

Filed: July 15, 1996

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 95-2280  
(CA-92-1288-A)

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Susan M. Power,

Plaintiff - Appellant,

versus

Alexandria Physicians Group, Limited, et al,

Defendants - Appellees.

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O R D E R

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The Court amends its opinion filed July 3, 1996, as follows:

On the cover sheet, section 5 -- the panel information is corrected to read "Before ERVIN, Circuit Judge, PAYNE, United States District Judge for the Eastern District of Virginia, sitting by designation, and KELLAM,\* Senior United States District Judge for the Eastern District of Virginia, sitting by designation."

For the Court - By Direction

/s/ Bert M. Montague

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Clerk

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

SUSAN M. POWER,  
Plaintiff-Appellant,

v.

ALEXANDRIA PHYSICIANS GROUP,  
LIMITED; BENEDICT J. SEMMES, M.D.,  
Defendants-Appellees,

No. 95-2280

and

ARLINGTON HOSPITAL ASSOCIATION,  
Defendant.

Appeal from the United States District Court  
for the Eastern District of Virginia, at Alexandria.  
T. S. Ellis, III, District Judge.  
(CA-92-1288-A)

Argued: April 5, 1996

Decided: July 3, 1996

Before ERVIN, Circuit Judge, PAYNE, United States  
District Judge for the Eastern District of Virginia, sitting  
by designation, and KELLAM,\* Senior United States District Judge  
for the Eastern District of Virginia, sitting by designation.

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Affirmed by unpublished per curiam opinion.

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\*Senior Judge Kellam heard oral argument in this case but died  
prior  
to the time the decision was filed. The decision is filed by a  
quorum of  
the panel. 28 U.S.C. § 46(d).

## COUNSEL

**ARGUED:** John Mansfield Falk, THE FALK LAW FIRM, P.L.C., Washington, D.C., for Appellant. Edward Anthony Gonsalves, GODARD, WEST & ADELMAN, Fairfax, Virginia, for Appellees.

**ON BRIEF:** James H. Falk, Sr., James H. Falk, Jr., Robert K. Tompkins, THE FALK LAW FIRM, P.L.C., Washington, D.C., for Appellant. Gary Albert Godard, GODARD, WEST & ADELMAN, Fairfax, Virginia, for Appellees.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

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## OPINION

PER CURIAM:

Susan M. Power obtained a verdict in the amount of \$5 million against Arlington Hospital Association under the Emergency Medical Treatment and Active Labor Act ("EMTALA") in recompense for personal injuries Power sustained as a result of the hospital's failure to provide an appropriate screening examination within the meaning of EMTALA. Power v. Arlington Hospital Ass'n, 800 F. Supp. 1384 (E.D. Va. 1992) ("Power I"). While the verdict in Power I was on appeal to this court, Power instituted an action for malpractice against the hospital, the Alexandria Physicians Group, Limited and Dr. Benedict J. Semmes. Thereafter, this court decided Power I. Power v. Arlington Hospital Ass'n, 42 F.3d 851 (4th Cir. 1994). As a result, the verdict of \$5 million in Power I was reduced to \$1 million.

Power then revived the dormant malpractice action and consented to the dismissal of the hospital as a defendant on the ground that it had been held liable already in Power I. The remaining defendants, Dr. Semmes and Alexandria Physicians Group, Limited, moved for dismissal contending that the \$1 million EMTALA award in Power's favor in Power I constituted the entire amount recoverable by her

because of Virginia's \$1 million medical malpractice cap. Va. Code Ann. § 8.01-581.15 (Michie 1992). Power opposed dismissal on the theory that a second cap in the amount of \$1 million was available in her malpractice action against Dr. Semmes and Alexandria Physicians Group, Limited. The district court, relying principally upon this court's decision in Power I, accepted the defendants' contention and granted their motion to dismiss the complaint in this action.

We have reviewed the district court's opinion, the record, the briefs and the contentions advanced by both parties at oral argument and find no reversible error. Accordingly, we affirm the decision of the district court on the reasoning of that court. Power v. Alexandria Physicians Group, Limited, 887 F. Supp. 845 (E.D. Va. 1995).

AFFIRMED