A. Handling Prejudicial Evidence

Most evidence is in a general sense, prejudicial to one side or the other. "All probative direct evidence generally has a prejudicial effect to the opposing party. Instead, the standard to have prejudicial evidence excluded is whether it rises to the level of unfair prejudice and whether the probative value of the evidence is substantially outweighed by that unfair prejudice." Lee v. Spoden, 290 Va. 235, 251, 776 S.E.2d 798 (2015)

But the rules of evidence make clear that some evidence is inadmissible and some evidence may be inadmissible, so tread carefully. Evidence of this nature is truly prejudicial and ignoring stop signs at trial can lead to sanctions and rulings which either exclude evidence or result in jury instructions harmful to your case.

Examples of Running a Stop Sign with Prejudicial Evidence

1. Mentioning Liability Insurance:

Eliciting testimony or mentioning to the jury that a party has liability insurance to pay any judgment. This runs afoul of the collateral source rule.

2. Mentioning Payment of a Plaintiff's Medical Bills By a Collateral Source:

Introducing evidence of payment of medical bills by health insurance which is a collateral source and is therefore generally inadmissible. Acuar v. Letourneau, 260 Va. 180, 531 S.E.2d 316 (2000). This includes payments by Medicaid and Medicare.

3. Improper Cross-Examination of Criminal Conviction;

Cross-examining a party with a criminal conviction which may not be a felony or misdemeanor involving moral turpitude. Or, attempting to elicit the specific nature of the crime rather than just establish that it was a felony or misdemeanor involving moral turpitude. See Payne v Carroll, 250 Va. 336 (1995) and Rule of Evidence 2:609.

4. Prior Medical Condition or Accident:

Stating in opening that the Plaintiff suffered a previous medical condition or prior accident with the knowledge that the opposing party has filed a motion in limine or will otherwise move to exclude the evidence.

Where there will be no evidence that Plaintiff's prior injuries have any connection with the injury for which Plaintiff is seeking compensation in the present lawsuit, the evidence of prior injuries should not be allowed. Carter v. Shoemaker, 214 Va. 16, 197 S.E.2d 181 (1973). The defense attorney should not be permitted to suggest the prior collision is medically relevant when he knows his own expert will not so testify.

5. Suggesting Intoxication of Driver Without Admissible Evidence;

Telling the jury that a vehicle operator was intoxicated when the evidence in support is insufficient, such as testimony the driver smelled of an alcoholic beverage, or that empty or partially empty containers were seen in the vehicle and other evidence suggesting but not proving intoxication is usually inadmissible. Hemming v. Hutchinson, 221 Va. 1143 (1981).

6. Prior Acts of Misconduct and Previous Negligent Conduct.

Collateral evidence of misconduct is inadmissible if it will distract the jury from the central issue of negligence, and inflame and mislead.

The circuit court did not err by denying plaintiff's attempts to cross-examine Dr. Ghramm about his alleged prior acts of misconduct and negligence relating to his former patients. The subjects of testimony upon which the plaintiff sought to cross-examine Dr. Ghramm were collateral, and such testimony would have certainly injected non-probative prejudicial evidence before the jury. Stottlemyer v. Ghramm, 268 Va. 7, 597 S.E.2d 191 (2004).

7. Reference to Illegitimacy of Heir of Decedent in Wrongful Death Case:

The administrator contends that the award of damages was grossly inadequate, and he attributes such inadequacy to the error of the trial court in admitting the highly prejudicial evidence showing that the decedent and his half-sister were illegitimate children of Maxine Lee Williams, and that the half-sister was pregnant before her marriage to the unborn child's father. We agree with the administrator's contention that it was error to admit the evidence complained of and that it could have influenced the jury in awarding damages. Edwards v. Syrkes, 211 Va. 600, 179 S.E.2d 902 (1971).

8. References to Police Crash Report:

Accident reports are inadmissible. Va. Code 46.2-379. Even where an accident report is not introduced into evidence, it is error to allow numerous references to it during the trial, not only by the officer, but also the court and the attorneys. This amounted to an official stamp being placed on the document used to refresh Mills' recollection. Thus, the jury could have placed more weight on Mills' testimony than it might otherwise have done. As we said in Phillips, the references to the accident report "accomplished indirectly what Code § 46.2-379 forbids to be done directly. Acuar v. Letourneau, 260 Va. 180, 531 S.E.2d 316 (2000).