

Confusing lane markings alleged to have caused wreck - Defense Verdict

By: Virginia Lawyers Weekly September 24, 2007

Wrongful death actions were filed on behalf of the driver and two passengers, who alleged that the driver drove across a double yellow line into oncoming traffic due to confusing lane markings and barriers placed by APAC-Virginia Inc. (APAC), a contractor for the Virginia Department of Transportation (VDOT). Prior to a summary judgment hearing, actions filed against VDOT and a subcontractor, CH2M Hill, were nonsuited.

Each action was brought in the name of the decedent, by his administrator, and was not brought "in the name of the personal representative" as required by Va. Code Sect. 8.01-50(B). Each action incorrectly named APAC as the defendant, even though that party no longer existed due to a merger that occurred four months prior to the accident.

The proper defendant did not receive notice of any of the causes of action until after the statute of limitations expired.

Defendants moved for dismissal and summary judgment because: (1) suit was not brought by the personal representative as required by statute; and (2) the misnomer statutes (Va. Code Sect. 8.01-6 and Sect. 8.01-6.2) did not apply because the proper defendant did not learn of the causes of action until after the statute of limitations expired.

The plaintiffs contended that under *Jarrell v. Chippenham*, 64 Va. Cir. 401 (2004) and *Cole's Committee v. Cole's Admin.*, 69 Va. 365 (1877), the administrator could be substituted as a party, and that under *Jacobson v. So. Biscuit Co.*, 198 Va. 813, 92 S.E.2d 1 (1957), the proper defendant could be added even after the expiration of the statute of limitations.

Judge T.J. Markow found that a wrongful death action may not be brought in the name of the decedent, because the statute requires that the case be brought only by the personal representative. In their memorandum the defendants relied upon the holdings in *Herndon v. St. Mary's Hospital*, 266 Va. 472, 587 S.E.2d 567 (2003) and *Swann v. Marks*, 251 Va. 181, 476 S.E.2d 170 (1996). The Court denied the Motion to Substitute the Correct Defendant under the misnomer statute because the correct defendant did not have notice of any of the causes of action until after the statute of limitations expired, and *Jacobson* had been modified by Va. Code Sect. 8.01-6.2.

Type of Action: Wrongful death

Injuries Alleged: Funeral expenses, loss of solace and future income (Navarijo – \$934,000; Torres – \$311,000)

Name of Case: Torres v. APAC-Virginia Inc.; Hinojosa v. APAC-Virginia Inc.; and Navarijo v. APAC-Virginia Inc.

Court: Richmond Circuit Court

Case No.: LT2139, LT 2137, and LT2138

Name of Judge: Theodore J. Markow

Verdict/Settlement: Verdict

Amount: Summary judgment for defendant

Verdict Date: Aug. 15, 2007

Demand: \$8,000,000 (ad damnum)

Experts: Gary C. Price, P.E., Tallahassee, Fla. (Defendant); Samuel C. Tignor, P.E., McLean (Plaintiff)

Insurer: Self insured

Defense Attorneys: Benjamin J. Trichilo, Dana L. Tubb and Michael C. Montavan, Fairfax

[07-T-156]

