pursuing your case. The Virginia State Bar requires that the client be responsible for these costs. Examples of costs are the filing fee to file your lawsuit, the copying charges from the hospital for photocopying your medical

records, or the fee your doctor charges to testify or meet with your attorney.

Most attorneys charge one-third of the recovery or 33.3% for attorney's fees. For some more complicated or more risky cases, such as medical malpractice or premise liability cases, an attorney may charge forty percent. Some firms have a hybrid fee agreement where they charge 33.3% at the start of the case and then move to 40% if the case requires suit to be filed. Some move to 40% only if the case has to be taken to trial.

It may even be possible to have an attorney handle your personal injury case on an hourly fee. Few personal injury cases are taken by the hour because most clients cannot afford to pay the attorney to handle the case on a pay as you go basis. The attorney will likely charge a large retainer to start the case. You will have to pay the fees as you go, and if you lose your case you will still be responsible for the attorney's fees. Some attorneys may agree to a mix of contingency fee and hourly fee. Again, the standard fee is one-third of the recovery.

Considerations in Hiring an Attorney

The decision of which attorney to hire is an important decision. There are many attorneys from which to choose. Some are better than others. Some are going to be more suited to your needs than others. You may be working with this attorney for a few years, so you

need to make sure you choose the attorney that is qualified to handle your case.

There are some attorneys that will take a personal injury case, hoping for a quick settlement. When the case does not settle and suit needs to be filed, they either refer the case to a more experienced trial attorney or tell the client to find another lawyer. Obviously, this is not the type of attorney you want to retain.

Particularly in more complex cases, or cases involving significant injuries, some attorneys get into the case and find out that it is much more complicated and requires much more work than they anticipated. No insurance company is going to hand over a large sum without putting up a fight.

Some attorneys will harm your case more than help it.

In a real life example, a client hired an attorney. The case was complex and there were a number of parties that were potentially responsible for the client's injuries, one of which was a state government entity. The attorney did not properly investigate the case and failed to put the government entity on proper notice, thereby forfeiting the claim against the state.

The attorney then waited until a few months before the deadline to file suit on the case, and he still did not know the parties against he was to file suit. The client and attorney parted ways shortly before the deadline to file suit. The client then hired another attorney who had time to investigate the appropriate parties but neglected to do so. On the last day possible, a law suit was filed by that attorney. Rather than filing and signing his name, the attorney filed it in the client's name as if the client had filed the lawsuit without an attorney. The client received poor representation from not one, but two attorneys on the same case.

Situations like this, while rare, demonstrate why you must not simply hire the attorney with the best commercials or the first one you see in the yellow pages. It is an important decision and one you should not take lightly

There are some questions that you should consider when deciding on which attorney to retain. While they may not be all of the factors, they will provide you with a great start on what to ask a potential attorney before you hire them.

1. What is the focus of the firm's practice?

Many firms handle many different types of cases: domestic, criminal, estate planning, and bankruptcy are just a few examples. Many firms will also take on personal injury cases. Some mistakenly believe they can get a quick settlement for you. However, if they are not knowledgeable in the area of personal injury, it will be apparent to the insurance company and defense attorney. Find out what percentage of the attorney's practice is dedicated to automobile accident and personal injury cases.

2. Does the attorney take many cases to trial?

Many attorneys do not try cases. It has been said that 20% of the attorneys try 80% of the cases. This may not be exactly true, but it demonstrates the need to go with an attorney that is willing to try a case. If the attorney is not willing or does not have the experience to try the case, the settlement value of your case will likely suffer.

3. Does the attorney stay involved with organizations of other attorneys that practice personal injury?

While many attorneys may be competitors for business purposes, most attorneys that practice in the same area

unite to work together to be better attorneys and to better represent their clients. Some organizations not only work to help keep their member attorneys better educated but also work to protect the rights of individuals who are injured. In Virginia, the organization is known as the Virginia Trial Lawyers Association (VTLA).

4. Does the attorney write and speak to other attorneys about personal injury law and related topics?

A history of published works and professional speaking engagements is a sure sign that the attorney you are hiring is well-versed in Virginia automobile accident cases. Many speaking engagements for attorneys consist of Continuing Legal Education (CLE) courses. Attorneys pay for these courses and expect to hear from experienced attorneys who are experts at handling and trying specific types of cases.

5. Does the attorney regularly attend educational seminars about automobile collision topics?

All Virginia attorneys must attend 12 hours of continuing legal education a year; the courses can be on any topic. Attorneys who focus on automobile collisions are more likely to be up to date on the latest law, cases and strategies of handling Virginia Automobile Accident cases.

6. Do other attorneys regularly refer personal injury cases to this attorney?

If other attorneys regularly refer cases to your attorney, it can indicate that your attorney is respected within the profession.

7. If it is a large firm, which attorney will you be working with?

How does the attorney you are assigned measure up when asked these questions? If you are not told at the first meeting who your attorney will be, how do you know what kind of attorney you will be working with?

8. Are you meeting with an attorney on your first visit?

This may be an indication of how much you will actually work with an attorney versus working with the staff.

9. When are you assigned an attorney?

There are firms that will not assign you an attorney until a lawsuit needs to be filed. This means that all of the preliminary work, including possible settlement, is done by someone other than an attorney. While this staff member may be supervised by the attorney, they will be doing the day to day work on the case.

10. Does the firm feel like a big box store or a mill as soon as you get there, or does it feel like you will get personal attention?

You need to be comfortable with the firm with whom you are going to be working with. If it feels like you are just a number in the beginning, it will likely get worse. Bigger is not an indication of better.

11. Does the attorney carry malpractice insurance?

While most attorneys do carry malpractice insurance, it is not required. Make sure your attorney has insurance in place so you can still recover if that attorney makes a mistake. If the attorney is not covered by malpractice insurance, and makes a mistake, it will be more difficult for you to make a recovery.

D. Does Advertising Matter?

You may have noticed that one of the questions to consider is not: “Does the attorney advertise?” Just because a firm spends a lot of money on television advertisements does not mean that it is a better firm than those that do not. It does not matter to the insurance company who you will have to resolve your case. There are some large advertising firms that are known for not trying cases. Within some large advertising firms, there are some lawyers who never try cases. The insurance company’s lawyers will know if your attorney is one who is hesitant or unwilling to go to court and will treat your case accordingly.

Many people mistakenly assume that because a firm advertises, it is a great firm. All advertising means is that the firm is willing to pay a lot of money to get its name publicized. It in no way reflects on the ability of its attorneys.

There are some firms that advertise that have good attorneys and enjoy a good reputation among other attorneys. You should not judge the firm by the amount of advertising. Size them up by the criteria previously

discussed and that will help you to make a better decision regarding the firm or attorney and whether they are right for your case.

You are making an important decision when hiring an attorney. All attorneys are not the same. Make sure you give thought to who you hire.

Alert: If you are contacted by an attorney or someone on behalf of a law firm for injuries from a Virginia automobile accident, you may have been improperly solicited. Unless you have a previous relationship with a firm or you have previously contacted them, a lawyer should not contact you at home or a hospital for the purpose of trying to get you to hire them.



Part 2

Virginia Collision Cases

A. Liability & Damages

The first major factor is *liability*. Liability is basically who was at fault for the car accident or for the injury. Since Virginia has



contributory negligence, most insurance companies will not quickly concede liability. In fact, it is not often conceded until days before trial. The following are two examples:

Example 1:

If you are a passenger in a vehicle that was sitting at a stop sign, and then are rear ended, liability will likely not be an issue.

Example 2:

The accident occurred at a stop light, and you and another driver claimed you both had a green light. If there were no independent witnesses, then establishing liability will be more difficult.

If liability is difficult to establish, then the value of the case is diminished. If you lose on liability, then you make no recovery. If a Virginia insurance company believes that they have a chance to show you were partly at fault for the collision, even if their insured was negligent, they will be more likely to want to try your case to a jury. Since they believe they have a certain chance to prevail at trial, their offer will be lower because they have a chance to

pay you nothing if the case is tried and you are found partly or totally at fault.

Damages

The next major factor is damages, or your injuries, and what effect have they had on your life. If a car accident causes you to sustain a neck sprain or back sprain that hurts for a few days or weeks, but does not have much effect on your life or work, then you will likely only make a modest recovery; a fair outcome, given that you had only modest injuries. Obviously, if a car accident leads to a herniated disc in your neck that requires a cervical fusion surgery and permanent injuries, then your damages are much more significant.

It is more important to understand that just because you have an injury that requires surgery; it does not mean that the injury is completely related to the accident. In many cases, the treating physician relates the injury that the plaintiff is claiming to the collision. Many times the insurance company will hire a doctor to give an opinion that the injury was either not related to the car accident, or was only partially due to the collision.

Likewise, if you make a claim that you are no longer capable of doing your job and claim future lost wages, the defense can argue that you could go back to work and that they are not responsible for the future wages. Regardless of what the dispute is as to damages, how strong the evidence is for each element will affect the total value of the case.

Venue

Venue is where the case may be permissibly filed. While in the eyes of the law it does not matter where the case is filed, from a practical standpoint it can make a difference. While most attorneys would probably agree that most venues in Virginia are conservative, there are some that are less conservative than others and a very few that could be considered favorable to personal injury victims.

Personality of the Plaintiff

The plaintiff is the injured party, and while it may not seem fair that the personality of the plaintiff matters, it does. It does not matter from a legal standpoint but from a common sense standpoint. If the injured party is a hardworking individual who is sincere to the jury, they will make a better recovery than one who is seen by the jury as making a “mountain out of a mole hill,” or trying to get something for nothing. You can be sure the insurance company understands this and the offers to settle the case will reflect whether the plaintiff is credible and will make a good impression with a jury.

Attorney

The attorney can absolutely make a difference in the value of the case. If an injured party is represented by an attorney who does not regularly try personal injury cases, and has a reputation for settling cases, the insurance company will likely take this into consideration when making offers. If, however, the attorney regularly handles these types of cases, and he understands how to try a

case, and is willing to try a Virginia car accident case to a jury, then the insurance company is more likely to be concerned, which may be reflected in their evaluation of the case.

Coverage

The amount of insurance coverage available is always important. If there is only \$25,000, the minimum in Virginia, then this is the most an injured party can recover. This is why it is so important to purchase higher limit policies. If you have a higher limit policy that includes underinsured or uninsured coverage, you will be able to access more coverage in any situation.



B. Wrongful Death Case

Wrongful Death is the term for ____.

Qualifying an Administrator or Personal Representative

For a Virginia Wrongful Death Case to be brought, someone must qualify as the Administrator or Personal Representative of the estate. If there is a will, the personal listed as the administrator of the will would be the person that could bring the wrongful death action on behalf of the beneficiaries.

If there is no will, then any family member who is a beneficiary can qualify as the personal representative. If

no family member comes forward, then a non-family member can qualify. The qualification process takes place in Circuit Clerk's Office in the city or county where the person was killed.

If the deceased is a child, the role of Administrator will be granted first to the custodial parent. If no parent applies within thirty (30) days, the Administrator role is granted just like in other cases.

Time Limit

A case for wrongful death must be brought within two (2) years after the death of the injured person. There are some factors that could extend that time limit, but it is a good idea to file within two years. Failure to do so can bar the case from going forward.

The Family Members Who Can Make a Recovery

It depends on what family the deceased leaves behind, to determine which family members can make a recovery from a Virginia Wrongful Death Case. The Virginia Code sets out five classes of family members who can recover.

Class I: Spouse and Children

If the person who was killed has a spouse and children, then the spouse and the children are entitled to recovery under Virginia law. If the deceased has a child that died before him but who also had children, then the deceased child's children can make a recovery.

Class II: Parents and Siblings and Relatives who are Primarily Dependent on the Deceased and are Members of the Same Household

If the deceased person has no spouse or children, then the family members who can recover in a Virginia wrongful death case are the parents, brothers and sisters of the deceased person. Also included in this category is any relative who is primarily dependent on the deceased for support or services and is a member of the same household of the person that was killed.

Class III: Spouse and Parents

If the deceased leaves a spouse and no children and his parents are still alive, the spouse and the parents are entitled to be included in the distribution of a Virginia wrongful death settlement or verdict.

Class IV: Any Relative Who is Primarily Dependent on the Deceased and is a Member of the Same Household

The Virginia Code says that if there are survivors under I, II, or III, then the distribution should be made to those members plus any relative who is primarily dependent on the deceased person for support or services and is a member of the same household as the person killed. This language is a little strange, because it is already used in describing Class II, but now the dependent relative of the household is given the ability to recover with members of all three of the other classes.

Class V: If No Other Class Applies, Then This is What Happens

If the deceased person does not leave any relatives described under Classes I-IV, then the award should be distributed as provided for in Virginia Code Section 64.11. The Code Section provides for distribution as follows:

First. To the surviving spouse of the intestate, unless the intestate is survived by children or their descendants, one or more of whom are not children or their descendants of the surviving spouse, in

which case two-thirds of such estate shall pass to all the intestate's children and their descendants and the remaining one-third of such estate shall pass to the intestate's surviving spouse.

Second. If there be no surviving spouse, then the whole shall go to all the intestate's children and their descendants.

Third. If there be none such, then to his or her father and mother or the survivor.

Fourth. If there be none such, then to his or her brothers and sisters, and their descendants.

Fifth. If there be none such, then one moiety shall go to the paternal, the other to the maternal kindred, of the intestate, in the following course:

Sixth. First to the grandfather and grandmother or the survivor.

Seventh. If there be none, then to the uncles and aunts, and their descendants.

Eighth. If there be none such, then to the great-grandfathers or great-grandfather, and great-grandmothers or great-grandmother.

Ninth. If there be none, then to the brothers and sisters of the grandfathers and grandmothers, and their descendants.

Tenth. And so on, in other cases, without end, passing to the nearest lineal ancestors, and the descendants of such ancestors.

Eleventh. If there be no paternal kindred, the whole shall go to the maternal kindred; and if there be no

maternal kindred, the whole shall go to the paternal kindred. If there be neither maternal nor paternal kindred, the whole shall go to the kindred of the husband or wife, in the like course as if such husband or wife had died entitled to the estate.

The class and beneficiaries who are eligible to receive a distribution are fixed either at the time of the verdict by the jury who will specify the distribution, or at the time the judgement is rendered and the court determines the distribution.

While the court must approve any distribution, in many settlements the different beneficiaries agree to the distribution. If an agreement is made the court will often allow the distribution to be made as agreed as long as the court determines it is fair to all parties.

If the parties do not agree, then the court will hear evidence and will decide how the settlement should be distributed among the beneficiaries.

Damages

If a jury decides the case, the jury will be charged with determining what level of compensation each beneficiary is entitled to.



C. Circuit Court

All Virginia Circuit Courts generally follow the same format. A jury decides the case in Circuit Court.

Pretrial:

Pre-trial motions will be heard before jury selections. If there are any objections from either the Plaintiff's counsel or the Defendant's counsel, these objections, motions *in limine* to exclude information, or particulars will be decided before the actual trial begins.

Voir Dire:

Jury selection begins with 13 qualified jurors. Each side strikes one alternatively until there are seven.

Opening Statements/Testimony

Plaintiff's witnesses:

- All witnesses to be presented by the Plaintiff such as the reporting officer, family, friends, experts and other witnesses as necessary.
- Defendant's cross-examination of Plaintiff's witnesses after each person testifies.
- Defendant's counsel questions witnesses.

Defendant's witnesses:

- All witnesses to be presented by the Defendant include experts and other witnesses as necessary.
- Plaintiff's counsel cross-examines Defendant's witnesses.
- Plaintiff's counsel questions witnesses.

If there are important questions to be answered or clarified, the Plaintiff's counsel may recall a witness who has already testified to clarify testimony or to respond to a Defendant's witness and/or expert.

Closing Statements

- Plaintiff's counsel makes the first closing statement.
- Defendant's closing statement
- Final statements are made with assessment and conclusion of the defendant.
- Plaintiff's Rebuttal. The plaintiff's attorney gets the final argument because the defendant has the burden of proof.

Jury Deliberations

The jury is taken to the deliberation room, where they can discuss the evidence and decide on the verdict.

Verdict

The jury decides the Verdict, and the findings of the jury are presented to the Court.

D. General District Courts

Virginia General District Courts are very useful in obtaining a quick return date and trial date, unlike Circuit Court which could result in a trial date over a year later. The filing fee for a Complaint in General District Court is also several hundred dollars cheaper.

You may file for up to \$25,000.00. The costs of preparing the case for trial are significantly smaller as well. General District Court cases do not require the extensive legal

pleadings that are the norm in Circuit Court or Federal Court trials.

Additionally, General District Court cases allow for affidavits to be used to validate medical bills and records without having a doctor testify. It can cost over \$5,000 to have a doctor to travel to Court to testify, and taking the doctor's deposition by video to be used in Court will cost between \$1,000 to \$2,000. While sometimes it is acceptable to use a video testimony to save money, in cases where a client has injuries that may be contested, having the doctor testify live is more effective.

Less money spent on the litigation of your Virginia personal injury case in General District Court usually translates into more money in your pocket at the end of your case. But some cases really need to be filed in the Circuit Court when medical bills and injuries are severe. A case with those qualifications will typically absorb the higher litigation costs because the recovery will likely be greater than \$25,000.

Here are a few advantages and disadvantages of filing a Virginia car accident injury case in General District Court:

Advantages:

- The case will be heard more quickly
- Less court and attorney costs involved
- No formal discovery by either side
- Can present medical records to the Court
- If the verdict is appealed by the defense, medical records can still be used in the Circuit Court case

Disadvantages:

- The verdict can be appealed
- Can only file for up to \$25,000

Your attorney will likely discuss with you the advantages and disadvantages of putting your case in General District Court.

Part 3

How *Not* to Harm Your Virginia Automobile Case

How Insurance Companies Operate

After an automobile accident in which you are injured, an insurance adjuster will likely contact you. It may be an adjuster from your insurance company, or it may be an insurance adjuster from the defendant's insurance company.

The adjuster for the defendant's insurance company will probably act quickly. He will have the scene of the accident photographed, take pictures of the cars involved, talk with the insured, and will most likely try to talk with you. These adjusters are trained to get to you, the injured party, quickly before you have had a chance to understand your rights or talk with an attorney. The adjusters are under no obligation to let you know what your rights are. They have a team of investigators and defense attorneys who are responsible for protecting the interests of the insurance company and not those of the injured party.

While the adjuster may be quite pleasant and friendly, he is trained to take advantage of the fact that the injured party does not have knowledge or experience in how to proceed or even how to evaluate the case. The adjuster will try to explain to you why your case is not worth much. Insurance companies will try many methods to deny your claim altogether or make the recovery as small as possible, so you should NOT do any of the following:

1. Admit to any fault at the scene of the collision.

Your initial thoughts on how the collision occurred may not be correct. If you admit you were partly to blame for the collision, you will likely be barred from making a recovery. This includes any statement you give to the insurance company or police.

If you are unsure of the facts, you should not be making a statement about them. For instance, if you do not know what your exact speed was prior to the collision, you should not say you were probably going a little over the speed limit.

As mentioned earlier, Virginia has contributory negligence law which means that if you are partly to blame for the collision you are not entitled to make a recovery. People are often shaken up, injured, or confused at the scene of the accident and answer questions without fully understanding their answers or the ramifications of answering incorrectly. Once you make a statement at the scene, it is often hard to reverse the statement.

2. Fail to get medical attention.

While you should never exaggerate the extent of your injuries, you should let the officer at the scene know you are hurt. If you are having some pain, do not assume it is nothing and that it will get better. If you prefer not to go to the emergency room in an ambulance, let the officer know you will follow up for treatment on your own. It is not uncommon for a person to believe he is fine at the scene, but to develop

symptoms in the coming hours or days. However, if you simply wait for it to get better and three months later go to the doctor, it will be argued that your injury must have come from some other event after the collision.

3. Give a statement to any insurance company.

Insurance companies often try to quickly get you to make a recorded statement about the collision. Rarely does the statement help you in any way. While the statement will likely not be admissible in court, it will be used against you in the acceptance of liability and for settlement purposes.

If you think it does not cause harm to give a statement, you should ask the insurance adjuster if you can take a recorded statement of their insured. It is not hard to guess what their response will be.

4. Not move quickly to have pictures taken of the vehicles involved in the collision.

If there is significant damage to the cars, they will likely be moved to a salvage yard quickly. You will want to have photographs taken of all vehicles involved if possible. Once they are moved to the salvage yard, they will either be sold or destroyed, and the opportunity to have them photographed may be lost.

Photographs of the damage to your car or the other cars involved in the collision can be one of the most persuasive pieces of evidence in your case. If you do not have an attorney, make sure you take at least a whole roll of film or digital pictures. If you have a digital

camera, take plenty of photographs. If you do not own a camera, buy a disposable camera and use all of the film.

Insurance companies will often take photographs of the damages and they may sometimes be used at trial. Some insurance companies are very savvy and will only take photographs when there is minor property damage. (Of course those photographs will be used in their explanation of why you could not have sustained any or little bodily injury).

5. Not seek medical treatment for injuries.

If you are injured, you need to be seen by a medical provider as soon as possible. Do not try to “tough it out” if you are experiencing real pain. If you wait until a month after the collision, the insurance company will surely bring up that there was a gap between when you were in the collision and when you first sought medical attention. On the other hand, you should NEVER go to a doctor just to run up medical bills.

6. Miss medical appointments.

A sure way to cause problems with your case is to not show up for appointments with doctors or medical providers. The records will reflect that you did not show up and will cause the insurance company, and possibly a jury, to look negatively on your case. If you do not have a ride, or cannot make the appointment, you must call ahead and explain to the provider that you need to

reschedule and inform them why you cannot make the appointment.

7. Give the insurance company authorization to contact your doctors.

You should not sign a medical authorization for the insurance company to get your medical records or allow them to contact your medical providers. They could then possibly contact your doctor and discuss your case without you present. They could also use the authorization to request medical documentation that has nothing to do with your injuries from the collision.

8. Believe the insurance company will act in your best interest.

Despite what an insurance representative may tell you, he does not have the same goal you do. The insurance reps want to re- solve your case as quickly as possible for the least amount possible. Over the years, I have had many people come to me months, or even a year after the automobile accident, and tell me that they needed an attorney. When asked why they waited so long to hire an attorney, they tell me the insurance company said that they did not need an attorney and that they would be treated fairly. When the time came to talk about resolving the case, the client quickly realized that their own definition of “fair” was not the same as that of the insurance company.

9. Not tell your attorney about previous personal injury cases.

You need to make your attorney aware of any and all previous personal injury cases you have been involved in. If you have had a previous automobile collision with personal injuries, have been hurt on the job and had to make a worker's compensation claim or been injured on someone's property and had to make a claim for injuries, it is imperative that you tell your attorney. The insurance company will check with an index to see if you have ever claimed injuries previously. If you do not notify your attorney, he can be sandbagged by the insurance company. While it may not be fatal to your case, it does create an unnecessary roadblock.

10. Not tell your attorney about previous injuries.

This can be one of the most fatal flaws to your case.

Particularly in cases involving a neck or back injury. Your doctor's opinion that your injury is related to the automobile collision may be based on the fact that you had no prior history of injuries to the affected area. If you do not tell you attorney about the previous treatment, it will almost surely be found by the insurance company. If you have not disclosed the previous condition, it will almost certainly sink your case. If a lawsuit is filed on your be- half, one of the first questions the defense will ask is for you to list all the medical providers you have seen in the last ten to fif- teen years.

They are going to be looking at your medical history so your attorney needs to know what is out there.

11. Not follow your physician's instructions.

You need to follow all of the instructions that your doctor gives you. If you are given lifting restrictions or are told not to engage in certain activities, you need to adhere to those restrictions. If there is any evidence that you did not follow the doctor's orders, the insurance company will use it against you.

12. Have your attorney refer you to a doctor.

If you do not have a regular family physician, you should follow up with the doctor recommended to you by the emergency room. Try asking family members or friends who they have seen and use those recommendations. It will not help your case and in fact will look bad if it comes out that you were sent to a particular doctor by your attorney.

13. Not hire an attorney that focuses on helping people who are injured.

There are many attorneys out there. Some focus their practices on one specific area of law, while others have more of a general practice, and handle cases in all areas. Some attorneys mistakenly believe that they can take a personal injury case and get a quick settlement. Quick settlements are not the norm in personal injury cases. You want an attorney who is going to prepare your case to be tried, in case that is what becomes necessary. Attorneys that regularly handle injury cases

will likely be able to identify the problem areas and address them quickly.

14. Settle your case before you are released from treatment by the doctor.

You can only resolve your case once. When you settle the case you will have to sign a release barring you from later filing a suit against that person or entity. If you resolve the case and later need further medical treatment, you will be on your own.

Conclusion

Recognizing the lack of information available to the public, I wrote this book to equip you with the information you need to take the appropriate steps following your injury in a Virginia automobile accident. I hope that in reading, you have acquired a new confidence in your ability to move towards a successful recovery.

Remember, a good attorney will be happy to discuss the de- tails of your case with you at no charge. Take the time to talk with an attorney that specializes in automobile accident cases. Do not undermine the importance of hiring an experienced attorney who is well-respected in the community and is willing and able to take your case all the way to trial. Now that you are better informed, you will hopefully be able to recognize which attorneys have had more experience and success handling cases similar to yours. Look for attorneys who have a variety of published works and speaking engagements amongst their credentials, a sure sign that they will be well-versed in Virginia automobile accident cases.

Perhaps most importantly, remember that insurance companies handle personal injury cases all day every day. They are NOT looking out for your best interest; they are looking to turn a profit. You will be fighting a battle with these companies. Make sure that you have a knowledgeable attorney on your side – you do not want to go into battle alone and unarmed.

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