

VIRGINIA LAWYERS WEEKLY

FEATURE STORY

Largest Verdicts of 2006

By Virginia Lawyers Weekly Staff
January 15, 2007

Presenting the 2006 Compilation

In this issue, Virginia Lawyers Weekly is pleased to present the "Virginia's Largest Verdicts of 2006," our annual compilation of big jury verdicts from across the commonwealth.

As in past years, our criteria for the list are simple:

1. The verdict must be for at least \$1 million.
2. The verdict was returned by a jury in Virginia - not a judge.
3. The verdict was returned in calendar year 2006.

The 2006 survey features 29 verdicts, up from the 20 million-dollar verdicts in last year's compilation.

If we have missed any million-dollar verdicts from 2006, please let us know. We'll be glad to add that information to the online version of the story so it can be complete as possible.

And during the coming year, we would greatly appreciate hearing about verdicts that will make it on next year's list.

#1 - \$10.4 million

Jones v. John Crane Inc.

Type of Case: Wrongful death, mesothelioma

Court: Newport News Circuit Court

Attorney: Robert R. Hatten

Summary: Garland Jones developed mesothelioma in July 2004 and died from the disease in July 2005 at age 60. His attorneys contended that he contracted the disease while installing asbestos

gaskets and packing in the engine room of ships at Newport News Shipbuilding & Dry Dock Co. from 1963-67.

The case was tried under maritime law, and the jury apportioned its verdict among three defendants: 34 percent for John Crane Inc. and 33 percent each for Johns Manville and Garlock Sealing Technologies.

Jones's estate had settled the case against Garlock before trial for six figures and had accepted a settlement of \$17,500 from the Johns Manville Settlement Trust, which is insolvent and paying only 5 percent of the amount claimants are due under a matrix developed for settlements.

John Crane remains potentially liable for \$3.5 million. Its petition for appeal is scheduled to be argued before the Supreme Court of Virginia next month.

#2 - \$8 million

Chu v. Mongold

Type of Case: Wrongful death, motor vehicle collision

Court: Fairfax County Circuit Court

Attorney: Gregory L. Murphy

Summary: David Chu, a senior at Oakton High School, was killed when a truck driver for Danella Companies Inc., a road construction company, apparently fell asleep and crashed into the rear of Chu's vehicle in September 2002 at a stoplight on U.S. 50 in Fairfax County. The defendants admitted liability.

The jury returned verdicts of \$3 million for each of his parents and \$2 million for his younger sister. Chu was a straight-A student, a varsity swimmer and a violinist who wanted to be a psychiatrist.

The Supreme Court granted the defendants' petition for appeal in November.

#3 - \$7.7 million

DePaoli v. Vacation Sales Associates LLC

Type of Case: Retaliation for filing age and sex discrimination claim

Court: U.S. District Court, Norfolk

Attorney: John M. Loeschen

Summary: Pamela L. DePaoli, a time-share sales manager, contended that her employer fired her because she had complained to the Equal Employment Opportunity Commission about age and sex discrimination. She alleged that the employer manipulated her sales figures and made changes to her

sales team in an effort to diminish her productivity and justify her termination.

The employer responded that she was fired because her sales had plummeted.

The jury awarded DePaoli \$2.5 million in compensatory damages, \$5 million in punitive damages and \$200,000 in back pay.

However, 42 U.S.C. § 1981a(b)(3) caps damages against employers the size of the defendants at \$200,000, and the trial judge reduced the punitive and compensatory damages to that amount. He also awarded \$208,708 in back pay and \$240,000 in attorneys' fees and costs.

The case is on appeal to the 4th U.S. Circuit Court of Appeals with oral argument set for March.

#4 - \$5.6 million

Frank v. Carolina Coach Co.

Type of Case: Personal injury, motor vehicle collision

Court: Norfolk Circuit Court

Attorneys: Irvin V. Cantor, Lewis T. Stoneburner

Summary: Army Staff Sgt. Melonie Frank was driving west on Interstate 64 to visit her parents before a second deployment to Iraq when a Trailways bus rear-ended her pickup truck near the Colonial Williamsburg exit.

She suffered a broken neck, a shattered shoulder blade, a broken nose, a disfiguring cut to her chin and lip and a mild traumatic brain injury. Family members testified that the crash transformed her from a happy, extremely fit soldier to a woman depressed over the likelihood of a lifetime of pain and the loss of career and lifestyle.

The case is on appeal to the Supreme Court.

#5 - \$5.2 million

Commonwealth Transportation Commissioner v. Saul

Type of Case: Condemnation

Court: Loudoun County Circuit Court

Attorneys: A. Hugo Blankingship Jr., Paul B. Terpak

Summary: The Virginia Department of Transportation acknowledged that the property owner was

entitled to about \$3.6 million to acquire eight acres for an interchange on Route 28. The department contended, however, that there was no damage to the 32-acre residue of the tract because the owner bought the property in the mid-1980s after plans for the interchange were known. The owner sought damages of \$3.5 million, and the jury awarded \$1.3 million, plus \$314,000 in interest.

VDOT has paid the amount awarded.

#6 - \$4.8 million

Massey Coal Sales Company Inc. v. Ontario Power Generation Inc.

Type of Case: Breach of contract

Court: U.S. District Court, Richmond

Attorneys: Brian C. Riopelle, David E. Finkelson

Summary: Massey failed to deliver 154,820 tons of coal to a Canadian utility at a contract price of \$33.50 per ton after the market price increased to \$64.67 during the contract period.

Ontario Power bought the coal at the market price and sought to recover the difference between that price and the contract price. A jury awarded it the full amount that it sued for. Massey contended that the shortfall in delivery was due largely to the failure of the utility to make rail transportation equipment available as required by the contract.

The utility countered that the equipment generally was available but that Massey failed to schedule the shipments, which was its responsibility under the contract.

Post-trial motions are pending.

#7 - \$4.5 million

Gray v. Rhodes

Type of Case: Wrongful death, excessive force by police officer

Court: Charlottesville Circuit Court

Attorneys: Richard Armstrong, Deborah C. Wyatt

Summary: Frederick Gray was shot and killed by Charlottesville police officer Amos Chiarappa during an altercation in an apartment in May 1997. The jury found that Chiarappa assaulted and battered Gray and that he was grossly negligent in the assault and shooting.

The panel awarded \$3.5 million in compensatory damages and \$1 million in punitive damages.

An earlier trial ended in a defense verdict, but the Supreme Court ordered a new trial after concluding that statements police officers made within a month of the shooting were admissible.

Virginia Code § 8.01-404, which bars the use of certain types of statements to contradict a witness in personal injury cases, was inapplicable, the court ruled.

Post-trial motions are pending.

#8 - \$4.4 million

McMillan v. Morrison

Type of Case: Medical malpractice, shoulder dystocia

Court: Newport News Circuit Court

Attorneys: Lewis T. Stoneburner, Wallace B. Wason Jr.

Summary: The jury found an obstetrician liable to both an infant and his mother for the nerve damage to his right arm and other injuries the child suffered during his delivery. The child's injuries occurred when his shoulders hung up on the mother's pubic bone after the head emerged during delivery.

Stoneburner contended that the physician turned the child's head with too much force and damaged the brachial plexus, the bundle of nerves at the spine that lead to the shoulder and arm. The jury's award to the child of \$2.5 million plus \$258,000 in prejudgment interest was reduced to the cap of \$1.75 million. The award for the mother was \$1.5 million plus \$150,000 in prejudgment interest.

An appeal is pending.

#9 - \$4 million

Granata v. Fruiterman

Type of Case: Wrongful birth

Court: Fairfax County Circuit Court

Attorney: Robert H. Hovis III

Summary: The jury awarded \$4 million to the mother of twins born with Down syndrome in September 2002. The panel also awarded \$500,000 to the father of the children.

The attorney for the parents contended that obstetricians committed medical malpractice by failing to advise the mother of the chorionic villus sampling, or CVS, test that could have identified a

chromosomal abnormality at 11 to 12 weeks of gestational age. The mother chose not to get undergo amniocentesis at 15 to 18 weeks gestational age because that was too late in her pregnancy.

Post-trial motions are pending, including ones to reduce the award to the applicable cap of \$1.6 million and to declare that the award to the father is derivative of the mother's and therefore covered by the cap.

#9 - \$3.5 million

Cooley v. King

Type of Case: Medical malpractice, gastric bypass surgery, brain damage

Court: Fredericksburg Circuit Court

Attorneys: Malcolm P. McConnell III, Jason W. Konvicka

Summary: The plaintiff's attorneys contended that she suffered brain damage caused by peritonitis and a septic reaction after a surgeon did not respond promptly to symptoms of a leak from the bypass surgery. The defense countered that the plaintiff's injuries were the result of aspirational pneumonia and lung failure.

The verdict was reduced to the cap of \$1.65 million and has been appealed to the Supreme Court.

#11 - \$3.3 million

Yao v. Inova Health Care Services

Type of Case: Medical malpractice, wrongful death

Court: Fairfax County Circuit Court

Attorneys: Brian C. Shevlin, Michael C. Shevlin

Summary: A 3-year-old girl was admitted to Inova Fairfax Hospital after she was found in a coma and incontinent in bed. Laboratory tests disclosed elevated ammonia levels in her blood, and her parents told physicians that she did not eat protein. The doctors concluded that the child had an inborn error of metabolism called a urea cycle defect.

Her attorneys contended that the girl's symptoms required immediate aggressive treatment, but her condition had deteriorated to the point that the treatment was given too late, and the child died.

The jury verdict was reduced to the cap of \$1.7 million. The Supreme Court refused the hospital's petition for appeal last month.

#12 - \$3 million

Clark v. Bramati Transport Inc.

Type of Case: Wrongful death, motor vehicle accident

Court: Fairfax County Circuit Court

Attorneys: David E. Haynes, Stephen D. Annand of the Washington office of The Cochran Firm.

Summary: Vernon Clark, a 58-year-old college professor and administrator from Chester, was killed on Interstate 395 North when his vehicle collided with a flat bed truck. The collision occurred after a John Doe vehicle swerved and cut off a van, which applied its brakes.

The truck driver swerved to avoid the van and skidded across the highway, spun almost 180 degrees and struck Clark's vehicle in the left lane. The trucking company contended that the accident was solely the fault of the John Doe driver.

Clark was earning about \$140,000 annually and had projected lost wages of \$1.5 million. The jury awarded \$2.26 million to his wife of 35 years and \$250,000 to each of his three adult children.

The Supreme Court refused the defendants' petition for appeal in November.

#13 - \$2.72 million

Johnson v. Gynecology Associates

Type of Case: Medical malpractice, shoulder dystocia

Court: Norfolk Circuit Court

Attorneys: Lewis T. Stoneburner, Wallace B. Wason Jr.

Summary: The jury awarded \$1.25 million, plus \$478,000 in prejudgment interest, to a 5-year-old girl whose arm was injured during delivery after her shoulders hung up on the mother's pubic bone. The brachial plexus, the bundle of nerves at the spine that leads to the shoulder and arm, was damaged so the child will have limited use of the hand and arm, despite multiple surgeries and extensive therapy.

The mother sought recovery of \$216,000 in medical expenses, and the jury awarded her \$1 million. Because the case was not brought to her attorneys until the statute of limitations on her claim had lapsed, and her claim was derivative of the child's claim, the total award was reduced to \$1.55 million, the applicable cap on the child's medical malpractice claim.

The case is on appeal to the Supreme Court.

#14 - \$2.5 million

Konoza v. Choi

Type of Case: Medical malpractice, botched myelogram

Court: Alexandria Circuit Court

Attorney: Jack T. Burgess

Summary: A firefighter/EMT who had injured his neck and back on the job underwent a myelogram but suffered immediate neurological complications when an improper contrast material was injected into his spinal canal. Seizures were so severe that he broke off the head of each femur before he was sedated, placed in restraints and transferred to intensive care.

Although he underwent extensive rehabilitation and now works as a personal trainer, he was determined to have a 32 percent whole body impairment and was forced to retire from the fire department.

The verdict was reduced to the applicable cap of \$1.7 million and has been paid.

#15 - \$2.3 million

Sirry v. Hight

Type of Case: Wrongful death, pedestrians killed by reckless driver

Court: Montgomery County Circuit Court

Attorney: Bill K. Cruery

Summary: A woman and her 6-year-old daughter were struck and killed by a disoriented driver as they walked along U.S. 460 near Shawsville. The driver, who pleaded guilty to two counts of involuntary manslaughter, had a total of \$50,000 in coverage, and the family had a total of \$150,000 in underinsured motorist coverage from Nationwide Assurance Co.

After the estate of the victims filed wrongful death suits, both insurers offered the limits of their coverage in the death of the child, but Nationwide offered only \$65,000 of its \$75,000 in coverage in the case of the mother.

The trial of the death of the girl was scheduled first, and Bill K. Cruery, the attorney for the estate, told Nationwide he would try the case unless it offered its policy limits in both cases. Nationwide refused until the day of trial, and Cruery insisted on going forward with the trial. The jury returned the \$2.3 million verdict, which is believed to be the largest in Montgomery County history. Nationwide subsequently paid

its policy limits in the mother's case.

#16 - \$2.25 million

Washington v. Wilmore

Type of Case: Police misconduct, fabricated confession

Court: U.S. District Court, Charlottesville

Attorneys: Robert T. Hall, Peter Neufeld

Summary: The jury concluded that a Virginia State Police special agent, Curtis Reese Wilmore, fabricated the confession of Earl Washington that resulted in his capital murder conviction for the 1982 rape and murder of a Culpeper woman.

Washington had his death sentence commuted and was eventually pardoned on the basis of DNA evidence. The verdict is on appeal to the 4th U.S. Circuit Court of Appeals.

Another potential issue is the responsibility of the state to indemnify the estate of Wilmore, who died in 1994, in an action brought under 42 U.S.C. § 1983 and to pay the attorneys' fees and court costs available under that law.

#17 - \$2.2 million

Dokes v. Waller

Type of Case: Wrongful death, medical malpractice, failure to diagnose strep infection

Court: Suffolk Circuit Court

Attorneys: Thomas B. Shuttleworth, Lawrence H. Woodward Jr.

Summary: A physician and a nurse practitioner did not consider the possibility of a strep infection in a 34-year-old physical fitness buff who complained of pain throughout his body and had a low-grade fever, elevated blood pressure and a very high heart rate. He was seen twice in four days and discharged with prescriptions for steroids, a diuretic and pain medication.

He was admitted to a hospital a day later disoriented and immobile. An examination of an arm disclosed the strep infection, but the patient died from the infection, which had progressed to necrotizing fasciitis.

The defendants made no offer and contended that they had met all reasonable standards of care.

The case has been appealed to the Supreme Court.

#18 - \$2 million

Simmons v. MTD Products Inc.

Type of Case: Wrongful death, product liability, defective design of riding lawn mower

Court: Roanoke Circuit Court

Attorney: P. Brent Brown

Summary: A 4-year-old boy was killed when a riding lawn mower rolled backward while on a slope and struck the child. P. Brent Brown, the attorney for the estate, contended that the design of the mower allows operators to circumvent a device that keeps the mower from rolling backward on level ground when it is on a slope. The mower should have been designed to that the operator cannot allow it to roll backward by putting a combination brake-clutch into the equivalent of neutral on an automobile, Brown contended. The mower was operated by the husband of the woman who provided day care for the child. MTD contended that the design met the standards of the industry and that the operator ignored safety warnings.

Post-trial motions are pending.

#19 - \$1.75 million

Grooms v. Stevens

Type of Case: Personal injury, survival action, attempted murder

Court: Augusta County Circuit Court

Attorney: Steven P. Hammond

Summary: Plaintiff's decedent suffered a severe traumatic brain injury when his Jeep Cherokee rolled several times as he was attempting to evade a man who was pursuing him in another vehicle. Depressed over the severity of his injuries, the decedent committed suicide seven months after the crash. The man responsible for the wreck was convicted of attempted murder and leaving the scene of the crash and was sentenced to 20 years in prison.

The insurer for the driver denied coverage, but the judgment was partially satisfied by the \$515,000 in uninsured motorist coverage. The UM insurer contended that the decedent was contributorily negligent because he was racing with the defendant.

#20 - \$1.58 million

Mario Industries of Virginia Inc. v. Cook

Type of Case: Breach of fiduciary duty, misappropriation of trade secrets

Court: Roanoke City Circuit Court

Attorneys: Matthew W. Broughton, H. David Gibson, Gregory D. Habeeb

Summary: A lamp company contended that its former contract sales manager breached his fiduciary duties and misappropriated the company's trade secrets when he quit to form a competing company. Neither the manager nor sales representatives who also joined the new company had noncompete or exclusivity agreements. The manager and four other defendants were found to be jointly and severally liable for \$1.53 million, and the jury award \$56,700 in punitive damages against the manager.

The Supreme Court refused the defendants' petition for appeal, but a petition for rehearing is pending.

#21 (tie) - \$1.5 million

Harper v. Ingram

Type of Case: Wrongful death, police shooting

Court: Richmond Circuit Court

Attorney: Charles H. Cuthbert Jr.

Summary: An 18-year-old mother of two was killed when she was accidentally shot by police who were breaking into an apartment to search it. Police used a special type of shotgun shell to shoot off the lock of the door. The shell is designed to disintegrate once it hits a solid object. However, at least three rounds appear to have gone cleanly through the door, and one of them struck the woman.

A jury was unable to reach a verdict in January 2004, but the judge entered judgment for the defendant after concluding that there was insufficient proof of gross negligence, the legal standard because the officer was performing his duties as an agent of the state.

The Supreme Court split 4-3 in remanding the case for a new trial, and the jury returned a verdict for the woman's children last year.

#21 (tie) - \$1.5 million

Vaughan v. Schiller

Type of Case: Wrongful death, medical malpractice, failure to diagnose melanoma

Court: Virginia Beach Circuit Court

Attorneys: Jonathan L. Thornton, David J. Pierce

Summary: The first biopsy from a raw spot on the nail bed of Paul Vaughan's right middle finger was negative for carcinoma. The spot did not heal over the next eight months, and a second biopsy was positive for melanoma, the most deadly form of skin cancer.

A check of slides from the original biopsy indicated that the melanoma was present then as well. Vaughan died less than a year after the first biopsy. The pathologist and her practice group contended that she did a reasonable workup of the specimen and that the melanoma was so advanced when the first biopsy was done that Vaughan would not have survived anyway. Defense experts testified to the contrary, and the jury credited their testimony.

The case was resolved without an appeal.

#23 - \$1.43 million

Baker v. Field

Type of Case: Breach of fiduciary duty

Court: Alexandria Circuit Court

Attorneys: Alexander Y. Thomas, Matthew R. Sheldon

Summary: Minority shareholders in AutoMall Online Inc. contended that Michael L. Field Jr, the company's founder, chairman and controlling shareholder breached his duty to them by merging AutoMall with another company in which he had a 50 percent interest.

The shareholders alleged that Field failed to disclose the merger. They said the terms were unfair and sued for the value of their shares at the time of the merger. The jury awarded 98 percent of the maximum share value the shareholders' expert placed on those shares.

The Supreme Court refused a petition for appeal.

#24 (tie) - \$1.2 million

Goe v. Green

Type of Case: Medical malpractice, failure to diagnose prostate cancer

Court: Arlington County Circuit Court

Attorneys: William E. Artz, Andrew J. Waghorn

Summary: A prostate specific antigen (PSA) test conducted in October 2002 was elevated and abnormal, but the primary care physician who ordered it did not become aware of the result for more than a year.

In December 2003, a digital rectal examination conducted as part of a colonoscopy procedure, disclosed a lumpy prostate, and the plaintiff was diagnosed with late stage, incurable cancer.

The 58-year-old plaintiff's attorneys contended that the physician was negligent in not following up on the test and in failing to maintain a system to identify missing laboratory results. Experts testified that plaintiff's cancer could have been cured if he had received treatment immediately after the PSA test. By the time of trial, the cancer had spread to his spine.

The judgment has been paid.

#24 (tie) - \$1.2 million

Confidential

Type of Case: Personal injury, motor vehicle collision

Court: Hampton Circuit Court

Attorney: O.L. "Buz" Gilbert

Summary: Plaintiff was severely injured when a driver in the right lane swerved into a ditch, overcompensated and struck plaintiff's vehicle head on in the plaintiff's lane. Plaintiff contended that a second vehicle also was at fault because his erratic driving contributed to the loss of control by the driver of the vehicle that struck plaintiff.

Both drivers were found liable and had a total of \$400,000 in coverage, which has been paid.

#26 - \$1.17 million

Hareford v. Negron-Crespo

Type of Case: Personal injury, drunken driver

Court: Rockingham County Circuit Court

Attorney: William W. Helsley

Summary: The vehicle of a 47-year-old woman was hit almost head on by a drunken driver on Port Republic Road. The woman suffered multiple leg fractures and incurred more than \$100,000 in medical bills. The jury awarded her \$1 million in compensatory damages, \$100,000 in punitive damages and

prejudgment interest.

The defendant had only \$25,000 in coverage, and the judgment is otherwise unsatisfied.

#27 (tie) - \$1 million

Lawson v. Blizzard

Type of Case: Personal injury, fall at loading dock

Court: Brunswick County Circuit Court

Attorneys: John Newby, Jay Tronfeld

Summary: A warehouse supervisor fell from the back of a tractor-trailer when the driver of the rig unexpectedly moved it forward several minutes after backing the rig almost flush against a loading dock. After the truck stopped, the supervisor had opened the trailer's doors, placed a steel ramp between it and the dock and started to inspect the trailer's contents. The supervisor broke his heel and cannot walk or work more than six hours a day, even after two surgeries.

The defendants contended that the supervisor's negligence contributed to his injuries and argued that the driver could not reasonably have foreseen that he would have gone inside the trailer.

The Supreme Court refused a petition for appeal.

#27 (tie) - \$1 million

Arnold v. Convalescent Care Center

Type of Case: Medical malpractice, nursing home care, fraud

Court: Smyth County Circuit Court

Attorney: Robert W. Carter Jr.

Summary: An 80-year-old woman with dementia fell and broke her wrist after being allowed to walk out the front door of a nursing home in Chilhowie. Within a month, she was hospitalized for eight days from complications related to hydration.

Before she was admitted, her family had been assured that she would not be able to leave the center and that her diet and health would be monitored closely.

A jury returned verdicts of \$350,000 for allowing the woman to leave the building, another \$350,000 for the dehydration, \$200,000 for common law fraud and \$100,000 for violating the Virginia Consumer Protection Act.

The case has been resolved on confidential terms.

#27 (tie) - \$1 million

Confidential

Type of Case: Personal injury, motor vehicle collision

Court: Norfolk Circuit Court

Attorney: O.L. "Buz" Gilbert

Summary: Plaintiff's vehicle was rear-ended by an uninsured motorist while he was working for his employer. His back was broken, and he will have pain and be limited to light work for the rest of his life. He had lost wages and medical expenses totaling \$175,000 at the time of trial.

The major issue in the case is whether the employer's uninsured motorist coverage is available to the plaintiff. A declaratory judgment action on that issue pending.

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