

**Virginia:**

**In the Circuit Court of the City of Richmond, John Marshall Courts Building**

ERIC M. GARVER

Plaintiff

v.

CL07-206

HALLETT H. MATHEWS, M.D.

and

MIDATLANTIC SPINE SPECIALISTS, P.C.

Defendants

**ORDER**

The parties appeared, in person and by counsel, on April 15, 16, 17 and 18 for trial by the court on the issues joined, a jury having been waived.

By a preponderance of the evidence the court makes the following findings:

- 1) Based on the testimony of the defendant and his expert witness on the standard of care, the disc space in which the Maverick artificial disc is to be placed must be meticulously cleared of materials that might be driven into nerves behind the disc space by insertion of the artificial disc;
  - a) In its decision, the court does not rely on the testimony of plaintiff's expert witness on the standard of care as it does not find him credible on the operative standard of care.
- 2) Material from the disc space was driven from the disc between L5 and S-1 space into the S-1 nerve

on Dr. Garver's right side when Dr. Mathews inserted the Maverick artificial disc into the disc space;

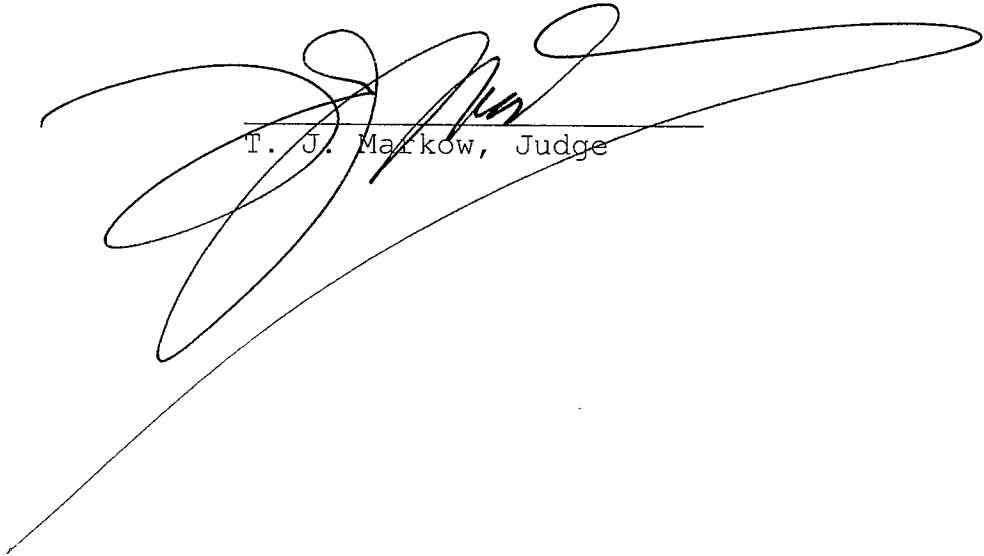
- 3) Dr. Mathews departed from the standard of care in preparing the disc space for insertion of the Maverick artificial disc;
- 4) Because the evidence is equivocal regarding Dr. Garver's nerve damage while he was in the hospital, plaintiff has not borne the burden of proving that Dr. Mathews departed from the standard of care in his post-operative care of Dr. Garver;
- 5) The material that was driven into Dr. Garver's S-1 nerve on his right side proximately caused permanent injury to that nerve which results in pain and difficulty in using his right leg;
- 6) For many years before Dr. Garver's disc replacement, he suffered from severe chronic pain resulting in permanent disability findings which the court considers in determining the quantum of damages to be awarded.

It is, therefore, ORDERED that judgment is awarded the plaintiff, Eric M. Garver, against the defendants, Hallett H. Mathews and MidAtlantic Spine Specialist, P.C., jointly and severally, for \$650,000, plus the costs.

The objections of the parties to decisions adverse to them are noted.

Copies of this order are mailed this day to counsel of record.

ENTER: 4/25/08



T. J. Markow, Judge