



TOP 10 TIPS

**IF YOU ARE INJURED AT A
STORE, HOTEL
OR RESTAURANT IN VIRGINIA**

BY JOHN COOPER AND BILL O'MARA



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TOP 10 TIPS

KNOW YOUR RIGHTS WHEN YOU ARE
INJURED AT A STORE, HOTEL, RESTAURANT,
OR ANY BUSINESS LOCATION IN VIRGINIA



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Your Injury, Our Fight!

This book is intended to increase your knowledge of your rights if you are injured. This book does not constitute formal legal advice or create any type of attorney-client relationship.

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Premises Liability in Virginia:

Holding a Negligent Business Responsible

Virginia law requires landowners and businesses to maintain their physical locations in a reasonably safe condition, and to protect people from known hazards or hazards the business should have discovered. If a business does not take ordinary measures to keep you safe, then it may be financially responsible for your injuries. Common scenarios in which an establishment may be liable for your injuries include:

- Falls at restaurants, stores or other businesses caused by liquids, protruding objects, poor lighting, or other tripping hazards;
- Merchandise falling from shelves onto customers causing injury;
- Injuries suffered in common areas of apartment complexes or office buildings
- Failure of a business to clear snow and ice; and
- The failure of a business to provide security from a known, specific and imminent threat of a criminal.

These are just some of the common examples in which an establishment may be held responsible for causing your injuries.



TOP 10 TIPS

John Cooper
Injury Lawyer

Recently John Cooper of Cooper Hurley Injury Lawyers presented educational material to other Hampton Roads and Virginia lawyers called his Top 10 Tips in Premises Liability Law, in which he shared his knowledge and experience in representing injured people for over 25 years.

This book is derived from his presentation. It focuses on cases against owners and operators of commercial establishments, such as restaurants, hotels, shopping malls, and stores.

Premises Liability cases are often a challenge for personal injury lawyers and their harmed clients. The Top 10 Tips provides guidance on factors that can improve your chances of success in your injury claim against an establishment. If you have been injured at a business, and you are unsure if you have a case, you should talk to an injury attorney right away.



TIP No. 1

Know How Claims are Handled

While it may seem obvious, you must be injured to have a personal injury claim against an establishment. While trips and falls can be embarrassing, if you are fortunate enough to avoid an injury, then you do not have an injury claim.

To take it `step further` you typically must suffer `significant injury before an insurer from the establishment will take your injury claim seriously. Litigating premises claims, involving medical and liability experts, can cost thousands of dollars through a jury trial. Because of this expense, to have a strong injury claim you must often have suffered serious injuries, such as:

- Broken Bones
- Permanent injuries
- Traumatic Brain Injuries
- Spinal injuries
- Injuries requiring surgery



TIP No. 2

Proving the Business Was At Fault

You must prove that a business did something wrong to hold it responsible for your injuries. This is much easier said than done, because the business does not have to prove it didn't do anything wrong. The burden is on you to prove it did something wrong.

A common example is a customer in a grocery store who falls in water on the floor. If another customer spilled the water 30 seconds prior to your fall and the store had no knowledge of the spill, then it would be very difficult to hold it responsible. However, if the store knew the water was there and did nothing, or the water was there for so long that the store should have discovered it, then it is possible to hold the store responsible.

Businesses will often claim they did not know about the hazard. If you can't prove otherwise then your injury claim may be a nonstarter. That is why Tips #4 and #5 are so important. (BONUS TIP: Ask questions and listen carefully. The staff may admit knowledge of the hazard. A manager may tell her staff, "I told you to clean up this mess 30 minutes ago!" The employees of the business may provide the proof you need to win your case through statements admitting fault).

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If you were drunk, running or playing with your phone before your fall, you may not have a winnable case in Virginia.

Virginia has a doctrine called contributory negligence, which says if you share any fault in causing your injury, you may not be able to recover compensation. You and your attorney must always look for the potential pitfalls in your case before proceeding to make sure there is no contributory negligence.

Even if an establishment is negligent in maintaining a dangerous premises, Virginia law requires people to avoid those open hazards if known or obvious. If an injured person could have reasonably avoided a danger, but did not, he or she may lose the case. However, factors such as inadequate lighting, deceptive appearances, or unexpected distractions can make otherwise visible hazards not so obvious.



TIP No. 4

Force The Business to Secure Surveillance Tape



Often your accident will have been caught on video in the store. That does not mean it will be easy for you to access the footage before it is lost or destroyed.

You and your lawyer must insist that the business keep all footage of the incident causing your injury as well as the hours preceding it. Once a business receives a formal written request to preserve evidence, it is less likely to discard, lose or destroy information about your case.

Preserved video footage can be the difference between winning and losing a case. The potential video evidence is a strong reason to hire an experienced accident attorney immediately before the store claims to have “taped over” the information.





TIP No. 5

Use Your Smart Phone

Almost everyone has a smartphone these days, but you may not always think to use it if you have an accident and are in pain from an injury. If you are able to, you or someone who is with you should try to, take your own pictures and video at the scene of an accident, talk to witnesses, and record their comments and contact information on your device. You should consider getting:

1. Photographs of the accident scene
2. Measurements of the scene because it may change after an accident
3. Video footage of the scene
4. Video statements from witnesses
5. Locate surveillance cameras in the store to determine what video should be available
6. Use Google Maps to obtain the layout of outdoor areas such as parking lots.



TIP No.

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Get Med Pay

INSURANCE

The store or business may have Med Pay (medical payments insurance) to help you with medical bills from an injury, even without proving its fault in the accident. The Med Pay is money over and above that owed, if any, for the fault of the store in causing you to get hurt.

If you do not ask the adjuster about Med Pay, they will often “forget” to tell you about it. Like Med Pay in car accidents, Med Pay is an optional insurance coverage for businesses. Ask the insurance company to put the amount of Med Pay in writing. Typical commercial Med Pay may only cover bills incurred and submitted within one year from the date of the injury.





TIP No. 7 Hire the Right Experts

. our main expert to find is the right personal injury lawyer who will hire the right experts. A good premises liability attorney will have access to a wide range of experts who can be called in to prove your case. Some areas of premises liability, such as collapsing decks or malfunctioning elevators, require specialized engineering knowledge. Most clients cannot shell out thousands of dollars for experts and need their attorney to advance these costs.

It is always helpful to have someone on your side with expert knowledge which will help you build your case. They should be involved in the case as early as possible to help explain what the store or business did wrong. Experts in premises liability cases may include:

1. Building code experts;
2. Construction practices experts;
3. Property management experts.



TIP No.

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Who Are the Responsible Companies

Knowing who to sue in a motor vehicle accident case is made much easier by the fact there is an investigating police officer and a police report. In an injury claim against a premises, the answer isn't always so simple. It is frequently unclear who are all responsible businesses in a premises case. Parties who may be responsible and sued in premises liability cases include:

- The business owner
- The operator of the business
- A property management firm
- Construction firms
- Vendors to the owner or the operator, such as landscaping companies
- Individual managers if a particular employee is actively negligent.

A judge could throw out your case if the correct business entity is not sued, and the business and its insurance company aren't usually forthcoming with that information. An experienced premises liability lawyer will know the sources of publically available data for the right parties such like local tax and land records or state corporation commission lists.





Once you've proved that the establishment was negligent and is responsible for causing your injuries, it is important that you not let the business or its insurance company shortchange you. You deserve full and fair money damages for all your harms and losses caused by the injury. If you have been hurt as a result of negligence, you may be entitled to:

- Payment for required medical treatment and medical equipment, both past and future
- Payment for any past, present, or future pain and suffering
- Inconvenience experienced as a result of your injuries and treatment
- Payment for any disfigurement or scarring, and the resulting embarrassment
- Payment for time missed from worked (even if you used sick days), or a future inability to work
- Compensation for loss of quality of life

These are just some of the damages you can potentially recover from a negligent business. (BONUS TIP: If you have health insurance, a business may offer to pay only your deductible or co-pays. A negligent business is responsible for the total cost of your medical expenses, so insist upon it!).

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TIP No. 10 Duties Owed Depend On The Type of Invitation

The legal duty a business or other landowner owes you depends on your relationship with the establishment and why you are there. There are three main classifications in Virginia:

1. An invitee – an invitee is someone who is invited to a business for the benefit of the business, such as a shopper in a store. An invitee is owed the highest level of protection.
2. A Licensee – A licensee is at a business for his or her own purposes, such as a person delivering goods. He may be afforded fewer protections than an invitee if injured.
3. A Trespasser – if you are on someone’s land without their permission to be there, you may be a “trespasser.” However, children who trespass in dangerous areas such as a railroad may have grounds to bring a premises liability case if a landowner or an operator has been lax in securing a hazardous site.

The strength of your case could hinge upon how and why you are at an establishment.



Conclusion



Bill O'Mara

John Cooper

Jim Hurley

Premises liability litigation for injured people demands an experienced attorney. Some personal injury law firms are wary about taking on premises liability cases. At Cooper Hurley Injury Lawyers we routinely prosecute these cases.

We are prepared to work hard to help the seriously injured get a full and fair recovery against a business where the liability can be proved. Big box stores and other businesses have a duty to provide a safe environment for visitors. If they fail in that duty, they should be held accountable.

Our Attorneys' Past Premises Liability Results

We cannot guarantee that you will receive particular results because each case is unique. We promise, though, that we will work tirelessly on your case to seek the jury verdict or settlement that you deserve. Here are a few of our past results:

- \$400,000 settlement for a hotel guest injury – A 55-year-old flight attendant was injured at a Virginia Beach hotel when a window treatment fell on her, causing injuries to her neck, knee and shoulder.
- \$225,000 Settlement for a slip on waxed floor – an employee fell at work when she slipped on a floor that had been cleaned by a janitor. The injured lady was hurt when the janitor told her it was alright to pass. She sustained injuries to her neck, right shoulder, right hand, right hip and low back.
- 125,000 Settlement for a trip-and-fall outside a fast food restaurant – A 76-year-old man was directed around landscaping by the employee of a fast food restaurant in Chesapeake. He fell and sustained a broken hip, a broken finger and multiple bruises.
- \$120,000 Settlement for customer Injured by department store shelf – A customer shopping in a store was injured when a metal shelf fell down, striking her in the shoulder. The victim suffered an AC separation and tear of the rotator cuff in her right shoulder, ultimately resulting in surgery.
- \$112,500 Settlement for slip-and-fall accident at a Hampton Roads Hospital – An employee at a local Hampton Roads hospital was injured when she fell on uneven stairs and broke her ankle. After undergoing surgery, the victim suffered a lengthy recovery period and a stress fracture on her foot due to complications from the injury.

*Many other cases have been resolved but the insurance company made us agree not to disclose the results.

About



COOPER HURLEY
INJURY LAWYERS

Cooper Hurley Injury Lawyers has a headquarters in Norfolk, Virginia and client meeting locations in Virginia Beach, Hampton, Chesapeake, Newport News and the Eastern Shore of Virginia.

One thing that sets our firm apart from the competition is the fact that our sole focus is on personal injury law. Personal injury attorneys John Cooper, Jim Hurley and Bill O'Mara do not split their attention between several practice areas; instead, they devote their energies entirely to the intricacies and complexities of Virginia personal injury law. This enables the firm to stay on top of changes in the Virginia Code and Supreme Court cases, using our knowledge and up-to-date familiarity with Virginia law to our clients' advantage.



COOPER HURLEY
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Meet the Team



John Cooper has represented injured people for over 25 years and has litigated a large number of premises liability Cases. John holds a top “AV” rating from Martindale Hubbell, a national lawyer assessment service and has been listed among VA “Super Lawyers” for injury law. He is a member of the Multi-million Dollar Advocates Roundtable and is ranked 10 of 10 (“Superb”) by AVVO, a national lawyer assessment service. John Cooper is also licensed in North Carolina and West Virginia.



Jim Hurley has represented personal injury clients since 1993 including many people injured by the fault of businesses. He has tried approximately 100 jury trials and been involved in thousands of litigation matters.

Jim Hurley is licensed in Virginia and Florida. He holds a top “AV” rating from Martindale Hubbell, reflecting a reputation among judges and lawyers for the highest level of skills and ethics in accident and injury law. He is ranked 10 of 10 (“Superb”) by AVVO, a national lawyer assessment service and is listed among Virginia “Super Lawyers” in 2014.



Bill O'Mara was educated at Dartmouth College and Washington and Lee University Law School. He started his legal career in 2008, and throughout has practiced in the field of plaintiffs' personal injury. He has extensive courtroom and trial experience, including contested trials before judges and juries across Hampton Roads.





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