VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday *the* 29th *day of* December, 2010.

Shawn C. Cawley, Appellant,

against Record No. 092286
Circuit Court No. CL06-1728

Stephen B. Spickermann, Appellee.

Upon an appeal from a judgment rendered by the Circuit Court of Chesterfield County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is reversible error in the judgment of the circuit court.

Shawn C. Cawley ("Cawley") filed suit against Stephen B. Spickerman ("Spickerman") for injuries arising out of a motor vehicle accident on July 31, 2004. Spickerman admitted liability and the matter proceeded for trial by jury solely on the issue of Cawley's damages. The jury, having retired to deliberate, submitted three written questions for the trial court regarding insurance and Cawley's out-of-pocket damages. The circuit court advised counsel that it responded, by note, that it could not answer their questions.[1]

The jury then returned a verdict in the amount of $2,389, the exact amount of Cawley's special damages. The circuit court advised the jury that the verdict was not proper because it was the exact amount of special damages, Bowers v. Sprouse, 254 Va. 428,

[1] The trial court's note does not appear in the record.

492 S.E.2d 637 (1997), and advised the jury to reread the damages instruction and continue deliberating.

The jury again retired to deliberate, and again submitted a question to the court: "Are the plaintiff's damages anything above $2,389? Future treatment?" The note further stated that the jury did not understand four of the instructions and needed clarification. It also stated that the jury did not want to award an amount greater than the medical expenses. The circuit court advised the jury that it could not return a verdict in the exact amount of the medical bills. After further deliberation, the jury returned a verdict in the amount of $0.

By letter opinion, the circuit court denied Cawley's motion to set aside the verdict as inadequate as a matter of law. Relying on Code § 8.01-430 and our guidance in Lane v. Scott, 220 Va. 578, 260 S.E.2d 238 (1979) and Glass v. David Pender Grocery Co., 174 Va. 196, 5 S.E.2d 478 (1939), the circuit court ruled that "[a] reasonable jury could have found that the alleged damages did not flow from the incident or . . . [that] the Plaintiff was not injured and did not meet his burden of proving damages."

On appeal, Cawley argues, *inter alia*, that the final verdict of $0 was inadequate as a matter of law in light of the jury's initial verdict of $2,389. While the Court has previously upheld a jury verdict of $0 where medical testimony supported the plaintiff's alleged injury, Mastin v. Theirjung, 238 Va. 434, 384 S.E.2d 86 (1990) ("jury could have found that [plaintiff's] alleged injuries were feigned"), it is apparent from the jury's initial verdict of $2,389 that the jury believed Cawley had suffered compensable injury. Having so found, it failed to account for

Cawley's pain, suffering, and inconvenience. Bowers, 254 Va. at 431, 492 S.E.2d at 638. In light of the initial verdict, when considered in the context of the jury's subsequent question to the court and statements that it did not understand four instructions and did not want to award more than medical expenses, the Court finds that the jury verdict of $0 was inadequate as a matter of law. The judgment therefore is reversed and the case is remanded for a new trial.

This order shall be certified to the said circuit court.

A Copy,

Teste:

Clerk