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Verdicts, Settlements & Dispositions

$500,000 Dog Bite Verdict

In April of 2018, **Alex Woodyard** of The Law Offices of William K. Goldfarb in Monroe obtained a $500,000 jury verdict in a dog bite case tried in Union County Superior Court.

On November 24, 2014, a 6-year-old boy was attacked by his neighbors' pit bull. The dog was chained to a stake in the neighbors' yard, and the pit bull pulled the stake from the ground and attacked the boy. The dog proceeded to bite the boy's face, and it inflicted injury requiring cosmetic surgery. Total Rule 414 medical bills were approximately $14,000. (Medical bills, however, were not put into evidence at trial).

The couple who owned the pit bull leased the property where the dog was chained. Although the couple's lease stated that no pets were allowed, their landlord was aware of the pit bull's presence, and he acquiesced to it being kept on the property.

Plaintiff sued the landlord on theories of ordinary negligence, common law strict liability, and negligence *per se*. Union County Animal Control Ordinances were used in support of these theories. The landlord's wife was sued for Common Business Venture Agency Liability. The owners of the pit bull were sued for strict liability and ordinary negligence.

During the course of litigation, Plaintiff's counsel obtained pre-judgment liens on eight properties owned by the landlord, including the landlord's primary residence. The Defendants were all uninsured.

The jury delivered its verdict after approximately four hours of deliberation. To date, no appeal has been filed, and Plaintiff's counsel intends to levy upon the pre-judgment liens to collect the verdict. This was Alex Woodyard's first jury trial.

Collaborative Supreme Court Win

In March of 2018, **S. Luke Largess** and **Cheyenne N. Chambers** of Tin Fulton Walker & Owen, PLLC in Charlotte obtained a significant Supreme Court ruling pertaining to the constitutional rights of public employees in *Tully v. City of Wilmington, N.C. Sup. Ct. No. 348A16.*

In 2000, Tully was hired as a police officer by the City of Wilmington. The City promoted him to corporal in 2007. He was named Wilmington Police Officer of the Year in 2011. That same year he tried for a promotion to sergeant, but he failed the written exam. Tully said he based his answers on current law. He said when he got a copy of the exam answers, he found they were based on outdated law.

Tully filed a grievance with the City, but in early 2012, the City Manager sent Tully a letter stating "the test answers were not a grievable item."

In December of 2014, represented by former Tin Fulton attorney, Katy Parker, Tully sued the City in New Hanover County Superior Court. He asserted that he was never given the opportunity to grieve his denial of promotion—in violation of his right under Article I, Section 1 of the North Carolina Constitution to "the enjoyment of the fruits of [his] own labor." Judge Trawick granted the City's motion for judgment on the pleadings, finding that Tully's rights were not violated as a matter of law.

Tully appealed to the N.C. Court of Appeals, represented by Parker. In 2016, a divided Court overturned Judge Trawick's decision, finding that Tully had stated a claim under Article 1, § 1 and 19 of the state constitution. The City then appealed to the North Carolina Supreme Court.

The following attorneys filed amicus briefs in support of Tully: (1) **Robert M. Elliot** and **R. Michael Elliot** of Elliot Morgan Parsonage, PLLC in Winston-Salem on behalf of the **North Carolina Advocates for Justice**; (2) **Michael C. Byrne** of the Law Offices of Michael C. Byrne in Raleigh on behalf of the North Carolina Fraternal Order of Police; (3) **M. Travis Payne** of Edelstein & Payne in Raleigh on behalf of the Professional Fire Fighters and Paramedics of North Carolina; and (4) **J. Michael McGuinness** of the McGuinness Law Firm in Elizabethtown on behalf of the Southern States Police Benevolent Association and North Carolina Police Benevolent Association.

Narendra Ghosh of Patterson Harkavy, LLP in Chapel Hill assisted in a moot panel prior to oral arguments.

As a result of this collaborative effort, in its ruling, the Supreme Court agreed with Tully that his Complaint about the City's actions stated a claim under Article I, Section 1 of the North Carolina Constitution.

$750,000 Mental Anguish Verdict

In March of 2018, **Jeremy Wilson** of Ward & Smith, P.A. in Wilmington obtained a $750,000 verdict for an elderly couple's mental anguish from a Pitt County jury.

In September of 2015, a home healthcare company assigned an aide to the elderly couple's home. Although the aide indicated on her job application that she did not have a criminal record, she had been convicted of or charged with numerous crimes, including but not limiting to communicating threats, drug possession, DWLR, and criminal contempt. The aide did not have a drivers' license, even though part of her job was driving the elderly couple to medical appointments. It did not appear that the home healthcare company ever performed a background check on the aide.

Soon after the aide was assigned to the home, money went missing. Over $1,200 disappeared from the wife's dresser drawer, as well as $90 from the husband's wallet. The missing money was reported to the home healthcare company, and the company removed the aide from the home pending an "investigation."

During the "investigation," the home healthcare company asked the aide whether she took the money. The aide denied it. The company did not discover her criminal record. Further, the company failed to consider notices of pending child support claims, indicating financial difficulties, troubling Facebook posts, or other information.

At the conclusion of its "investigation," the home healthcare company placed the aide back in the elderly couple's home.

Thereafter, the aide orchestrated a home invasion and robbery. She told two accomplices where a key was hidden, when to enter the house, and where valuables were located. The two accomplices robbed the elderly couple at gunpoint, which even included driving the husband to an ATM with a gun pressed to his head. The aide and accomplices were thereafter arrested and criminally charged.

As a result of the home invasion and robbery, the elderly couple was diagnosed with PTSD.

A lawsuit was filed based on an ordinary negligence theory. Among other things, it alleged the company was negligent in failing to follow its own policies in assigning the aide, and failing to reasonably investigate the missing money.

At trial, damages were only sought for pain and suffering. The elderly couple did not seek payment of psychologists' bills or the value of stolen property.

At trial, Plaintiffs called the detective who investigated the robbery, the elderly couple, and their three adult children. The psychologist testified by video deposition. Additionally, a portion of the company's videotaped Rule 30(b)(6) deposition was played.

The elderly couple testified that they are now scared to be in their own home. The husband said that he continues to have nightmares and incessantly checks the locks.

After deliberating for approximately one hour, the jury awarded $500,000 to the husband and $250,000 to the wife—all in compensatory damages. The defense's highest official offer before trial was $90,000.

Seventeen Million Dollar Trucking Accident Verdicts

In May of 2018, **Wade E. Byrd** of the Law Offices of Wade E. Byrd, P.A. in Fayetteville obtained bifurcated verdicts totaling $17 Million Dollars from a Robeson County jury in a case involving a tractor-trailer crash, which was presided over by Judge Beecher R. Gray.

On April 20, 2015, a pick-up truck and a "bobtail tractor," were traveling down a highway at approximately 20 to 30 miles per hour with their flashers on. At the same time and place, an eighteen wheeler, hauling a full load of grease, rear-ended the pick-up truck at 69 miles per hour.

During the collision, the pick-up truck was launched from the highway rolling several times down an embankment into a tree, causing the death of the pickup driver, due to massive head injuries. The 18-wheeler then slammed into the "bobtail tractor," knocking it 641 feet. The driver suffered permanent brain injury and substantial lost wages and medical expenses

Plaintiffs filed suit against the trucker and trucking company for the wrongful death of the pick-up driver and personal injury to the "bobtail tractor" driver.

The trial was trifurcated into the following issues: (1) Liability of the Defendants; (2) Damages for Wrongful Death; and (3) Damages for Personal Injury.

After deliberations, the jury returned $13 Million Dollars for the wrongful death of the pick-up truck driver, and $4 Million Dollars for personal injury to the "bobtail tractor" driver.

At trial, the Plaintiffs utilized the following experts: J.C. Poindexter, Ph.D. (economist), Claudia R. Coleman, Ph.D. (neuropsychologist), Steve H. Farlow, P.E. (accident reconstructionist), Johnnie P. Hennings P.E (accident reconstructionist), and Scott L. Turner (trucking regulatory expert).

Among other insurance carriers, Liberty Mutual, National Fire & Marine Insurance Company, and National Union Fire Insurance Company insured the Defendants for a total of $226 Million in coverage. Stephen W. Coles and Erin Young of Hall, Booth, Smith, P.C. in Charlotte represented the Defense at trial. Defense called experts: Brian Farah, M.D. (psychiatrist), April Yergin (accident reconstruction), and John G. Bauer (crash reconstruction).

Workers' Comp Appellate Victory

In February of 2018, **Bradley H. Smith** of Campbell & Associates in Charlotte obtained a significant appellate victory for workers' compensation claimants in *Neckles v. Harris Teeter, NCCOA 16-569-2.*

The claimant injured his back in 2009 while working as a meat cutter. He was assigned permanent light-duty work restrictions, which included not lifting over 30 pounds. After reaching maximum medical improvement, the plaintiff met with a vocational counselor in September of 2011 to assess his return-to-work options. The vocational counselor determined it would be "difficult" to place the plaintiff in the current job market.

In June of 2014, the defendants filed a Form 33, arguing that the plaintiff was no longer disabled. By that time, the plaintiff was 68 years old. He had not worked in five years. The Deputy Commissioner found that it would have been futile for the plaintiff to conduct a job search, based on his age, education, work experience, work restrictions, unrelated health conditions, and difficulty communicating (he was an immigrant from Grenada). The Full Commission reversed, holding that there were "numerous" jobs the plaintiff could perform with the 30-pound lifting restriction.

In a 2016 unpublished decision, the Court of Appeals reversed and remanded, re-affirming a previous case which held that a plaintiff need not present expert testimony to show futility in a job search. The court then concluded that the Commission improperly limited its factual inquiry and failed to consider evidence supporting the futility argument. Specifically, the court noted that the plaintiff was 68 years old, that he had two years of college but no degree, that he had only ever worked as a meat cutter since 1989, that he had difficulty reading, that he lacked computer skills, and that he suffered from chronic health problems unrelated to the work accident.

The defendants timely appealed the Court of Appeals' Unpublished Decision by filing a Petition for Discretionary Review with the North Carolina Supreme Court. On June 8, 2017, the Supreme Court allowed the defendants' PDR for the limited purpose of remanding to the Court of Appeals for reconsideration in light of developing Supreme Court precedent.

On February 20, 2018, in a published decision, the Court of Appeals concluded that the Commission failed to make necessary findings regarding the effect of Plaintiff's compensable injury on his ability to earn wages. The Court stated that if a plaintiff can show total incapacity for work, he is not required to also show that a job search would be futile. The Court held that the burden had shifted to defendants to not only show that suitable jobs were available, but that Plaintiff was also capable of getting one, considering all of his limitations. The Court ordered the Commission "to take additional evidence if necessary and make specific findings addressing plaintiff's wage-earning capacity, considering plaintiff's compensable [injury] in the context of all of the pre-existing and co-existing conditions bearing upon his wage-earning capacity."

One Million Dollar Auto-Torts Verdict

In April of 2018, **Charles Hinnant** and **Dr. Ted Greve** of Ted A. Greve & Associates in Charlotte obtained a significant jury verdict in an auto-torts case tried in Mecklenburg County Superior Court before the Honorable Casey Viser.

On December 12, 2015, Plaintiff, a 49-year-old dishwasher from Thailand, was a front-seat passenger in a Nissan Pathfinder. While stopped at a red light, the vehicle was rear-ended by a new Maserati. The vehicles were totaled. The Defendant driver, a CEO of a Sushi Franchising Business, had just left a work Christmas Party and was driving to an "after-party" with four women. There was no evidence that the Defendant driver was under the influence of alcohol.

During the wreck, Plaintiff sustained a fracture of her distal humerus. An open reduction and internal fixation surgery (ORIF) was thereafter performed, and a plate and six screws were implanted in her arm. Later, the Plaintiff developed Complex Regional Pain Syndrome (CRPS).

Four to five months after the wreck, Plaintiff was diagnosed with a traumatic brain injury (TBI). There was no evidence of head trauma in the Plaintiff's medical records, and Plaintiff was unable to testify that she struck her head in the wreck.

Suit was filed against the Defendant driver and also his Sushi Franchising Business. MetLife insured the Defendant with a $100,000 car insurance policy and a $1,000,000 umbrella policy. The corporate defendant had an additional $9,000,000 in coverage.

At mediation, the defense offered $75,000 to settle the Plaintiff's claims. During the first day of jury selection, the defense upped its offer to $400,000.

At trial, Dr. Leon Chandler testified to causation of the TBI. Julie Sawyer-Little developed the life care plan and testified to future medical treatment, while Gary Albrecht, PhD, an economist, testified to economic loss.

Due to the drastic difference between past and future medical bills, at trial, the Plaintiff did not put on evidence of past medical expenses and instead only asked for future medical expenses, pain and suffering, scarring, deformity, wage loss, and loss of use of the arm.

The defense put on evidence of the Plaintiff not following the recommendations of her physical therapists, not following-up with a spinal surgeon, missing various medical appointments, refusing to go to a behavioral health specialist, and refusing psychiatric help. It argued that the Plaintiff failed to mitigate her damages.

After a nine-day trial, the jury returned $1,000,000 in total damages (which was reduced to $850,000 due to the mitigation issue), and it found that the corporate defendant was not liable.

Second-Degree Verdict for Client Facing Life Without Parole

In May of 2018, Assistant Public Defenders **Matthew C. Geoffrion** and **J. Taplie Coile** of the Pitt County Public Defender's Office obtained a Second-Degree Murder verdict for a client facing First Degree Murder (Life Without Parole) in the trial of *State of North Carolina v Michael O'Neal*, which was presided over by Judge Jeffrey B. Foster.

On October 19, 2015, the alleged victim was cut with a knife seventeen times in a field between the Park West Apartment Complex and Wal-Mart in Greenville. The prosecution presented three eyewitnesses who testified they saw two men chasing someone through the field. O'Neal testified that he stabbed the alleged victim three times in the chest in defense of others and self-defense. O'Neal testified that both he and the alleged victim had knives and that the alleged victim had stabbed O'Neal first (O'Neal had two stab wounds). O'Neal said that he hadn't been chasing the alleged victim, but that he was running alongside the alleged victim like a "cornerback on a wide receiver" to keep him from attacking other individuals. There was a minute long 911 call that was placed by the alleged victim, which was played mul-

tiple times by the prosecution. The 911 call captured the run through the field.

The jury had the option of finding the Defendant guilty of First Degree Murder, Second Degree Murder, Voluntary Manslaughter, or acquittal. The court gave an instruction on self-defense but not as to defense of others.

After about four hours of deliberation, the jury came back with a verdict of Second Degree Murder, and then later deliberated about aggravating factors. The jury did not find the statutory aggravating factor that the Defendant joined with more than one other person in committing the offense. The jury also did not find the statutory aggravating factor that the victim was mentally infirm. However, the jury did find two aggravating factors—that the crime was especially heinous, atrocious or cruel, and that the Defendant was on pretrial release at the time of the incident.

The Defendant received a sentence of 300-372 months in the North Carolina Department of Adult Corrections. The Defendant gave written and oral notice of his appeal to the judgment of the Court. O'Neal was 24 years old at the time of trial, and as a result of the Second-Degree Murder verdict, he is likely to be released from prison in his lifetime.

Negligent Handling of Human Remains Verdict

In April of 2018, **James E. Rogers** of Morrisville obtained a $100,000 jury verdict for compensatory damages for the negligent handling of human remains in the matter of *Marsh v. Rogers-Pickard Funeral Home, Inc., et al (Chatham Co. 16-CVS-782)*.

The decedent, a 25-year-old athlete, died of cardiac arrest while playing basketball on May 24, 2014. He was transported by ambulance to Central Carolina Hospital. The hospital has limited capacity in its morgue, and therefore, bodies are sometimes stored at the near-by Rogers-Pickard Funeral Home. Due to the decedent's age and good health, an autopsy of the body was required.

An employee of the funeral home picked up the decedent's body from the hospital on the date of death. The decedent's body was then supposedly placed in a cooler at the funeral home.

On May 26, 2014, a nurse at the hospital contacted a transport company to pick up the decedent's body from the hospital to deliver it to the Office of the Chief Medical Examiner (OCME) for an autopsy.

No information was available as to how, when, or why the decedent's body was transported back to the hospital from the funeral home.

When the assistant medical examiner saw the decedent's body, it was badly decomposed from apparently not being refrigerated. As a result, the body could not be embalmed, and the family could not have an open casket funeral. In the lawsuit, the decedent's mother claimed that she had suffered emotional distress as a result of seeing her son's decomposed body.

Among other things, the funeral home was sued for failing to preserve the decedent's body, while the hospital was sued for failing to properly document the location of the decedent's body and failing to ensure it was reasonably maintained.

At trial, the issues of compensatory damages and punitive damages were bifurcated. After the jury rendered a $100,000 award for compensatory damages, the defense settled the punitive damages claim for $50,000.

Two Million Dollar Wrongful Death Settlement

In April of 2018, **Robby Jessup** and **Joan Davis** of the Howard Stallings Law Firm in Raleigh obtained a Two Million Dollar settlement for the wrongful death of a motorcyclist.

Phil Sabino, a 45-year-old father, was killed in August of 2015 when a Honda Accord crossed under the median cable on I-540 and entered his lane of travel. The driver of the Honda Accord was an inexperienced driver, who became confused and panicked in the merging traffic lanes of the I-540/I-40 interchange.

The insurance company for the Honda Accord tendered its liability policy limits of $100,000 within weeks of the crash. Sabino had UIM coverage on his motorcycle of $250,000, and the attorneys discovered another automobile policy with $250,000 of UIM that was stacked for a $500,000 recovery. A limited release and waiver of subrogation for the liability and UIM policy limits was negotiated.

Thereafter, upon completing an accident reconstruction, witness interviews, and evaluation of thousands of records from the NCDOT, numerous problems with the cable median barrier were discovered.

A tort claim was filed in the Industrial Commission against the NCDOT, and after a year of litigation, a separate lawsuit was filed against the NCDOT contractor charged with maintenance and repair of the cable medians.

After 23 depositions, including eyewitnesses, state officials, maintenance crews and company representatives, as well as local accident reconstruction engineers and national cable median experts on both sides, the cases against the NCDOT and contractor were settled post-mediation, two weeks before trial, for an additional $1.5 Million. An aggregate settlement of Two Million Dollars was recovered for the Sabino family. ◆