

VIRGINIA LAWYERS WEEKLY

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78-year-old housewife killed in head-on collision

\$1,750,000 Settlement

The case stemmed from a two-car accident on a residential street in Roanoke. Plaintiff's decedent, a housewife, age 78, was alone in her car driving to the grocery store when she was struck head-on by a car driven by an employee of a Roanoke car dealership. She was transported by ambulance to a Roanoke hospital where she died 27 days later.

Wrongful death beneficiaries were her husband and two adult daughters, both living out-of-state. Defendant driver was not prosecuted for anything other than a minor traffic charge for which he was convicted after several delays. Discovery in the civil case after the traffic case was concluded revealed that the defendant driver had tested positive for cocaine use approximately six hours



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following the accident. The test was ordered by the dealership, which fired him, and this was not made known to the prosecutor. The case settled at mediation following investigation and the issuance of third-party subpoenas and collection of documents from the defendants and from numerous third parties. Much of the investigation and discovery aimed at developing the defendant driver's background indicating long-term issues with illicit drug use. He denied using cocaine on the day of the accident and the dealership denied prior knowledge.

The decedent was a highly valued wife and mother, a good friend and

a good neighbor to many. The mediation presentation focused upon the impact of her death on her family, her friends and neighbors.

Timothy Henshaw, MD, of Atlantic Technical Consultants of Roanoke, assisted with preparation and editing a presentation shown at mediation containing medical illustrations, videotaped witness interviews and computer images. Dr. Henshaw and his team attended the mediation and fielded questions about cause of death and drug testing.

At the mediation, a life care plan for the surviving widower was utilized to show economic impact of loss of wife's services.

The ages of the decedent and her widower (84) were taken into account in arriving at the settlement. Despite the issue of illegal drug use on the day of the accident, punitive damages were not a factor in the settlement. [09-T-178]

Type of action: Wrongful death

Name of case: James P. Comer, Executor of the Estate of Barbara R. Comer, Deceased v. Allen Hamilton Duvall and Magic City Motor Corporation

Court: Roanoke City Circuit Court

Case No.: CL08-2340

Tried before: Mediation

Name of mediator: Kenneth E. Trabue, McCammon Group

Special damages: Medicals of \$400,000 plus funeral expenses

Verdict or Settlement: Settlement

Amount: \$1,750,000

Date: Sept. 21, 2009

Expert: Dr. Timothy Henshaw, Atlantic Technical Consultants, Roanoke; Susan Wirt, Wirt & Associates; and Larry A. Lynch, PhD

Insurance carriers: Charter Oak Fire Insurance and Travelers Property Casualty Company

Plaintiff's attorney: M. Mallory Mantipty, Roanoke