Trial Report: *Raymond Jones v. Centra Health Inc*
Date of Trial: March 26 through March 30, 2018
Type of case: Malpractice in failing to prevent patient elopement through 3rd story window
Outcome: Defense Verdict
Lead Plaintiff's counsel: Jeffrey J. Downey, Esq. (703-564-7318 or jdowney@jeffdowney.com)

A. Summary of Case

On May 6, 2013 Raymond Jones, a 52 year old patient at Guggenheimer Health and Rehabilitation Center in Lynchburg Virginia, eloped through a third story window while his nurse aide watched and screamed for nurse assistance. On that same day he had made four prior attempts to exit the facility before going out the window. Mr. Jones, who previously had suffered a stroke which caused cognitive and behavioral problems, was confused and agitated at the time. Guggenheimer records show that after Mr. Jones' admission, the staff failed to feed him, medicate him or provide him with ADL care (activities of daily living). Mr. Jones' doctor had ordered a medication (Inderal) to help keep Mr. Jones calm, but the nursing home did not have the medication in stock. The nursing home was also short of their regularly staff at the time Mr. Jones escaped through the window.

As a result of Mr. Jones' fall from the third story onto payment, he suffered a traumatic brain injury with numerous rib and facial fractures. He was treated at Lynchburg Memorial Hospital, a facility operated by Centra Health Inc. Centra Health also operated Guggenheimer. Based on Mr. Jones' brain injury (which Centra Health would later deny in litigation), Mr. Jones was transferred to a facility in Massachusetts, Braintree, for rehabilitation. It took his wife over 3 years to secure Raymond's return to Virginia, after having been qualified as his lawful guardian.

Mr. Jones, through his guardian, filed a lawsuit against Centra Health Inc (doing business as Guggenheimer) alleging negligence in failing to prevent Mr. Jones' elopement through what was allegedly Guggenheimer' s secure, 3rd story unit. Although Jones required close supervision because of his confused and agitated state, he was placed on a locked unit with long term care Medicaid residents, many of who were elderly and demented.

After a 4-day jury trial, the case resulted in a defense verdict on April 30, 2018. Below is a summary of case along with various rulings made by the Court. For more information you can reviewed the referenced pleadings or contact the undersigned directly.

B. Pretrial Rulings

As is the custom in Virginia, before the trial begins there are usually rulings pursued by both parties to address evidentiary issues. This case was no exception as both Parties filed motions *in Limine*. Copies of Plaintiff's Motions *in LImine* can be accessed through this link. The Courts rulings can be found here. The Court also issued discovery rulings compelling policies, procedures, staff personnel files, training records and similar complaints of elopements for other patients. The discovery order can be found here.

1. Attempted Exclusion of Plaintiff's Medical Expert

Defendant filed motions to exclude Plaintiff's internal medicine doctor from giving opinions regarding Mr. Jones' traumatic brain injury. Defendant had hired a neurologist from Roanoke, Sidney Mallenbaum, MD, to testify that even through Mr. Jones cracked his skull from a 24-foot fall onto

pavement and had intracranial hemorrhage (bleeding) he did not suffer any ongoing, adverse effects from his alleged traumatic brain injury. The Court took this ruling under advisement, but ultimately ruled at trial that Plaintiff's internal medicine doctor was qualified to discuss Mr. Jones' traumatic brain injury and the fact that it caused him permanent receptive aphasia (an inability to understand the spoken word).

2. Exclusion of the bolting shut of all windows

After Mr. Jones escaped through a window that he opened on the third floor, Guggenheimer bolted all the windows shut in their facility. Defendants argued that even through Mr. Jones escaped through a window that could partially open, it was a secure facility because the windows did not open far enough to allow a person to escape. Mr. Jones had to partially bend back the window to get out, which he did while a nurse aide watched him. Defendant successfully moved to exclude the fact that after this incident Guggenheimer, had bolted shut all the windows that opened on their "secure" unit. The Court ruled that as this was a subsequent remedial measure, it would not be admissible under Virginia law unless there was testimony that denied it was possible bolt the windows shut.[1] (Feb 15, 2018 Transcript at 15-16). The Court did allow Plaintiff to call the administrator of the facility to ask whether it would have been feasible to correct this issue before Mr. Jones went out the window, but would not let Plaintiff establish that the cost of such measure was only 50 cents per window.

Throughout the trial Defendant argued that it was not foreseeable that Mr. Jones would escape through a window by breaking it. As it turns out, Mr. Jones had tried to escape through a window just days before in another Centra Facility, Virginia Baptist. The Virginia Baptist staff timely responded and were able to redirect Mr. Jones away from the window.

3. Plaintiff's Motion to Be Permitted to Contact Centra Health Treating Physicians

Although the alleged negligence in this case involved only Guggenheimer Health and Rehabilitation, Defendant took the position that Plaintiff was precluded from contacting his own treating physicians from Lynchburg Hospital, where Plaintiff was taken after he sustained his brain injuries. As Mr. Jones was treated at three separate Centra facilities, this position effectively cut off Plaintiff from accessing his own treating doctors, without the participation of defense counsel. After briefing the issue Centra Counsel acknowledged that "we concede that I cannot – for those treating physicians that are post fall, there is no basis for us to say that we could potentially be liable for their actions . . . And so we are not - - we withdraw any statement to - - that you can't contact those treating – that's your right under 399.[2]" (Tr. of Feb. 15, at p. 47). I copy of Plaintiff's brief on the issue can be found here.

Even after Centra modified their position, Plaintiff's counsel attempted to interview an important Lynchburg healthcare provider who would still only talk to Plaintiff's attorney if Centra Health in-house counsel participated in the interview. While future Plaintiff's counsel should challenge any attempt to

[1] Feb. 15, 2018 Transcript at 15-17. Va. Code 2:407 governs the rule that excludes such evidence. *Holcombe v. Nationsbanc Financial Services Corp.* 248 VA. 445 (1994) allows such evidence where feasibility of the precautionary measure is controverted.

[2] Va. Code §8.01-399 governs the privileges that exist between a doctor and his patient in cases where the patient has filed a lawsuit that has placed his medical condition at issue.

have Centra limit contact to a patient's own treating physician, once the provider is identified they may decide to exercise their right to counsel, even when their own conduct or treatment is not implicated in the suit.

4. Defendant's Exclusion of the Video of Mr. Jones

After insisting on taking the deposition of the cognitively impaired Mr. Jones, Defendant moved to exclude the video deposition of Mr. Jones. As Mr. Jones could not understand the spoken word, defense counsel used written notes to question Mr. Jones and had him perform various tasks, like raising his hands, making a fist and reading his prescription bottle. The Court initially reserved ruling, but allowed Plaintiff to play the video of Mr. Jones at trial. Mr. Jones complete video, which was played for the jury, can be found here.

5. Plaintiff's Motion to Prevent Defendant from using Centra's Treating Providers to Testify Adverse to Plaintiff

Without permission of the Plaintiff, defense counsel contacted Mr. Jones treating physician, Dr. Stutesman who had worked at Virginia Baptist Hospital, where Plaintiff had been treated prior to his admission to Guggenheimer. Defendant sought to obtain favorable opinion testimony from Dr. Stutesman who had originally prescribed Mr. Jones' Inderal, which he noted in discharge records had kept Mr. Jones "very calm." Defendant had designed Dr. Stutesman to opine that giving Mr. Jones his ordered medication after he was admitted to Guggenheimer would not have prevented Mr. Jones from eloping out the window. This went beyond any opinions that Dr. Stutesman had formed as treating physician and Plaintiff moved to exclude those opinions under Va. Code, § 8.01-399. To review Plaintiff's legal memorandum on this issue, click here.

After reserving a ruling during pretrial Motions, the Court granted Plaintiff's Motion to limit the testimony of Dr. Stutesman to only opinions he developed as a treating physician. The Court held that except at the request of the patient or in discovery, Va. Code § 8.01-399 limited the testimony of a treating physician to the diagnoses, signs and symptoms, observations, evaluations histories or treatment plan of the practitioner, obtained or formulated as contemporaneously documented during the court of treatment. (Final Order, at p. 2-3).

6. Plaintiff's Motion to Strike Contributory Negligence – Granted at the close of evidence

As Mr. Jones suffered severe cognitive problems from his prior stroke, he lacked mental capacity at the time of his escape from Guggenheimer sufficient to understand the consequences of his actions. He also had had vision problems. Plaintiff moved to exclude any evidence of Mr. Jones' alleged contributory negligence in escaping through the third story window. Although the Court reserved ruling on this issue in Motions in *Limine*, at trial the Judge ruled that the Defendant had not proffered sufficient evidence of contributory negligence to allow this issue to go to the Jury. This ruling was consistent with other Virginia Supreme Court cases striking the defense of contributory negligence in malpractice cases.[3] As

[3] *Chandler v. Graffeo*, 268 Va. 673, 681 (2004); *Sawyer v. Comerci*, 264 Va. 68, 76 (2002); *Ponirakis v. Choi*, 262 Va. 119, 125-26 (2001); *Gravitt v. Ward*, 258 Va. 330, 336-37 (1999); *Diehl v. Butts*, 255 Va. 482, 491 (1998); *Eiss v. Lillis*, 233 Va. 545, 553 (1987); *Lawrence v. Wirth*, 226 Va. 408, 412-13.

such, Defendant's claim of contributory negligence was stricken at the close of the evidence in Defendant's case.

C. Jury Selection

Jury selection or *voir dire* is the process by which the attorneys question the jury on issues that may impact their ability to be fair and impartial. In Virginia an unlimited number of jurors can be struck for cause, meaning that they have revealed some source or potential bias towards one side. However, the parties are typically given 3 or 4 strikes each to eliminate jurors for reasons other than for cause.

Defense counsel for Centra had sought to strike two African Americans as their initial, non-cause strikes, one of whom had not given any information at all during the questioning process. Plaintiff counsel objected under the Supreme Court *Batson* case.[4] Defense counsel argued that one of the jurors, who did not say anything during questioning, had closed her eyes for a few minutes during his *voir dire* questioning.

The Court ruled that Defendant had articulated legitimate, non-discriminatory reasons for striking the two African Americans. After jury selection was completed, the Jury consisted of 8 whites and one African American woman. As two of those jurors were alternates, the final jury consisted of one African American woman and 6 whites. In terms of professions, there were two employees from Liberty University, an Engineer from a local engineering firm, a paralegal, an unemployed and retired person.

D. Summary of Plaintiff's Evidence

Plaintiff's case consisted of two standard of care experts, a nurse and medical director of a nursing home who explained that Guggenheimer's staff breached the standard of care by not medicating Mr. Jones when he got agitated, by not providing him the proper level of supervision and by not preventing him from climbing out the window after the nurse aide found him in the process of removing the window and screen. They explained in a prior facility (Virginia Baptist Hospital) Mr. Jones had one-on-one supervision and that the staff was able to easily redirect him from doors and windows. They explained that the staff member who encountered Mr. Jones in the process of opening the window had more than enough time to redirect him away and that she breached the standard of care by waiting until he went out the window to try and grab him. Given Mr. Jones' weight of some 200 lbs., once he was out window, there was no way the staff was going to pull him back in.

[4] *Batson v. Kentucky*, 476 U.S. 79 (1986)(Holding that peremptory jury challenges, or challenges without cause, are subject to the equal protection clause).

The window as it appeared after Mr. Jones' elopement. The cracker his wife gave him before she left the facility can be seen on the window ledge. It was the only food Jones got at Guggenheimer.

1. Plaintiff's Experts

Plaintiff called two experts, a nurse and internal medicine doctor, to testify to breaches of Defendant's staff. Plaintiff's Nurse, Charlotte Sheppard was a highly qualified nurse, who taught long term care to nursing students.[5] Plaintiff's nurse expert testified that the Guggenheimer staff breached the standard of care by not providing medications that were ordered to be given to Mr. Jones on the day of his elopement and by not passing on information about his prior elopement attempts and aggressive behaviors to the direct care staff who encountered Mr. Jones on the day of his escape. She opined that the facility should have had Mr. Jones' medications on hand upon admission and even if they did not have his Inderal, they should have given him PRN Haldol, which was available. Nurse Sheppard opined that the Nurse Aide who encountered Mr. Jones while he was in the process of breaking the window open was negligent in not stopping Mr. Jones until he started to go through the window. Once the 200 lb. Mr. Jones was out the window, the nurse aide tried to grab him, but at that point given his weight, she could not pull him back in his room. Plaintiff's nurse expert explained that given Mr. Jones' prior attempts to get out of his prior facility (Virginia Baptist Hospital), the staff needed to keep a constant eye on Mr. Jones either through additional staffing or through the use of a sitter, which had been effectively used at Virginia Baptist.

Plaintiff's medical expert was a former Medical Director of a nursing home. The doctor corroborated Plaintiff's nurse expert's testimony and opined that the staff had sufficient time to prevent Mr. Jones from eloping out the window. The medical expert opined that Inderal had been effective in calming Mr.

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[5] Plaintiff filed a brief addressing the issue of whether his nurse, who had significant teaching experience, was qualified to render opinions on the standard of care. Defendant did not challenge the qualifications of the nurse at trial. See *Dunston v. Huang*, 709 F.Supp.2d 421 (E.D. Va. 2010), finding that teaching residents how to care for patients satisfies Virginia's active clinical practice requirement.

Jones at his prior facility and that even if the staff did not have Inderal in stock, they should have used the PRN Haldol, which was also effectively used at his prior facility. It was not unusual for patients to have adjustment periods after transferring to a new facility and maintaining their medication regime is essential. Not giving Mr. Jones any medications and failing to provide the vigilant supervision he needed, was a breach in the standard of care. As a result of Mr. Jones fall from the third story window, he sustained 5 broken ribs, broken facial bones (near and around his temple) and a traumatic brain injury which caused permanent receptive aphasia, a condition which prevents Mr. Jones from understanding spoken word.

2. Plaintiff's Wife – Dana Jones

Dana Jones explained that before the fall she had warned the Guggenheimer staff about her husband's exit seeking behaviors. She was told that he was supposed to get a sitter at Guggenheimer, but on the day of admission, they did not have one available. She stayed with him most of the day to get him orientated to the facility, but when she tried to leave, Mr. Jones would try and leave the facility with her. He was confused and agitated. This was the same type of exit seeking behavior he was doing at his prior facility. Dana had been out of the facility for about an hour when she got a call explaining that Raymond had gotten out the window.

After the fall Dana explained that her husband was never the same. While he had cognitive deficits due to a prior stroke, he could understand and communicate with her. That ended after Raymond sustained his TBI because he injured the area of the brain responsible for oral speech recognition. Also, after the fall Ms. Jones did not have guardianship over her husband. Centra Health decided to transfer Mr. Jones to a facility in Massachusetts, where he remained over 3 years until Mrs. Jones could get appointed guardian and secure her husband's return to Lynchburg.

Dana explained that she currently cares for her husband in a small apartment in Lynchburg. She has health problems of her own, having suffered a significant stoke that limits her mobility and ability to care for Raymond.

3. **Nurse Aide, Carolyn**

A police investigation revealed that after this incident, the police were told that when the Nurse Aide first encountered Mr. Jones, he was already out the window. At trial the investigating officer testified in that when he spoke to the Nurse Aide, she told him that when she first encountered Mr. Jones, he was already positioned out the window. The Nurse Aide Carolyn denied that she ever made such statement to the police. However, Guggenheimer's report to the Department of Health reflects the same attempt to reinvent history, as that report indicates that when the nurse aide first encountered Mr. Jones he was already out the window.

In fact, as revealed by the Nurse Aide's actual testimony, when she first encountered Mr. Jones he was in the initial process of removing the window. He had to pull up the blinds, break and bend the window back, remove the screen and position himself to get through the small opening that he made. While this event played out the nurse aide was yelling for staff assistance some 6 to 8 times, but the nursing staff, who was working short of staff, did not arrive until Mr. Jones had gotten out the window.

4. Administrator Joyce Wade

Administrator Wade was called as an adverse witness and as a corporate designee witness. She was called at trial live to address the issue of whether it was feasible to secure the windows shut with a simple bolt, as had been done after this incident. The Court had excluded evidence of this subsequent remedial measure, but ruled that it was proper to ask a knowledgeable witness if it was feasible to correct this window, before Mr. Jones' eloped through it.

During direct examination, Plaintiff's counsel asked if the third-floor unit where Mr. Jones resided was a secure unit, as had been argued by the defense. Administrator Wade testified "not particularly." This testimony helped undercut the defense expert testimony that suggested that Guggenheimer's 3rd floor unit was secure.

5. Raymond Jones

Link to Video
https://www.youtube.com/watch?v=dUxbGJF3PRU

Raymond Jones testified through video deposition. His complete video deposition can be reviewed here. Defendants questioned Mr. Jones through the use of written notes. After the deposition, Plaintiff's counsel attempted to question Mr. Jones without notes and he became very upset. It was obvious that he could not understand any oral speech.

Defendant later sought to exclude the video of Mr. Jones, but this Motion was denied by the Court after testimony showed that Mr. Jones suffered his receptive aphasia from his fall and resulting TBI.

E. Summary of Defendant's Evidence and Testimony

Defendant evidence consisted mostly of their retained experts. They did not call a single nurse or staff member from Guggenheimer to explain their conduct on the day in question. Defendant argued that Mr. Jones' escape through the window was not foreseeable or preventable. They argued that they had a reasonable time to secure Mr. Jones' medications and that even if they had his calming medication available, it would not have made a difference.

1. Defendant's Nurse Expert – Tiffany Robins, RN

Nurse Robins testified that Defendant's staff met the standard of care in all material respects. She opined that the standard of care did not require a nursing home to have medications available on the day of admission for Mr. Jones. She testified that Guggenheimer was a secure unit and that there was no need to have a sitter watching Mr. Jones. She testified that the nurse aide acted properly and that she was not required to risk her personal well-being to prevent Mr. Jones from escaping through the window. Ms. Robins testified that it would not have been proper to give Mr. Jones Haldol as his behavior did not justify that type of chemical restraint.

On cross examination Nurse Robins acknowledged that in the prior nursing home for which she had worked, the secure unit had windows that did not open at all. In deposition Nurse Robins had testified that a secure unit meant the windows did not open, but she changed that opinion at trial. In her deposition she had testified that it would have been a breach for the nurse aide to wait 30 seconds to

stop Mr. Jones, but at trial she would not concede that point. Nurse Robins also testified that all her opinions had been reached to a reasonable degree of nursing probability, but during cross examination it became clear that she had no idea what the term meant. On redirect defense counsel rehabilitated Nurse Robins to educate her on the proper standard for expert testimony, which she was quick to adopt. Nurse Robin's deposition testimony can be obtained by contacting the undersigned counsel.

Note that Defendants also designated expert Elizabeth P. Kaeser, RN to give similar opinions as Nurse Robins, but she did not testify at trial. Her deposition transcript can be obtained through the undersigned counsel. Defendant's expert witness designation can be found here.

2. **Sidney Mallenbaum, MD Neurologist, Carilion Medical Center, Roanoke, Virginia**

Dr. Mallenbaum was a neurologist retained by the defense. He testified that Mr. Jones did not suffer a traumatic brain injury and that it would be misleading to suggest to the jury that he did. Dr. Mallenbaum testified that Mr. Jones made a complete recovery from his injuries and that the receptive aphasia that Mr. Jones is currently experiencing was due to his prior stroke, not his traumatic brain injury.

On cross examination, when confronted with the fact that Mr. Jones' treating physicians had also diagnosed him with a TBI, Dr. Mallenbaum invoked Donald Trump. At one point in his testimony Dr. Mallenbaum stated you (as Plaintiff) rely on the facts that help you and I rely on the facts that help me. Dr. Mallenbaum had initially admitted in deposition that Mr. Jones had suffered a TBI and then back-tracked from that testimony at trial. He had to acknowledge that when he adopted (without change) the testimony that had been written by the defense attorney, he had not reviewed the Guggenheimer chart. Dr. Mallenbaum's complete deposition testimony can be obtained through counsel.

3. **James Lee Wright, MD, Medical Director of Lexington Court Nursing and Reha**b,

Dr. Wright testified that Guggenheimer staff complied with all applicable standards of care. Dr. Wright opined that Mr. Jones provided an appropriate level of supervision and that it was not necessary to have someone watching Mr. Jones at all times. Dr. Wright opined that the nursing home was not required to have Mr. Jones' medications available on the day of his admission and that it would not have been appropriate to give him Haldol to calm him down even though his behaviors did begin to escalate before Mr. Jones eloped through the third story window. He opined that one on one supervision would not have even made a difference.

On cross examination Dr. Wright agreed that the staff was able to stop Mr. Jones from getting out a window at his prior facility because they intervened timely. Dr. Wright noted that it was not unusual to delay ALD care like hygiene, as that can agitate a resident. He testified that the nurses made appropriate attempts to socialize with Mr. Jones, although, according to the defense theory, Mr. Jones could not understand oral speech because he already had receptive aphasia. Dr. Wright was not deposed in this case, but Defendant's expert witness designation can be found here.

F. Attorney Comments, by Jeffrey J. Downey, Plaintiff's counsel

After the trial ended, I stayed behind as my client's wife was assisted out of the Courtroom by a close friend. Having suffered a stroke herself, Dana Jones hobbled as she walked and cried "it's so unfair." Her cries echoed through the small courthouse as the jurors left the courtroom. The Judge's law clerk came by to give me the complimentary, good job, "tough set of facts" consolation. I thought to myself, the facts didn't get any better than this case. What was I missing?

During *voir dire* when the Jury was asked about Guggenheimer, about half of the African Americans on the panel raised their hands indicating that they were familiar with that facility, and could not be impartial because of their strong, negative opinions about the facility. This facility clearly had a bad reputation in the African American community. They were excused for cause. Two of the three remaining African Americans were struck by defense counsel over objection of Plaintiff, as discussed in the section addressing Plaintiff's *Batson* challenge.

The evidence went in well from Plaintiff's perspective. Defendant scored no real points on Plaintiff's experts and Plaintiff's medical expert had been used by the defense (as their expert) in a case less than a year before. The jury seemed engaged in the case, taking notes during the trial.

The Jury deliberated 4.5 hours on Friday after a weeklong trial. After leaving the courtroom, I interviewed the only African American juror and one white female juror in the parking lot outside the courthouse. The African American female, who worked as a paralegal, was visibly upset by the outcome and was crying. She seemed sympathetic to the case and stated it was a moral breach, but not a legal breach. I believe she was the likely hold-out for Mr. Jones, but in the end, she could not persuade the other jurors during their deliberations.

I asked the white female juror whether they considered that the nurse aide was negligent for not stopping Mr. Jones from escaping out the window when she had the chance. She responded that they really did not spend a lot of time discussing that issue and focused on whether the facility should have had an individual sitter, as had been used at the prior facility. She also appeared to have accepted the defense argument that even if a staff member was present, it would not have made a difference. She noted that they had to follow the jury instructions and that they did not find that there was any conduct of the nursing home that caused Mr. Jones to go out that window.[6] The foreman was an engineer who seemed particularly interested in the window display, which the defense brought into the Courtroom.

Up until a week before trial Centra Health Inc. had litigated this case for over three years without any offer. After transferring Mr. Jones out of state, they later sought to cut Plaintiff off from accessing his own healthcare providers, who treated him after the fall. Centra also tried to use Plaintiff's own healthcare providers against him, by eliciting opinions that were adverse to Mr. Jones and which went beyond the scope of opinions that were generated by the treating physician. The Court disallowed this improper opinion testimony and Defendants had to retreat from their attempts to block Plaintiffs from accessing his own treating physicians before trial. I have published these opinions for use by future

[6] This conclusion was troubling as negligence was clearly defined to include acts or omissions. It was the failure to prevent the elopement that was the basis for the negligence claim, as no one ever argued that Guggenheimer' s staff caused Mr. Jones to elope through the window, only that they failed to prevent it through medications, supervision and redirection.

attorneys litigating cases in this jurisdiction. And while Centra's strategy backfired in this case, the over-reaching position taken by Centra reflected another reality: Centra's belief that they could control the litigation process and limit access to witnesses Plaintiff needed to prove his case.

After their defense expert nurse's depositions were taken within a month of trial, Centra decided to place a modest amount of money on the case to attempt settlement. They must have known from previous settlement discussions that the offer was not going to resolve the case.[7] During the trial I asked the Risk Manager what were they thinking in forcing this type of case to trial. Her response was disturbing. She asked me what would the Joneses have had, if this incident had never happened? I was stunned, and told her that they'd still be poor for sure, but at least Mr. Jones would not have severe brain damage and his wife would not be taking care of a husband with a permanent brain injury. After the defense neurologist testified and invoked Donald Trump, suggesting that each side should pick their own facts, the Risk Manager pulled her offer off the table. Although the low offer was never a real attempt to resolve the case, she seemed to take pleasure in pulling the offer off the table after Centra' expert neurologist suggested to the Jury that Mr. Jones did not really suffer a traumatic brain injury.

After the verdict the Risk Manager told the press that Centra offered Dana Jones and her attorneys a "very serious and in good faith" settlement through the third day of trial but it wasn't accepted. That comment, which conveniently did not mention the amount of settlement offer, caused my client's wife some distress, as she struggled to explain to family members that Centra never really made a fair settlement offer. But from a public relations perspective, this was a victory for Centra Health. They spent many thousands of dollars in attorney and expert fees to make sure that a victim of their negligence never got compensated for the injuries they caused. This litigation mindset reflects a more troubling reality: that companies like Centra Health Inc, who have significant market and political power, can operate under their own set of rules in Lynchburg, emboldened by the harsh reality that African Americans in this jurisdiction may not find a jury of their peers.

When I tell people the story of Raymond Jones, they often ask about an appeal. Appeals generally challenge the legal rulings made by the Judge, not the decision by a jury resolving the key issue of negligence. Here, most of the important legal rulings went our way. The Court's rulings were consistent with Virginia law and the Judge hearing the case, F. Patrick Yeatts, was patient, thoughtful and fair. The other reality is that even if were to obtain a reversal on some legal ground, we would still encounter a difficult jury pool in Lynchburg.

The legal rulings we obtained in *Jones* may help even the playing field for future Plaintiff's attorneys, who will no longer be cut off from accessing their treating providers from Centra Health; nor will Centra be able to use their doctors to testify against their own patients, where such testimony goes beyond what's in their medical records. While that's progress, its little consolation to Raymond and Dana Jones.

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[7] Mr. Jones had significant expert and litigation costs and attorney's fees, along with a sizeable Medicaid lien. The Trump administration recently altered rules for Medicaid liens, allowing Medicaid to come after life time benefits in a personal injury action or medical malpractice case. Previously the agency would be limited to recovering only medical expenses which were related to treatment of the injury at issue. This will make prosecution of malpractice cases even more difficult for patients who have received Medicaid benefits.

The Jones family had problems even finding an attorney in Virginia to take their case. It is important that attorneys continue to take cases of underserved minorities in communities like Lynchburg and that they publicize their cases, even when they lose. While most attorneys do not like to discuss their losses publicly, I have always learned more from my loses than from my victories. And while I have lost other cases, the real life, adverse impact to my clients in this case was devastating.

Not long after the trial, Dana called me to explain that Centra was transferring Raymond to a facility in Farmville, which is too far away for her to visit. She had taken him back to Lynchburg General Hospital because of stroke symptoms. There are some 20 subacute and skilled care facilities in Lynchburg, yet Centra Health chose a facility where Raymond will be effectively separated from this wife. As I write this article, I am also writing a letter to the new facility on behalf of Dana to address some communication issues. Dana is worried that Raymond, who can't understand anything people say, will be neglected like he was before she got him back under her care. She is right. But in the world we currently live in, she is powerless to do anything about it.

This statute of the Confederate Soldier still stands outside the Lynchburg Circuit Court.

If you require any additional information on this case, please feel free to contact me directly.

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