

SETTLEMENTS

Problem, creates another

spine surgery.

Judge T.J. Markow, who heard three days of evidence in a lawsuit brought by Dr. Garver, issued a written decision in which he found that Dr. Mathews had violated "the standard of care in preparing the disc space for insertion of the Maverick artificial disc."

The standard for the surgery, written by the defendant himself and other spine surgeons, required that the disc space be "meticulously cleared of materials that might be driven into nerves behind the disc space by insertion of the artificial disc," the judge wrote. In the Garver surgery, Dr. Mathews, while inserting the artificial disc, drove material from the disc space into the patient's S-1 nerve root on his right side. This caused permanent injury to the nerve with pain and difficulty using the right leg.

[08-T-084]

Type of Action: Medical malpractice

Injuries Alleged: Chronic pain syndrome

Name of Case: Garver v. Mathews

Court: City of Richmond Circuit Court

Case No.: CL 07-206

Date: April 25, 2008

Tried Before: Judge

Name of Judge: T.J. Markow

Verdict/Settlement: Verdict

Amount: \$650,000

Plaintiff's Attorneys: Patrick Malone, Washington, D.C., Thomas Albro and Lee Livingston, Charlottesville

Owners allege mistreatment by community association

Defense Verdict

Plaintiffs, husband and wife, sued the board of their community association complaining that a multi-building limitation on the number of rental units permitted to be offered to the public was an impermissible encroachment on their ownership rights. After taking a nonsuit during the course of the first trial of adverse rulings by the court, they re-filed, claiming breach of contract and breach of fiduciary duty.

The board had inadvertently and mistakenly adopted a resolution some years earlier that facially undertook to exempt from the unit rental limitation the building in which plaintiffs owned their home. Likewise, the defense unsuccessfully argued that breach of fiduciary duty was not a separate cause of action but simply a label that merged into the contract claim, permitting it to turn the dispute into a tort action. Those circumstance could have allowed the jury to conclude a finding that the damages claimed by plaintiffs – the forced sale of their unit, and a rental loss of \$62,500 for approximately two years – were justified.

The defense relied on the testimony of the board president that the plaintiffs were treated evenhandedly, and that of its retained counsel who had advised the board on its procedures in adopting and administering the rental cap requirements were legitimate. The trial was

completed in two days, and the jury returned the evening of the second day with a verdict for the defendant board on all counts. Attorneys' fees under Va. Code §§ 55-79.53(A) and 79.80(B) were paid to the board by the plaintiffs.

[08-T-087]

Type of Action: Breach of contract, Breach of fiduciary duty

Injuries Alleged: Loss of rent and delayed sale of property

Name of Case: Baranovsky, et al. v. Board of Directors, Stratford Condominium Unit Owners Association

Court: Fairfax Circuit Court

Case No.: CL-2007-2163

Date: March 25, 2008

Tried Before: Jury

Name of Judge: Jane M. Roush

Verdict/Settlement: Defense verdict

Special Damages: \$62,500

Insurer: Great American Insurance Company

Defense Attorneys: Joseph F. Cunningham, Edward P. Trivette, Arlington