

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR FREDERICK COUNTY**

**MICHAEL PASTERNAK,**

**Plaintiff,**

v.

**CIVIL ACTION NO.: CL24000051-00**

**PAUL ANTHONY AUSTIN,**

**Defendant.**

**PLAINTIFF’S MOTION IN LIMINE TO SUBSTITUTE THE WORD “ACCIDENT”  
WITH “COLLISION” WHEN INSTRUCTING THE JURY**

This case concerns a motor vehicle collision. Plaintiff, by counsel, respectfully requests that the Court substitute the word “accident” with “collision” when instructing the jury for the following reasons: (1) there is persuasive authority in support of substituting the word “accident” with “collision” when instructing the jury during a motor vehicle collision trial, and (2) the use of the word “accident” in such a trial can be inaccurate, confusing, and/or misleading.

**1. Orders substituting the word “Accident” with “Collision.”**

On November 20, 2023, in Chesterfield Circuit Court Case No. CL20-3168, the court recognized that the use of the word “accident” in a motor vehicle collision trial can be inaccurate, confusing, and/or misleading and, as such, entered an order stating “that the Court will substitute the word ‘accident’ with ‘collision’ when instructing the jury.” **Exhibit A (Order in CL20-3168).**

On January 23, 2024, in Richmond Circuit Court Case No. CL23-3309, the court with the consent of all parties entered an order stating “that the Court will substitute the word ‘accident’ with ‘collision’ when instructing the jury.” **Exhibit B (Order in CL23-3309).**

**2. The word “accident” implies that no one was at fault.**

The word “accident” is generally defined as “an event or condition occurring by chance or arising from unknown or remote causes.” Webster’s Third New International Dictionary 11 (1971); *see also* Black’s Law Dictionary 15 (6th ed. 1990) (“an event happening without any human agency”). The above-quoted dictionaries in particular have repeatedly been relied upon by the Virginia Supreme Court as a source for definitions. *See, e.g., City of Charlottesville v. Regulus Books, LLC*, 873 S.E.2d 81, 85 (Va. 2022) (referring to definitions in both Black’s Law and Webster’s International); *accord Grethen v. Robinson*, 294 Va. 392, 400 (2017) (McClanahan, J., dissenting); *Sigmon v. Commonwealth*, 200 Va. 258, 267 (1958).

Additionally, other prominent legal dictionaries define the word “accident” to expressly exclude negligence. *See* The Law Dictionary (2002) (“an unforeseen event, misfortune, act, or omission as is not the result of negligence or misconduct in any party”); Ballentine’s Law Dictionary (3d ed.) (“an occurrence which could not have been foreseen by the exercise of reasonable prudence”).

Beyond just dictionary definitions, the Virginia Supreme Court has repeatedly explained, over the course of decades, that the word “accident” connotes an event that occurs without negligence. *See AES Corp. v. Steadfast Ins. Co.*, 283 Va. 609, 622 (2012) (Mims, J., concurring) (“[U]nder the reasoning of our precedents, allegations of negligence and allegations of accident must be mutually exclusive.”); *Tri-State Coach Corp. v. Stidham*, 191 Va. 790, 799 (1951) (noting that “in its strictly proper use the word [accident] excludes negligence”) (citing Black’s Law Dictionary 23 (3d ed.); Webster’s New International Dictionary 14 (2d ed., unabridged)); *Byrne v. Edmonds*, 64 Va. (23 Gratt.) 200, 210 (1873) (“By the term accident is included not merely inevitable casualty or the act of Providence . . . but such unforeseen events, misfortunes, losses,

acts or omissions as are not the result of any negligence or misconduct in the party.”) (emphasis added); *see also Monterey Corp. v. Hart*, 216 Va. 843, 850 (1976) (“A collision occurs between vehicles, and it is referred to as an ‘accident.’ [But n]ormally, negligence on the part of one or both parties is involved.”); *Morris v. Travelers Indem. Co.*, 31 Va. Cir. 306, 311 (Greene County 1993) (“Generally, an ‘accident’ means a circumstance or event that is unusual and unexpected or fortuitous and unforeseen and occurs without fault.”) (emphasis added).

Last but not least, there is an element of common usage and consistency at play here, too. Airplanes do not have accidents, they crash. Trains also do not have accidents, they wreck. Why should automobiles be treated differently than these other forms of motorized, human-operated modes of transportation? As recognized by the Virginia Department of Motor Vehicles, they should not be treated differently. *See, e.g.*, Va. DMV Form FR200 (07/01/2020) (“Voluntary Report of a Crash”);<sup>1</sup> Va. DMV Form CRD 93 (07/01/2021) (“Information Request” for, inter alia, “Police Crash Report”);<sup>2</sup> Va. DMV Form FR300P (Rev 7/07) (“Police Crash Report”).<sup>3</sup>

Admittedly, Virginia’s Civil Model Jury Instructions use the word “accident” in multiple instructions. However, the model instructions can and should be specifically tailored to the particular circumstances of this case by simply replacing the word “accident” with “crash.” *See* Va. Model Jury Instructions-Civil(2) (“[M]any [instructions] will require some changes to make them fit the facts of a particular case. . . . The instructions provided in this volume are models or patterns from which to construct instructions that are apt for a case. Therefore, an instruction can be modified . . . to fit the particular facts and circumstances.”).

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<sup>1</sup> Copy available at <https://www.dmv.virginia.gov/webdoc/pdf/fr200.pdf>.

<sup>2</sup> Copy available at <https://www.dmv.virginia.gov/webdoc/pdf/crd93.pdf>.

<sup>3</sup> Copy available at [https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/va\\_fr300\\_rev7\\_2007.pdf](https://www.nhtsa.gov/sites/nhtsa.gov/files/documents/va_fr300_rev7_2007.pdf).

In light of the foregoing arguments and authorities cited, the Court can and should substitute the word “accident” with “collision” when instructing the jury at the trial of this case because the use of the word “accident” can be inaccurate, confusing, and/or misleading.

**MICHAEL PASTERNAK**

By:   
Counsel

Sharif L. Gray (VSB No. 96221)  
Gray B. Broughton (VSB No. 46692)  
The Broughton Law Firm, PLLC  
9701 Gayton Road, Suite 12  
Henrico, Virginia 23238  
Direct: (804) 613-3800  
Fax: (804) 250-5069  
sharif@graybroughton.com  
gray@graybroughton.com  
*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I certify that I sent a copy of this motion by e-mail and mail on August 12, 2024 to:

Graham S. Butler (VSB No. 77846)  
The Butler Law Firm, P.C.  
P.O. Box 2218  
Staunton, VA 24402  
Phone: (540) 292-7665  
Fax: (540) 301-0734  
gbutler@thebutlerlawfirm.com  
*Counsel for Defendant Austin*

August W. Steinhilber, III (VSB No. 24368)  
3554 Chain Bridge Road, Suite 100  
Fairfax, Virginia 22030  
Phone: (703) 273-6400  
Fax: (703) 273-3514  
asteinhilber@thebrautfirm.com  
*Counsel for Respondent State Farm*

  
Counsel