

# Index

## **ABSENTIA**

Evidence, **5:112, 5:114**

## **ACCIDENT REPORTS**

Costs of action, **1:33**  
Cross-examination, **5:106**  
Diagrams and charts, **5:108**  
Evidence, **5:104 to 5:108**  
Investigation of accident, **1:92**  
Traumatic brain injuries, **10:24**

## **AD DAMNUM CLAUSE**

General treatment, **2:30 to 2:34**  
Cap on amount of judgment, federal procedure, **2:31**  
Drunk driving cases, **15:20, 15:45**  
Insurance coverage, suit for more than, **2:34, 15:45**  
Modification of amount sued for, **2:33**

## **ADDITUR AND REMITTITUR**

Appeal, standard of review of remittitur on appeal, **8:79**  
Comparison analysis not valid measure of excessiveness of verdict, **8:78**  
Entry of judgment, time of, **8:81**  
New trial, generally, **8:73, 8:74, 8:84**  
Punitive damages, **8:80**  
Standard for grant of remittitur, **8:77**  
Time for entry of judgment, **8:81**

## **ADMISSION, REQUESTS FOR**

General treatment, **2:135 et seq.**  
Drafting of response, **2:151, 2:152**  
Form of requests for admissions, **2:236**  
Genuineness of documents, **2:138 to 2:140**  
Lack of information or knowledge, **2:152**  
Matters admitted, **2:141 to 2:143**  
Medical bills, presumption as to authenticity and reasonableness of, **2:139**  
Preparation of requests, **2:137**  
Purposes, **2:136**  
Sanctions for failure to admit, **2:143, 5:71**  
Trial exhibits, genuineness of, **2:140**

## **ADMISSIONS**

Cross-examination, obtaining admissions on, **5:87, 6:58 to 6:60**  
Intoxication, admission by defendant of liability, **5:137**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **ADMISSIONS—Cont'd**

- Medical evidence, obtaining admissions from defendant's physician or medical expert, **6:58 to 6:60**
- Requests for admission
  - general treatment, **2:135 et seq.**
  - for detailed treatment see index heading **ADMISSION, REQUESTS FOR**

### **AFFIDAVITS**

- Electronic service and filing, **2:78**
- Evidence. See index heading **EVIDENCE**
- Hospital or medical facility custodian of records, affidavit of (Va. Code Ann. § 16.1-88.2), **5:200**
- Service of process and papers, **2:59, 2:64, 2:65, 2:67, 2:78, 2:228**
- Treating or examining health care provider, affidavit of (Va. Code Ann. § 16.1-88.2), **5:199**

### **AGE**

- Children. See index heading **CHILDREN AND MINORS**

### **ALCOHOLIC BEVERAGES**

- See index heading **INTOXICATION**

### **AMNESIA**

- Traumatic brain injuries, **10:4**

### **ANALOGIES**

- Expert witnesses, use by, **5:57**
- Low impact, soft tissue injuries, **9:28**

### **APPEAL AND REVIEW**

- Attorneys' fees, **1:51**
- Costs of action, **1:33**
- Nonsuit, time for filing nonsuited action after appeal affirming nonsuit order, **2:97**
- Remittitur, standard of review of remittitur on appeal, **8:79**

### **APPEARANCE**

- Compulsory general appearance by defendant, failure to object to defect in service of process waives one year time limit, **2:48**
- Voluntary general appearance by defendant waives one year time limit for service of process, **2:47**

### **APPOINTMENT BOOKS**

- Medical evidence of defendant, subpoena duces tecum, **6:35**

### **APPROVAL**

- See index heading **CONSENT AND APPROVAL**

### **ARBITRATION**

- Low impact, soft tissue injuries, **9:18**

### **ARMED FORCES**

- See index heading **MILITARY SERVICE**

## INDEX

### **ASSOCIATION OF TRIAL LAWYERS OF AMERICA (ATLA)**

Structured settlements, attorneys' fees, **14:114**

### **ATTENTION SPAN**

Traumatic brain injuries, **10:9**

### **ATTORNEY GENERAL**

Compromise of liens of state, **1:110**

Liens on recovery, proposal for compromise of lien, **1:111**

### **ATTORNEYS**

Advice to client, **1:31 to 1:43**

Authorizations

general treatment, **1:53 to 1:58**

for detailed treatment see index heading **AUTHORIZATIONS**

Calendar of events, keeping by client, **1:41**

Communication by client with others, advice against, **1:40**

Costs to pursue claim, **1:33**

Decision whether to take case, **1:26 to 1:30**

Discovery process, participation of client in, **1:38**

Electronic service and filing. See index heading **ELECTRONIC SERVICE AND FILING**

E-mail address of counsel, **2:75**

Ethics. See index heading **ETHICS**

Evaluation of case

general treatment, **1:154 to 1:199**

for detailed treatment see index heading **EVALUATION OF CASE**

Fees

general treatment, **1:44 to 1:52**

for detailed treatment see index heading **ATTORNEYS' FEES**

Forms

basic instructions to clients, **1:228**

consent to representation of driver and passenger after full disclosure, letter confirming, **1:226**

non-engagement letter, **1:227**

Instructions to jury, preparation of, **8:19 to 8:22**

Interview of client

general treatment, **1:1 to 1:25**

for detailed treatment see index heading **INTERVIEW OF CLIENT**

Investigation of case

general treatment, **1:77 to 1:153**

for detailed treatment see index heading **INVESTIGATION OF CASE**

Management of case

general treatment, **1:59 to 1:76**

for detailed treatment see index heading **MANAGEMENT OF CASE**

Medical bills, instructions to client regarding, **1:42**

Mistrial motion based on improper statements by counsel, **8:50**

Negotiations and settlement

general treatment, **1:200 to 1:221**

for detailed treatment see index heading **NEGOTIATIONS AND SETTLEMENT**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **ATTORNEYS—Cont'd**

- New trial, prejudicial conduct of counsel during trial, **8:59**
- Nonsuit, assessment of attorney fees, **2:91**
- Paralegals, role of, **1:39**
- Privileged work product, requests for production of documents and things, **2:124, 2:125**
- Statute of limitations, **1:36**
- Subpoena duces tecum, attorney issued (form), **2:234**
- Subpoena issued by attorney, **2:127, 2:239**
- Time required to bring case to end, **1:34 to 1:37**
- “User ID” of attorney constitutes signature, **2:76**

### **ATTORNEYS' FEES**

- General treatment, **1:44 to 1:52**
- Appeal or collection efforts, **1:51**
- Contingent fees, **1:46**
- Costs, payment of, **1:48 to 1:50**
- Deposit, requirement of, **1:49**
- Execution of fee agreement, **1:52**
- Federal employees, actions against, **13:27**
- Form for retainer agreement, **1:229**
- Liens on recovery, **1:127, 1:128**
- Structured settlements
  - general treatment, **14:111 to 14:123**
  - for detailed treatment see index heading **STRUCTURED SETTLEMENTS**
- Types of fee agreements, **1:45**

### **AUDIO/VIDEO RECORDINGS**

- Demonstrative evidence, **5:75**
- Depositions. See index heading **DEPOSITIONS**
- Injuries to plaintiff, proof of, **5:151**
- Investigation of accident, **1:86**
- Low impact, soft tissue injuries, **9:29, 9:31**
- Traumatic brain injuries, **10:47**

### **AUTHENTICATION**

- Computer animations, **12:28, 12:36**

### **AUTHORIZATIONS**

- General treatment, **1:53 to 1:58**
- Assignment language, **1:57**
- Employment information, release of, **1:58, 1:231**
- Forms
  - employment authorization, **1:231**
  - lost wages statement to be sent to client's employer, **1:232**
  - medical authorization, **1:230**
- Medical information, release of, **1:54 to 1:57, 1:230**
- Revocation of prior authorizations, **1:55**

## INDEX

### **AUTOPSIES**

Interview of client, charges against defendants, **1:15**

### **BAD FAITH**

General treatment, **1:220**

### **“BAD FAITH” REFUSAL TO SETTLE**

General treatment, **1:250**

Low impact, soft tissue injuries, **9:36**

### **BALANCE DEFICITS**

Traumatic brain injuries, **10:14**

### **BANKRUPTCY**

Medical bills discharged in bankruptcy, admissibility of medical expenses when, **5:156**

Settlement proceeds from personal injury claim received by plaintiff-debtor in, **1:126**

### **BATSON**

General treatment, **3:56 et seq.**

For detailed treatment see index heading PEREMPTORY CHALLENGES

### **BEAMS**

Traumatic brain injuries, **10:43**

### **BEHAVIORAL CHANGES**

Traumatic brain injury, symptoms of, **10:21**

### **BIAS AND PREJUDICE**

Closing arguments, **7:16**

Computer animations, **12:14, 12:15, 12:22, 12:32**

Medical evidence of defendant, challenges to

general treatment, **6:28 to 6:41**

for detailed treatment see index heading MEDICAL EVIDENCE OF DEFENDANT

New trial, prejudicial conduct of counsel during trial, **8:59**

Peremptory challenges, supporting strike of contested juror, **3:68**

Selection of jury, **3:53 to 3:55**

### **BIFURCATION**

Drunk driving cases, **5:138, 15:23, 15:26, 15:27**

### **BIOGRAPHICAL INFORMATION**

Interview of client, **1:24**

### **BLOOD TESTS**

General treatment, **5:126 to 5:130, 15:8, 15:9, 15:11, 15:22, 15:30**

Punitive or exemplary damages, unreasonable refusal to submit to test, **5:136**

### **BONDS AND UNDERTAKINGS**

Costs of action, **1:33**

### **BRAIN ELECTRICAL ACTIVITY MAPPING (BEAM)**

Traumatic brain injuries, assessment of, **10:43**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **BRAIN INJURIES**

General treatment, **10:1 et seq.**

For detailed treatment see index heading TRAUMATIC BRAIN INJURIES

### **BRIEFS**

Motions, filing and service of briefs, **2:107**

### **BURDEN OF PROOF**

See index heading PRESUMPTIONS AND BURDEN OF PROOF

### **BUSINESS RECORDS**

Hearsay, exception to, **5:168**

### **CALENDAR OF EVENTS**

Keeping by client, **1:41**

### **CALENDARS OF COURT**

See index heading DOCKETS AND CALENDARS OF COURTS

### **CAUSE, CHALLENGES FOR**

Selection of jury, **3:53 to 3:55**

### **CENTER LINE, CROSSING OF**

Judgment as matter of law, **8:12**

### **CERTIFICATE OF SERVICE**

Electronic service and filing, **2:80**

### **CHARTS**

See index heading DIAGRAMS AND CHARTS

### **CHILDREN AND MINORS**

Motions in limine, competency to testify concerning speed of vehicle, **3:16**

Structured settlements, **14:26, 14:30, 14:110**

### **CHIROPRACTORS**

Damages, use to prove, **5:29**

Injuries to plaintiff, proof of, **5:150**

### **CLERKS OF COURT**

Costs of action, **1:33**

Electronic service and filing, annotation by clerk not required on pleading, **2:74**

### **CLOSING ARGUMENTS**

General treatment, **7:1 et seq.**

Abusive personal remarks regarding opposition, **7:27**

Aids in preparation of effective closing argument, **7:46**

Attributes of effective closing argument, **7:44**

Checklists

elements of effective closing argument, **7:48**

outline of sample plaintiff's closing argument, **7:49**

Content of closing arguments, **7:8 to 7:29**

Control by court, **7:3 to 7:7**

Curing of improper remarks and conduct, **7:33, 7:34**

## INDEX

### **CLOSING ARGUMENTS—Cont'd**

- Damages, discussion of, **7:24, 7:25, 7:38**
- Delivery of effective closing argument, **7:45**
- Demonstrative aids, use of, **7:12**
- Effectiveness of argument, **7:36 to 7:48**
- Failure to testify or present evidence, comment on, **7:26**
- Figures of speech, use of, **7:11**
- Financial condition of party, discussion of, **7:18**
- Goals of effective closing argument, **7:42**
- “Golden rule,” **7:19**
- Inferences and deductions fairly drawn from evidence, **7:8**
- Instructions to jury, **7:9, 7:34**
- Insurance coverage, discussion of, **7:17**
- Length of closing arguments, **7:4, 7:5**
- Low impact, soft tissue injuries
  - general treatment, **9:61 to 9:84**
  - for detailed treatment see index heading **LOW IMPACT, SOFT TISSUE INJURIES**
- Medical evidence of defendant, challenges to, **6:43**
- Misstatement of evidence or law, **7:14**
- New matters, discussion of, **7:15**
- New trial after improper closing argument, **7:35**
- Nonjury trials, **7:2**
- Number of attorneys involved in presentation of closing arguments, **7:6**
- Objections, **7:30 to 7:32**
- Opinion of counsel, **7:22**
- Opposition, comments on conduct of, **7:26 to 7:28**
- Pain and suffering, formula to calculate, **7:25**
- Parts of effective closing argument, **7:43**
- Passion or prejudice, appeals to, **7:16**
- Preparation for closing arguments, **7:39, 7:40, 7:46**
- Provoked or invited argument, **7:29**
- Rebuttal, importance of, **7:41**
- Right to make closing argument, **7:1, 7:2**
- Right to open and close, **7:7**
- Straying from evidence, **7:21**
- Stricken evidence, reference to, **7:23**
- Themes of case, restatement of, **7:37**
- “Tried and true” arguments, **7:47**
- Truthfulness of witnesses, **7:28**
- Vouching for witness, **7:22**

### **CLOTHING**

- Interview of client, evidence at scene, **1:17**

### **COMPROMISE**

- General treatment, **1:200 to 1:221**
- For detailed treatment see index heading **NEGOTIATIONS AND SETTLEMENT**

**COMPROMISE OF LIEN**

See index heading LIENS ON RECOVERY

**COMPUTER ANIMATIONS**

General treatment, **12:1 et seq.**

Authentication, **12:28, 12:36**

Checklists

discovery requests to learn about an animation, **12:53**

exclusion of computer animation, possible grounds for, **12:54**

Collection of relevant data, **12:7**

Creation of computer animations, **12:6 to 12:12**

Dangers associated with computer animations, **12:13 to 12:15**

Demonstrative evidence, admission to illustrate expert testimony, **12:43, 12:44**

Direct and cross-examination, use of, **12:46 to 12:48**

Discovery, use to learn about animation, **12:39, 12:53**

Experts

admissibility of computer animations as demonstrative evidence to illustrate expert testimony, **12:43**

comparing expert testimony and computer animated reconstructive evidence, **12:4**

opposition to computer animations, calling your own experts qualifications, **12:21, 12:33**

Federal court, evidentiary principles in, **12:16 to 12:28**

Hearsay, **12:23 to 12:25, 12:34**

Helpfulness, **12:20, 12:31**

Input of data, **12:9**

Instructions to jury, submission of limiting, **12:49**

Motion to exclude animation, **12:40 to 12:42**

Opposition to computer animations

general treatment, **12:38 to 12:52**

demonstrative evidence, admission to illustrate expert testimony, **12:43, 12:44**

direct and cross-examination, use of, **12:46 to 12:48**

discovery, use to learn about animation, **12:39, 12:53**

experts, calling your own, **12:48**

instructions to jury, submission of limiting, **12:49**

motion to exclude animation, **12:40 to 12:42**

understand and utilize all possible grounds for exclusion, **12:38**

Prejudicial effect, **12:14, 12:15, 12:22, 12:32**

Reconstruction evidence, **12:4**

Recording of videotape or film, **12:12**

Relevance, **12:19, 12:30**

Rendering, **12:11**

Scientific evidence, **12:26, 12:27, 12:35**

Scripting of motion, **12:10**

State court, evidentiary principles in, **12:29 to 12:37**

“Stealth witness,” computer animation as, **12:5**

Storyboard, development of, **12:8**



## INDEX

### **CONFESSION OF JUDGMENT**

Generally, **2:222**

Nonsuit may be taken after rejecting, **2:87**

### **CONFLICT OF LAWS**

Evaluation of case, **1:167**

### **CONSCIOUSNESS, LOSS OF**

Traumatic brain injuries, **10:3**

### **CONSENT AND APPROVAL**

“John Doe” cases, consent to settlement provisions in UM policy, **11:9**

Structured settlements, **14:50, 14:110**

### **CONSTITUTIONAL LAW**

Intoxication, constitutional defenses, **15:37, 15:38**

Peremptory challenges, remedy for unconstitutional exercise of, **3:73**

### **CONTINGENT FEES**

General treatment, **1:46**

### **CONTRIBUTORY NEGLIGENCE**

“John Doe” cases, **11:17**

Judgment as matter of law, presumptions favoring plaintiff when defendant alleges contributory negligence, **8:13**

### **CORPORATIONS**

Service of process and papers, **2:55 to 2:59**

### **CORROBORATING WITNESSES**

Dead man’s statute, failure to present corroborating testimony under, **8:9**

“John Doe” cases, **11:15, 11:16**

### **COSTS AND EXPENSES**

General treatment, **1:33, 1:48 to 1:50**

Accident reports, **1:33**

Admission, sanction for failure to admit, **5:71**

Discovery, generally, **2:206**

Duty to save costs, **2:227**

Expert witnesses, **1:33**

Motion to compel discovery, **2:206**

New trial, **8:88**

Nonsuit, **2:91**

Post-trial motions, **8:86 to 8:89**

Prejudgment interest, **8:87**

Service of process and papers, **1:33**

### **COUNSEL**

See index heading ATTORNEYS

### **COURT REPORTERS**

Costs of action, **1:33**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### CRIMINAL RECORDS

- Evaluation of case, **1:199**
- Interview of client, biographical information, **1:24**

### CROSS-EXAMINATION

- General treatment, **5:83 to 5:93**
- Accident report, use of, **5:106**
- Admissions, obtaining, **5:87, 6:58 to 6:60**
- Challenging witness as liar, **5:86**
- Computer animations, **12:46 to 12:48**
- Discrediting of witness, **5:85 to 5:88**
- Favorable testimony, obtaining, **5:91**
- Federal court rules, **5:89**
- Low impact, soft tissue injuries, sample cross-examination of defense orthopedic, **9:88**
- Medical evidence of defendant, challenges to
  - general treatment, **6:7, 6:8, 6:42 to 6:61**
  - for detailed treatment see index heading **MEDICAL EVIDENCE OF DEFENDANT**
- Persuasiveness of witness, limiting, **5:90**
- Prior inconsistent statements, **5:88**
- Purposes, **5:84 to 5:91**
- Reputation of witness for truth and veracity, **5:92**

### CUMULATIVE OR DUPLICATIVE MATTERS

- Cumulative testimony, **5:13**

### CURRICULUM VITAE

- Medical evidence of defendant, challenges to, **6:25**

### DAMAGES

- General treatment, **5:140 to 5:193**
- Closing arguments, **7:24, 7:25, 7:38**
- Driving while intoxicated. See index heading **INTOXICATION**
- Evaluation of case
  - general treatment, **1:170 et seq.**
  - for detailed treatment see index heading **EVALUATION OF CASE**
- Evidence, **5:140 to 5:193**
- Expert witnesses, **5:29 to 5:31**
- Instructions to jury, **8:39**
- Lay witnesses, proof of injuries, **5:143 to 5:146**
- Lost earnings
  - general treatment, **5:175 to 5:193**
  - for detailed treatment see index heading **LOST EARNINGS**
- Low impact, soft tissue injuries
  - general treatment, **9:38 et seq.**
  - for detailed treatment see index heading **LOW IMPACT, SOFT TISSUE INJURIES**
- Medical bills, proof of injuries, **5:154**
- Medical expenses
  - general treatment, **5:155 to 5:174**
  - for detailed treatment see index heading **MEDICAL EXPENSES**

## INDEX

### **DAMAGES—Cont'd**

- Medical expenses—Cont'd
  - write-offs, **5:163**
- Models and illustrations, proof of injuries, **5:152**
- New trial on basis of inadequate damages, **8:69**
- Non-monetary damages, adequacy of award for, **8:62**
- Opening statements, **4:11**
- Physicians, proof of injuries, **5:147 to 5:150**
- Punitive damages. See index heading PUNITIVE DAMAGES
- Relatives, friends and acquaintances, proof of injuries, **5:145**
- Special damages. See index heading SPECIAL DAMAGES
- Tangible evidence, proof of injuries, **5:151 to 5:153**
- Traumatic brain injuries
  - general treatment, **10:1 et seq.**
  - for detailed treatment see index heading TRAUMATIC BRAIN INJURIES
- Treating physician, proof of injuries and expenses, **5:147 to 5:149, 5:165, 5:166**
- Voir dire, prepare jurors to award full and fair damages, **3:31**
- X-rays and medical devices and appliances, proof of injuries, **5:153**

### **DATE**

- See index heading TIME AND DATE

### **DAY-IN-THE-LIFE VIDEOTAPES**

- Injuries to plaintiff, proof of, **5:151**

### **DEAD MAN'S STATUTE**

- Corroborating testimony, failure to present, **8:9**

### **DECLARATIONS AGAINST INTEREST**

- Investigating officer, testimony of, **5:110**

### **DEFAULT JUDGMENT**

- Participation by carrier in negligence action on behalf of defendant driver, **1:140**

### **DEFERRED PAYMENT**

- Structured settlements, **14:19**

### **DEFINITIONS**

- Low impact, soft tissue injuries, **9:3 to 9:5, 9:39**
- Minor impact, soft tissue injuries, **9:3 to 9:5**
- Served, **2:108**
- Structured settlements
  - generally, **14:2 to 14:23**
  - for detailed treatment see index heading STRUCTURED SETTLEMENTS

### **DEMEANOR**

- Expert witnesses, **5:54**

### **DEMONSTRATIVE AIDS**

- Closing arguments, **7:12**

### **DEMONSTRATIVE EVIDENCE**

- General treatment, **5:72 to 5:78**

**DEMONSTRATIVE EVIDENCE—Cont'd**

For detailed treatment see index heading **REAL AND DEMONSTRATIVE EVIDENCE**

**DEMURRER**

Punitive damages, asserting claims for punitive damages sufficient to survive demurrer, **2:38**

**DEPOSITIONS**

General treatment, **2:128 to 2:134, 2:159 to 2:201**

Audio/video recordings

generally, **2:183**

editing, **2:185**

errata sheets, use of, **2:198 to 2:201**

filing transcripts, **2:187**

procedures, **2:184**

written transcripts, **2:186**

Client, preparation for depositions, **2:159 to 2:166**

Errata sheets

generally, **2:192**

audio/video recordings, **2:198 to 2:201**

impeachment, original responses used for, **2:195**

majority federal court view on changes by errata sheet, **2:193 to 2:196**

minority federal court view on changes by errata sheet, **2:197**

reasons for changes, stating, **2:194**

reopening original deposition, **2:196**

Evidence, use as, **5:8, 5:16, 5:68, 5:69**

Forms

notice of deposition, **2:235**

pre-deposition instructions to clients, **2:238**

Inconsistencies, use of, **2:178**

Leading questions, use of, **2:176**

Limitation or termination of examination at deposition, **2:132**

Low impact, soft tissue injuries, **9:31, 9:32**

Medical evidence of defendant, challenges to, **6:26, 6:27**

Medical practitioners, requests for disclosures from, **2:181**

Notice of examination, **2:172, 2:173**

Number of depositions, **2:134**

Objections to examination at deposition, **2:131**

Offers of proof, **5:101**

Persons to depose, **2:133**

Place for depositions, **2:171**

Preparation for depositions, **2:159 et seq., 2:238**

Procedure, **2:130 to 2:132, 2:169 to 2:173**

Production of documents, request for, **2:173, 2:180**

Purpose, **2:129**

Review of information before depositions, **2:163, 2:164**

Role play before depositions, **2:161 to 2:165**

Signing of deposition, **2:188 to 2:191**

Specificity of questions, **2:175, 2:177**

## INDEX

### **DEPOSITIONS—Cont'd**

- Strategy, **2:174 to 2:178**
- Telephone depositions of witnesses, **2:182**
- Time and date
  - general treatment, **2:170**
  - determination of times, **2:177**
  - signing of deposition, **2:191**
- Videotaped depositions, use of errata sheets, **2:198 to 2:201**
- Waiver of signing of deposition, **2:189, 2:190**
- Witnesses, **2:179 to 2:183**

### **DIAGRAMS AND CHARTS**

- Accident reports, **5:108**
- Closing arguments, **7:12**
- Demonstrative evidence, **5:75**
- Expert witnesses, use by, **5:35, 5:47**
- Investigating officer, testimony of, **5:110**
- Traumatic brain injuries, **10:48**

### **DIRECTED VERDICT**

- General treatment, **8:1 to 8:17**
- For detailed treatment see index heading **JUDGMENT AS MATTER OF LAW**

### **DIRECT EXAMINATION**

- General treatment, **5:80 to 5:82**
- Computer animations, **12:46 to 12:48**
- Expert witnesses, **5:32 to 5:39**

### **DISCOVERY**

- General treatment, **2:110 to 2:209**
- Admission, requests for
  - general treatment, **2:135 et seq.**
  - for detailed treatment see index heading **ADMISSION, REQUESTS FOR**
- Attorney issued subpoena, production of documents and things, **2:127**
- Client participation in preparation of response to written requests, **2:146**
- Computer animations, **12:39, 12:53**
- Depositions
  - general treatment, **2:128 to 2:134, 2:159 to 2:201**
  - for detailed treatment see index heading **DEPOSITIONS**
- Drafting of response to written requests, **2:147 to 2:152**
- Drunk driving cases, **15:14**
- Evasive or incomplete answers, **2:205**
- Expenses of motion to compel discovery, award of, **2:206**
- Expert testimony, federal court rules for supplementing disclosures of, **2:154, 2:155**
- Form of answers under Virginia court rules, **2:149**
- Insurance coverage of defendant, **1:149**
- Interrogatories
  - general treatment, **2:112 to 2:117**
  - for detailed treatment see index heading **INTERROGATORIES**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **DISCOVERY—Cont'd**

- Low impact, soft tissue injuries, **9:24, 9:31, 9:32**
- Malpractice, Rule 4:10 examination, **2:203**
- Medical examinations, court ordered, **2:202**
- Motions to compel discovery
  - general treatment, **2:204 to 2:209**
  - evasive or incomplete answers, **2:205**
  - expenses, payment of, **2:209**
  - expenses of motion, award of, **2:206**
  - failure to comply with order compelling discovery, **2:207**
  - sanctions for failure to make required disclosures, **2:208, 2:209**
- Objections
  - subpoena duces tecum, **2:158**
  - written requests, **2:157**
- Participation of client, **1:38**
- Production of documents and things, requests for
  - general treatment, **2:118 to 2:127**
  - for detailed treatment see index heading PRODUCTION OF DOCUMENTS AND THINGS
- Responding to written requests, **2:144 to 2:156**
- Sanctions for failure to make required disclosures, **2:208, 2:209**
- Supplementation of response to written requests, **2:153, 2:156**
- Supplementation or correction of response to written requests, **2:156**
- Time frame for response to written requests, **1:37**
- Written discovery requests
  - expert testimony, federal court rules for supplementing disclosures of, **2:154, 2:155**
  - form of answers under Virginia court rules, **2:149**

### **DISCREPANCIES IN DATA**

- Investigation of case, **1:102**

### **DISCRIMINATION**

- General treatment, **3:56 et seq.**
- For detailed treatment see index heading PEREMPTORY CHALLENGES

### **DISMISSAL**

- Nonsuit, exclusion of parties or claims dismissed from original action, **2:93**
- Service, special appearance to file motion to dismiss for failure to obtain timely service, **2:49 to 2:52**

### **DIVERSITY**

- Federal court jurisdiction, **2:22**

### **DIVISION OF MOTOR VEHICLE**

- Investigation of case, **1:92**

### **DIZZINESS**

- Traumatic brain injury, symptoms of, **10:14**

### **DOCKETS AND CALENDARS OF COURTS**

- Structured settlements, **14:68**

## INDEX

### **DOCKETS AND CALENDARS OF COURTS—Cont'd**

Time required to bring suit to end, **1:37**

### **DRIVING WHILE INTOXICATED**

General treatment, **5:124 to 5:139, 15:1 et seq.**

For detailed treatment see index heading INTOXICATION

### **DRUGS**

See index heading INTOXICATION

### **DUPLICATING FEES**

Costs of action, **1:33**

### **DUPLICATIVE MATTERS**

See index heading CUMULATIVE OR DUPLICATIVE MATTERS

### **DYNAMISM**

Expert witnesses, credibility of, **5:43**

### **EARNING CAPACITY, LOSS OF**

General treatment, **5:178, 5:186 to 5:193**

For detailed treatment see index heading LOST EARNINGS

### **ECONOMISTS**

Damages, proof of, **5:29**

Future lost earnings, proof of, **5:184**

Lost earnings, **5:190**

Structured settlements, **14:48**

### **ELECTROENCEPHALOGRAPHY (EEG)**

Traumatic brain injuries, assessment of, **10:41**

### **ELECTRONIC SERVICE AND FILING**

General treatment, **2:72 to 2:82**

Annotation by clerk not required on pleading, **2:74**

Certificate of service, **2:80**

E-mail address of counsel, inclusion of, **2:75**

Non-electronically filed cases, electronic service in, **2:81**

Orders, decrees and notices, service of, **2:82**

Service of documents on counsel, generally, **2:79 to 2:82**

Sworn pleadings and affidavits, **2:78**

Time for acting after electronic service, **2:77**

“User ID” of attorney constitutes signature, **2:76**

### **EMERGENCIES AND UNEXPECTED CONTINGENCIES**

Structured settlements, **14:44, 14:64**

### **EMERGENCY MEDICAL TECHNICIANS**

See index heading RESCUE PERSONNEL

### **EMOTIONAL CHANGES**

Traumatic brain injury, symptoms of, **10:21**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **EMOTIONAL DISTRESS**

Structured settlements, **14:74**

### **EMPLOYMENT AND EMPLOYMENT RECORDS**

Authorizations, **1:58, 1:231**

Defendant, who to sue, **2:8, 2:9**

Evaluation of case, **1:179**

Federal employees

    general treatment, **13:26 et seq.**

    for detailed treatment see index heading **FEDERAL EMPLOYEES**

Future lost earnings, proof of, **5:184**

Interview of client, **1:21**

Low impact, soft tissue injuries, **9:14**

Traumatic brain injury, assessment of, **10:26**

### **ERGONOMISTS**

Expert witnesses, use to prove liability, **5:26**

### **ERISA**

Subrogation, **1:124 to 1:129**

### **ERRATA SHEETS**

Depositions, **2:192 to 2:201**

### **ETHICS**

Closing arguments, expressing opinion or vouching for witness, **7:22**

Communication with jury after discharge, **8:51**

ERISA lien and reimbursement rights, cases asserting, **1:129**

Opening statements, ethical constraints, **4:6**

Representation of both driver and passenger, **1:27, 1:226**

Structured settlements, attorneys' fees, **14:119**

Voir dire, **3:36**

### **EVALUATION OF CASE**

General treatment, **1:154 to 1:199**

Checklists

    damages for pain and suffering, **1:223**

    negotiation and settlement, **1:224**

Client/plaintiff, evaluation of, **1:156**

Conflict of laws analysis, **1:167**

Criminal record of client, **1:199**

Daily life of plaintiff, impact of injuries on, **1:178**

Damages, **1:170 et seq.**

Defendant(s), evaluation of, **1:157**

Demonstration of injuries to jury, **1:173**

Duration and consistency of treatment, **1:175**

Employment of plaintiff, impact of injuries on, **1:179**

Evidence

    general treatment, **1:162 to 1:164, 1:170 et seq.**

    daily life of plaintiff, impact of injuries on, **1:178**



## INDEX

### EVALUATION OF CASE—Cont'd

#### Evidence—Cont'd

- damages, **1:170 et seq.**
- demonstration of injuries to jury, **1:173**
- duration and consistency of treatment, **1:175**
- employment of plaintiff, impact of injuries on, **1:179**
- expert testimony, below
- objective vs. subjective proof of injuries, **1:172**
- pain and anguish, **1:180, 1:223**
- permanent injuries, **1:176**
- permanent or partial disability, **1:177**
- physical evidence, **1:163**
- police officer's investigation, **1:164**
- special damages, **1:181**
- time when injuries were reported, **1:171**
- visible injuries, **1:174**

#### Expert testimony

- general treatment, **1:186 to 1:192**
- defendant's expert, **1:189**
- plaintiff's expert, calling by defendant, **1:190**
- treating doctor, **1:187, 1:188**

#### Financial condition of client, **1:196**

#### Governing law, **1:167**

#### Insurance coverage, impact of, **1:191**

#### Liability, evaluation of, **1:159**

#### "Net" recovery by client, **1:193**

#### Pain and anguish, **1:180, 1:223**

#### Permanent injuries, **1:176**

#### Permanent or partial disability, **1:177**

#### Personal financial responsibility of defendant, **1:192**

#### Physical evidence, **1:163**

#### Police officer's investigation, **1:164**

#### Preexisting medical conditions of client, **1:197**

#### Prior or subsequent accidents of client, **1:198**

#### Punitive damages, availability of, **1:182, 1:184**

#### Relationship between plaintiff and defendant, **1:158**

#### Special damages, **1:181**

#### Time when injuries were reported, **1:171**

#### Venue, effect of, **1:185**

#### Visible injuries, **1:174**

#### Willful and wanton conduct, punitive damages, **1:184**

#### Willingness of client to go to court, **1:195**

#### Witnesses, evaluation of, **1:165**

### EVASIVE ANSWERS

#### Discovery, **2:205**

### EVIDENCE

#### General treatment, **5:1 et seq.**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### EVIDENCE—Cont'd

Absentia, finding guilt, **5:112, 5:114**

Accident reports, **5:104 to 5:108**

Admission, use of requests for, **5:71**

Affidavits

Hospital or medical facility custodian of records, affidavit of (Va. Code Ann. § 16.1-88.2), **5:199**

Treating or examining health care provider, affidavit of (Va. Code Ann. § 16.1-88.2), **5:199**

Burden of proof. See index heading PRESUMPTIONS AND BURDEN OF PROOF

Checklists

lost earnings, future lost earnings and loss of earning capacity, proof of, **5:198**

medical expenses, proof of, **5:197**

presenting the evidence, **5:194**

real and demonstrative evidence, **5:196**

testimonial evidence, **5:195**

Computer animations

general treatment, **12:1 et seq.**

for detailed treatment see index heading COMPUTER ANIMATIONS

Corroborating witnesses. See index heading CORROBORATING WITNESSES

Costs of action, **1:33**

Cross-examination

general treatment, **5:83 to 5:93**

for detailed treatment see index heading CROSS-EXAMINATION

Cumulative testimony, **5:13**

Damages

general treatment, **5:140 to 5:193**

for detailed treatment see index heading DAMAGES

Defendant, calling as witness, **5:14 to 5:16**

Demonstrative evidence

general treatment, **5:72 to 5:78**

for detailed treatment see index heading REAL AND DEMONSTRATIVE EVIDENCE

Depositions, use of, **5:8, 5:16, 5:68, 5:69**

Diagram of accident scene, accident reports, **5:108**

Direct examination

general treatment, **5:80 to 5:82**

for detailed treatment see index heading DIRECT EXAMINATION

Evaluation of case

general treatment, **1:162 to 1:164, 1:170 et seq.**

for detailed treatment see index heading EVALUATION OF CASE

Expert witnesses

general treatment, **5:17 to 5:66**

for detailed treatment see index heading EXPERT WITNESSES

Guilty plea or nolo contendere plea, **5:112 to 5:114**

Hearsay. See index heading HEARSAY

Instructions to jury, **8:39**

Interview of client, **1:12, 1:13, 1:17**

## INDEX

### EVIDENCE—Cont'd

- Intoxication and intoxicating liquors
  - general treatment, **5:124 to 5:139**
  - for detailed treatment see index heading INTOXICATION
- Investigating officer, **5:109, 5:110**
- Lay witnesses
  - questionnaire and evaluation, **1:248**
  - testimony, **5:12**
- Leading questions. See index heading LEADING QUESTIONS
- Leaving scene of accident, admissibility of evidence as to, **5:116**
- Lost earnings
  - general treatment, **5:175 to 5:193**
  - for detailed treatment see index heading LOST EARNINGS
- Medical bills discharged in bankruptcy, admissibility of medical expenses when, **5:156**
- Medical evidence of defendant, challenges to
  - general treatment, **6:1 et seq.**
  - for detailed treatment see index heading MEDICAL EVIDENCE OF DEFENDANT
- Medical expenses
  - general treatment, **5:155 to 5:174**
  - for detailed treatment see index heading MEDICAL EXPENSES
- Medical witnesses, number of, **5:7**
- New trial, grounds for, **8:58**
- Number of witnesses to call, **5:6 to 5:8**
- Objections, **5:94**
- Offers of proof
  - general treatment, **5:96 to 5:102**
  - for detailed treatment see index heading OFFERS OF PROOF
- Order of presentation
  - general treatment, **5:1 to 5:10**
  - depositions, use of, **5:8**
  - linking the evidence, **5:9**
  - medical witnesses, number of, **5:7**
  - number of witnesses to call, **5:6 to 5:8**
  - plaintiff, opening or closing with, **5:4, 5:5**
  - right to open and close, **5:10**
  - strength of beginning and ending, **5:2 to 5:5**
- Precautions with using tangible evidence, **5:78**
- Preparation for direct examination, **5:82**
- Presumptions. See index heading PRESUMPTIONS AND BURDEN OF PROOF
- Production of documents and things, requests for, **2:126**
- Real and demonstrative evidence
  - generally, **5:72 to 5:78**
  - for detailed treatment see index heading REAL AND DEMONSTRATIVE EVIDENCE
- Reconstruction of accidents
  - general treatment, **5:117 to 5:123**
  - for detailed treatment see index heading RECONSTRUCTION OF ACCIDENTS
- Service of process, proof of, **2:70**

**EVIDENCE—Cont'd**

Stipulations, **5:70**

Traffic citations and trials, **5:111 to 5:115**

Traumatic brain injuries

general treatment, **10:30 to 10:48, 10:50**

for detailed treatment see index heading TRAUMATIC BRAIN INJURIES

Voir dire

general treatment, **3:23 to 3:52**

for detailed treatment see index heading VOIR DIRE

**EXEMPLARY DAMAGES**

See index heading PUNITIVE DAMAGES

**EXHIBITS**

Admission, requests for, **2:140**

Costs of action, **1:33**

**EXPENSES**

General treatment, **1:33, 1:48 to 1:50**

For detailed treatment see index heading COSTS AND EXPENSES

**EXPERT WITNESSES**

General treatment, **5:17 to 5:66**

Admissibility, **5:18 to 5:31**

Analogies, use to explain complex concepts, **5:57**

Bases of opinion testimony, **5:37**

Chiropractors. See index heading CHIROPRACTORS

Communication skills of expert, **5:60 to 5:62**

Computer animation. See index heading COMPUTER ANIMATION

Costs of action, **1:33**

Credentials of expert, **5:41 to 5:43, 5:66**

Damages, proof of, **5:29 to 5:31**

Demeanor, conveyance of certainty through, **5:54**

Demonstrative evidence, use to bolster expert, **5:47**

Direct examination, **5:32 to 5:39**

Discovery, federal court rules for supplementing disclosures of expert testimony, **2:154, 2:155**

Economists. See index heading ECONOMISTS

Engineering experts, **5:27**

Evaluation of case

general treatment, **1:186 to 1:192**

for detailed treatment see index heading EVALUATION OF CASE

Federal court

admissibility of expert testimony, **5:21 to 5:24**

discovery, federal court rules for supplementing disclosures of expert testimony, **2:154, 2:155**

Forthrightness on cross-examination, **5:53**

Foundation, **5:34**

Giving opinion testimony, **5:36, 5:38**

Hearsay matters of opinion, **5:38, 5:39**

## INDEX

### **EXPERT WITNESSES—Cont'd**

- Human context for expert's testimony, **5:45**
- Lay testimony, support expert by use of, **5:44 to 5:46**
- Leading questions, **5:59**
- Liability, proof of, **5:26 to 5:28**
- Medical evidence of defendant, challenges to
  - general treatment, **6:1 to 6:8**
  - for detailed treatment see index heading **MEDICAL EVIDENCE OF DEFENDANT**
- Medical experts, **5:30**
- Nurses. See index heading **NURSES**
- Objections to expert testimony, **5:95**
- Objectivity, gain juror trust through, **5:50 to 5:52**
- Peer review of publications, **5:64**
- Physical therapists. See index heading **PHYSICAL THERAPISTS**
- Plain language, use of, **5:55**
- Preparation and presentation of testimony, **2:215, 5:49 to 5:66**
- Psychiatrists and psychologists. See index heading **PSYCHIATRISTS AND PSYCHOLOGISTS**
- Publications by expert, maximization of significance of, **5:63 to 5:65**
- Qualifications, **5:33**
- Reconstruction of accidents
  - general treatment, **5:117 to 5:123**
  - for detailed treatment see index heading **RECONSTRUCTION OF ACCIDENTS**
- Sequence of law and expert testimony, **5:46**
- Speculative testimony, **5:19**
- Strategies, **5:40 to 5:48**
- Texts, use of, **5:48**
- Toxicologists. See index heading **SCToxicologists and Toxicology Reports**
- Trial preparation, **2:213 to 2:215**
- Vocational rehabilitation experts. See index heading **VOCATIONAL REHABILITATION EXPERTS**

### **FAMILY AND RELATIVES**

- Damages, **5:145**

### **FATIGUE**

- Traumatic brain injuries, **10:16**

### **FEDERAL EMPLOYEES**

- General treatment, **13:26 et seq.**
- Amount of claim, **13:29, 13:30**
- Attorneys' fees, limitation on, **13:27**
- Filing requirements, **13:28**
- Form 95, **13:31**
- Jury trial, unavailability of, **13:34**
- Place to file suit, **13:33**
- Time requirements, **13:31, 13:32**
- Uninsured motorists, applicability of sovereign immunity, **13:35**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **FEDERAL TORT CLAIMS ACT**

General treatment, **13:26 et seq.**

For detailed treatment see index heading **FEDERAL EMPLOYEES**

### **FIGURES OF SPEECH**

Closing arguments, **7:11**

### **FILES AND FILING**

Depositions, audio/video recordings, **2:187**

Electronic filing

general treatment, **2:72 to 2:82**

for detailed treatment see index heading **ELECTRONIC SERVICE AND FILING**

Federal employees, actions against, **13:28**

Medical evidence of defendant, subpoena duces tecum, **6:32**

Nonsuit (voluntary)

general treatment, **2:83 to 2:97**

for detailed treatment see index heading **NONSUIT**

### **FINANCIAL CONDITION**

Closing arguments, **7:18**

Evaluation of case, **1:196**

### **FINE MOTOR SKILLS**

Traumatic brain injuries, **10:20**

### **FOREIGN CORPORATIONS**

Service of process and papers, **2:56 to 2:59**

### **FORENSIC ENGINEERS**

Expert witnesses, use to prove liability, **5:26**

### **FORM 1099**

Medical evidence of defendant, subpoena duces tecum, **6:34**

### **FOUNDATION**

Expert witnesses, **5:34**

Reconstruction of accidents, **5:121**

### **GIG ECONOMY**

Generally, **16:1 to 16:7**

Auto cases, **16:1 to 16:7**

Definition, **16:1**

Overview, **16:1**

Ride share cases

generally, **16:1 to 16:7**

special considerations, **16:2**

Vehicle share cases

generally, **16:1 to 16:7**

special considerations, **16:2**

### **“GOLDEN RULE”**

Closing arguments, **7:19**

## INDEX

### **GOOD FAITH**

“Bad faith” refusal to settle. See index heading “BAD FAITH” REFUSAL TO SETTLE

### **GRIP STRENGTH**

Traumatic brain injuries, reduction in grip strength, **10:20**

### **GROSS NEGLIGENCE**

State and local governments, **13:11**

### **GUILTY PLEA**

Evidence, **5:112 to 5:114**

### **HEADACHES**

Traumatic brain injuries, **10:6**

### **HEALTH CARE PROVIDERS**

Affidavit of treating or examining health care provider (Va. Code Ann. § 16.1-88.2), **5:199**

### **HEARING PROBLEMS**

Traumatic brain injuries, **10:15, 10:19**

### **HEARSAY**

Computer animations, **12:23 to 12:25, 12:34**

Expert witnesses, **5:38, 5:39**

Medical expenses, **5:167, 5:168**

### **HOSPITAL RECORDS**

Affidavit of hospital or medical facility custodian of records (Va. Code Ann. § 16.1-88.2), **5:200**

Proof of medical expenses, **5:159 to 5:161**

### **HUMAN FACTORS ENGINEERS**

Expert witnesses, use to prove liability, **5:26**

### **IDENTITY OR IDENTIFICATION**

Defendants, identification of, **1:14**

“John Doe” cases, identification of “John Doe,” **11:10, 11:11**

Tolling of limitations period when driver misrepresents identity, **2:6**

Witnesses, identification of, **1:12**

### **ILLUSTRATIONS**

Damages, **5:152**

### **IMPEACHMENT**

Depositions and errata sheets, original responses used for impeachment, **2:195**

### **INFANTS**

See index heading CHILDREN AND MINORS

### **INFLATION**

Structured settlements, **14:45, 14:56, 14:65**

### **IN LIMINE MOTIONS**

General treatment, **3:1 to 3:22**

**IN LIMINE MOTIONS—Cont'd**

For detailed treatment see index heading MOTIONS IN LIMINE

**INSTRUCTIONS TO JURY**

General treatment, **8:18 to 8:45**

Attorneys, role in preparation of instructions, **8:19 to 8:22**

Checklists

    preparing and arguing jury instructions, **8:92**

    strategies for handling jury instructions at trial, **8:93**

Closing arguments, **7:9, 7:34**

Computer animations, **12:49**

Damages, **8:39**

Drunk driving cases, **15:25, 15:39, 15:51, 15:53 to 15:55**

Evidence, **8:39**

Exchange of proposed instructions not required, **8:30**

Federal court practice, **8:21, 8:22, 8:35 to 8:37**

Form for instructions, **8:29**

Judgment as matter of law, summary of general principles governing jury instructions, **8:38**

Low impact, soft tissue injuries, **9:75, 9:76**

Medical evidence of defendant, challenges to, **6:39**

Model jury instructions, **8:26**

New trial, grounds for, **8:58**

Objections

    general treatment, **8:31 to 8:37**

    federal courts, **8:35 to 8:37**

    record, making objections on, **8:33**

    sufficiency of objections, **8:37**

    time, **8:36**

Record, making objections on, **8:33**

Refusal by court to give proffered instruction, **8:34**

Request for instructions, **8:24**

Sources for instructions, **8:26, 8:27**

Time and date

    objections to instructions, **8:36**

    submission of instructions, **8:28**

Verdicts, **8:39**

Waiver, **8:25**

**INSURANCE AND INSURANCE COVERAGE**

Closing arguments, **7:17**

Discovery, **1:149**

Evaluation of case, **1:191**

First party benefits

    settlement and release, effect on insurer's obligation to pay medical expenses, **1:135**

    stacking of medical payments, circumstances where stacking not allowed, **1:137**



## INDEX

### **INSURANCE AND INSURANCE COVERAGE—Cont'd**

- First party benefits—Cont'd
  - write-offs on plaintiff's recovery of medical expenses from insurer, effect of, **1:134**
- Interview of client, **1:20**
- Investigation of case, **1:94 to 1:97, 1:131 to 1:153**
- Production of documents, insurance reports, **2:123 to 2:125**
- Settlement and release, effect on insurer's obligation to pay medical expenses, **1:135**
- Stacking of medical payments, circumstances where stacking not allowed, **1:137**
- Uninsured and underinsured motorists. See index heading **UNINSURED AND UNDER-INSURED MOTORISTS**
- Write-offs of medical expenses, **1:134, 5:163**

### **INTERROGATORIES**

- General treatment, **2:112 to 2:117**
- Drafting of answers, **2:148**
- Forms
  - instructions to clients on answering interrogatories, **2:237**
  - plaintiff's first set of interrogatories to defendant, **2:232**
- Number of interrogatories, **2:114**
- Scope of inquiry, **2:115**
- Service with complaint, **2:113**

### **INTERVIEW OF CLIENT**

- General treatment, **1:1 to 1:25**
- Account of accident, **1:9 to 1:12, 1:225**
- Amount of recovery, determination of, **1:6**
- Biographical information, **1:24**
- Candor, insistence on, **1:4**
- Charges against defendants, **1:15**
- Control of interview, **1:3 to 1:8**
- Defendants, identification of, **1:14**
- Departure from scene, **1:18**
- Employment of client, **1:21**
- Evidence at scene, **1:17**
- Form for client interview/ information sheet, **1:225**
- Insurance coverage, **1:20**
- Medical records and bills, **1:19**
- Occupants of vehicles, **1:13**
- "Principle," trial of case on, **1:7**
- Prior litigation or claims, **1:22**
- Statements made at scene, **1:16**
- Statements made by client to others, **1:25**
- Time and place of accident, **1:10**
- Trust and confidence, **1:2**
- Vehicles involved, **1:11**
- Witnesses, **1:12, 1:13**

## **INTOXICATION**

- General treatment, **5:124 to 5:139, 15:1 et seq.**
- Ad damnum amount, **15:20, 15:45**
- Admissibility of alcohol or drug content of blood results, **5:127**
- Admission by defendant of intoxication, **5:137**
- Alcoholism as evidence, **5:133**
- Amount of award, **15:55**
- Bifurcation, **5:138, 15:23, 15:26, 15:27**
- Blood tests, **5:126 to 5:130, 15:8, 15:9, 15:11, 15:22, 15:30**
- Chemical testing to determine alcohol or drug content of blood, **5:126 to 5:130**
- Community, jurors' responsibility to the community, **15:34 to 15:36**
- Complaint, punitive damages case, **15:47**
- Conclusiveness of blood test result, **5:130**
- Constitutional defenses, **15:37, 15:38**
- Damages
  - jury instructions, **15:25**
  - punitive or exemplary damages, below
- Defenses, **15:37, 15:38, 15:40 to 15:45**
- Discovery, effective use of, **15:14**
- Driving record of defendant, investigating, **15:13**
- Evidence, generally, **5:124 to 5:139**
- Exemplary damages. Punitive or exemplary damages, below
- Failure to properly test blood for alcohol or drug content, **5:128**
- Focusing on misconduct of defendant, **15:33**
- Forms
  - generally, **15:47 to 15:55**
  - amount of award, jury instructions, **15:55**
  - jury instructions, punitive damages, **15:51, 15:53 to 15:55**
  - motion for judgment, punitive damages case, **15:52**
  - punitive damages. Punitive or exemplary damages, below
  - reconsider, motion to, **15:50**
  - wrongful death, jury instructions, **15:54**
- Interview of client, charges against defendants, **1:15**
- Jury instructions, **15:25, 15:39, 15:51, 15:53 to 15:55**
- Knowledge of dangers of drinking and driving, **15:16**
- "Mere odor of alcohol" as evidence, **5:131**
- Multiple plaintiffs, punitive damages case, **15:48**
- Negotiations, avoiding counterproductive negotiations from the outset, **15:12**
- Opening statement, **15:29**
- Pedestrians, punitive damages, **15:49**
- Pleading punitive damages, **15:18**
- Preparing the case for trial, **15:10 to 15:46**
- Preserving evidence of defendant's BAC, **15:11**
- Prior DUI convictions, punitive or exemplary damages, **5:139**
- Punitive or exemplary damages
  - general treatment, **5:134 to 5:139, 15:1 to 15:55**
  - ad damnum amount, choosing, **15:20**

## INDEX

### **INTOXICATION—Cont'd**

- Punitive or exemplary damages—Cont'd
  - admission by defendant of liability, **5:137**
  - case law, **15:3**
  - common law punitive damages claim, establishing, **15:19**
  - complaint, **15:47**
  - evidence to support award, **15:15 to 15:17, 15:22, 15:30**
  - forms
    - generally, **15:47 to 15:55**
    - amount of award, jury instructions, **15:55**
    - complaint, **15:47**
    - jury instructions, **15:51, 15:53 to 15:55**
    - motion for judgment, **15:52**
    - multiple plaintiffs, **15:48**
    - pedestrians, **15:49**
    - reconsider, motion to, **15:50**
    - wrongful death, **15:54**
  - jury instructions, **15:51, 15:53 to 15:55**
  - multiple plaintiffs, **15:48**
  - pleading punitive damages, **15:18**
  - prior DUI convictions, **5:139**
  - reconsider, motion to, **15:50**
  - refusal to submit to blood alcohol test, **15:8, 15:9**
  - statutory law, **5:135, 15:4, 15:5**
  - toxicologists, use of to prove punitive damages case, **15:30**
  - uninsured and underinsured motorist carriers, **15:21, 15:43**
  - willful or wanton conduct, **15:6, 15:7**
- Quantity of alcohol consumed, determining, **5:132**
- Reconsider, punitive damages case, **15:50**
- Rescue personnel, testimony of, **15:17**
- Serving alcohol, no liability for those who serve alcohol, **15:2**
- Themes in drunk driving cases, **15:32**
- Time
  - bifurcation lengthens time required to resolve issues, **15:26**
  - chemical testing to determine alcohol or drug content of blood, **5:129**
- Toxicologists, use of expert witnesses, **5:28, 15:30, 15:31**
- Uninsured and underinsured motorist carriers, **15:21, 15:40 to 15:45**
- Voir dire, **15:24, 15:28**
- Wrongful death, jury instructions, **15:54**

### **INTUITIVE FEELINGS**

- Peremptory challenges, supporting strike of contested juror, **3:69**

### **INVESTIGATION OF CASE**

- General treatment, **1:77 to 1:153**
- Agency investigations of accident, **1:85**
- Amount of UIM coverage available, determining, **1:146**
- Assets of defendant, identification of, **1:153**
- Attorney General, compromise of liens of state, **1:110**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### INVESTIGATION OF CASE—Cont'd

- Bankruptcy, settlement proceeds from personal injury claim received by plaintiff-debtor in, **1:126**
- Collectively bargained plans, subrogation, **1:130**
- Compromise of liens of state, **1:109 to 1:112**
- Discrepancies in data, **1:102**
- Division of Motor Vehicle documents, **1:92**
- Drunk driving cases, investigating the defendant's driving record, **15:13**
- ERISA and self-insured plans, subrogation, **1:124 to 1:129**
- First party insurance benefits, identification of, **1:132 to 1:147**
- Forms
  - accident investigation report, letter requesting from governmental agency, **1:237**
  - accident report, letter requesting, **1:243**
  - final report, medical report and itemized treatment bill of physician, letter requesting, **1:242**
  - hospital record, letter requesting, **1:238, 1:239**
  - initial report of physician, letter requesting, **1:240**
  - lay witness questionnaire and evaluation, **1:248**
  - liability carrier for defendant, letter requesting name of, **1:245**
  - liens on recovery, below
    - medical records chart, **1:246**
    - notes and itemized treatment bill of physician, letter requesting, **1:241**
    - physician's records, letter requesting, **1:240 to 1:242**
    - traffic court disposition, request for, **1:244**
- In-house investigation, **1:79**
- Insurance coverage, **1:94 to 1:97, 1:131 to 1:153**
- Joint and concurrent tortfeasors, passenger's right to both liability coverage and UIM coverage under a single policy, **1:145**
- Lay witness questionnaire and evaluation, **1:248**
- Liability insurance coverage of defendant, identification of, **1:150**
- Liens on recovery
  - general treatment, **1:105 to 1:130**
  - for detailed treatment see index heading liens on recovery
- Limits of liability under policy, determining, **1:151**
- Low impact, soft tissue injuries
  - general treatment, **9:6 to 9:15, 9:22 to 9:24**
  - for detailed treatment see index heading LOW IMPACT, SOFT TISSUE INJURIES
- Media reports, **1:86**
- Medical payments or medical expenses coverage, first party insurance benefits, **1:132, 1:133**
- Medical reports, bills and records, **1:88 to 1:91, 1:99, 1:100, 1:120, 1:121, 1:123**
- Military facilities, liens for treatment received at, **1:106**
- Notice of lien, **1:108, 1:121**
- Notice to defendant's insurance carrier, **1:96**
- Notice to employer before settlement of third-party tort claim, **1:117**
- Official documents, **1:93**
- Outside investigation, **1:80**

## INDEX

### INVESTIGATION OF CASE—Cont'd

- Participation by carrier in negligence action on behalf of defendant driver, **1:139, 1:140**
- Physical evidence, procurement and preservation of, **1:84**
- Review and analysis of data, **1:98 to 1:104**
- Scene of accident, visit to, **1:82**
- Stacking of medical payments coverage, **1:136**
- State, liens of, **1:107 to 1:115**
- Statements from witnesses, **1:83**
- Subpoena of medical records, authority to, **1:91**
- Subrogation, **1:122 to 1:130**
- Uninsured/underinsured motorist coverage, identification of, **1:138 to 1:147**
- Weather reports, **1:87**
- Workers' compensation, liens on recovery, **1:116, 1:117**

### INVITED ARGUMENT

- Closing arguments, **7:29**

### “JOHN DOE” CASES

- General treatment, **11:1 et seq.**
- Burden of proof of defendant, **11:12**
- Checklists, **11:19**
- Consent to settlement in UM policy are binding, **11:9**
- Contact between vehicles, absence of, **11:3 to 11:5, 11:15**
- Contributory negligence, **11:17**
- Corroborating witnesses, absence or presence of, **11:15, 11:16**
- Defense strategies, **11:14 to 11:17**
- Identification of “John Doe,” **11:10, 11:11**
- Service of process, **11:6 to 11:9**
- Settlement, **11:9, 11:13**
- Statutory obligations, **11:2 to 11:12**
- Summary of issues, **11:18**
- Waiver of service of process, **11:8**

### JOINT AND CONCURRENT TORTFEASORS

- Passenger's right to both liability coverage and UIM coverage under a single policy, **1:145**

### JOINT LIFE OR SURVIVORSHIP OPTIONS

- Structured settlements, **14:22**

### JUDGMENT AS MATTER OF LAW

- General treatment, **8:1 to 8:17**
- Attorney's decision to take case, effect of judgment in separate action against tortfeasor, **1:28**
- Consequences if motion is denied, **8:7**
- Dead man's statute, failure to present corroborating testimony under, **8:9**
- Evidence viewed most favorably as to nonmoving party, **8:11**
- Federal practice, **8:14 to 8:17**

**JUDGMENT AS MATTER OF LAW—Cont'd**

Forms

motion to strike defendant's evidence, **8:94**

order striking defendant's evidence, **8:95**

Grounds for motion to strike evidence, **8:8**

Inferences favoring plaintiff, **8:12**

Jury instructions, summary of general principles governing, **8:38**

Presumptions favoring plaintiff when defendant alleges contributory negligence, **8:13**

Striking of evidence, generally, **8:3 to 8:7**

Summary judgment if motion is sustained, **8:6**

Taking case from jury, motion to strike evidence as prerequisite for, **8:4**

Test for sustaining motion, **8:10 to 8:13, 8:17**

Time for motion, **8:5, 8:16**

**JURISDICTION**

General treatment, **2:19 to 2:23**

Diversity, federal court jurisdiction, **2:22**

Federal court jurisdiction, **2:21 to 2:23**

Removal from state court, preventing, **2:23**

State court jurisdiction, **2:20**

**JURY AND JURY TRIAL**

Federal employees, actions against, **13:34**

Instructions to jury

general treatment, **8:18 to 8:45**

for detailed treatment see index heading INSTRUCTIONS TO JURY

Reseated juror not subject to subsequent peremptory strike, **3:74**

Selection of jury

general treatment, **3:53 to 3:76**

for detailed treatment see index heading SELECTION OF JURY

Settlement after jury award, **14:93**

Trial preparation, **2:218**

**LAWYERS**

See index heading ATTORNEYS

**LEADING QUESTIONS**

Depositions, **2:176**

Expert witnesses, **5:59**

**LEAVING SCENE OF ACCIDENT**

Admissibility of evidence, **5:116**

**LIENS ON RECOVERY**

General treatment, **1:105 to 1:130**

Attorney General

compromise of liens of state, **1:110**

proposal for compromise of lien, **1:111**

Collectively bargained plans, subrogation, **1:130**

## INDEX

### **LIENS ON RECOVERY—Cont'd**

#### Compromise of lien

Attorney General, proposal for compromise of lien, **1:111**  
state, liens of, **1:109 to 1:112**

#### ERISA

self-insured plans, subrogation, **1:124 to 1:129**

#### Forms

reduction of medical lien, petition for, **1:247**

#### Medical bills, **1:120, 1:121**

#### Military facilities, treatment received at, **1:106**

#### Notice of lien, **1:108, 1:121**

#### State, liens of, **1:107 to 1:115**

#### Subrogation, **1:122 to 1:130**

#### Third-party claims, court approval of settlement of, **1:119**

#### Workers' compensation, **1:116, 1:117, 1:119**

### **LIFE CARE**

Future life care expenses, **5:174**

### **LIFE CARE PLANNERS**

Expert witnesses, use to prove damages, **5:29**

### **LIGHT SENSITIVITY**

Traumatic brain injuries, hypersensitivity to light, **10:15**

### **LIMITATION OF ACTIONS**

General treatment, **1:36, 1:63 to 1:65, 2:2 to 2:6**

For detailed treatment see index heading **STATUTE OF LIMITATIONS**

Accrual of cause of action, **2:3**

Amended complaint, effect of filing, **2:5**

### **LIQUIDITY, NEED FOR**

Structured settlements, **14:28**

### **LOCAL GOVERNMENTS**

General treatment, **13:1 to 13:25**

For detailed treatment see index heading **STATE AND LOCAL GOVERNMENTS**

### **LOCATION**

See index heading **PLACE OR LOCATION**

### **LOST EARNINGS**

General treatment, **5:175 to 5:193**

Causation, proof of, **5:179**

Checklist, proof of future lost earnings and loss of earning capacity, **5:198**

Earning capacity, loss of

general treatment, **5:178, 5:186 to 5:193**

economist expert, use of, **5:190**

present employment or income status, insignificance of, **5:191**

present value, reduction to, **5:193**

speculation, **5:187 to 5:193**

vocational rehabilitation expert, use of, **5:189**

**LOST EARNINGS—Cont'd**

- Economist expert, use of, **5:190**
- Evidence, **5:175 to 5:193**
- Future lost earnings, generally, **5:177, 5:183 to 5:185, 5:198**
- Pre-accident wage history, **5:182**
- Present value of future lost earnings, **5:185**
- Receipt of salary during disability after accident, admissibility of evidence of lost earnings, **5:181**
- Vocational rehabilitation expert, use of, **5:189**

**LOW IMPACT, SOFT TISSUE INJURIES**

- General treatment, **9:1 et seq.**
- Analogies, use by medical experts, **9:28**
- Arbitration, **9:18**
- Audio-visuals, use of medical experts, **9:29, 9:31**
- Bad faith claims, **9:36**
- Body position at impact, **9:51 to 9:53**
- Bumper braces and shocks, damage to, **9:48**
- Checklists
  - proving injuries in low impact, soft tissue injury cases, **9:86**
  - strategy in low impact, soft tissue injury cases, **9:85**
- Closing arguments. Opening and closing arguments, below
- Complex terminology, avoidance in opening and closing arguments, **9:70**
- Credibility, opening and closing arguments, **9:63, 9:67 to 9:70, 9:81, 9:82**
- Damages
  - general treatment, **9:38 et seq.**
  - before and after lay witnesses, **9:56**
  - body position at impact, **9:51 to 9:53**
  - bumper braces and shocks, damage to, **9:48**
  - closing arguments, helping jury understand elements of damages, **9:77**
  - extent of injuries, **9:55 to 9:59**
  - front end and tire alignment, damage to, **9:46**
  - hood, trunk and doors, damage to, **9:44**
  - interior of vehicle, damage to, **9:47**
  - jury, selection of, **9:60**
  - muffler, tail pipe and related parts, damage to, **9:45**
  - neuropsychologist, testimony by, **9:59**
  - older cars, damage to, **9:49**
  - photograph vehicular damage, **9:41**
  - physical therapist, testimony by, **9:58**
  - plaintiff, testimony by, **9:57**
  - roof line, damage to, **9:43**
  - susceptibility to serious injury, **9:54**
  - vehicular damage, use of, **9:40 to 9:50**
  - witness accounts of impact, **9:50**
- Defense techniques, **9:16 to 9:18**
- Definition, **9:3 to 9:5, 9:39**
- Depositions, **9:31, 9:32**



## INDEX

### **LOW IMPACT, SOFT TISSUE INJURIES—Cont'd**

- Discovery, **9:24, 9:31, 9:32**
- Economical ways to represent client, **9:30 to 9:32**
- Education of courts, **9:35**
- Education of public, **9:34**
- Employment of plaintiff, **9:14**
- Forms
  - sample cross-examination of defense orthopedic, **9:88**
  - sample questions asked by insurer in plaintiff's recorded statement, **9:87**
- Front end and tire alignment, damage to, **9:46**
- Hood, trunk and doors, damage to, **9:44**
- Instruction to jury regarding damage, **9:75, 9:76**
- Insurance company investigation
  - general treatment, **9:6 to 9:15**
  - course of treatment for injuries, **9:12**
  - details concerning accident and extent of injuries, **9:11**
  - employment of plaintiff, **9:14**
  - insurance coverage of plaintiff, **9:15**
  - intensive investigation, **9:8**
  - low settlement offer, **9:9**
  - previous accidents or claims, **9:13**
  - recorded statement of plaintiff, **9:7, 9:10 to 9:15**
- Interior of vehicle, damage to, **9:47**
- Investigation
  - generally, **9:6 to 9:15, 9:22 to 9:24**
  - insurance company investigation, above
- Jury, selection of, **9:60**
- Knowledge and experience of jury, appeal to, **9:69**
- Mediation, **9:18**
- Medical experts, use of, **9:26 to 9:29**
- Muffler, tail pipe and related parts, damage to, **9:45**
- Neuropsychologist, testimony by, **9:59**
- Objective findings, emphasis on, **9:25**
- Older cars, damage to, **9:49**
- Opening and closing arguments
  - general treatment, **9:61 to 9:84**
  - closing argument, generally, **9:71, 9:73 to 9:83**
  - complex terminology, avoidance of, **9:70**
  - counter defense tactics, preparation for, **9:62, 9:63**
  - credibility, **9:63, 9:67 to 9:70, 9:81, 9:82**
  - damages, helping jury understand elements of, **9:77**
  - effective arguments, formulation of, **9:64 to 9:71**
  - initial closing argument, **9:74 to 9:76**
  - instruction to jury regarding damage, **9:75, 9:76**
  - knowledge and experience of jury, appeal to, **9:69**
  - opening statement, generally, **9:71, 9:72**
  - overall defense approach, flaws in, **9:80**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **LOW IMPACT, SOFT TISSUE INJURIES—Cont'd**

- Opening and closing arguments—Cont'd
  - rebuttal closing argument, **9:78 to 9:83**
  - strengths and weaknesses of case, identification of, **9:66**
  - theme, development of, **9:65**
- Photograph damage to vehicles, **9:23, 9:41**
- Physical therapist, testimony by, **9:58**
- Previous accidents or claims, **9:13**
- Recorded statement of plaintiff, **9:7, 9:10 to 9:15, 9:87**
- Response by plaintiff, **9:19 to 9:32**
- Roof line, damage to, **9:43**
- Settlement
  - low settlement offer, **9:9**
  - “problem” cases, settle “problem” cases early, **9:20**
- Telephone depositions, **9:32**
- Videotape depositions of physicians, **9:31**
- Witness accounts of impact, **9:50**

### **MALPRACTICE**

- Discovery, Rule 4:10 examination, **2:203**

### **MANAGEMENT OF CASE**

- General treatment, **1:59 to 1:76**
- Addresses of witnesses, **1:71**
- Checklists, use of, **1:72**
- Forms
  - liability carrier for defendant, notice to, **1:234**
  - liability notice/letter of representation, **1:233**
  - medical payments claims, notice to client’s insurance of, **1:235, 1:236**
- Initial tasks, **1:62 to 1:69**
- Insurance carrier, revocation of authority given by client to defendant’s, **1:68**
- Liability notice/letter of representation, **1:67, 1:68**
- Notice of claim requirements, **1:66, 1:69**
- Opening the file, **1:60, 1:61**
- Organizing the file, **1:61**
- Organizing the medical records, **1:100**
- Relations with client, **1:73 to 1:76**
- Statute of limitations
  - general treatment, **1:63 to 1:65**
  - personal injuries, **1:64**
  - wrongful death, **1:65**

### **MAPS**

- Demonstrative evidence, **5:75**

### **MARITAL RELATIONSHIPS**

- Structured settlement, appropriateness of, **14:31**

### **MECHANICAL ENGINEERS**

- Expert witnesses, use to prove liability, **5:26**

## INDEX

### **MEDIA REPORTS**

Investigation of case, **1:86**

### **MEDIATION**

Low impact, soft tissue injuries, **9:18**

### **MEDICAL BILLS, RECORDS AND REPORTS**

Costs of action, **1:33**

Damages, **5:154**

Instructions to client, **1:42**

Interview of client, **1:19**

Investigation of case, **1:88 to 1:91, 1:99, 1:100, 1:120, 1:121, 1:123**

Medical expenses, proof of, **5:167**

Presumption as to authenticity and reasonableness, **2:139**

Proof of medical expenses, **5:159 to 5:161**

### **MEDICAL CARE AND TREATMENT**

Affidavits

Hospital or medical facility custodian of records, affidavit of (Va. Code Ann. § 16.1-88.2), **5:200**

Treating or examining health care provider, affidavit of (Va. Code Ann. § 16.1-88.2), **5:199**

Authorizations, **1:54 to 1:57, 1:230**

Depositions, requests for disclosures from medical practitioners, **2:181**

Discovery, medical examinations, **2:202**

Medical Care Recovery Act, lien for treatment received in military facilities, **1:106**

Medical devices and appliances, damages, **5:153**

### **MEDICAL EVIDENCE OF DEFENDANT**

General treatment, **6:1 et seq.**

Accident, knowledge of details of, **6:75**

Appointment books, issuance of subpoena duces tecum, **6:35**

Bias and motive of defendant's physician

general treatment, **6:28 to 6:41**

appointment books, issuance of subpoena duces tecum, **6:35**

cross-examination, **6:48 to 6:51, 6:80**

defending subpoena duces tecum, **6:38**

fee schedule, issuance of subpoena duces tecum, **6:37**

file on plaintiff, issuance of subpoena duces tecum, **6:32**

Form 1099, issuance of subpoena duces tecum, **6:34**

"independent" examination, prevention of use of term, **6:40**

invoices and bills, issuance of subpoena duces tecum, **6:33**

jury instruction, offer of, **6:39**

separating motive and bias, **6:30**

subpoena duces tecum, issuance of, **6:31 to 6:37**

tax returns, issuance of subpoena duces tecum, **6:36**

Checklists

cross-examination of defendant's medical expert, **6:79**

**MEDICAL EVIDENCE OF DEFENDANT—Cont'd**

Checklists—Cont'd

limited opportunity to form opinion, cross-examination of medical expert to elicit evidence of, **6:81**

motive, cross-examination of medical expert to elicit evidence of, **6:80**

Closing argument, **6:43**

Cooperation of plaintiff with examination, **6:16**

Credibility of expert, attacks on, **6:4, 6:5**

Cross-examination of defendant's physician or medical expert

general treatment, **6:7, 6:8, 6:42 to 6:61**

admissions, obtaining, **6:58 to 6:60**

bias, establishment of, **6:49 to 6:51**

checklist, **6:79**

closing argument, keep in mind, **6:43**

conversational nature of examination, **6:45**

disagreements between experts, **6:61**

frequency of opinions in conflict with treating physicians, **6:50**

history and condition, opportunity to ascertain, **6:52, 6:53**

limited opportunity to form opinion, **6:81**

motive, establishment of, **6:48**

motive of defendant's physician, **6:80**

purpose of examination, **6:54 to 6:56**

referral by defense, **6:51**

timing of physician's contact with plaintiff, **6:55**

treating physicians, contrast with, **6:57 to 6:60**

Cross-examination of plaintiff's treating physician, **6:19 to 6:21**

Curriculum vitae of defendant's physician, review of, **6:25**

Deposition of defendant's physician, **6:26, 6:27**

Examination of plaintiff

general treatment, **6:9 to 6:17**

cooperation of plaintiff, **6:16**

notes, taking of, **6:15**

order of court for examination, **6:11 to 6:13, 6:41**

preparation for defendant's physician, **6:9**

preparation of plaintiff, **6:14 to 6:17**

questions, answering by plaintiff, **6:17**

report, delivery to counsel for both parties, **6:12**

voluntary agreement to examination, **6:10 to 6:13**

Favorable report, dealing with, **6:6**

Fee schedule, issuance of subpoena duces tecum, **6:37**

File on plaintiff, issuance of subpoena duces tecum, **6:32**

Form 1099, issuance of subpoena duces tecum, **6:34**

Form of order for Rule 4:10 examination, **2:240, 6:2**

General concessions from defendant's physician, **6:74**

Impairment vs. disability, **6:76, 6:77**

"Independent" examination, show absence of, **6:3, 6:40**

Invoices and bills, issuance of subpoena duces tecum, **6:33**

Jury instruction, offer of, **6:39**

## INDEX

### **MEDICAL EVIDENCE OF DEFENDANT—Cont'd**

- Motive. Bias and motive of defendant's physician, above
- Negative findings, challenges to, **6:67 to 6:69**
- Notes, examination of plaintiff, **6:15**
- Opinion of expert, challenges to, **6:3**
- Preparation of treating physicians, **6:18 to 6:27**
- Records, knowledge of, **6:73**
- Re-injury, susceptibility to, **6:78**
- Report of defendant's physician, **6:12, 6:22 to 6:25**
- Role of defendant's medical expert, **6:1**
- Rule 4:10, generally, **2:240, 6:2**
- Rule 35, Federal Rules of Civil Procedure, generally, **6:2**
- Specialty of defendant's physician, determination of, **6:24**
- Subjective symptoms, **6:70 to 6:72**
- Subpoena duces tecum, issuance of, **6:31 to 6:37**
- Tax returns, issuance of subpoena duces tecum, **6:36**
- Timing of physician's contact with plaintiff, **6:55**
- Treating physicians, working with, **6:18 to 6:27**
- Treatises, use of, **6:63, 6:64**
- X-rays, challenges to negative findings, **6:68**

### **MEDICAL EXPENSES**

- General treatment, **5:155 to 5:174**
- Authenticity, proof of, **5:158 to 5:161**
- Business records exception, hearsay, **5:169**
- Checklist, proof of medical expenses, **5:197**
- Evidence, **5:155 to 5:174**
- Future life care expenses, **5:174**
- Future medical expenses, **5:170 to 5:173**
- Hearsay, **5:168, 5:169**
- Hospital records, admissibility, **5:159 to 5:161**
- Medical bills, introduction of, **5:167**
- Medical reports, admissibility, **5:159 to 5:161**
- Necessity and causal relationship, proof of, **5:164 to 5:166, 5:171**
- Present value of future medical expenses, **5:173**
- Reasonableness, proof of, **5:162, 5:171**
- Write-offs, **1:134, 5:163**

### **MEDICAL ILLUSTRATIONS**

- Traumatic brain injuries, **10:46**

### **MILEAGE**

- Costs of action, **1:33**

### **MILITARY SERVICE**

- Interview of client, biographical information, **1:24**
- Liens for treatment received at military facilities, **1:106**

### **MINORS**

- See index heading **CHILDREN AND MINORS**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **MISREPRESENTATION**

Tolling of limitations period when driver misrepresents identity, **2:6**

### **MIST CASES**

General treatment, **9:1 et seq.**

For detailed treatment see index heading **LOW IMPACT, SOFT TISSUE INJURIES**

### **MISTRIAL**

General treatment, **8:49 to 8:53**

Attorney communication with jurors after discharge, **8:51 to 8:53**

Evidence rules, attorney communication with jurors after discharge, **8:53**

Improper statements by counsel, motion based on, **8:50**

### **MODELS**

Damages, **5:152**

Demonstrative evidence, **5:75**

Expert witnesses, use by, **5:35, 5:47**

Traumatic brain injuries, **10:34**

### **MOTION FOR JUDGMENT**

General treatment, **2:35 to 2:40**

Federal jurisdiction, **2:40, 2:45**

Forms

intersection collision, **2:225**

punitive damages case, **15:47**

rear end collision, **2:224**

### **MOTIONS**

Generally, **2:104 to 2:109**

Briefs, filing and service of, **2:107, 2:108**

Definition of “served,” **2:108**

Hearings on motions, **2:105, 2:109**

In limine. See index heading **MOTIONS IN LIMINE**

Judgment, motion for. See index heading **MOTION FOR JUDGMENT**

Notice, reasonable notice to other counsel, **2:106**

Scheduling of hearings, **2:105**

### **MOTIONS IN LIMINE**

General treatment, **3:1 to 3:22**

Accident reconstruction testimony, **3:13**

Blood alcohol level of plaintiff, **3:17**

Cautions against use, **3:5 to 3:7**

Child, competency to testify concerning speed of vehicle, **3:16**

Forms

motion in limine, **3:78, 3:79**

notice of hearing, **3:80**

order in limine, **3:81**

Insurance adjuster, statements to, **3:19**

Medical examination of plaintiff, reference to as “independent” examination,  
**6:40**

Objection to evidence at trial after ruling on motion in limine, **3:22**

## INDEX

### **MOTIONS IN LIMINE—Cont'd**

- Opening statement, use relative to, **3:8**
- Police officer, testimony of, **3:18**
- Prejudicial background, protection from effect of, **3:20**
- Primary purpose, **3:2**
- Prior claims, evidence of, **3:10**
- Prior injuries, evidence of, **3:11**
- Seat belt use, **3:14**
- Tax return, failure to file, **3:21**
- Unsubstantiated fact or opinion testimony by lay witness, **3:16**
- Uses, **3:3 to 3:22**

### **MOVIES**

- See index heading AUDIO/VIDEO RECORDINGS

### **MUNICIPALITIES**

- General treatment, **13:1 to 13:25**
- For detailed treatment see index heading STATE AND LOCAL GOVERNMENTS

### **NAUSEA**

- Traumatic brain injuries, **10:7**

### **NEGLIGENT ENTRUSTMENT**

- Owner of vehicle, suit for negligent entrustment, **2:16, 2:17**

### **NEGOTIATIONS AND SETTLEMENT**

- General treatment, **1:200 to 1:221**
- Bad faith, **1:220**
- “Bad faith” letter, **1:250**
- Checklist, **1:224**
- Drunk driving cases, avoiding counterproductive negotiations from the outset, **15:12**
- Firm, but flexible, **1:214**
- Forms
  - “bad faith” letter, **1:250**
  - settlement agreement and release, **1:249**
- “John Doe” cases, **11:9, 11:13**
- Liens of state, **1:109 to 1:112, 1:117**
- Low impact, soft tissue injuries. See index heading LOW IMPACT, SOFT TISSUE INJURIES
- Medical expenses, effect of settlement and release on insurer’s obligation to pay, **1:135**
- Notes, keeping of, **1:215**
- Notice to witnesses, **2:216**
- Opening offer of adjuster, **1:213**
- Order granting, **8:102**
  - medical liens, **8:103**
  - minors, approval for, **8:104**
- Patience, **1:203**
- Preparation of settlement package and demand letter, **1:204 to 1:206**

**NEGOTIATIONS AND SETTLEMENT—Cont'd**

- Range of settlement, determination of, **1:211**
- Strengths, knowledge of, **1:210**
- Structured settlements
  - general treatment, **1:218, 1:219, 14:1 et seq.**
  - for detailed treatment see index heading STRUCTURED SETTLEMENTS
- Top offer, **1:216, 1:217**
- Workers' compensation liens, **1:116, 1:117**

**NEWLY DISCOVERED EVIDENCE**

- New trial, grounds for, **8:58, 8:85**

**NEW TRIAL**

- General treatment, **8:56 et seq.**
- Additur. See index heading ADDITUR AND REMITTITUR
- Adequacy of verdict, generally, **8:60, 8:63**
- Bowers v Sprouse rule, **8:71**
- Closing arguments, new trial after improper closing argument, **7:35**
- Costs, motion for, **8:88**
- Damages
  - inadequacy of award, defendant seeking new trial claiming, **8:72**
  - limiting new trial to issues of, **8:63**
  - non-monetary damages, adequacy of award for, **8:62**
  - special damages, adequacy of award for, **8:61**
- Evidence, **8:64 to 8:69**
- Federal practice, **8:82 to 8:85**
- Forms
  - motion for new trial, **8:99**
  - notice of hearing, **8:100**
  - order granting new trial, **8:101**
- Grounds for new trial, generally, **8:58**
- Medical and special damages, verdict for exact amount of, **8:70**
- Non-monetary damages, adequacy of award for, **8:62**
- Number of new trials that may be granted, **8:57**
- Prejudicial conduct of counsel during trial, **8:59**
- Remittitur. See index heading ADDITUR AND REMITTITUR
- Special damages, adequacy of award for, **8:61**

**NOISE**

- Traumatic brain injuries, hypersensitivity to noise, **10:15**

**NOLO CONTENDERE**

- Evidence, **5:112 to 5:114**

**NONJURY TRIALS**

- Closing arguments, **7:2**

**NONSUIT**

- General treatment, **2:83 to 2:97**
- Appeal affirming nonsuit order, time for filing nonsuited action after, **2:97**
- Attorney fees, **2:91**



## INDEX

### **NONSUIT—Cont'd**

- Confession of judgment, nonsuit may be taken after rejecting, **2:87**
- Costs, **2:91**
- Counterclaims, effect of, **2:85**
- Dismissal of parties or claims from original action, exclusion of, **2:93**
- Process, right to nonsuit not contingent on whether defendant was served with, **2:86**
- Refiling the nonsuited action, **2:92 to 2:97**
- Sanctions, entry of nonsuit will not preclude a ruling on a motion for sanctions, **2:88**
- Third-party claims, effect of, **2:85**
- Time for refiling action, **2:94 to 2:97**
- Tolling of limitations period, **2:95, 2:96**
- When nonsuit may be taken, **2:84 to 2:87**

### **NOTES**

- Negotiations and settlement, **1:215**

### **NOTICES**

- Commencement of action, **2:226**
- Defendant's insurance carrier, notice to, **1:96**
- Depositions, **2:172, 2:173, 2:235**
- Electronic service, **2:82**
- Liens, **1:108, 1:117, 1:121**
- Management of case, **1:66**
- Motions, reasonable notice to other counsel, **2:106**
- Parties, suit against parent not notice to subsidiary, **2:15**

### **NURSES**

- Damages, proof of, **5:29**
- Injuries to plaintiff, proof of, **5:150**

### **OATHS**

- Electronic service and filing, sworn pleadings and affidavits, **2:78**

### **OBJECTIONS**

- Closing arguments, **7:30 to 7:32**
- Compulsory general appearance by defendant, failure to object to defect in service of process waives one year time limit, **2:48**
- Depositions, **2:131**
- Discovery, **2:157**
- Evidence, **5:94**
- Expert testimony, **5:95**
- Instructions to jury
  - general treatment, **8:31 to 8:37**
  - for detailed treatment see index heading INSTRUCTIONS TO JURY
- Opening statements, objections to improper statements in, **4:5**
- Subpoena duces tecum, **2:158**
- Verdict, form of, **8:44, 8:45**

**OBJECTIVITY**

Expert witnesses, credibility of, **5:43**

**OFFERS OF PROOF**

General treatment, **5:96 to 5:102**

Deposition, proffer by, **5:101**

Methods of proffers, **5:98 to 5:102**

Mutual stipulations, **5:102**

Summary by counsel, **5:99**

Testimony outside presence of fact finder, **5:100**

Timing of proffers, **5:97**

**OPENING STATEMENTS**

General treatment, **4:1 et seq.**

Checklists

do's and don'ts in opening statements, **4:25**

law of opening statements, **4:21**

persuasion in opening statements, **4:24**

practical considerations, **4:22**

tactical considerations, **4:23**

Comfort, **4:20**

Control of court, **4:4**

Credibility, **4:19**

Damages, theme for, **4:11**

Diffuse weaknesses, **4:14**

Drunk driving cases, **15:29**

Empathy and sympathy for plaintiff, **4:13**

Ethical constraints, **4:6**

Importance of opening statement, **4:7 to 4:20**

Low impact, soft tissue injuries

general treatment, **9:61 to 9:84**

for detailed treatment see index heading **LOW IMPACT, SOFT TISSUE INJURIES**

Motions in limine, **3:8**

Objections to improper statements in opening, **4:5**

Overview of case, presentation of, **4:8**

Personalize plaintiff, **4:12 to 4:14**

Persuasion in opening statements, checklist, **4:24**

Positive image, projecting, **4:16 to 4:18**

Presentation, techniques for, **4:7 to 4:20**

Purpose, **4:2**

Right to make opening statement, **4:1**

Scope, **4:3 to 4:6**

Style and presentation, **4:2, 4:15 to 4:20**

Sympathy for plaintiff, evoking, **4:13**

Themes of case, presentation of, **4:9 to 4:11**

**OPINION**

Closing arguments, **7:22**

## INDEX

### **OSTEOPATHS**

Injuries to plaintiff, proof of, **5:150**

### **OWNERSHIP**

Negligent entrustment, suit against owner of vehicle for, **2:16, 2:17**

Structured settlements, ownership of annuity, **14:95**

### **PAIN AND SUFFERING**

Closing arguments, **7:25**

Evaluation of case, **1:180, 1:223**

### **PARALEGALS**

General treatment, **1:39**

### **PARKS AND RECREATION FACILITIES**

Immunity in collisions caused by municipal vehicles engaged in maintenance or operation of, **13:21**

### **PARTIES**

Defendants, generally, **2:8, 2:9, 2:16 to 2:18**

Misnomer in pleading, **2:12, 2:13**

Notice, suit against parent not notice to subsidiary, **2:15**

Owner of vehicle, suit for negligent entrustment, **2:16, 2:17**

Vicarious liability, identify corporate entity when suing under theory of, **2:11, 2:12, 2:15**

Wrong party named in pleading, **2:13, 2:14**

### **PASSION**

Closing arguments, **7:16**

Expert witnesses, **5:54**

### **PAST RECOLLECTION RECORDED**

Accident reports, use as past recollection recorded, **5:107**

### **PEREMPTORY CHALLENGES**

General treatment, **3:56 et seq.**

Assertion of Batson challenge, **3:59 to 3:61**

Batson, **3:56 et seq.**

Court's determination of motive behind strike, **3:72**

Discrimination, **3:56 et seq.**

Establishing application of Batson, **3:62 to 3:64**

Failure to strike other jurors with similar characteristics, **3:70**

Guidelines and reasons to support strike, **3:67 to 3:70**

Membership in juror's group, **3:58**

Opposing strike of contested juror, **3:65**

Partiality, supporting strike of contested juror, **3:68**

Remedy for unconstitutional exercise of, **3:73**

Reseated juror not subject to subsequent peremptory strike, **3:74**

Supporting strike of contested juror, **3:66 to 3:72**

Visceral or intuitive feelings, supporting strike of contested juror, **3:69**

Voir dire, **3:32**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **PERIODIC PAYMENT ACT OF 1982**

Structured settlements, **14:88 to 14:90**

### **PERMANENT OR PARTIAL DISABILITY**

Evaluation of case, **1:177**

### **PERSONAL INJURY**

Venue, **2:27**

### **PHOTOGRAPHS**

Demonstrative evidence, **5:75**

Injuries to plaintiff, proof of, **5:151**

Low impact, soft tissue injuries, **9:23, 9:41**

Traumatic brain injuries, **10:24, 10:33, 10:35**

### **PHYSICAL THERAPISTS**

Damages, proof of, **5:29**

Injuries to plaintiff, proof of, **5:150**

Low impact, soft tissue injuries, **9:58**

### **PLACE OR LOCATION**

Depositions, **2:171**

Federal employees, actions against, **13:33**

Interview of client, **1:10**

Venue, **2:24 to 2:29**

### **PLAIN LANGUAGE**

Expert witnesses, **5:55**

### **PLEADINGS**

Drunk driving cases, punitive damages, **15:18**

Electronic filing. See index heading **ELECTRONIC SERVICE AND FILING**

Interrogatories, service with complaint, **2:113**

Misnomer in pleading, **2:12, 2:13**

Plaintiff's complaint, **2:35, 2:38**

Punitive damages case, complaint, **15:47**

Wrong party named in pleading, **2:13, 2:14**

### **POLICE OFFICERS AND REPORTS**

Evaluation of case, **1:164**

Evidence, **5:107**

Gross negligence, police pursuit cases, **13:20**

Interview of client, identification of witnesses, **1:12**

Motions in limine, **3:18**

### **POLLING OF JURY**

General treatment, **8:46 to 8:48**

### **POST-TRIAL MOTIONS**

General treatment, **8:46 to 8:90**

Costs, motion for, **8:86 to 8:89**

Federal practice, **8:47, 8:90**

## INDEX

### **POST-TRIAL MOTIONS—Cont'd**

#### Forms

- final order, **8:105**
- motion to set aside verdict, **8:96**
- notice of hearing, **8:97**
- order setting aside verdict, **8:98**
- settlement, order granting, **8:102**
  - medical lien language, **8:103**
  - minors, approval for, **8:104**

#### Mistrial

- general treatment, **8:49 to 8:53**
- for detailed treatment see index heading MISTRIAL

#### New trial

- general treatment, **8:56 et seq.**
- for detailed treatment see index heading NEW TRIAL

#### Polling of jury, **8:46 to 8:48**

#### Renewal of trial motions, **8:54**

#### Setting aside of verdict, **8:55**

#### Uninsured motorist insurer, liability for costs, **8:89**

### **PREEXISTING INJURIES AND DISEASES**

#### Evaluation of case, **1:197**

#### Motions in limine, **3:11**

### **PREJUDICE**

#### See index heading BIAS AND PREJUDICE

### **PRESUMPTIONS AND BURDEN OF PROOF**

#### Closing arguments, right to open and close, **7:7**

#### Instructions to jury, **8:39**

#### “John Doe” cases, **11:12**

#### Judgment as matter of law, presumptions favoring plaintiff when defendant alleges contributory negligence, **8:13**

#### Medical bills, reasonableness of, **5:162**

#### Right to open and close evidence, **5:10**

### **PRETRIAL CONFERENCE**

#### Generally, **2:99**

#### Final pretrial conference, **2:220**

### **PRETRIAL PLANNING AND DISCLOSURE REQUIREMENTS**

#### Initial disclosures required in federal court proceedings, **2:102, 2:103**

#### Meeting required under federal court rules

##### generally, **2:101**

##### form, report of parties planning meeting, **2:231**

#### Report of parties planning meeting, form, **2:231**

#### Time for making initial disclosures required by federal rules, **2:103**

### **PRIOR INCONSISTENT STATEMENTS**

#### Cross-examination, **5:88**

**PRIVILEGED WORK PRODUCT**

Production of documents and things, requests for, **2:124, 2:125**

**PRODUCTION OF DOCUMENTS AND THINGS**

General treatment, **2:118 to 2:127**

Attorney issued subpoena, **2:127**

Drafting of response, **2:150**

Form for plaintiff's first request for production of documents and things to defendant, **2:233**

Insurers, reports of defendant's insurer, **2:123, 2:125**

Nonparty, request for production by, **2:126, 2:180**

Presumption that reports are made in ordinary course of business and not privileged, **2:124**

Privileged work product, **2:124, 2:125**

Procedure, **2:121**

Purpose of requests, **2:119**

Scope of requests, **2:120**

Specific requests, **2:122**

**PROVOKED ARGUMENT**

Closing arguments, **7:29**

**PSYCHIATRISTS AND PSYCHOLOGISTS**

Emotional distress, use to show, **5:31**

Injuries to plaintiff, proof of, **5:150**

**PUNITIVE DAMAGES**

Demurrer, asserting claims for punitive damages sufficient to survive demurrer, **2:38**

Evaluation of case, **1:182 to 1:184**

Intoxication and intoxicating liquors

general treatment, **5:134 to 5:139, 15:3 to 15:9**

for detailed treatment see index heading INTOXICATION

New trial motion, **8:80**

Structured settlements, **14:73, 14:75**

Willful and wanton conduct, **1:184, 15:6, 15:7**

**QUALIFICATIONS**

Expert witnesses, **5:33**

**QUANTITATIVE ELECTROENCEPHALOGRAMS (QEEGs)**

Traumatic brain injuries, **10:42**

**REAL AND DEMONSTRATIVE EVIDENCE**

General treatment, **5:72 to 5:78**

Checklist, **5:196**

Computer animations, **12:43, 12:44**

Expert witnesses, **5:47**

Photographs. See index heading PHOTOGRAPHS

Traumatic brain injuries, **10:30 to 10:48, 10:50**

Uses of demonstrative evidence, **5:77**

## INDEX

### **RECONSIDER, MOTION TO**

Intoxication, punitive damages case, **15:50**

### **RECONSTRUCTION OF ACCIDENTS**

General treatment, **5:117 to 5:123**

Computer analysis in accident reconstruction, **5:122**

Computer animations

general treatment, **12:1 et seq.**

for detailed treatment see index heading **COMPUTER ANIMATIONS**

Expert witnesses, use to prove liability, **5:26**

Foundation, **5:121**

Motions in limine, **3:13**

### **REINSURANCE**

Structured settlements, **14:41**

### **RELATIVES**

See index heading **FAMILY AND RELATIVES**

### **RELEVANCE**

Computer animations, **12:19, 12:30**

### **RELIABILITY**

Expert witnesses, credibility of, **5:43**

### **REMITTITUR**

See index heading **ADDITUR AND REMITTITUR**

### **REPUTATION**

Cross-examination, **5:92**

Evaluation of treating physician, **1:188**

### **RESCUE PERSONNEL**

Drunk driving cases, **15:17**

Interview of client, identification of witnesses, **1:12**

### **RESIDENCE**

Plaintiff's residence, venue, **2:28**

Venue, **2:27, 2:28**

### **REVIEW**

See index heading **APPEAL AND REVIEW**

### **REVOCATION**

Prior authorizations, **1:55**

### **RIDE SHARE CASES**

Gig economy

special considerations, **16:2**

### **SANCTIONS**

Admission, requests for, **2:143, 5:71**

Discovery, sanctions for failure to make required disclosures, **2:208, 2:209**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **SANCTIONS—Cont'd**

Nonsuit, entry of nonsuit will not preclude a ruling on a motion for sanctions,  
**2:88**

### **SCARS**

Damages, proof of, **1:174**

### **SCENE OF ACCIDENT**

Investigation of case, **1:82**

### **SCHEDULING ORDERS**

Generally, **2:100**

### **SCIENTIFIC EVIDENCE**

Computer animations, **12:26, 12:27, 12:35**

### **SEAT BELTS**

Motions in limine, **3:14**

### **SECRETARY OF COMMONWEALTH**

Service of process on, **2:228**

### **SELECTION OF JURY**

General treatment, **3:53 to 3:76**

Bias and prejudice, **3:53 to 3:55**

Cause, challenges for, **3:53, 3:54**

Low impact, soft tissue injuries, **9:60**

Peremptory challenges

general treatment, **3:56 et seq.**

for detailed treatment see index heading PEREMPTORY CHALLENGES

Reseated juror not subject to subsequent peremptory strike, **3:74**

Timing of objections, **3:75, 3:76**

Unconstitutional exercise of peremptory strike, remedy for, **3:73**

Voir dire

general treatment, **3:23 to 3:52**

for detailed treatment see index heading VOIR DIRE

### **SENSORY OVERLOAD**

Traumatic brain injury, **10:18**

### **SERVICE OF PROCESS AND PAPERS**

General treatment, **2:41 to 2:82, 2:227**

Affidavits, **2:59, 2:64, 2:65, 2:67, 2:78, 2:228**

Compulsory general appearance by defendant, failure to object to defect in service of process waives one year time limit, **2:48**

Corporations, **2:55 to 2:59**

Costs of action, **1:33**

Dismissal for failure to obtain timely service, special appearance to file motion,  
**2:49 to 2:52**

Domestic corporations, **2:55**

Due diligence, **2:46**



## INDEX

### **SERVICE OF PROCESS AND PAPERS—Cont'd**

- Electronic service
  - general treatment, **2:72 to 2:82**
  - for detailed treatment see index heading **ELECTRONIC SERVICE AND FILING**
- Federal court actions, **2:71**
- Foreign corporations, **2:56 to 2:59**
- Individual defendants, **2:60 to 2:69**
- Interrogatories, **2:113**
- “John Doe” cases, **11:6 to 11:9**
- Known address, affidavit not required against nonresident driver with known address, **2:65**
- Nonresident individual defendants, **2:63 to 2:67**
- Nonsuit, right to nonsuit not contingent on whether defendant was served with process, **2:86**
- Personal service, **2:57, 2:61**
- Persons who may be served, **2:54**
- Persons who may serve process, **2:53**
- Proof of service, **2:70**
- Resident individual defendants, **2:61, 2:62**
- Secretary of Commonwealth, service on, **2:228**
- Substituted service, **2:58**
- Underinsured defendants, **2:69**
- Uninsured defendants, **2:68**
- Venue
  - where agent appointed to receive service of process, **2:27**
  - where defendant resides, **2:27**
- Voluntary general appearance by defendant waives one year time limit for service of process, **2:47**
- Waiver, **2:47, 2:226, 2:227, 11:8**

### **SETTING ASIDE OF VERDICT**

- General treatment, **8:55**

### **SETTLEMENT**

- General treatment, **1:200 to 1:221**
- For detailed treatment see index heading **NEGOTIATIONS AND SETTLEMENT**

### **SHORT TERM MEMORY IMPAIRMENT**

- Traumatic brain injuries, **10:10**

### **SIGNATURES**

- Depositions, **2:188 to 2:191**
- Electronic service and filing, “User ID” of attorney constitutes signature, **2:76**
- Structured settlements, **14:97**

### **SINGLE PHOTON EMISSION COMPUTERIZED TOMOGRAPHY (SPECT)**

- Traumatic brain injuries, assessment of, **10:40**

### **SKID MARKS**

- Interview of client, evidence at scene, **1:17**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **SMALL BUSINESS JOB PROTECTION ACT OF 1996**

Structured settlements, **14:76**

### **SMELL, SENSE OF**

Traumatic brain injuries, impairment of ability to smell, **10:13**

### **SOVEREIGN IMMUNITY**

General treatment, **13:1 et seq.**

For detailed treatment see index headings **FEDERAL EMPLOYEES; STATE AND LOCAL GOVERNMENTS**

### **SPECIAL DAMAGES**

Adequacy of award, **8:61**

Evaluation of case, **1:181**

New trial, **8:70**

### **SPECIFIC PERFORMANCE**

ERISA plan, reimbursement provisions of, **1:125**

### **SPECT SCANS**

Traumatic brain injuries, **10:40**

### **SPEECH AND LANGUAGE IMPAIRMENT**

Traumatic brain injury, symptoms of, **10:11**

### **STACKING OF MEDICAL PAYMENTS**

Generally, **1:136**

Circumstances where stacking not allowed, **1:137**

### **STATE AND LOCAL GOVERNMENTS**

General treatment, **13:1 to 13:25**

Adequacy of notice of claim against the Commonwealth, **13:6**

Control and discretion exercised over employee by government, degree of, **13:18**

Discretionary vs. ministerial functions, **13:13, 13:14**

Factors in determining whether sovereign immunity applies, **13:15 et seq.**

Gross negligence, **13:11, 13:12, 13:20**

Interest and involvement of government in function, extent of, **13:17**

Limiting amount of recovery, **13:4**

Nature of function performed by employee, **13:16**

Notice of claim required prior to suit against government entities, **13:5 to 13:8**

Parks and recreation facilities, immunity in collisions caused by municipal vehicles engaged in maintenance or operation of, **13:21**

Pleading case against government employee, **13:9 et seq.**

Police pursuit cases, gross negligence, **13:20**

Public policy issues supporting sovereign immunity, **13:2**

Simple negligence, extent of sovereign immunity, **13:10 to 13:12**

Sovereign immunity, **13:3 to 13:35**

Sovereign immunity, **13:1 et seq.**

Timeliness of notice of claim against the Commonwealth, **13:8**

Uninsured motorists, applicability of sovereign immunity, **13:35**

## INDEX

### STATUTE OF LIMITATIONS

- General treatment, **1:36, 1:63 to 1:65, 2:2 to 2:6**
- Accrual of cause of action, **2:3**
- Filing suit, **2:6**
- Nonsuit, tolling of limitations period, **2:95, 2:96**

### STIPULATIONS

- Evidence, **5:70**
- Form of pretrial procedure stipulations, **2:229**
- Pretrial procedure stipulations, **2:98, 2:229**

### STOPPING VEHICLE ON ROAD

- Judgment as matter of law, **8:12**

### STORYBOARD

- Computer animations, **12:8**

### STRUCTURED SETTLEMENTS

- General treatment, **1:218, 1:219, 14:1 et seq.**
- Actual or constructive receipt of periodic payments, **14:78 to 14:81**
- Advantages and disadvantages, **14:51 to 14:70, 14:126**
- Appropriateness of structured settlement
  - general treatment, **14:24 to 14:32**
  - age, **14:26**
  - infant settlements, **14:30**
  - liquidity, need for, **14:28**
  - prudence of plaintiff, **14:29**
  - size of settlement, **14:27**
  - tenuous marital relationships, **14:31**
  - type of injury, **14:25**
- Approval of court, **14:50, 14:110**
- Association of Trial Lawyers of America (ATLA), attorneys' fees, **14:114**
- Attorneys' fees
  - general treatment, **14:111 to 14:123**
  - Association of Trial Lawyers of America (ATLA), **14:114**
  - calculation of fee, **14:111 to 14:119**
  - cost of settlement, calculation of fee based on, **14:112**
  - ethical considerations, **14:119**
  - greater than normal fee, receipt of, **14:116**
  - percentage of present value, **14:117**
  - present value, determination of, **14:115**
  - structuring of fee, **14:118**
  - tax considerations, **14:120 to 14:123**
- Calendars of courts, clearing of, **14:68**
- Checklists
  - advantages and disadvantages of using structured settlement, **14:126**
  - deciding whether to use a structured settlement, **14:124**
  - payments under structured settlements, **14:125**
- Collapse of assignee or annuity company, **14:38 to 14:43, 14:66**

**STRUCTURED SETTLEMENTS—Cont'd**

Creditors of assignee, protection of annuity from, **14:43, 14:98**

Deferred payment option, **14:19**

Definitions

generally, **14:2 to 14:23**

annuity based settlement, **14:4**

funding asset, **14:11**

future lump sum payments, **14:14**

guaranteed period annuity, **14:18**

life annuity, **14:16**

period certain annuity, **14:17**

periodic payments, **14:13**

structured settlement, **14:3**

trust based settlement, **14:5**

Drafting of necessary documents

general treatment, **14:91 to 14:110**

constructive receipt language, avoidance of, **14:94 to 14:96**

creditors of assignee, protection of annuity from, **14:98**

“full accord and satisfaction,” current or up front payment as, **14:101**

indemnity, **14:105**

minors and other incompetents, approval by court, **14:110**

model forms, **14:99 to 14:105**

ownership of annuity, **14:95**

payment, **14:104, 14:108**

“release any and all claims,” **14:100**

“release of defendant(s) and insurer(s) upon assignment,” **14:103, 14:109**

“rights no greater than those of a general creditor,” **14:102, 14:107**

signature of authorized representative of insurance carrier, **14:97**

tax expert, assistance of, **14:91**

Uniform Qualified Assignment and Release, **14:106 to 14:109**

Economists, consultation with, **14:48**

Educational endowment, **14:55**

Emergencies and unexpected contingencies, **14:44, 14:64**

Emotional distress, exclusion of damages received for personal injuries from  
gross income, **14:74**

Ethical considerations, attorneys' fees, **14:119**

Experts, consultation with, **14:46 to 14:48**

Flexibility, **14:54 to 14:58**

“Full accord and satisfaction,” current or up front payment as, **14:101**

Funding asset, **14:11**

Future lump sum payments, **14:14, 14:21**

Future payments, **14:12 to 14:14**

Gross income, exclusion of damages received for personal injuries, **14:71 et seq.**

Guaranteed period annuities, **14:18**

Historical background, **14:1**

Increasing payment annuities, **14:20**

Indemnity, **14:105**

Inflation, **14:45, 14:56, 14:65**

## INDEX

### STRUCTURED SETTLEMENTS—Cont'd

- Insurance, potential reduction in costs of, **14:70**
- Investment risks, elimination of, **14:61**
- Joint life or survivorship options, **14:22**
- Jury award, settlement after, **14:93**
- Life annuities, **14:16**
- Life insurance, **14:58**
- Liquidity, need for, **14:28**
- Management fees, avoidance of, **14:60**
- Marital relationships, appropriateness of structured settlement, **14:31**
- Medical experts, consultation with, **14:47**
- Minors and other incompetents, **14:26, 14:30, 14:110**
- Model forms, **14:99 to 14:105**
- Multiple annuities, **14:23**
- Negotiation of structured settlement
  - general treatment, **14:33 to 14:50**
  - approval of court, **14:50**
  - economists, consultation with, **14:48**
  - experts, consultation with, **14:46 to 14:48**
  - general creditors of assignee, prevention from reaching annuity contract, **14:43**
  - inflation, **14:45**
  - information needed to evaluate settlement, **14:36, 14:37**
  - initial considerations, **14:33 to 14:50**
  - medical experts, consultation with, **14:47**
  - rating of annuity company, **14:40**
  - reinsurance, use of, **14:41**
  - reserve for emergencies or unexpected contingencies, **14:44**
  - risk of collapse of annuity company, minimization of, **14:38 to 14:43**
  - satisfaction of needs of client, **14:35**
  - secured creditor rights, creation in plaintiff, **14:42**
  - structured settlement specialty companies, **14:37**
- O'Gilvie v United States, effect of ruling in, **14:75**
- Ownership of annuity, **14:95**
- Payment, **14:104, 14:108, 14:125**
- Period certain annuities, **14:17**
- Periodic Payment Act of 1982, **14:88 to 14:90**
- Periodic payments, **14:13**
- Present value, attorneys' fees, **14:115**
- Prudence of plaintiff, **14:29**
- Punitive damages, **14:73, 14:75**
- Qualified assignment, **14:7 to 14:10**
- Rated policies, **14:57**
- Rating of annuity company, **14:40**
- Reinsurance, use of, **14:41**
- "Release any and all claims," **14:100**
- "Release of defendant(s) and insurer(s) upon assignment," **14:103, 14:109**
- "Rights no greater than those of a general creditor," **14:102, 14:107**

**STRUCTURED SETTLEMENTS—Cont'd**

- Secured creditor rights, creation in plaintiff, **14:42**
- Self-protection and security, **14:53**
- Signature of authorized representative of insurance carrier, **14:97**
- Small Business Job Protection Act of 1996, **14:76**
- Tax considerations
  - general treatment, **14:52, 14:71 to 14:90**
  - actual or constructive receipt of periodic payments, **14:78 to 14:81**
  - attorneys' fees, **14:120 to 14:123**
  - economic benefit, exclusion from gross income periodic payments, **14:82**
  - emotional distress, exclusion of damages received for personal injuries from gross income, **14:74**
  - estate of recipient, payments made to, **14:85**
  - gross income, exclusion of damages received for personal injuries, **14:71 et seq.**
  - increasing annual payments, **14:86**
  - IRS rulings, **14:83 to 14:87**
  - loss of income, damages for, **14:87**
  - Periodic Payment Act of 1982, **14:88 to 14:90**
  - periodic payments, exclusion from gross income, **14:77 to 14:79**
  - punitive damages, **14:73, 14:75**
  - Small Business Job Protection Act of 1996, **14:76**
- Tax expert, assistance of, **14:91**
- Types of annuities, **14:15 to 14:23**
- Uniform Qualified Assignment and Release, **14:106 to 14:109**
- Weak liability case, settlement of, **14:62**
- Worry-free nature, **14:59**

**SUBPOENA DUCES TECUM**

- Attorney issued (form), **2:234**
- Medical evidence of defendant, challenges to, **6:31 to 6:37**
- Production of documents and things, attorney-issued subpoena, **2:127**

**SUBPOENAS**

- Costs of action, **1:33**
- Medical records, **1:91**
- Witness, attorney-issued subpoena for, **2:239**

**SUBROGATION**

- General treatment, **1:122 to 1:130**
- Uninsured and underinsured motorist carriers, **15:44**

**SUBSTITUTED SERVICE**

- Service of process and papers, **2:58**

**SUMMONS**

- Generally, **2:39**

**SUPPLEMENTATION**

- Discovery, responses to requests, **2:153, 2:156**

## INDEX

### **TASTE, SENSE OF**

Traumatic brain injuries, impairment of ability to taste, **10:13**

### **TAXATION**

Medical evidence of defendant, subpoena duces tecum, **6:36**

Motions in limine, failure to file tax return, **3:21**

Structured settlements

general treatment, **14:52, 14:71 to 14:90**

for detailed treatment see index heading **STRUCTURED SETTLEMENTS**

### **TELEPHONES**

Costs of action, **1:33**

Depositions, **2:182, 9:32**

Low impact, soft tissue cases, **9:32**

### **TEXTS**

Expert witnesses, **5:48**

### **THIRD-PARTY CLAIMS**

Liens on recovery, court approval of settlement of third-party claims, **1:119**

Nonsuit (voluntary), **2:85**

### **TIME AND DATE**

Chemical testing to determine alcohol or drug content of blood, **5:129**

Depositions. See index heading **DEPOSITIONS**

Discovery, **2:145**

Driving while intoxicated. See index heading **INTOXICATION**

Electronic service and filing, time for acting after electronic service, **2:77**

End, time required to bring case to, **1:34 to 1:37**

Entry of judgment, additur and remittitur, **8:81**

Federal employees, actions against, **13:31, 13:32**

Initiation of suit, **2:1 to 2:7**

Instructions to jury. See index heading **INSTRUCTIONS TO JURY**

Interview of client, **1:10**

Judgment as matter of law, motion for, **8:5, 8:17**

Nonsuit, time for refiling action, **2:94 to 2:97**

Offers of proof, **5:97**

Pretrial planning and disclosure requirements, time for making initial disclosures  
required by federal rules, **2:103**

Selection of jury, **3:75, 3:76**

Settlement, inability to reach, **2:7**

Statute of limitations

general treatment, **1:36, 1:63 to 1:65, 2:2 to 2:6**

for detailed treatment see index heading **STATUTE OF LIMITATIONS**

### **TOXICOLOGISTS AND TOXICOLOGY REPORTS**

General treatment, **5:28, 15:30, 15:31**

Interview of client, charges against defendants, **1:15**

### **TRAFFIC CITATIONS**

Evidence, **5:111 to 5:115**

**TRAUMATIC BRAIN INJURIES**

General treatment, **10:1 et seq.**

Accident report and photographs, **10:24**

Amnesia, **10:4**

Assessment and testing

general treatment, **10:22 to 10:29**

accident report and photographs, **10:24**

history of symptoms, **10:25**

information needed, **10:23 to 10:27**

neuropsychological testing, **10:28, 10:29**

pre-injury level of functioning, **10:26, 10:27**

Attention span, changes in, **10:9**

Balance deficits, **10:14**

BEAMs, **10:43**

Behavioral changes, **10:21**

Checklists

demonstrative evidence in mild traumatic brain injury cases, examples, **10:49**

symptoms of traumatic brain injury, **10:49**

Cognitive inefficiency, **10:12**

Consciousness, loss of, **10:3**

Demonstrative evidence, **10:30 to 10:48, 10:50**

Diagrams and charts, **10:48**

Divided attention, **10:17**

EEGs, **10:41**

Emotional changes, **10:21**

Evidence

general treatment, **10:30 to 10:48, 10:50**

BEAMs, **10:43**

biomechanical aspects of trauma, **10:32 to 10:35**

brain function or activity, tests of, **10:39 to 10:43**

demonstrative evidence, **10:30 to 10:48, 10:50**

diagrams and charts, **10:48**

EEGs, **10:41**

medical illustrations, **10:46**

models of head and brain, **10:34**

neurodiagnostic tests, **10:36 et seq.**

neuroimaging tests, **10:38**

neuropsychological tests, **10:44, 10:45**

photographs, **10:33, 10:35**

SPECT scans, **10:40**

videotapes, **10:47**

Fatigue, **10:16**

Fine motor skills, reduction in, **10:20**

Grip strength, reduction in, **10:20**

Headaches, **10:6**

Hearing problems, **10:15, 10:19**

History of symptoms, **10:25**



## INDEX

### **TRAUMATIC BRAIN INJURIES—Cont'd**

- Language impairment, **10:11**
- Light, hypersensitivity to, **10:15**
- Medical illustrations, **10:46**
- Mental status, alteration in, **10:5**
- Models of head and brain, **10:34**
- Nausea and vomiting, **10:7**
- Neurodiagnostic tests, **10:36 et seq.**
- Neuroimaging tests, **10:38**
- Neuropsychological tests, **10:28, 10:29, 10:44, 10:45**
- Noise, hypersensitivity to, **10:15**
- Photographs, **10:24, 10:33, 10:35**
- Post-acute symptoms, **10:8 to 10:21**
- QEEGs, **10:42**
- Sensory overload, **10:18**
- Short term memory impairment, **10:10**
- Smell, impairment of ability to, **10:13**
- SPECT scans, **10:40**
- Speech impairment, **10:11**
- Symptoms, **10:2 to 10:21**
- Taste, impairment of ability to, **10:13**
- Testing. Assessment and testing, above
- Videotapes, **10:47**
- Vomiting, **10:7**

### **TREATISES**

- Hearsay, statements in certain publications relied upon by expert not excludable as, **5:39**
- Medical evidence of defendant, challenges to, **6:63, 6:64**

### **TRIAL PREPARATION**

- General treatment, **2:210 to 2:222**
- Confession of judgment by a defendant, **2:222**
- Drunk driving cases, **15:10 to 15:46**
- Expert witnesses, **2:213 to 2:215**
- Fees of expert witnesses, payment of, **2:214**
- Final pretrial conference, **2:220**
- Interviews of witnesses, **2:211**
- Jury investigation prior to trial, **2:218**
- Notebook, prepare a trial notebook, **2:221, 2:223**
- Order of witnesses, **2:212**
- Plaintiff, preparation of, **2:217**
- Report of parties planning meeting, form, **2:231**
- Scheduling orders, uniform pretrial scheduling order, form, **2:230**
- Settlement, notice to witnesses of release from subpoena, **2:216**
- Uniform pretrial scheduling order, form, **2:230**
- Witnesses, **2:210 to 2:216**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **TRUSTWORTHINESS**

Expert witnesses, credibility of, **5:43**

### **UNIFORM QUALIFIED ASSIGNMENT AND RELEASE**

Structured settlements, **14:106 to 14:109**

### **UNINSURED AND UNDERINSURED MOTORISTS**

Drunk driving cases, **15:21, 15:40 to 15:45**

Investigation of case, **1:138 to 1:147**

“John Doe” cases

general treatment, **11:1 et seq.**

for detailed treatment see index heading “JOHN DOE” CASES

Service of process and papers, **2:68, 2:69**

Sovereign immunity, applicability of, **13:35**

### **VEHICLE SHARE CASES**

Gig economy

special considerations, **16:2**

### **VENUE**

General treatment, **2:24 to 2:29**

Administrator, appointed for the estate of a decedent, **2:27**

Agent appointed to receive service of process, **2:27**

Cause of action, place of arising of, **2:26**

Circuit courts, **2:25 to 2:28**

Evaluation of case, **1:185**

Federal jurisdiction, **2:29**

General district courts, **2:25 to 2:28**

Principle office or principle place of business, **2:27**

Residence, defendant, **2:27**

Residence, plaintiff, **2:28**

Wrongful death or personal injury, **2:27**

### **VERDICTS**

General treatment, **8:40 to 8:45**

Federal court practice, **8:43, 8:82, 8:83**

Form of verdict, **8:40 to 8:43**

General verdict, **8:41**

Instructions to jury, **8:39**

Itemization of damages, **8:45**

Objection to form of verdict, **8:44, 8:45**

Special findings, **8:42**

### **VERTIGO**

Traumatic brain injury, symptoms of, **10:14**

### **VICARIOUS LIABILITY**

Identify corporate entity when suing under theory of, **2:11, 2:12, 2:15**

### **VIDEO RECORDINGS**

See index heading AUDIO/VIDEO RECORDINGS

## INDEX

### VISCERAL FEELINGS

Peremptory challenges, supporting strike of contested juror, **3:69**

### VOCATIONAL REHABILITATION EXPERTS

Damages, proof of, **5:29**

Earning capacity, proof of loss of, **5:189**

Future lost earnings, proof of, **5:184**

Lost earnings, **5:189**

### VOIR DIRE

General treatment, **3:23 to 3:52**

Checklist, **3:77**

Conversation, being a good conversationalist, **3:46**

Damages, prepare jurors to award full and fair damages, **3:31**

Disapproval, avoid showing, **3:43**

Draw jurors out, **3:45**

Dress down for voir dire, **3:50**

Drunk driving cases, **15:24, 15:28**

Effective use, **3:29 to 3:32**

Ethics, lecturing of jurors, **3:36**

Examination, generally, **3:26, 3:28**

Follow-up questions, use of, **3:44 to 3:48**

Form for sample voir dire, **3:82**

Getting jurors to talk, generally, **3:34, 3:49**

Group discussion, voir dire as, **3:52**

Impaneling of venire, **3:24, 3:25**

Judge, assistance of, **3:49**

Jury lists, **3:25**

Justification of questions, **3:47, 3:48**

Lecturing of jurors, **3:35 to 3:38**

Open-ended questions, use of, **3:40, 3:41**

Peremptory challenges, gathering of information for, **3:32**

Potential problems in case, preparation of jury for, **3:30**

Preliminary voir dire information, **3:27**

Purposes, **3:23**

Rehearsal of voir dire, **3:51**

Strategies and techniques, **3:33 to 3:38**

Techniques for voir dire questioning, generally, **3:39 to 3:52**

Watch and listen, **3:42, 3:43**

### VOMITING

Traumatic brain injuries, **10:7**

### VOUCHING FOR WITNESS

Closing arguments, **7:22**

### WAIVER

Compulsory general appearance by defendant, failure to object to defect in service of process waives one year time limit, **2:48**

Deposition, signing of, **2:189, 2:190**

## HANDLING AN AUTOMOBILE NEGLIGENCE CASE IN VIRGINIA

### **WAIVER—Cont'd**

Instructions to jury, **8:25**

“John Doe” cases, service of process, **11:8**

Objections to evidence, **5:94**

Right to open and close evidence, **5:10**

Service of process, **2:47, 2:226, 2:227, 11:8**

Voluntary general appearance by defendant waives one year time limit for service of process, **2:47**

### **WEATHER REPORTS**

Investigation of case, **1:87**

### **WILLFUL AND WANTON CONDUCT**

Punitive damages, **1:184, 15:6, 15:7**

### **WITNESSES**

See index heading EVIDENCE

### **WORKERS' COMPENSATION**

Liens on recovery, **1:116, 1:117**

### **WORK PRODUCT**

Production of documents and things, requests for, **2:124, 2:125**

### **WRITE-OFFS**

Medical expenses, **1:134, 5:163**

### **WRONGFUL DEATH**

Venue, **2:27**

### **X-RAYS**

Damages, proof of, **5:153**

Expert witnesses, use by, **5:47**

Medical evidence of defendant, challenges to, **6:68**