SEARCY DENNEY SCAROLA BARNHART & SHIPLEY

OF COUNSEL

A quarterly report to clients and attorneys.

VOLUME 02
NUMBER 2

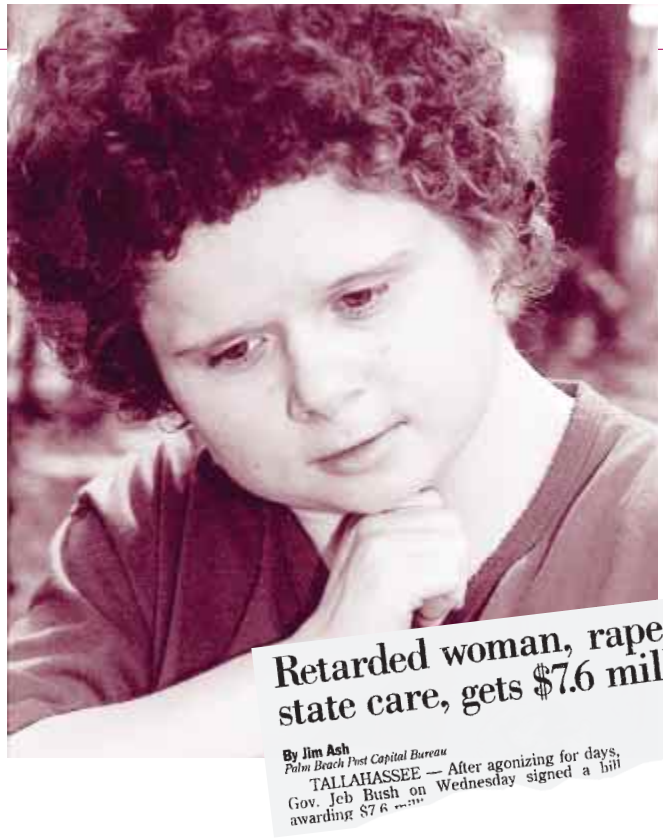
Kimberly Godwin Claims Bill Passes

On June 5, Governor Jeb Bush signed into law the Kimberly Godwin "claims bill." By signing the bill, a 10-year battle between the family of a mentally handicapped woman and the Department of Children and Families (DCF) came to an end.

In 1992, Jimmy Godwin and his now-deceased wife, Darlene, learned that their profoundly mentally retarded daughter, Kimberly, had been raped and impregnated by the 16-year-old son of a DCF group home operator. Upon the recommendations of her doctors, the pregnancy was terminated and Ms. Godwin was returned to live with her parents in northern Florida. The group home, located in Ft. Pierce, Fla., was eventually closed down.

Attorney Lance Block represented the Godwins. A lawsuit was filed in 1995. Evidence was uncovered which revealed that Ms. Godwin, who is 3 feet 11 inches tall and unable to talk, was the victim of chronic physical and sexual abuse. In addition, she received inadequate medical care and suffered from malnutrition while under DCF care. Before trial, DCF officials offered the Godwins $50,000 to settle the case. On March 28, 2000, a St. Lucie County jury rendered an $8 million verdict for Ms. Godwin at the conclusion of an eight-day trial. The jurors took less than five hours to reach their decision.

Because Florida's sovereign immunity laws cap damages against governmental agencies at $100,000 per claim, a claims bill was filed by Sen. Ken Pruitt, R-Port St. Lucie, and Rep. Gaston Cantens, R-Miami, seeking a balance due of $7.6 million. While the bill worked its way through the legislative process, DCF officials argued that the claims bill amount should be reduced and that Ms. Godwin should continue to receive care from the state. In the final days of the 2002 regular session, legislators rejected DCF's arguments and approved the jury verdict by a combined 144 to 6 vote in the House and Senate, and then sent the bill to the Governor for final approval.



Jimmy Godwin will use the proceeds to find the best therapeutic training and care for Kimberly. ■

Readers will find enclosed a reprint from *The National Law Journal* (June 10, 2002), featuring Chris Searcy as one of the nation's best trial attorneys.

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NOTE: The accounts of recent trials, verdicts and settlements contained in this newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case.

Omitting clients' names and/or defendants' names are the result of requests for anonymity.

Doctor Performs Surgery on Woman Without Her Consent

Louise Pereira was a 73-year-old great grandmother, living in Deltona, Fla. As a retiree, Mrs. Pereira lived on a fixed income from Social Security. She enjoyed swimming, working in her garden, spending holidays with her family, and socializing with her friends.

On November 7, 1997, Mrs. Pereira was admitted to Florida Hospital Fish Memorial to have routine surgery to remove and biopsy a mass from her right breast. As Dr. Thomas Largen began the surgery, a spark from the electrocautery unit he was using ignited vapors of an alcohol-based solution, called DuraPrep. This in turn caused the surgical drapes, which were placed on Mrs. Pereira, to catch on fire. Dr. Largen put out the flames on top of the drapes, but did not look beneath them, where the fire continued to burn.

Mrs. Pereira suffered first, second, and third degree burns to her flank, breast, and back. Upon learning about the botched surgery, the director of surgery and the risk manager of the hospital came to the operating room to investigate what had happened. They also took photographs of Mrs. Pereira's burns, without her consent.

After suffering the severe burns, Mrs. Pereira was sedated with morphine throughout the remainder of the day and into the night. The following morning, Dr. Largen performed additional surgery on Mrs. Pereira to excise the burn tissue. Mrs. Pereira was heavily sedated with pain medication at the time, and she therefore never gave a valid, informed consent for the additional surgery. As a consequence of the first botched surgery, coupled with the additional procedure, Mrs. Pereira suffered tremendous pain and suffering, disability, and disfigurement.

Attorney Butch Paul in Deland referred Mrs. Pereira's case to attorney Chris Searcy, who in turn sought assistance from his partner, John Shipley.

Mr. Shipley prepared the case for trial, which began on May 13, 2002. During the 14-day trial, six jurors listened to wrenching testimony about how the incident occurred and how Mrs. Pereira still suffers today. The most compelling evidence came when Dr. Largen testified live, in contradiction to his videotaped deposition, which was played on the first day of trial. On Friday, May 25, the all-female jury found Dr. Largen 70 percent liable and the hospital 30 percent liable, and awarded $801,240 to Mrs. Pereira. In addition, Dr. Largen's insurance company will pay a large portion of Mrs. Pereira's attorney fees.

This was a very satisfying result for Mrs. Pereira and Mr. Shipley, especially since Dr. Largen's insurance company never offered a penny before or during trial. Some of the money, according to Mrs. Pereira, will be used to purchase a different health insurance policy. ■

Louise Pereira

Woman Expires After Delay in Diagnosis

Lois Horne-Lewis, 50, was a vibrant, fun-loving mother of seven daughters, grandmother of ten, and wife to husband Jacob. Mrs. Horne-Lewis knew the importance of having yearly mammograms. Her sister had had breast cancer, and she knew that having regular breast examinations was important for maintaining good health. Following some unusual changes in June 1997, Mrs. Horne-Lewis scheduled a mammogram at Center Y. While the study revealed some benign densities in her breast, Mrs. Horne-Lewis was obviously relieved to learn that no evidence of malignancy was detected.

In August 1998, Mrs. Horne-Lewis returned to Center Y for her next mammogram. The films were read by radiologist Dr. X. He found a new area of increased density, with ill-defined borders measuring one centimeter in the central left breast, and characterized the study as "somewhat suspicious." Dr. X also noted some benign appearing lymph nodes in the left armpit, but dismissed those findings, recommending only that additional views of the left breast be taken.

Two weeks later, Mrs. Horne-Lewis returned to Center Y for four spot compression views of her left breast. Dr. X again reviewed the films and found that they failed to demonstrate a discreet mass or cancerous lesion, concluding that the findings were merely densities. Rather than properly evaluating and interpreting the abnormalities in the mammograms, Dr. X simply recommended that Mrs. Horne-Lewis return for another screening in six months.

On Feb. 24, 1999, Mrs. Horne-Lewis returned for her recommended screening. Dr. X again reviewed the films and compared them with the August 1998 mammogram. In just six-months, the mass had tripled in size, from one to three centimeters. Finally, Dr. X recommended a biopsy – something he should have done long ago. The biopsy was performed on March 3, and by March 9 the pathology report revealed that Mrs. Horne-Lewis had breast cancer. On June 28, Mrs. Horne-Lewis underwent surgery, and her entire left breast and all of the lymph nodes under her left arm were removed.

Following the surgery, the family sought the assistance of attorney Carl Brown in Miami, who then referred the case to attorney Darryl Lewis (no relation). Mr. Lewis, along with attorney Sia Baker, filed a Notice of Intent to Initiate Litigation against the radiologist and the radiologist's employer. Utilizing an option available under Florida's medical malpractice statute, the defendants demanded arbitration in an attempt to cap their losses. The Lewises rejected the arbitration demand and chose to litigate their case. Nevertheless, having been offered the option of arbitration, the Lewises were entitled to seek all of their economic damages, but their claim for non-economic (pain and suffering) damages would be capped at $350,000.

In September 2000, while litigation was ongoing, Mrs. Horne-Lewis learned that her cancer had spread to her liver. This was a devastating blow to Mrs. Horne-Lewis and her family, as it meant that Dr. X's delayed diagnosis of the cancer would ultimately be a fatal mistake.

In early January 2002, subject to the non-economic damage cap of $350,000, Mr. Lewis and Ms. Baker successfully negotiated a settlement of $987,500 for the Lewis family. Mrs. Horne-Lewis passed away later that month. ■

Pictured above: Lois Horne-Lewis and her daughters.

In Honor and Memory of David Charles Abramson, M.D.

On Jan. 31, 2002, the world lost one of its foremost advocates for babies and children.

David C. Abramson received his Medical Degree from Georgetown University in 1966. He performed his internship and residency at Georgetown University, became Board Certified in Pediatrics in 1972, and Board Certified in Newborn and Perinatal Medicine in 1975. He then became Board Certified in Emergency Medicine in 1984. Additionally, Dr. Abramson performed the studies necessary for a Ph.D. in Physiology, although an illness suffered by his mentor kept him from defending his thesis and taking his Ph.D. in Physiology.

All of Dr. Abramson's studies promoted his central interest of understanding the physiology of the fetus and child at every developmental age. Thanks to Dr. Abramson, and others, great strides were made in the understanding and treatment of born and unborn children.

Many pediatricians and neonatologists perform good medical care for their patients, but are unwilling or afraid to come forth and testify in court when a child has been injured due to negligent medical care. Dr. Abramson showed great courage on behalf of children. When a child was wrongfully injured by negligent medical care, he would stand up for the child's rights and testify in court, knowing he would face the wrath of the organized medical profession and unpopularity amongst fellow physicians. Dr. Abramson never faltered, despite the enormous political, social, and economic pressure placed on him by those not wishing to be held accountable for their mistakes.

I have had the privilege of many one-on-one teaching sessions with the finest physician experts in the country. Dr. Abramson was the finest teacher I have ever known.

As a neonatologist, pediatrician, and emergency physician, Dr. Abramson saved thousands of lives. He did so with a demeanor of kindness and calm control. For the many thousands of people living fulfilling lives today, who would not be here had Dr. Abramson not saved their lives; for the thousands of wrongfully injured children who have an economic chance in life because Dr. Abramson had the courage to come forth and testify on their behalf; and for the trial lawyers whose representation of injured children was wonderfully enriched by such an extraordinary mentor, I ask that you join me in honoring Dr. Abramson and praying for his spirit.

Dr. Abramson is survived by his wife, Bonnie Schwartz Abramson, whom he loved dearly, his three children, to whom he was devoted, and his Executive Assistant, Bonnie Johnson Meagher, who was an integral part of his life and considered part of his family.

Dr. Abramson's teachings and good works will live on beyond him.

With great honor and respect for the memory of David Charles Abramson,

CHRISTIAN D. SEARCY
On Behalf of the Firm

Car Insurer Allegedly Backdates Policy

Generally, Florida's "dangerous instrumentality" law makes car owners and car leasing companies responsible for injuries arising from accidents in which their cars have been involved. However, Florida Statute 324.021(9)(b)(1991) states that car leasing companies are exempt from liability if they meet certain criteria. In order to enjoy that exemption, companies must write leases that last at least one year, and must also ensure that the entity leasing the vehicle carries at least $100,000 in insurance coverage per injured person and $300,000 per incident.

On April 26, 1996, Sheryl Gruden of Tampa was driving in Clearwater when a driver named Guy Abbanat of Coral Springs negligently struck her. Mr. Abbanat was driving a vehicle he had leased from Nissan, which he insured with State Farm Mutual Automobile Insurance Company. However, at the time of the accident, Mr. Abbanat maintained insurance of only $50,000/$100,000. In fact, State Farm, in responding to requests for insurance coverage disclosure, provided two separate sworn affidavits that disclosed limits of $50,000/$100,000.

As a consequence of the accident, Mrs. Gruden suffered a severe femur fracture requiring major surgery and the use of metal plates and screws to repair it. Not surprisingly, Mrs. Gruden incurred significant medical expenses for the treatment of her physical and mental injuries. Furthermore, her condition was complicated by the fact that she was already a double amputee, having lost both of her legs below the knee in a prior collision.

Mrs. Gruden sought the assistance of attorney David Kesler in St. Petersburg, who initiated litigation against Mr. Abbanat and Nissan Motor Acceptance Corporation. Nissan took the position that Mr. Abbanat had carried the appropriate insurance coverage of $100,000/$300,000 on the date of the accident. State Farm intervened in the action, also taking the position that Mr. Abbanat had purchased appropriate insurance coverage in compliance with Florida Statute 324.021(9)(b). State Farm claimed that it had increased Mr. Abbanat's coverage to the statutorily required limit one day before he crashed into Mrs. Gruden's car. Upon learning of State Farm's assertion, Mr. Kesler referred the case to Chris Searcy.

Sheryl Gruden and her daughter Kristin.

Attorneys Chris Searcy and Darryl Lewis took over the active prosecution of the case.

The trial court in Pinellas County bifurcated the case, requiring the parties to first try the sole issue of what coverage was in effect on the date of the accident. Lawyers for State Farm and Nissan argued before the jury that it was purely coincidence that Mr. Abbanat's coverage was increased from $50,000/$100,000 to $100,000/$300,000 the day before the crash. Mr. Searcy and Mr. Lewis contended that State Farm backdated the documents, falsely increasing Mr. Abbanat's level of coverage in order to qualify Nissan Motor Acceptance Corporation for protection under the statute described above. The jurors rejected State Farm's and Nissan's arguments, concluding that Mr. Abbanat did not have the legally required policy limits on the date of the accident. The jury returned its verdict in less than one hour.

Prior to the trial of the remaining issues in the case, Mr. Searcy and Mr. Lewis negotiated a $1.1 million compensatory damage settlement with State Farm on Mrs. Gruden's behalf. Subsequently, Mr. Searcy and Mr. Lewis initiated a claim in Broward County, Fla., against State Farm, alleging that the company committed fraud by backdating documents in an attempt to deny Mrs. Gruden her full legal remedies. The State Farm agent and agency office have also been named in the lawsuit, which remains pending. ■

Cardiac Symptoms Ignored, Woman Dies

On Aug. 19, 1999, Mrs. B went to her local hospital with chest pain and a reported family history of premature coronary artery disease. She told the emergency room physician that she had been having upper chest and shoulder pain for approximately five days. The ER doctor diagnosed chest pain and the need to rule out angina. He then contacted Dr. C, a general physician who had previously treated Mrs. B. Dr. C gave orders to admit Mrs. B.

At 7:36 a.m., an EKG was completed in the emergency room. The computer interpreted the study as abnormal, and Mrs. B's admitting diagnoses included chronic hypertension, chest pain, and the need to rule out coronary artery disease/angina.

Mrs. B was admitted to the telemetry floor at approximately 9:30 a.m. Cardiologist A examined Mrs. B and reviewed the EKG and documented chest pain/possible angina, obesity, adult onset diabetes, and hypertensive cardiovascular disease. His plan included the use of aspirin and other drugs to thin Mrs. B's blood, and he ordered a Troponin test, used to measure an enzyme level that rises in patients having heart attacks. Cardiologist A also ordered additional testing to take place in the morning, including a stress test, and repeat EKG and Troponin studies. Mrs. B continued to complain of chest pain throughout that day and into the evening hours.

The following morning, a repeat EKG demonstrated new abnormalities. Mrs. B also underwent the exercise portion of the stress test ordered by Cardiologist A. Mrs. B was unable to exercise for even three minutes before the test was discontinued due to her "fatigability." By 1:42 p.m., with her Troponin level still elevated, Mrs. B began complaining of chest pain. She was given nitroglycerine, which relieved her pain.

Experts testified that an emergency catheterization would have saved Mrs. B's life, and the stress tests should never have been performed.

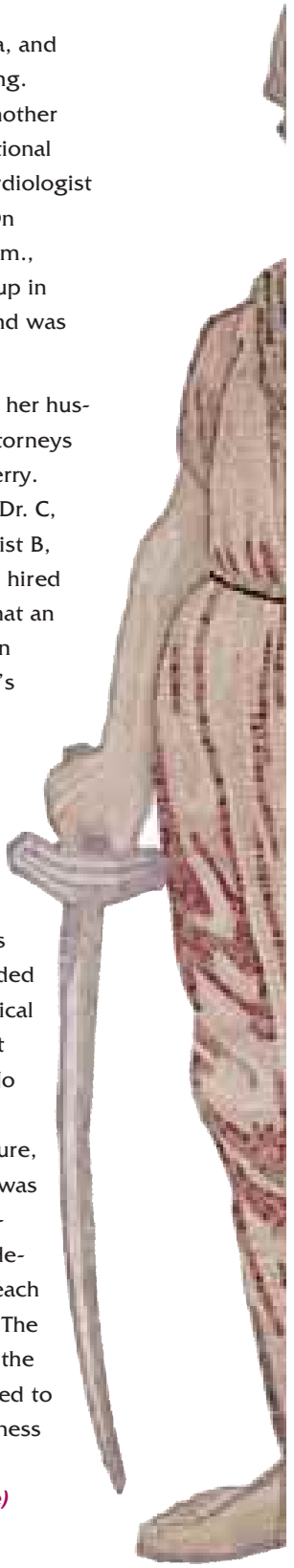
Despite obvious signs that Mrs. B was developing an infarction, Cardiologist A resumed the exercise testing of Mrs. B the next day, August 21. Throughout the day, Mrs. B continued to complain of chest pain, and nitroglycerin continued to be administered to relieve the pain. Dr. C visited Mrs. B around 4:00 p.m., and he too noted her complaints of pain. By 5:30 p.m., Cardiologist A's partner, Cardiologist B, was notified. Cardiologist B ordered medications over the telephone for stomach upset, but did not treat Mrs. B's ongoing pain as a cardiac emergency.

Just before midnight, Cardiologist B was called concerning an episode of rapid heartbeat, nausea, and a small amount of vomiting. Cardiologist B ordered another EKG, which showed additional adverse changes, and Cardiologist B ordered Compazine. On Aug. 22, 1999, at 2:10 a.m., Mrs. B was found sitting up in her bed, unresponsive, and was pronounced dead.

Following Mrs. B's death, her husband of 31 years hired attorneys Chris Searcy and Karen Terry. Suit was brought against Dr. C, Cardiologist A, Cardiologist B, and the hospital. Experts hired by the plaintiff testified that an emergency catheterization would have saved Mrs. B's life. Furthermore, the stress tests should never have been performed.

Initially, the defendants collectively denied responsibility for Mrs. B's death, arguing that the Bs had refused a recommended catheterization. The medical records, however, did not support the allegation. No mention of the recommended life-saving measure, much less the fact that it was allegedly refused, was recorded. Eventually, the defendants began blaming each other for Mrs. B's death. The cardiologists argued that the general physician had failed to communicate the seriousness of the cardiac symptoms

(continued on next page)



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

and test results, while the general physician blamed the cardiologists for failing to treat a patient who was obviously undergoing a serious cardiac event.

Ms. Terry settled the majority of the case with the hospital and the two cardiologists during mediation for a total of $700,000. Subsequently, Dr. C paid an additional $100,000 to resolve the remainder of the case. ■

Despite Numerous Doctor Visits, Man Diagnosed with Cancer

Mr. K, age 53, first established Dr. G as his primary care physician on Jan. 26, 1994. During Mr. K's third visit to Dr. G, which occurred on April 10, 1996, Mr. K underwent a prostrate-specific antigen (PSA) test. The result from the test was 2.4, which was within the normal range.

Mr. K visited Dr. G's office for treatment of various illnesses a total of seven times in 1997, although no physical examinations, PSA tests, or digital rectal exams were performed during that year. A similar scenario followed in 1998, as Mr. K visited Dr. G's office a total of ten times without ever having physical exams, PSA tests, or digital rectal exams performed.

On Sept. 20, 1999, during his fourth visit to Dr. G that year, a PSA test performed by the doctor revealed a level of 8.9, which exceeded the range deemed normal. A follow-up PSA test done on Nov. 12, 1999, revealed that the level had elevated to 16.4. As a consequence of the second lab value, Mr. Khan was referred for an exam with a urologist, which occurred on Dec. 2, 1999. By then, a CT scan showed the presence of metastatic carcinoma in Mr. G's prostate and thoracic spine. Aggressive treatment with radiation and chemotherapy was initiated, but the cancer continued to metastasize down to Mr. K's lumbar and sacral spine.

Believing that his cancer should have been detected long ago, Mr. K hired Dick Slawson of the law firm of Slawson, Cunningham, Whalen and Smith in Palm Beach Gardens, who in turn referred Mr. K to attorney Greg Barnhart. Mr. Barnhart investigated the claim, and in November 2001, placed Dr. G on notice of Mr. K's claim for medical negligence. Under guidelines mandated by the medical malpractice statute in Florida, that notice letter commenced a 90-day pre-suit investigation period, during which the opposing parties examined pertinent records, consulted with experts, and discussed the merits of the claim.

A follow-up PSA test done on Nov. 12, 1999, revealed that Mr. K's level had elevated to 16.4.

Prior to the expiration of the pre-suit investigation period, and therefore prior to the filing of a formal lawsuit against Dr. G, Mr. Barnhart successfully negotiated an $875,000 settlement on Mr. K's behalf with Dr. G's malpractice insurance carrier. The settlement proceeds will afford Mr. and Mrs. K some measure of comfort as Mr. K battles the effects of this dreaded, yet preventable, disease. ■

The Meeting Corner:

James W. Gustafson, Jr.

James Gustafson joined the law firm of Searcy Denney Scarola Barnhart & Shipley in April 2002. Born in West Palm Beach, Fla., Mr. Gustafson is a sixth generation native Floridian. He earned his undergraduate and law degrees from Florida State University after completing a term of enlistment with the 82nd Airborne Division in Fort Bragg, N.C. He graduated Phi Beta Kappa and cum laude with honors from Florida State University in 1991. In law school at Florida State, he was a member of the Moot Court team and Phi Delta Phi, and he graduated with honors in 1994. Mr. Gustafson also completed a course of study at St. Edmund Hall, Oxford University in England.

Mr. Gustafson began his legal career in 1994 with Freeman Hunter & Malloy in Tampa, defending health care providers and product manufacturers, as well as handling other cases involving general liability. In 1997, he joined the firm of Masterson, Rogers, Woodworth, Masterson & Lopez in St. Petersburg, litigating plaintiff medical malpractice and product liability claims. In 2000, he was named a partner of that firm.

Mr. Gustafson has served on the Academy of Florida Trial Lawyers' Board of Directors since 1999. He is a sustaining member of the Association of Trial Lawyers of America and he serves as the editor of ATLA's Professional Negligence Section newsletter. He is a member of the Trial Lawyers Section of the Florida Bar and the Million Dollar Advocates Forum. Mr. Gustafson and his wife Josie have a son, James Winton. Mr. Gustafson enjoys saltwater fishing and duck hunting. ■

Insurance Covers Mother for Negligence Causing Brain Injury To Her Fetus

Attorneys Chris Searcy and David White represented Kara Goodman, the severely brain injured daughter of Terry and Barbara Goodman, in a lawsuit filed by National Casualty Company in Miami, Fla. National Casualty Company requested that the trial court declare that there was no liability insurance of $1 million covering Mrs. Goodman, who was 7-months pregnant, when she negligently operated her motor vehicle on July 21, 1994 in Coconut Grove, Fla. The automobile accident required the performance of a Caesarean section and the delivery of Kara. At the time of her birth, Kara suffered from a severe injury to her brain caused by the automobile accident.

For the first time, Florida law will allow the recovery of damages for prenatal injuries sustained by the child against the mother up to the limits of the insurance coverage.

After three days of trial, Judge Norman Gerstein, on July 10, 2000, entered judgment against National Casualty Company and in favor of Kara holding that insurance coverage exists for damages sustained by a fetus caused by the negligence of her mother up to the limits of the available insurance coverage. On Sept. 20, 2000, Judge Gerstein entered judgment in favor of Kara and against National Casualty Company in the amount of $1 million.

National Casualty Company filed an appeal with the Third District Court of Appeal, State of Florida. The Third District Court of Appeal affirmed Judge Gerstein's judgment on Dec. 19, 2001, recognizing, for the first time, that Florida law will allow the recovery of damages for prenatal injuries sustained by the child in a lawsuit filed against the mother up to the limits of insurance coverage. Thereafter, National Casualty Company filed a Petition for Writ of Certiorari with the Florida Supreme Court. While the Petition was pending, a settlement was reached with National Casualty Company for the payment of $1 million plus attorney's fees, interest, and costs. ■

Safeguard Your Rights — Write Congress Today

To safeguard the rights and safety of all Americans, please consider contacting your members of Congress today. We invite you to encourage friends and family members to do the same. Urge Congressional members to place the needs of injured victims first, ahead of insurance companies and bad doctors.

To locate the address of your Congressional senate and house representatives, please go to www.info@votenet.com, click on "Contact Congress," then type in your zip code under "Find Your Members of Congress by Zip Code."

(DATE)

Dear (CONGRESS MEMBER'S NAME):

It has come to my attention that there is a move afoot to establish federal caps on the damages recoverable in medical negligence cases. As one of your constituents, I urge you to vote against any such legislation. Caps only serve to deny fair and just compensation to the most injured and to allow bad doctors to escape responsibility and accountability for their actions.

Caps on damages do not reduce insurance premiums for doctors. Rather, in states with the most severe caps on damages, insurance rates are actually higher than the average of states without caps. Furthermore, the caps on pain and suffering, or human damages, hurt women and children the most.

The problem with medical malpractice is that there is too much of it. Unfortunately, that is one of the reasons for increasing medical malpractice insurance rates.

We've all heard about the Institute of Medicine's report that up to 98,000 people die every year from medical errors. Doesn't it make more sense to get to the root of the problem and weed out the doctors who cause the errors, rather than punish the victims of malpractice by under-compensating them for their injuries and their ongoing health care needs? Instead we have a system in which good doctors are paying as much medical malpractice insurance as doctors who have committed medical errors. Even doctors who have injured or killed multiple patients are allowed to keep practicing. They shield their past errors from patients and pay the same insurance premiums as good doctors.

Some people claim that large jury verdicts are the cause of increases in medical malpractice premiums. But large verdicts reflect the reality that a patient was grievously injured and is going to require care for many years, often the remainder of his or her life. Those medical care costs do not remain stagnant; they rise each year just like the cost of groceries or clothing. In fact, health care costs rose 74.7 percent from 1988 to 1999, far more than the increases in other costs of living.

Most people injured through medical negligence never file lawsuits. The Harvard Medical Practice Study Group determined that out of every eight instances of medical malpractice, only one claim was actually filed.

Insurance companies claim lawsuits increase the costs of coverage, yet almost none base their rates on experience. In other words, insurers charge bad doctors and good doctors the same rates, forcing responsible doctors to pay for the mistakes of those who are negligent.

The truth is, insurance companies charge higher premiums when the economy is slow or their profit-making investments go bad. When these insurance companies make bad investments and lose money, they raise their insurance rates. The St. Paul Insurance Co., for example, lost $108 million in the Enron collapse.

Limits on the compensation a jury can award a victim of medical malpractice only penalizes the victim and does nothing to solve the real problem, which is too many unnecessary errors.

I urge you, when you consider any bill that addresses medical malpractice insurance, to consider the ramifications for the injured patients. They should come first — not the insurance companies or the doctors who have committed the harm.

Sincerely,

(YOUR NAME)

Accolades

John Shipley Joins the Board of the Morikami Museum and Japanese Gardens

On April 23, John Shipley was inducted as a board member of The Morikami Museum and Japanese Gardens in Delray Beach. Mr. Shipley joins 23 other board members to help foster a broader understanding of the Japanese culture and Japanese Americans. The induction ceremony took place during the Morikami's annual board meeting. ■

Harry Shevin Appointed to Board of Palm Beach County Trial Lawyers Association

Harry Shevin was recently appointed to a one-year term as a Board of Director of the Palm Beach County Trial Lawyers Association. The Association serves more than 300 members throughout the county. On May 31, Mr. Shevin lectured on strategies and updates in case law during the Association's seminar called, "How to Defeat the PIMPs II" (Professional Insurance Medical Practitioners). ■

Sia Baker Inducted as Member of The Links Incorporated

On June 2, Sia Baker became a 2002 inductee into the West Palm Beach Chapter of The Links Incorporated. Ms. Baker, along with seven other inductees, was honored at a reception in Palm Beach Gardens. Chartered in West Palm Beach in 1969, Links members raise money to help fund scholarships, expose underprivileged children to the fine arts, and assist with other projects that benefit Palm Beach County citizens. ■

West Palm Beach Kiwanis Club

On Wednesday, May 15, Searcy Denney Scarola Barnhart & Shipley presented a check for $1,550 to the Kiwanis Club of West Palm Beach Foundation. The foundation awards college scholarships to area youths. Last year, more than $130,000 was awarded to 89 college-bound students who met specific academic requirements. Out of 66 law firms participating, Searcy Denney Scarola Barnhart & Shipley was the largest contributor. ■

l. to r. Cory Rubal presents check to West Palm Beach Kiwanis Club President Brent Deviney.

Taking... Time to Care

l. to r. (front row) Dog Bali, Robin Kriberney, Dawn Pitts, Vi Ware, Cory Rubal, dogs Pete and Steve, Dorlynne Maynor. (back row) Randy Kriberney, Marilyn Hoffman, Laurie Briggs, Kelly Lawrence, and Kelby Maynor.

Juvenile Diabetes Research Foundation

On Saturday, April 6, Searcy Denney Scarola Barnhart & Shipley employees and their family members walked in the 2002 Walk to Cure Diabetes. The event, held at the Meyer Amphitheatre in West Palm Beach, consisted of a three-mile walk along Flagler Drive. SDSBS employees raised $1,380, adding to the total of $550,000 collected countywide. Proceeds from the event will help fund diabetes research and education programs locally and nationwide. ■

Legal Aid Society of Palm Beach County

On Saturday, May 11, Searcy Denney Scarola Barnhart & Shipley was a benefactor for the Legal Aid Society of Palm Beach County's 14th Annual Pro Bono Recognition Evening. Held at the Kravis Center in West Palm Beach, 12 attorneys/law firms were recognized for their pro bono work in the community. Proceeds from the event will benefit Legal Aid's 18 programs that provide free civil legal services to more than 6,000 clients on matters of housing, employment, health, education, and safety. ■

l. to r. Jack Scarola, Greg Barnhart, John Shipley and Patrick Quinlan.

l. to r. April Kriberney holding dog Bali, Cory Rubal, Scott Ovian, Vi Ware, Marilyn Hoffman, Robin, Mandy and Randy Kriberney.

Peggy Adams Animal Rescue League

On Saturday, March 16, Searcy Denney Scarola Barnhart & Shipley employees and their family members volunteered during the Peggy Adams Animal Rescue League's First Annual Walk. More than 500 people and 350 dogs attended the event held at Currie Park in West Palm Beach. Proceeds from the event, which exceeded $70,000, will be used to offer a free spay/neuter program for pets in Palm Beach County. ■

Volume 02, No. 2

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www.searcylaw.com

for the latest news and information about Searcy Denney Scarola Barnhart & Shipley.

In this issue:

THE NATIONAL
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WINNING 2002

The art of the win

Ten of the nation's leading litigators describe strategies from key cases of the past year.

CHRISTIAN D. SEARCY

Secret weapon: listening for hours

ATTORNEY: *Christian D. Searcy*

FIRM: *Searcy Denney Scarola Barnhart & Shipley, West Palm Beach, Fla.*

CASE: Jenkins v. Ranger Construction Industries Inc., *nos. 98009025AN and CL0000169AN (Palm Beach Co., Fla., Cir. Ct.)*

"THE FIRST THING you do in any lawsuit," says plaintiffs' attorney Christian D. Searcy, "is sit down and have a very deep, intense conversation with your clients. You begin with a detailed interview, lasting several hours or several days. You're assessing them as witnesses. You're trying to learn as much as possible about them."

He doesn't confine his questions to the incident that spurred the suit.

"I want to find out who they were before this catastrophe," he says. "To show the loss to the jury, you have to know what they lost."

In the opening moments of a recent lawsuit over a traffic accident that killed one child and crippled two others, the first time he met his clients Kathy and Torrey Jenkins, he spent the entire day interviewing them.

The information he received in those interviews provided the foundation for the biggest jury verdict of his career—$256 million.

Listening to his clients has clearly paid off for Searcy, who represents plaintiffs exclusively in a variety of actions involving catastrophic injuries or deaths. He won his first million-dollar verdict in 1977, when he was only 30, and has since won dozens more, including $133 million in an aircraft crash lawsuit. He has had several hundred settlements of seven figures or more.

Searcy's life experiences spurred his desire to handle only plaintiffs. "When I was 13 years old, I saw my 6-year-old brother get killed." When he was 25, his son sustained brain damage during birth.

In the *Jenkins* case, the suit grew out of a two-car collision in Riviera Beach, Fla. On the night of May 7, 1997, Kathy Jenkins was driving westbound on Blue Heron Boulevard. She began to turn left onto Congress Avenue when her car was broadsided by an off-duty Riviera Beach police officer going east on Blue Heron.

Kathy Jenkins' injuries were minor, but her daughter Jasmine, age 6, was killed; her son Landon, 3, sustained a spinal cord injury leaving him quadriplegic; and her son Jordan, also 3, suffered a brain injury that left him paralyzed on one side. Both boys also sustained mild mental retardation.

In his initial interviews with Kathy and Torrey Jenkins, Searcy began organizing the case by element of damages.

As he listened to Kathy Jenkins recount the accident, Searcy says, he determined why the accident had happened. The intersection was under construction and "she was already into the intersection when she saw the other car," he notes. "There had to be some kind of view obstruction." He realized as well, he adds, "if she was unable to see the car just before the collision, the other car might not have been able to see her."

This conclusion determined the next step, Searcy says. "I had to find out who was responsible for that intersection."

Palm Beach County had hired Ranger Construction Industries Inc. to widen Blue Heron Boulevard to a six-lane divided highway. The roadway continued to be open to traffic while the construction project was under way.

To ensure that traffic could move safely through the construction zone, Searcy notes, the project needed a maintenance of traffic (MOT) plan. "The best and safest way is to bid out the MOT plan contract separately from the road construction contract," Searcy says. To cut costs, Palm Beach County "bid the whole thing together and Ranger was the low bidder."

But, he adds, Ranger did not have a professional engineer do the MOT plan, which is required by state law. The Ranger employee "did not draw the plans to scale or measure the elevation of the roadway in various places."

The Jenkins family sued Ranger Construction, Palm Beach County, Rivera Beach and the driver of the other car, Andrew Cohan. The plaintiffs charged, among other things, that Ranger developed and instituted an inadequate MOT plan and that Palm Beach County was negligent because it did not follow proper procedures in bidding out the MOT plan. The plaintiffs contended that Cohan was negligent as well. Cohan said he was driving at the speed of traffic.

In the investigation of the case, says Searcy, he learned that on several occasions "Cohan had been stopped without a license or registration or for speeding. But he always got off the hook because he was a cop." While this provided evidence for the claims against Riviera Beach, it hurt the case overall, says Searcy.

"We now had evidence to cause anyone to hate this cop." But the jury could "load all the negligence on Cohan," and clear Ranger and Palm Beach County, leaving the Jenkins family with little or no compensation. Cohan had no insurance and Riviera Beach had only $1 million. Searcy dismissed the negligent hiring and retention claims against Riviera Beach.

In pretrial focus groups, Searcy learned that the timing of his witnesses could be critical. It was essential, he says, to start with witnesses and evidence supporting the plaintiffs' contention that failures in the maintenance of traffic plan caused the accident. "So we did not put the drivers on until very late in the case."

The reasoning? If the drivers testified first, the jurors in the mock trials focused on the drivers' actions and were more likely to blame them for the accident. They also tuned out when the experts on roadways and traffic plans appeared. By putting the drivers on last, he says, "the motorists became passive players, someone to be protected." The jurors then focused on the plaintiffs' primary point—that defects in the MOT system had created an unsafe intersection and led to the accident.

TRIAL TIPS

- **Begin case with detailed interview with client.**
- **Drop claims if they'll hurt your overall case.**
- **Test timing of witnesses through mock trials.**

Although a common strategy is to call representatives of the defense in the plaintiffs' case-in- chief, Searcy decided to put them on only through depositions. This prevented the defense from cross-examining these witnesses at trial, Searcy notes. In addition, the personnel charged with supervising, monitoring or devising the MOT plan did not have any training in such work, he says.

Searcy would read the questions in the depositions and his co-counsel Darryl Lewis would read the answers. "We would try to breathe as much life into it as possible, using the same cadences and inflections" as the speakers. But, he says, he was not concerned about the jury finding this portion of the trial dull. "These are the defendants' witnesses. If the jury finds them boring, is that so bad?"

One of the best witnesses for the plaintiffs, Searcy says, was a paid expert for the defense. During Searcy's case-in-chief, he had called the accident reconstruction expert for the city of Riviera Beach to the stand as an adverse witness. "The city had him do an examination of the intersection with the original barricades," Searcy says.

"He didn't want to help us, but his eyewitness testimony was so important."

Searcy called this witness, Don Moore, only on one discrete point—his eyewitness account about the visibility in the intersection when the barricades were up. He didn't want to have the witness go through his entire planned testimony. "His lawyer could have led him," Searcy says. Searcy asked the witness what happened when Moore drove his own vehicle through the intersection while the original barricades were in place. The witness answered, "It was virtually impossible to see approaching vehicles from a point approximately 350 feet away from the intersection."

On Jan. 24, 2001, a West Palm Beach jury assigned liability at 50% to Ranger, 43% to the county and 7% to Cohan. The jury found no responsibility for Kathy Jenkins and Riviera Beach. Two months later, Ranger and the county settled for $57 million. Cohan had not settled so the damages portion was still tried. But the result, while extraordinary, was anticlimactic. On July 11, the jury awarded the Jenkins family $256 million, leaving Cohan liable for $17.92 million.

PHILIPPE JENNEY/ARGENT

CHRISTIAN D. SEARCY: *His life experience spurred his desire to handle only plaintiffs. When he was 13, he saw his six-year-old brother get killed, and his son sustained brain damage at birth.*