Immunities

Traps and Pitfalls in Handling Immunity Cases

by Colleen Marea Quinn

One of the greatest disappointments is to conduct intake on what appears to be a super plaintiff's injury case – clear liability, significant damages, sympathetic and articulate client – only to discover that the defendant is a government entity, religious institution, non-profit association or other defendant entitled to claim immunity from suit.

This article is intended to provide some practical tips in selecting and handling immunity cases involving municipalities and charitable institutions. It is not intended to be an all inclusive list of all the traps and pitfalls encountered in immunity cases. Rather, this article is simply a disjointed compendium of some of the snares that I have encountered in practicing more than 20 years of injury law (both plaintiff and defense) as well as tips and words of caution borrowed from my law partners at *Cantor Arkema* and honed from the always useful VTLA listserves and its more active participants.

Selection Phase - Due Diligience

It is critical to learn everything there is to know about the defendant(s) at the selection phase of taking a case.

- Is the entity part of a city, county or state government or municipality?
- Was the wrongdoer an employee working for a city, county, state or other government or municipal body?

- Is the entity for-profit or not for profit?
- If a non-profit – what is their mission statement? What is their financial worth?
- Was the wrongdoer an employee working for a non-profit entity?

For example, a simple rear end collision becomes a different case when the defendant turns out to be an undercover state trooper who was on duty at the time of the accident and just got an emergency call. Now the case just got more complicated with the added issues of:

- determining whether the Virginia Tort Claims Act ("VTCA") applies or does not apply by:
  - establishing whether the trooper was engaged in discretionary acts or only ministerial obligations at the time of the accident (more on this discussed below), and/or
  - meeting a higher standard of proof (gross negligence or intentional act rather then negligence); and/or
  - determining whether the trooper was acting outside the scope of employment; and then,
- if the VTCA applies, giving notice within one year;
- facing a limitation on recovery under the VTCA; and
- under the VTCA, being certain to name the Commonwealth as a defendant.

Take the time to research the defendant(s) first – put the horse before the cart.

Before launching into gathering the client's medical records and bills or other damage information, time and effort should be spent on researching the defendant(s). Why spend the time and effort in pursuing the case if you are only going to hit insurmountable immunity road blocks? Inexpensive research methods include:

- State corporation site search
- Internet research
- Physically visit the defendant's place of business, pick up brochures, ask questions about what type of business it is
- Search the land records – who owns the property?
- Pick up the phone and call the defendant's general counsel (this is how I recently learned that a shopping mall was owned by a quasi-governmental entity formed by the local county but was operated by a private entity)
- If the defendant is an individual – for whom did they work? Were they on duty or off duty? Were they just driving around or responding to an emergency call. Flushing out these factors could make or break your case.
- Make a Freedom Of Information Act (FOIA) request for all relevant public records – especially 911 tapes, emergency call records, employment records, insurance information and other public documents.

Be certain to find and sort out ALL the defendants.

While the slip and fall might have been on county, city or state property – who were the maintenance or construction workers? Were they county, city or state employees or independent contractors?

Was the harm committed by an employee or independent contractor?

For example, I had a case where a high school student client sat on a cafeteria stool which broke and caused significant injury. Suing the county school system (even though the school knew the stools kept breaking) posed numerous immunity issues. The better route was to pursue the case as a products liability case (not a premises case), sue the distributor and the manufacturer – and recruit the school as an ally.

Another example is when the medical malpractice may have occurred at a public hospital (like the Medical College of Virginia) but the nurse who was negligent was supplied by a staffing company as an independent contractor.

Research the Law.

- What is the applicable law?
- What are the causes of action and will an immunity defense apply?
- Even if the immunity defense applies – can you get around it?
- Are there any exceptions to the immunity defense (for example, charitable immunity is not a defense to an action for negligent selection and retention)?
- What will be the burden of proof?

Make a preliminary assessment before expending more time and money on the case - can you seriously win?

Specific Traps and Pitfalls in Suing Municipalities

Watch Statutory Notice Deadlines and Express Requirements!

After sorting out the defendants and researching the applicable law, calendar and be sure to meet the statutory notice deadlines. Even if it appears that the immunity defense will not apply (*e.g.*, officer was sitting in his vehicle drinking coffee reading the paper), it is better to err on the side of caution and file notice. Remember that failure to give notice may not doom your case if you have facts (gross negligence, intentional act, acts outside scope of employment, etc.) that permit you to get around the immunity defense. Also consider the implications of uninsured motorists' coverage (more on that below) in a motor vehicle case where the tortfeasor is immune.

(1) **Claims Under the Virginia Tort Claims Act**. Pursuant to Virginia Code section 8.01-195.6 (set out below, emphasis added), notice must be given **AND RECEIVED** within one year. Read the statute carefully so as to include the proper information in the notice (statement of the nature of the claim including time and place of injury and the agency or agencies liable). Name the Commonwealth and, if applicable, the transportation district. Out of an abundance of caution, individual defendants should be named as well. Note that the tolling provisions of 8.01-229 (infant, convict, incapacity, death, etc.) apply.

Most importantly – be sure to have PROOF that the notice was RECEIVED in the right office before the one year expires!

§8.01-195.6. Notice of claim.

A. Every claim cognizable against the Commonwealth or a transportation district shall be forever barred unless the claimant or his agent, attorney or representative **has filed a written statement of the nature of the claim**, **which includes the time and place at which the injury is alleged to have occurred and the agency or agencies alleged to be liable, within one year after such cause of action accrued. However, if the claimant was under a disability at the time the cause of action accrued, the tolling provisions of §8.01-229 shall apply.**

B. If the claim is against the Commonwealth, the statement shall be filed with the Director of the Division of Risk Management or the Attorney General. If the claim is against a transportation district the statement shall be filed with the chairman of the commission of the transportation district.

C. The **notice is deemed filed when it is received** in the office of the official to whom the notice is directed. The notice may be delivered by hand, by any form of United States mail service (including regular, certified, registered or overnight mail), or by commercial delivery service.

D. In any action contesting the filing of the notice of claim, **the burden of proof shall be on the claimant to establish receipt of the notice in conformity with this section.** A signed United States mail return receipt indicating the date of delivery, or any other form of signed and dated acknowledgment of delivery given by authorized personnel in the office of the official with whom the statement is filed, shall be prima facie evidence of filing of the notice under this section.

E. Claims against the Commonwealth

involving medical malpractice shall be subject to the provisions of this article and to the provisions of Chapter 21.1 (§8.01-581.1 et seq.) of this title. However, the recovery in such a claim involving medical malpractice shall not exceed the limits imposed by §8.01-195.3.

Claims Against Counties, Cities or Towns.

Pursuant to Virginia Code §15.2-209 (set out below, emphasis added), notice must be given AND RECEIVED within six months after the cause of action accrues. The same tolling provisions of §8.01-229 apply. Remember that just because the Commonwealth (and certain transportation districts) have waived sovereign immunity under the Virginia Tort Claims Act, counties, cities and towns, and their agents and employees, have not.

> **§15.2-209**. Notice to be given to counties, cities, and towns of tort claims for damages.
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> A. Every claim cognizable against any county, city, or town for negligence shall be forever barred unless the claimant or his agent, attorney, or representative **has filed a written statement of the nature of the claim, which includes the time and place at which the injury is alleged to have occurred**, within six months after such cause of action accrued. However, if the claimant was under a disability at the time the cause of action accrued, the tolling provisions of §8.01-229 shall apply.
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> B. The **statement shall be filed with the county, city, or town attorney or with the chief executive or mayor of the county, city, or town**.
>
> C. **The notice is deemed filed when it is received in the office of the official to whom the notice is directed.** The notice may be delivered by hand, by any form of United States mail service (including regular, certified, registered or overnight mail), or by commercial delivery service.
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> D. In any action contesting the filing of the notice of claim, **the burden of proof shall be on the claimant to establish receipt of the notice in conformity with this section. A signed United States mail return receipt indicating the date of delivery, or any other form of signed and dated acknowledgment of delivery, given by authorized personnel in the office of the official with whom the statement is filed, shall be prima facie evidence of filing of the notice under this section**.
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> E. **This section does not, and shall not be construed to, abrogate, limit, expand or modify the sovereign immunity of any county, city, town, or any officer, agent or employee of the foregoing.**
>
> F. This section, on and after June 30, 1954, shall take precedence over the provisions of all charters and amendments thereto of municipal corporations in conflict herewith granted prior to such date. It is further declared that as to any such charter or amendment thereto, granted on and after such date, that any provision therein in conflict with this section shall be deemed to be invalid as being in conflict with Article IV, Section 12 of the Constitution of Virginia unless such conflict be stated in the title to such proposed charter or amendment thereto by the words "conflicting with §15.2-209 of the Code" or substantially similar language.
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> G. **The provisions of this section are mandatory and shall be strictly construed**. This section is procedural and compliance with its provisions is not jurisdictional.

Flush Out the Limits on Insurance Coverage and Potential Recovery

Liability insurance. Ask for and obtain the applicable Virginia Department of Risk Management (DRM) plan, and read the applicable DRM plan. Don't accept DRM's word as to the amount of coverage applicable to a given case. While the limit is $100,000 for a case under the Virginia Tort Claims Act (VTCA) it may be $2 million for an agent in a regular negligence (non-VTCA case). The DRM may not be volunteering that information.

Uninsured motorists coverage. For a motor vehicle accident case, if the employee defendant is immune, then your client may be able to recover against his or her own uninsured motorists (UM) coverage. BE CERTAIN TO GIVE NOTICE TO THE UIM CARRIER.

> Under Virginia Code §38.2-2206(B) (emphasis added): "Uninsured motor vehicle" means a motor vehicle for which (i) there is no bodily injury liability insurance and property damage liability insurance in the amounts specified by §46.2-472, (ii) there is such insurance but the insurer writing the insurance denies coverage for any reason whatsoever, including failure or refusal of the insured to cooperate with the insurer, (iii) there is no bond or deposit of money or securities in lieu of such insurance, (iv) the owner of the motor vehicle has not qualified as a self-insurer under the provisions of §46.2-368, or (v) **the owner or operator of the motor vehicle is immune from liability for negligence under the laws of**

> **the Commonwealth or the United States, in which case the provisions of subsection F shall apply and the action shall continue against the insurer.** A motor vehicle shall be deemed uninsured if its owner or operator is unknown.

Under Virginia Code §38.2-2206(F) (emphasis added), the specific process for pursuing an action against an immune driver is set out:

> If any action is instituted against the owner or operator of an uninsured or underinsured motor vehicle by any insured intending to rely on the uninsured or underinsured coverage provision or endorsement of this policy under which the insured is making a claim, then the insured shall serve a copy of the process upon this insurer in the manner prescribed by law, as though the insurer were a party defendant. The provisions of §8.01-288 shall not be applicable to the service of process required in this subsection. The insurer shall then have the right to file pleadings and take other action allowable by law in the name of the owner or operator of the uninsured or underinsured motor vehicle or in its own name. Notwithstanding the provisions of subsection A, **the immunity from liability for negligence of the owner or operator of a motor vehicle shall not be a bar to the insured obtaining a judgment enforceable against the insurer for the negligence of the immune owner or operator, and shall not be a defense available to the insurer to the action brought by the insured, which shall proceed against the named defendant although any judgment obtained against an immune defendant shall be entered in the name of "Immune Defendant" and shall be enforceable against the insurer and any other nonimmune defendant as though it were entered in the actual name of the named immune defendant.** Nothing in this subsection shall prevent the owner or operator of the uninsured motor vehicle from employing counsel of his own choice and taking any action in his own interest in connection with the proceeding.

Evaluate the Choice of Venue

One problem with suing municipalities under Virginia common law is that often the only choice of venue is within the municipality. For example, I once (unwisely) handled a premises liability case where my client fell on the courthouse steps out in Powhatan. Since the case had to be brought in Powhatan, and tried in the Powhatan courthouse, the fact that there was an 11-inch drop in the steps that violated the building code and that she had severe and permanent injuries were no match for the venue. The judge struck the plaintiff's case after the plaintiff rested on the basis of contributory negligence. Think twice about your venue option before suing a municipality.

Of course, if the claim is based on certain federal causes of action (such as Title VII of the Civil Rights Act, the Americans with Disabilities Act, Age Discrimination in Employment, Fair Labor Standards Act, etc), then federal court would be a better option as to venue and possibly without the immunity defenses. *See Jacobs v College of William & Mary*, 495 F. Supp 183 (E.D. Va. 1980) (plaintiff's claim under Fair Labor Standards Act allowed, Title VII claim presumably allowed but dismissed due to failure to file timely notice, 42. U.S.C. Section 1983 claim barred by Eleventh Amendment immunity as College of William & Mary is "arm of the state"); and *Croatan Books, Inc. v Commonwealth of Virginia*, 574 F. Supp. 880 (E.D. Va. 1983) (Commonwealth, State Corporation Commission and Attorney General had immunity under 42 U.S.C. Section 1983 civil rights action).

Sue the Correct Entities; Name the Commonwealth under VTCA Actions

For cases under the Virginia Tort Claims Act, make sure you sue the Commonwealth (and/or the specific transportation districts) and not just the agency/agencies or employee(s) of the Commonwealth. The Commonwealth and certain transportation districts have waived sovereign immunity while the Commonwealth's agencies and employees have not. *See, e.g. The Rector and Visitors of UVa v. Carter*, 267 Va. 242, 591 S.E. 2d 76 (2004) (UVa, as an agency of the Commonwealth, was entitled to sovereign immunity; the Commonwealth – which was not named - was both a proper and necessary party; trial court erred in not granting plea of sovereign immunity as to UVa and dismissing case).

Evaluate the "Independent Contractor" vs. "Employee" Distinction and Draft Your Complaint Accordingly

Let's go back to the MCV case discussed earlier, what if the nurse can successfully show she was an employee of MCV and not an independent contractor because of the amount of control MCV exercised over her? Now she may be entitled to sovereign immunity – but as set out below, it is still not automatic. Careful drafting of the Complaint – even in the alternative – is important.

Independent contractors.

The sovereign immunity test set forth in *James v. Jane*, 221 Va. 43, 282 S.E.2d 86 (1980) "presupposes" that the one seeking the protection of sovereign immunity is "an employee or agent of the Commonwealth." *Atkinson v. Sachno*, 261 Va. 278, 283,

541 S.E.2d 902, 904-05 (2001). In other words, the *James* test is not applicable if the individual is an independent contractor and, thus, not an employee or agent of the Commonwealth. *Id.* Because of the misconception that sovereign immunity extended to independent contractors, the Virginia Supreme Court in *Atkinson* made it crystal clear that was not the case:

> So that no doubt will exist on that issue, we expressly hold that while some employees or agents of the Commonwealth ***may*** be entitled to the protection of sovereign immunity, all independent contractors are excluded from that protection.

Id. at 284, 541 S.E.2d at 905 (emphasis in original). Sovereign immunity is not afforded one who is merely an "independent contractor" with no permanent ties to the sovereign. Thus, the threshold question in this action is whether the defendants are employees or independent contractors.

An "independent contractor" is:

> [a] person who is employed to do a piece of work without restriction as to the means to be employed, and who employs his own labor and undertakes to do the work according to his own ideas, or in accordance with plans furnished by the person for whom the work is to be done, to whom the owner looks for results.

Id. quoting Epperson v. DeJarnette, 164 Va. 482, 486, 180 S.E. 412, 413 (1935). Whether a person is an independent contractor or an employee is generally a question of fact for the jury. *Hadeed v. Medic-24, Ltd.*, 237 Va. 277, 288, 377 S.E.2d 589, 594 (1989). The Virginia Supreme Court has acknowledged that "there are abundant tests and criteria that can be used to determine whether the relationship between the individual and the Commonwealth is that of an independent contractor or an employee." *Atkinson*, 261 Va. at 284, 541 S.E.2d at 905. The "individual circumstances of each case play an important part in answering the query." *Id.*

Generally, the Virginia Supreme Court has applied a four-part test to resolve whether one is an independent contractor or an employee: (1) selection and engagement; (2) payment of compensation; (3) power of dismissal; and (4) power to control the work of the individual. *See Hadeed v. Medic-24, Ltd.*, 237 Va. at 288, 377 S.E.2d at 594-95. The fourth factor—the power of control—is said to be "determinative." *Id.*

Thus, a well-drafted Complaint ought to expressly state that the defendant was an independent contractor and that the sovereign did not have the power to control the work of the defendant.

Employees.

"No single all-inclusive rule can be enunciated or applied in determining entitlement to sovereign immunity." *James*, 221 Va. at 53, 282 S.E.2d at 869. However, the Virginia Supreme Court announced a four-pronged test in *James v. Jane* for analyzing the issue. Among the factors to be considered are: (1) the nature of the function performed by the employee; (2) the extent of the state's interest and involvement in the function; (3) the degree of control and direction exercised by the state over the employee; and (4) whether the act complained of involved the use of judgment and discretion. *Messina*, 228 Va. at 313, 321 S.E.2d at 663 *citing James*, 221 Va. at 53, 282 S.E.2d at 869.

Thus, it may be wise to plead in the alternative that, even if the defendant could be found to be an employee (and not an independent contractor), the negligent act complained of was ministerial and did not involve the use or exercise of judgment or discretion.

Carefully Draft the Factual Allegations When Distinguishing Between Governmental (Discretionary) and Ministerial (Ordinary) Acts - Especially in Premises Liability and Motor Vehicle Accident Cases

Be careful in drafting the factual allegations contained in the Complaint. It is important not to turn a ministerial act such as maintaining streets and sidewalks (no sovereign immunity) into a governmental act of planning or designing streets or sidewalks (where sovereign immunity applies).

Another area that entails artful drafting of the factual allegations in a Complaint is that of motor vehicle accidents involving municipal employees. For example, there is a difference between an officer or rescue worker in pursuit or engaged in the performance of his protect and serve duties and an officer or rescue worker simply traveling to the scene to perform such duties. Moreover, whether lights or sirens are activated is not determinative. A sampling of police and rescue vehicle accident cases, as set out below, better illustrates the need for alleging factual detail in the Complaint in order to avoid having the case dismissed on an immunity plea:

Muse v. Schleiden, 349 F. Supp. 2d 990, 998 (E.D. Va. 2004) (holding that whether lights and siren are activated is not controlling; immunity is not controlled by the "flip of the switch").

Friday-Spivey v. Collier, 268 Va. 384, 387, 601 S.E.2d 591 (2004) (fire truck driver was involved in a collision when responding to a dispatch regarding an infant locked in a car at a shopping mall; driver contended he subjectively believed he needed to get to the scene as quickly as possible because of the nature of the call: "he 'decided to take the quickest route possible' because an infant was locked in a vehicle and 'we just [did not] know what to expect when we [got] there." Trial court granted immunity to the fire truck driver, but the Virginia Supreme Court reversed and held no immunity applied as a matter of law.

Nationwide Ins. Co. v. Hylton, 260 Va. 56, 64, 530 S.E.2d 421 (2000), (immunity conferred upon an officer who was engaged in vehicular pursuit of motorist who had just committed a traffic law violation; the police officer had personally witnessed and had just made the decision to pursue although his lights and siren were not yet activated).

Heider v. Clemons, 241 Va. 143, 400 S.E.2d 190 (1991) (simple operation of an automobile does not involve special risks arising from governmental activity or the exercise of judgment or discretion; trial court properly held that a sheriff was not entitled to the defense of sovereign immunity when he was sued for damages incurred as a result of his ministerial operation of an automobile while serving judicial process).

Colby v. Boyden, 241 Va. 125, 130, 400 S.E.2d 184 (1991) (immunity conferred on a police officer involved in pursuit because "a police officer, engaged in the delicate, dangerous, and potentially deadly job of vehicular pursuit, must make prompt, original, and crucial decisions in a highly stressful situation. Unlike the driver in routine traffic, the officer must make difficult judgments about the best means of effectuating the governmental purpose by embracing special risks in an emergency situation. Such situations involve necessarily discretionary, split-second decisions balancing grave personal risks, public safety concerns, and the need to achieve the governmental objective").

National R.R. Passenger Corp. v. Catlett Volunteer Fire Co. Inc., 241 Va. 402, 404 S.E.2d 216 (1991) (driver of fire truck en route to a burning vehicle with emergency lights and siren activated was protected by immunity).

Reid v. Hammer, 62 Va. Cir. 251 (Richmond 2003) (dispatch failed to notify officer that the call was canceled so officer was still immune because he still thought he was in pursuit).

Smith v. Daniel, 47 Va. Cir. 541 (Richmond 1999) ("defendant was unquestionably performing a governmental function at the time of the collision: going to assist another sheriff's deputy in a vehicular stop. . . defendant had to decide how quickly he had to get to the other deputy's location, what route to take, what action was needed to protect the public, whether to alert the occupants of the stopped vehicle of his approach by employing his flashing lights and siren, whether to call for additional backup, whether to have his weapon in hand, and so on"). See also, *Campbell v. Compton*, 28 Va. Cir. 317 (Essex. Co. 1992) (downplaying the importance of lights or siren).

As illustrated above, the case law suggests that, the fact that lights or sirens were not activated is not determinative. However, alleging in the Complaint the fact that the officer or rescue worker did not have his or her lights and siren activated, supports the evidence that he or she did not believe there was any emergency and/or that he or she was not engaged on an active call or in pursuit. In other words, draft the Complaint so that the facts support the finding that the municipal worker was engaged in a ministerial, rather then discretionary, duty.

Allege Gross Negligence, Intentional Acts or Acts Committed Outside the Scope of Employment; Set Out Sufficient Facts to Support Them

Officials and employees of municipalities are only afforded immunity for ordinary negligence, so where the facts support it – allege:

- gross negligence
- intentional acts, and/or
- acts committed outside the scope of employment.

See, e.g. Glasco v. Ballard, 249 Va. 61, 65, 452 S.E.2d 854 (1995), and *Fox v. Deese*, 234 Va. 412, 423-424, 362 S.E.2d 699 (1987).

Traps and Pitfalls in Suing Charitable and Religious Institutions

There are two basic ways to get around the Charitable Immunity defense:

(1) hit it straight on and show that the defendant is not entitled to charitable immunity and/or (2) find an exception such as the torts of negligent hiring and/or retention.

Allege Negligent Hiring and/or Retention

The tort of negligent hiring operates as an exception to charitable immunity of religious institutions and charities. *See, e.g., J. v. Victory Tabernacle Baptist Church*, 236 Va. 206, 372 S.E.2d 391 (1988). This exception was first recognized in *Weston's Adm'x v. St. Vincent, Etc.*, 131 Va. 587, 107 S.E. 785 (1921) where a newborn baby died after being placed in a crib with a hot water bottle that was too hot. The court held that the hospital was a charitable institution and the only duty that it owed was the exercise of due care in the selection and retention of employees. *Id.* at 611, 107 S.E. at 793.

"[N]egligent hiring is a doctrine of primary liability; the employer is principally liable for negligently placing an unfit person in an employment situation involving an unreasonable risk of harm to others." *J v. Victory Tabernacle Baptist Church*, 236 Va. at 211, 372 S.E. 2d at 394. In alleging the tort of negligent hiring and/or negligent retention, to survive a demurrer, specific facts and allegations need to be set out stating that:

> The employer failed to exercise reasonable care in placing an individual with known propensities, or propensities which should

have been discovered by reasonable investigation, in an employment position

AND

Due to the circumstances of the employment, it should have been FORESEEABLE that the hired individual posed a threat of injury to others.

See, e.g., Interim Personnel v Messer, 263 Va. 435, 559 S.E.2d 704 (2002). In a wrongful death case that I filed some years ago against The Boy's Home, the only claim that survived The Boy's Home's charitable immunity plea was that of negligent hiring and retention.

Allege that the Institution is Operated for Profit if Sufficient Facts Support It and Immediately Serve Discovery to Flush Out the Immunity Defense After it is Alleged by the Defendant

Wait until the defense files its Answer to see if the charitable immunity plea is alleged – but have discovery ready to go that asks for, among other things, the following:

- Tax returns for the past ten years
- Profit and loss statements for the past 10 years
- All year end income and expense statements and financial reports
- Annual reports
- Mission statement
- Articles of Incorporation and By-Laws
- Year end payroll records
- Employee handbooks
- Employment contracts
- Salaries and benefits paid to officers and directors
- Minutes of Board of Director meetings
- Marketing mail outs and solicitation materials
- Organization chart

Note the Distinction Between a Plaintiff Who Makes a Payment for Services Versus Being a Free Benefactor of the Charity

Did You Draw an Adverse Judge? Decide Whether to Request a Jury to Decide the Facts of the Immunity Plea in Bar

Are you better off having the judge or a jury decide? If there is any material disputed issue of fact pertinent to the immunity plea, there arguably is a right to a jury trial of disputed facts in a plea in bar. *See Bethel Inv. Co. v. City of Hampton*, 272 Va. 765, 769, 636 S.E.2d 466 (2006) (holding on a statute of limitations plea, that the Virginia Constitution guarantees that a jury will resolve disputed facts in controversies respecting properties and suits between private parties).

Final Trap

Watch out for SPECIAL PLEAS IN BAR filed by the defense along with the Answer that requires a timely affirmative reply by the plaintiff!

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