

THE ADVOCATE

MUNDY
ROGERS
& ASSOCIATES, L.P.

SPRING 2007

MUNDY
ROGERS
& ASSOCIATES, L.P.

G. Marshall Mundy
Frank W. Rogers III

SPECIALIZING IN:

- Medical malpractice
- Family law
- Personal injury
- Wrongful death
- Nursing home litigation

1328 Third Street, SW
Roanoke, VA 24016
540-982-2900

Fax: 540-982-1362

E-mail:

info@mundyrogers.com

Web site:

www.mundyrogers.com

Law defies logic

By Frank W. Rogers III

Virginia's law requires judges determining custody and visitation matters to consider the physical and mental condition of the child and each parent. Logically, it flows that any evidence addressing the physical or mental condition of the child or the child's parents is relevant. This means that any therapist treating the child or the parents should be able to give testimony in a custody and visitation case. Right? Wrong!

In 2003, Virginia's General Assembly enacted §20-124-3.1 of the *Code of Virginia*, which prohibits therapists from testifying against a patient without the patient's written consent in any case involving custody or visitation. The law has been interpreted in recent months in several cases. For instance, in a decision issued on December 28, 2006, the Court of Appeals of Virginia determined that this statute prevents a child's therapist from testifying *about the child*. However, in a case decided in February 2007, the same court allowed the testimony of a marriage counselor regarding only spousal support or equitable distribution of property.

Since its enactment, the law has confounded and confused judges and lawyers alike. In the recently ended session of the General Assembly, a bill was introduced and supported by many family law practitioners that would have repealed the statute. Regrettably, the bill was withdrawn in committee by its patrons when it appeared that it did not have the support for passage.

As it stands on the books, this is bad law. A judge may not consider, for instance, the testimony of a therapist that a parent's mental health prevents that parent from being able to adequately provide for a child. It is hard to imagine how a judge can make a fully informed decision on what is in the best interests of a child without being able to consider all relevant evidence, not just evidence which obviously is favorable to a parent. This law defies all good logic.

We're always here for you

When a person or a family is seriously injured in a seemingly larger-than-life situation, we offer them the hope and promise of fair treatment and compensation for harm.

Victims of a person's or a business's negligence may be so injured, upset, confused, or traumatized that they cannot speak out for themselves. That's when we become their voice.

We will bring our experience, resources, and, most importantly, our passion and heartfelt concern to bear for those harmed by insensitive wrongdoers to compensate them for the harm they have suffered.

In consultation with our clients, we may recommend several alternate paths to injury-case resolution. However, when circumstances call for it, we will represent our clients in court, presenting evidence in the cases to judges and jurors in a convincing manner to help them perceive victims' plights as the victims themselves feel them.



Dedicated. Respected. Results-driven.

Workers' compensation

When insurers refuse to pay

Workers' compensation regulations are state-based insurance programs that effectively cover claims by workers injured on the job or who suffer work-related diseases or illnesses. Insurers regularly handle claims with understanding and efficiency.

On occasion, an insurer may deny claims benefits, as the following case illustrates. Workers should consult an attorney experienced in workers' compensation law for counsel.



Fall from a ladder

When a retail store employee fell from a ladder and severely injured her back, her physician recommended surgery. When she filed a workers' compensation claim, the insurer denied her petitions and an independent Industrial Commission's confirming orders for several years.

The employee's attorney sued the insurer, demonstrating it had not acted in good faith. A jury held for the plaintiff, stipulating a significant award, and held the insurer liable for lifetime medical care and disability benefits for the underlying injury under the state's Workers' Compensation Act.



Accident cases

Insurer fails to pay underinsured motorist claim

A pickup truck backed into a car driven by a driver recovering from back surgery. The injured driver's doctor determined that the accident caused the patient's initial disk-fusion surgery to fail, which necessitated two additional surgeries. When the injured driver sued for medical expenses, the truck driver's insurance company refused to pay the full underinsured motorist claim. When the injured driver's attorney filed a bad-faith claim on his behalf, a jury's verdict resulted in a significant award.

Passenger killed by drunk driver

A husband and wife were passengers in a car allegedly driven by a drunk driver who lost control of the vehicle and struck a utility pole. The husband was killed instantly by a section of the pole that entered the car. The defendant pleaded guilty to impaired driving, and the wife's attorney sued for her husband's significant lost income and her own posttraumatic stress disorder. The parties settled prior to trial.



Pharmaceutical
MARKETING
Dollars



Pharmaceutical **RESEARCH** **Dollars**

Pharmaceutical marketing

U.S. drug manufacturers spend 2.5 times more money on marketing drugs to consumers and doctors than they invest in pharmaceutical research.

To make windfall profits on prescription drug sales, pharmaceutical companies spend billions influencing physicians and other health-care providers to prescribe and utilize their medications.

In one case, former Medtronic employees blew the whistle on the company's marketing generosity, which included giving doctors financial kickbacks. Their case settled in federal court in August 2006 for \$40 million.

In other lesser instances, medical-school professors claim that drug representatives often provide many doctors' offices free lunches, some costing as much as \$250, to buy access for sales.

Access costs American consumers millions and adds billions to drug companies' marketing annually. In 2004, Merck alone spent \$7 billion in marketing, compared with \$4.01 billion in research. Public Citizen, a consumer advocacy group, reported that in 2005, the pharmaceutical industry committed more than \$60 billion to marketing efforts.

FOR YOUR SAFETY

Recalled product roundup

Here are some recently recalled products you may have in your home or at work:

- ✓ **Target Stores** is voluntarily recalling 185,000 Firestreet Scooters. The handlebars, wheels, and brakes can break and detach, causing rider injuries.
- ✓ **Acuity Specialty Products Group, Inc.**, asks consumers to return 6,800 five-gallon pails of “Zep Industrial Purple Cleaner & Degreaser” and “Zep Heavy-Duty Floor Stripper” cleaning products, which can crack, leak corrosive products, and harm users.
- ✓ **Atico International USA, Inc.**, has recalled 209,000 folding picnic tables with legs that can unexpectedly buckle, break, fold, or collapse, injuring users.
- ✓ **Fun Express, Inc.**, has called back 340,000 bendable toys given away at libraries. The toys are decorated with paint containing excessive levels of lead, which is banned under federal law. Lead is toxic and, when ingested by children, can cause adverse health effects.
- ✓ **Black & Decker** has requested buyers to return 160,000 cordless electric mowers. An electrical component in the lawn mower can overheat, catch fire, and burn users.

Legal dictionary



Many clients find legal terms mystifying. From time to time, we’ll provide easy-to-understand definitions to help clear things up. This time, you’ll learn the meanings of several important terms used in courts to help you better understand our legal responsibility concepts.

Liability

A person’s, group’s, or business entity’s legal responsibility for an injury or loss for which they are responsible.

Negligence

The failure to exercise the kind of sufficient care that a reasonably prudent and careful person would use under specific circumstances. If an injury results from another’s negligence, that person or entity may be liable to pay damages for any injury they caused.

Statute of limitations

An arbitrary time limit—in years—that cuts off a plaintiff’s ability to file an injury case after a certain period of time from the date of the injury, even if the injury is not detected until much later.

Statute of repose

Another arbitrary time limit—in years—that terminates a corporation’s responsibility for marketing faulty or dangerous products.

Damages limitations

Can lawsuit damages caps harm those injured? Damages-cap legislation restricts amounts a jury can award for injuries, no matter what case facts may be. Some state legislatures have enacted caps in civil cases, while others have not. Some caps apply to specific kinds of cases, such as medical malpractice. Other caps limit only noneconomic damages, and some limit punitive damages.

In states that cap damages, a jury’s or judge’s award is automatically reduced to the amount of the cap—even though the

jury or judge may believe the plaintiff should be awarded more than the cap as compensation, or even if the circumstances of the case show that a negligent or malicious defendant should be punished with a significant punitive-damages award. There is generally no way to raise a damages award beyond the cap once it is written into law.

Here is an example of how a cap of \$250,000 on noneconomic damages may be incredibly unfair to some victims.

Who is harmed	The victim’s injuries or losses	The amount the jury originally believed should be awarded	The amount the victim is awarded based on the legislature’s cap
VICTIM A	After being hit by a drunk driver, the victim’s car caught fire. Her husband (a passenger) was killed, she was burned and left disfigured, and lost the use of her right arm. She was a homemaker and can no longer work.	\$1.2 million noneconomic damages	\$250,000 noneconomic damages
VICTIM B	After being hit by a drunk driver, this victim suffered two broken legs, had to have surgery to repair them, and was forced to wear a full body cast for two months.	\$250,000 noneconomic damages	\$250,000 noneconomic damages

VICTIM A, who suffered worse injuries than VICTIM B, nonetheless takes home the same compensation for her losses as VICTIM B. Even though the jury thought VICTIM A deserved far more compensation, the jury’s judgment was overruled by a cap put in place by the legislature long before VICTIM A’s case ever arose.

© Copyright 2007. Newsletters, Ink. Corp. All rights reserved. Printed in the U.S.A. www.newslettersink.com
The information included in this newsletter is not intended as a substitute for consultation with an attorney. Specific conditions always require consultation with appropriate legal professionals.

Shopping for auto insurance



The seven steps in buying auto insurance that will best protect you and your family include:

1. Educating yourself about state auto insurance requirements.
2. Comparison-shopping coverages.
3. Meeting with several insurance agents.
4. Reading the entire policy very carefully.
5. Listing all drivers.
6. Paying premiums promptly.
7. Disclosing past claims.

Types of coverage

Auto insurance policies include several coverage elements, specifically costed out, that you should understand:

Bodily injury liability—protects you against injury, death claims, and legal expenses from an accident.

Property damage liability—covers property damaged by your car in an accident. Since liability covers other parties, almost all states require it.

Medical payments—compensates for injuries your passengers suffer. In some states it's optional. In “no-fault” states, personal injury coverage replaces basic medical compensation coverage.

Uninsured/underinsured motorist protection—pays for your and your occupants' accident injuries from uninsured, inadequately insured, or hit-and-run drivers.

Collision coverage—after you pay the deductible, it reimburses for damage to your vehicle, up to its book value.

Comprehensive—covers physical damage to your car from fire, flood, theft, vandalism, wind, and other nonaccident causes, also with deductibles.