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<b>OVERVIEW OF VIRGINIA COURT SYSTEM</b>	
Court levels: 3	
Trial courts: 31 Judicial Circuits, 122 trial courts	
Highest court: Supreme Court of Virginia	
<b><i>Trial Courts</i></b>	
<p>1) <b>General District Court</b></p> <p>a) <b>Jurisdiction:</b> Exclusive jurisdiction over all matters with less than \$4,500 in controversy. Va. Code § 16.1-77(1)(i)-(ii). Concurrent jurisdiction with the Circuit Court over all matters with between \$4,500 and \$25,000 in controversy for any claim specific to personal property. Va. Code § 16.1-77(1)(i). Concurrent jurisdiction with the Circuit Court over all matters with between \$4,500 and \$50,000 in controversy for any personal injury claim. Va. Code § 16.1-77(1)(ii).</p> <p>b) <b>Divisions</b></p> <p>i) Small claims division (amounts in controversy not to exceed \$5,000) - Special division for small claims cases litigated exclusively between <i>pro se</i> parties. If an attorney will represent either party to the case, it will be tried on the Court’s regular docket.</p> <p>ii) Regular docket (amounts in controversy greater than \$50,000) - The General District Court operates under relaxed pleading requirements, a simplified discovery process, and generally has a quicker case resolution timeline than Circuit Court. There is no right to a jury in the General District Court, and it is not a Court of record. Any decision of the General District Court may be appealed, as of right, to the Circuit Court of the same jurisdiction, where such case will be reviewed <i>de novo</i>.</p> <p>2) <b>Circuit Court</b></p> <p>a) <b>Jurisdiction:</b> Exclusive jurisdiction over property claims with greater than \$25,000 in controversy. Exclusive jurisdiction over all personal injuries claims with greater than \$50,000 in controversy. Concurrent jurisdiction with the General District Court over all property claims with between \$4,500 and \$25,000 in controversy and all personal injury claims with between \$4,500 and \$50,000 in controversy.</p> <p>b) <b>Jury Trial:</b> For jury trial cases where the Circuit Court has exclusive jurisdiction, the jury shall be composed of seven (7) members. For jury trial cases where the Circuit</p>	

Court shares concurrent jurisdiction with the General District Court, the jury shall be composed of five (5) members. Each side is entitled to three (3) peremptory strikes, and thus the panel must include at least six (6) more members than the jury will ultimately be comprised of (i.e., a seven-member jury must have a thirteen-member panel, and a five-member jury must have an eleven-member panel).

### ***Appellate Courts***

There are two types of Appellate Courts:

#### **1) Court of Appeals of Virginia**

- a) Jurisdiction: The CAV is Virginia’s intermediate-level appeals court. Beginning in January 2022, any final judgment, order, or decree of a Circuit Court hearing a civil matter may be appealed as of right to the CAV. Va. Code § 17.1-405(3).
- b) Procedure: Beginning in January 2022, appeal by the Commonwealth to the CAV in criminal and traffic cases is taken by petition. Va. Code § 17.1-406(A). In all other cases over which the CAV has jurisdiction, appeal is taken as of right. Va. Code § 17.1-406(A). Cases are decided by three judge panels, and the Court may decide to rehear a case *en banc*. Va. Code § 17.1-402.

#### **2) Supreme Court of Virginia**

- a) Jurisdiction: The SCV is Virginia’s highest appeals court. The SCV has jurisdiction to consider appeals of all cases from the CAV, unless made final under Va. Code § 17.1-410 or § 19.2-408. Va. Code § 17.1-411.
- b) Procedure: Appeal to the SCV is taken by petition only. Va. Code § 17.1-411. If a petition for appeal is granted by the Court, the full nine-member Court will consider and decide the case.

## **PROCEDURAL OVERVIEW**

### ***Venue***

- 1) **Preferred venues** (Va. Code § 8.01-261): In limited, enumerated situations, Virginia law dictates a “preferred” location where the action should be filed; “[v]enue laid in any other forum shall be subject to objection.” A non-exhaustive list of these situations includes:
  - a) Administrative appeals
    - i) In a dispute between an aggrieved party and Virginia and/or a Virginia administrative agency, preferred venue lies where the aggrieved party:
      - (1) Resides;
      - (2) Regularly or systematically conducts affairs of business activity; or
      - (3) Wherein such party’s property affected by the administrative action is located.
    - ii) If the above does not yield a preferred venue, then preferred venue is the county or city where the disputed administrative action/decision occurred;
  - b) Injunctions
    - i) If a party seeks an injunction of a judgment or judicial proceeding of a district court or circuit court, venue shall be in the circuit court in the county or city in which the judgment was rendered or such proceeding is pending;
    - ii) For any other type of injunction, preferred venue is the circuit court of the county

or city in which the act sought to be enjoined is to be done, or is being done, or is apprehended to be done;

c) Virginia Tort Claims Act

- i) The city or county where the claimant resides;
- ii) The city or county where the act or omission complained of occurred; or
- iii) If the claimant resides outside the Commonwealth and the act or omission complained of occurred outside the Commonwealth, the City of Richmond.

2) **Permissible venues** (Va. Code § 8.01-262): In all situations where a “preferred venue” is not specifically enumerated by Va. Code § 8.01-261, plaintiff may file suit in any “permissible venue” enumerated in Section 262:

- a) Wherein the cause of action, or any part thereof, arose;
- b) Wherein the defendant resides or has the principal place of employment or, if the defendant is a corporation, wherein its mayor, rector, president or other chief officer resides;
- c) Wherein the defendant has a registered office, has appointed an agent to receive process, or such agent has been appointed by operation of the law;
- d) Wherein the defendant regularly conducts substantial business activity;
- e) In actions to recover or partition personal property, whether tangible or intangible, the county or city:
  - i) Wherein such property is physically located; or
  - ii) Wherein the evidence of such property is located.
- f) Wherein any of the plaintiffs reside if:
  - i) All of the Defendants are unknown or are nonresidents of the Commonwealth; or
  - ii) There is no other forum available under any other provisions of Va. Code § 8.01-261 or Va. Code § 8.01-262.

3) **Motion to Transfer Venue** (Va. Code § 8.01-264) Any objection to improve venue is waived if not raised by the defendant in his initial responsive pleadings before the Court. If a motion to transfer venue is filed, the Court may hear such Motion and transfer the case to any judicial district within the Commonwealth according to the venue provisions of Va. Code § 8.01-261 and 262. If venue for a suit filed by a nonresident properly lies outside the Commonwealth, the Court may dismiss the suit without prejudice so that it may be filed in another jurisdiction pursuant to the doctrine of forum *non conveniens*. Va. Code § 8.01-265.

**Statute of Limitations**

Below is a summary of civil statutes of limitations in Virginia

Injury to Person	Personal Injury: 2 years (Va. Code § 8.01-243(A))
	Wrongful Death: If no action for personal injury damages was filed during the injured person’s life, and such claim also was not time-barred prior to the injured person’s death, an action for wrongful death may be filed within two (2) years of the injured person’s death. Va. Code § 8.01-244(B).
Injury to Property	5 years (Va. Code § 8.01-243(B))
Professional Malpractice	Legal: 5 years if a written contract exists, 3 years if there is no written contract between attorney and client. (Va. Code § 8.01-246(2), (4).
	Medical: The normal two-year limitations period for personal injury actions is extended in certain circumstances related to medical malpractice:  In cases with a foreign object with no therapeutic purpose being left in the patient’s body, one (1) year after discovery or after the object should have reasonably been discovered. Va. Code § 8.01-243(C)(1).  In cases in which fraud/concealment prevented discovery of the injury, one (1) year after discovery or after the injury should have been discovered. Va. Code § 8.01-243(C)(2).  In cases involving a negligent failure to diagnose a malignant tumor/cancer, one (1) year from the date the malignancy is communicated to the patient. Va. Code § 8.01-243(C)(3).
	Written: 5 years (Va. Code § 8.01-246(2))
	Oral: 3 years (Va. Code § 8.01-246(4))
Contracts	Written: 5 years (Va. Code § 8.01-246(2)) Oral: 3 years (Va. Code § 8.01-246(4))
Defamation	1 year (Va. Code § 8.01-247.1)
Fraud	2 years (Va. Code § 8.01-243(A))

***Responsive Pleading***

- 1) **General District Court:** Typically, a general district court case is initiated by the filing and service of a “Warrant in Debt,” a simple court-furnished form. The parties will then appear for a “return date” before the Court, at which time the Court will inquire whether the matter is contested. At the time of the return date, the parties may move for more definite pleadings—for plaintiff, a Bill of Particulars and for defendant, a Grounds of Defense.
- 2) **Circuit Court** (Va. Sup. Ct. R. 3:8) Responsive pleadings shall be filed within twenty-one (21) days after service of the summons and complaint. If a defendant has waived service of process, then responsive pleadings shall be filed within sixty (60) days of when the request for waiver was sent, or ninety (90) days if the request was sent to the defendant outside of Virginia. If the defendant demurs, files a plea in bar, or files a motion rather than filing an answer, such defendant’s answer is due within twenty-one (21) days after the entry of the order overruling such demurrer/plea in bar/motion.

***Dismissal and Re-Filing of Suit***

- 1) **Nonsuits** (Va. Code § 8.01-380) A plaintiff has the absolute right to voluntarily dismiss his or her action once at any time prior the case being submitted to the jury, submitted to the court for decision (as in a bench trial), or prior to a motion to strike the plaintiff’s evidence being granted. A plaintiff may move the court for additional nonsuits after the first is taken as of right, but it is within the court’s discretion whether to allow such additional nonsuits.
- 2) **Refiling after a Nonsuit** (Va. Code § 8.01-229) The plaintiff must refile the case in the same court where the nonsuit was taken. The period during which the nonsuited case was pending does not count for the purposes of the statute of limitations. The plaintiff must refile the case either (a) within the original limitations period for the action, or (b) within six (6) months of the date of the order from the court commemorating the nonsuit, whichever period is longer.

**LIABILITY*****Negligence***

- 1) **Elements**
  - a) The elements of a cause of action for negligence are: (a) a legal duty to use reasonable and ordinary care toward the plaintiff; (b) a breach of such legal duty through unreasonable conduct; [and] (c) such breach was both the cause in fact and the proximate cause of plaintiff’s injury; and (d) plaintiff suffered actual harm and damages in the form of physical injury to plaintiff’s person or property. Kaltman v. All American Pest Control, Inc., 281 Va. 483, 489-90 (2011).
- 2) **Defenses**
  - a) Contributory Negligence: Virginia is a contributory negligence jurisdiction, where any negligence whatsoever on the part of the plaintiff will bar recovery completely.
  - b) Assumption of risk: A plaintiff who subjectively appreciates a particular risk, and voluntarily encounters such risk, is completely barred from recovering on account of any injury sustained therefrom. Amusement Slides Corp. v. Lehmann, 217 Va. 815, 818-19 (1977).
  - c) Sudden Emergency Doctrine: A person who, without negligence on his or her part, is suddenly and unexpectedly confronted with imminent circumstances requiring

immediate action without giving time for the deliberate exercise of judgment, that person has a duty to exercise the care that an ordinarily prudent person would exercise in the same situation (i.e., the jury is permitted to consider the fact that an emergency was ongoing when determining whether the person behaved negligently). Harrah v. Washington, 252 Va. 285, 294 (1996). This defense is disfavored in Virginia, and although it has not been completely abandoned the Court has held that it is more appropriate for cases involving exigent circumstances of unknown or uncontrollable origin rather than motor vehicle accidents which may merely involve the negligence of multiple parties. Id.

- d) **Rescue Doctrine:** A plaintiff who exposes himself voluntarily to danger because he was attempting to rescue someone from imminent and serious danger is not negligent if he did not create the danger and his conduct was not rash and reckless under the circumstances. Lassiter v. Warinner, 235 Va. 274, 276-77 (1988).
- e) **Last Clear Chance:** Contributory negligence will not bar plaintiff's recovery if (a) plaintiff's negligence placed him in peril which he could not cure or did not realize, (b) defendant realized or should have realized plaintiff's peril, and (c) defendant could have prevented injuring the imperiled plaintiff by using ordinary care. Williams v. Harrison, 255 Va. 272, 276-77 (1998).

#### ***Gross Negligence and Willful/Wanton Conduct***

- 1) **Gross negligence:** Gross negligence is a degree of negligence which shows such extreme indifference to the well-being of others as to constitute an utter disregard of caution. Ferguson v. Ferguson, 212 Va. 86 (1971).
- 2) **Willful/wanton conduct:** Willful and wanton conduct is acting in conscious disregard of the well-being of others or reckless indifference to consequences of which an actor is aware where the actor is aware of a risk that injury will result from his actions. Alfonso v. Robinson, 257 Va. 540 (1999).

#### ***Negligent Hiring, Supervision, Retention, and Entrustment***

- 1) **Negligent hiring and retention:** Under the tort of negligent hiring, an employer can be directly liable to an injured plaintiff if it knows, or by reasonable investigation should have discovered, that it was placing a dangerous individual in an employment situation that created an unreasonable risk that others will be physically harmed. Interim Personnel of Central Virginia, Inc. v. Messer, 263 Va. 435 (2002); Phillip Morris, Inc. v. Emerson, 235 Va. 380 (1988).
- 2) **Negligent supervision and training:** Virginia has never recognized a cause of action for the negligent supervision and training of an employee. Chesapeake and Potomac Tel. Co. v. Dowdy, 235 Va. 55, 61 (1988).
- 3) **Negligent entrustment:** Under the tort of negligent entrustment, a person may liable if he or she allows a significantly unsuitable driver to operate his or her motor vehicle. The entrusted driver's unsuitability must be marked, such as a driver with a congenital defect to his eye muscles that disqualified him from obtaining a driver's license, Denby v. Davis, 212 Va. 836, 837-38 (1972), or a driver with a known propensity for alcohol abuse, who had already had his driver's license revoked due to his alcoholism, Crowell v. Duncan, 145 Va. 489, 510 (1926). The tort of negligent entrustment does not lie merely where a driver had driving infractions on his record, or a prior history of accidents. Turner v. Lotts, 244 Va. 554, 558 (1992).

***Dram Shop***

Virginia does not recognize dram shop liability. Williamson v. Old Brogue, Inc., 232 Va. 350, 353 (1986).

***Joint and Several Liability***

Two or more tortfeasors that are all found liable by a verdict for injury to the plaintiff are each responsible to the plaintiff for the whole of the verdict rendered, regardless of their respective degree of fault. Each joint tortfeasor is responsible to the other for contribution in a *pro rata* amount according to his individual responsibility for the injury. Va. Code § 8.01-34.

***Wrongful Death and/or Survival Actions***

- 1) **Wrongful death** (Va. Code § 8.01-50) A personal representative may bring a cause of action seeking damages for a decedent's death. Such damages are sought on behalf of the decedent's statutory beneficiaries, and are intended to compensate such beneficiaries for the loss of the decedent—for this reason, there are no damages awarded for the decedent's own pain and suffering in a wrongful death action. If the decedent maintained a personal injury action prior to death, and during the pendency thereof died as a result of the acts complained of in the personal injury action, the personal injury action can be amended to a wrongful death action. Va. Code § 8.01-56.
- 2) **Survival action** (Va. Code § 8.01-25) If a decedent had a viable cause of action for personal injury damages, but died prior to the resolution of that action, the decedent's personal injury action can be brought by a personal representative on behalf of the estate. If the personal injury action was pending at the time of death, such personal injury action can be amended to a survival action. Va. Code § 8.01-56.

***Vicarious Liability/Respondeat Superior***

An employer is liable for damages proximately caused by the negligence of an employee if the employee was acting within the scope of his employment. Smith v. Landmark Communications, Inc., 246 Va. 149, 151-52 (1993). Scope of employment is presumed if it is established by a preponderance of the evidence that the allegedly negligent actor was an employee. United Brotherhood of Carpenters and Joiners of America, AFL-CIO v. Humphreys, 203 Va. 781, 788 (1962). If an employee acted with multiple motives, then the employer is vicariously liable for the employee's actions as long as one of the employee's motives was to serve the employer.

A person who hires an independent contractor is generally not liable for the independent contractor's actions unless the independent contractor was performing work which was unlawful, or inherently dangerous. McDonald v. Hampton Training Sch. for Nurses, 254 Va. 79, 81 (1997).

***Workers Compensation Exclusivity Rule***

Worker's compensation generally provides the exclusive remedy for workers against their employer when they are injured during the course of their employment. Va. Code § 65.2-307.

**DAMAGES*****Statutory Caps on Damages***

Virginia does not have a cap on noneconomic damages (e.g., pain and suffering).

Punitive Damages: Punitive damages may not exceed \$350,000, although the jury is not informed about the existence of this cap. Va. Code § 8.01-38.1.

Medical Malpractice: The cap is currently \$2.45 Million, but it increases each year according to a schedule set forth at Va. Code § 8.01-581.15.

***Compensatory Damages for Bodily Injury***

Virginia Model Jury Instruction (Civil) 9.000 states, in relevant part, that the jury may consider the following when determining a plaintiff's compensatory damages for a personal injury:

- (1) Bodily injuries sustained and their effect on the Plaintiff's health according to their degree and probable duration;
- (2) Any physical pain and mental anguish suffered in the past and any he may reasonably suffer in the future;
- (3) Any disfigurement or deformity and any associated humiliation or embarrassment;
- (4) Any inconvenience caused in the past and any that probably will be caused in the future;
- (5) Any medical expenses incurred in the past and any reasonably expected in the future;
- (6) Any earning lost because he was made unable to work;
- (7) Any loss of earnings and lessening of earning capacity, or either, that he may be reasonably expected to sustain in the future;
- (8) Any property damage he sustained.

***Collateral Source***

The plaintiff's recovery of damages is not affected by any compensation the plaintiff receives for his or her loss from other collateral sources, such as insurance proceeds or employment benefits. Collateral sources for plaintiff's recovery are not disclosed to the jury. Bullard v. Alfonso, 267 Va. 743 (2004).

***Pre-Judgment/Post-Judgment Interest***

Interest is automatically charged on a judgment from the date the judgment is rendered at a rate of six percent. Va. Code § 6.1-330.54. The jury may also award the plaintiff prejudgment interest by checking a box on the verdict form. Va. Code § 8.01-382. Prejudgment interest, if awarded, is charged at the same six percent rate.

***Damages for Emotional Distress***

In personal injury actions in which the plaintiff has suffered a physical injury, damages for mental anguish are recoverable as a component of the plaintiff's recovery.

In personal injury actions in which the plaintiff has not suffered a physical injury, however, recovery may be had if plaintiff can establish a claim for negligent infliction of emotional distress or intentional infliction of emotional distress:

**1) Negligent Infliction of Emotional Distress**

In Virginia, a plaintiff may recover for emotional distress in the absence of physical impact in very limited circumstances. The plaintiff must establish the defendant's negligence by preponderance of the evidence as normal, but must further prove by clear and convincing evidence that the defendant's negligence proximately caused the plaintiff "fright or shock" amounting to a physical injury. Hughes v. Moore, 214 Va. 27, 36 (1973).

**2) Intentional Infliction of Emotional Distress**

To establish liability for intentional infliction of emotional distress, a plaintiff must prove:

- (a) the wrongdoer's conduct was intentional or reckless
- (b) the wrongdoer's conduct was outrageous and intolerable in that it offends generally accepted standards of decency and mortality;
- (c) there was a causal connection between the wrongdoer's conduct and the plaintiff's emotional distress; and
- (d) the emotional distress was severe.

Womack v. Eldridge, 215 Va. 338, 342 (1974). This tort is "not favored" in Virginia. Supervalu, Inc. v. Johnson, 276 Va. 356 (2008). Consequently, an action for intentional infliction of emotional distress will only lie in exceptional cases where the wrongdoer's conduct was especially egregious and the plaintiff's emotional distress was especially severe. Russo v. White, 241 Va. 23, 28 (1991).

***Wrongful Death versus Survival Action Damages***

Whereas in a survival action a personal representative seeks to recover on behalf of the estate all personal injury damages to which the decedent would have been entitled in life, in a wrongful death action the personal representative may recover the following damages pursuant to Va. Code § 8.01-52:

- 1) Sorrow, mental anguish and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent;
- 2) Compensation for reasonable expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;
- 3) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;
- 4) Reasonable funeral expenses; and
- 5) Punitive damages may be recovered for willful or wanton conduct, or such recklessness as evinces a conscious disregard for the safety of others.

***Punitive Damages***

Punitive damages may be awarded if the plaintiff establishes that the defendant acted with actual malice toward the plaintiff, or was so willful or wanton as to show a conscious disregard for the rights of others. Kaltman v. All American Pest Control, Inc., 281 Va. 483, 494-95 (2011). Neither negligence nor gross negligence is a sufficient basis for punitive damages in Virginia. Green v. Ingram, 269 Va. 281 (2005). Although a plaintiff must be awarded some measure of compensatory damages in order to be eligible to also recover punitive damages, a trial court is not empowered to compare the amount of compensatory and punitive damage recovery to determine the appropriateness of a jury's verdict. Coalson v. Canchola, 287 Va. 242 (2014). Evidence of intoxication of a driver of a motor vehicle may form the basis of a claim for punitive damages. Va. Code § 8.01-44.5.

***Diminution of Value of Damaged Vehicle***

The plaintiff may recover the cost of repair to the vehicle, as well as any diminution between the market value of the vehicle after repairs as compared to the value before damage. Averett v. Shircliff, 218 Va. 202, 206-07 (1977).

***Loss of Use of Motor Vehicle***

A plaintiff may recover reasonable costs he actually incurred in hiring a comparable substitute vehicle for a reasonable period of time while the plaintiff's vehicle was repaired or replaced. Va. Code § 8.01-66.

**EVIDENTIARY ISSUES*****Exclusion of Traffic Collision Report and Traffic Citations***

A plea of guilty of *nolo contendere* in a criminal or traffic case is admissible in a civil action arising from the same facts. Va. Code § 8.01-418. This includes prepaid tickets, which are treated as pleas for the purposes of this rule. Va. Code § 19.2-254.1. Although the result of the traffic/criminal case is admissible in the civil action, it does not conclusively establish negligence; the defendant is free to present evidence that he/she was not negligent despite the plea. Chodorov v. Eley, 239 Va. 528, 532 (1990).

***Testimony of Investigating Police Officer***

A police report made at the time of an accident is not admissible as evidence in a civil trial arising from the accident, and it may not be used by a testifying police officer to refresh his or her recollection during testimony. Va. Code § 46.2-379; see Acuar v. Letourneau, 260 Va. 180 (2000).

***Failure of Motorcyclist to Wear a Helmet***

Motorcyclists are required to wear a helmet and either a face shield, safety glasses or goggles while operating the bike, but the motorcyclist's failure to wear such articles is not considered negligence *per se*. Va. Code § 46.2-910(A).

***Evidence of Alcohol or Drug Intoxication***

Punitive damages may be awarded in motor vehicle accidents if the plaintiff establishes that (1) the defendant's blood alcohol content was 0.15% or more at the time of the accident; (2) the defendant's intoxication was a proximate cause of the accident; and (3) the defendant knew, or should have known, that his driving would be impaired by the intoxication. Va. Code § 8.01-44.5.

***Expert Testimony***

Expert testimony is admissible when it would be helpful to the trier of fact. Va. Code § 8.01-401.3(A). Expert's testimony is admissible only when the subject matter is not within the range of a layperson's common experience; it is not admissible on matters of common knowledge which the jury is able to form an intelligent opinion about on its own. Tittsworth v. Robinson, 252 Va. 151 (1996).

In forming his or her opinion, the expert may rely on the facts, circumstances, and data that an expert in the field would normally rely on, regardless of whether such matters are admissible in evidence. Va. Code § 8.01-401.1. However, this license does not permit the expert to actually testify to the hearsay opinions of others, even if such hearsay was something on which the expert relied in forming his or her opinion. McMunn v. Tatum, 237 Va. 558, 566 (1989).

***Collateral Source***

Virginia prohibits the introduction of collateral sources for payment of medical expenses, Acuar v. Letourneau, 260 Va. 180, 188-89 (2000); Burks v. Webb, 199 Va. 296 (1957), and loss of income, Va. Code § 8.01-35; Bullard v. Alfonso, 267 Va. 743 (2004). Evidence of insurance coverage may be admissible when offered for a purpose other than proving a collateral source of recovery, such as proof of agency, ownership, or control; or proof of bias or prejudice of a witness. Va. Sup. Ct. R. 2:411.

***Recorded Statements***

In a personal injury case, any recorded statement or signed written statement made by the injured party must be tendered to the injured party within thirty (30) days of the statement being set down in written form, or upon request by the injured party or his/her attorney. Va. Code § 8.01-417.

***Prior Convictions***

Prior felony convictions, as well as convictions for perjury or a misdemeanor involving moral turpitude, are admissible. Va. Code § 19.2-269. There is no time limit for such convictions as there is under the federal rule.

***Spoliation***

A party to litigation, or a potential litigant, has an affirmative duty to preserve evidence that may be relevant to reasonably foreseeable litigation. Va. Code § 8.01-379.2:1(A). The court has discretion to take such steps as necessary to cure any prejudice resulting from spoliated evidence, and upon finding that the spoliation occurred due to recklessness or intentional conduct, may (a) give a “negative inference” instruction that the jury may presume the spoliated evidence would have been unfavorable to the spoliating party, (b) dismiss the action, or (c) enter a default judgment. Id. at -379.2:1(B).

**SETTLEMENT*****Offer of Judgment***

Virginia does not have offers of judgment the way that federal courts do. Va. Code § 8.01-421 provides that a defendant may pay money into court as a means of offering judgment to the plaintiff, but such system does not provide the same benefits/incentives to defendants that the offer of judgment provides in federal court.

***Liens***

A health insurance policy may not contain a provision giving it a right of subrogation for the insured’s personal injury action against a third party. Va. Code § 38.2-3405(A). However, insurance policies qualifying under ERISA are permitted by federal law to have liens, which takes precedence over Virginia’s state law prohibition.

***Settlement with a Minor***

When parties seek to settle a claim involving a minor, they must petition the Court to approve such settlement. Va. Code § 8.01-424. Virginia courts require a guardian ad litem be appointed by the court and make a recommendation to the court on behalf of the minor as to whether the settlement should be approved. Va. Code § 8.01-9. The settlement funds are generally held by a fiduciary in trust until the child reaches the age of majority.

***Confidentiality Agreements***

Confidentiality agreements are generally permitted in Virginia. However, a Virginia employer may not require an employee or prospective employee, as a condition of employment, to prospectively agree to a non-disclosure agreement for sexual assault claims. Va. Code § 40.1-28.01(A).

***Releases***

When a release is given to one of multiple joint tortfeasors, the release does not discharge any other person from liability unless the release terms expressly provide as much. The settlement agreement is also not admissible at a trial between plaintiff and any non-settling defendant(s). If a verdict is reached against the non-settling defendant(s), the Court reduces such verdict by the amount recovered from the settling defendant(s). Va. Code § 8.01-35.1.

***Voidable Releases***

When a claimant executes a settlement and release of liability within thirty (30) days of the incident giving rise to the claim, the claimant has the right to rescind the settlement for three (3) business days after executing it (provided he was not represented by counsel in negotiating the settlement). Va. Code § 8.01-425.1. A fraudulently induced settlement agreement is void where a defendant has made an intentional, knowing misrepresentation upon which the plaintiff has relied. Metrocall of Delaware, Inc. v. Continental Corp., 246 Va. 365, 373-74 (1993).

**TRANSPORTATION LAW*****State DOT Regulatory Requirements***

Information regarding Virginia's state-specific requirements for driver, vehicle, and cargo safety may be found at 19 VAC 30-20-20, et seq.

***State Speed Limits***

The baseline speed limit for Virginia highways is 55 miles per hour. Va. Code § 46.2-870. However, highways at which a traffic engineering study and analysis of accident and law-enforcement data has been performed may have a speed limit of 60 or 70 miles per hour, which increased speed limit is indicated by a speed limit sign. Id. If a highway has fewer than four lanes and is not a state primary highway, then trucks, tractor trucks, and combinations of vehicles designed to carry property are limited to traveling only 45 miles per hour, not the normal 55 miles per hours. Id.

***Overview of State CDL Requirements***

A driver is eligible for a commercial driver's license if he or she (a) is at least 21 years old, or has a special exception that allows an 18-year-old to obtain a CDL; (b) has been domiciled in Virginia for at least six weeks; (c) has applied for the license and passed the applicable vision, knowledge, and skills tests; and (d) surrenders any other CDL issued to him by another state. Va. Code § 46.2-341.9(A). Virginia's administrative regulations regarding CDLs can be found at 24 VAC 20-60-10, et seq.

**INSURANCE ISSUES*****State Minimum Limits of Financial Responsibility***

Virginia does not require drivers to obtain liability insurance, but imposes on all vehicles which are registered in Virginia that are not covered by a liability insurance policy an "Uninsured Motorist Fee" of \$500 per annum. Such fee is not insurance. Va. Code

§ 46.2-706. If a driver does elect to obtain liability insurance, such policy must provide a minimum coverage of \$25,000 per person and \$50,000 per occurrence for bodily injury, and must provide \$20,000 of coverage per occurrence for property damage. Va. Code § 46.2-472.

### ***Uninsured/Underinsured Motorist Coverage***

Uninsured/underinsured motorist coverage is mandatory in all auto liability policies issued in Virginia, and provides coverage for the insured in situations where the insured is involved in an accident with a driver who is “uninsured” or “underinsured.” Va. Code § 38.2-2206(A).

A vehicle is “uninsured” if (a) there is no liability insurance policy on the vehicle, or there is such coverage but the insurer has denied coverage, and (b) if the vehicle has not been approved as “self-insured” by the Commissioner of the Highways. *Id.* at -2206(B)-(C). A vehicle is also considered “uninsured” for the purposes of UM/UIM coverage if the insured is involved in an accident with an unknown driver (in such circumstances, the insured may maintain an action against “John Doe,” and his or her own UM/UIM insurer may defend the action in the name of John Doe). *Id.* at -2206(B).

A vehicle is “underinsured” when the total amount of coverage available for payment for that vehicle is less than the total amount of UM/UIM coverage available for payment for the insured. *Id.*

UM/UIM coverage is subrogable, and Virginia law allows the “stacking” of UM/UIM coverage. Intra-policy stacking is permitted unless there is express language in the policy prohibiting stacking. *Goodville Mut. Cas. Co. v. Borrer*, 221 Va. 967, 970 (1981). The order of priority is:

1. The policy covering the motor vehicle the injured insured occupied at the time of the accident.
2. Any policy covering a motor vehicle not involved in the accident under which the injured person is a *named insured*.
3. Any policy covering a motor vehicle not involved in the accident under which the injured person is an insured, but is not a named insured.

Va. Code § 38.2-2206(B).

### ***No Fault Insurance***

Virginia does not have a mandatory “no-fault” insurance regime. On each auto insurance policy issues in Virginia, insureds have the option to purchase medical payment benefits and lost wages benefits, which are payable regardless of fault. Va. Code § 38.2-2201.

### ***Disclosure of Limits and Layers of Coverage***

An injured person, or his attorney, may obtain information about the policy limits available to pay out for a motor vehicle accident prior to filing suit. Va. Code § 8.01-417(C)-(D). To obtain such information, the injured person or his or her attorney must request such limits in writing, and must provide the insurer certain information such as (a) the date of the accident, (b) the name of the insured, (c) furnish a copy of the accident report, and (d) provide the claim number for the accident, if available. Such injured person or his or her attorney must also provide the injured person’s medical records, medical bills, and wage-loss documentation and, provided such records demonstrate a claimed loss of at least \$12,500, the insurer must respond within thirty (30) days, providing the policy limits for any policies that may be available to cover the accident. *Id.*

***Unfair Claims Practices***

Va. Code § 38.2-510 enumerates an extensive list of practices which insurers are forbidden to “perform with such frequency as to indicate a general business practice.” Such list includes arbitrarily and unreasonably refusing to pay claims, and not attempting in good faith to make prompt, fair, and equitable settlements of claims in which liability has become reasonably clear. Although violation of this statute could expose the insurer to liability through a suit brought by a Virginia regulatory agency, there is no private right of action for an insured or other private party to enforce this statute. Va. Code § 38.2-510(B).

***Bad Faith Claims***

If an insurer unreasonably denies coverage or refuses payment to either the insured (a first-party claimant), or a person injured by the insured (a third-party claimant), then the insurer can be held liable for the costs and attorney’s fees incurred by its denial/refusal, in an action initiated by either the first-party or third-party claimant. Va. Code § 8.01-66.1; CUNA Mut. Ins. Co. v. Norman, 237 Va. 33, 38 (1989).

***Coverage – Duty of Insured***

The duty to defend is broader than the obligation to pay, and arises whenever the complaint contains a set of facts which, if proven, fall within the risk covered by an insurance policy. Va. Elec. & Power Co. v. Northbrook Prop. & Cas. Ins. Co., 252 Va. 265, 268 (1996).

***Fellow Employee Exclusions***

If an employee is injured by a fellow employee, and there is a causal connection between injury and the conditions under which the employer requires work to be done, then Worker’s Compensation covers the injury. If, however, the injury is not related to the work of the two employees, then the injury is not considered to have arisen out of the employment, and is not covered by Worker’s Compensation. Butler v. Southern States Coop., Inc., 270 Va. 459 (2005).