SEARCY DENNEY SCAROLA BARNHART & SHIPLEY

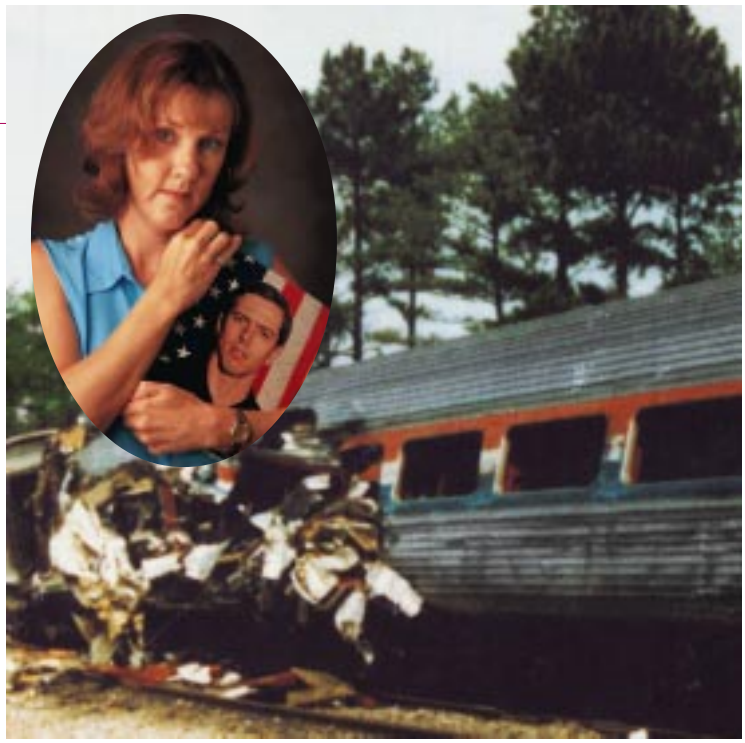
OF COUNSEL

A Quarterly Report to Clients and Attorneys.

VOLUME 00
NUMBER 4

CSX Liable for $50 Million in Punitive Damages

U.S. Supreme Court Rules In Favor Of Woman's Fight Against CSX



On Tuesday, Oct. 3, the U.S. Supreme Court handed down a decision to CSX Transportation Inc. denying a June 9 petition to hear the case. This affirms a Cooper City, Fla., woman's nine-year battle against the railroad giant.

The plaintiff, Angelica Palank, with the help of attorneys Chris Searcy and Greg Barnhart, filed suit against CSX Transportation Inc. for the death of her husband Paul in 1991.

On July 30, 1997, six jurors found CSX, which is based in Jacksonville, liable for $50 million in punitive damages. CSX appealed the decision. In August 1999, the Fourth District Court of Appeals, in a seven page opinion, affirmed the six jurors' 1997 verdict. CSX responded with an appeal to the Florida Supreme Court which, on March 15, 2000, refused to accept jurisdiction to review the case. CSX then appealed to the U.S. Supreme Court.

On July 31, 1991, eight people, including Paul Palank, were killed in Lugoff, S.C., when the last five passenger cars of a Miami-to-Washington Amtrak train switched to a side track and smashed into nine parked freight cars. Federal Safety Regulations require railroads to carefully inspect main line switches at least twice a week. An extensive investigation revealed that a faulty main line switch, which had been broken for at least 7 months, opened, causing the train to derail. CSX owns the Lugoff tracks and approximately 30,000 miles of track between New York and Miami. Records show that an audit done by the Federal Railroad Administration (FRA), as early as 1987, showed gross deficiencies in CSX's staffing and inspection practices. ■

***Miami Metro* magazine contributor Linda Marx wrote a feature on Mrs. Palank's fight with CSX. Enclosed is a reprint of that October 2000 article.**

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Small Area of Pond Lacked Safety Requirements

Pond's Side Slope Turns Tragic for Six-Year-Old Boy

On May 11, 1991, six-year-old Collin Brann was playing with a friend near a pond. The pond was located directly behind his family's home in Greenacres, Fla. The pond's drainage structure, known as a weir, allowed the water level to be raised or lowered. While the water was very shallow along the shoreline and everywhere else in the pond, it was very deep immediately in front of the drainage structure. Collin tragically fell into the pond, and, unable to swim, immediately sunk to the bottom. His young friend went for help, but it was more than ten minutes before Collin was recovered in eight feet of water. Collin was resuscitated and transported to St. Mary's Hospital in West Palm Beach, but not before suffering a severe anoxic brain injury.

Palm Beach County and the South Florida Water Management District require builders of storm water retention ponds to conform with very specific side slope requirements. These requirements are designed to protect young children, like Collin, who, if having fallen into the pond, can easily stand up and walk out. Nevertheless, the drainage structure for this pond was designed so that the depth of the water directly in front of the drain was more than eight feet deep. When Collin fell into the pond, he immediately sunk to the bottom and was unable to climb up the steep underwater slope. The entire bed of the pond conformed with side slope requirements, with the only exception being the small area where Collin was ultimately found.

Collin is now a quadriplegic and is unable to walk, talk, eat, or drink. Collin's only source of nutrition is through a gastrostomy tube which was placed shortly after his injury. He has also been hospitalized on numerous occasions for chronic respiratory problems and for a number of orthopedic surgeries. Collin's lack of mobility has made it impossible for his bones to grow normally. Orthopedic surgeons have had to implant rods in Collin's back to relieve pressure on his spine, tendons, and muscles.

Attorneys Bill Norton and Patrick O'Hara, of Patrick O'Hara, P.A. in West Palm Beach, sued the homeowners' association and the engineers who designed the pond. They settled in 1995 for $2.243 million. They also sued the developer and contractors, who together settled this year for $2.75 million.

The Branns are an inspiration to all who witness their love for Collin. Collin's father, Dr. Herman Brann, left his profession as an economist to stay home and care for Collin full time. His mother, Mrs. Glorianna Brann, is a registered nurse who works tirelessly to care for Collin and to ensure the coordination of his medical treatment with all of his physicians. The entire Brann family, including Collin's younger sister, Julie, and older brother, Marlin, have done everything possible to ensure that Collin knows he is loved and cared for. Collin's total recovery of $4.993 million will be placed in a guardianship to provide him with proper care and treatment for the rest of his life. ■

Nerves Damaged During Back Surgery

Young Couple Loses Everything As a Result of Botched Surgery

Mr. and Mrs. John Doe were a young couple who were very active and very much in love. They did everything together, including fishing, scuba diving, snow skiing, and many other physical activities.

In 1995, Mr. Doe sustained a lower back injury which required medical care. He sought treatment from Dr. X, a local orthopedic surgeon. Dr. X told Mr. and Mrs. Doe about a "Band-Aid" procedure, intended to remove a herniated disk with a laser device. Dr. X touted the procedure as being less invasive than traditional disk surgery. It would require careful administration of anesthesia so that Mr. Doe could alert the surgeon if sensitive nerves were being adversely affected. Mr. Doe, following his doctor's recommendation, agreed to undergo the procedure.

One of the most obvious complications of any back surgery is injury to otherwise healthy nerves. Nerves in the lower back, if injured, can disable a patient's lower extremities, as well as interfere with bowel and bladder function. It is therefore common for a hospital to make sure a patient is neurologically intact before the patient is discharged.

Evaluation showed that Mr. Doe was not a good candidate for the surgery.

When Mr. Doe's surgery was completed, he was transferred to a post-anesthesia recovery room. Unfortunately, he found he was unable to urinate. He was told he must remain in the hospital until he could urinate successfully. In an attempt to empty his bladder, Mr. Doe, with his wife's assistance, attempted to stand beside his bed. His legs buckled immediately, and his wife helped him back into bed.

A neurological evaluation revealed that Mr. Doe had suffered a nerve injury to his lower back. Mr. Doe was taken back into the operating room, this time for a full laminectomy. Unfortunately, Mr. Doe emerged from the surgery partially paralyzed. To this day he has limited bowel and bladder function and extremely limited lower extremity sensation. He will walk with difficulty for the remainder of his life.

At the time Mr. Doe underwent surgery, he and his wife owned a flourishing restaurant. They were also planning to start a family. As a consequence of this negligent, preventable injury, Mr. and Mrs. Doe lost everything, including their marriage. They divorced due to the stress and strain of Mr. Doe's permanent disability.

Experts hired by the plaintiffs evaluated the care rendered to Mr. Doe, and determined that he was never a good candidate for surgery in the first place. In addition, they determined that the surgery was performed negligently. While in the operating room, Mr. Doe had experienced excruciating pain. A laser technician, describing the event, stated, "The patient screams of pain and jerking around the table, became so severe that I was unable to keep him safely on the operating table..." It was learned that the anesthesiologist had suggested that the procedure be terminated, but Dr. X chose to ***continued on page four***

Employee Injured Due to Combination of Rain, Speed, and Unscreened Driver

Staff Leasing Company Found Liable for Employee's Injuries

In April 1998, Pedro Torres had been living in the United States less than one month. He had quickly gotten a job as a blueberry picker in Okeechobee, Fla. On the afternoon of April 30, 1998, it was raining and the pickers were therefore sent home early. Mr. Torres was riding in the front seat of a car driven by a co-worker. As they pulled out from a side street, they were struck by a semi-truck owned by Padgett Trucking & Sod Farms. The driver of the truck, Arturo Guerrero, was a temporary worker for a company called Staff Leasing, Inc.

According to eyewitnesses, the truck driver was speeding along at 60 miles per hour in a 55 mile per hour zone. The Commercial Driver's License Manual states that in rainy conditions a truck driver should slow his speed by a third, which in this case should have been about 35 mph. Furthermore, Mr. Guerrero had a long history of poor driving, and Staff Leasing had done no background check before hiring him. If they had, the plaintiff contended, Staff Leasing would never have allowed Mr. Guerrero to drive.

Following the accident, Mr. Torres was air-lifted to St. Mary's Hospital in West Palm Beach. He stayed in a coma for several months and suffered fractures to his arm and his leg. Mr. Torres also suffered multiple internal injuries.

This case was referred to attorney Sean Domnick from The Accident Law Offices of Philip DeBerard in Okeechobee and Stuart. The driver of the car in which Mr. Torres was riding, who was significantly at fault in this accident, had no insurance. There have been very few, if any, cases holding employee leasing companies, such as Staff Leasing, liable under these circumstances. Nevertheless, Mr. Domnick was able to reach a settlement for $1 million with Padgett Trucking and Sod Farms, and $1.05 million with Staff Leasing. Mr. Torres will use the $2.05 million to pay for his future needs, as well as enjoy financial stability for the remainder of his life. ■

Nerves Damaged During Back Surgery

(Continued from page three)

have additional anesthetic administered so he could complete the surgery. For complying with Dr. X's wishes, the anesthesiologist was also deemed negligent. Experts also criticized other hospital personnel involved in the surgery, as well as the manufacturer of the laser itself.

In defending this case, Dr. X, arguing that the injury occurred post-surgery, blamed the hospital staff for allowing Mr. Doe to attempt to stand in the recovery room. The hospital staff, in turn, blamed Dr. X for negligently performing the procedure, as did the laser manufacturer. In essence, all the defendants began pointing fingers at each other.

Attorneys Chris Searcy and Earl Denney represented Mr. Doe for his injuries. Attorney Pat Massa from North Palm Beach represented Mrs. Doe, who remained a plaintiff in the case after the Does divorced. Defense counsel continued to shirk responsibility by arguing that Mr. Doe merely suffered a complication for which their clients were not liable.

On the eve of trial, Mr. Searcy, Mr. Denney, and Mr. Massa settled with Dr. X, the anesthesiologist, and the hospital for a combined sum in excess of $4 million. The settlement was apportioned 90 percent for Mr. Doe and 10 percent for Mrs. Doe. ■

Doctors Treat Fracture But Miss Cancer

Young Man Shows Courage After Misdiagnosis

Willie Marshall, Jr. was a sophomore at Immokalee High School, near Ft. Myers, Fla., and was the running back on the varsity football team. On the evening of Sept. 23, 1994, Willie's life changed forever when he took a pitch from the quarterback, dropped the ball, and turned to pick it up. When he pivoted, he felt a tremendous pain in his left leg. Willie was not hit by any other players.

Willie was taken by ambulance to the hospital. Paramedics determined that Willie's injury was not traumatic. X-rays were taken and interpreted by Radiologist A and an orthopedist as a left spiral oblique femur fracture. Although both physicians were aware of the lack of blunt trauma, neither investigated potential underlying causes of the fracture. The next day, the orthopedist performed surgery to place a rod in Willie's left femur. Another radiologist, Radiologist B, was present during the procedure. Once again, the physicians noticed nothing in the area of the fracture which might have raised their suspicions.

After the operation, the orthopedist reviewed the original x-rays and noticed a mass at the fracture site. He conferred with Radiologist A, who then performed a CT scan on Sept. 29, 1994. This time the doctors identified a mass at the fracture site, but diagnosed it as a benign condition.

Willie continued treatment with the orthopedist for normal post-operation follow-ups. His left leg, however, became increasingly painful. Finally, after two months, the orthopedist recognized that Willie had a significant problem with his left leg and referred him to a specialist for an MRI. The MRI confirmed that Willie had cancer in the area of the fracture. However, because the surgeon performed an open surgical procedure and placed the rod through Willie's femur, the cancer had been distributed from Willie's hip down to his knee.

Willie was immediately referred to a pediatric oncological specialist at All Children's Hospital in St. Petersburg, as well as an oncologic orthopedic surgeon at Tampa General Hospital. In spite of heroic efforts to save Willie's leg, the oncologists were ultimately unsuccessful. The placement of the rod had spread Willie's cancer so extensively and quickly that the only way to save Willie's life was to perform a hemipelvectomy surgery. This is a very rare procedure in which the doctor removes not only the patient's leg, but half of his pelvis. ***continued on page seven***

Wrock-Ryland vs. Karroum, SmithKline

In August 1996, Martie Wrock-Ryland noticed a dark growth on the nape of her neck. She went to her dermatologist, who removed the growth at the skin level and sent it to SmithKline Beecham Laboratories for evaluation. Dr. John Karroum, a dermatopathologist employed by SmithKline, reviewed the tissue sample. His pathology report stated that the growth was a basal cell carcinoma and, therefore, Ms. Wrock-Ryland needed no further treatment.

Five months later, Ms. Wrock-Ryland noticed another small growth in roughly the same spot as the one removed in August. She again went immediately to her dermatologist, who again cut off the growth and sent it to SmithKline Beecham Laboratories. Dr. Karroum again examined the tissue sample and this time rendered a diagnosis of malignant melanoma. Ms. Wrock-Ryland then underwent a procedure called a complete wide excision, where all the tissue surrounding the area of the melanoma was removed. The melanoma was of minimal depth and Ms. Wrock-Ryland's prognosis looked good.

In October 1998, Ms. Wrock-Ryland, while showering, discovered a lump in her armpit. A subsequent examination revealed that she had a lymph node which was positive for malignant melanoma. The melanoma was spreading, and in April 1999 her doctors found another positive lymph node.

At about that same time, Ms. Wrock-Ryland was watching a TV news program about a lady whose melanoma was misdiagnosed by a SmithKline Beecham pathologist. Concerned that this may have happened to her, Ms. Wrock-Ryland visited Dr. Steven Rosenberg, a West Palm Beach dermatologist. Dr. Rosenberg obtained the original biopsy sample from August 1996. He arranged for a subsequent review by a dermatopathologist from the University of Miami, which revealed that Dr. Karroum had misread the initial biopsy sample. In fact, Ms. Wrock-Ryland had malignant melanoma all along.

Attorneys Greg Barnhart and Sean Domnick were retained by Ms. Wrock-Ryland. The plaintiff's experts testified that Dr. Karroum's negligence was the cause of Ms. Wrock-Ryland's cancer spreading. They testified that if Dr. Karroum had correctly diagnosed the malignant melanoma in September 1996, appropriate treatment would have cured Ms. Wrock-Ryland. Conversely, permitting the melanoma to grow for five months allowed the cancer to spread.

Recently, Mr. Barnhart and Mr. Domnick were able to reach a confidential settlement with SmithKline Beecham Laboratories and Dr. Karroum. Ms. Wrock-Ryland currently undergoes CAT scans and physical examinations every three months. She also continues her crusade to make people aware of the dangers of melanoma. ■

Decisions...Decisions...Decisions...

The 1989 Toyota Camry in which Catherine Giampa was a passenger.

Giampa vs. Berkowitz

On July 26, 2000, attorneys David White and Karen Terry successfully tried a case on behalf of their client, Catherine Giampa of Connecticut. Ms. Giampa, age 74, was a restrained passenger in her sister's automobile. The Toyota Camry in which they were riding was involved in a violent crash in an intersection in Delray Beach, Fla.

Ms. Giampa's sister, who was driving the car, attempted to make a left hand turn into her apartment complex, The Pines. Upon entering the intersection, a four door Chrysler smashed into the back passenger door, causing over one foot of intrusion. The Camry spun 180 degrees and went up on two wheels on the driver's side, then smashed back down on Ms. Giampa's side. Ms. Giampa's head struck the window and she broke her neck.

Ms. Giampa was rushed to Delray Beach Medical Center emergency room, where she was diagnosed with an odontoid fracture and C-2 bilateral mass fractures and placed in a hard collar. Fortunately, surgery was not necessary. In fact, Ms. Giampa was fortunate to have not been rendered a quadriplegic.

After months of grueling physical therapy, Ms. Giampa was ultimately deemed to have a residual permanent impairment of 14 percent. She continues to have difficulty with range of motion in her neck. Stripped of much of her independence, Ms. Giampa can no longer drive an automobile great distances and she is unable to travel out of state alone. She has lost her ability to garden, play Ping-Pong with her grandsons, and exercise to Richard Simmons videos as she did prior to the crash. She is now reliant on others for many activities which used to be routine. Ms. Giampa has been relegated to the life of a "little old lady" and, as her sister described her, she is a "mere shell of her former self."

Ms. Giampa's past medical expenses totaled approximately $25,000. The cost of medical care in the future remains uncertain. Mr. White and Ms. Terry tried this case before a Palm Beach County jury for three days. The jury awarded a total of more than $240,000 for past and future medical expenses, pain, and suffering. ■

Young Man Shows Courage After Misdiagnosis

Continued from page five.

In addition to enduring such a painful and profound procedure, Willie then had to undergo a very long course of chemotherapy. During his treatments, Willie unselfishly volunteered for experimental courses of chemotherapy. He hoped that it would someday benefit other pediatric cancer patients, like the ones he had met and befriended in his cancer ward.

Willie's perseverance and love of life has made him a very well respected young man.

The Marshall family originally consulted attorney Jeff Chambers of St. Petersburg, who then referred the case to attorneys Chris Searcy and Bill Norton. Mr. Searcy and Mr. Norton settled the case for the available insurance limits of $1.275 million.

Willie's perseverance and love of life has made him a very well regarded and respected young man. He served as a mentor to many younger cancer patients and became involved in the Children's Miracle Network. Willie now speaks regularly for the Children's Miracle Network, All Children's Hospital, and other related organizations. The 22-year-old is attending college at the University of South Florida and is pursuing a degree in education. ■

Symptoms and Risk Factors Not Recognized by Doctors

Doctor's Misdiagnosis Causes Woman to Suffer a Stroke at Age 44

At the age of 44, the last thing Kathleen Colozzo expected was to have a heart attack. On April 28, 1995, the unexpected happened, and the doctors and nurses who Mrs. Colozzo trusted failed to properly diagnose her heart condition.

After finishing her dinner, Mrs. Colozzo began to feel ill. As her abdominal pain increased, Mrs. Colozzo, who is a licensed practical nurse, began to recognize that her symptoms were becoming serious. Her husband, Don, called 911. Mrs. Colozzo began to develop serious chest pains. When the paramedics arrived at the Colozzos' home, they initiated a cardiac protocol and transported Mrs. Colozzo to the hospital.

When Mrs. Colozzo arrived at the emergency room, the nurse and emergency room doctor focused on Mrs. Colozzo's gastric problems. Although Mrs. Colozzo had clearly indicated to the paramedics that her chief complaint was chest pain, the emergency room record reflects only epigastric pain. In addition to her chest pains, Mrs. Colozzo had several risk factors for heart disease which should have been recognized by the nurses and emergency room doctor. The results of the blood work showed a very high CPK level, which can be indicative of a heart attack. In spite of Mrs. Colozzo's symptoms and laboratory findings, the emergency room physician chose to focus on her gastrointestinal symptoms and discharged Mrs. Colozzo with a diagnosis of gastritis. Although gastrointestinal distress frequently accompanies a cardiac event, neither the doctors nor the nurses considered the possibility. A simple EKG, which could have been ordered by the doctor or the nurses, would have ruled out or confirmed a heart attack.

The next day, April 29, 1995, Mrs. Colozzo again developed chest pains. This time, her husband drove her to the hospital where the couple had to wait for over an hour before being seen by a physician. In spite of Mrs. Colozzo's severe chest pains, the couple was told by a nurse that the hospital had "priorities" and that they would have to wait. When Mrs. Colozzo was finally seen by a physician, he immediately recognized that Mrs. Colozzo was experiencing an evolving myocardial infarction which required emergency treatment. Mrs. Colozzo was admitted to the hospital and administered blood thinners in an attempt to minimize any further damage to her heart. Unfortunately, the injury to her heart muscle had begun the day before. The damage was permanent.

On May 1, 1995, Mrs. Colozzo underwent a cardiac catheterization which documented the extensive damage to her heart muscle. When Mr. Colozzo returned to the hospital the next morning to see his wife, he found her unresponsive. Mrs. Colozzo was found to have suffered a left middle cerebral artery stroke. The stroke left Mrs. Colozzo with severe brain damage. After several years of intensive therapy, Mrs. Colozzo was still left with right-sided weakness, severe depression, and an inability to speak, in addition to greatly diminished heart function.

A simple EKG, ordered by either doctors or nurses, would have clarified the possibility of a heart attack.

Attorney Bill Norton, along with co-counsel James Torres of the law firm of Alpizar, Ville, Torres & Camfield in Palm Bay, litigated this case. They argued that Mrs. Colozzo's stroke was caused by the damage done to her heart as a result of the doctors' and nurses' failure to diagnose her serious heart condition. The case settled shortly before trial for $1.15 million. ■

History and Symptoms Ignored by Doctors

Man Dies After Two Cardiologists Misread EKG

Left to right:
Rebecca, Brandon, Amber, and Ronald Carroll

Ronald Carroll was a truck driver who was looking forward to returning home to his wife and children on the evening of May 16, 1998. Mr. Carroll was driving to his home in St. Petersburg, Fla. from a trip to Indiana when he began to experience shortness of breath. While driving through Gainesville, Mr. Carroll stopped at a drug store. The pharmacist recognized that Mr. Carroll had a severe problem and called 911.

Mr. Carroll was transported to Hospital A, where he was examined by emergency room physician Dr. B. The doctor noted complaints of left-sided chest pain and a productive cough. The emergency room record reflected a history of borderline diabetes and mitral valve replacement eight years prior. A chest x-ray was ordered, which the hospital radiologist found to be abnormal. Dr. B also ordered an EKG, which was mechanically interpreted to be abnormal and possibly indicative of a heart attack. Dr. B disregarded both the EKG and the x-ray and diagnosed Mr. Carroll with pneumonia and bronchitis. The doctor attributed Mr. Carroll's chest wall pain to a bruise he had received some weeks prior. Mr. Carroll spent less than one hour in the hospital.

When Mr. Carroll arrived home, he developed nausea and vomiting. His wife, Rebecca, went to the pharmacy to fill the emergency room doctor's prescriptions for antibiotics and pain medication. During the course of the night, Mr. Carroll continued to experience nausea and vomiting, which got progressively worse. Mrs. Carroll called an ambulance in the early morning hours of May 17, 1998, and Mr. Carroll was taken to Columbia Northside Medical Center. Shortly after his arrival at the hospital, Mr. Carroll died as a result of an acute myocardial infarction. Mr. Carroll was survived by his wife, Rebecca, his daughter, Amber, and son, Brandon.

Mrs. Carroll originally sought representation by St. Petersburg attorney Jeffrey Chambers. Mr. Chambers referred the case to attorneys Chris Searcy and Bill Norton. Shortly after being placed on notice of the claim, the defendant hospital and emergency room doctor admitted liability and requested arbitration. They did so to take advantage of protection afforded to them by the Florida Medical Malpractice Statute. By admitting liability, the defendant hospital and emergency room doctor limited the Carroll family's non-economic (pain and suffering) damages to $350,000. However, shortly after the defendants' admission of liability, the Florida Supreme Court ruled in the case of St. Mary's Hospital v. Phillipe that the statutory cap of $350,000 is available to each of Mr. Carroll's survivors. Previously, defendants could cap their total exposure at $350,000, regardless of the number of dependent survivors.

Citing the St. Mary's case, Mr. Searcy and Mr. Norton demanded the emergency room physician's policy limits of $1 million. The policy limits were paid to Mr. Carroll's estate shortly thereafter. The case against Hospital A is still pending. Additionally, Mr. Searcy and Mr. Norton have discovered that Mr. Carroll had treated with a cardiologist several months prior to his death. The cardiologist performed an EKG which was misread. Had the cardiologist correctly read the EKG, Mr. Carroll could have received medical treatment which would have prevented his subsequent fatal heart attack. The Estate of Ronald Carroll has recently filed suit against this cardiologist as well. ■

Three Attorneys are Selected for Best Lawyers In America

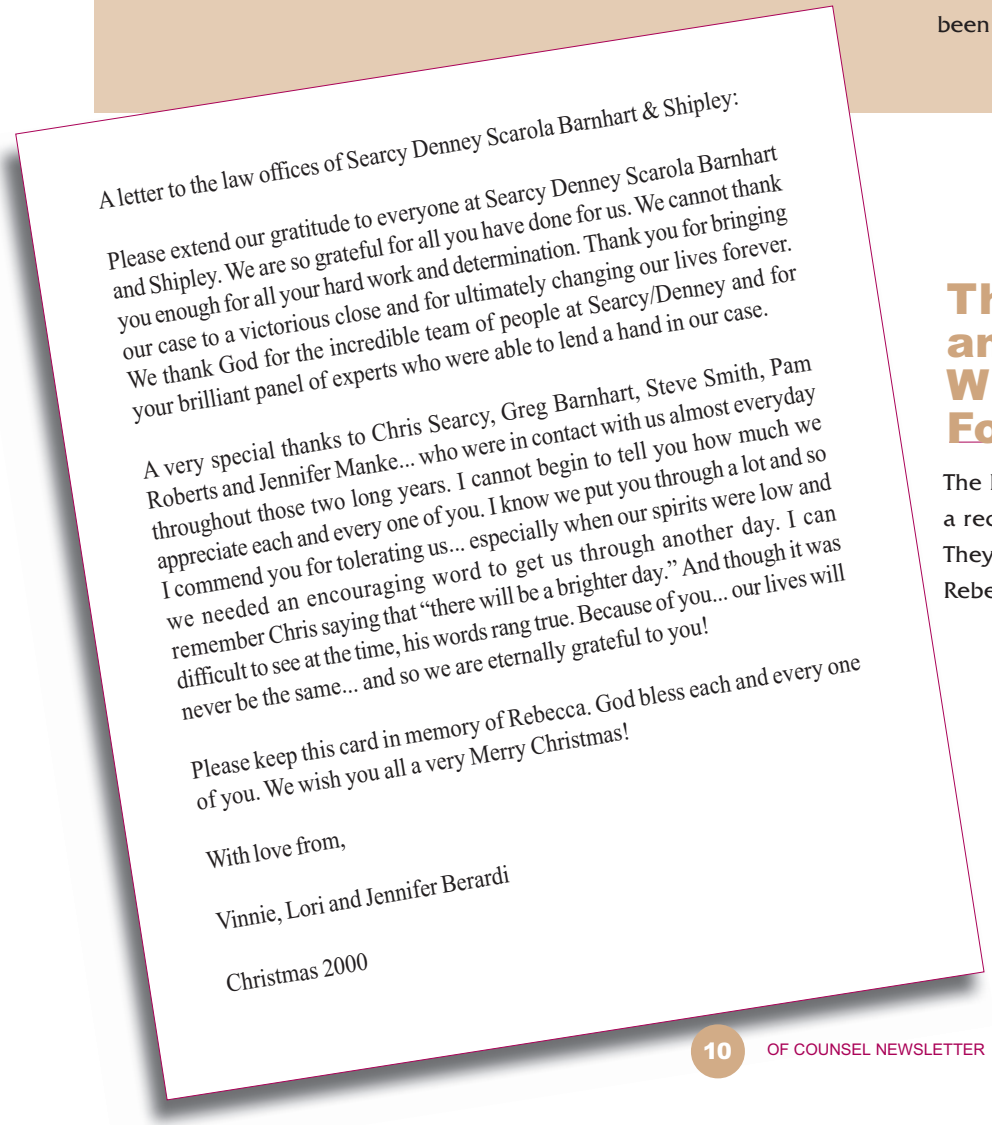
Chris Searcy

Greg Barnhart

Chris Speed

Chris Searcy, Greg Barnhart, and Chris Speed have been selected for the 2001-2002 edition of *The Best Lawyers in America.* Throughout the country, 15,000 leading attorneys were contacted to cast their "votes" on the abilities of lawyers in their fields of expertise. Lawyers are chosen for the publication based solely upon their abilities as measured by their peers.

This is the ninth edition of *Best Lawyers In America.* Mr. Searcy has been listed since 1983, Mr. Speed has been listed since 1987, and Mr. Barnhart has been listed since 1995. ■



A letter to the law offices of Searcy Denney Scarola Barnhart & Shipley:

Please extend our gratitude to everyone at Searcy Denney Scarola Barnhart and Shipley. We are so grateful for all you have done for us. We cannot thank you enough for all your hard work and determination. Thank you for bringing our case to a victorious close and for ultimately changing our lives forever. We thank God for the incredible team of people at Searcy/Denney and for your brilliant panel of experts who were able to lend a hand in our case.

A very special thanks to Chris Searcy, Greg Barnhart, Steve Smith, Pam Roberts and Jennifer Manke... who were in contact with us almost everyday throughout those two long years. I cannot begin to tell you how much we appreciate each and every one of you. I know we put you through a lot and so I commend you for tolerating us... especially when our spirits were low and we needed an encouraging word to get us through another day. I can remember Chris saying that "there will be a brighter day." And though it was difficult to see at the time, his words rang true. Because of you... our lives will never be the same... and so we are eternally grateful to you!

Please keep this card in memory of Rebecca. God bless each and every one of you. We wish you all a very Merry Christmas!

With love from,

Vinnie, Lori and Jennifer Berardi

Christmas 2000

Thank You and Holiday Wishes from Former Clients

The Berardis were featured in a recent *Of Counsel* newsletter. They lost their daughter, Rebecca, in 1999. ■

Taking...

Time to Care

Leukemia and Lymphoma Society's "Light the Night Walk"

On Friday, Sept. 22, Searcy Denney Scarola Barnhart & Shipley employees and their family members participated in The Leukemia & Lymphoma Society's "Light The Night Walk." More than $1,200 was raised by Searcy Denney team walkers, who collected pledges and then walked three miles. All the proceeds will help fund research for the Society.

Searcy Denney Scarola Barnhart & Shipley employees and family members who participated were Nancy Bullard; Carla DeCunha; Lisa Dodds; Marilyn Hoffman and her husband Brad; Michelle Holly; Stacey Kniseley; Jennifer Manke and her daughter Ashleigh; Donna Miller and her daughter Lindsey; Cory Rubal; Sylvia Simon and her husband Jay; Ashleigh Simmons, her friend Greg Anderson, and her sister Angie; Chris Speed and his son Jonathan; and Jud Whitehorn. ■

Firm Team Excels at "Great Grown Up Spelling Bee"

On Saturday, Sept. 23, paralegals Steve Smith, Kevin Walsh, and law clerk Tobi Perl participated in the "Great Grown Up Spelling Bee." More than $27,000 was raised during the event, with proceeds to help support the services of the Palm Beach County Literacy Coalition. Searcy Denney Scarola Barnhart & Shipley was one of 21 teams participating in the spelling competition.

Mr. Smith, Mr. Walsh, and Ms. Perl made it to an impressive fifth round during the event. The word they missed was "querulous," an adjective which means "inclined to find fault." ■

Prince Loadholt Retires

On Friday, Oct. 27, Searcy Denney Scarola Barnhart & Shipley employees said goodbye to Prince Loadholt. Mr. Loadholt retired and will be moving to Georgia with his family.

Mr. Loadholt began his career with the firm in the early 1980s. He was hired by then office manager, Ed Fallon, to maintain the grounds around the firm parking lot. During an early morning celebration, Earl Denney reminisced about Mr. Loadholt's years of dedicated service at the firm. Mr. Loadholt was then presented with gifts and well-wishes from all the law firm's employees. ■

OF COUNSEL
Volume 00, No. 4

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Happy New Year!

Happy 2001 from all of us at...

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
Attorneys at Law

DERAILED
The Angel Palank Story

A Widow's Fight To Keep A National Railroad Company From Getting Away With Murder

by Linda Marx

Because Miami police officer Paul Palank had an intense fear of flying, he took an Amtrak train to his family reunion in Washington, D.C. on the morning of July 31, 1991. His wife, Angelica, and two young children had arrived in D.C. earlier that week by airplane, and awoke before sunrise that day, eager to greet Dad at Union Station to start what they had planned to make a month-long vacation. As Palank's family prepared for his arrival, his train, the Silver Star, was traveling north at 79 miles per hour through Lugoff, South Carolina. It was 5 a.m. and Palank was fast asleep when suddenly a faulty mainline switch broke in two. Within moments, Palank's car derailed and smashed into nine parked freight cars. The force of the impact, which awakened Palank, crushed his chest. When Amtrak's rescue crew arrived 40 minutes later (rescuers had trouble finding the crash site), Palank already had died from internal bleeding.>>>

Though her husband had been dead for more than seven hours, it wasn't until Angelica "Angel" Palank arrived at the train station that afternoon that she learned something was wrong. She and her two children (son Josef, 4, and daughter Taylor, 10 months) waited and waited, but there was no sign of Paul.

"We stood around watching all of the people coming and going when someone said, 'That train derailed.' We were confused and alarmed, so we quickly rode down the escalator looking for the service desk," recounts Palank in her first in-depth interview about what would turn into a nine-year battle to avenge her husband's death. "I remember my son Joe asking what 'derailed' meant."

When Palank asked a clerk about the train from Fort Lauderdale, she was given an 800 phone number and directed to a pay telephone. "I kept dialing and it was busy," recalls Palank, now 41. "The kids kept asking where daddy was, and I was praying and trying to entertain them while I kept dialing." When she did get through she was transferred numerous times until finally, "I remember someone telling me the Miami Police Department had sent an officer to identify Paul's body in South Carolina," says Palank, a former Miami Police Department dispatcher who met her husband when she sent him to the scene of a burglary. "I was sobbing and horrified and trying to keep the children calm. My life was shattered within seconds."

After her husband's death, Palank says her life became a blur of chaos and confusion. The craziness started the moment she and her kids returned to their Cooper City home where they found members of the media camped on her doorstep.

"I was fearful I could die or go nuts because I was so upset all the time," says Palank, who began seeing counselors for depression, memory loss and vision problems brought on by the overwhelming stress. "I was a young mother who had lost her husband and had no concept something like that could ever happen to me. It just wasn't right. Things like that aren't supposed to happen."

Decisions about what to do with her life hovered over Palank like a summer storm cloud. Money was becoming an issue. Palank hadn't worked for several years while caring for the children, and while the couple had taken out a small insurance policy after the birth of Josef, that cash would eventually be exhausted. She had recently been named a city commissioner for Cooper City, but that paid just $500 a month.

When Palank's sister-in-law Avis urged her to see a lawyer, she initially refused. The soft-spoken widow had enough to deal with, and didn't want to endure the pain of a lengthy lawsuit. But an unexpected phone call changed her mind. The call came from a doctor who had survived Paul's train wreck (which had killed eight people and injured 19). The doctor told Angel he'd tried to save her husband's life, but Amtrak's medical crew didn't arrive until 40 minutes after the crash.

"The derail was at 5 a.m., and there were no rescue people there until 5:40 a.m.," explains a tearful Palank. "Paul had crash injuries to the chest. This doctor did what he could, but it was an emergency situation and he needed supplies. I told the children their daddy died in his sleep because the truth was too painful for them to hear."

The reason for the delay, Palank learned, was that the dispatcher on duty gave the rescue crew faulty directions to the site. This dispatcher worked for CSX Transportation, the second-largest railroad company in the United States. CSX, a Jacksonville-based company which owns and operates all tracks in 23 states east of the Mississippi River (including all of Florida), charges Amtrak and other commuter authorities a fee to use its tracks. Through painstaking research and investigation, Palank would eventually discover that incompetent dispatchers were the least of the problems at CSX.

A TERRIBLE TRACK RECORD

Fueled by anger and a lust for justice, Palank contacted Chris Searcy, a nationally known trial lawyer with the West Palm Beach firm Searcy, Denney, Scarola, Barnhart & Shipley.

Officer Paul Palank (l), who met his wife Angel while on the job, was a happily married father of two until the Amtrak train he was riding crashed in South Carolina in 1991 (r).

Though warned by her lawyers, Chris Searcy (l) and Greg Barnhart (r), that she'd be in for a nasty legal battle, Angel Palank (center) was determined to expose CSX Transportation's negligence in the death of her husband.

"When Angel first came to meet me she was overwhelmed with grief," says Searcy. "She told me that this case must make her husband's death meaningful. She was clear that she needed someone who would not get cold feet and settle. She wanted to go all the way to the Supreme Court — no matter what."

Searcy and his partner, Greg Barnhart warned Palank: She was in for a long, tough fight, especially if punitive damages were to be considered. They told her that large, entrenched companies like Amtrak and CSX Transportation try to make plaintiffs' lives miserable in hopes they'd grow weary of the fight (except for an earlier $2.5 million verdict, all cases in this accident were settled out of court).

But Palank was undeterred. "This was a battle for justice, not money. I was so filled with furor and emotional pain," she says. "This battle helped me work through that misery."

Palank's mission for retribution, which began in 1993 when Palank filed a complaint against CSX, would become an obsession for both her and her legal team. Palank would read all documents, attend depositions and question defendants, and eventually enroll in Nova Southeastern University Law School so she could better understand the case's machinations. In turn, Searcy and his team of lawyers and investigators would spend tens of thousands of dollars out-of-pocket on investigations and agency reports, as well as for fact-finding trips to the South Carolina crash site.

The team's discoveries left them flabbergasted: Records indicated that CSX had known for more than seven months that the faulty mainline switch which caused the train to derail in South Carolina was in need of repair. Records also indicated that an audit done by the watchdog Federal Railroad Administration (FRA) done back in 1987 showed gross deficiencies in CSX's staffing and inspection practices. They also learned that, approximately a decade prior to the accident, CSX had cut its track-maintenance spending in half to save about $250 million a year (says attorney Searcy today, "A switch stand was installed backwards 11 years ago and nobody figured it out").

In addition, court documents revealed that management did not track whether employees were actually *performing* said inspections. Furthermore, pre-trial depositions revealed CSX management knew but ignored the fact that the chief inspector for the portion of the South Carolina track involved in the accident was, according to Searcy, "chronically drinking whiskey" in his office when he was reporting himself to be on the road doing his job.

"The road master reported that he had done his inspections but we proved he was on vacation in Myrtle Beach on the date he said he inspected the tracks," Searcy says. "Although it was not brought into evidence, we learned the road master sat in his office on many occasions drinking Jack Daniels."

CSX denies the latter allegation. "This information is not true — it came from a deposition and was never entered into evidence," says CSX spokeswoman Cathy Burns. "It was never put in front of a jury."

Other evidence that *was* introduced to a jury: CSX operated with 100-year-old equipment; the road master's admission he routinely committed fraud on occasions when derailment damages didn't exceed $5,000; and when workers were injured on the job, they were simply given paid vacations (CSX saved $275 million a year through layoffs; it would take thousands more workers to properly fix and maintain the tracks around the United States).

"In sum, FRA reports prove the tracks are in deplorable shape and are only corrected after emergencies," says Searcy. "We have seen two decades of less-than-minimum maintenance."

He adds: "It's heartbreaking...accidents could have been avoided if there hadn't been so much financial cutback on the part of CSX."

BITTERSWEET VICTORY

Two years after filing her complaint, Palank finally had her day in court. After an eight-month trial in Broward, she was awarded $6.1 million in compensatory damages. At a second trial in 1997 to determine punitive damages (the punitive phase endured a mistrial and subsequent three-month retrial), a Broward County Circuit Court determined CSX did not care about the enormous risks to which they were subjecting passengers. The jury considered awarding Palank as much as $240 million in punitive damages — which would've been 10 percent of the $2.4 billion CSX saved in cutbacks on track maintenance and inspection over the years. Ultimately, though, on the eve of the sixth anniversary of her husband Paul's death, the jury awarded Angel Palank $50 million.

Broward Circuit Court Judge Arthur Franza upheld the jury's verdict, and in a 19-page order wrote: "This Court finds the evidence clear and convincing, sufficiently showing that the Defendant's conduct in breaching its duty was deliberate, reckless, willful and wanton, evincing a reckless disregard for the safety of passengers and the public at large. This behavior was tantamount to manslaughter."

After the Circuit Court verdict, CSX appealed to the Florida Supreme Court, but last spring the appeal was denied. At this point, Palank received her $50 million judgment, but in June CSX made a desperate, last-ditch appeal to the U.S. Supreme Court, which is scheduled to make its ruling in October (see sidebar

Palank says the aftermath of her husband's untimely death has made her an "angrier, less playful and more serious person."

"Fighting The Good Fight"). Palank's lawyers anticipate that appeal also being denied.

But there is a bittersweet twist to this saga: While CSX was found at fault for the crash, CSX and Amtrak have an agreement under which Amtrak (or its insurance company) must pay the damages. Palank promises to make sure the matter is raised in Congress, which, of course, must appropriate much of Amtrak's annual budget. "Since CSX wants Amtrak to pay my punitive damages, I will try and work against them," she vows. "CSX needs to feel the pain, they need to learn they are not above the law."

Even more disturbing is that, while Palank was awarded monetary damages, the Court never demanded CSX fix the problems with the railroad tracks.

"Our hearts go out to Angel, and we never said we were not liable for this accident," says spokeswoman Burns. "But we will have no policy change on whether or not the tracks are fixed. Moreover, we believe the verdict was excessive."

It would make sense if a judge could order CSX to increase the level of maintenance on its tracks so that no more lives would be put at risk, but that's not going to happen any time soon. "Under the law, we have no control over the railroads," says Searcy. "The law doesn't allow a judge to force them to fix anything. That's how our system works. Punitive damages are awarded by juries and allowed by judges so that it will not be economically feasible for the defendant to make the same mistake again. In this case, a federal law required CSX to pay a $20,000 fine for the day of the accident — and that's all that is required of CSX."

EVERYONE'S AT RISK

U.S. News & World Report recently stated that a derailment occurs somewhere in the United States about once every hour. Locally, the most recent train incident occurred in Miami last March, when a line hauling heavy tank cars full of hazardous material derailed.

In South Florida, countless people from West Palm Beach to Miami use the rail system daily. The South Florida system includes four Amtrak passenger trains, the auto-train (out-of-state), and Tri-Rail commuters (in-state). And every mile of passenger track is maintained by CSX.

It has been seven years since Palank originally filed suit against CSX Transportation. This past April a general internal review by the FRA, the agency that regulates railroad safety, found deteriorating track conditions on many areas of the CSX rail system, including passenger trains, according to agency officials. Among the defects, inspectors found areas where the distance between the rails — the gauge — had spread wide enough to risk derailments, and "many areas of concern" such as marginal crosstie conditions, rail failures, worn rails, worn switches and water-saturated subgrades. This is the second time in less than three years that the agency has criticized the physical condition of CSX tracks. "Unacceptable," said CSX president Ronald Conway of the conditions. "Whatever is necessary to do, we'll do."

Angelica Palank, who passed the bar exam in 1997 and now is a lawyer, has made it her life's mission to see that he does. Much of her $50 million award money is being used to start the Paul Palank Memorial Trust, a foundation to help victims like her, and to start an Internet service that will provide truthful information about the railway system. In the works already are plans to hire engineers to further challenge the "lies" told in court, and a public affairs program to warn potential rail passengers that neither CSX nor Amtrak were forced to make any improvements to the tracks as a result of her lawsuits.

In addition to honoring her late husband through her foundation, Palank finds solace in celebrating his birthday each year. Every February 16th she and the kids have a party for him with his favorite foods: steamed asparagus, boiled shrimp, grilled dolphin, parsley potatoes and coconut custard pie. Then they write him birthday cards and leave them on the nightstand of the master bedroom. And each year on the anniversary of her husband's death, Palank meditates in isolation. "I have memory problems from this whole thing and they get worse each year around the anniversary of his death," says Palank, who (along with both her children) is still in counseling. "I don't talk to people during the meditation period and when I come out of it after a couple of days, I feel better."

Palank often reflects on how much she's changed in the past nine years, and about her new role as a railway safety advocate. "I've become angrier, less playful and a more serious person," says Palank, who adds that she quit dating a year ago so she could devote all her time to the kids, and to her foundation. "But I'm also a much stronger woman. I will continue [Paul's] crusade through the foundation, as well as on my own. I'll never give up until I am assured there is rail safety in the U.S." M

FIGHTING THE GOOD FIGHT

After the judgments had been rendered in the Palank vs. CSX Transportation case, the Florida legislature succumbed to the blandishments of industry lobbyists and passed a statute limiting punitive damages to one sum per incident. In Palank's case, this would have meant that only the first plaintiff of the dozens who were killed or injured could have even sought punitive damages. On one hand, this law could encourage speedy disposition of claims and a consolidation of claimants' actions into a single action. On the other hand, the $50 million in punitive damages is a relative pittance to CSX — which has a net worth of nearly a half-trillion dollars. In fact, that $50 million is just 20 percent of what CSX saved per year when it cut its track maintenance in half. Palank has traveled to Tallahassee repeatedly in attempts to have this law overturned, and promises she'll continue to do so until she is successful.

Also, in June CSX petitioned the U.S. Supreme Court (SCOTUS) for certiorari (legalese for having the highest federal court review the Florida Supreme Court's ruling), alleging the Florida jury gave Palank a punitive award because of a lawful personnel decision by CSX. Everyone familiar with the case, though, agrees that the jury handed down its award because, in the jury's opinion, CSX adopted a deliberate policy of putting passengers on its rails at risk of life and limb by severely cutting its maintenance. The odds of any particular case even receiving SCOTUS review on certiorari are less than five percent. And the Florida Supreme Court has a good reputation in this regard. Moreover, CSX's own view of its prospects may best be judged by the fact it paid the judgment before filing for review. Experts predict the Supreme Court will reject CSX's appeal later this month.