SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.

OF COUNSEL

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Use of Outlawed Forceps Delivery Results In a $63 Million Verdict

Luke Korzeniowski

After deliberating less than a day, a jury in the 15th Circuit Court of Palm Beach County has awarded a $63 million verdict to six-and-a-half year old Luke Korzeniowski and his parents, Jennifer & Derik Korzeniowski of Columbus, GA.

The Korzeniowski family was represented by Searcy Denney Scarola Barnhart & Shipley attorneys Chris Searcy and David White.

The defendants in the lawsuit – Korzeniowski vs. Eagleman & Bethesda Memorial Hospital – were Dr. Attila Eagleman and Bethesda Memorial Hospital, both of Boynton Beach, FL.

In the six-week trial before Circuit Court Judge David Crow, it was revealed that Dr. Eagleman had decided to deliberately induce the birth of Luke Korzeniowski, despite the fact that his mother was having a normal pregnancy. Furthermore, Dr. Eagleman decided to take the baby by utilizing a high forceps delivery that has been outlawed in obstetric practice for more than 40 years because of the large number of babies that were born brain damaged from this procedure. The induction and high forceps delivery ocurred on October 30, 1997.

As a direct result of this high forceps delivery, Luke Korzeniowski was born with severe brain damage. He spent 19 days in the hospital's neonatal intensive care unit fighting for his life, his hind brain full of blood. Since then, young Luke has had to endure 14 different brain and spinal surgeries and will need around-the-clock care for the rest of his life.

In 1995, the Florida Agency for Health Care Administration (AHCA) investigated Atilla Eagleman, M.D. and filed an administrative complaint against him on October 31, 1995. Count I of the administrative complaint alleged that Dr. Eagleman was guilty of gross or repeated malpractice relating to the prenatal care of a 37 year old woman. Count II alleged that Dr. Eagleman was guilty of making deceptive, untrue or fraudulent representations in the practice of medicine. Count III alleged that Dr. Eagleman failed to keep written medical records justifying his care and treatment of his patient. Dr. Eagleman signed a Consent Agreement with AHCA on October 28, 1996 agreeing as follows: the charges were not contested; pay a fine of $1,500; receive a Reprimand from the Florida Board of Medicine; serve a term of Probation for one year; and take a course in medical record keeping. On December 24, 1996, the Florida Board of Medicine issued its final order approving the Consent Agreement, but dismissing Count II, converting a Reprimand to a Letter of Concern and deleting the term of Probation. ***Continued on page three.***

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Ignoring Precautions Results In Fatal Crash Moments After Safety Meeting

Megan Hudson was a 17-year-old student at North Marion High School in Ocala. On March 12, 2001, Megan was an unbelted passenger in a vehicle driven by her boyfriend, Albert, traveling southbound on four-lane U. S. Highway 441 near Belleview. Also traveling southbound, on the inside lane, was a large van directly in front of Albert's vehicle, blocking his view of the roadway ahead.

As both vehicles neared the entrance to the Spruce Creek Communities (a development of Del Webb Corporation), a slow-moving Caterpillar front-end loader was also driving southbound on Hwy. 441 hauling a concrete drainage culvert toward another location on Spruce Creek properties. The loader had no flashing lights, no 'slow-moving vehicle' sign, and no trailing vehicle to provide warning of the traffic barrier that had been created.

As the van, with Albert's vehicle following, abruptly came upon the slow-moving loader, the driver of the van swerved to go around the loader. Albert had no opportunity to stop or to swerve, and his car crashed into the rear of the loader. Albert was seriously injured. His young girlfriend, Megan, was killed.

The loader operator and his supervisor had made a deliberate decision to transport the concrete culvert via busy Hwy. 441 instead of simply transporting the load within Spruce Creek properties. Under oath, the driver testified:

Q: *If you had to make the decision yourself about whether or not to drive that front-end loader onto Hwy. 441 in order to go south, you wouldn't have done it, would you?*
A: Well, I wouldn't have wanted to.

Q: *You wouldn't have wanted to because it was unsafe to drive that big vehicle on Hwy. 441, wasn't it?*
A: Yes, sir.

Particularly interesting is that moments before this crash, the loader operator and his supervisor attended a company safety meeting. Immediately following the safety meeting, the supervisor drove his pickup truck leading the loader onto Hwy. 441. Experts agreed that the pickup truck should have trailed the loader with flashing lights warning traffic of the slow-moving Caterpillar traveling the busy highway.

Megan is survived by her father, Frank Mazzitelle, and her mother, Karen Hudson, who are both devastated by the loss of their daughter. Searcy Denney Scarola Barnhart & Shipley attorney Earl Denney successfully brought this case to a mediation settlement of $1,110,000. ■

Use of Forceps Delivery Results in a $63 Million Verdict

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During trial it became evident that since 1987, Dr. Eagleman never sent his prenatal records on any obstetrical patient to Bethesda Memorial Hospital prior to delivering the baby, including Jennifer Korzeniowski. It was also uncontested that Bethesda Memorial Hospital never investigated the facts underlying the administrative complaint filed against Dr. Eagleman by AHCA.

Plaintiffs' credentialing expert testified that the falsification of medial records was a serious matter, should have prompted an investigation by Bethesda Memorial Hospital, and that Dr. Eagleman should have been supervised by an obstetrician while treating his patients at Bethesda Memorial Hospital, including Jennifer Korzeniowski.

"Bethesda Memorial Hospital had a duty to supervise Dr. Eagleman's admission of patients for induction and a duty to supervise circumstances under which he performed forceps delivery," said attorney Searcy. "This disaster was a direct manifestation of the hospital's failure to assure Dr. Eagleman's competency through ongoing and careful review."

"The sloppy practice that ruined this little boy's life had been going on at Bethesda Memorial Hospital for more than 10 years before Jennifer Korzeniowski became a patient. If they had just fulfilled their duty to protect the safety of patients, this never would have had a chance to occur," said Searcy. "It's vital to the interests of every consumer that ends up hospitalized that all hospitals take seriously their duties to assure the competency of their medical staff." ■

Verdict Rendered Against Doctor "Frozen in Inactivity"

On February 26, 2004, a Tampa, Florida jury rendered a verdict in the amount of $2.386 million on behalf of Chris and Rebeca Ipox. The case was brought on behalf of the Ipoxes' son, Christopher, who was born profoundly brain injured and who lived with severe disabilities up until his death at age two and a half.

On May 28, 1999, Rebeca Ipox was admitted to St. Joseph's Women's Hospital for induction of labor. Her pregnancy and prenatal testing had been completely normal, but she had passed the 41st week of her pregnancy. Her doctor, Luciano Martinez, M.D., therefore scheduled Rebeca's admission to the hospital. There, he ordered nurses to administer a drug called pitocin to start Rebeca's contractions.

Over the course of the day, Rebeca's contractions progressed in frequency and duration, causing what was referred to by many experts as "hyper-stimulation" of her uterus. As a result, Rebeca's baby, who had tolerated the contractions initially, began to show signs of distress. Eventually, the baby's heartbeat slowed dramatically, dropping from a normal range of 140 beats per minute to as low as 45.

Nurses on duty for Rebeca's labor and delivery repeatedly urged Dr. Martinez to consider delivering the baby by Cesarean Section, but the doctor delayed the decision to do so. Rather, he ascribed the baby's reduced heartbeat to an equipment malfunction. The nurses finally summoned a supervisor, who also urged Dr. Martinez to take action. After having been "frozen in inactivity," the doctor finally called for a "stat" (immediate) c-section, and Rebeca was rushed to surgery.

Rebeca Ipox with her son Christopher

Upon arriving in the operating room, Dr. Martinez listened for the baby's heartbeat and thought he heard it back in the 120-beat range. Concluding that the baby had recovered, he changed the status of the c-section from a "stat" to an "ASAP." Unfortunately, Dr. Martinez mistook Rebeca's heartbeat for that of her baby.

When baby Christopher was finally delivered, he was blue, limp, and not breathing. He had suffered severe and permanent brain damage during labor due to oxygen depravation. Over the two and a half years of his life, young Christopher was never able to eat, talk, or even blink his own eyes. Christopher finally succumbed to pneumonia, a common complication suffered by profoundly brain damaged children.

Attorneys Karen Terry and John Shipley tried the case during the entire month of February. And while the Ipox family would much prefer to have Christopher back, the verdict represents a measure of justice for the tragedy they and their baby endured. ■

Brother and Sister Drown In Unprotected Pool

On the 12th day of June 2001, James Duffin and Lisa Meyer suffered the worst fate that can befall a parent: the drowning deaths of their two children, Tyler, age 5, and 4-year-old Amber.

The facts of this case are simple. Lisa Meyer was asleep with her children in a rented cottage that was on the property of the defendant landlord, Louis Pisani. Next to the cottage was a pool. The doors were locked, but the locks were not the special, self-latching kind necessary to provide pool safety. There was no pool fence or pool alarm. Lisa awoke around 10:30 a.m. The kids were no longer in bed with her. She saw the open door and raced outside. Both Tyler and Amber were floating in the pool. They were rushed to the hospital, but it was too late. Both had to be taken off of life support.

Amber and Tyler with their father, James Duffin

On October 15, 2003, Searcy Denney Scarola Barnhart & Shipley partner Sean Domnick obtained a verdict for James and Lisa of $1,141,464.68. The defendant had only a $100,000 insurance policy. Although James and Lisa offered twice to accept the policy limits, the insurer, State Farm, never offered any money to settle the case.

This tragedy was preventable if the defendant landlord had taken even the most basic steps for pool safety. After all, drowning deaths are one of the leading causes of accidental deaths of children. Under Florida law, a landlord who rents out property with a pool on it has an obligation to keep the common areas safe, including the areas around the pool. At trial, plaintiff's expert Gerald Dworkin explained to the jury that it is unrealistic to believe that parents can supervise their children 24 hours a day. Therefore, layers of protection around a pool are necessary. These layers include a pool fence, a pool alarm or special locks on the doors leading to the pool area. In this case, the landlord had taken none of these basic safety steps. In addition, he violated local zoning laws that prohibited him from renting out the cottage on his property.

The defendant, through his insurance company, blamed Lisa for not keeping an eye on her children and tried to portray James as an "absentee" father. The jury rejected the defendant's argument, placing 70 percent of the responsibility on the landlord. Lisa Meyer was also represented by attorney Todd Stewart. ■

Error in Anesthesia During Routine Surgery Causes Tragic Results

Married over 50 years, Jane Client and her husband, John, moved to Florida to enjoy their well-deserved retirement. John Client had been a colonel in the Air Force after the couple and their children had lived all over the world. John and Jane had shared the challenges of raising a handicapped son and they endured John's lengthy imprisonment as a POW in the Korean War, an ordeal for which there had been no guarantee of survival. After his tour in the military, John worked as an insurance executive, and then eventually planned his retirement altogether. The couple looked forward to playing golf and spending time with their children, grandchildren, and their large circle of friends. Unfortunately, the dreams they shared for their golden years ended abruptly in the summer of 2000.

On the morning of July 11, 2000, Jane Client was scheduled to have a routine knee replacement surgery at Hospital X in Florida. Jane was cleared for general anesthesia, but on the morning of the scheduled procedure her anesthesiologist advised her that a spinal anesthetic would be a better option. Jane agreed and her surgery was performed.

According to the report dictated by her orthopedic doctor, Jane's knee replacement surgery was completed without complication. Jane was moved to a post-surgical recovery unit and she was administered, on her doctor's orders, medications called Lovenox and Torodol. Soon afterward, Jane began to complain of severe pain from her lower back to her knees. Though such bilateral leg pain is a classic indication of damage caused during spinal anesthesia, neither the doctor nor the nurses made the connection. In addition, Jane's internist also examined her, but he too failed to intervene on Jane's behalf. Finally, after several hours of Jane's horrible discomfort, a neurologist was called in for consultation. The neurologist weighed the possibility of a spinal hematoma and recognized the seriousness of such a diagnosis. He then made an extraordinary effort to help Jane by traveling, in the middle of the night, to a local neurosurgeon's house in an attempt to get Jane the surgical attention she so desperately needed. Unfortunately, too much time had passed and the bleed around Jane's spinal column had caused devastating damage. Exacerbated by the blood-thinning medications prescribed by her knee doctor, the bleed in Jane's spinal column caused a condition known as cauda equina, rendering her a near paraplegic in excruciating pain.

Once Jane's injury stabilized, an investigation into her medical care was commenced. It was learned that the operative report, which noted no complications, failed to indicate that Jane's spinal anesthesia had been described as "difficult." In fact, the anesthesiologist had attempted to administer the epidural anesthesia multiple times, leaving "several bloody needle sticks." Tragically, neither the nurses nor the anesthesiologist communicated this vital information to the surgeon. As a result of the collective negligence of her medical providers, Jane Client is paralyzed and requires frequent hospitalizations for debilitating pain. She has sought treatment from prominent specialists throughout the country, but has been told repeatedly that hers is a permanent condition. She has lost all bowel and bladder function and requires catheterization, which her husband does for her every six hours.

Jane's injuries now consume the life she shares with her husband. Furthermore, John recently became seriously ill, leaving his wife dependent upon others for her daily care. Despite their plans for a leisurely and fun-filled retirement, this lovely couple now struggles to manage together through what should have been their golden years.

Shortly after legal proceedings began, Jane's anesthesiologist admitted liability, capitalizing on a $250,000 statutory damage cap provided under Florida law. The remaining providers denied liability, forcing a prolonged litigation led by attorney Bill Norton. Testimony was offered in the case that Jane's catastrophic injuries would require future medical costs of approximately $4.7 million, over and above the nearly $500,000 in expenses she had incurred already. Shortly after mediation, the Defendants collectively offered a confidential sum sufficient to settle the case. The proceeds will provide the Clients with the resources necessary to provide Jane with the crucial care she will need for the remainder of her life. ■

Failure to Monitor Care Results In Amputation for Newborn Twin

Born three months premature on June 28, 1999, Diane weighed less than two-and-a-half pounds and was somewhat depressed. Her APGAR scores were 2 at one minute and only 5 at five minutes. Normal APGAR scores at two minutes would be closer to 10. Clearly there were problems with this newborn that required intensive care. Although Diane was born with normal pulses bilaterally, she was quickly diagnosed with respiratory distress, cardiac dysfunction, anemia, sepsis and polyhydramnios. The newborn was being maintained on a ventilator and had several transfusions.

At the same time, Diane's twin sister Dee was also depressed with similar difficulties associated with a premature birth. Dee only weighed 1 pound 10 ounces and her APGAR scores were 5 at one minute, 8 at two minutes.

Due to difficulties with Diane's condition, an umbilical arterial catheter (UAC) was inserted. A UAC is used to provide a painless way of drawing arterial blood for testing and giving medication, nutrition and fluids.

Newborn twins Diane and Dee.

At 7 a.m. on June 30 – when Diane was just two days old – hospital nurses noted that the infant's right foot was "blanched, purplish and her abdomen was distended". Nothing was done.

At 8 a.m., Diane's right leg had turned dark in color. Nothing was done.

One hour later, after being notified by nurses, the neonatologist told them to try nitro paste.

By 9:30 a.m., the right leg was dark and purple, but still nothing was done except for the nitro paste. It wasn't until 11 a.m. that Diane's UAC was finally removed. An hour later, her right leg remained purplish and showed no sign of recovery.

A noted complication of utilizing a UAC is that it can cause vascular compromise. Prompt removal of the UAC will almost immediately reverse the adverse affects of the vascular compromise. The nurses had the responsibility to monitor Diane's vascular status and to promptly notify her physician, but failed miserably in this regard. Also, after the nurses notified him, the physician was negligent in failing to see and assess Diane's vascular status and timely remove the UAC.

By July 14, Diane's leg became so compromised, an above-the-knee amputation of the right leg was necessary. Had Diane been appropriately assessed and the UAC removed timely, this tragic loss of her right leg could have been prevented.

A rehabilitation physician evaluated Diane as having sustained a 40 percent impairment of the whole person and indicated she will never be gainfully employed. A life care plan was prepared that demonstrated the economic damages would be in the multi-million dollar range.

In addition to the obvious physical limitations, the emotional/psychological affects of this injury are substantial, including pain and suffering, disability or impairment, disfigurement, mental anguish, inconvenience and loss of capacity for the basic enjoyment of life. The impact on Diane's twin sister Dee was also significant.

What made this case particularly tragic is that the damages could easily have been prevented. Searcy Denney Scarola Barnhart & Shipley attorney Earl Denney handled this case to conclusion, eventually obtaining a recovery of $2.2 million. ■

Shoddy Work and Lack of Inspections By Orkin Expose Homeowners to Dangers

Following an 8-day arbitration hearing in Jacksonville last fall, Searcy Denney Scarola Barnhart & Shipley clients Collier & Peggy Black were awarded a total of $3 million from Orkin Exterminating, Inc., consisting of $750,000 in compensatory damages and $2,250,000 in punitive damages.

Mr. & Mrs. Black entered Orkin's arbitration process after years of problems, including repeated and severe termite invasions — more than 25 swarms in seven years — and Orkin's failure to obtain both the proper legally required permits and inspections for repair work. The unanimous decision by the 3-person arbitration panel was announced on September 4, 2003.

According to the Interim Findings and Award in *Collier Black v. Orkin Exterminating, Inc. and Rollins, Inc.* (Orkin's parent company), the arbitration tribunal found with "clear and convincing evidence" that Orkin and Rollins has "actively and knowingly participated in, knowingly condoned, ratified or consented to the following types of gross and flagrant conduct evidencing reckless disregard of human life, safety of persons exposed to its dangerous effects, or a conscious indifference to the consequences of such conduct."

For example, Orkin and its subcontractor failed to get a permit for repair work on a termite-damaged exterior balcony on the Black's home, nor did they have the balcony inspected by county officials after the repair job was completed. Subsequent examination of the "repaired" balcony proved that the uninspected work by the subcontractor was particularly shoddy, and that the Black's balcony was in imminent danger of collapse.

"As we saw with last year's tragedy in Chicago, where 13 people died when the uninspected balcony they were standing on collapsed, this kind of unlicensed and non-permitted repair work can be deadly. There are probably hundreds, if not thousands, of Orkin customers in Florida and elsewhere who may unknowingly be facing the same danger every day," said Searcy Denney Scarola Barnhart & Shipley attorney Harry Shevin.

"Furthermore, Orkin representatives admitted under oath that they have done nothing so far to notify any current or former customers about unlicensed, uninspected and non-permitted work that Orkin and its subcontractors may have done on their family homes," Shevin added.

In fact, in the testimony of Chris Gorecki, Orkin's Vice President of Quality Assurance and Claims, it was inferred that the exterminating company's failure to obtain permits and screen subcontractors is not limited to Florida. Despite the fact that Orkin has been aware of these allegations since May 2001, Gorecki admitted that the company has done "nothing" on a national basis to address the permitting and background check issues.

In addition to the Black arbitration, there is a class action arbitration with virtually identical allegations, filed by Elizabeth & William Allen, also of Ponte Vedra Beach.

> *"...Orkin has avoided the inspection process... and potentially exposed thousands of Florida homeowners to financial liabilities and endangerment of life and safety."*

In *Allen v. Orkin and Rollins, Inc.*, it is alleged that Orkin failed to obtain the required building permits for repairs on termite damage covered under the exterminating company's repair bond. As demonstrated in the Black arbitration, it is Orkin's pattern and practice to use contractors (including those with criminal backgrounds) that deliberately and consistently avoid the permitting and inspection process required by law.

By not pulling permits, Orkin has avoided the inspection process in all of Florida's counties and potentially exposed thousands of Florida homeowners to financial liability and endangerment of life and safety. These homeowners are unaware of the potential liabilities and dangers of substandard "repair" work that is performed without permits nor inspections.

Mr. & Mrs. Allen and Mr. & Mrs. Black are all represented by Chris Searcy, along with his Searcy Denney Scarola Barnhart & Shipley legal team of Sean Domnick and Harry Shevin. ■

What are Health-Care Advance Directives?

Health care advance directives are instructions given for one's future care. No one else may write your health care advance directive. Unlike most other types of advance planning, a health care directive is *silent unless you are unable to participate in the medical decisions at the time those decisions need to be made.*

"Your wishes cannot be carried out unless they're communicated."

The law in Florida recognizes a competent adult's right to accept or refuse any type of medical care for any reason whatsoever. This right of self determination can survive incapacity if such desire is communicated in a clear and convincing manner prior to the onset of incapacity. Putting one's desires in writing with two witnesses, one of whom is not related meets the legal requirements. In addition, it is important that these desires be communicated to physicians and family in an ongoing and thoughtful manner. Such action will help avoid the potential of family conflict.

The Florida Statutes delineate three general types of health care advance directives. The narrowest, termed a Living Will, informs health care givers what type of care would be elected or declined following diagnosis of a terminal condition; an end stage of a chronic condition; or a permanent vegetative state. A diagnosis for any of these conditions means there is no known successful cure. A Living Will may prevent prolongation of the death or suffering by a patient whose family may insist upon a misguided attempt to do everything possible, or who suffer from an inability to let go. Failure to have personally stated clear and convincing directions to the contrary can allow a decision-maker to insist on maintaining a dying condition indefinitely. This difficult situation has been heartbreakingly portrayed for more than thirteen years in the case of Terri Schiavo.

The second type of advance directive is much broader and thus far more helpful to a patient. In Florida, this directive is called a Health Care Surrogate Designation; it may be referred to as a Durable Power of Attorney for health care decisions in other states, or even a Designated Proxy. This designation establishes and protects the author's wishes regarding who is to decide in the event of his incapacity to make a medical decision. Obviously, this person, the designee, should know and accept such designation. This designation must be in writing and be witnessed by two persons, neither of whom is the designated person. One witness cannot be either related or married to the author.

Once you have decided who should make decisions on your behalf, it is incumbent upon you to inform the surrogate what decisions you would like to be made. This process is not inflexible, and ought to be routinely updated to reflect your knowledge and understanding of your particular situation in life. This is your responsibility; a surrogate may be called upon to defend a decision undertaken on your behalf. A history of ongoing discussions enables your surrogate to knowledgeably communicate your wishes. If you are diagnosed with an illness, your surrogate should know the plan of care, the possible side effects, and the prognosis. He/she should know everything you know about your state of health.

The importance of a surrogate designation cannot be overstated because most cases of incapacity are consequent to trauma and thus unforeseen. A person can be enjoying excellent health, suffer a terrible car crash and never again have the capacity to make health care decisions for himself. In these situations, having a previously appointed surrogate can facilitate decisions regarding nursing home care, treatment, and even transfer to other facilities.

Consider the patient diagnosed with Alzheimers who is not in the end stages of the disease but who is in renal failure. This patient could well be forced to undergo dialysis because of his inability to refuse it. With no designated surrogate, family members may feel compelled to impose this regimen,

which the patient may have refused given the choice. The earlier appointment of a surrogate who had discussed which therapies the patient would have wanted undertaken or refused in the event of such a diagnosis could have obviated the imposition of either burdensome or fruitless care.

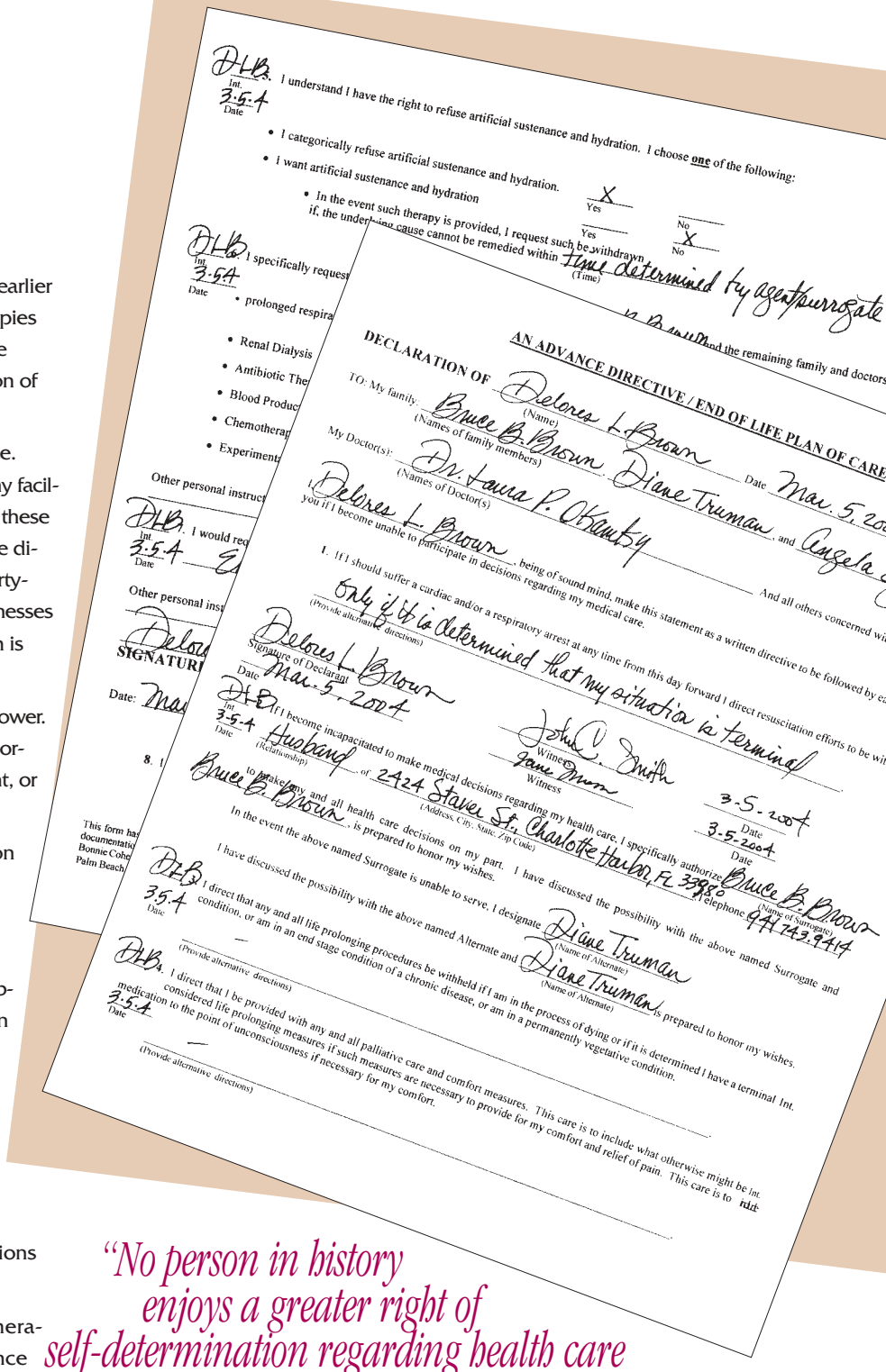
The existence of written directives has no impact on insurance. These directives are not necessary for admission or care at any facility, and the withdrawal or withholding of care as directed by these documents does not impair or invalidate life insurance. These directives, if executed in Florida, are recognized in the other forty-nine states. (They must be signed in the presence of two witnesses neither of whom is the intended surrogate, and one of whom is neither related nor a spouse).

It is important to note that surrogates do not have unlimited power. Unless specifically directed, a surrogate may not consent to abortion, sterilization, electroshock therapy, experimental treatment, or voluntary admission to a mental hospital.

The third type of advance directive involves organ donation upon one's demise. A designation on a Florida driver's license is considered sufficient. Again, such a decision should be known to the family.

In summary, communication with the designated surrogate is absolutely vital. The need to keep family and the treating physician up to date on the status of one's desires cannot be over stressed. Wishes regarding care may change according to diagnosis, prognosis, age, family obligations, and of course, the state of medical technology. In unusual circumstances, a lawyer may be required, but in most cases, the following actions are all that are necessary:

1. knowledge of one's health status and what conditions might reasonably be anticipated;
2. the kinds of care one would opt for and those therapies that would not be chosen in any circumstance (e.g. artificial sustenance and/or hydration, cardiac and/or respiratory resuscitation);
3. the length of time beyond which nothing further is desired (e.g. dialysis);
4. the kind of intervention then expected (e.g. Hospice);
5. communication of these desires (in writing if possible, although not necessary) to one's surrogate, family and doctors.



"No person in history enjoys a greater right of self-determination regarding health care than a competent American adult; however, that right is fragile. If not protected, it can be lost in a second."

MARNIE R. PONCY, RN, ATTORNEY AT LAW
THE BIOETHICS LAW PROJECT
THE LEGAL AID SOCIETY OF PALM BEACH COUNTY, INC.

FREE COPIES OF THE ADVANCE DIRECTIVE PLAN OF CARE SHOWN ABOVE AVAILABLE ONLINE: www.LegalAidPBC.org

Medical Experts Failure to Detect Malfunction Results in Child's Death

Lance Block and James Gustafson recently resolved a medical negligence case involving the wrongful death of 10-year-old L.H., who died as a result of an untreated shunt malfunction, for $2.5 million.

L.H. had cerebral palsy and hydrocephalus due to a brain bleed at birth. Hydrocephalus is an excess accumulation of cerebral spinal fluid (CSF) within the skull. The excess fluid has no avenue of escape, which causes an increase in intracranial pressure. If untreated, it can lead to death. Treatment for this condition usually consists of the surgical placement of a venticulo-peritoneal shunt, a device that drains the excess fluid from the ventricles in the brain to the peritoneum, or abdominal cavity, thereby restoring a normal amount of CSF within the skull. L.H.'s initial shunt was implanted when she was just a few days old, and there was a revision several years later.

However, shunts can malfunction, and healthcare providers must presume the worst when confronted with the signs and symptoms of shunt malfunction. Symptoms of shunt malfunction include severe headache, nausea, vomiting, lethargy, sleepiness, difficulty walking, and abnormal behavior. A child that presents with symptoms of shunt malfunction requires immediate evaluation. The work-up includes a CT scan of the brain and a series of plain x-rays the length of the shunt. An increase in the size of the ventricles of the brain, where CSF emits from the brain, or evidence of an obstruction or disconnection of the shunt, should be cause for intervention. Only a neurosurgeon is qualified to rule out and treat shunt malfunction after an appropriate work-up is completed.

In the L.H. case, her mother took her to the pediatrician's office on a weekday morning after she had three episodes of vomiting and complained of headaches, nausea and sleepiness. In the doctor's waiting room, L.H.'s symptoms persisted. She vomited one time while waiting for the doctor, and continued to complain of headaches and a "stiff" neck. After her examination, the pediatrician noted in the medical records, "Need to rule out shunt malfunction with history of headaches/emisis." The pediatrician ordered a shunt series and CT scan, all to be performed on a stat basis, and sent L.H. to the hospital across the street. The studies were interpreted by a radiologist, who reported an abnormal CT scan with enlarged ventricies, evidence of excess accumulation of CSF. However, the radiologist did not emphasize the degree of ventricular enlargement nor did she communicate other signs of life-threatening CSF build-up. And while the shunt series did not reveal an obstructed or disconnected shunt, the x-ray was not conclusive that the shunt was working properly. Nevertheless, the pediatrician concluded that L.H.'s condition was not life threatening. So she decided not to refer L.H. to a neurosurgeon and simply instructed the family to return home and either call her back or "go to the ER" if the child's symptoms did not improve.

No more than three hours passed before L.H.'s mother called the pediatrician, advising the doctor that L.H. was again complaining of headaches and was having difficulty taking liquid Advil. Rather than referring L.H. to a neurosurgeon or advising her to go to an emergency department, the pediatrician instructed L.H.'s mother to administer suppositories. After following the pediatrician's instructions, L.H.'s parents made a bed for her in the living room so they could all sleep in the same room and be close to L.H. throughout the night. When L.H.'s parents awoke the next morning, they found their daughter dead in her bed.

"Only a neurosurgeon is qualified to rule out and treat shunt malfunction after an appropriate work-up is completed."

Plaintiff's liability witnesses included world renowned experts in pediatrics, neuroradiology, neurosurgery, and neuropathology. The standard of care experts all testified that a pediatrician is not qualified to rule out shunt malfunction, and that the pediatrician's failure to obtain a neurosurgical evaluation for L.H. was a departure from the standard of care. Additionally, experts in neuroradiology testified that the radiologist was negligent ***Continued on next page.***

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for not clearly reporting her findings as to L.H.'s hydrocephalus, and for failing to diagnose and report the presence of periventricular resorption of CSF, a diagnostic clue of shunt malfunction and excess accumulation of CSF.

Although there were no economic damages that could legally be claimed, L.H.'s parents were devastated by the loss of their 10-year-old daughter. While L.H. was disabled and had special needs, she was mainstreamed in school, was popular among her friends and in her community, and was a source of pride and inspiration to her parents and younger brother. According to psychiatric experts on grief and bereavement related illnesses, L.H.'s parents both suffer from depression and post-traumatic stress disorder as a result of the sudden and unexpected death of their daughter. The experts testified that their grief was further complicated because L.H. suffered excruciating pain and distress before she died, which they witnessed, and that from the parents' perspective, L.H.'s death was unjust and preventable if only reasonable medical care had been provided. Further compounding the parents' grief were defense arguments that they were comparatively negligent for not calling L.H.'s neurosurgeon and for not taking L.H. to an emergency department after they had called the pediatrician.

The case was settled with both defendants at mediation shortly before the scheduled trial date. ■

Firm and Attorneys Receive Honors from Legal Guide

The law firm of **Searcy Denney Scarola Barnhart & Shipley** was selected by the *South Florida Legal Guide* as one of the top law firms in the area. Three of the firm's attorneys — **Chris Searcy, Greg Barnhart** and **John Shipley** — were selected as top lawyers. In addition, attorneys **Sean Domnick, Karen Terry,** and **Harry Shevin** were selected for the *Guide's* "Up & Comer" category.

According to a recent article in the south Florida *Sun-Sentinel*, the attorneys listed in the 2004 edition of the *South Florida Legal Guide* "earned their placement as a result of gaining top nods from their peers in anonymous balloting held this spring...." Questions on the two-page ballot asked respondents whom they would recommend to a family member."

Lawyers listed in the *South Florida Legal Guide* do not pay a fee to be included in the edition. ■


Chris Searcy


Greg Barnhart


John Shipley


Sean Domnick


Karen Terry


Harry Shevin

Accolades...

James W. Gustafson, Jr. has been awarded an AV rating in Martindale-Hubbell

The AV rating, which identifies a lawyer with very high to preeminent legal ability, is a reflection of expertise, experience, integrity and overall professional excellence. Their ratings are established by attorneys for attorneys. ■

Sia Baker-Barnes (mock-trial co-chair) (far left) and Doug Eaton (mock trial co-chair) (far right), pictured with the winning team from Stetson University College of Law.

Academy of Florida Trial Lawyers Mock Trial Competition

On November 8-9, 2003, the Young Lawyers Section of the Academy of Florida Trial Lawyers held its annual Earle Zehmer Mock Trial Competition at the Palm Beach County Courthouse. Attorney Sia Baker-Barnes served as co-chair of the competition. This year's event featured twelve law student teams from Florida law schools. The competitors participated in a personal injury trial before Fifteenth Circuit Judges and senior attorneys during the two-day event. Justice Fred Lewis of the Florida Supreme Court presided over the final round of the competition, which was held on Sunday, November 9, 2003. ■

F. Malcolm Cunningham Sr. Bar Association Scholarship Fund

In November 2003, the F. Malcolm Cunningham, Sr. Bar Association held its annual William Holland Scholarship Luncheon. Searcy Denney Scarola Barnhart & Shipley was a Platinum Sponsor of the event, which is held annually to support the Association's scholarship fund for students preparing to take the bar examination. Attorney Sia Baker-Barnes served as Chairperson of the Scholarship Selection Committee. ■

(From left) Kalinthia Dillard, Pamela Wright, Nelson Harvey, Jr. (scholarship recipient), Sia Baker-Barnes, and Edrick Barnes.

The West Palm Beach Chapter of The Links, Inc.

The Links White Rose Luncheon

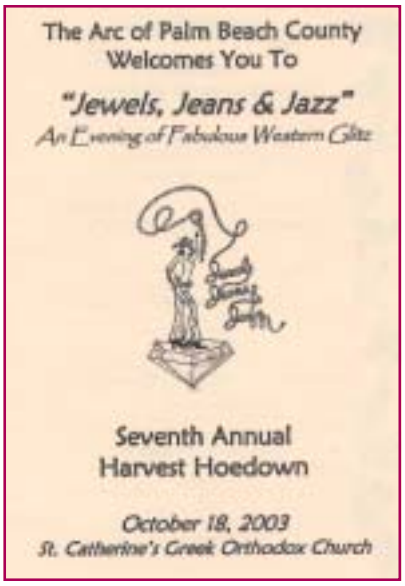
On December 6, 2003, The West Palm Beach Chapter of The Links, Incorporated, held it's 26th Annual White Rose Luncheon. Attorney Sia Baker-Barnes is a member of the organization, and served as chairperson for the event. This year's luncheon honored three men who have devoted their lives to children. Joseph Bernadel was honored for establishing a Delray Beach school for underprivileged children. Wayne Barton was honored for opening the Boca Raton Study Center and sponsoring college preparation tutorials and visits. Carlton Carwright was honored for developing workshops to expose underprivileged children to the arts. Chief Clarence D. Williams III of the Riviera Beach Police Department served as the master of ceremonies, and Searcy Denney Scarola Barnhart & Shipley was a Platinum Sponsor for the event. Each year, The Links, Inc. utilizes the proceeds from the luncheon for college scholarships. ■

National Philanthropy Day

In November 2003, the law firm of Searcy Denney Scarola Barnhart & Shipley was recognized at the 17th Annual National Philanthropy Day awards luncheon, hosted by the Association of Fundraising Professionals. The firm was nominated by the Legal Aid Society of Palm Beach County. ■

(From left) Roxanne Jacobs, President; Greg Barnhart; Jan Rodusky, Event Chairman

Taking... *Time to Care*



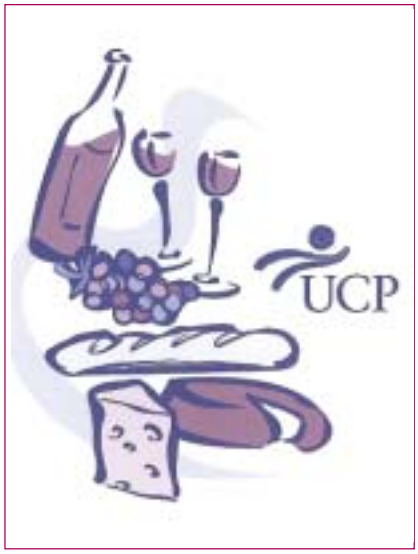
The Arc's Harvest Hoedown: "Jewels, Jeans & Jazz"

On Saturday, October 18, SDSBS was a Sapphire Sponsor of The Arc's 7th Annual Harvest Hoedown. Held at St. Catherine's Greek Orthodox Church in West Palm Beach, guests enjoyed a barbecue dinner, participated in both live and silent auctions, and danced to the music of the band Sierra. All proceeds from the event will help The Arc provide services, advocacy, and education for children and adults with developmental disabilities. ■

Light the Night Walk

On Friday, September 19, SDSBS employees and their family members participated in The Leukemia & Lymphoma Society's "Light the Night Walk." The firm was a Gold Sponsor of the event. The SDSBS team collected contributions before participating in the three-mile walk along Flagler Drive in West Palm Beach. All of the proceeds raised during the event will help to fund research for the Leukemia & Lymphoma Society. ■

(l. to r. front row): Bobby Marques, Donna Miller, Diana Rennie, Michelle White, Steve and Gillian Smith; (l to r. second row): Earl Denney, Kimberly and Linda Miller; (l to r. third row): Laurie Briggs, Jessica Covey, Elaine Bulger, and Joan Williams



Great Chefs' Tasting Party benefits United Cerebral Palsy

On Sunday, October 19, SDSBS was a sponsor of United Cerebral Palsy's 15th Annual Great Chef's Tasting Party. Chefs from around Palm Beach County prepared culinary delights in hopes of being voted best in the categories of Appetizer, Entree Seafood, Entree Non-Seafood, Dessert, and Presentation. Guests of the event, which was held at the West Palm Beach Marriott, also selected their "People's Choice." All proceeds from the event will help UCP serve more than 1,200 individuals at over 60 facilities throughout South Florida. ■

Great Grown-Up Spelling Bee

On Saturday, September 20, research associate Debbie Block, paralegal Kevin Walsh, and legal assistant Janet Hernandez participated in the "Great Grown-Up Spelling Bee." Held at the Boynton Beach Mall, the SDSBS team competed to raise awareness for the Palm Beach County Literacy Coalition, which hosted the event. ■

(l. to r.) Janet Hernandez, Kevin Walsh, and Debbie Block

Holiday Gifting from Searcy Denney Scarola Barnhart & Shipley

Searcy Denney Scarola Barnhart & Shipley employees showed their spirit and goodwill by supporting nine non-profit organizations over the holidays. Spearheaded by paralegal Laurie Briggs and accounting assistant Dawn Pitts, the firm's employees and family members rallied to bring holiday cheer to families in need. The group shopped, sorted, and wrapped gifts and food items for nearly 30 adults and 50 children.

Items purchased/donated included: Clothing, toys, toiletries, towels, educational games, CDs, DVDs, gift certificates for food, and more. Employees also gathered, thanks to the organizational efforts of medical consulting clerk Jackie Pitts, to hand-make stockings and fill them with stocking-stuffers for each child.

Organizations through which gifts were distributed included:

- Children's Home Society
- Child Outreach
- Edward Healey Rehabilitation and Nursing Home
- Esreh Youth and Family Center
- Family Hope
- Farmworkers Coordinating Council
- Mayan-Guatemalan Center
- Operation Hope
- Vickers House

(l-r) Melissa Medlin, William Shannon, Jackie Pitts and Dawn Pitts

Speaking Opportunities:

Chris Searcy

Attorney Chris Searcy has spoken to various groups on subjects they requested he address in his speech:

- Academy of Florida Trial Lawyers
  2003 Auto Negligence Seminar
  Jury Selection in the Auto Case
- Louisiana Trial Lawyers Association
  2003 Annual Convention
  Death and Destruction from Highway Construction
- Academy of Florida Trial Lawyers
  3rd Annual Al J. Cone Trial Advocacy Institute
  Voir Dire from the Plaintiff Side
- Bethesda Memorial Hospital Nurses Seminar - "Reaching Out - Touching Lives"
  How to Avoid Medical Malpractice

Lance Block

In December 2003, Lance Block participated in a debate sponsored by the Center for Lifetime Learning, which is affiliated with Palm Beach Community College. The topic of the debate was *"Tort Reform - The Importance of the Civil Justice System."* ■

Bill Norton

Attorney Bill Norton was a featured speaker at the Academy of Florida Trial Lawyers Winter Ski Seminar in Beaver Creek, Colorado. Mr. Norton provided the legal perspective on how to recognize a securities case in a program entitled *"Recognizing the Securities Case, 'My Client Lost Money in the Market' Join the Club, Who Didn't? A Primer on Securities Cases."* Mr. Norton is frequently asked to lecture on various topics involving medical negligence, personal injury and securities matters. ■

David White

In September 2003, David White was a guest speaker at the Society of Financial Service Professionals - Miami Chapter. He spoke about *"Disability and ERISA."* ■

Harry Shevin

Harry Shevin was a moderator for the Palm Beach County Trial Lawyers Association's seminar entitled *"Winning with Expert Witnesses,"* which was presented in the fall of 2003. Mr. Shevin serves on the Board of Directors of the Palm Beach County Trial Lawyers Association and is Chairman of the Seminar Committee. ■

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