



# The Litigation Report

## *The Legislative Edition*

### NEW VIRGINIA LEGISLATION TO TAKE EFFECT IN JULY

Multiple bills passed in Virginia that will have an effect on the handling and evaluation of insurance claims. And more importantly, a proposed bill to abolish the contributory negligence defense, failed.

Here is a summary of the noteworthy legislation that will, and will not, go into effect in July:



**Finding of guilt in absentia; proof of such finding in a civil action.** *§ 8.01-418 of the Code of Virginia* was amended to add a finding of guilt made in absentia in a criminal prosecution or traffic infraction to be admissible in a civil action. Currently, only guilty pleas, pleas of nolo contendere (no contest) and forfeitures were admissible in civil actions. This evidence is commonly admitted at trial in personal injury actions involving motor vehicle accidents as an admission of negligence by the tortfeasor.

**Civil cause of action; sexual abuse by person of authority; limitations period.** Creates a civil cause of action for injury to a person 18 years of age or older resulting from sexual abuse by a person of authority, defined in the bill. The bill further specifies that any such action shall be brought within 15 years after the cause of action accrues. *§ 8.01-243 of the Code of Virginia*.

**Attorney-issued subpoenas; release of witness.** *§ 8.01-407 of the Code of Virginia* was amended to allow an attorney who subpoenaed a witness to testify, to release such witness from appearing as long as such release is in writing and served concurrently on all other parties or their counsel. Rather than being able to rely on another party's witness subpoena, counsel will now have to serve their own subpoenas to ensure the appearance of the witnesses who they want to testify at depositions or trial.

**Immunity of persons; tort actions; assertion of immunity; attorney fees and costs.** Provides that a person shall be immune from tort liability if the tort claim is based solely on statements (i) regarding matters of public concern that would be protected under the First Amendment to the Constitution of the United States made by that person that are

communicated to a third party; (ii) made at a public hearing before the governing body of any locality or other political subdivision, or the boards, commissions, agencies, and authorities thereof, and other governing bodies of any local governmental entity concerning matters properly before such body; or (iii) made by an employee against his employer and where retaliatory action against an employee by such employer is otherwise prohibited by law. The bill also provides that any person who prevails in such a legal action may be awarded reasonable attorney fees and costs. [§ 8.01-223.2 of the Code of Virginia](#).

**Appointment of guardian ad litem for minor witness.** Authorizes a general district court, when the court determines circumstances so require, to appoint a discreet and competent guardian ad litem to represent a minor who is required to testify as a witness in a case before the court. The bill provides that such guardian ad litem shall be compensated for the provision of such services consistent with the rates and procedures set by the Supreme Court of Virginia for compensation of court-appointed counsel. [§ 8.01-396.2 of the Code of Virginia](#).

**Transportation network companies; uninsured and underinsured motorist coverage.** Requires transportation network company (TNC) insurance to maintain the same minimum uninsured and underinsured motorist coverage as is currently required by law for all motor vehicle insurance policies of \$30,000 for bodily injury per person, \$60,000 for bodily injury per accident, and \$20,000 for property damage, whether or not there is a passenger in the vehicle. The bill also prohibits TNC insurance underinsured motorist coverage from being set off by another policy from incidents arising when there is a passenger in the vehicle. Current law requires uninsured and underinsured motorist coverage for TNCs at \$1 million when a passenger is in the vehicle. The bill repeals expired provisions related to TNC insurance coverage. [§§ 46.2-2099.50 and 46.2-2099.52 of the Code of Virginia](#).

**Titling requirements for nonrepairable vehicles; sale to certain auto recyclers.** Establishes a process whereby an insurance company can obtain a nonrepairable certificate for a vehicle acquired through the claims process without first obtaining a title or salvage certificate for such vehicle, provided that the insurance company is unable to obtain the assigned title or salvage certificate from the insured and has determined the vehicle to be a nonrepairable vehicle, any lien on the vehicle has been satisfied, and the vehicle is being sold to a demolisher, salvage dealer, or scrap metal processor for the purpose of recycling parts, dismantling, demolishing, or recycling for scrap. [§ 46.2-1602.3 of the Code of Virginia](#).

**Yielding or reducing speed for stationary vehicles; vehicles displaying hazard lights, caution signs, or road flares.** Requires drivers to make a lane change or reduce speed when passing stationary vehicles that have activated the vehicular hazard warning signal flashers, displayed caution signs, or been marked with properly lit flares or torches on certain highways when safe and reasonable to do so and makes a violation of this requirement a traffic infraction. [§ 46.2-861.1 of the Code of Virginia](#).

**Uninsured motorist fee; repeal.** Repeals the option to register an uninsured motor vehicle upon payment of the uninsured motor vehicle fee of \$500. The repeal has an effective date of July 1, 2024. The bill authorizes the Commissioner of the Department of Motor Vehicles to continue registering uninsured vehicles from July 1, 2023, to July 1, 2024, but provides that all such registrations shall expire prior to July 1, 2024. [§ 46.2-706 of the Code of Virginia](#).

#### **Bills that Failed:**

**Contributory negligence bar; abolished.** Provides that the negligence of a plaintiff shall not automatically bar plaintiff's recovery in any action for injury, wrongful death, or property damage unless the plaintiff's negligence is (i) a proximate cause of the plaintiff's injury and (ii) greater than the aggregated total amount of negligence of all the defendants that proximately caused the plaintiff's injury. The bill further provides that any damages recoverable by the plaintiff shall be diminished by an amount that is proportionately equal to the percentage of negligent conduct of the plaintiff.

**Wrongful death; death of parent or guardian of child resulting from driving under the influence; child support.** Provides that in any action for death by wrongful act where

the defendant, as a result of driving a motor vehicle or operating a watercraft under the influence, unintentionally caused the death of another person who was the parent or legal guardian of a child, the person who has custody of such child may petition the court to order that the defendant pay child support.

**Civil action against parent; minor's possession and use of firearm.** Creates a civil cause of action against a parent, guardian, legal custodian, or other person standing in loco parentis of a minor for injury to the person or property of another or for wrongful death resulting from the minor's possession and use of a firearm if it can be shown by a preponderance of the evidence that the minor came into possession of such firearm because of the failure of the civil defendant to reasonably secure the firearm.

**Common interest communities; foreclosure remedy.** Prohibits a common interest community association from conducting a foreclosure sale on a lien for unpaid assessments totaling less than \$5,000, excluding interest and attorney fees. Current law does not place a limit on the amount of assessments that must be unpaid before a common interest community association may conduct a foreclosure sale on a lien for any such unpaid assessments. The bill also limits interest charged on such unpaid assessments to an annual rate of six percent and prohibits any bill to enforce a lien from being entertained upon such property if the assessments are less than \$5,000. Current law prohibits any bill to enforce a lien from being entertained if such real estate is the judgment debtor's primary residence unless the judgment exceeds \$25,000.

**Commercial motor vehicles; driving in left-most lane.** Limits the locations where a person may drive a commercial motor vehicle in the left-most lane from those interstate highways having more than two lanes in each direction with a posted speed limit of less than 65 miles per hour to those interstate highways having more than two lanes in each direction with a posted speed limit of less than 55 miles per hour.

**Exception to stopping requirement; bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or motorized skateboard or scooter.** Authorizes the operator of a bicycle, electric personal assistive mobility device, electric power-assisted bicycle, or motorized skateboard or scooter to yield instead of stop at an intersection of two highways controlled by a stop sign.

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## TOP 10 HIGHEST JURY VERDICTS IN 2022

Each year, Virginia Lawyers Weekly compiles a list of the million-dollar-plus jury verdicts that are reported to them by attorneys across the Commonwealth. In 2022, there were 18 such verdicts with the highest being an award of \$15 million from a Charlottesville jury.



Historically, Charlottesville and Fairfax County have been fairly conservative venues. However, two of the top ten verdicts were from Charlottesville and two were from Fairfax County. It seems that aggravating circumstances, such as intoxication and intentional acts, as well as medical malpractice cases, tend to garner large verdicts. Note that currently in Virginia, there is a \$2.5 million cap on medical malpractice cases.

Following are summaries of the top 10 verdicts of 2022:

- 1. Name of Case:** *Love v. Huguely*  
**Court:** Charlottesville Circuit Court  
**Attorneys:** Paul Bekman, Baltimore, Maryland; Jeffrey Stedman  
And Irvin Cantor, Richmond; Kevin Biniazan, Virginia Beach  
**Verdict:** \$10 million

Huguely and Love were both lacrosse players at the University of Virginia and had dated for two years. The relationship was abusive and Love ended their relationship in April of 2010. On May 2, 2010, after a day of heavy drinking, Huguely entered Love's off-campus apartment, kicked open her locked bedroom door, violently shook her and assaulted her. When Love's roommate arrived home early the next morning, she found Love unresponsive. Medical examiners determined that Love died from blunt force trauma to her head. Huguely was convicted of second-degree murder and sentenced to 23 years in prison.

2. **Name of Case:** *Industrial Development Authority for the County of Warren and Town of Front Royal, a/k/a the Warren County EDA v. McDonald, et al.*  
**Type of Case:** Common law and statutory conspiracy, fraud, conversion  
**Court:** Warren County Circuit Court  
**Attorneys:** Cullen Seltzer, Lee Byrd, Dan Siegel, Karissa Keseorg and Jesse Bausch  
**Verdict:** \$12 million

The Warren County Economic Development Authority alleged that from approximately 2014 to approximately 2018, the EDA's former executive director, Jennifer McDonald, on her own and acting with others, unlawfully diverted more than \$21 million from the Warren EDA. EDA asserted ultra vires claims as well as claims of fraud, conspiracy, statutory conspiracy, unjust enrichment, conversion, and punitive damages.

3. **Type of case:** Personal injury  
**Court:** Charlottesville Circuit Court  
**Attorneys:** Kevin Biniazan, Virginia Beach; Scott Perry, Arlington  
**Verdict:** \$10 million

The plaintiff, a 15-year-old student of a private coeducational and college preparatory day and boarding school, suffered severe and debilitating injuries while engaged in a service project and in the care and supervision of the school. While working on the project, the plaintiff lost his footing and was impaled by a partially cut bamboo cane. The defendants filed pleas in bar asserting charitable immunity but the court overruled the pleas in bar.

4. **Type of case:** Medical malpractice  
**Court:** Fairfax County Circuit Court  
**Attorneys:** Thomas G. Smith and Michael J. Shevlin, Fairfax  
**Verdict:** \$6.7 million

Plaintiff, 31 years old, fell down her stairs and fractured the humerus bone in her non-dominant arm. She went to the emergency room, the fracture was diagnosed and she was referred to a general orthopaedic surgeon, for surgical repair. On initial examination by the surgeon, the plaintiff had no radial nerve function. The surgeon performed an open reduction internal fixation of the displaced fracture. When there was no return of radial nerve function, she sought a second opinion from a peripheral nerve surgeon. That surgeon discovered that her nerve had been completely cut in two and given the time that had passed, she was unlikely to get a favorable result from a nerve graft. Consequently, she was left with a significant partial disability of her hand.

5. **Name of case:** *Oliver v. Cohen*  
**Type of case:** Defamation  
**Court:** Virginia Beach Circuit Court  
**Attorneys:** Jeremiah A. Denton III and Christopher W. Palermo-Re, Virginia Beach  
**Verdict:** \$5 million

Deona Branch Oliver, 62, a Virginia Beach resident with deep family roots in the community, ran for city council in November 2018. Local political activist James Haskel Cohen, 59, who formerly had been a long-time supporter of Oliver, published a scandalous accusation on a popular local Facebook group suggesting Oliver had sex with a gym trainer in a public bathroom within the hearing of the man's family, while the man was hospitalized for heart surgery. During her testimony, Oliver (and the alleged



correspondent) denied the hospital sex had occurred and Oliver spoke about the devastating impact Cohen's statement had on her reputation and emotional state. After a year and a half of litigation, defendant offered to settle for \$100,000. Plaintiff did not counter. Defendant increased his offer to \$250,000 a few days before trial. Plaintiff did not counter.

- Name of case:** *Vera v. Algie*  
**Type of case:** Auto accident  
**Court:** Fairfax County Circuit Court  
**Attorney:** Brian Glass, Fairfax  
**Verdict:** \$4.24 million

The defendant went for dinner and drinks at MGM Casino in National Harbor. After three hours of drinking, he drove 17 miles home to Fairfax. Less than a mile from his house, he lost control of his car and entered the plaintiff's lane of travel, causing a horrific crash. When tested, his blood alcohol concentration was 0.15 mg/DL. The plaintiff, a 28-year-old woman, suffered tears to her colon and ileum, which required resection in emergency surgery. She underwent 10 surgeries during her 33-day hospital stay ultimately requiring a colostomy. The defendant testified at trial that he had consumed only two drinks at the casino over the course of three hours and argued that his speed, rather than his intoxication, was what caused him to lose control of the car and was the sole proximate cause of the crash. The plaintiff's toxicology expert told the jury that it would have required 9-11 drinks to elevate the defendant's blood alcohol concentration to 0.15. The jury returned a verdict for \$3.24 million in compensatory damages and \$1 million in punitive damages.

- Tie- Name of case:** *James A. Boley Jr., Administrator of the Estate of Robert Lee Boley, Deceased v. Armor Correctional Health Services, Inc. Arleathia Peck, Emmanuel Bynum*  
**Type of case:** Wrongful death, civil rights  
**Court:** U.S. District Court for the Eastern District of Virginia, Richmond Division  
**Attorneys:** Mark J. Krudys and Danny Zemel, Richmond  
**Verdict:** \$4 million

Plaintiff alleged that Robert Boley, an inmate at the Deerfield Men's Work Center, sought care for acute chest pain, but was disregarded by correctional and medical staff. Boley was found dead the following morning. An autopsy report determined that Boley died of a "ruptured aortic aneurysm due to hypertensive and atherosclerotic cardiovascular disease."

- Tie- Name of case:** *Wolfe v. Lim, M.D. and Atlantic Brain & Spine, LLC*  
**Type of case:** Medical malpractice  
**Court:** Fairfax County Circuit Court  
**Attorneys:** Anthony M. "Tony" Russell, Roanoke; Les S. Bowers, Charlottesville  
**Verdict:** \$4 million

David Wolfe, a 58-year-old male, presented to Dr. Jae Lim with mid-thoracic pain and bilateral leg weakness with associated balance issues and difficulty standing and walking. An MRI revealed a T9-10 disc herniation which had caused compressive thoracic myelopathy. Dr. Lim recommended surgical intervention. Dr. Lim improperly performed the surgery resulting in Wolfe suffering permanent damage to his spinal cord.

- Name of case:** *Taylor v. Harlow*  
**Type of case:** Personal injury  
**Court:** Chesterfield Circuit Court  
**Attorneys:** Bill Shields and Jennifer Wilkie, Richmond; Corine Bailey, Petersburg  
**Verdict:** \$2.5 million

The plaintiff fell on a defective step and then down a flight of stairs, rupturing the membrane between her vagina and rectum.

10. Name of case: *Williams v. Billeter*  
Type of case: Motor vehicle tort  
Court: Norfolk Circuit Court  
Attorney: Griffin M. O'Hanlon, Norfolk  
Verdict: 2,465,259.33

The plaintiff was a front-seat passenger in a vehicle traveling on Interstate 64 in Norfolk when the defendant crossed the center median and struck plaintiff's vehicle head-on. The plaintiff's left ankle was shattered as a result of the impact. Surgeons stabilized the fractures with an external fixator that subsequently lost fixation and required revision. The plaintiff was discharged from the hospital approximately two weeks later. He thereafter developed osteomyelitis, a bone infection, at the insertion sites of the external fixator screws. The plaintiff underwent several operative procedures for the placement of antibiotic beads to treat the infection, as well as a month-long admission at a rehabilitation center for intravenous treatment of the infection. The plaintiff's medical expert opined that the left ankle injury supported a permanent, 100% impairment rating of the plaintiff's left lower extremity. Approximately \$415,000 in past medical bills were presented at trial, along with a contested claim for a future cervical surgery at a cost of approximately \$130,000.

## ASKED AND ANSWERED



This is where we answer legal questions commonly posed to us by our insurance and corporate clients. If you have any burning questions that need quick answers, or if you have any suggestions for questions in future newsletters, please e-mail Janeen at: [jkoch@chadwickwashington.com](mailto:jkoch@chadwickwashington.com).

This edition's subject: Minor settlements

**Q: Does a settlement with a minor *have* to be court approved?**

**A: If you want the settlement to be binding, then yes, it *must* be court approved.** In Virginia, a minor is legally incapable of entering into a binding contract, which includes a settlement. So if the settlement is substantial, or if you think the circumstances could change and a future claim could be made, it is prudent to have the settlement court approved. Remember that the statute of limitations for a personal injury claim does not run until the minor is 20 years old, so you never know what could happen in the future. However, if the injuries are minor, the settlement is small, and there is no concern that a future claim will be made, then the expense of obtaining court approval may not be justified.

There is no minimum amount that requires court approval. However, **§8.01-606 of the Code of Virginia** provides that for payments of \$50,000 or less, the court may permit the payment to be made to "any person deemed by the court capable of properly handling it, to be used solely for the education, maintenance and support of the person under a disability" rather than being paid into the Court to be held until the minor turns 18.

**Q: Does the parent of an injured minor have a separate claim for medical expenses?**

**A:** For causes of action that accrued prior to July 1, 2013, a parent may bring a separate action against the tortfeasor for medical expenses incurred for curing or attempting to cure the infant as a result of personal injury.

For causes of action that accrued on or after July 1, 2013, the past and future medical expenses are damages recoverable by the infant. Any parent or guardian who has paid for or is personally obligated to pay for the medical expenses, has a lien and right of

reimbursement against any recovery by the infant up to the amount the parent or guardian has actually paid or is personally obligated to pay. Court approval of the infant settlement releases the defendant from any claims for past or future medical expenses. **§8.01-36 of the Code of Virginia.**

Janeen has been practicing primarily insurance defense since her admission to the Virginia Bar in 1994, focusing primarily on handling catastrophic accident cases and insurance coverage matters. Janeen joined Chadwick Washington in 2021 and handles insurance defense cases as well as major community association litigation. Here is a link to her bio: <https://www.chadwickwashington.com/attorneys/janeen-b-koch/>.



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