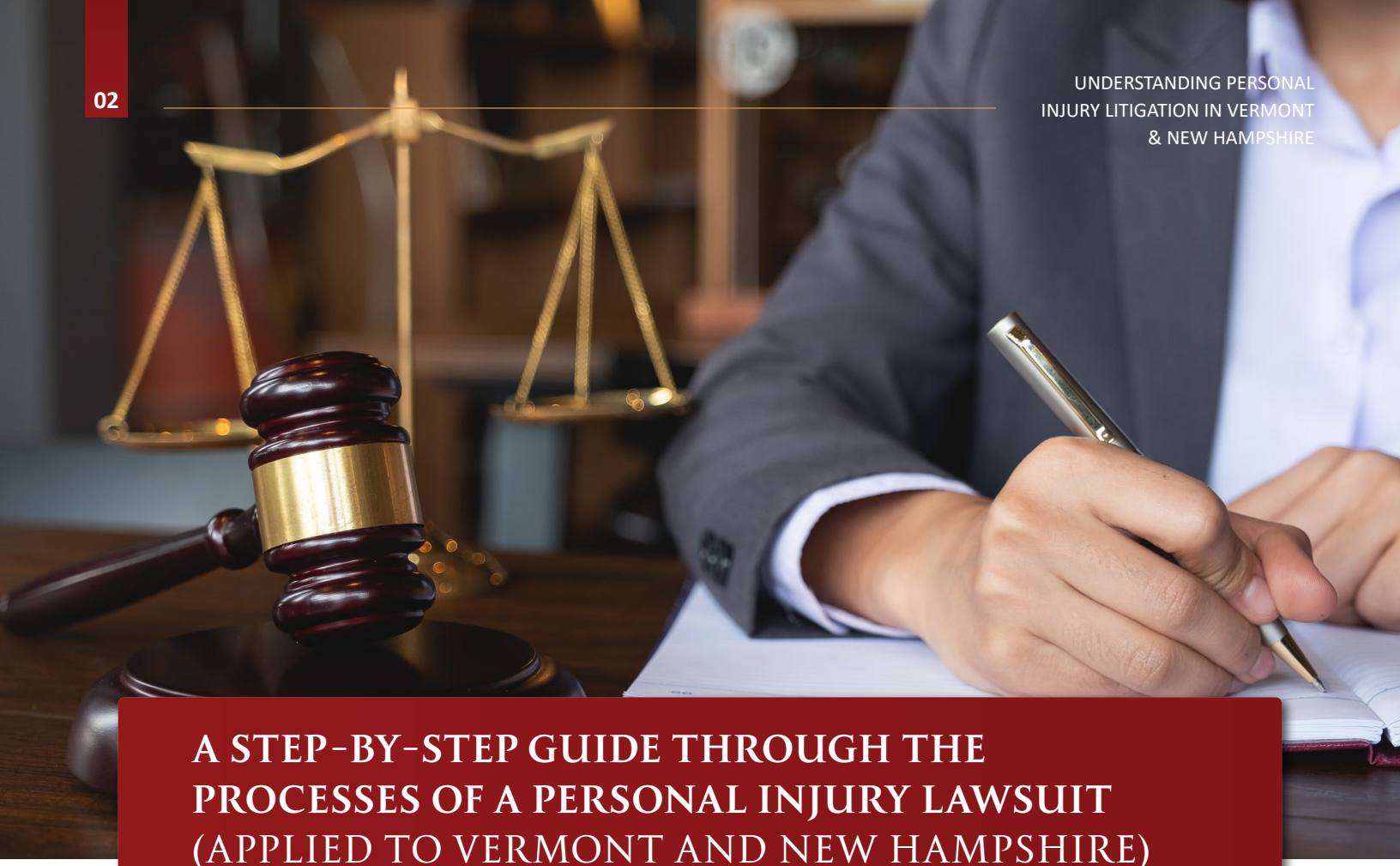
SABBETH LAW

DRIVEN BY COMPASSION
MEASURED BY SUCCESS

UNDERSTANDING PERSONAL INJURY LITIGATION

IN VERMONT & NEW HAMPSHIRE

Help for the injured in VT & NH: (802) 230-7945



A STEP-BY-STEP GUIDE THROUGH THE PROCESSES OF A PERSONAL INJURY LAWSUIT (APPLIED TO VERMONT AND NEW HAMPSHIRE)

Many personal injury cases in New Hampshire and Vermont resolve without the need to ever file a lawsuit. However, when negotiations break down, the case needs to be put into litigation. This begins the formal process of putting your case before the court and "litigating" your case.

As soon as we file the lawsuit, we are "in litigation."

Litigation can be a scary prospect for those involved. However, at Sabbeth Law, we make sure that you are 100% prepared for every step of the process. That level of preparedness breeds comfort — and results.

The following is a guide through the processes of personal injury lawsuits in Vermont and New Hampshire.

DISCOVERY

"Discovery" — one of the few legal terms that actually make sense in plain English. It means the same thing in the law as it does in any other context: To learn something new. It's the discovery process that allows all parties to the lawsuit to learn information they may not have previously known that might affect the outcome of the personal injury lawsuit.

In many cases, discovery is the most important process of any lawsuit. The validity and value of a personal injury lawsuit almost always go up or down by the end of the discovery process. Why? Because the parties almost always learn at least some important facts about the case that they didn't know before the discovery process began. We also get to learn more about the people (parties and witnesses) involved and also determine how a jury might view them. Discovery is an invaluable and indispensable tool that gives everyone the best possible chance to truly understand all aspects (strengths and potential weaknesses) of their personal injury case before it's presented to a Vermont or New Hampshire jury.

Here are some of the discovery mechanisms that all parties in Vermont and New Hampshire personal injury lawsuits can use to "discover" new information.

INTERROGATORIES

Interrogatories are formal, written questions that are sent to parties of the lawsuit to be answered under oath. After all of the answers to these questions have been written and reviewed, the last page asks the person answering them to sign a pledge that they answered the questions truthfully to the best of their knowledge. What that means is that the written answers to these questions are considered sworn testimony.

In New Hampshire, a party is limited to issuing only 25 interrogatory questions per set of interrogatories. N.H. Super. Ct. R. 23(b). While this might seem like a good thing (after all, who wants to answer more questions from some prodding attorney than they have to?), it does cut both ways. It means that your attorney gets to learn less about the opposing party, too. That's why it's so important for attorneys to hone their interrogatories around this limitation when drafting and issuing interrogatories in New Hampshire.

Vermont does not have a limit on the number of interrogatories a party is allowed to send to other parties. However, when an attorney attempts to abuse this by issuing excessive interrogatories, the offended party's attorney can (and should) file a motion before the court for an "Order of Protection," essentially asking the judge to step in and determine (i.e., rule) that the other attorney is abusing the discovery process.

Interrogatories in Vermont and New Hampshire personal injury cases can be daunting and tedious. They often require our clients to try to recall information they haven't thought about in years. At Sabbeth Law, we walk our clients through the process of answering interrogatories, step by step, so that they aren't overwhelmed.

REQUESTS FOR PRODUCTION (AKA REQUESTS TO PRODUCE)

Requests for Production are requests to produce tangible (i.e., real and existing) items to hand over or to be inspected. In Vermont and New Hampshire personal injury cases, those items commonly include medical records, insurance policies, medical bills, damage estimates, police reports, written statements, etc., but can include any number of other types of items.

One of the other types of items that are requested to be produced is Electronically Stored Information (aka "ESI"). ESI includes essentially any type of electronic information or files that can be kept, imprinted, mirrored, or otherwise leave a "digital thumbprint" on a hard drive or on the cloud. Emails, Facebook posts, voicemails, and browser history are all examples of ESI. There are many other such examples.

Additional types of items that may be requested to be produced in a personal injury lawsuit include defective devices or their components. For example, in a defective products lawsuit where a motorcycle helmet failed to meet one of the many requirements they are obligated to meet (thereby causing injury), there would be many related requests for production. We would request helmets produced in the same plant, on the same line, in the same production cycle, etc., to compare with our client's helmet. We might request to inspect the machinery or assembly line. We sure as heck would request every related document or report (though we addressed documents above). We may not get to "keep" them, but we can require the defendant to produce them for inspection by us and our experts, as well as to preserve them for future inspections and trial if necessary.

To wrap this section up, if you can imagine any physical or electronic/digital that might lead to the discovery of relevant and admissible evidence in a given claim, that item will likely be requested to be produced — at least if Sabbeth Law is making the requests.

DEPOSITIONS

A deposition is an opportunity for a party's attorney to ask a witness or party to the suit questions in person, under oath, and in front of a court reporter. When the deposition is finished, the court reporter will produce a transcript, which is a complete written (typed) record of the deposition. It is sometimes done on video, though that's not a particularly routine practice in Vermont and New Hampshire personal injury cases. The following information applies to depositions in Vermont and New Hampshire personal injury and workers' compensation claims.

How do we prepare you for your deposition?

By the time we get to the deposition phase, we have a very good sense of the strengths and potential weaknesses of your case. That allows us to anticipate the other attorney's questions and prepare you for them. From the time our clients first learn they're going to have their deposition taken until after we have prepared them, we have addressed any potential surprises and discussed the process in-depth. This allows our clients to be comfortable and confident, which is critical.

When our clients have their depositions taken, they are usually done at our office. This is often a more comfortable environment for our clients.

The setup for the deposition is one that we will have made familiar to our clients by the time the deposition day comes around. At the end of our conference table is the stenographer/court reporter. On one side of the stenographer is the attorney who will ask you questions; on the other side is our client. We sit next to our client.

All attorneys have different styles of how they conduct and take depositions. There is no defined order of questions, but most attorneys will usually star the deposition by asking some background information (for example, education history, where you have lived through the years, what jobs you have held, etc.) before moving into the meat of the case.

The attorney taking the deposition is allowed to ask a wide array of questions. Because this is still part of the "discovery" phase, they're allowed to ask any questions "that are reasonably calculated to lead to the discovery of admissible evidence." Admissible evidence is evidence that is allowed to be presented in court. So, to put that all into plain English, it simply means that the attorney taking the deposition can ask questions that don't necessarily lead to admissible evidence, as long as the question is "reasonably calculated" to clue them into new facts that might ultimately lead them to admissible evidence. However, some attorneys will attempt to exploit the wide latitude they're given. When they do, we raise objections and try to work it out between the attorneys. If an argument can't be settled between the attorneys, we may try to get a judge on the phone then and there or revisit the argument at a later date.

While the attorney taking the deposition is learning (or discovering) new facts about the case, he or she is also observing how the person whose deposition they're taking might present to a jury. These observations include: does the party appear credible? Will a jury like this person? Will a jury trust this person? Is this person sympathetic? In other words, the deposition isn't only about learning new facts. It's also about learning how a jury is likely to view you.

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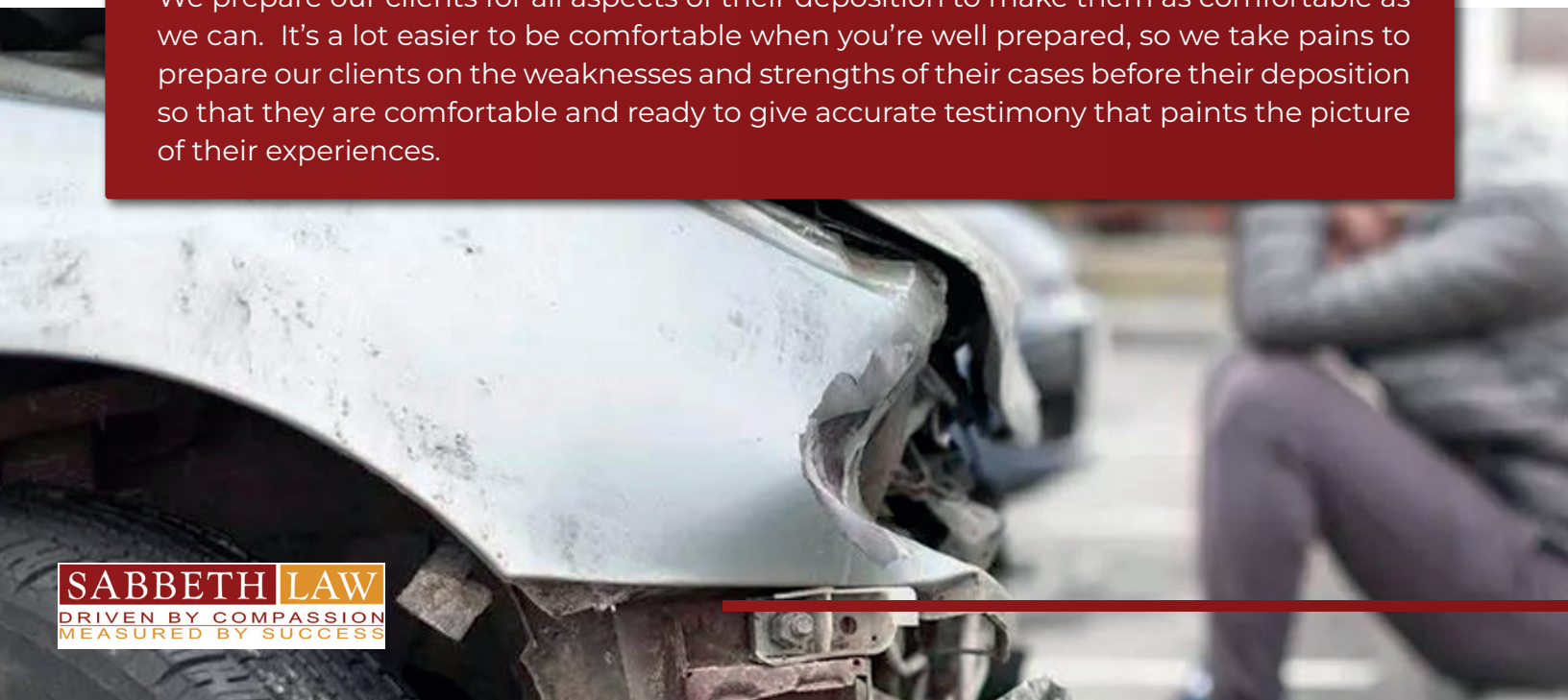
One of the other important goals of a deposition is to get the witness's testimony locked in. This is important for the preparation of the case, and to use if the witness tries to change his testimony at trial.

We prepare our clients for all aspects of their deposition to make them as comfortable as we can. It's a lot easier to be comfortable when you're well prepared, so we take pains to prepare our clients on the weaknesses and strengths of their cases before their deposition so that they are comfortable and ready to give accurate testimony that paints the picture of their experiences.



OTHER DISCOVERY

Interrogatories, Requests for Production and Depositions make up most, but not all, of the discovery process. We often hire expert witnesses, such as engineers, crash reconstruction experts, medical experts, safety experts, industry experts, among others depending on your case. Sabbeth Law puts up the cost for any experts needed until settlement or jury verdict. They are also often deposed and must produce their reports to the other parties to the lawsuit. If there is no verdict or settlement, Sabbeth Law absorbs the cost so our clients cannot be left owing money.

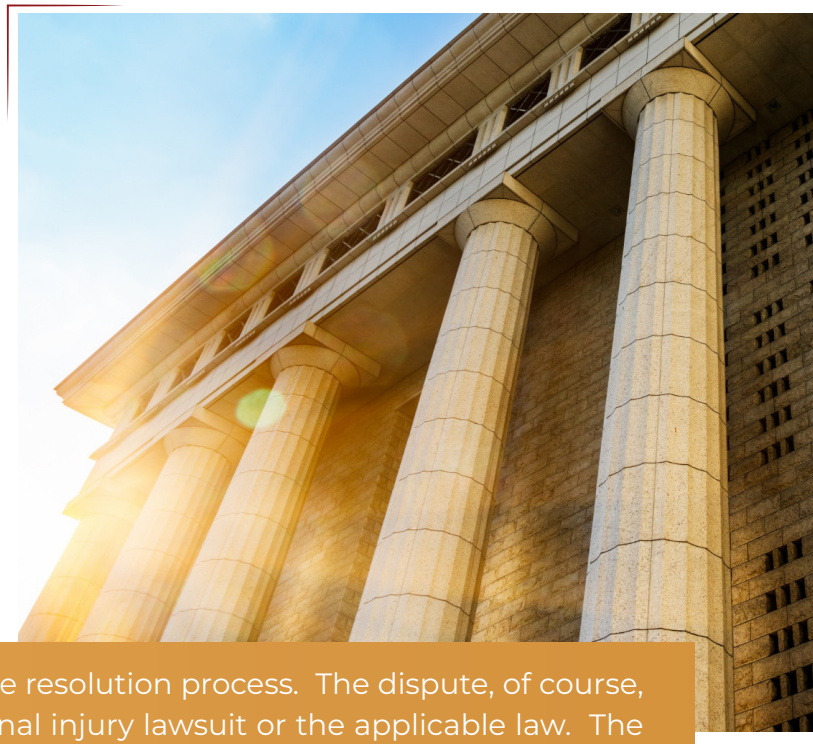
Sometimes site visits and other inspections are necessary – especially when one of our experts needs to evaluate something on the Defendant's premises, business, factory, or elsewhere.

And of course, defendants may call experts, too, which means we have to get the available discovery from them and take their depositions.

MEDIATION

With discovery closed, we are almost ready for trial. However, there's one more very important step before we begin the trial process: Mediation.

Mediation is required (with few exceptions) in all Vermont personal injury cases (V.R.C.P. 16.3) and New Hampshire personal injury cases (N.H. Super. Ct. R. 32) before going to trial. In fact, mediation is also required in Vermont workers' compensation cases before going to the Vermont Department of Labor's version of the trial, which is called Formal Hearing. (Vermont Workers' Compensation Act Rule 27.3100)...



First: What is mediation? Mediation is a dispute resolution process. The dispute, of course, includes the facts being contested in the personal injury lawsuit or the applicable law. The dispute might be on fault, damages, or both. The resolution — if there's one to be had — will come in the form of a settlement as a result of the mediation.

Attorneys for all parties first agree on a mediator. The mediator, depending on what jurisdiction we're in, is a Vermont or New Hampshire personal injury of workers' compensation lawyer who understands the type of law and issues that we are dealing with in our case, though we sometimes use mediators from out of state. The mediator is also a neutral party, which means he or she has no skin in the game — they are not for or against either party. That point is critical because all the attorneys and parties need to be able to trust the mediator. Without a high level of trust, the mediation is not likely to go far. The reasons for that will be clear as we explain the mediation process in more depth below.

The way a mediation begins is all parties convene at a mutually agreed-upon place (this is usually the mediator's office). The mediator goes over the process and the rules of mediation with all the parties together. One of the most important rules everyone is required to agree to is that anything said during the mediation is confidential and can not be used outside of the mediation. That is a blanket rule, and it is absolutely critical. This rule allows the parties to negotiate without anyone worrying that their attempts to settle could be used against them in front of a jury. The idea is that a party cannot later say to a judge or jury, "John is asking for $100 but he was willing to take $50 at mediation". Conversely, the plaintiff cannot later say, "Travelers Insurance isn't willing to pay anything, but they agreed to pay $45 at mediation". The point is that this confidentiality allows for the parties to be able to negotiate in good faith without the suspicion or paranoia that the mediation process will negatively affect their positions at trial if the mediation fails.

So, after the mediator goes over all the rules and explanations of mediation, the actual mediation process begins.

What is the mediation process in a Vermont personal injury case? What is the mediation process in a New Hampshire personal injury case? What is the mediation process in a Vermont workers' compensation case? Well, they're all pretty much the same.

The process actually begins before we arrive at the mediation. We will draft a mediation statement brief in the days or weeks prior to the mediation. In that brief, we will outline why the defendant is responsible for my client's injuries, and will also detail every aspect of my client's damages. We will typically include exhibits—which can include video testimony, animations, recreations, medical imaging, etc.—that will support our position. This is our chance to paint the picture of how we view the claim and how we intend to present it to a jury in a personal injury case or to the Department of Labor on a workers' compensation case.

Within our mediation statement, we almost always include the dollar value that we are looking for. This allows the mediator to not have to start cold. We will almost always pass it along to defense counsel so that they can be prepared for what we are asking for and have the proper communications with their clients so that they are prepared for our position. Otherwise, it's going to be a short mediation.

Defense counsel will also prepare a mediation statement to send to the mediator outlining their position, and what they perceive to be their strengths. They, too, will usually send us a copy prior to the mediation so that there will be few surprises, and everyone can get down to brass tacks when the mediation begins.

It all comes together on the day of mediation.

As attorneys who represent the injured (we never represent insurance companies), and are thus bringing the case, we have the first opportunity to make an oral statement after the mediator lays out the rules. It is important to be forceful but to the point. Everyone has already read our in-depth written briefs, and time is valuable. So we make sure to use our time with precision to bang home the important points and allow us to get into the heart of meaningful back and forth negotiation. Defense counsel then gets to make their points. We listen. We do not brush them aside, because if we do, we cannot counter them as they should be countered. We listen closely and prepare to react.

When both sides are done with their presentations, the mediator will separate the parties – we stay with our clients in one room, and defense counsel and their clients (usually the insurance company reps) will go to a separate room. From then on, the mediator – now well versed in all sides of the case – will spend time in each room talking to the parties separately. The mediator will present his or her take on the case and challenge each party, individually. Because they bring a fresh set of eyes and experience in the subject matter, they bring invaluable insight to all sides. And so we listen. We also disagree and argue. But, if the mediator has prepared, we will learn something or see a perspective that we might not have seen before. Any attorney that says otherwise is not an attorney you want representing you (or perhaps has limited mediation experience or uses poor mediators).

These private sessions with the mediator are called “caucuses”. Everything said in caucus is confidential. The mediator can’t bring any information provided from our room to the other party’s room unless we tell the mediator that it’s okay to do so. This, again, allows a free flow of honest dialogue that helps that allows the parties to analyze the case much more accurately and efficiently.

As the mediator shuttles back and forth between the parties, the plaintiffs are most likely reducing their demand for compensation in reasonable and calculated increments as the defendants increase their offer. This is the “back and forth” referred to earlier. It can be tedious. It can also seem ridiculous at times. But, we can assure you: there is always a reason for the way the back and forth plays out.

At the end of the day, after much hard work, thought, and analysis, we will either agree on a dollar value to settle the case, or we won’t. Most of the time, the case will resolve. If it does, the long winding road of the case comes to an end. But if the case does not resolve, we go to trial.

MOVING TO TRIAL

In the event all previous negotiations and mediation have failed, we now enter the final stages of trial preparation. And, believe it or not, after all the work that’s already been done, there’s still lots more work to be done before the trial begins. Jury selection, being among the most important.

In an interesting way, jury selection is almost like a panel competition, though with very serious stakes. You start with perhaps 30 potential jurors. And then an attorney representing each party gets to tell the potential jurors a little about the case. After giving the potential jurors some general information about the case (argument is not allowed during jury selection), the attorneys get to ask questions. And so begins “voir dire”.

JURY SELECTION AND VOIR DIRE IN PERSONAL INJURY CASES

Jury Selection is a process through which the attorneys for all sides get to meet the jury pool (all the people called to jury duty) and try to whittle it down to a jury, usually of 12. So how does that happen? The rules are relatively simple.

While talking to the prospective jurors, we get to ask them lots of questions. This process is called "voir dire" which translates from French to mean "to tell the truth." We're trying to get the potential jurors "to tell the truth" in response to our questions. More importantly, we're trying to learn the potential jurors' "truths."

The questions the attorneys ask will allow us to get some sense of the people in the jury pool. They will lead to some of the potential jurors being removed from the pool "for cause." There are also potential jurors that either of the parties will have removed without cause, through what's called a "peremptory challenge." Let's examine those processes below.

REMOVAL FOR CAUSE

When a potential juror is removed for cause, it is most likely because the prospective juror stated or indicated that he or she could not judge the trial fairly. An example of that would be if a potential juror knew the defendant, had strong feelings about him (for good or bad), and couldn't be impartial. The judge would remove him for cause.

Another example would be if a potential juror said he just didn't believe there was any such thing as a legitimate personal injury lawsuit, and that, without learning about what happened, he knows he's going to vote against the person who brought the lawsuit. The same process would play out and he would almost definitely be removed by the judge for cause.

PEREMPTORY CHALLENGES

Peremptory challenges allow any party to remove a certain amount of prospective jurors for any reason at all. As opposed to Removals for Cause, Peremptory Challenges in Vermont and New Hampshire are limited in the amount you can have. Otherwise, it would be almost impossible to impanel a jury.

THE HEART OF VOIR DIRE

Good trial attorneys will work very hard to hone their craft so that, through the dialogue with the potential jurors they can give their clients the best chance for a fair trial. As a plaintiff's attorney, I try to open dialogue with the potential jurors by asking them questions about the issues of the case that I think might affect their ability to judge the case fairly. For example, if I represent an individual that was negligently injured by a family member resulting in the lawsuit, some of the questions I would ask would center on how that makes the jurors feel – to sue a family member, even if the family member negligently caused the injuries. Remember, we can never mention that insurance is paying the negligent party's lawyers and will pay out the verdict if there is one.

If a prospective juror said they couldn't allow damages for the plaintiff against a family member who negligently injured the plaintiff, even though the law requires they not consider their relationship, then I would ask that this juror be stricken for cause. The judge would almost definitely agree. And that is not a judgment against the potential juror, but it does mean that he cannot abide by the law. If the potential juror said she could be fair, but hated the idea of it, I would strongly consider using one of my peremptory challenges to have her removed. Again, the whole point is to get our client a fair trial.

Voir dire and jury selection are also great opportunities to learn about the people who may be sitting on the jury. It's also the first, and perhaps best, opportunity to establish a connection with the jurors. After all our potential jurors are still just people trying to do the right thing in what's often a tough situation. Just like our clients. Just like us. So it's important that we can connect with and understand each other. That we can make clear that our client's case isn't some money grab; that this is a real case. With real people. Who have suffered real losses. And that allows us to build an understanding and dialogue so that when the trial begins we have some familiarity and perhaps even empathy.

There is also some level of science behind it. We can't just count on honest answers from all prospective jurors from our voir dire questions. Again, they're humans — just like everyone else in the courtroom. I'm not sure I would be so eager to pipe up and offer the biases I might hold about a certain case. I might not even be aware of them. We all have biases, but most of us try to keep them to ourselves. This is probably easiest to explain with an example.

As a diehard New York Rangers hockey fan, I can tell you that if the Rangers had a case against the Islanders (the Rangers' arch-rival hockey team), I'm going to start with a severe bias in favor of the Rangers before I learn anything about the actual case. In other words, I'm not going to start with the proverbial clean slate that every person – plaintiff or defendant – deserves when a trial begins. But, if I was called into court as a potential juror on that case, and an attorney for the Rangers or the Islanders asked me if I would be able to look at the case fairly and impartially in light of the evidence, I would probably say, "yes." And if I did, it would be because I believed at that moment that I could, no matter how much I can't stand the Islanders.

However, if the attorney conducting the voir dire (again, looking for "the truth") was skillful at his craft, he would ask the types of questions and open the type of dialogue that would bring out – perhaps to my surprise – that I probably would not be able to judge the case fairly. And, the attorney, in his good wisdom, would then seek to have me removed from the jury pool for cause or through a peremptory challenge, and rightly so. That's the type of attorney I would want conducting voir dire on my behalf. And that's an art that we spend lots of time practicing, studying, and honing at Sabbeth Law.

TRIAL

This is it. What all of the previous work, time, and expense have built toward. It's time to tell your story. What happened to you. Why it happened. Why it shouldn't have happened. And what it has meant, and continues to mean, to you.

OPENING

The trial begins with opening statements. The attorneys get to speak directly to the jury. As plaintiff's attorneys, we begin.

In opening, we explain to the jury what they are going to learn over the course of the trial, and how and through what witnesses they will learn those things. A tremendous amount of preparation goes into preparing an opening statement because this is our first true chance to tell the jury about our client, about why we're here, and to leave an imprint upon them. We need to give them our word that what we are telling them during opening will be confirmed through the course of the trial by witness testimony and other evidence. We set the tone for the trial ahead and tell them what the case is really about, and what the law requires of them in assessing the case. We tell them your story. And we allow them to understand and feel your story.

The defense will then get their opportunity to deliver their opening. They will of course impress their theory of the case upon the jury.

WITNESS EXAMINATIONS

After openings, we, as the party bringing the case, put our case on first. That means that we call all of our witnesses and conduct direct examinations. After we examine each witness, the defense counsel gets to cross-examine the witness. Our case may include any number of witnesses. Here is an example of what our witness lineup might look like if fault and damages are in dispute in a personal injury case.

We would call our liability witnesses to assess fault. In a simple car accident case, that might just be the officer that responded to the scene. In more complex car accident cases, it might be an expert in accident reconstruction. If it were a products liability case involving faulty engineering, we would call an expert engineer. If it were a medical malpractice case, we would call a medical expert. In certain cases, we would have you, our client, testify to elements of fault. We would also call any other witnesses, be they additional expert witnesses or simply fact witnesses that observed some aspect of the chain of events, to testify.

Next, we would call our damages witnesses to provide a basis for the damages we're seeking. They will include experts and non-experts. Learning who our damages experts will be is part of the vigorous process we undertake when learning your case. We speak to those who know you best from before and after your injuries. That could be a family member, a co-worker, a best friend, you name it; as long as it's someone who can truly testify to what you've gone through.

Some people are surprised to learn that these witnesses are often more in tune with how your life has been changed by your injuries than you are. For example, I've spoken to damages witnesses who told me about changes in a client's behavior — even things as obvious as a limp — that the client had no idea about. That is not unusual! And that's why lay (non-expert) damages witnesses are so important: They see what many people miss, and they can often speak to a jury in a way an expert just can't. However, an expert damages witness is often critical to the outcome of a case.

Expert damages witnesses also run the gamut. Depending on your injuries, they might be doctors who testify about the reasonableness of the treatments and medical bills incurred to date. In other cases, they might discuss whether any of the injuries are permanent. In cases that will include the need for future medical treatment, they will be needed to explain what those future medical treatments will likely be, why they are reasonable, and what the expenses are likely to be. In cases involving loss of earning capacity or lost wages, we may need an economist.

Throughout our witnesses' testimony, we are likely to rely on demonstrative evidence (e.g., photographs, enlarged medical records, medical illustrations, re-enactments of the event, etc.).

There is no set order for how we will call our witnesses. The order will be specific to each case.

Once we rest our case, the defense puts forth their witnesses. Just like ours, their witnesses will likely examine who was at fault (if in dispute) and to what extent, and the extent of damages. Just like them, we will have the opportunity to cross-examine each and every one of their witnesses. And, should they bring any expert witnesses, we likely will have already taken their depositions before trial, and we will be well versed in their theories and prepared to challenge them on their testimony if and when necessary.

CLOSING

After both sides rest their cases, we move to closing.

Closing is similar to the opening, in that we get to speak directly to the jury again. But it's also different in some very important ways. We're no longer setting the tone or expectation of why they're here like we did in the opening. We're now talking about everything they've learned throughout the trial, and explaining why it matters. Connecting the dots of the various witnesses' testimony that they heard throughout the trial. We're again talking to them about the law and how it should be applied in this case (which the judge will also do before allowing them to deliberate).

We address the important pieces of what we all went through together, and again explain why we're asking for what it is that we're asking for. Why we truly believe in our case. Why they should, too. Lastly, why their job, why their decision, in this case, will affect every one of us. Why that matters. And after we thank them for their time, for going on this journey with us, it is left to them.

INJURED IN VERMONT OR NEW HAMPSHIRE? CONTACT US TODAY.

Our clients are our top priority at Sabbeth Law. We've spent years assisting injured personal injury victims in their time of need. Please contact us if you believe an insurer is treating you unfairly or if you are unsure what to do after a car accident. We provide consultations at no cost to you.