



XXXXXXXXXXXXXXXXXXXXFIRM 23602  
355662 P-1 P70

ROBERT R. HATTEN  
HATTEN MORNING HATTEN & DIAMONS  
12350 JEFFERSON AVE STE 300  
NEWPORT NEWS VA 23602-6956

# VIRGINIA LAWYERS WEEKLY

Volume 24, Number 33

www.valawyersweekly.com

January 18, 2010

## Largest Verdicts of 2009

### Presenting the 2009 Survey

Virginia Lawyers Weekly's survey of the "Largest Jury Verdicts of 2009" found 21 seven-figure judgments in 2009, six more than last year and one more than we found the previous year. All but five of the cases had a personal injury component, including seven medical malpractice verdicts, with three of those won by Arlington lawyer William E. Artz. The survey results begin on page 7. To qualify for the list, a verdict had to be handed down by a Virginia jury during the calendar year.

■ See Verdicts, on PAGE 22

## New RESPA reg may slow real estate recovery

BY PETER VIETH

New federal regulations designed to protect homebuyers from nasty surprises at loan closing time could slow the recovery of the real estate market, some industry insiders say.

The regulations require early disclosure of expected loan costs for residential mortgages, with potential penalties if the actual costs exceed the early estimates.

One real estate attorney said the new rules can hamstring lawyers by forcing them to accept only their basic fee, even if they have to spend extra hours on a real estate deal. Another industry lawyer said the rules will discourage use of local professionals in favor of big national banks and their affiliates.

The new rules are revisions to regulations under RESPA, the 1974 Real Estate Settlement Procedures Act. The law is aimed at exposing hidden kickbacks and referral fees to consumers.

"Everybody has been going to school for the last three months trying to figure out what to do, and they will continue to try to figure it out," said one title insurance executive.

New rules approved in November went into effect Jan. 1. They require new forms to give homebuyers advance notice of the costs involved in loan settlement and an easy way to compare actual costs with the estimated

■ See RESPA, on PAGE 22

## Cheaters can't take the Fifth under bill

BY PETER VIETH

Adulterers could no longer hide behind the Fifth Amendment in divorce cases if a bill backed by family lawyers is approved by the General Assembly.

The measure would allow a judge to draw an adverse inference if a party or witness refuses, on the ground of self-incrimination, to answer a question about adultery or certain other sexual crimes that remain on the books in Virginia.

The legislation was proposed by the Virginia Family Law Coalition in reaction to what was seen as inconsistent positions by Virginia judges on how to handle the silence of an accused adulterer. The concept was earlier approved by the Boyd-Graves Conference, which makes recommendations for Virginia civil litigation.

Two delegates have introduced bills to implement the proposed change. Del. Robert G. Marshall, R-Manassas has introduced House Bill 14 and Del. David J. Tecano, D-Charlottesville, is the patron for House Bill 67.

Family law practitioner Lawrence D. Diehl of Chesterfield said the inconsistencies arise because, while laws regulating private sexual conduct generally have been deemed unconstitutional, adultery or other sexual misconduct by a spouse remains an important factor in many divorce cases.

For someone to be able to dodge the truth on such an important issue, without any real risk of criminal prosecution, was considered "just not fair," Diehl explained.

Currently, Virginia Code § 8.01-223.1 provides that the exercise of a constitutional protection may not be used against a party in a civil action. The proposed legislation would add an exception to allow a trier of fact

■ See Cheaters, on PAGE 3

### IMPORTANT OPINIONS

**TORT**  
**Federal Jury Instruction Followed Virginia Defamation Law**  
A jury instruction was correct when it gave plaintiff the burden of proving defamation from her employer's statement that she was fired for "job abandonment."

PAGE 12

**INTELLECTUAL PROPERTY**  
**No Damaging E-Mail on Damages**  
In last year's "top verdict" case, a Richmond U.S. District Court keeps out an exec's e-mail that said a multi-million damage award would help him "get thru my senior years in a little more style."

PAGE 13

**DOMESTIC RELATIONS**  
**Health Care Premiums Stop, Contempt Starts**  
A husband can't call wife's health insurance "spousal support" and stop paying when the remarries, and the Court of Appeals upholds a civil contempt order against the husband.

PAGE 16



There Is Only One



With Top 10 Virginia Verdicts For 4 Consecutive Years

2009 Sanders v. John Crane, Inc. \$3,825,799

2008 King v. John Crane, Inc. \$1,702,542

2008 Koonce v. John Crane, Inc. \$4,390,000

2007 Oney v. John Crane, Inc. \$9,250,000

2006 Jones v. John Crane, Inc. \$10,000,000

Congratulations To Our Asbestos Litigation Team

Bobby Hatten

Donald N. Patten

Hugh B. McCormick, III

William W.C. Harty

Jennifer W. Stevens

Erin E. Hieronimus

Patten Wornom Hatten Diamonstein Virginia Lawyers With A National Reputation

PRIOR RESULTS DO NOT GUARANTEE A SIMILAR OUTCOME WITH RESPECT TO ANY FUTURE MATTER UNDERTAKEN BY PWHD

fr  
e:  
th  
pr  
A  
of  
C  
th  
hr  
ti  
ti  
ci  
ar  
le  
co  
fa  
th  
"h  
hi  
fr  
he  
no  
fo  
he  
a  
alt  
tio  
tia  
ing  
t  
(H  
20  
Se  
sor  
10  
  
D  
PS  
Cc  
  
A  
he:  
wif  
me  
vor  
hol  
hus  
B  
pro  
thu  
the  
E

on

GMBH & Co. KG

shoreman

Beach  
Whitaker fell seven feet through a catwalk  
cargo at Portsmouth Marine Terminal in  
spital emergency room after treatment for

two herniated disks in his neck but re-  
surgery. He worked light duty until he  
and retired in 2005 at age 60, when he  
bled from work as a longshoreman.  
riated disks were a result of the fall while  
by cervical disk disease.  
aker because the suit originally was filed  
t to defeat diversity jurisdiction. In the  
damages were limited to that amount, but  
l. It held that any prejudice to the defen-  
ensel to make a timely motion to remove  
retrial on damages alone.

# #8 \$4.3 million

## Commonwealth Transportation Commissioner v. Spinner

**Type of Case:** Eminent domain

**Court:** Fairfax County Circuit Court

**Attorneys:** Joseph T. Waldo and Stephen J. Clarke, Norfolk; Jack R. Wilson III, Chesterfield

**Summary:** A jury awarded \$4.3 million, \$1.8 million more than the Virginia Department of Transportation had offered, for a service station at Gallows Road and U.S. 29.

The department contended the highest and best use of the property was redevelopment for a bank site, while the owner and long-term tenant countered that the best use was for continued operation as a gas station and convenience store. A notice of appeal has been filed.



WALDO



CLARKE



WILSON

### ALPRACTICE

on



WAGHORN



HAMMER

four months after delivering her first child  
eath. An X-ray showed an enlarged heart.  
month at the ER and was treated for bron-  
was abnormal and she had swelling in her  
plant after a diagnosis of postpartum car-  
zians had failed to diagnose the symptoms  
ated the condition to avoid the transplant.  
tial diagnosis met the standard of care and  
necessary even with a correct diagnosis at  
al cap of \$1.8 million and the judgment has

### PRODUCT LIABILITY



# \$3.8 million

## Sanders v. John Crane Inc.

**Type of Case:** Product liability - mesothelioma

**Court:** Newport News Circuit Court

**Attorneys:** Robert R. Hatten, Hugh B. McCormick, Gary M. DiMuzio, William W.C. Harty and Erin E. Hieronimus, Newport News

**Summary:** Retired Command Master Chief Gerald Gray died from mesothelioma, a disease caused only by exposure to asbestos.

His attorneys contended that he was exposed to asbestos products manufactured by John Crane Inc. and others over 20 years during his Navy career. Other manufacturers settled, and the case went to trial with only John Crane as a defendant.



HATTEN



MCCORMICK



DIMUZIO



HARTY



HIERONIMUS

# Verdicts

■ continued from PAGE 1

end of year 2009, for at least \$1 million. Three verdicts were eminent domain cases, but the two biggest cases were in categories of their own.

PBM Products LLC, the manufacturer of store-brand baby formula, won a \$13.5 million verdict against Mead Johnson & Company, the market leader with its Enfamil brand of formula.

PBM alleged false advertising under the Lanham Act in Mead Johnson's assertion that its brand is nutritionally superior to PBM's products.

The second case involved a claim that Campbell County violated state environmental laws by allowing chemicals from its landfill to leak into the groundwater of a nearby manufactured home park. A jury returned a \$9 million verdict for the owners.

The verdicts in both cases were returned late in the year and post-trial motions are still before the trial courts.

Newport News attorney Robert R. Hatten had a seven-figure verdict for the fourth year in a row, the only attorney in the state with such a run. All the cases involved mesothelioma that Hatten's juries found were caused in part by asbestos products manufactured by John Crane Inc.

Artz's juries returned verdicts totaling \$18.4 million but they were reduced to a total of \$4 million under the state law that limits the recovery on medical malpractice claims.

He said his cases are an illustration of the unfairness of the cap because the evidence justified the verdicts the juries returned. All the cases involved dire consequences – a death, a heart transplant and brain damage to an attorney – from a failure to diagnose symptoms that Artz contended could have been treated with no permanent damage to the patients.

The largest personal injury verdict, \$8 million, was for a state librarian who was run over by a GRTC in a crosswalk as she was going to work.

# RESPA

■ continued from PAGE 1

costs. If the actual costs are significantly higher than the estimated costs, the lender has to pay the difference.

The minutiae of the new rules are available through a FAQ page maintained by the Department of Housing and Urban Development, <http://www.hud.gov/hsg/ramh/res/resparulefaqs.pdf>.

With new forms to learn and penalties for mistakes, real estate professionals have been studying for months to get ready for the changes. Lisa K. Tully of Richmond, vice president and underwriting counsel with Lawye Insurance Corp.

"There is a significant impact on the settlement industry, especially residential real estate attorneys," Tully said.

Lenders are required to be extra accurate in their early estimates of costs, Tully explained. If the actual costs exceed the estimate by a certain amount, the lender has to pay the difference.

"The lenders and the settlement industry have to be in really close contact throughout the settlement process, so there's going to be a lot of up-front discussion," she said.

Tully described a situation where a lender estimates the recordation tax on the sale price – only to learn late in the game that the depressed real estate market has assessed value of the home is higher than the sale price. Since the tax is based on the higher of the two figures, the lender has to pay the extra tax the borrower has to pay. "It's very tricky," Tully said.

As of last week, we couldn't find a lender who had actually closed on a loan under the new regulations. Settlements still being done on loans originated before the new year.

"Just judging by the workload this year, I'm thinking lenders are delaying some closings," Tully said. "I think they are being very, very careful."

At a recent gathering of Charlotte area real estate lawyers, no one rep