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September 2, 2010

Roger W. Mullins, Esq.  
P.O. Box 647  
Tazewell, VA 24651

RE: Boyd-Graves Committee  
Report on Impact of the Spear Decision Regarding the Effect of  
an Increased *Ad Damnum* in a Lawsuit Filed after a Nonsuit

Dear Roger:

This Committee was appointed to study the impact of the decision in Spear v. MWWA, et al. (Loudoun County Circuit Court - 9/4/09) which dismissed a lawsuit which contained an *ad damnum* higher than the amount claimed in the original lawsuit which had been non-suited. The trial court ruled that because the amount sued for was different, the subsequently filed lawsuit was not the same action as the original suit, so that the tolling provisions of Code 8.01-229(E)(3) did not apply. The Committee is comprised of The Honorable William Petty, Mary Lynn Tate, Kailaini Memmer, Gary Hancock, Stephen Sayers and me.

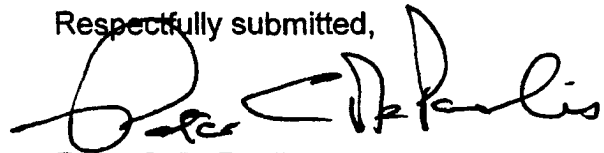
The Committee discussed the Spear decision in telephone conferences and subsequent e-mails. The Committee also reviewed the brief filed by Appellant Spear before the Supreme Court of Virginia, as well as the amicus brief filed by the Virginia Trial Lawyers Association.

The Committee recognized that the Spear decision was based upon an analysis not previously established in Virginia case law. The Committee also recognized that the Spear analysis has not been adopted in subsequent decisions of other circuit court judges faced with the same issue. Further, the Committee recognized that the impact of the Spear decision could go well beyond the narrow question involving an *ad damnum* different from the original suit. For instance, a similar challenge could arise if the

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second suit contained facts or legal theories not identical to those set forth in the original suit. However, the Committee has decided that no specific action should be recommended by Boyd-Graves on this issue until the Supreme Court rules in the Spear case. Although the writ has been granted, no argument has been set as of 9/1/2010. The Committee will review the ruling of the Supreme Court and will report with recommendations at that time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter C. DePaolis". The signature is written in a cursive style with a large initial "P" and "D".

Peter C. DePaolis  
Chairman

*/jal*

cc to: The Hon. William Petty  
Mary Lynn Tate, Esq.  
Kailaini Memmer, Esq.  
Gary Hancock, Esq  
Stephen Sayers, Esq.