

A report to clients and attorneys.
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OF COUNSEL

\$6.4 Million Verdict: Negligence Resulting in Permanent Spine Damage During Boating Accident

Homecoming weekend is always a special time for

high school students. John Doe and his friends, Sam Brown and Bill Smith (not their real names), were no exception at homecoming weekend in October 2003. They were seniors at a high school in West Palm Beach, preparing for graduation in the spring of 2004. As part of homecoming weekend activities, John had spent the night at Sam's house. The boys planned to take the Brown family boat out for a cruise the next morning. Unknown to John, Sam had invited seven teenaged boys and two teenaged girls to go along. The boat was a 34-foot offshore fishing boat, a Venture 34, which is a fast, powerful ocean-going vessel. A Venture 34, and really any boat, does not have brakes and is subject to winds, tides, current and, of course, waves and swells. While the owner's son had boating skills, what he did not have was the judgment and maturity to handle a powerful boat such as a Venture 34 without adult supervision. And, he certainly did not have the judgment to stop one of his friends from bringing two six packs of beer on board. By the time the boys got the boat underway, there were a total of 11 occupants on board, none older than 18 years of age. A huge difference between being in charge of a boat and driving a car is the responsibility the captain has for the safety of the people on board.

After cruising south, down the Intracoastal, Sam anchored the boat at Peanut Island and the occupants swam, sunbathed and, unfortunately, drank the beer. As the day began to wane, Sam decided to take the Venture out of the Palm Beach Inlet into the Atlantic Ocean. The boat was sturdy and could certainly handle most weather conditions. However, a small craft advisory had been issued for the area because of high winds. As the boat entered the inlet, three of the boat's occupants, including John Doe, were riding in the bow of the boat. The owner's son decided to get the Venture up on a plane, which meant that he had to push the throttles on both engines all the way down. The boat was being operated by both the owner's son and a friend. As the bow of the boat encountered the incoming swells, the boat rode up on a wave, and then dropped into the trough between the waves. The occupants in the bow of the boat were not informed of the danger in sitting at the bow when the boat started through the inlet, nor were they instructed to move aft in the boat to avoid the danger. As the boat approached a wave, John was lifted with the deck of the boat as it rose over the wave, and as the boat plunged down the other side, the bow dropped out from beneath him. *(Continued on page twelve.)*



A homecoming weekend boating party left a teenager with severe damage to his spine and a future of pain, medication therapy, and rehabilitation. The owners of a 34-foot boat allowed their teenage son and his friends to spend the day partying on the water which included a run out the inlet into the ocean despite a small craft advisory warning. As the boat slammed over the waves, one teenager was severely injured. After the boaters returned home, the injured boy was driven to an emergency room, and then underwent the first of several surgeries for repair. The boat owners were found to be negligent in permitting the teenagers to operate the boat without a skilled operator or adult supervision. The parties eventually reached settlement for almost \$4 million.

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The boat then slammed back upward with the next wave and John crashed hard back onto the deck. Almost immediately, he felt severe back pain.

The boys at the helm of the boat did not notify the Coast Guard, nor did they call 911 for urgent assistance. Instead, they turned the boat around and headed back toward the Intracoastal Waterway and eventually back to the dock at the Browns' home. As they arrived, Sam's parents were informed that John had been injured and was suffering serious back pain. Mr. Brown went to the dock and walked John off the boat, up the dock and into their home. After a half hour inside the home, they decided that John needed medical care. Rather than call for an ambulance, John was walked to the family SUV and was then driven to Palm Beach Gardens Medical Center.



Upon arrival at the emergency room, x-rays were taken of the lumbar area of John's spine and he was immediately immobilized. The findings revealed a severe burst fracture at L-2 with retropulsion of bone into the spinal cord. He was transported by ambulance from Palm Beach Gardens Medical Center directly to St. Mary's Medical Center where an orthopedic surgeon was standing by. Surgery was performed shortly thereafter involving the removal of fragmented bone from the spinal cord, a discectomy, and a fusion of the spine from L-1 through L-3.

The surgery was successful in preventing paralysis. However, John was left with severe and intractable pain. Additional surgeries included the removal of surgical hardware put in place to help healing, implantation and testing of a morphine pump, removal of the morphine pump, and installation of a dorsal column stimulator. All told, John has endured a total of five surgical procedures and has incurred over \$300,000 in medical expenses. He

was forced to miss virtually all of his remaining senior year in high school, although he was able to graduate. John tried attending college on a full-time schedule but his efforts were thwarted by the unremitting pain he continued to suffer. He depends upon a continuing narcotic medication therapy in order to maintain functionality.

The case was brought against the owners of the boat for permitting a teenager to operate such a powerful boat without supervision, their son who operated the boat, and the other young man who was involved in operating the boat. Each was met with a strong defense. The defense team asserted time and time again that John Doe was responsible for his own injuries because he was engaged in horse play when he was hurt. The defense's argument failed to take into account the very clear responsibility that the operator – the captain – of a boat owes to the passengers on his vessel. The captain has a duty to operate the boat in a safe manner and to consider the conditions of the sea and weather at all times. In operating a powerboat, the captain must be in complete control, determining the vessel's proper and safe heading (direction), its acceleration rate, and overall speed, in relation to weather and sea conditions. The operator of any vessel has the responsibility to ensure that the crew and passengers on his vessel are placed in a safe position on the vessel and that they are acting in a safe manner.

Needless to say, the operators of the Venture 34, loaded with 17- and 18-year-old girls and boys and a party atmosphere, powering through an inlet with a small craft advisory, showed a serious lack of judgment. Their responsibility was further increased by the failure of the boat operators and the boat's owners to seek immediate medical care for the injured teenager, or to request safe transportation of the boy to a medical facility by trained and qualified medical personnel.

John and his family sought representation by SDSBS attorney **Greg Barnhart**. After two mediation efforts failed to reach an agreement in this case, a summary jury trial was ordered. The facts of this case, the resulting medical catastrophe, and the prognosis for John's future were presented to a Palm Beach County jury. After hearing the case, the jury returned a \$6.4 million verdict, determining that there was a considerable degree of negligence on the part of the two operators of the vehicle and on the parents and owners of the boat. The parents and owners of the boat were found to be at fault for making the boat available to the teenagers without adult supervision. Although John was found to be comparatively at fault himself, the percentage of fault the jury ascribed to him was not large – 10%. Shortly thereafter, the case was settled for a hair under the full insurance policy limits of \$4 million dollars. ■