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NEWSLETTER

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An insurance defense firm should devote its time to aggressive and cost effective representation of insureds and insurers. However, our somewhat remarkable experience of the past few months in successfully defending cases assigned by carriers seemed to warrant a resurrection of our infrequently published newsletter. This was a Spring of great challenge and equally satisfying results.

In February, the firm received front page coverage in the Virginia Lawyer's Weekly, making precedent in the Circuit Court for the City of Richmond, by winning a closely watched attorney malpractice case. This feat was accomplished by winning a Summary Judgment motion on behalf of a law firm and its members, by the defense of *res judicata*, despite the plaintiff not having done more in a prior case than dispute the law firm's fee. The court correctly determined issues that were asserted and/or available defenses in the earlier fee dispute case, and barred their second assertion in a subsequent malpractice case by plaintiff. The losing attorney is believed by many to be the foremost advocate for disgruntled clients in the Commonwealth. But not as to our insureds.

Shortly thereafter, we prevailed in the U.S. District Court for the District of Columbia on behalf of a Title Company involved in a refinancing arrangement which plaintiff later claimed to have been contrary to the D.C. Consumer Protection Act, and otherwise violative of various common law duties. All other defendants in the case

refrained from filing a dispositive motion, but consistent with our historically well-known and aggressive motion's practice, we persevered, and it paid dividends. Consequently, the various other defendants remain in a messy, high publicity and high cost litigation, while our insured does not. A sixty-five page Motion for Reconsideration was filed by the other side, an AARP affiliate, and was denied.

We next began a thirty-day period of trials taken to verdict, in Virginia and the District of Columbia -- all of which resulted in favorable results to our insureds. The first, filed in the "defendants graveyard," the City of Portsmouth, Virginia, represented a \$2.5 million dollar claim for a seriously injured plaintiff. To make matters more complicated, the corporate insured was a non-participant during the entire litigation. Added to this difficulty was the late appearance of an employee of the corporate insured who testified adversely to the insured in every possible way. Regardless, a well-prepared defense resulted in a positive verdict at the conclusion of the case. The plaintiff's attorneys were sufficiently upset with the result so as to move to set it aside, having "killed a tree" by filing a 150-page motion to that end. That motion, after hearing, was denied by the Court.

The Circuit Court of Arlington, Virginia was the next venue for us in an injured claimant's slip and fall suit. Here, two surgeries and remaining metal plates and screws in her leg generated much sympathy for the plaintiff. Defending a large sports bar

created no such empathy. Regardless, our well-prepared witnesses testified so well that we presented a defense that was believable and acceptable to the jury despite the absence of any direct observation by these witnesses of the occurrence. After hearing the evidence, the jury quickly returned a defense verdict.

Then, we faced a very experienced plaintiff's counsel in the Superior Court for the District of Columbia in a landlord/tenant confrontation over a nasty slip and fall on ice, resulting in multiple surgeries and a large, multi-hundred thousand dollar demand. The Judge seemed to appreciate this painful circumstance more than the jury, who found for the landlord. Given the general reputation of D. C. juries to give large awards, we were particularly pleased with this result.

Thereafter, the U.S. District Court in Alexandria dismissed a recently assigned case that we met with a motion seeking that result. This outcome, cost efficient and dampening to other claimants' ardor, came from careful analysis of case facts, tactics and controlling law. It capped a few months of intensive activity for our five lawyer firm, and hopefully portends a banner year for our carriers and clients in 2003.

And recently, we prevailed in the Maryland District Court in Baltimore County on an automobile claim by a plaintiff who alleged he had been not only struck by our insured's Van, but "knocked in the air ten feet." Medical records were silent as to this graphic event, and ultimately, the trier of fact disbelieved plaintiff's evidence and we prevailed at a bench trial.

In the coming quarter, we face resolution of a major national law suit against

a well respected Maryland accounting firm, involving a variety of claims by disgruntled investors in a failed telecommunications firm.

Next, we cross swords with the EEOC in an effort by that agency to force a small Virginia non-profit to the wall on behalf of a supposedly disabled former employee. This is but one of many employment discrimination disputes that we presently intend to resolve against frivolous complainants.

Finally, we have a nasty environmental case set for trial in Alexandria, Virginia in July, wherein an older plaintiff claims hundreds of thousands of dollars in damages related to an oil leak and subsequent fire that caused pollutant exposure and, allegedly, serious harm to him. We think not, based upon experts employed by us to deal with plaintiff's junk science. Jury sympathy is always a concern in these cases where some injury may be shown, but we believe a strong presentation of prompt remediation, coupled with scientific negation of harmful consequences related to exposure, should be persuasive.

Keep in touch for the excitement of insurance defense that succeeds! Please contact us should you have questions as to any of the above cases, or difficult claims requiring tried and trusted expertise.

In May, we concluded an automobile case which arose earlier in Loudon County, Virginia. In that case, the plaintiff collided with the insured's dump truck. At the time of the accident, the insured's vehicle was driven by its employee, who was acting within the scope of his employment. As a result of the collision, plaintiff sustained significant injury, including the fracture of vertebrae in her back. She sustained medical expenses in excess of \$20,000.00. She also claimed ten (10) months of lost wages due to the accident. Consequently, she sued for \$100,000.00 in compensatory damages.

Plaintiff subsequently testified, and her brothers confirmed, that she simply did not see our insured's driver when she made a left turn because the sun was in her eyes. Her witnesses testified that they spoke to an eyewitness, who said he was behind our vehicle at the time of the accident, and that it was speeding. Subsequently, we deposed this witness, who contradicted the testimony of plaintiff's witnesses. He testified unequivocally that he did not know our driver's speed at the time of the accident. We then deposed an accident reconstructionist, who responded to the accident scene that morning. We qualified him as an expert witness in the area of accident reconstruction, and he testified that, in his opinion, and to a reasonable degree of scientific certainty, the plaintiff was at fault in accident. Shortly after this deposition, plaintiff moved to non-suit her claim. The Non-Suit Order was entered by the Court, and we believe aggressive discovery and case preparation won this case.

Finally, in June we tried a four-day case to verdict in the Superior Court for the District of Columbia. It involved a wrongful eviction by our insured management company of a tenant who, while frequently in

arrears with rent payments, nonetheless had paid her rent in full as of the time of the eviction. The insured had only recently assumed responsibility for management of the subject property, and its bookkeeping procedures were not yet correctly functioning. No record of plaintiff's payment existed, so eviction was the inevitable result. Predictably, it was protested by the tenant and her family; especially given the destruction and loss of property left curbside. The Court promptly ordered the tenant restored to her home and suit soon followed.

The case appeared quite difficult to defend, and yet settlement was impossible, given a six figure demand from a super confident plaintiff's attorney. Our emphasis then shifted to damage control. As the trial unfolded, the Judge was clearly favorable to the wrongfully evicted plaintiff, and frequently indicated a proclivity to direct a verdict for the tenant at the end of the trial. Part and parcel of such a result would have been a significant award of damages, including punitives. However, after strenuous argument from us, the Judge ultimately resisted so ruling, leaving the case to the jury, but promising to overturn any defense verdict. The jury returned a verdict for the plaintiff, but for only \$3,500.00. The Judge rejected plaintiff's subsequent motion for a new trial.

In conclusion, the first half of 2004 was full of good results in hard cases. There were other less spectacular results, but fortunately, no bad news for insureds, insurers or private clients. We aim to pursue similar results during the remainder of the year.