JURY VERDICTS

PRESENTING THE 2021 COMPILATION

1 $10 million

Untreated acute kidney failure, acidosis led to woman's death

Name of case: Estate of Rita Epps v. Sajid Naveed, M.D., et al.

Type of case: Medical malpractice

Court: Petersburg Circuit Court

Attorneys: Brewster Rawls, Eric Speer and Jay Tronfeld, Richmond

RAWLS SPEER TRONFIELD

Rita Epps, 63, died at Southside Regional Medical Center because of untreated acute kidney failure and resulting acidosis.

Ms. Epps arrived at the SRMC emergency room a little before 9 a.m. on Dec. 10, 2016. The initial laboratory studies and evaluation showed that she was in acute kidney failure with severe anion gap metabolic acidosis and high potassium. She was admitted to the hospital and evaluated by the first hospitalist defendant. This doctor started medical treatment. She also ordered a lactic acid level and ordered a nephrology consultation.

The nephrologist on call, Sajid Naveed, claimed he never got the consultation. The nephrologist's phone records showed a call from SRMC's general number about 40 minutes after the consult was placed in the EMR. However, the hospitalist testified that she never called the nephrologist herself and there is no evidence in the medical record that he took any action that afternoon or evening.

The first hospitalist handed over care around 7 p.m. to the overnight hospitalist, the third defendant. Ms. Epps was experiencing increased pain so the nocturnist ordered Dilaudid on top of the morphine and oxycodone already given during the day.

The nocturnist ordered an arterial blood gas which came back shortly after midnight. It showed that Ms. Epps was severely acidotic. Her pH was 6.6, a level that multiple experts described as incompatible with life. It also meant that the medical management of her acidosis, primarily fluids and bicarbonate, had not worked. At this point, the nocturnist had an ICU nurse call the nephrologist and advise him of Ms. Epps' condition. This phone call is recorded in the medical record and two minutes later, the records show that Dr. Naveed ordered more bicarbonate. The nephrologist did not come to the hospital, nor did he order emergency dialysis.

Dr. Naveed came to the hospital around 7 a.m. He ordered continuous renal replacement therapy, a form of dialysis. Upon returning from having her dialysis catheter placed, the decedent suffered cardiac arrest and permanent brain damage. Life support was removed several days later.

The trial of the matter was unusual. Everyone agreed that Ms. Epps needed dialysis shortly after her admission to the hospital. The hospitalists argued that Dr. Naveed had responsibility for Ms. Epps from the time of the Saturday afternoon consultation order. Everyone also agreed that the high lactic acid and pH of 6.6 constituted an emergency.

Dr. Naveed tried to make a case that he was never contacted, and that he first found out about Ms. Epps when he came to the hospital.

Plaintiff's hospitalist expert testified that Ms. Epps' condition was obvious and that the hospitalists should have taken affirmative steps to make sure the patient was evaluated by a nephrologist. The plaintiff's nephrology expert testified that Ms. Epps needed dialysis early on and that should have been obvious to any nephrologist.

The hospitalists both put on multiple experts to say that their orders were appropriate, and it was reasonable for them to assume that the nephrologist was on the case. Even with just the order of bicarbonate, reliance on Dr. Naveed's expertise was reasonable.

No evidence of economic losses or medical bills was presented. In closing, the jury was told that the family had sued for $10 million.

The trial lasted seven days. The jury was out a little more than three hours before returning a $10 million verdict against the nephrologist only. Following the verdict, the judge reduced the verdict pursuant to the Virginia cap on medical malpractice damages. The court immediately overruled Dr. Naveed's motion to set aside the verdict.

About three weeks after the verdict, plaintiff settled with Dr. Naveed for a nominal discount. The settlement was approved by the court on Nov. 9, 2021.

Attorneys Brewster Rawls and Eric Speer tried the case, while attorneys Jay Tronfeld and Wiley Latham were significantly involved in working on the case leading up to trial.

2 $4,007,478

14-year-old killed at crosswalk while preparing for first day of high school

Type of case: Wrongful death

Court: Norfolk Circuit Court

Attorney: Adam Lotkin, Norfolk

LOTKIN

Plaintiff's decedent, a 14-year-old son, was preparing for his first day of high school, on his way home from a local convenience store when he was struck in a crosswalk. He was looking forward to 9th grade and had gone with friends for snacks to pack to take to school the next day. As he crossed the street during daylight hours, while in a designated and marked crosswalk, leaving a local public recreation park on his scooter, he was struck by a passenger vehicle driven by a driver in his 20s who allegedly was operating his vehicle too fast for the residential area and conditions. The decedent was dragged nearly 100 feet before the vehicle stopped and he was pronounced dead at the scene. While the decedent did not have a job or verifiable career, he had expressed ambitions for military service to his family and friends and was an excellent athlete. According to the witness testimony, he enjoyed spending time with his siblings, friends, playing Xbox, basketball, football and fishing.

The case was tried on admitted liability (damages only) in order to lessen the emotional carnage to the parties as there was only very limited insurance coverage and no assets to recover from any defendant. Defense counsel was professional, considerate and respectful in this tragic case at trial. The jury trial lasted only one day but provided a meaningful closure for the family, parents and siblings of the deceased child. The jurors were attentive, considerate and visibly upset by the untimely passing and circumstances of the case. Counsel for the estate asked the jury for a range within the jury's ultimate verdict. The judgment was not docketed to protect the defendant who was also affected by the tragic collision.

3 $3 million

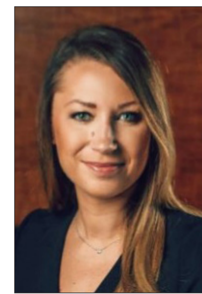
Mother awarded $3 million in fetal death case

Type of case: Medical malpractice

Court: Henrico County Circuit Court

Attorneys: Jonathan M. Petty and Brielle M. Hunt, Richmond

PETTY



HUNT

The plaintiff was a 30-year-old woman with an obstetrical history that included a prior stillbirth at 32 weeks of pregnancy, a prior C-section and a prior miscarriage. All of her prior care took place in India. She moved to the United States with her family in 2018 and shortly thereafter became pregnant. She received regular prenatal care and consulted with a maternal fetal medicine specialist during this pregnancy. The delivery plan was for repeat C-section at 39 weeks.

At 37 weeks, the plaintiff presented to the emergency department at Henrico Doctors Hospital with significant nausea, vomiting and abdominal pain. She was monitored for several hours and released. Following discharge, she continued to experience worsening abdominal pain. Two nights later, she was again admitted to Henrico Doctors Hospital complaining of significant abdominal pain. She was seen for approximately five minutes by the defendant Dr. Sumac Diaz, an obstetrician hospitalist, and placed on the fetal heart monitor. During the 2.5 hours she was in the hospital, her ab-

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dominal pain worsened, the station of her baby descended into the pelvis and the fetal heart tracing changed from Category I (normal) to Category II (indeterminate). At approximately 1:30 a.m., Dr. Diaz decided to release the patient home with instructions to follow-up with her treating obstetrician in the morning. She continued to experience significant abdominal pain following discharge. At approximately 8 a.m., while in the car on the way to her OB, her uterus ruptured, causing the death of her baby boy at 37 weeks.

The plaintiff alleged that the patient's history, increasing pain and changing fetal heart tracings required that she be kept in the hospital for further observation. Had she been monitored in the hospital instead of being sent home, emergency C-section likely would have saved her baby. Diaz claimed that abdominal discomfort is common in pregnant mothers during the third trimester of pregnancy, that the patient was not in labor and that there was no reason to keep her for observation.

The jury returned a plaintiff's verdict of $3 million, allocating $1.5 million to the mother, $1 million to the father and $500,000 to the surviving sister of the deceased infant. No special damages were claimed. It is believed that this is the first plaintiff's verdict in a medical malpractice case in Virginia since the onset of COVID.

4 $2,350,000

Attorney died after receiving steroid injection

Name of case: Estate of Michael Eisenstein v. Advanced Spine and Pain PLLC

Type of case: Medical malpractice

Court: Arlington Circuit Court

Attorneys: Scott M. Perry, Arlington; Les Bowers, Charlottesville

PERRY

BOWERS

This is a unique case in which a challenge to a default judgment was upheld and, as a result, the full judgment amount plus interest has been paid. The plaintiff alleged that an employee of Advanced Spine and Pain, or ASP, negligently performed an epidural steroid injection in Michael Eisenstein's neck. This caused Eisenstein to suffer a cardiac arrest at ASP's office, which plaintiff alleged ASP mismanaged. As a result, Eisenstein, a lawyer, remained in a semi-vegetative state for several months before dying. He left behind his wife of 30 years and two adult daughters. The plaintiff served ASP with process but it failed to respond to the suit. The plaintiff conducted a full-day ex parte hearing on damages. The court awarded the cap of $2,350,000 plus interest. When the plaintiff began garnishing ASP's assets, ASP filed a motion to vacate the default judgment, claiming proper service did not occur. The parties engaged in intense discovery over eight months solely on the issue of proper service. This included depositions, subpoenas to Google and review of thousands of documents. This culminated in an evidentiary trial on the issue of service. The court ruled that service was proper and refused to vacate the judgment. ASP filed a notice of appeal but agreed to pay the full judgment plus interest before briefs were due.

5 $2,004,669.14

Care facility failed to take man to rescheduled dialysis appointment

Name of case: Yvonne Bazil, Administrator of the Estate of Marvin Bazil, deceased v. Envoy of Woodbridge, LLC

Type of case: Medical malpractice

Court: Prince William County Circuit Court

Attorneys: Travis W. Markley, Richard L. Nagle, Benjamin M. Wengerd and James N. Knaack, Reston

MARKLEY

NAGLE

WENGERD

KNAACK

Marvin Bazil was a 36-year-old resident of Envoy of Woodbridge, LLC, the defendant long-term care facility. Although Mr. Bazil was a fully-functioning individual and talented artist, he required more assistance with management of his end-stage renal disease and brittle diabetes than his family could provide. As a result, Envoy of Woodbridge was responsible for managing Mr. Bazil's medical needs and ensuring his transportation to dialysis three times per week.

On Sept. 16, 2017, his 36th birthday, Mr. Bazil had his regular dialysis appointment rescheduled due to pain from a dental appointment earlier that day. Envoy of Woodbridge thus documented that Mr. Bazil's dialysis appointment had been rescheduled for Sept. 18, 2017.

Despite the clear documentation of the rescheduled appointment, Envoy's staff failed to take Mr. Bazil to dialysis on Sept. 18, 2017. In the early morning hours of Sept. 19, 2017, Envoy's nursing staff found Mr. Bazil unconscious and in distress. Mr. Bazil was rushed to the hospital, where he was diagnosed with cardiac arrest and hypoxic brain injury. Mr. Bazil never regained consciousness and his family agreed to withdraw life support measures a week later, resulting in his death on Sept. 27, 2017.

Trial of this matter was originally scheduled for August 2020, but was postponed due to issues related to COVID-19. Trial was initially reset for April 2021, but it was again continued due to the prioritization of criminal trials in Prince William County resulting from the COVID-19 backlog. The case was rescheduled yet again and finally tried in front of a jury in December 2021.

Approximately two weeks before the December 2021 trial date, the defendant stipulated that it had breached the standard of care and caused the wrongful death of Mr. Bazil. Given the liability stipulation, plaintiff did not present testimony from any of her previously retained and designated expert witnesses. Instead, plaintiff presented testimony from Mr. Bazil's mother and his five surviving siblings regarding the sorrow, mental anguish and loss of solace that each suffered as a result of his death.

Although it had stipulated to liability for Mr. Bazil's wrongful death, the defendant nonetheless presented trial testimony from two retained expert witnesses. In short, the defense experts testified that as a result of his underlying health conditions, Mr. Bazil had a decreased life expectancy.

Following the three-day damages trial, the jury deliberated for more than three hours before awarding $600,000 to Mr. Bazil's mother, $225,000 to each of Mr. Bazil's five adult siblings and the full medical and funeral expenses of $126,853.21 that were incurred by Mr. Bazil's estate. The jury further awarded pre-judgment interest from Aug. 1, 2020, resulting in a total verdict of $2,004,669.14. The verdict amount was $500,000 more than the defendant's highest settlement offer of $1,500,000, which was made five days before trial.

6 $1,986,089.70

Plaintiff awarded more than $1.9M in suit related to I-81 construction

Name of case: W.C. English Inc. v. Rummel, Klepper & Kahl LLP

Type of case: Contract

Court: U.S. District Court for the Western District of Virginia, Lynchburg Division

Attorneys: James R. Harvey III and Dustin M. Paul, Norfolk

HARVEY

PAUL

W.C. English contracted with the Virginia Department of Transportation to design and construct a third lane of travel for seven miles of roadway on northbound Interstate 81 between Lexington and Staunton. English engaged Rummel, Klepper & Kahl to provide quality assurance services that would have otherwise been provided by VDOT. Under the contract and project documents, it was the primary responsibility of RK&K's quality assurance manager to determine if the work performed conformed to the approved for construction plans and specifications. In April 2012, the quality assurance manager, Richard Clarke, stopped English's construction forces from correctly installing the reinforcing steel mats to a bridge deck and instead stated that he would not approve the deck for payment unless it was adjusted to a more narrow spacing between the steel mats that violated the plans and specifications for the project and VDOT. The quality assurance manager then approved the modified spacing without noting any nonconformity prior the pouring of the concrete. VDOT later discovered the unacceptable condition and ultimately directed English to remove and replace the bridge deck, costing significant damages to W.C. English including the project delays and liquidated damages for late completion of the project. W.C. English sued RK&K for breach of its quality assurance obligations under the subcontract and project documents when it specifically inspected and failed to identify a condition that failed to meet the requirements of the plans and specifications. The jury awarded damages reflecting RK&K's primary responsibility for the losses, and required RK&K to pay prejudgment interest since June 2014 and English's attorneys' fees.

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7 $1.6 million

Plaintiff suffered seizure, TBI after abnormal blood test missed

Type of case: Medical malpractice

Court: Virginia Beach Circuit Court

Attorneys: Richard N. Shapiro and Eric K. Washburn, Virginia Beach

SHAPIRO

WASHBURN

A 69-year-old female retired wallpaper contractor suffered nausea and abdominal pain for several days and went to the hospital ER on March 16, 2017. The ER attending physician ordered a blood test, a CT scan of her abdomen and kept her in the emergency department from about 5 p.m. until 12:30 a.m. on March 17. The patient was unaware she was suffering low-moderate hyponatremia (low sodium level of 122 reflected on the ER blood test result) and the ER doctor discharged her with no hyponatremia diagnosis and no low sodium patient instructions, except to follow up with her PCP and to see a gastroenterologist for her abdominal pain. Normal sodium in the body is 133-145 on usual blood test results, severe hyponatremia is considered 119 or less.

She followed up with her PCP a week later, and those office notes reflect that neither the patient nor the PCP practice was aware of the critically low sodium level result and there was no intervention by the PCP as the PCP believed all ER workup was negative.

About 11 days after the initial ER visit, on March 28, she was discovered neurologically unconscious by her husband when he got home after work, supine on the floor in their kitchen, beside several pooled areas of blood on the hard tile floor, with a laceration over her right eye and blood streaming down her face to her shirt.

The rescue squad transported her back to the same ER hospital where a new blood test revealed a sodium level of 115, considered profound hyponatremia, and CT scans of the brain showed multi-compartmental brain bleeds, traumatic brain injury with a 3-to-5-millimeter shift of the brain from right to left. She was emergently transported to a higher-level trauma center to address her TBI and her severe hyponatremia, where she was hospitalized for 11 days, and her sodium level was slowly elevated back to normal, before she was transferred to a rehabilitation facility for occupational, speech and physical therapy for her TBI.

She underwent outpatient therapies for the next several months but was left with serious cognitive deficits and permanent effects of her TBI. She suffered memory loss and could not recall any details of the first ER visit or of the March 28, 2017 incident when she suffered blunt force trauma to her head and the resultant TBI.

Plaintiff filed suit against the ER physician and her ER group over the missed diagnosis. Plaintiff submitted no medical expenses claimed; plaintiff focused on permanent cognitive impairments.

Plaintiff deposed hospital trauma physicians who treated the TBI, each who testified the patient suffered profound hyponatremia on her admission. On the standard of care, plaintiff retained two emergency physicians who each stated that the ER doctor failed to follow the standards of care by never recording the hyponatremia diagnosis, by never admitting the patient to address hyponatremia and by discharging plaintiff with no patient instructions on her hyponatremic condition. Both ER physicians and a Norfolk neurologist testified that her March 28 TBI was caused by a hyponatremic seizure/event due to profound hyponatremia, which caused the blunt force trauma to her skull, caused by her striking her head on a hard surface, likely the tile floor. All medical experts agreed during trial that severe hyponatremia can cause seizures, coma, or even brain herniation.

Once deposed, the defendant ER physician testified that she had verbally told the plaintiff about her hyponatremia, despite the diagnosis not being recorded in the patient chart.

The ER doctor and her group retained two emergency physicians who testified she did not violate any standards of care, not all incidental findings in the ER are recorded in a patient chart and the ER doctor's care was appropriate for the circumstances. In addition, the defense called two critical care/neurology physicians who denied the plaintiff suffered a hyponatremic seizure at all, despite agreeing she suffers the lasting effects of a TBI.

Judge Stephen Mahan presided over the jury trial which lasted nine days, and the jury deliberated more than eight hours before returning a $1.6 million verdict for plaintiff. The defendants' post-trial motions were pending as of late October 2021.

8 $1,535,403

Woman suffered TBI in head-on collision with teen driver

Name of case: Parker v. O'Connor

Type of case: Personal injury

Court: Warren County Circuit Court

Attorneys: Leonard C. Heath Jr., Joseph F. Verser and Jordan C. Heath, Newport News

L. HEATH JR.

VERSER

J. HEATH

The plaintiff, a 57-year-old computer graphic artist and musician, was driving when she was struck head on by the 16-year-old defendant's vehicle. On impact, the airbag in the plaintiff's vehicle deployed, striking her squarely in the face, resulting in bruising under both eyes. The plaintiff was transported by ambulance to a local hospital where she was diagnosed with a cervical strain. In the emergency room the plaintiff reported that she had undergone surgery about four months earlier to repair a macular hole in her right eye. Therefore, her chief concern in the emergency room was potential damage to that eye and her surgical repair.

The plaintiff also had surgery previously scheduled for the left eye to prevent a future macular hole. In spite of suffering neck pain, she elected to undergo the second eye surgery within days of the automobile collision. While recovering from the second surgery, symptoms of her mild traumatic brain injury became more apparent, particularly with regard to visual changes and vestibular difficulties. The plaintiff was referred to a local neurologist, Dr. Marieckeen Fowler, who diagnosed her with a concussion and who ordered appropriate care. That neurologist eventually changed practices and advised the plaintiff that there was no one left at that medical practice who specialized in traumatic brain injuries. At that point, the plaintiff came under the medical care of Dr. Gregory J. O'Shanick, who continued to treat the plaintiff for her mild traumatic brain injury. Dr. O'Shanick opined that the plaintiff's mild traumatic brain injury was permanent. His associated diagnoses included visuo-vestibular disorder, auditory processing disorder, post-trauma vision disorder, convergence insufficiency, vertigo, PTSD and anxiety. The plaintiff is a talented artist and musician; however, her injuries prevent her from participating in these activities. She has worked as an artist on cartoons that are nationally syndicated and appear in newspapers worldwide. However, her income varied drastically from year to year, as she was self-employed. For these reasons, a lost wage claim was not pursued. State Farm Mutual Automobile Insurance Company afforded the defendant with $250,000 in liability coverage. In addition, the plaintiff had UIM coverage in the amount of $500,000 under her own State Farm policy. State Farm elected to retain one attorney to represent both the defendant and State Farm in the case. State Farm further took the position that the plaintiff never suffered a mild traumatic brain injury and attempted to attribute her symptoms to a myriad of other possible causes. A little less than two months before trial, plaintiff's counsel forwarded a letter to defense counsel outlining the claim and indicating that the plaintiff was willing to accept a tender and walk offer of the $250,000 in liability coverage pursuant to Va. Code § 38.2-2206, reserving the right to pursue the remaining UIM claim. The letter further indicated that, if State Farm did not make such a tender, then, after a jury rendered a verdict, the plaintiff would be willing to withhold collection against the teenage defendant as he pursued a potential bad faith claim against his own carrier. In response, State Farm offered $62,334.71. No further negotiation occurred. The defense conceded liability at trial. The commencement of the trial was delayed by two hours when a sufficient number of venireman did not appear at the appointed time. Coincidentally, the weekend before trial, the press covered the arrival of the omicron variant of COVID-19 in the U.S. The court, court staff and the sheriff's office took the extraordinary step of contacting additional venireman who came to court. The trial lasted four days. After the jury rendered its verdict, defense counsel advised that State Farm would be insuring over the entire amount of the verdict.

9 $1.4 million

Teen fractured skull after being struck by bat at baseball practice

Type of case: Negligence

Attorney: C. James Williams III, Midlothian

WILLIAMS

A 13-year-old boy was struck in head by a baseball bat during a preseason indoor high school spring conditioning batting practice using tees and tennis balls. No coach or player witnessed the incident. The teammate who struck the plaintiff in the head did so at the end of his back swing. Plaintiff alleged gross negligence due to the lack of helmets and supervision as both coaches in the auxiliary gymnasium were fixated on live pitch in the cage while the players were acting on their own at the adjacent tee-ball sta-

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tions. The defense denied the negligence was gross and that plaintiff's own negligence was contributory. He had no recollection of the practice where he was hurt and his first memories were months afterwards. Blood splatter on the gym floor placed the incident somewhere between the weight racks and one of the tee stations, suggesting he did not walk into a swing at a tee station as was defended.

10 $1.072 million

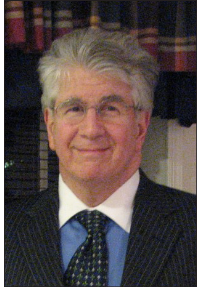
Trustee removed from estate after alleged misuse of funds

Name of case: Shiroma v. Shiroma

Type of case: Conversion

Court: Stafford County Circuit Court

Attorney: Michael D. Kaydouh, McLean



KAYDOUGH

The parties' father passed away in 2010, naming the defendant as a co-executor of his estate and sole trustee of his estate as well as the managing member of a LLC in which a large part of his property had been transferred to. The defendant sold a first piece of property and retained $216,000 and an additional $36,000, all of which he informed the beneficiaries he needed for future expenses. Rather than hold this money for future expenses, it is believed that he gambled away all of it to the detriment of the beneficiaries. During this time, the defendant listed and sold in a pending contract another piece of property for $820,000 listed in the name of a defunct LLC which had been permanently terminated by the state of Virginia. The defendant has refused to reimburse the beneficiaries, has refused to resign as trustee, co-executor and sole liquidating member of the LLC. The plaintiff has now had the defendant removed as sole trustee, co-executor and a member of the LLC. The plaintiff has now been appointed by the court to assume these duties. Judgment has been awarded against the defendant for $252,000, plus judgment interest from 2017. The remaining assets of $820,000 are now under the sole control of the plaintiff.

11 $1 million (tie)

Verdict reached in police shooting, wrongful death case

Name of case: Tyree v. Colas

Type of case: Wrongful death

Court: Virginia Beach Circuit Court

Attorneys: Kevin E. Martingayle, Virginia Beach; Sarah Gelsomino and Marcus Sidoti, Cleveland, Ohio

MARTINGAYLE

GELSOMINO

SIDOTI

Decedent Jeffrey Tyree was having a mental health crisis on Feb. 9, 2019, and was at his elderly mother's home. Adult siblings tried to get him committed, but after those efforts failed, they called 911. Virginia Beach police arrived and set up a perimeter around the fenced-in backyard where Tyree was located. A plan was developed that involved negotiating with Tyree and trying to de-escalate the situation.

Generally, the plan was working. Eventually a sergeant decided that an officer equipped with a non-lethal "Sage" device would shoot Tyree if given a certain signal after Tyree put down a knife he had been holding and had been threatening to use against himself. Defendant Tuft-Williams was told to relay the signal to the Sage officer if the signal was given by the sergeant.

A take-down team was assembled and waiting to enter the yard and take Tyree into custody to get him mental help, but were waiting for the Sage shot as their signal to enter. This plan would work safely only if Tyree was not in possession of his knife. The Sage device was to be used as a distraction so that Tyree could be grabbed.

However, defendant Colas called Tuft-Williams on a cell phone and, as a result of their discussion (which was disputed as to what was said), Tuft-Williams believed the plan changed to one in which if he got a signal, he would jump the backyard fence and tackle Tyree in an effort to bring him into custody. Tyree then negotiated for some cigarettes, but was told that he must put down the knife and come get the cigarettes from the sergeant at the fence.

Tyree did as told and walked to the fence. The sergeant gave the signal for the Sage shot, but instead of Tuft-Williams relaying it to the Sage officer to take a shot, Tuft-Williams jumped the fence and ran towards Tyree. In the meantime, Tyree had retrieved the cigarettes and gone back to pick up his knife. He was tackled as he was picking it up. Colas fatally shot Tyree as Tyree and Tuft-Williams were on the ground together.

Colas claimed it was to save the life of his fellow officer. Suit was filed based on claims of gross negligence and battery. Trial commenced July 20, 2021. At the end of the plaintiffs' case, the judge struck the evidence against the tackler, Tuft-Williams, and let it proceed as to the shooter, Colas.

Over plaintiffs' objection, a contributory negligence instruction was given regarding the gross negligence claim. During closing argument, the defense conceded that a battery occurred but argued that the jury should find in favor of Colas on his affirmative defense of "defense of another."

On July 26, the jury returned a verdict of $1 million against Colas based solely on battery. A defense motion to set aside the verdict was briefed, argued and overruled. Judgment on the verdict was entered Sept. 30, 2021.

The defense has stated an intention to appeal.

11 $1 million (tie)

Lynchburg jury returns verdict in man's drunken driving case

Name of case: Perkins v. Brown

Type of case: Personal injury

Court: Lynchburg Circuit Court

Attorney: James B. Feinman, Lynchburg

FEINMAN

Plaintiff Andrew Perkins was injured on Dec. 10, 2014, in a head-on collision with defendant David Brown.

Witnesses testified Brown was travelling west after dark on Timberlake Road with his lights off. Perkins was making a left turn onto Enterprise Drive and could not see Brown's unlit black SUV. An expert witness toxicologist testified Brown's blood alcohol concentration was 0.20% at the time of the accident, which is two and a half times the legal limit of 0.08%.

Perkins suffered a crushed urethra, leaving him with a permanent urinary tract impairment. He had more than $22,000 in medical bills.

Brown had three DWI convictions since 2014 and his license was suspended at the time of this accident for driving while intoxicated.

The jury returned a verdict in the amount of $500,000 compensatory damages and $500,000 punitive damages. Upon hearing the verdict, the defendant's counsel moved to reduce the compensatory damages award to $300,000 to comport with the ad damnum clause. The court also reduced the punitive damages award to $350,000 to comport with the ad damnum and the statutory limit on punitive damages.

James B. Feinman, Perkins' attorney, explained to him that the court had reduced the verdict, and this was proper under the law. Feinman explained to the plaintiff that there was only $250,000 in insurance coverage, but that he would attempt to make State Farm pay the entire $650,000 judgment. The plaintiff understood and agreed to this course of action.

Feinman made demand on State Farm to pay the entire judgment of $650,000. State Farm had never made a policy limits offer to protect its insured, and only offered $90,000 shortly before trial.

Within one week State Farm agreed to pay the full $650,000 judgment with post-judgment interest. Upon informing the plaintiff, the plaintiff refused to accept it. His view was that "the jury awarded me $1 million, and I will not accept a penny less." The plaintiff refused to endorse the settlement check.

Feinman consulted the Virginia State Bar and received input on how to proceed. At the conclusion of a hearing the plaintiff agreed to endorse the check satisfying the judgment and the case was resolved.