

# Largest Defense Verdicts of 2004

## Virginia Lawyers Weekly presents "Largest Defense Verdicts of 2004"

In this issue, *Virginia Lawyers Weekly* is pleased to present the survey of the "Largest Defense Verdicts of 2004."

This survey runs in tandem with the annual feature we published in January, the "Largest Verdicts of 2004."

Determining placement on a list of largest verdicts is simply a matter of looking at the amount of the jury's actual award and proceeding from there.

Defense verdicts, on the other hand, result in a zero-dollar recovery for a plaintiff. The "size" of a defense verdict is determined by the amount of the plaintiff's last demand, if one was made.

To rank the defense verdicts, we reviewed all the Verdict & Settlement Reports that were published in the paper during 2004. In a few instances, there were qualifying verdicts for cases that were tried in 2004, but the V&S Report did not appear until early this year.

As in the previous two installments of this survey, we feature the top 10 verdicts. This year there actually are 11 verdicts in the survey, due to a three-way tie at ninth place.

We would like to thank all the many lawyers – both plaintiff's and defense counsel – who have contributed Verdict & Settlement Reports throughout the year. We look forward to hearing and reporting the results of your cases in 2005 as well.

*Paul Fletcher*  
Publisher & Editor-in-Chief



**\$3.5 Million**

**Ferguson v. Smith**

**Lowest Demand:** \$3.5 million

**Highest Offer:** None

**Type of Case:** Medical Malpractice/Battery

**Case Name:** Ferguson v. Smith

**Court:** Circuit Court of Chesterfield County

**Attorneys:** Rodney K. Adams and Elizabeth Pharr, Richmond

**SUMMARY:** Plaintiff suffered an injury to his left ureter during a laparoscopic sigmoid colon removal on Aug. 17, 2001. The injury was diagnosed six days after surgery and the plaintiff remained in the hospital for 30 days. Six months later, the kidney was lowered to allow reconnection of the ureter without tension. Plaintiff subsequently developed a hernia and weakness in the large flank incision used for access during the repair surgery. Plaintiff abandoned his allegations of negligence related to the informed consent before trial in the

face of his admission that he had received a booklet from the surgeon that explained the surgery and the risks. At trial, plaintiff contended that the surgeon intentionally used the harmonic scalpel to cut tissue and while he did not intend to cut the ureter, he did. This, according to plaintiff, constituted battery because he had not consented to having the surgeon cut his ureter. The defense called the defendant surgeon, a colorectal surgeon, and a urologist specializing in urology reconstruction, who all testified that ureter injury is a known risk of sigmoid removal, the surgery to which plaintiff consented. The expert testimony was bolstered by peer review articles in urology and surgical publications. At the end of plaintiff's case, the court struck the \$260,000 claim for the initial 30-day hospitalization. However, the court allowed plaintiff, over defendant's objection, to discuss the prolonged hospitalization in cross examination of the defense witnesses and in closing argument. The jury was permitted to consider the bills for the urologist and the subsequent surgery to repair the ureter. A defense verdict was returned.

**\$3 Million**

**Confidential**

**Lowest Demand:** \$3 million

**Highest Offer:** None

**Type of Case:** Medical Malpractice

**Case Name:** Confidential

**Court:** Circuit Court of Richmond

**Attorneys:** John M. Fitzpatrick and Ronald P. Herbert, Richmond

**SUMMARY:** The patient was a 37-year-old male with a history of congenital aortic stenosis. Of four possible valve replacement surgeries, he chose to have a mechanical valve inserted because of its known longevity and lower risk of reoperation. The patient had the valve implanted, did well initially coming off the bypass pump and then deteriorated resulting in a second surgery the next day. After a second surgery, though, the patient died 14 days later.

At trial, the plaintiff, using one expert's testimony, argued that the size of the valve that had been inserted was too small and that the cardioplegia used during the operation was insufficient to properly protect the heart from injury. The plaintiff argued that the defendant's inter-

val doses of cardioplegia exceeded the 20-minute notifications routinely given to him by the perfusionists.

The defense countered that the 20-minute notification was simply a guideline and that the intervals were reasonable given the nature and technical demands of the procedure. In deposition and at trial, the defendant's expert had conceded that while the valve may have been smaller than he felt appropriate, it was not in violation of the standard of care. The defense expert, Dr. Wechsler, testified that the use of the cardioplegia in this surgery was completely appropriate. The jury deliberated for about 30 minutes before returning a unanimous defense verdict.



# The Largest Verdicts of 2004

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\$1.4 Million

**Confidential**

**Lowest Demand:** \$1.4 million

**Highest Offer:** None

**Type of Case:** Medical Malpractice

**Case Name:** Confidential

**Court:** Circuit Court of Prince William County

**Attorneys:** John M. Fitzpatrick and Ronald P. Herbert, Richmond

**SUMMARY:** Plaintiff was a 15-year-old male treated by his family physician for multiple conditions since the age of about 6. Plaintiff received regular treatment for asthma and had an intermittent treatment history for migraines. Plaintiff's migraines were evaluated by the performance of a negative MRI in January, 1999, and a trial of Calan was prescribed. The patient was not seen again until approximately October of that year for symptoms related to his asthma. Thereafter, the patient was seen for a total of approximately 15 visits for asthma and other complaints until July

2002, when the patient presented to the office in renal failure and was admitted to the hospital. The primary issue in the case came down to a factual dispute between the treating physicians and the family as to what instructions were given concerning the use of Ibuprofen for the treatment of migraines. The parents claimed that they had told the physician on multiple occasions about the continued daily headaches and migraines. They claimed that the physician discounted the headaches and advised them to continue with and in fact increase the dosage of Ibuprofen. The physician testified that that he was never aware of daily headaches, he was not aware of a continued ongoing problem and he did not prescribe the continued daily use of Ibuprofen. The mother conceded that she also medicated the child with Excedrin on occasion and that she was never told to use Excedrin by this physician. When the child was admitted emergently to Fairfax Hospital in July 2002, multiple histories were obtained indicating that the child had taken large amounts of Ibuprofen for years on a daily basis.

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\$1.2 Million

**Davis v. Beaver**

**Lowest Demand:** \$1.2 million

**Highest Offer:** none

**Type of Case:** Medical Malpractice

**Case Name:** Davis v. Beaver

**Court:** Danville Circuit Court

**Attorneys:** John M. Fitzpatrick and Tracy L. Taylor, Richmond

**SUMMARY:** Elizabeth Davis was a 37-year-old wife and mother of two when she presented to Danville Regional Medical Center for the delivery of her third child on Sept. 24, 2000. She delivered a 9 lb., 3 oz. baby boy just three minutes after arriving in L&D. Robin Dillard, R.N., C.N.M., delivered the baby in the absence of the decedent's treating physician, Dr. Louis Eliacin. Mrs. Davis' postpartum course was complicated by uterine atony causing intermittent bleeding. She later developed a fatal heart arrhythmia and died of an MI. Plaintiff called

two experts during his case in chief: Dr. John Albert, an obstetrician from Charlotte, and Dr. Craig Kessler, a hematologist from Georgetown. These experts opined that Dr. Beaver breached the standard of care by failing to follow up on his earlier lab results in a timely fashion, by failing to consult with a hematologist earlier in Mrs. Davis' hospital stay, and by failing to transfuse sufficient amounts of clotting factors before Mrs. Davis was taken back to the operating room for the hysterectomy in the early morning hours of Sept. 25. The defense experts countered that none of these measures would have stopped the bleeding, which had to be the primary focus in treating Mrs. Davis. They also pointed out that Mrs. Davis' blood volume was replaced 6-8 times during her admission to DRMC. They argued that one or two more units of clotting proteins would not have saved Mrs. Davis. After eating lunch, the jury deliberated for approximately 20 minutes before rendering a defense verdict.