University of Richmond Law Review

Volume 33 | Issue 3 Article 5

1999

# Annual Survey of Virginia Law: Civil Practice and Procedure

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# CIVIL PRACTICE AND PROCEDURE

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## I. INTRODUCTION

This article focuses on some of the recent developments in civil litigation from June 1, 1998 to May 30, 1999, that have been effected by the Virginia General Assembly and the Supreme Court of Virginia. Each numbered discussion section is organized by topic in alphabetical order. This article highlights legislation of general interest to civil practitioners and does not purport to be all inclusive. This article does not address criminal procedure.

## II. RECENT LEGISLATION AFFECTING CIVIL PROCEDURE

The General Assembly enacted many measures during the 1999 session that affect civil litigation in state courts. These provisions became effective on July 1, 1999, unless otherwise noted.

### A. *Courts Not of Record*

#### 1. Judges

##### a. New Judgeships

The General Assembly increased the number of general district court judges in Newport News from three to four and increased the number of juvenile and domestic relations district court judges by one in the Second, Fifteenth, Sixteenth, Twenty-fourth, Twenty-fifth, and Twenty-sixth Districts.[1]

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1. *See* H.B. 1637, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Feb. 26, 1999, ch. 11, 1999 Va. Acts 19) (codified as amended at VA. CODE ANN. § 16.1-69.6:1 (Repl. Vol. 1999)).

b. Notice of Vacancies

The Supreme Court, Judicial Council, and the Committee on District Courts must publish notice of judicial vacancies and new judgeships in a publication of general circulation among attorneys licensed to practice in Virginia.[2]

c. Increased Per Diem Pay

The General Assembly increased the per diem pay from $150 to $200 for substitute and retired judges.[3]

2. Hearings Involving Juveniles

The General Assembly passed legislation that tolls time limitations for certain hearings involving juveniles during any period in which the whereabouts of the child is unknown, the child has escaped from custody, or the child has failed to appear pursuant to a court order.[4]

3. Juvenile Competency

The General Assembly established juvenile court procedures for determining whether a juvenile is competent to stand trial, for restoration of competency, and for dispositions for unrestorably incompetent juveniles.[5] These bills, which are quite detailed, are modeled after the adult competency provisions and are a recommendation of the Commission on Youth.

4. Juvenile and Domestic Relations Intake Officer

Juvenile and domestic relations district court intake officers are now required to accept and file a petition when family abuse is

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2. *See* H.B. 2297, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 22, 1999, ch. 319, 1999 Va. Acts 362-63) (codified as amended at VA. CODE ANN. § 16.1-69.9:3 (Repl. Vol. 1999)).

3. *See* H.B. 2076, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 28, 1999, ch. 730, 1999 Va. Acts 1250) (codified as amended at VA. CODE ANN. § 16.1-69.44 (Repl. Vol. 1999)).

4. *See* H.B. 2604, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 5, 1999, ch. 58, 1999 Va. Acts 56) (codified as amended at VA. CODE ANN. § 16.1-277.1 (Repl. Vol. 1999)).

5. *See* S.B. 1039, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Apr. 7, 1999, ch. 958, 1999 Va. Acts 2498) (codified at VA. CODE ANN. §§ 16.1-356 to -361 (Repl. Vol. 1999)); H.B. 2043, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Apr. 7, 1999, ch. 997, 1999 Va. Acts 2642) (codified at VA. CODE ANN. § 16.1-356 (Repl. Vol. 1999)).

alleged and a protective order is sought.[6] House Bill 2033 provides the definition of "family abuse."[7]

5. Removal of Action

House Bill 1583 provides for the removal from general district court to circuit court of actions involving more than $3000 if the defendant states a substantial defense to the action exclusive of the sole issue of the amount or computation of damages.[8] The former law allowed removal for any substantial defense, including a defense regarding the amount or computation of damages.[9]

6. Satisfaction of Judgments

A judgment creditor is now required to give written notification of payment or satisfaction of a judgment to the clerk of court where the judgment is entered.[10]

B. *Courts of Record*

1. Judges

The General Assembly increased the number of circuit court judges for the Fifteenth Judicial Circuit from six to seven.[11] That circuit consists of the City of Fredericksburg and the Counties of Caroline, Essex, Hanover, King George, Lancaster, Northumberland, Richmond, Spotsylvania, Stafford, and Westmoreland.

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6. *See* H.B. 2034, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 5, 1999, ch. 54, 1999 Va. Acts 52) (codified as amended at VA. CODE ANN. § 16.1-260 (Repl. Vol. 1999)).

7. *See* H.B. 2033, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 28, 1999, ch. 665, 1999 Va. Acts 1069) (codified as amended at VA. CODE ANN. § 16.1-228 (Repl. Vol. 1999)).

8. *See* H.B. 1583, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 28, 1999, ch. 717, 1999 Va. Acts 1198) (codified as amended at VA. CODE ANN. § 16.1-92 (Repl. Vol. 1999)).

9. *See* VA. CODE ANN. § 16.1-92 (Cum. Supp. 1998)).

10. *See* H.B. 1865, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 24, 1999, ch. 370, 1999 Va. Acts 422) (codified as amended at VA. CODE ANN. § 16.1-94.01 (Repl. Vol. 1999)).

11. *See* H.B. 1624, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Feb. 26, 1999, ch. 10, 1999 Va. Acts 18) (codified as amended at VA. CODE ANN. § 17.1-507 (Repl. Vol. 1999)).

2. Juries

a. Exemption from Service

Persons eligible to claim an exemption from jury service may serve if they wish, but are exempt from such service upon their request.[12] The former statute provided that such person may claim the exemption, but did not make clear that such person may serve if they wish.

b. Juror Selection

The maximum number of jury commissioners for each judicial circuit was increased from nine to fifteen.[13]

c. Selection

A statutory provision allowing a party to move for selection of jurors by lot was eliminated. Instead, jurors will be selected randomly.[14]

C. *Docket Control by Courts*

A court can now dismiss an action without notice to the parties if the case has been on the docket for three years with no orders or proceedings other than continuances.[15] The clerk of court must provide notice to the parties after dismissal, and the parties have one year to move to reinstate the case for cause.[16]

D. *Immunity*

The General Assembly provided immunity from liability for any damages resulting from an act or omission related to the installation

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12. *See* S.B. 967, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 17, 1999, ch. 153, 1999 Va. Acts 183) (codified as amended at VA. CODE ANN. § 8.01-341.1 (Cum. Supp. 1999)).

13. *See* H.B. 2753, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 17, 1999, ch. 221, 1999 Va. Acts 245) (codified as amended at VA. CODE ANN. § 8.01-343 (Cum. Supp. 1999)).

14. *See* S.B. 187, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Feb. 4, 1999, ch. 3, 1999 Va. Acts 3) (codified as amended at VA. CODE ANN. § 8.01-357 (Cum. Supp. 1999)).

15. *See* H.B. 1565, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 28, 1999, ch. 652, 1999 Va. Acts 1044) (codified as amended at VA. CODE ANN. § 8.01-335 (Cum. Supp. 1999)).

16. *See id.*

or inspection of child restraint devices (absent gross negligence or willful misconduct), provided that the person has successfully met the minimum training standards established by the U.S. Department of Transportation for the installation of child restraint devices.[17]

E. *Local Court Rules*

The General Assembly passed a bill that will have a major impact on local rules of practice and procedure. House Bill 2522, which becomes effective July 1, 2000, limits the rules that general district and circuit courts may prescribe to those rules necessary to promote proper order and decorum and the efficient use of the clerk's office and courthouse facilities.[18] The bill invalidates any other rule and states that it is the clear intent of the General Assembly that there be no local rules and that any docket control procedures not affect the substantive rights of litigants.[19] The Courts of Justice Committees and the supreme court were asked to review and recommend to the 2000 Session of the General Assembly which matters are docket control procedures and which are local rules.[20]

F. *Liens—Serving Notice on Financial Institutions*

A financial institution is required to respond within twenty-one days to a notice of lien from a judgment creditor or his attorney.[21] The financial institution must indicate the amount of money held by the institution pursuant to the notice of lien.[22]

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17. *See* S.B. 1329, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 22, 1999, ch. 293, 1999 Va. Acts 399) (codified as amended at VA. CODE ANN. § 8.01-226.5 (Cum. Supp. 1999)).

18. *See* H.B. 2522, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 29, 1999, ch. 839, 1999 Va. Acts 1528) (codified as amended at VA. CODE ANN. § 8.01-4 (Cum. Supp. 1999)).

19. *See id.*

20. *See id.*

21. *See* H.B. 1527, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 5, 1999, ch. 48, 1999 Va. Acts 48) (codified as amended at VA. CODE ANN. § 8.01-502.1 (Cum. Supp. 1999)).

22. *See id.*

G. *Medical Malpractice Limit*

The amount recoverable in a medical malpractice case has been raised from $1 million to $1.5 million, exclusive of interest.[23] The amendment further provides that the $1.5 million limit will increase by $50,000 annually through July 1, 2006, and by $75,000 in 2007 and 2008.[24] The 2008 increase will be the final increase.[25] Each increase will apply to acts of malpractice occurring on or after the effective date of the increase.[26] The provisions of this chapter became effective on August 1, 1999.[27]

H. *Personal Jurisdiction*

The General Assembly established the courts' personal jurisdiction over any person who transmits or causes the transmission of unsolicited bulk electronic mail to or through an electronic mail service provider's computer network located in Virginia.[28]

I. *Pleadings*

1. Amendment of Pleadings When There Is Confusion in Trade Name/Relation Back

The statute of limitations will now be tolled when a party incorrectly asserts a claim against the wrong party because the trade name of the incorrectly named party is substantially similar to the trade name of the intended party.[29] However, the intended party or its agent must have notice of the claim, and the incorrect

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23. *See* S.B. 1230, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 28, 1999, ch. 711, 1999 Va. Acts 1190) (codified as amended at VA. CODE ANN. § 8.01-581.15 (Cum. Supp. 1999)).

24. *See id.*

25. *See id.*

26. *See id.*

27. *See id.*

28. *See* H.B. 1714, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 29, 1999, ch. 905, 1999 Va. Acts 1745) (codified at VA. CODE ANN. §§ 8.01-328.1, 18.2-152.2, -152.4, -152.12 (Cum. Supp. 1999)); H.B. 1668, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 29, 1999, ch. 904, 1999 Va. Acts 1742) (codified at VA. CODE ANN. §§ 8.01-328.1, 18.2-152.2, -152.4, -152.12 (Cum. Supp. 1999)); S.B. 881, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 29, 1999, ch. 886, 1999 Va. Acts 1693) (codified at VA. CODE ANN. §§ 8.01-328.1, 18.2-152.2, -152.4, -152.12 (Cum. Supp. 1999)).

29. *See* H.B. 2582, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 28, 1999, ch. 686, 1999 Va. Acts 1123) (codified as amended at VA. CODE ANN. § 8.01-6.2 (Cum. Supp. 1999)).

claim must have been asserted before the applicable statute of limitations has run.[30]

This bill also tolls the statute of limitations when a pleading against the estate of a decedent is served or attempted on an executor who, at the time of service, had no authority to accept such service.[31]

2. Extensions for Filing

House Bill 2359 would permit the supreme court and the court of appeals to grant a thirty-day extension for filing documents upon motion, for good cause, and to attain the ends of justice.[32] Currently, filing deadlines are mandatory, and there is no provision for an extension even when there is an extreme emergency. This bill is not meant to change the mandatory nature of deadlines, but it does provide these two courts with the discretion to allow an extension in limited circumstances. This bill will not become effective unless it is reenacted by the General Assembly in 2000.[33]

J. *Release of Liability / Right of Recision by Plaintiff*

An unrepresented personal injury plaintiff who executes a release of liability within thirty days of the incident giving rise to the claim may rescind the settlement until midnight of the third business day after the day the release was executed.[34] The recision must be in writing and all settlement proceeds returned.[35]

K. *Service by Publication*

A party shall recover the costs of publication when that party receives final judgment.[36] However, the cost of such publication shall be paid initially by the party seeking service.[37]

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30. *See id.*

31. *See id.*

32. *See* H.B. 2359, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 29, 1999, ch. 872, 1999 Va. Acts 1643) (to be codified at VA. CODE ANN. § 8.01-689 if reenacted by the 2000 General Assembly).

33. *See id.*

34. *See* H.B. 2560, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 22, 1999, ch. 326, 1999 Va. Acts 370) (codified at VA. CODE ANN. § 8.01-425.1 (Cum. Supp. 1999)).

35. *See id.*

36. *See* S.B. 941, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 24, 1999, ch. 353, 1999 Va. Acts 400) (codified as amended at VA. CODE ANN. § 8.01-316 (Cum. Supp. 1999)).

37. *See id.*

## L. *Venue*

### 1. Where Plaintiff Resides

House Bill 1899 clarifies that venue lies in any city or county wherein any of the plaintiffs reside if all of the defendants (1) are unknown or (2) are nonresidents of the Commonwealth.[38] Courts had previously interpreted the statute to mean that such venue is allowed only if no other permissible venue is available.[39]

### 2. Actions Under Contracts Related to Construction

Virginia Code section 8.01-262.1 was amended to make unenforceable any provision in a construction contract mandating that any action on the contract be brought in a location outside of the Commonwealth.[40]

## M. *Writ of Possession*

Writs of Possession shall be issued within one year of the entry of judgment for possession in unlawful entry and detainer actions, unless a landlord has accepted rent payments without reservation.[41]

## N. *Y2K Issues*

The General Assembly passed several measures addressing Y2K issues that are relevant to civil litigators.

### 1. Discoverability of Documents

House Bill 1663 provides that Y2K documents and assessments shall not be discoverable or admissible in evidence unless ordered by the court for good cause shown after an *in camera* review.[42]

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38. H.B. 1899, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 10, 1999, ch. 73, 1999 Va. Acts 75) (codified as amended at VA. CODE ANN. § 8.01-262 (Cum. Supp. 1999)).

39. *See id.*

40. *See* H.B. 2431, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 10, 1999, ch. 130, 1999 Va. Acts 159) (codified as amended at VA. CODE ANN. § 8.01-262.1 (Cum. Supp. 1999)).

41. *See* H.B. 2552, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 28, 1999, ch. 683, 1999 Va. Acts 1116) (codified as amended at VA. CODE ANN. § 8.01-471 (Cum. Supp. 1999)).

42. *See* H.B. 1663, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Feb. 27, 1999, ch. 17, 1999 Va. Acts 25) (codified as amended at VA. CODE ANN. § 8.01-418.3 (Cum. Supp. 1999)).

2. Immunity for Disclosure of Information

The General Assembly provided immunity to any person who causes injury by disclosing information about the Y2K problem; however, the disclosure must be made in good faith.[43] Immunity does not attach for disclosures that are for profit, material and false, inaccurate, or misleading.[44] The bill does not affect any other available remedies.[45] The bill contained an emergency clause and became effective immediately.[46]

3. Immunity for Government Officials and Employees

Officers or employees of the Commonwealth or its political subdivisions, agencies, and instrumentalities shall not be held liable for any claim based on failure of a computer program, database, etc., relating to the Y2K date change.[47] Immunity conferred by this legislation does not cover gross negligence or willful misconduct.[48]

4. Limiting Y2K Liability

The General Assembly passed the following provisions regarding liability and damages based on a Y2K problem:

> [a.] No person shall be liable to any person who is (i) not in privity of contract with such person, (ii) not a person to whom an express warranty has been extended by such person, or (iii) in the case of a trust, not the beneficiary of a trust administered by such person.
>
> [b.] No person shall be liable for damages caused by a delay or interruption in performance, or in the delivery of goods or services, resulting from or in connection with a Year 2000 problem to the extent such Year 2000 problem was caused by (i) a third party or (ii) a third party's Year 2000 problem.
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> [c.] No employee, officer, or director shall be liable in his capacity as such to any person.

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43. *See* H.B. 1671, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Mar. 29, 1999, ch. 859, 1999 Va. Acts 1600).

44. *See id.*

45. *See id.*

46. *See id.*

47. *See* H.B. 2158, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Apr. 7, 1999, ch. 1002, 1999 Va. Acts 2653) (codified as amended at VA. CODE ANN. § 8.01-226.6 (Cum. Supp. 1999)).

48. *See id.*

> [d.] No person shall be liable for consequential or punitive damages.
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> [e.] Total damages shall not exceed actual direct damages.
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> [f.] This [bill] shall not affect the right of recovery for damages in connection with wrongful death, personal injury, or property damage.[49]

## III. RECENT DECISIONS OF THE SUPREME COURT OF VIRGINIA

### A. *Additur*

In *Walker v. Mason*,[50] the Supreme Court of Virginia held that the trial court in each of three cases improperly set aside damage verdicts for inadequacy and erred in applying the additur statute to increase the awards.[51] The supreme court held that each of the trial courts misapplied the rule annunciated in *Bowers v. Sprouse*[52] that "a jury award in a personal injury action which compensates a plaintiff for the exact amount of the plaintiff's medical expenses and other special damages is inadequate as a matter of law, irrespective of whether those damages were controverted."[53] The court noted that when the jury verdict is not in the exact amount of all the special damages claimed, like the situation in *Walker*, the trial court must review the evidence under traditional principles relating to the adequacy of jury verdicts.[54]

The *Walker* court limited the *Bowers* rule to those factual situations in which the jury verdict is identical to the full amount of the special damages.[55] The rationale underlying the rule does not extend to an award which deviates from the amount of all the special damages claimed, even if the amount of the verdict corresponds to an identifiable portion of the special damages.[56]

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49. S.B. 983, Va. Gen. Assembly (Reg. Sess. 1999) (enacted as Act of Apr. 7, 1999, ch. 954, 1999 Va. Acts 2491) (codified at VA. CODE ANN. § 8.01-227.1 to -227.3).
50. 257 Va. 65, 510 S.E.2d 734 (1999).
51. *See id.* at 72, 510 S.E.2d at 737.
52. 254 Va. 428, 492 S.E.2d 637 (1997).
53. *Id.* at 431, 492 S.E.2d at 639.
54. *See Walker*, 257 Va. at 72, 510 S.E.2d at 737.
55. *See id.* at 68, 510 S.E.2d at 735.
56. *See id.*

B. *Attorneys' Fees*

In *Lansdowne Development Co. v. Xerox Realty*,[57] the Supreme Court of Virginia affirmed a decree awarding $908,007.73 for attorneys' fees and $234,100.32 for other litigation expenses.[58] The award of fees was made under a provision of a contract permitting the prevailing party to recover "all litigation expenses, including actual attorneys' fees, which shall not be unreasonable, and court costs."[59]

The court did note that the contractual term "'all litigation expenses' cannot be so broadly construed as to include any charges made by an attorney to a client in the course of litigation."[60] Charges made in this case included conference room expenses in amounts ranging from $1.50 to $11.00.[61] Other charges were made for meals and items delineated as "Miscellaneous" and "Cash Expense."[62] The court commented that "some of these charges are not direct costs of litigation and arguably should have been excluded in the award of costs recommended by the commissioner and approved by the chancellor."[63] However, the purchaser failed to make a particularized objection to any of these charges during the commissioner's hearing or in its exceptions to the commissioner's report.[64] The court held that a generalized exception was insufficient to direct the chancellor or the appellate court to which of the myriad of individual charges the purchaser objects.[65] Therefore, the purchaser failed to adequately preserve this issue for appeal, and under Rule 5:25 of the Rules of the Supreme Court of Virginia these objections were denied appellate review.[66] The court further noted that it is not the duty of the chancellor, or of the court on appeal, to conduct *sua sponte* a review of the record of the commissioner's hearing to determine the legitimacy of every individual item.[67]

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57. 257 Va. 392, 514 S.E.2d 157 (1999).
58. *See id.* at 400, 514 S.E.2d at 160-61.
59. *Id.* at 403, 514 S.E.2d at 162.
60. *Id.* at 403, 514 S.E.2d at 163.
61. *See id.*
62. *See id.*
63. *Id.*
64. *See id.*
65. *See id.* at 403-04, 514 S.E.2d at 163.
66. *See id.* at 404, 514 S.E.2d at 163.
67. *See id.*

### C. *Charitable Immunity*

In *Mooring v. Virginia Wesleyan College*,[68] the Supreme Court of Virginia held that the defendant was not entitled to charitable immunity because he was not engaged in the charity's work at the time of the alleged negligence.[69]

The plaintiff in *Mooring* lost a thumb when the defendant closed a door on his hand at the Boys & Girls Club of Hampton Roads.[70] The defendant, Braley, was a professor at Virginia Wesleyan College and established a program with the club in which students in his recreation and leisure studies program were required to spend six hours observing children and volunteering at the club.[71] Braley was at the club to observe one of his students who was conducting a wellness and body conditioning program for teenagers.[72] At the time of the accident, Braley was not at the club to perform any of its work, but instead was carrying out his duties as a professor at Virginia Wesleyan College.[73] As a result, Braley was not entitled to rely on the doctrine of charitable immunity.[74] Therefore, the supreme court reversed the trial court's dismissal of the plaintiff's motion for judgment.[75]

### D. *Constitutionality of Statutory Cap on Damages in Medical Malpractice Cases*

In *Pulliam v. Coastal Emergency Services of Richmond*,[76] the Supreme Court of Virginia upheld the constitutionality of the medical malpractice cap,[77] and reaffirmed its prior holding in *Etheridge v. Medical Center Hospitals*.[78] The plaintiff argued that the medical malpractice cap was unconstitutional on seven independent grounds including that the cap (1) violates the right to trial by jury;[79] (2) constitutes special legislation in violation of article IV,

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68. 257 Va. 509, 514 S.E.2d 619 (1999).
69. *See id.* at 512, 514 S.E.2d at 621.
70. *See id.* at 510, 514 S.E.2d at 620.
71. *See id.* at 511, 514 S.E.2d at 620.
72. *See id.*
73. *See id.* at 512, 514 S.E.2d at 621.
74. *See id.*
75. *See id.*
76. 257 Va. 1, 509 S.E.2d 307 (1999).
77. *See id.* at 7, 509 S.E.2d at 310.
78. 237 Va. 87, 376 S.E.2d 525 (1989); *see Pulliam*, 257 Va. at 6, 509 S.E.2d at 321.
79. *See Pulliam*, 257 Va. at 10-15, 509 S.E.2d at 312-15.

section 14 of the Constitution of Virginia;[80] (3) constitutes a taking of private property in violation of the Fifth Amendment to the U.S. Constitution and article I, section 11 of the Constitution of Virginia;[81] (4) violates due process;[82] (5) violates equal protection;[83] (6) violates separation of powers;[84] and (7) invades the province of the judiciary.[85] The supreme court rejected each of the arguments.[86] The court also ruled that the award of prejudgment interest was subject to the statutory cap on damages.[87]

As discussed above, the 1999 General Assembly raised the cap on medical malpractice damages.[88]

### E. *Cross Examination of a Witness*

In *Food Lion, Inc. v. Cox*,[89] the Supreme Court of Virginia held that cross examination of a witness is not a privilege but an absolute right.[90] Therefore, the trial court's ruling that deprived a civil party of the right to cross-examine witnesses called by another party as adverse witnesses was error.[91]

The plaintiff, Cox, filed a motion for judgment alleging she was injured by Food Lion's failure to maintain its store in a reasonably safe condition.[92] Cox called four store employees as adverse witnesses.[93] Defense counsel prepared to cross-examine the first witness, but the trial court ruled *sua sponte* that the defendant was not entitled to examine its own employees until it called them as witnesses for the defense.[94] The defendant objected to that ruling and addressed the same objection to the other three employees.[95] The jury rendered a verdict for the plaintiff in the amount of $25,000.[96] On appeal, the supreme court held that the trial court's

80. *See id.* at 15-19, 509 S.E.2d at 315-17.
81. *See id.* at 19-20, 509 S.E.2d at 317-18.
82. *See id.* at 20, 509 S.E.2d at 318.
83. *See id.* at 20-21, 509 S.E.2d at 318-319.
84. *See id.* at 21-22, 509 S.E.2d at 319.
85. *See id.*
86. *See id.* at 23, 509 S.E.2d at 319.
87. *See id.* at 24-25, 509 S.E.2d at 320-21.
88. *See supra* Part II.G.
89. 257 Va. 449, 513 S.E.2d 860 (1999).
90. *See id.* at 450-51, 513 S.E.2d at 861.
91. *See id.*
92. *See id.* at 450, 513 S.E.2d at 861.
93. *See id.*
94. *See id.*
95. *See id.*
96. *See id.*

ruling was not "harmless error" and that the cross-examination of witnesses is an absolute right.[97]

F. *Finality*

In *Wagner v. Shird*,[98] the Supreme Court of Virginia held that pursuant to Virginia Supreme Court Rule 1:1, the trial court did not have jurisdiction over the case when it entered an order of remittitur because the court's thirty-day limit for suspending its final order expired without entry of an order to extend the stay.[99]

Wagner filed a motion for judgment for injuries sustained and medical expenses incurred as a result of an automobile accident.[100] On January 6, 1998, the jury returned a plaintiff's verdict in the amount of $106,000.[101] That same day, the circuit court entered a final order.[102] Subsequently, in an order dated January 27, 1998, the court stayed the final order.[103] Specifically, the court stated, "the Order of Final Judgment of January 6, 1998 is stayed or suspended for a period of 30 days for argument and decision upon [Shird's] Motion for Remittitur."[104] The court heard arguments on February 24, 1998, and reduced the jury's verdict to $60,000.[105] A final written order of remittitur and final judgment were not entered until April 21, 1998.[106]

The supreme court noted that the trial court suspended the January 6, 1998 order within the twenty-one-day period allowed in Rule 1:1.[107] However, the stay "was expressly limited to 'a period of 30 days.'"[108] Since the court did not enter an additional order within that thirty-day period to continue the stay, the January 6, 1998 order became final well before April 21, 1998.[109] The pendency of Shird's motion did not extend or toll the running of the thirty-day period.[110] Similarly, an oral ruling from the bench does not extend

97. *See id.*
98. 257 Va. 584, 514 S.E.2d 613 (1999).
99. *See id.* at 585, 514 S.E.2d at 614.
100. *See id.* at 585-86, 514 S.E.2d at 614.
101. *See id.*
102. *See id.*
103. *See id.*
104. *Id.*
105. *See id.*
106. *See id.*
107. *See id.* at 587, 514 S.E.2d at 615.
108. *Id.*
109. *See id.*
110. *See id.*

the length of the stay.[111] A court speaks only through its written orders.[112] Therefore, the trial court did not have jurisdiction to enter the order on April 21, 1998, and that ruling was a nullity.[113]

G. *Negligent Infliction of Emotional Distress*

In *Gray v. INOVA Health Care Services*,[114] the Supreme Court of Virginia held that there is no cause of action for negligent infliction of emotional distress and its symptomatic effects.[115] The motion for judgment alleged that Gray's three-year-old daughter, Kira, was admitted to INOVA to undergo a lumbar puncture test for meningitis, which was negligently administered.[116] The test caused Kira's body to convulse, stopped her breathing, and caused her body to turn blue.[117] Mrs. Gray observed her daughter's reaction and claimed she experienced extreme fright and shock, temporarily blacked out, fell to the floor, and became physically sick and vomited.[118] Mrs. Gray claimed she continued to suffer from mental anguish and emotional trauma.[119]

The supreme court noted that it has consistently held that there can be no actionable negligence unless there is a legal duty, a violation of that duty, and a consequent injury.[120] In this case, the court held that INOVA owed Mrs. Gray no duty.[121] Kira was the patient undergoing the test, and it was Kira to whom INOVA owed a duty of care.[122] The court affirmed the trial court's judgment sustaining the demurrer.[123]

H. *Nonsuit*

In *Kelly v. Carrico*,[124] the Supreme Court of Virginia held that because a nonsuit motion was made prior to submission of the case to the trial judge for consideration of dispositive motions, the grant

111. *See id.*
112. *See id.*
113. *See id.*
114. 257 Va. 597, 514 S.E.2d 355 (1999).
115. *See id.* at 598, 514 S.E.2d at 355-56.
116. *See id.*
117. *See id.* at 598, 514 S.E.2d at 356.
118. *See id.*
119. *See id.*
120. *See id.*
121. *See id.*
122. *See id.*
123. *See id.* at 600, 514 S.E.2d at 356-57.
124. 256 Va. 282, 504 S.E.2d 368 (1998).

of a second nonsuit was proper, and the judgment of the trial court was affirmed.[125]

On the morning of trial, after the jury had been impaneled, Kelly asked the trial court to enter judgment in his favor on the pleadings.[126] Kelly pled a new matter in his grounds of defense, which, if true, would show that Carrico was guilty of contributory negligence, thus barring Carrico from any type of recovery.[127] Because Carrico had failed to file a pleading in response to this new matter, Kelly moved for judgment on the pleadings.[128] While hearing arguments on the motion, the court indicated that it wanted to review a certain case before deciding Kelly's motion.[129] During a colloquy with the court, Carrico's counsel asked for a second nonsuit.[130] The court then took a recess.[131] At the conclusion of the recess, Carrico's counsel asked for permission to amend the pleadings to respond to the new matter pled in Kelly's grounds of defense.[132] The court did not rule on this request. Instead, it granted the motion for a nonsuit.[133]

The supreme court held that Carrico made the nonsuit motion before the trial court recessed to consider the merits of Kelly's dispositive motion; therefore, granting the nonsuit was appropriate.[134] The court distinguished *Wells v. Lorcom House Condominiums' Council of Co-Owners*[135] because in that case the parties submitted to the court for a ruling the defendant's demurrer, plea in bar, and motion to dismiss.[136] All briefing and oral arguments were concluded, and "[a]ny one of those pleadings [was] dispositive if the court ruled in favor of the defendants."[137] No party contemplated any further action save a decision from the court.[138] Only months later, while still waiting for a decision from the trial court, did the plaintiff move for a nonsuit.[139] The *Wells* court found that the action

125. *See id.* at 286-87, 504 S.E.2d at 370-71.
126. *See id.* at 284, 504 S.E.2d at 369.
127. *See id.*
128. *See id.*
129. *See id.*
130. *See id.*
131. *See id.* at 285, 504 S.E.2d at 369.
132. *See id.*
133. *See id.*
134. *See id.*
135. 237 Va. 247, 377 S.E.2d 381 (1989).
136. *See Kelly*, 256 Va. at 285, 504 S.E.2d at 370.
137. *Id.* (quoting *Wells*, 237 Va. at 252, 377 S.E.2d at 384).
138. *See id.* at 286, 504 S.E.2d at 370.
139. *See id.*

had been submitted to the court for decision and that it would be improper to grant the nonsuit.[140]

In *Kelly*, the court found there was no submission because the nonsuit motion was made before the court recessed to consider the merits of Kelly's motion, and Carrico did not yield the dispositive issues to the court for consideration and decision.[141] Therefore, granting the second nonsuit was proper.[142]

I. *Personal Jurisdiction*

In *Peninsula Cruise, Inc. v. New River Yacht Sales, Inc.*,[143] the Supreme Court of Virginia held that the trial court erred in refusing to exercise personal jurisdiction pursuant to Virginia Code section 8.01-328.1 (the long-arm statute) over a Florida corporation that delivered a boat to Virginia and had other contacts with Virginia.[144]

The plaintiff corporation contacted the defendant about the purchase of a sportfishing boat.[145] After a trip to Florida and negotiations about certain terms, the parties agreed that the delivery point of the boat would be South Carolina.[146] However, on the way to South Carolina the boat developed an oil leak and sustained damage to the propeller.[147] The defendant then agreed, for additional consideration, to deliver the boat to Virginia.[148] After delivery, the defendant told the plaintiff to have the needed repair work performed and that the defendant would consider reimbursement to the plaintiff.[149] Plaintiff brought this action to recover, among other things, the cost of the repairs made to the boat.[150]

The defendant filed a special plea asserting that the trial court lacked jurisdiction over it.[151] The circuit court agreed, holding that it lacked sufficient basis upon which to exercise personal jurisdiction over the defendant, and dismissed the action.[152]

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140. *See Wells*, 237 Va. at 252, 377 S.E.2d at 384.
141. *See Kelly*, 256 Va. at 286, 504 S.E.2d at 370.
142. *See id.* at 287, 504 S.E.2d at 371.
143. 257 Va. 315, 512 S.E.2d 560 (1999).
144. *See id.* at 320-21, 512 S.E.2d at 563.
145. *See id.* at 318, 512 S.E.2d at 561.
146. *See id.*
147. *See id.*
148. *See id.*
149. *See id.*
150. *See id.* at 317, 512 S.E.2d at 561.
151. *See id.*
152. *See id.* at 318, 512 S.E.2d at 561.

The supreme court reversed, holding that Virginia Code section 8.01-328.1 authorized the circuit court to exercise jurisdiction over the defendant because the defendant transacted business in Virginia within the meaning of the long-arm statute.[153] The court noted that the defendant delivered the boat to Virginia and that the defendant's employees had telephone conversations with the plaintiff in Virginia to discuss the status of repairs and improvements to the boat.[154] By taking these actions, the defendant purposefully availed itself of the privilege of conducting activities within Virginia.[155] The court stated:

> Maintenance of this action in Virginia "does not offend traditional notions of fair play and substantial justice" because the defendant, through its purposeful acts, had sufficient contacts with this Commonwealth. The defendant's contacts with this Commonwealth make it reasonable for the defendant to be required to defend the plaintiff's action in this State.[156]

### J. *Service of Process*

In *Gilpin v. Joyce*,[157] the Supreme Court of Virginia held that a defendant who makes a general appearance without having been served with process is not entitled to assert the bar against judgment provided by Virginia Supreme Court Rule 3:3.[158]

On June 26, 1996, Gilpin filed a motion for judgment seeking damages from Joyce and Leslie Dailey for injuries resulting from an automobile accident.[159] "Gilpin did not request service of process on either defendant."[160] On October 30, 1997, Joyce, by counsel, filed a motion to dismiss citing part of Rule 3:3 which provides: "No judgment shall be entered against a defendant who was served with process more than one year after the commencement of the action against him unless the court finds as a fact that the plaintiff exercised due diligence to have timely service on him."[161] At the

153. *See id.* at 320-21, 512 S.E.2d at 563.
154. *See id.* at 321, 512 S.E.2d at 563.
155. *See id.*
156. *Id.*
157. 257 Va. 579, 515 S.E.2d 124 (1999).
158. *See id.* at 582, 515 S.E.2d at 126.
159. *See id.* at 580, 515 S.E.2d at 125.
160. *Id.* at 581, 515 S.E.2d at 125.
161. *Id.* (quoting VA. SUP. CT. R. 3:3).

same time, Joyce filed grounds of defense, a counterclaim, a certificate of service of interrogatories, and a motion to produce.[162]

On December 1, 1997, during oral argument on the motion to dismiss, the parties stipulated that Gilpin failed to exercise due diligence in obtaining service of process on Joyce.[163] The court requested briefs on the issue, and on May 29, 1998, entered an order sustaining the motion to dismiss.[164]

The supreme court reversed the trial court and noted that an appearance for any purpose other than questioning the jurisdiction of the court is general and not special, despite a claim that the appearance is only special.[165] By filing a grounds of defense and counterclaim, Joyce made a general appearance.[166] Such a general appearance is a "waiver of process . . . and confers jurisdiction of the person on the court."[167] Virginia Code section 8.01-277, which allows a person upon whom process has been served to take advantage of any defect by filing a motion to quash, failed to provide any relief to Joyce because it "applies only where process has actually been served on the defendant."[168] The court reached the same conclusion when applying Rule 3:3.[169] Under the rule's express terms, it applies only where there has been service of process.[170]

The court rejected Joyce's argument that his general appearance more than one year after the commencement of the action should be equivalent to service of process more than one year after the commencement of an action.[171] It reasoned that service and appearance were distinguishable in their levels of compulsion.[172] Joyce was under no compulsion to make an appearance because he was never served with process.[173] By comparison, a defendant who actually receives service of process, but wants to challenge it, must make an appearance or risk default.[174] Unfortunately for Joyce, he made a general appearance without having been served with process and

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162. *See id.*
163. *See id.*
164. *See id.*
165. *See id.* (citing Norfolk & Ocean View Ry. Co. v. Consolidated Turnpike Co., 111 Va. 131, 136, 68 S.E. 346, 348 (1910)).
166. *See id.*
167. *Id.* (quoting Nixon v. Rowland, 192 Va. 47, 50, 63 S.E.2d 757, 759 (1951)).
168. *Id.* at 582, 515 S.E.2d at 126.
169. *See id.*
170. *See id.*
171. *See id.*
172. *See id.*
173. *See id.*
174. *See id.*

was therefore unable to take advantage of section 8.01-277 or Rule 3:3.

K. *Sovereign Immunity*

In *Wagoner ex rel. Wagoner v. Benson*,[175] the Supreme Court of Virginia held that the School Board and a bus driver were not entitled to sovereign immunity in a suit filed by a minor pedestrian who was injured when she was hit by a car while crossing the street to board a school bus.[176] Sovereign immunity was not available as a defense because the School Board's motor vehicle liability policy covered accidents that arose out of the "loading or unloading of an auto."[177] The court held that Virginia Code section 22.1-194 abrogates a School Board's sovereign immunity to a limited degree, including when the School Board is an insured under a policy covering a vehicle involved in an accident.[178] The School Board is then "'subject to action up to, but not beyond, the limits of valid and collectible insurance in force to cover the injury complained of . . . .'"[179]

The insurance policy at issue did not define "loading," but the court held that "loading" was a function performed by the bus driver and included "turning on flashing warning lights and extending the mechanical stop sign and the metal safety gate, all of which remain engaged until all students are inside or have been 'loaded onto' the school bus."[180]

L. *Spoliation of Evidence*

In *Austin v. Consolidation Coal Co.*,[181] the Supreme Court of Virginia ruled that an employer has no duty to preserve evidence for the benefit of an employee's potential tort action against a third party.[182]

The plaintiff, an employee of Consolidation, was injured when a hose burst during the course of his employment.[183] Consolidation destroyed the hose before the plaintiff's experts had a chance to

175. 256 Va. 260, 505 S.E.2d 188 (1998).
176. *See id.*
177. *Id.* at 263, 505 S.E.2d at 189.
178. *See id.*
179. *Id.* (quoting VA. CODE ANN. § 22.1-194 (Repl. Vol. 1997)).
180. *Id.*
181. 256 Va. 78, 501 S.E.2d 161 (1998).
182. *See id.* at 83-84, 501 S.E.2d at 163-64.
183. *See id.* at 80, 501 S.E.2d at 161.

conduct independent testing.[184] The court held that because Consolidation had no legal duty to preserve the hose, the plaintiff had no cause of action against it for intentional or negligent spoliation of evidence.[185]

M. *Statute of Limitations*

1. John Doe Defendants

In *Rivera v. Witt*,[186] the Supreme Court of Virginia held that a John Doe defendant and an insured motorist later identified as the John Doe are not considered the same entity for purposes of the statute of limitations.[187] Therefore, the court affirmed dismissal of the motion for judgment filed against the insured motorist after the statute of limitations had run.[188]

Rivera filed a motion for judgment against John Doe, an unknown driver, for injuries she sustained in an automobile accident, and served a copy of the motion on her uninsured motorist insurance carrier.[189] Several years later, she identified the John Doe motorist who was insured.[190] The trial court granted Rivera's motion to join Witt, the John Doe motorist, as a defendant.[191] "Witt then filed a plea in bar asserting that [the] cause of action against him was barred because it was filed beyond the two-year limitations period."[192] The trial court granted the plea and dismissed the motion for judgment.[193]

In affirming the trial court, the supreme court reasoned that creating an exception to the statute of limitations whenever a plaintiff could show that a defendant was not prejudiced by permitting suit against him after the limitations period has expired would be contrary to the established principle that statutes of limitations are strictly enforced and must be applied unless the General Assembly has clearly created an exception to their application.[194]

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184. *See id.* at 80, 501 S.E.2d at 162.
185. *See id.* at 83-84, 501 S.E.2d at 163-64.
186. 257 Va. 280, 512 S.E.2d 558 (1999).
187. *See id.* at 284-85, 512 S.E.2d at 560.
188. *See id.* at 285, 512 S.E.2d at 560.
189. *See id.* at 282, 512 S.E.2d at 559.
190. *See id.*
191. *See id.*
192. *Id.*
193. *See id.*
194. *See id.* at 283, 512 S.E.2d at 559.

This decision answered a question left unanswered by the court in *Truman v. Spivey*.[195] In *Truman*, the court held that, for statute of limitations purposes, an unidentified John Doe motorist and the later identified uninsured motorist are considered the same entity under Virginia Code section 38.1-381, the predecessor of Virginia Code section 38.2-2206.[196] Therefore, the statute of limitations is tolled when a suit is filed against the unidentified John Doe motorist.[197] The *Truman* court specifically declined to determine whether it would reach the same result if the subsequently identified motorist were an insured motorist.[198]

The court answered that question in *Rivera* and held that the John Doe defendant and a later identified insured motorist are not considered the same entity and that the statute of limitations continues to run until suit is filed against the insured motorist.[199]

2. Contract Provisions Trump Statutes of Limitations

In *Massie v. Blue Cross & Blue Shield of Virginia*,[200] the Supreme Court of Virginia affirmed the dismissal of an action arising from a health care insurance contract that contained a twelve-month limitation.[201] The court reasoned that parties to a contract may agree that an action to enforce the contract must be filed within a shorter period of time than otherwise established by an applicable statute of limitations.[202] In such a situation, the tolling provisions of Virginia Code section 8.01-229(E)(3) do not apply.[203]

Massie had subscribed to a health insurance plan that paid less than the entire amount of expenses incurred by Massie for oral surgery.[204] Massie filed a warrant in debt in general district court that was removed to circuit court by the defendant Blue Cross and Blue Shield of Virginia ("Blue Cross").[205] Massie then nonsuited the action one year after it was commenced and refiled the motion for judgment six months later.[206] Blue Cross filed a special plea relying

195. 225 Va. 274, 302 S.E.2d 517 (1983).
196. *See id.* at 279, 302 S.E.2d at 519.
197. *See id.* at 281, 302 S.E.2d at 520.
198. *See id.*
199. *See Rivera*, 257 Va. at 284, 512 S.E.2d at 560.
200. 256 Va. 161, 500 S.E.2d 509 (1998).
201. *See id.* at 162, 500 S.E.2d at 510.
202. *See id.*
203. *See id.* at 165, 500 S.E.2d at 511.
204. *See id.* at 163-64, 500 S.E.2d at 510.
205. *See id.* at 163, 500 S.E.2d at 510.
206. *See id.*

on a provision in the contract between the parties that required proceedings to be brought within twelve months after a cause of action accrued.[207] The trial court sustained the plea and dismissed the action.[208]

On appeal, Massie did not challenge the validity of the twelve-month limitation or argue that he filed the present action within that time frame.[209] Rather, Massie argued that the action was timely filed because he commenced his suit within six months after entry of the nonsuit order and that even though he was bound by the twelve-month limitation period in the contract, he was entitled to the tolling provision of Virginia Code section 8.01-229(E)(3).[210]

The supreme court held that the plain meaning of the statute indicates that after a voluntary nonsuit the statute of limitations, not a contractual period of limitations, is tolled, and the plaintiff may recommence the suit within six months or the original period of limitations, whichever is longer.[211] The court noted that it "must give effect to the intention of the parties as expressed in the language of their contract, and the rights of the parties must be determined accordingly."[212] In this case, "the parties chose to exclude the operation of the statute of limitations and, in so doing, also excluded its exceptions."[213]

N. *Subject Matter Jurisdiction*

In *Early v. Landsidle*,[214] the Supreme Court of Virginia dismissed an original petition for mandamus brought by the Attorney General under Virginia Code section 8.01-653 for lack of subject matter jurisdiction.[215]

In this case, the Comptroller of Virginia notified the Attorney General that he entertained doubts concerning the constitutionality of two spending provisions enacted by the General Assembly as part of Virginia's 1998-2000 Biennial Budget.[216] One questionable item was the "per diem" payments to be made to legislators for legislative

207. *See id.*
208. *See id.* at 163, 500 S.E.2d at 510.
209. *See id.* at 164, 500 S.E.2d at 511.
210. *See id.*
211. *See id.* at 165, 500 S.E.2d at 511.
212. *Id.* at 166, 500 S.E.2d at 512.
213. *Id.*
214. 257 Va. 365, 514 S.E.2d 153 (1999).
215. *See id.*
216. *See id.* at 367-68, 514 S.E.2d at 154.

activities involving the discharge of their duties when the Assembly was not in session.[217] The second item was an increase in the legislators' monthly allowance for office expenses and supplies from $750 to $1250.[218]

The Attorney General filed a petition for a writ of mandamus naming the Comptroller as a party defendant and asking for a declaration that the increased payment levels were unconstitutional.[219] The Attorney General later filed a motion to join the General Assembly's clerks as additional defendants.[220] The clerks moved to dismiss the Attorney General's motion to join them, and asserted that subject matter jurisdiction was lacking because the Virginia Code requires the Attorney General to defend the constitutionality of provisions challenged by the Comptroller.[221]

The court found subject matter jurisdiction lacking because Virginia Code section 8.01-653[222] only permits the Attorney General to petition the supreme court to seek payment of money that he believes the Comptroller is improperly withholding.[223] Here, the Attorney General, having assumed the role of a party defendant, sought to invalidate these budgetary provisions and asked the court for an order to make payment pursuant to the challenged items after the beginning of the next General Assembly session in January

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217. *See id.* at 368, 514 S.E.2d at 154.
218. *See id.*
219. *See id.*
220. *See id.*
221. *See id.* at 368, 514 S.E.2d at 155.
222. Virginia Code section 8.01-653 provides, in material part:

> Whenever the Comptroller or the Treasurer of the Commonwealth shall notify the Attorney General, in writing, that they, or either of them, entertain such doubt respecting the proper construction or interpretation of any act of the General Assembly which appropriates or directs the payment of money out of the treasury of the Commonwealth, or respecting the constitutionality of any such act, that they, or either of them, do not feel that it would be proper or safe to pay such money until there has been a final adjudication by the Supreme Court determining any and all such questions, and that, for such reason, they will not make payments pursuant to such act until such adjudication has been made, the Attorney General may file in such court a petition for a writ of mandamus directing or requiring the Comptroller or Treasurer of the Commonwealth, or both, to pay such money as provided by any such act at such time in the future as may be proper .... The Comptroller and the Treasurer of the Commonwealth, or either of them, as the case may be, shall be made a party or parties defendant to any such petition and the court may, in its discretion, cause such other officers or persons to be made parties defendant as it may deem proper ....

VA. CODE ANN. § 8.01-653 (Repl. Vol. 1992 & Cum. Supp. 1998).
223. *See Earley*, 257 Va. at 371, 514 S.E.2d at 156.

2000.[224] The statute does not permit the Attorney General to challenge the constitutionality of an act by adding parties, here the clerks, in the role of petitioners whom he expects will defend that act and seek payment under it.[225] Thus, there was no request to direct the Comptroller to pay money under a contested budget item, and therefore, no subject matter jurisdiction under Virginia Code section 8.01-653.[226]

O. *Venue*

In *Meyer v. Brown*,[227] the Supreme Court of Virginia found that the trial court erred in overruling the defendant's objection to venue in the City of Richmond.[228] The defendant's objection was based on the fact that the accident occurred in Prince George County and the defendant lived and worked in Chesterfield County.[229]

As an initial matter, the supreme court noted that the party objecting to venue has the burden of establishing that the chosen venue is improper[230] and that permissible venue under the circumstances should be in the county or city where the defendant regularly conducts affairs or business activities.[231] The court went on to discuss dictionary definitions of "affairs" and "regularly."[232]

The court held that evidence of the defendant's pleasure trips through the City of Richmond to visit a son and of his passing through the city or stopping there "for whatever reason" failed to demonstrate that the defendant "conducts affairs or business activity" within the city.[233] Further, the court held that defendant's seven visits per year to insurance brokerage firms and three appearances per year at business seminars did not constitute "regularly" conducting affairs or business activity within the city.[234] The supreme court concluded that the trial court abused its discretion in refusing to sustain the defendant's objection to

224. *See id.* at 370-71, 514 S.E.2d at 156.
225. *See id.* at 371, 514 S.E.2d at 156.
226. *See id.*
227. 256 Va. 53, 500 S.E.2d 807 (1998).
228. *See id.* at 58, 500 S.E.2d at 810.
229. *See id.* at 55, 500 S.E.2d at 808.
230. *See id.* at 57, 500 S.E.2d at 809.
231. *See id.*; *see also* VA. CODE ANN. § 8.01-262(3) (Repl. Vol. 1992 & Cum. Supp. 1998).
232. *See Meyer*, 256 Va. at 57, 500 S.E.2d at 809-10.
233. *See id.* at 57, 500 S.E.2d at 810.
234. *See id.*

venue.[235] As a result, the plaintiff's verdict for $1 million was reversed.[236]

P. *Virginia Human Rights Act*

In *Conner v. National Pest Control Association,*[237] the Supreme Court of Virginia, in affirming the trial court's dismissal of the plaintiff's motion for judgment, held that the enactment of the 1995 amendments to the Virginia Human Rights Act[238] ("VHRA") eliminated a common law cause of action for wrongful termination based on any public policy that is reflected in the VHRA, regardless of whether the policy is articulated elsewhere.[239] The amendment provides that "[c]auses of action based upon the public policies reflected in this chapter shall be exclusively limited to those actions, procedures and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances."[240]

This case appears to bring closure to what had been a hotly contested issue.[241]

## IV. CONCLUSION

The past year saw many new developments affecting civil litigation in the courts of the Commonwealth. While this article does not purport to be all inclusive, it is hoped that Virginia practitioners will find the information contained in the article useful in the years to come.

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235. *See id.* at 58, 500 S.E.2d at 810.
236. *See id.*
237. 257 Va. 286, 513 S.E.2d 398 (1999).
238. VA. CODE ANN. §§ 2.1-714 to -725 (Repl. Vol. 1995 & Cum. Supp. 1999).
239. *See id.* at 290, 513 S.E.2d at 400.
240. VA. CODE ANN. § 2.1-725(D) (Cum. Supp. 1999).
241. *See* Doss v. Jamco, Inc., 254 Va. 362, 492 S.E.2d 441 (1997); Lockhart v. Commonwealth Educ. Sys., 247 Va. 98, 439 S.E.2d 328 (1994); Bowman v. State Bank of Keysville, 229 Va. 534, 331 S.E.2d 797 (1985).