

Million-Dollar Settlements of 2017 (1-29)

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See #9 on the list

Virginia Lawyers Weekly presents the survey of "Million-Dollar Settlements of 2017." This annual compilation recaps big settlements from across the commonwealth for the previous year.

When this feature was published last month, it did not include several late-filed settlements and several cases that had been previously reported to Virginia Lawyers Weekly. We are republishing it in its complete format to provide as complete a list as possible.

While we have made every effort to provide a comprehensive list, we know there may be further cases not represented in this list. If you had a million-dollar settlement from 2017 that is not reported here, please let us know. We will add that information to the online version of the survey.

The largest settlement, for \$25.35 million, involved the victim of a period of sexual abuse. The second-highest settlement was for \$15 million, and involved a man rendered a paraplegic in a car accident. The other driver had an unexpected seizure right before the crash.

A man hurt in an industrial crane accident had the second-highest settlement, for \$9.55 million. He suffered catastrophic injuries, including the loss of a limb.

To make the list:

1. The settlement must be for at least \$1 million.
2. The settlement was reached in calendar year 2017.
3. The settlement involved a dispute in Virginia or was one with a strong Virginia connection.

During the coming year, we would greatly appreciate hearing about all your settlement (verdicts, too) not just the ones that will make next year's million-dollar list.

— Paul Fletcher, Publisher & Editor-in-Chief

1. \$25 Million
Victim of sexual abuse settles for over \$25 million
Heather Weser v James Looney Hessom
Type of case: Sexual Assault

Court: Loudoun Circuit Court

Name of judge: Judge Douglas L Fleming Jr.

Attorneys: Thomas H. Roberts and Brett H. Mooney, Richmond

Between 1983 and 1990, defendant James Looney Hessom sexually assaulted his minor granddaughter. Court entered agreed judgment for \$25 Million compensatory and \$350,000 punitive damages.

Defendant, initially pro se, claimed the suit was barred by the statute of limitations and that one of his sons had stolen all of his money. The court subsequently appointed a guardian ad litem pursuant to Va. Code § 8.01-9, as the defendant was an incarcerated prisoner, and a Committee pursuant to Va. Code § 53.1-221 et seq. due to defendant's disability. Defendant paid money from his bank accounts to plaintiff in settlement and assigned to the victim any claims that he might have had for breach of any fiduciary relationship related to his estate and agreed to designate the victim as the beneficiary of any life insurance contracts.

2. \$15 Million

Driver had seizure, hit man who became paraplegic

Type of case: Personal Injury

Attorneys: Irvin V. Cantor, Elliott M. Buckner, Stephanie E. Grana, M. Scott Bucci, and Jeffrey N. Stedman, Richmond; Charles F. Purcell, Michael C. Kildoo; D. Michael Mullori Jr. and Carman A. Jacobs, Woodbridge

The plaintiff, a 47-year-old man, suffered a spinal cord injury at T9-10 that rendered him a paraplegic as a result of a motor vehicle crash.

Liability was hotly contested in this case. The defense argued that the driver of the defendant's vehicle had a sudden medical emergency consisting of an unexpected seizure at the time of the crash. The plaintiff countered that it was not unexpected because the defendant had a history of a brain tumor and resection surgery. The defense position was that the driver had been seizure-free for over one year prior to the crash and had a medical clearance to drive from his neurologist. The plaintiff's position was that the driver had post-surgical encephalomalacia which put him at risk of seizures.

3. \$11.5 Million

European woman, lifeguarding here on visa, rode her bike, was run over

Type of case: Personal Injury

Name of mediator: Thomas S. Shadrack (Ret.)

Attorneys: David E. Durrett and Elizabeth E. West, Richmond

This personal injury case arose out of a motor vehicle collision in June 2015 between a tractor-trailer and a bicyclist. The plaintiff was riding her bicycle on the street. The defendant was driving a tractor-trailer pulling out of a trucking terminal. As the defendant pulled out into the street, the defendant struck the plaintiff, running over her and her bicycle.

The plaintiff arrived in the U.S. two weeks earlier on a summer work visa. She was employed full-time for the summer as a lifeguard for a local company. After the summer in Richmond, she planned to return to school in her country.

The plaintiff was admitted to the ICU at the VCU Medical Center with life-threatening injuries. She was hospitalized from June 11, 2015, through Sept. 22, 2015. By the end of August, the plaintiff was able to participate in three hours of physical therapy per day. She still required crutches to walk upon discharge. Upon discharge from MCV, the plaintiff returned to her home in Europe. Because of her injuries, she was unable to immediately resume her studies and had to move back to her parents' home. In February 2016, she was able to return to school.

The plaintiff was engaged in a very active lifestyle and is no longer able to participate in the numerous outdoor activities and hobbies she enjoyed prior to the collision. The plaintiff is now living a sedentary lifestyle having given up snowboarding, water skiing, hiking and traveling across Europe.

4. \$9.55 Million

Man badly hurt in industrial crane accident

Type of case: Personal Injury

Attorneys: Amberley Gibbs Hammer, Chesapeake; Jason Itkin, Houston, TX

A 63-year-old man suffered catastrophic injuries including the loss of a limb in an industrial crane accident.

5. \$8 Million

Key given to drunk, entrustment claim settles during trial

Type of case: Personal Injury

Court: U.S. District Court for the Eastern District of Virginia, Newport News Division

Name of judge: Judge Lawrence R. Leonard

Stephen M. Smith, David B. Holt, and C. Stewart Gill, Hampton; Kevin W. Mottley and Benjamin P. Kyber, Richmond

While slowing to stop at a traffic signal on J. Clyde Morris Boulevard in Newport News, plaintiff's sedan was struck from behind at a high rate of speed by a work truck driven by the defendant driver, an employee of the corporate defendant.

Plaintiff suffered a mild traumatic brain injury, post-traumatic stress disorder, and soft tissue injuries to her back and neck.

The defendant driver, a nonresident, was in Virginia with several co-workers on a months-long project for the corporate defendant. On the evening of the collision, the individual defendant had consumed alcohol at the extended-stay hotel where he and his co-workers were staying. After becoming intoxicated, he obtained the key to the truck from the hotel's front desk clerk. The corporate defendant's employees had entrusted the truck's key to the hotel front desk clerk with an instruction to give the key to any employee of the corporation who asked for it.

6. \$7.25 Million

Pedestrian was run over by utility truck in crosswalk

Flores v. Local Road Contractor (name withheld) and Linwood Knight

Type of case: Personal Injury

Court: Fairfax Circuit Court

Attorneys: Peter S. Everett, Robert J. Stoney, Mark A. Towery, Chidi I. James, Lainie Singerman, Fairfax; Bruce S. Deming, Arlington

On July 3, 2013, in the middle of the afternoon, plaintiff was run over by an Arlington County utility truck as she crossed South 12th Street in Arlington.

At the time of the collision, the intersection was undergoing construction. As part of the project, the road had been repaved and the crosswalk had been moved 20 feet away from the intersection, adjacent to an overpass where 12th Street passed underneath Route 1.

The contractor, a local road contractor, had not yet re-striped the crosswalk, which was marked by new curb cuts and pedestrian poles only – the new pedestrian walk signals were not yet energized.

7. \$6.41 Million

Permanent disability case settles for more than \$6M

Type of case: Personal Injury

Attorneys: Scott Perry, Mikhael Charnoff, and Leslee Soudrette, Arlington

A personal injury suit came as a result of the plaintiff being permanently disabled.

Details of the court proceedings are confidential.

8. \$5.187 Million

Patient at dentist office dies after being given nitrous oxide instead of oxygen

Type of case: Wrongful Death

Attorneys: Stephanie E. Grana, M. Scott Bucci, Irvin V. Cantor, Elliott M. Buckner and Jeffrey N. Stedman, Richmond

Plaintiff's decedent, a 22-year-old college student, died during a dental procedure in a newly renovated dental office. During construction, the oxygen and nitrous oxide lines had been switched in error. The

case involved 10 defendants.
He is survived by his parents and 20-year-old sister.

9. \$5 Million

Intellectually disabled women prevail in civil rights suit against the District of Columbia

Jane Does I-III v. District of Columbia

Type of case: Civil Rights

Court: U.S. District Court for the District of Columbia

Name of mediator: Hon. Johanna L. Fitzpatrick (Ret.)

Attorneys: Shep Williams, Washington, D.C.; Irvin V. Cantor and H. Aubrey Ford III, Richmond

Two intellectually disabled women who were wards of the District of Columbia sued the District for consenting to abortions without due process in violation of 42 U.S.C. § 1983. The case was initially filed as a class action challenging the District of Columbia medical consent policy for intellectually disabled adults on the grounds that the policy did not incorporate the substituted judgment standard in medical decision-making by District officials. Plaintiffs won class certification, summary judgment on liability and a permanent injunction in 2005. That victory was short-lived as the D.C. Circuit reversed the liability finding and injunction in 2007 and stated that plaintiffs' constitutional claims were meritless. Undaunted, after unsuccessfully attempting settlement with the District, plaintiffs reformulated the case to just focus on the due process claims of two plaintiffs who had been forced to have abortions and not the class-wide challenge to the consent process.

In 2013, the court allowed plaintiffs to amend the complaint and proceed on the new theory. After two years of litigation, the court granted plaintiffs' motion for summary judgment and held that the District did not provide the women with constitutionally adequate procedures before authorizing abortions on their behalf and that District municipal policy was the moving force behind the violation of plaintiffs' due process rights.

9. \$5 Million

Overlooked comp lien brings \$5M settlement

Type of case: Legal Malpractice

Attorneys: Matthew W. Broughton, Gregory D. Habeeb, and Andrew D. Finnicum, Roanoke; George L. Townsend, Fishersville

An injured employee whose lawyers unwittingly scotched his workers' compensation award has settled legal malpractice claims for \$5 million.

The lawyers allegedly overlooked the need to involve the workers' comp insurance company when they resolved a related product liability claim.

Details and names were not available due to confidentiality provisions of the settlement, but a settlement report offered a basic account of the case.

The plaintiff suffered complications from an accident at work that initially left him with bilateral leg contusions. His condition became far worse, with a diagnosis of complex regional pain syndrome. He was confined to a wheelchair and deemed permanently totally disabled, entitled to lifetime indemnity and medical benefits.

He had an open award through the Virginia Workers' Compensation Commission, with his lifetime benefits estimated at around \$6 million.

However, the plaintiff then sued a product manufacturer whose product was involved in his accident.

After reaching a settlement, the plaintiff's lawyers, from two different firms, allegedly dropped the ball on a key consideration.

They failed to notify and seek permission of the workers' compensation carrier prior to entering the settlement. As a result, the comp commission terminated the plaintiff's open award.

Virginia Code § 65.2-309 provides for a lien and a subrogation right for the employer in any claim against a third party for workplace injury.

Negotiations reportedly focused on damages. The defendant law firms in the legal malpractice suit asserted that the plaintiff had a reduced life expectancy, did not require 24-hour attendant medical care, and did not require other items of care as a result of the plaintiff's disability.

The plaintiff claimed a \$6 million loss, but – after mediation with retired U.S. Magistrate Judge B. Waugh Crigler – the parties settled for \$5 million.

11. \$4.2 Million

Man filed qui tam action for alleged upcoding of services

United States ex rel. Richard Morrow v. Fredericksburg Hospitalist Group, et al.

Type of case: Qui Tam Action

Court: U.S. District Court for the Eastern District of Virginia

Attorneys: Zachary Kitts, Fairfax; Stephen Baril, Richmond; Michael Lesser, Boston, MA

In this case against Fredericksburg Hospitalist Group, PLLC (and 14 of its individual owners)

plaintiff/relator Richard Morrow alleged that the defendants knowingly and intentionally upcoded evaluation and management codes for hospitalist services from 2010 to 2015. This resulted in damages to the United States and to the Commonwealth of Virginia, both of which were alleged to have overpaid for the services as a result of the upcoding. Plaintiff/relator filed this case pursuant to the qui tam provisions of the federal False Claims Act and the Virginia Fraud Against Taxpayers Act.

12. \$3 Million

Mother of son born with cerebral palsy settles for cap limit

Type of case: Medical Malpractice

Name of mediator: Hon. B. Waugh Crigler (Ret.)

Attorneys: Lewis T. Stoneburner and Bellamy Stoneburner, Richmond

Plaintiff's pregnancy was complicated by moderate obesity and the development of gestational diabetes; she was a Group B streptococcus (GBS) carrier. Plaintiff's glycemic control was managed by diet.

Ultrasounds and all prenatal testing indicated healthy fetal development. Due to gestational diabetes, plaintiff was scheduled for an induction of labor at 39 weeks, two days gestation.

At admission, the fetal heart rate (FHR) pattern was reassuring. The artificial rupture of membranes demonstrated normal, clear fluids. There were no signs of fetal or maternal distress. The labor and delivery was managed by a certified nurse midwife (CNM), employed by defendant practice group. Prior to the CNM's arrival at bedside, plaintiff's FHR strips showed a series of fetal heart rate decelerations. Defendant CNM gave an order to temporarily hold Pitocin due to prolonged fetal heart rate decelerations. Defendant CNM failed to consult an obstetrician to determine whether plaintiff needed an urgent cesarean section due to these ominous decelerations. Defendant CNM placed an intrauterine pressure catheter to measure the FHR; in addition, uterine contractions and maternal heart rate were monitored. As plaintiff's labor progressed, defendant CNM improperly increased the dosage of Pitocin despite the presence of fetal heart rate decelerations. Plaintiff's heart rate became tachycardic. The FHR strips continued to show a pattern of late decelerations signaling fetal distress.

The infant was diagnosed with spastic quadriplegic cerebral palsy, cortical visual impairment, seizure disorder, right-sided torticollis, plagiocephaly, expressive language disorder, and dysphagia.

13. \$3 Million

Child ran over by truck in apartment complex

Type of case: Personal Injury

Name of mediator: Hon. Michael C. Allen (Ret.)

Attorneys: Paul D. Hux, Chesterfield; P. Christopher Guedri, Richmond

On Sept. 9, 2012, the plaintiff was 2 ½ years old. She lived with her mom, her older brother, and a friend in an apartment complex in Petersburg. At approximately 2:35 p.m., the friend left the apartment and was walking across the parking lot to the dumpster. The plaintiff was distantly following her and her mom was a little distance behind her carrying a box towards the dumpster. The friend gets to the dumpster and notices a truck approaching at a rapid rate of speed. She was not aware that the plaintiff was following her. About that same time, the plaintiff's mom sees and hears this same truck speeding through the lot and sees her daughter in the street between her and their friend. Her mom yells at the plaintiff, drops her box and starts running towards her, but she could not get there before the truck had run over her with the driver's front tire. In fact, the back tire on the driver's side was still on the plaintiff when the

defendant brought his truck to a stop. He had to actually back his truck up off of her leg. The driver of the truck stated he never saw the little girl before he hit her. He felt a bump and then he stopped. Liability was not an issue.

14. \$2.8 Million

Resolution of umbrella coverage allows settlement to paraplegic

Matthew T. Green v. Tanya N. Dombrosky

Type of case: Personal Injury

Court: Botetourt Circuit Court

Attorney: Francis H. Casola, Roanoke

In June 2015, Tanya Dombrosky, 16, crashed her Hyundai Veloster in Botetourt County, hitting a tree and rolling the car. Liability was not seriously contested. Her unrestrained passenger, Matthew Green, 17, was ejected from the vehicle and suffered a fractured left maxillary sinus, right lung aspiration, and a wedge compression fracture of T12 with severe spinal stenosis and spinal cord compression. Matthew was diagnosed with acute paraplegia, and thoracic spine fracture, closed, with no feeling below the T10 level. He underwent surgery resulting in an open reduction internal fixation arthrodesis from T10 to L2 to stabilize his spine, including a discectomy at T11/T12.

15. \$2.75 Million

Man slipped on black ice at airport, suffered TBI

Type of case: Personal Injury

Court: Fairfax Circuit Court

Name of mediator: Hon. Johanna Fitzpatrick (Ret.)

Attorneys: Peter S. Everett, Robert J. Stoney, and Lainie R. Singerman, Fairfax

Plaintiff was 69-year-old international consultant when he slipped and fell on black ice at an airport on January 6, 2015. He hit his head on a metal door frame and may have experienced brief loss of consciousness. He immediately experienced dizziness, vertigo, headache, and nausea. He was taken to the hospital for evaluation and discharged hours later.

The airport had allowed ice to accumulate despite the ease of eliminating the hazard through the use of anti-icing agents or a non-slip surface. In deposition, the airport's own employees testified that they were not provided the necessary equipment to clear ice off the area.

Plaintiff had been a highly productive and sought-after international consultant in his field for several decades at the time of his injury.

After his TBI, however, he was only able to tolerate two to four hours of work per day and suffered aggravation of his TBI symptoms when he did so.

16. \$2.7 Million

Harbor worker injured on construction site

Type of case: Product Liability

Name of mediator: Hon. Thomas Shadrick (Ret.)

Attorneys: Stephen Swain, Virginia Beach; David Wise, Fairfax

A harbor worker's product liability claim recently settled for \$2,700,000. The claimant sustained serious facial, foot and spine injuries while working at a construction work site. Other terms are confidential.

17. \$2.65 Million

Bolivian citizen visiting the U.S. for a wedding injured in car accident

Type of case: Personal Injury

Court: Fairfax Circuit Court

Name of mediator: Hon. Michael C. Allen (Ret.)

Attorneys: Patrick M. Regan, Jacqueline T. Colclough and Amy S. Griggs, Washington, D.C.

Plaintiff, then 45 years old, suffered severe injuries in T-bone crash caused by pickup truck. At 2 a.m. on June 26, 2016, plaintiff was the front-seat passenger in a small SUV heading southbound on Hunter Mill Road (a small neighborhood street) in Fairfax County. Approaching from the right, a pickup truck blew a

stop sign and T-boned plaintiff's door (the front passenger door) at approximately 40 mph, flipping the SUV onto the driver's side. After the SUV came to a rest, plaintiff was trapped, suspended by her seatbelt, until a witness freed her.

The paramedics took plaintiff by ambulance to INOVA Fairfax Hospital, where she underwent treatment for multiple traumatic injuries, including subarachnoid hemorrhage, liver laceration, thoracic aortic injury, lung contusions, and multiple fractures of the clavicle, ribs, pelvis, leg and ankle. She underwent eight surgeries, remained hospitalized for several weeks, and currently continues to require rehabilitation therapy.

A Bolivian citizen, plaintiff was in the United States for a family wedding at the time of the crash. The case was therefore complicated by the fact that the plaintiff was receiving her continuing medical care and attention in Bolivia.

18. \$2.5 Million

Ship worker killed in motorcycle wreck

Type of case: Wrongful Death

Name of mediator: Hon. Thomas Shadrick (Ret.)

Attorneys: Adam H. Lotkin and Brother Rutter, Norfolk

Decedent, a 29-year-old ship worker, was on his motorcycle, on his way home from dinner with his younger brother at a local steakhouse. The defendant driver of a private commercial medical vehicle exited a filling station into his path. The evidence at trial would have been in dispute as to the speed of the decedent, who enjoyed the right of way, by eyewitnesses working at an adjacent construction site, police investigators, the defendant and his front seat passenger colleague. The defendants intended to introduce expert opinions through a forensic-retained witness on accident reconstruction supported by measurements taken after the night of the accident and in conjunction with eyewitness statements. Alcohol or intoxicants were not an issue whatsoever on either side causing the collision; rather, it was inexperience and lack of training.

18. \$2.5 Million

Woman struck by machinery killed

Type of case: Wrongful Death

Name of mediator: Hon. Michael C. Allen (Ret.)

Attorneys: Walter H. Emroch and Thomas J. McNally, Richmond

While seated in a chair, the decedent was struck in the torso and killed by an inadequately secured and maintained piece of equipment owned by the defendant. The defendant company would have denied any liability, asserted contributory negligence and claimed the incident was unforeseeable.

At the time of her death, the decedent was 55 years old. The decedent was survived by her husband, a retired military veteran. They had recently celebrated their 4-year wedding anniversary. The decedent was also survived by two adult daughters. One adult daughter, 28, is married. The other adult daughter, 23, is unmarried. Both daughters have college degrees and the older daughter also has a master's degree. All of the beneficiaries made good impressions and were able to articulate the significant losses that they suffered as a result of the death of the decedent.

The economic damages asserted by the estate included a claim for reimbursement of the emergency room bill of \$15,417.00 and a claim for loss of income and loss of household services in the amount of \$337,717.00. The decedent died in the emergency room and, thus, did not undergo lengthy or expensive medical treatment.

18. \$2.5 Million

Man suffered TBI when his car struck by pick-up truck

Type of case: Personal Injury/Auto Accident

Attorneys: Elliott M. Buckner, Stephanie E. Grana, Irvin V. Cantor and M. Scott Bucci, Richmond

Plaintiff, a 70-year-old male, was turning left onto Hull Street Road in Chesterfield County under a left turn arrow. A large pick-up truck failed to stop and collided with plaintiff's small SUV on the driver's side. Plaintiff suffered massive injuries in the accident, was medflighted to MCV, required emergency surgery,

including a splenectomy, and was kept under medical sedation for nearly a week. Despite the severity of his injuries, plaintiff made a remarkable recovery. He had some mild residual deficits from his TBI, scarring from his surgery and he fatigued easily for months, but approximately five months after the accident he had largely returned to his pre-accident level of function. The case settled three and a half weeks after mediation.

21. \$2.079 Million

Patient became paralyzed as a result of doctor's injection

John Doe v. Confidential

Type of case: Workers' Compensation

Attorneys: Andrew J. Reinhardt and Stephen T. Harper, Richmond

Claimant initially suffered a back injury on February 22, 2006. As a result of an injection performed by a doctor, the claimant became a paraplegic. Claimant obtained a medical malpractice jury verdict in the amount of \$6.4 million. This verdict was reduced to a total recovery of \$2 million because that was the medical malpractice cap in place at the time of the accident. After payment of attorney's fees and costs, as well as reimbursement of the workers' compensation lien, the claimant's net recovery out of the \$2 million was roughly \$836,000. Normally this recovery would also result in a reduction of ongoing workers' compensation benefits whereby those benefits would be payable at the ratio of attorney's fees and costs to the total recovery (roughly 40 percent in this case). Fortunately, the parties agreed that the claimant's medical benefits and indemnity benefits would continue in full if the net recovery from the medical malpractice case was held in trust until a settlement agreement was reached in the workers' compensation matter. The additional indemnity and medical payments after the medical malpractice verdict resulted in an additional workers' compensation lien balance of \$436,318.72 at the time of the workers' compensation settlement.

The parties agreed upon a settlement of the workers' compensation claim for a total recovery of \$2,079,810.78.

22. \$1.95 Million

Claim settled for \$1.95M

Type of case: Medical Malpractice

Name of mediator: Hon. Thomas S. Shadrick (Ret.)

Attorneys: Chris Anderson and Thomas Johnson, Richmond

Details of the case and court proceedings are confidential.

23. \$1.85 Million

Woman hurt when worker knocked merchandise off shelf

Type of case: Personal Injury

Court: York Circuit Court

Name of judge: Hon. Thomas Shadrick (Ret.)

Attorneys: Stephen M. Smith and David B. Holt, Hampton; Edward E. Scher, Richmond

The incident occurred when plaintiff, a 59-year-old woman, was shopping in a retail store owned and operated by Roe Corporation.

While assisting the plaintiff, store employee Poe attempted to retrieve an item of merchandise from a shelf. As he did that, several other items of merchandise fell toward the aisle. One of those items struck the plaintiff on the head.

Despite the fact that plaintiff had been struck in the head and already was experiencing symptoms from the blow, plaintiff was able to complete an incident report in the store. Plaintiff then left the store under her own power and drove herself home.

24. \$1.75 Million

Continued use of bone needle caused foot drop

Type of case: Medical Malpractice

Name of mediator: Hon. Robert S. Brewbaker, Jr. (Ret.)

Attorney: David J. Pierce, Virginia Beach

Plaintiff, a 35-year-old male, was transported to the emergency department with complaints of syncope, chest pain and shortness of breath. A CT scan revealed bilateral pulmonary emboli. He suffered acute respiratory failure requiring resuscitation in the ED.

An intraosseous catheter (IO) was placed in the right tibial plateau for the emergent administration of medications.

In the evening hours of the second day the patient's right lower extremity was noted to be cyanotic with developing blisters and decreased capillary refill. The nurses were unable to palpate his pedal, dorsalis pedis or popliteal pulses by Doppler. Upon evaluation by a vascular surgeon, the patient was diagnosed with compartment syndrome necessitating a four compartment fasciotomy surgical procedure. He required several additional procedures to debride dying tissue and later underwent the amputation of his fifth toe due to infection. He sustained nerve damage to his right extremity below the knee and has suffered permanent foot drop which is the inability to fully control his ankle and foot.

25. \$1.65 Million

Bowel perforation may have exacerbated existing problems

Type of case: Medical Malpractice

Attorneys: William B. Kilduff, Christopher L. Spinelli, and W. Randolph Robins Jr., Richmond
Plaintiff, 55, underwent a laparoscopic cholecystectomy. During the laparoscopy, defendant surgeon noted that a trocar may have perforated the small bowel. He looked for a perforation but did not find one. Defendant surgeon was concerned enough that he told his associates, including his co-defendant surgeon, that if plaintiff presented with complications following her discharge, they should consider a possible bowel perforation. The next day, plaintiff called the surgical group after she experienced persistent vomiting and severe pain. She was advised by defendant surgeon to go to the emergency room.

Plaintiff presented to the ER with an elevated white blood count. She rated her pain as an 8 out of 10. A CT scan showed an extensive amount of free and subcutaneous air as well as fluid in the area of the umbilicus – the same area where defendant surgeon expressed concern about a possible perforation. The radiologist who reviewed the CT scan reported that given the degree of free fluid and free air, bowel injury/perforation related to the recent surgery cannot be excluded, and that he suspected a small bowel obstruction. He also felt that there was an abscess forming in the right lower quadrant of plaintiff's abdomen. Based on these findings, the emergency room physician started plaintiff on antibiotics and admitted her for observation.

26. \$1.6 Million

ER doc missed artery injury, man's knee was amputated

Type of case: Medical Malpractice

Name of mediator: Hon. Michael C. Allen (Ret.)

Attorney: Gregory L. Sandler, Virginia Beach

On Feb. 25, 2016, the plaintiff was working as a sign/roadway contractor and was descending from a flatbed trailer, when he fell. His foot became trapped on the step and when he fell, his right knee dislocated severely. He was transported by ambulance to the emergency room, in severe pain, where he came under the care of the attending emergency room physician, the defendant.

Plaintiff was discharged with a diagnosis of knee effusion and medial collateral ligament injury. He was placed in an immobilizing splint.

In actuality, the plaintiff had suffered an injury to the popliteal artery behind the knee.

26. \$1.6 Million

Recreations aid plaintiff's case in pedestrian death

Type of case: Wrongful Death

Name of mediator: Hon. Thomas S. Shadrick (Ret.)

Attorneys: Kelly B. Martin, Jay Tronfeld, Elizabeth West, Richmond

The plaintiff's decedent, 82, was walking for exercise in the parking lot of her apartment complex at noon

on a clear day when she was struck by the defendant's SUV. The defendant testified he did not see the decedent until she was in front of his vehicle even though there was nothing that would have obstructed his view. The police responded but no charges were filed against the defendant. The police officer did not interview any eyewitnesses. The decedent died at the hospital a day later.

Plaintiff's counsel located an eyewitness from interviewing an employee at the apartment complex. The eyewitness testified the defendant was driving too fast for the parking lot. Further, the eyewitness testified the decedent was walking from a direction where the defendant could have easily seen the decedent had he been paying attention.

26. \$1.6 Million

Stunt performer disabled in accident on the job

Type of case: Workers' Compensation

Court: Virginia Workers Compensation Commission

Name of mediator: Deputy Commissioner Angela F. Gibbs

Attorney: Peter M. Sweeny, Leesburg

Claimant was a performer who was injured when a planned stunt went wrong. He fell from a height landing flat and hard striking the right side of his face. He was rendered unconscious for an hour. As a result of the accident he suffered multiple facial fractures which resulted in the development of trigeminal neuralgia. This condition, coupled with a TBI, rendered the claimant totally disabled. He also required surgery on both shoulders. The claim was accepted by the employer without issue and an Award Order was entered.

The employer sought a global settlement of all claims. The parties agreed to mediation which centered on the question whether the claimant would qualify for permanent total disability in the future on the basis of his TBI. The medical evidence was mixed on this question which was problematic given the claimant's age (28) and the fact that the accident had only occurred less than two years ago.

After intense negotiation and with the assistance of the Commission mediator, a final settlement figure of \$1.6 Million was reached. As part of the final settlement the claimant signed a resignation and release while the employer agreed to continue to provide medical care, including surgery, for the claimant's right shoulder injury for a period of three months post-surgery.

29. \$1.526 Million

Delivery of second twin was delayed, resulting in brain damage

Type of case: Medical Malpractice

Attorneys: William E. Artz and Thomas M. Wochok, Tysons Corner

A 35-year-old woman sought out service of an infertility practice to assist in achieving a pregnancy. After several attempts, Mrs. Noe and her husband conceived and she was advised of a twin pregnancy.

At 36 weeks the adult plaintiff went into labor. The defendant was advised by a resident assigned to assist in the labor and delivery that the adult female was fully dilated, 100 percent effaced, and at a +2 station and waiting to push. The defendant advised that he was tied up in another procedure (an elective D & C) and instructed the patient to wait until he arrived. No instructions were given to move the patient into an operating room so the adult plaintiff remained in the delivery room.

Forty minutes later, the defendant arrived and the patient was then allowed to push. A first-year resident was instructed to deliver the first twin and did so without incident. The second twin changed from a head down position to a double footling breech presentation. This occurs in 20-40 percent of all twin pregnancies and is a reason to deliver twins in an operating room where a C-section remains a viable option.