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NEWSLETTER

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The past six months of this year, July – December 2005, were marked by the usual good results for insurers, insureds and personal clients. But, as sometimes happens, these consistently satisfactory case resolutions came about with but only one jury verdict in our favor – the rest being voluntary dismissals or extremely modest settlements. Of course, most cases settle out at some figure. Yet, this period has seen dismissals of troubling cases that reflected significant liability exposure; results that are only ascribable to aggressive discovery, motions and thorough case preparation on behalf of our defendants. One would have to fully know the facts of some of these case dispositions to well appreciate the always true aphorism that hard work and preparation usually spell success. Suffice to say that our small firm has done the same thing, time after time, over thirty-five years in insurance defense cases and such disciplined concentration works today as it did in 1970.

In July, we were assigned the defense of a claim by a plaintiff known as Wolff who sued our insured contractor. The allegation was that our client had destroyed a gas line while digging under contract. We responded that the claimant had failed to alert Miss Utility of the dig of which it knew and further that it had agreed to hold our insured harmless and indemnify it from any loss. Demanding attorneys' fees, we quickly forced (within a month of case assignment) the claimant to drop its suit against our insured.

In August, a large malpractice claim against our insured alleged negligence by the attorney in Northern Virginia. We promptly filed a demurrer, or motion to dismiss, arguing that the pleading on its face was legally defective. The words seemed to persuade both the court and the opponent. On the morning of the hearing, our client learned that our motion would be granted as to the entire complaint. Apparently counsel for the other side either intuited this result or simply lost his nerve. He dismissed the law suit as the Judge was about to rule and never re-filed it. Besides the good, final result, the case is interesting in that the attorney involved was alleged to have walked away from the plaintiff's case with disastrous results to her. It portended a long and expensive defense with experts for each side dueling over the standard of care regarding the involved lawyer. Thus, the quick end to the case made a significant dollar difference to both the lawyer and his insurance company.

In September, amongst other cases, we prepared for trial of an unusual matter wherein our insured company selling weapons and ammunition to hunters and sportsmen, was accused of negligently failing to alert a customer that the gun powder it sold to him for use in a muzzle loading weapon, was inherently dangerous. The plaintiff subsequently loaded the gun powder and the weapon blew up in his face; causing allegedly serious damage to his face, eyes and body. We responded by vigorous interrogation of the two experts chosen by plaintiff's counsel. The results of

this discovery illuminated numerous weaknesses in the proponent's position. We then chose experts to speak on behalf of our client. Their knowledge was well articulated and apparent. We went on to demand independent medical examinations of the plaintiff, which further diminished his case and enhanced ours. The process continued to perfect itself as to the defensibility of the case to the point that plaintiff's attorney, on the eve of trial, dismissed the entire complaint. Again, good preparation for trial obviated the costs of an extended litigation with attendant personal burdens on all concerned.

In October, we faced a litigant who asserted his landlord had negligently failed to prevent oil spillage from a broken basement faucet, which subsequently caught fire and exuded pollutants into his residence and adjacent work place. He alleged resultant bronchial problems, headaches and diminished capacity. He further claimed the landlord failed to make repairs to alleviate the conditions creating such environmental hazard. Witnesses were assembled to support the plaintiff's testimony as to some continuity of the problem. The case went to trial after a $90,000.00 demand was rejected. A three day trial resulted in a $2,300.00 award to the plaintiff. The jury when questioned indicated they were not persuaded that the tenant deserved more than two months' rent reimbursement for his inconvenience and a few hundred dollars for testing air quality at his two units. Our arguments of no medical disability resulting from the spill were completely accepted. Indeed five of the seven jurors had voted for a zero dollar award. The modest sum given was a compromise. The plaintiff has petitioned for a writ of appeal which will be refused by the Virginia Supreme Court.

November saw the resolution of a multi-million dollar law suit brought against our insured, a commercial building owner, by an injured military officer who entered the building's elevator only to have it malfunction; fall some floors; and result in his being found seriously injured and unconscious. The building had subsequently been sold but existing liabilities were not assumed by the new owner. The officer presented an attractive profile; having a spotless record, frequent promotions, and an award for heroism during the 9/11 terrorism attack at the Pentagon. He claimed, in addition to various fractured vertebrae, the onset of debilitating seizures – a condition witnessed by us during his deposition.

Faced with what appeared a most difficult defense, we immediately began an historic medical records review and learned that plaintiff's back problems were pre-existing. We then engaged appropriate independent medical experts to examine the claimant and determine the actual extent of injury caused by the elevator malfunction. We next retained a top notch elevator expert who had experience with the particular model involved and the engineering facets claimed to have malfunctioned. We filed a cross claim against the elevator maintenance organization also sued by the plaintiff. We left no stone unturned in exploring the actual cause of the elevator failure and utilized discovery to the fullest. For a change, pretrial economy was sacrificed to the demand to prepare a winning case given the significant exposure. Apparently, the reality of our aggressive defense persuaded plaintiff's counsel she could not proceed to trial. So on its eve, the case was dismissed as to our client/insured.

Finally in December, we resolved a prickly Maryland Homeowner's Association dispute at no cost to the Association or its insurer. The claimant had contended that the Board was improperly formed; a special assessment was not warranted, business decisions as to vendor selection for work required were unjustified; elections were not

correctly conducted; and that the on-site management resource individual was wrongly selected. Our written discovery to flesh out the substance, if any, of this multitude of charges, resulted in the complainant dismissing her case. The agency to which this person complained had already narrowed the scope of her claims and faced with a fairly massive task of responding to our discovery, the burden apparently seemed too great for this disgruntled unit owner. The bottom line, of course, was a complete resolution of an otherwise protracted dispute with minimal costs.

The above monthly highlighted cases for the period hardly reflect every good result during this period: in September the closeout of a case where personal counsel, claiming attorneys' fees involved in disputing coverage issues, ultimately dropped such effort against the carrier, or in November when an emotional distress claim by an injured Maryland claimant was forced off the table when our discovery coupled with choice of another top mental health medical expert, showed the fatuousness of the $40,000.00 price tag ascribed to present/future treatment costs.

In our three jurisdictions of concentrated practice, Maryland, Virginia and the District of Columbia, we continue to achieve excellent results for clients and carriers by application of well-tested disciplines to a broad variety of case facts. We will continue this course with an eye to minimum costs for value received in the coming New Year.