

NORFOLK & PORTSMOUTH BAR ASSOCIATION

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for all NPBA Events.
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PRESIDENT'S MESSAGE



James R. Harvey, III

Lawyers are different. It is part of our job to question everything, read the fine print and think creatively. Our profession sets us apart from the rest of the community, as anytime I show up to a cocktail party, Bar-B-Q or swim meet, the conversation usually starts, "So, you're a lawyer; I have this friend who has a little trouble ..." I also appreciate how many different ways we serve our clients and community: Are you part of a large firm or small to solo practice? Government lawyer, in-house counsel or lobbyist? Is your practice primarily criminal, domestic, personal injury, contract, transactions, administrative? Do you appear regularly in general district court, federal court, appellate courts, or none of the above? Are you a public servant or counsel to a charitable organization? With all of the potential ways to practice law, it is easy to make the mistake and think that we have nothing in common.

I want to use my time as your President to emphasize how we are each better because of bar associations like the NPBA that celebrate and bring together all in the profession. I am grateful that I practice in a firm of really bright people who support bar association participation. They figured out long ago that participation in bar activities is better for our practice, better for our clients, and better for our bottom line. I am a better lawyer when I get to know other practitioners so that when our clients have a dispute, we have a level of professional trust that helps our clients resolve their disputes as quickly and efficiently as possible. I am a more knowledgeable lawyer when I sit on a bar committee with attorneys in completely different practice areas, learn about their areas of expertise and share common issues. I better serve my clients when I can refer matters to other attorneys in the area that I know and trust when a conflict arises or when a matter arises outside of my area of expertise. I better understand the practice of law when local solo practitioners tell me about their challenges, or in-house counsel tell me about what works in their relationship with retained counsel. I am more effective as a lawyer when I know judges on our bench through bar events, and better understand their expectations at the next hearing or trial.

There are lots of selfish reasons why the NPBA make us better lawyers that may justify the dues, but I think the bar is far more important because of how it make us better people in our community. We come together as one profession to support the rule of law, educate each other and the community where we live, and help those in need. I am particularly proud of the work done by the NPBA to teach Norfolk Public Middle School students through our Courtroom Law program, the activism of our Young Lawyers Section in supporting local charities, the scholarships our Foundation provides, the opportunities for pro bono service, our excellent law library, our

extensive educational offerings and the monthly luncheons featuring important community speakers. This will be an important year of transition as the NPBA and Norfolk Law Library move to the Norfolk Courthouse, a move that will allow us to better serve our community.

This year, it is my goal to provide more opportunities to both swap stories and serve with each other so that each of you appreciate the value of the NPBA to our practice and the community. Come out and be a part of all that NPBA has to offer and I am confident you will find out what I learned: Yes, we are better because of the NPBA.



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DOCKET DIGEST – RECENT NORFOLK CIRCUIT COURT OPINIONS

Compiled and Summarized by Dustin M. Paul and Jennifer L. Eaton, Vandeventer Black LLP

Select Summaries from April-June 2017:

Court Denies Charitable and Recreational Land Use Immunity for Harborfest Event.

Harlan v. Norfolk Festevents, Ltd., CL16-8314 (Apr. 7, 2017) (Judge Lannetti).

This matter was before the Court on March 7, 2017, for a hearing on the Special Pleas of Charitable and Statutory Immunity filed by Defendant. The underlying complaint describes a personal injury when a pedestrian tripped on a power cord at Harborfest and knocked Plaintiff to the ground. Defendant claimed it was entitled to charitable immunity given its charitable purpose and that it was entitled to statutory immunity under Virginia's Recreational Land Use Statute. Judge Lannetti held that Defendant's charitable immunity argument fails because Plaintiff was not a direct beneficiary of Defendant's charitable benefits. The Court's ruling said "[t]he benefit Harlan claims to receive by virtue of Festevents's contribution to the economic vitality of Norfolk is the quintessential example of an indirect benefit that fails to cloak its grantor with charitable immunity." With respect to the statutory immunity argument, Judge Lannetti determined that Defendant does not fall within the three distinct classes of landowners that are entitled to statutory immunity under the Virginia Recreational Land Use Statute. The Special Pleas were therefore denied.

Court Allows Aiding and Abetting a Breach of Fiduciary Duty Claim to Proceed.

Fortress Holdings II, LLC v. Charles R. Patty, Jr., et al., CL16-9593 and *FWLMGR, LLC v. Charles R. Patty, Jr., et al.*, CL16-9594 (Apr. 27, 2017) (Judge Atkins).

This matter was before the Court on March 28, 2017, on Defendants' demurrers to the Complaints. Notably, the Court's ruling examined the frequently-debated issue of whether aiding and abetting a breach of a fiduciary duty is a viable claim in the Commonwealth.¹ At this stage of the litigation, Judge Atkins determined that the aiding and abetting a breach of a fiduciary duty claim was sufficiently pled and "[i]f these allegations are proven true," joint liability for two of the defendants under this claim would result. The demurrers were overruled.

Court Examines the Right of an Expert Witness to Change his Opinion Before Trial.

Warren & Associates, PLC v. John C. Schaefer, M.D., CL16-10577 and *John C. Schaefer, M.D. v. Warren & Associates, PLC*, CL16-10045 (May 17, 2017) (Judge Martin).

Both matters were before the Court on summary judgment. Notably, the Court examined whether a retained expert breached his contract by changing his opinion. In the former case, Judge Martin noted that it was unclear why the expert changed his opinion and therefore overruled the motion for summary judgment. In the latter case, Judge Martin opined that—given the facts and circumstances of the case—if the expert "simply refused to testify or changed his opinion capriciously, he committed a material breach of the contract" and Defendant would be excused from further performance under the contract. Judge Martin also denied the motion for summary judgment in this latter, companion case.

¹ For further discussion of this issue, see the following publication authored by the Docket Digest authors: <http://www.vsb.org/docs/sections/litigation/springnews2017.pdf>.

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ANNUAL MEETING AND AWARDS



YOUNG LAWYERS SECTION

By Andrea Ruege, Chair

I am honored to be serving as the YLS Chair for the 2017-2018 year. Getting involved with YLS was one of the first decisions I made as a newly licensed lawyer and it has turned out to be one of the best decisions that I have made thus far in my career. My involvement with YLS has allowed me to interact with and learn from the bench, engage in community service, and develop relationships with many attorneys in our bar. As excited as I am to take the reins, I have big shoes to fill as **Jennifer Fuschetti** had an incredible year as YLS Chair. Thanks to Jennifer, YLS hosted a number of social events including our yearly Fall Reception and participated in community service projects at the Ronald McDonald House, the Foodbank, and Legal Aid.

In my opinion, Jennifer's biggest accomplishment over the past year was launching our new mentorship program. YLS hosted a program kick-off party on May 3 at Grace O'Malley's Irish Pub and Restaurant. There has been a great deal



of interest in this program both within YLS and the "big bar," as evidenced by the excellent turnout at Grace O'Malley's. We have attempted to pair mentors and mentees with consideration as to practice area, career goals, and personal interests. Please be sure to stay tuned for upcoming opportunities to get involved in the mentoring program. I know we are all excited about the amazing potential that this program has.

I would also like to congratulate our new treasurer and president-elect, **Nick Raffaele**, and our new subcommittee chairs, **Margaret Kelly**, **Darden Barrett**,

Alex Cloud, **Dan McNamara**, and **Griffin O'Hanlon**. I've been lucky to have the opportunity to work with each of these individuals throughout my time with YLS and I'm so excited to have them as part of our team for the 2017-2018 year!

As usual, summer is a busy time for YLS. Our Annual Golf Tournament was held on June 29, 2017. Thank you to **Kyle Martin** and **Amber Randolph** for all of your hard work in making this happen again this year. I know a good time was had by all! Be on the lookout for more great events this summer, including a Tides game, volunteer opportunities, and a summer social to be held in mid-August. If you are a young attorney, I strongly encourage you to attend our committee meetings to become more involved. Meetings are held once a month on Tuesdays at the Belmont in Ghent. For more information about getting involved in YLS or any of our upcoming events, please do not hesitate to contact me at aruege@bertinilawfirm.com.

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Please help us find a tenant for our Ghent offices. Cooper Hurley Injury Lawyers moved from 2014 Granby Street to a bigger office to accommodate our growing firm. We are seeking a tenant for our 2,800 square foot office on the corner of Granby Street and 21st Street in Ghent, Norfolk.

The office was designed for our law firm three years ago. It contains a large conference room, seven offices, a kitchen, two bathrooms and a spacious reception area. The office is above the Wells Fargo bank and within close walking distance of Ghent restaurants and stores on 21st Street with good transportation links. The new tenant will have great visible signage. The building also has ample free parking. Call Jim Hurley at (757) 455-0077 or our agent Scott Godbout at (757) 525-4947.



ANNOUNCEMENTS

Will Dudley has joined **Cooper Hurley Injury Lawyers**. Dudley attended Old Dominion University and the University of Richmond School of Law. He previously worked at a general practice law firm and at the Newport News public defenders' office. He concentrates on auto accidents and other personal injury cases.

Nicole J. Harrell of **Kaufman & Canoles** has earned the designation of Certified Information Privacy Professional with the International Association of Privacy Professionals, the largest and most comprehensive global information privacy community and resource.

Henry M. Schwan is pleased to announce that he has been recognized for the twelfth consecutive year as a Virginia Super Lawyer.

Deborah C. Waters of **Waters Law Firm** was again recognized as a Super Lawyer in

Transportation and Maritime Law. She is a member of the Board of Directors of Maritime Law Association of the United States. As Past President of the Admiralty Section of Association of Trial Lawyers of America (ATLA, now AAJ), she remains on its Board, Ex Officio, and continues to advise on maritime law issues. She was a member of the Limitation and Maritime Law Committee for all claimants in the BP Oil Spill Multi-District Litigation. In 2014, Governor McAuliffe appointed Ms. Waters to the Board of Commissioners of Virginia Port Authority.

Willcox Savage is pleased to welcome **Justin Guthrie** to the Maritime practice group. Justin is a 2016 graduate of Tulane University Law School, where he received a Certificate of Specialization in Maritime Law and was an editor for the Tulane Maritime Law Journal. During law school, Justin interned for the Federal Maritime Commission and the United States Department of Justice: Aviation & Admiralty

Civil Division. Prior to law school, Justin, a 2012 graduate of the University of Virginia, worked in aquaculture for one of the largest oyster companies on the Chesapeake Bay, as a U.S. Sailing Instructor and sailed competitively in college.

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NPBA FOUNDATION

By **Greg E. Summy**, President, NPBA Foundation
Greg.summy@nscorp.com • 533-4890

Greetings to all, and I hope you are enjoying a pleasant and relaxing summer so far. At the 2017 Annual Dinner, your Foundation's high school and Elizabeth Fitzwater scholarship recipients were introduced to the membership. The high school scholarship recipients are:

1st Place: John Azar
Granby High School

2nd Place: Griffin Schutte
Princess Anne High School

Mr. Azar will attend The University of Virginia, and Mr. Schutte will attend Virginia Commonwealth University. Each is a very

deserving recipient, as pointed out by the Honorable Rebecca Beach Smith in her introductory remarks. I think it's safe to say that the high school scholarship program is a vibrant and worthwhile mission for our Foundation.

The Fitzwater Scholarship recipient is Victoria Rice, a rising third year student at Regent University Law School. Ms. Rice demonstrated a combination of academic achievement and affinity for public interest law that resulted in her unanimous



selection by the Fitzwater Scholarship Committee.

We are always interested in hearing suggestions from NPBA members about other vehicles that we could use to further the Foundation's mission, which is to:

- Promote the administration of justice;
- Educate the public about the importance of law in their daily lives; and
- Enhance the image of the legal profession in the local community.

Please send me your ideas!

WELCOME NEW MEMBERS

William Dudley
Cooper Hurley Injury Lawyers

Julianne Freeman
Norfolk Southern

Andrew Gibbs
Wolcott Rivers Gates

Rachel Glasser
Glasser & Macon, P.C.

Justin Guthrie
Willcox & Savage, P.C.

Krista Haab
Norfolk Southern


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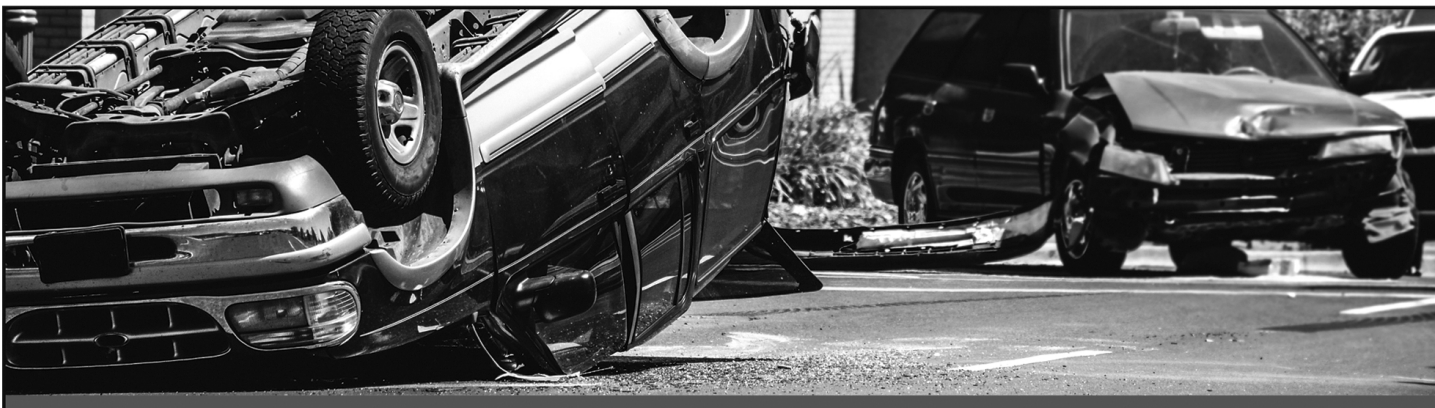
Stephen M. Smith, Esq.

Out of thousands of trial lawyers in the United States, Stephen M. Smith was one of the select few invited to be trained in the Neuro-Anatomical Dissection of the Human Brain and Spinal Cord at Marquette University College of Health Sciences. This advanced medical training, coupled with his 42 years of national and international complex medical litigation experience, provides his clients with an advantage in the court room.

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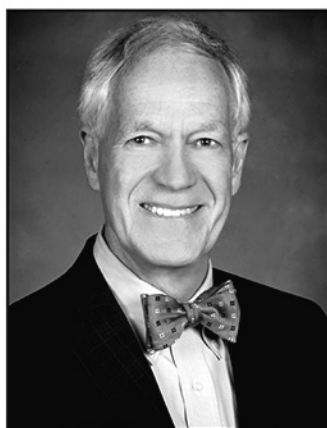
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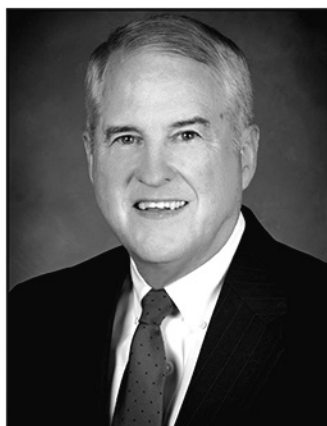
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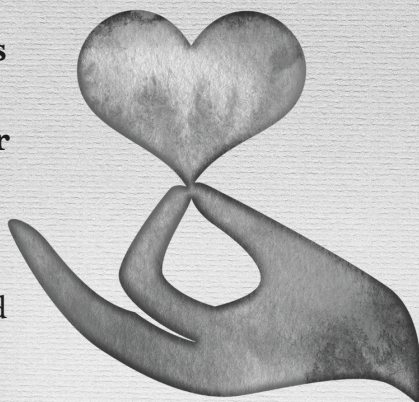


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