

# VIRGINIA LAWYERS WEEKLY

## VERDICTS & SETTLEMENTS

### Highway worker reaches settlement in p.i., comp claims

**\$936,775 Settlement**  
**\$1,930,000 Settlement**

This case stemmed from an accident that occurred at approximately 3:00 a.m. on Sept. 14, 2012, on I-264 in Norfolk. The intoxicated defendant drove around orange cones and a stationary state police cruiser with flashing blue lights at a road construction site and crashed at a high rate of speed into the rear of a highway work crew's flatbed truck. At the time of the collision, the plaintiff and his co-worker were sitting on the bed of the truck with their legs hanging over the edge as they placed cones on the road to mark the construction area. The force of the impact struck both of the plaintiff's legs, resulting in guillotine amputations of both lower extremities.

The defendant had a minimum limits \$25,000/\$50,000 liability policy, and there was a single limit \$1,000,000 UM/UIM policy on the employer's vehicle. The plaintiff's parents also had a policy with \$25,000 of UM/UIM limits. The liability and UM/UIM carriers offered their limits. Thus, from total available insurance proceeds of \$1,025,000, plaintiff obtained \$936,775.50, with the remainder of the coverage allocated to his co-worker's claim.

The comp carrier was owed \$330,000 from the personal injury proceeds for its subrogation lien, and had a future credit/offset of approximately \$405,000 before

it would owe the plaintiff additional workers' comp benefits. In advance of a mediation in the workers' comp claim, plaintiff's counsel obtained a life care plan from Mary Salerno and multiple reports from Dr. Beverly Roberts-Atwater establishing the elements of a permanent and total disability claim in the comp case. The present value of indemnity benefits under a permanent and total disability claim was approximately \$383,000, which was less than the comp carrier's future credit. Deputy Commissioner Brooke Anne Hunter conducted a mediation of the workers' comp claim that proved unsuccessful due to disagreements over the plaintiff's life care plan and the proper present value calculation for that plan. The parties continued to negotiate after the mediation, with Hunter's assistance, until an agreement was reached to settle the claim for a lump sum payment of \$1,600,000 and waiver of the carrier's subrogation lien of \$330,000, for a total value of \$1,930,000. Thus, the combined value of both settlements was \$2,866,775.50.

The plaintiff was an undocumented alien



COOPER



DAVIS



HURLEY

who at the time of his accident had recently obtained a valid work permit and Social Security number under President Obama's Executive Order creating the Deferred Action for Childhood Arrivals (DACA) program that allowed undocumented immigrants brought to the United States at a young age to maintain employment.

As part of the settlement process, counsel screened and recommended to the plaintiff both a health insurance broker and a financial planner who devised a plan that allowed the plaintiff to use his settlement proceeds to purchase a handicap accessible home and vehicle, create a long-term investment portfolio with quarterly interest dividends sufficient to cover the plaintiff's living expenses, and create a short-term, liquid investment pool to cover unforeseen medical emergencies.

[15-T-030]

**Type of action:** Personal injury - auto accident/workers' compensation

**Injuries alleged:** Left leg below the knee amputation; right leg above the knee amputation

**Court:** Norfolk Circuit Court; Virginia Workers' Compensation Commission

**Verdict or settlement:** Settlement

**Mediator:** Brooke Anne Hunter (for workers' comp claim)

**Amount:** \$2,866,775.50 (total proceeds) - \$936,775.50 for p.i. claim; \$1,930,000 for workers' comp claim

**Attorneys for plaintiff:** John M. Cooper and Jim Hurley, Norfolk (p.i. claim); Craig B. Davis, Richmond, and John M. Cooper, Norfolk (for workers' comp claim)

**Plaintiff's experts:** Dr. Beverly Roberts-Atwater, physical medicine and rehabilitation, EVMS; Mary Salerno, life care planner; Dr. Larry Lynch, economist