SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

OF COUNSEL

SPRING 1995 - QUARTERLY REPORT TO CLIENTS AND ATTORNEYS

2139
PALM BEACH LAKES BLVD.
WEST PALM BEACH
FLORIDA 33409

800-780-8607
(407) 686-6300
FAX: (407) 478-0754

P.O. DRAWER 3626
WEST PALM BEACH
FLORIDA 33402

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.

SDSBS

Insurance Firms Sued By Aged Workers And Their Employers In Medicare Paybacks

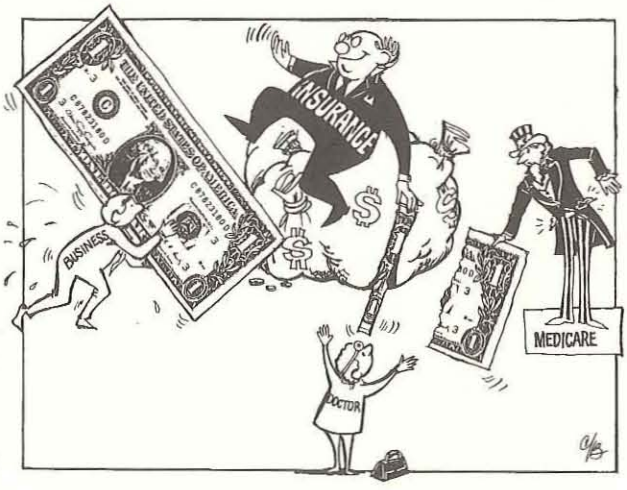
Elderly workers and their employers have filed a class action suit against three insurance companies that wrote illegal insurance policies which were misrepresented as supplements to Medicare coverage. The workers were covered by health plans sponsored by their employers and written by defendants, New York Life Insurance Co., United American Insurance Co., and First National Life Insurance Co. Since 1983, these insurance companies were required by federal law to provide workers 65 or older with primary coverage. Instead, they paid only the supplemental medical bills that Medicare failed to cover. Medicare is now seeking reimbursement for expenses it incurred that should have been paid by the private insurance companies. The suit also names Blue Cross/Blue Shield of Florida which processed Medicare claims for the government, and permitted insurers to utilize the illegal policies for more than twelve years.

Filed in Miami federal court, the suit seeks nationwide class-action status. Requested damages could be trebled under the federal racketeering law. Jack Scarola, partner with Searcy Denney Scarola Barnhart & Shipley, P.A. is representing the workers and their employers along with co-counsels Rex Cowan of Winter Haven and Michael Pucillo of West Palm Beach.

The conflict arises from a 1982 amendment to the Social Security Act. For many years, Medicare was required to be the primary payer for elderly workers' medical care. Some employers paid or sponsored group health "Medigap" insurance for their workers 65 and older. "Medigap" policies paid that portion of the cost of medical services not covered by Medicare. The cost to the insurer of payments under a "Medigap" plan in which the insurer is secondarily liable was substantially less than the cost of providing primary coverage. The government, as primary provider, paid most of the costs of medical services for elderly workers.

Congress saw a potential opportunity to cost-shift health care expenses from the government to the nation's employers. In 1982, the Social Security Act was amended, rendering Medicare's obligation secondary to employers' group health plans. Insurers providing group health insurance to employers were required by law to be primarily liable for the

Continued on Page Five



Billy Hungerford: A Profile In Courage

HUNGERFORD vs. RAWLS & ASSOCIATES

Seventeen year-old Billy Hungerford was returning from a morning outing at the beach. A few miles from home, his car drifted off the road and struck a guardrail. Had the guardrail been properly designed and installed, Billy would have suffered a badly dented right front fender, a good scare, and some minor bumps and bruises. Gross defects in the guardrail turned what should have been one bad dream into a lifelong nightmare.

The guardrail served to separate a pedestrian/bicycle path from the main roadway. In an apparent effort to provide a deflector for bicycle tires

Continued on Page Seven

The Meeting Corner:

Jack Scarola

Jack Scarola has been with the firm of Searcy Denney Scarola Barnhart & Shipley, P.A. for sixteen years, having joined the firm after five years as a felony prosecutor with the Palm Beach County State Attorney's Office. All of Mr. Scarola's twenty-one years of legal experience have focused exclusively on litigation matters.

Mr. Scarola graduated with honors from Georgetown University in 1969 and from Georgetown Law Center in 1973. As Chief Felony Prosecutor, he was lead counsel in the trial of well over fifty major criminal cases, including the nation's first gavel-to-gavel televised murder trial.

Since turning his attention to civil law, Mr. Scarola has had numerous multi-million dollar verdicts with particular success in obtaining some of the largest punitive damage awards ever returned in the State. Mr. Scarola led the thirteen year-long effort on behalf of over 700 African-American citrus workers

Continued on page 4.

Emilio Diamantis

Emilio Diamantis is a Paralegal/ Investigator at Searcy Denney Scarola Barnhart & Shipley, P.A. Before joining the firm, he was Deputy Chief of Detectives in the Palm Beach County Sheriff's Office. He retired from the Sheriff's Office in 1983 with the rank of Lieutenant. He received his Bachelor's Degree from Barry University in 1990.

Mr. Diamantis primarily works with Jack Scarola on personal injury, medical malpractice and product liability cases. His duties include investigation, case resolution and trial preparation. Fluent in Spanish, Mr. Diamantis also assists in the majority of the firm's cases involving Spanish speaking clients.

A resident of Palm Beach County since 1957, Mr. Diamantis is actively involved in his community. He served as Lieutenant Governor for Florida Kiwanis in 1992/93. He is also a member of Palm Beach County Leadership Class of '95 and serves on numerous nonprofit boards. ■

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

JOHN DOE vs. XYZ HOSPITAL

John Doe, 18, was involved in a very severe head-on motor vehicle accident. He was unrestrained and struck his chest on the steering wheel. He was transported to an emergency room where the emergency physician correctly observed no obvious injuries, but was suspicious for heart and major vessel damage. A routine chest x-ray was markedly abnormal. A surgical consult and ct-scan of the chest were ordered. Unfortunately, the surgeon and radiologist did not effectively communicate. The radiologist had not been informed as to the reason for Doe's hospitalization. The ct-scan was misread as normal except for soft tissue abnormalities which the radiologist called enlarged lymph glands. Doe was placed on the regular floor and a lung specialist was consulted for the lymph gland concern. Forty-eight hours later Doe had a cardiac arrest and a new radiologist repeated a chest ct-scan. The correct diagnosis of transected aorta was made, air transport was accomplished and emergency surgery saved Doe's life. However, he is a permanent t-4 paraplegic. Plaintiff's expert, chief of the department of cardio-thoracic surgery at Harvard, testified that Doe would not have been paralyzed with timely diagnosis and surgery. Chris Searcy and Cal Warriner tried this case for three weeks before it settled for $5.9 million. ■

ROBINSON vs. CAULKINS INDIANTOWN CITRUS COMPANY

Settlement Update

Over 700 claims have been received from persons seeking to participate in the $13.5 million racial discrimination class action settlement obtained by Searcy Denney Scarola Barnhart & Shipley, P.A. lawyers, Jack Scarola and Moses Baker, (now Circuit Court Judge Baker), in cooperation with referring attorneys, I. Jeffrey Pheterson, Joseph Vassallo, and Florida Rural Legal Services Director Peter Helwig. The claims have been measured against a complex, Court approved distribution formula and settlement shares have been allocated to individual class members ranging from $1,000 to almost three-quarters of a million dollars.

This distribution of settlement checks and execution of the closing papers and releases constitutes the final chapter in this historic case. ■

T/F SYSTEMS, INC. vs. FU SHENG INDUSTRIAL COMPANY LIMITED

David Sales and Jack Scarola have represented T/F Systems, Inc., a Boynton Beach-based manufacturer of automobile products, for several years. In 1990, they sought a declaratory judgment that T/F was the exclusive owner of the manufacturing and marketing rights of T/F's principal patented product, the "Purifiner," a device which extends the life of engine oil. The defendants included Fu Sheng Industrial Co., Ltd., a large Taiwan-based manufacturer and Fu Sheng's domestic trading partner, Purifiner Distribution Corp., based in Illinois. These parties contended that they, and not T/F, had obtained the rights to manufacture and market "Purifiner" devices, which are subject to several United States and foreign patents.

In 1991, the Palm Beach County Circuit Court granted T/F all of the relief it was seeking, including, (1) a declaration that it had the exclusive manufacturing and marketing rights under the referenced patents, (2) a declaration that it had the exclusive right to use the "Purifiner" trademark and (3) money damages in the amount of $115,000, plus interest for breach of an agreement of which T/F claimed to be a third-party beneficiary.

The defendants appealed and posted a bond in the amount of $1,000,000. During the pendency of the appeal, they engaged in an aggressive campaign to put as much of their product, which T/F claimed to be inferior, in markets reaching from Australia to Ecuador. T/F suffered significant damages because of head-to-head competition with the defendants and damage done to the Purifiner trademark. In 1993, the Fourth District Court of Appeal affirmed the trial court's judgment. T/F immediately requested a trial to recover its damages due to the appellate delay.

David Sales represented T/F in the delay damages trial. At trial, T/F proved that it had lost contracts with many of its foreign trading partners around the world. It also proved, despite a concerted effort by the defendants to conceal their actual product sales during the appeal, that they had sold millions of dollars worth of Purifiner product. In December 1994, the court agreed and awarded T/F delay damages in excess of $12.4 million. All of the defendants' post-trial motions have been denied. ■

"The most important thing a lawyer can do is become an advocate of powerless citizens."

- - Ralph Nader,

Decisions... Continued

JANE DOE R.N. vs. JOHN ROE, M.D.

Jane Doe, R.N., plaintiff, was working as a recovery room nurse at a PBC hospital. She was attending a post-trauma patient who had undergone extensive plastic surgery performed by defendant, John Roe, M.D. The patient was a race car driver who had received two units of blood during surgery. After having administered medication by syringe through the patient's I.V., the nurse put the syringe, which contained a bloody fluid extracted from the patient's I.V. tubing, on a table, placing the cap onto the needle. John Roe, M.D. walked beside Jane Doe as she was writing on the patient's chart. Without warning, he took the dirty syringe, absent the cap, and plunged it into Doe's buttock, breaking the skin and causing bleeding.

Doe, three months pregnant at the time, was scared for her life and the life of her expected child, fearing exposure to HIV infection, hepatitis and other infectious diseases. As a result of the exposure to the dirty needle stick, she lived in constant fear of exposing her expected child and husband to these diseases. Despite the fact that the race car driver and the transfused blood had both tested negative, Jane Doe required repeated testing for HIV and was also monitored for hepatitis. Fortunately, she did not acquire any infectious diseases and her baby was born healthy. Greg Barnhart settled the case against the doctor for $95,000 plus a written letter of apology.■

ESTATE OF JOHN DOE vs. EMERGENCY ROOM HOSPITAL B AND DR. C

A 55-year-old Volusia County man stepped on a nail which penetrated his shoe and entered his foot. He went to an emergency room where a nurse took a history with regard to previous tetanus toxoid immunization by way of noting a question mark. He was examined by the emergency room physician, given a tetanus toxoid booster and sent home with antibiotics.

Three days later he returned to the emergency room with a red, swollen foot and neck stiffness. He was admitted to the hospital although the treating physician never saw him during the initial admission. That evening he continued to have difficulty breathing and progressive muscle spasms. The next morning he went into extreme spasms, had a cardiac arrest and died. He was later diagnosed as having tetanus.

Since he had never been immunized for tetanus, the booster he was given was ineffective. A booster merely enhances a previous immunization. Physicians who treat older adults should take complete histories with regard to their tetanus immunization. Earl Denney negotiated a $737,500 settlement for Mr. Doe's estate.■

BLANCHE vs. TAUER, D.O. AND COASTAL EMERGENCY SERVICES OF FORT LAUDERDALE, INC.

Gregg Blanche, 24, intellectually challenged since birth, is in the borderline range of intellectual functioning. He awoke one morning with excruciating pain in his scrotum and went immediately to Bethesda Memorial Hospital in Boynton Beach where he was examined by emergency room physician, Dr. Minta Tauer. Despite the fact that the differential diagnosis was epididymitis and torsion (a surgical emergency), Dr. Tauer failed to order a nuclear scan or call in a urologic consult to rule out torsion. Instead, she discharged Mr. Blanche with antibiotics and pain medication. A week later, he returned to the emergency room in severe pain with swollen testicles. A nuclear scan confirmed a torsioned left testicle, which, in the urologist's opinion, had been missed the prior week. The testicle had to be surgically amputated and replaced by a testicular prosthesis.

Mr. Blanche suffered severe emotional and psychological trauma requiring psychotherapy and counseling which is expected to continue indefinitely. The crux of the damage case was that his intellectual limitations made it more difficult for him to cope with the surgical amputation of his testicle, and the issues of self-esteem, fear and anxiety, which he experienced as a result. After a week-long trial, Michael Kennedy obtained a $589,000 jury award including $500,000 for future pain and suffering.■

ESTATE OF JANE DOE vs. NURSING HOME

Jane Doe, 86, was admitted to a nursing home from a hospital after a series of strokes and heart attacks. She was unable to walk and had some reddened areas on her heels and toes. The nursing home failed to appropriately follow the admitting doctor's orders with regard to turning the patient, administering antibiotics and other modalities of therapy designed to keep her from developing pressure sores. She deteriorated and developed severe pressure sores to the extent that both of her legs were ultimately amputated and she died.

Pursuant to the Florida Nursing Home Residents Bill of Rights, the estate of an individual who dies as a result of the denial of rights may sue for actual damages. After a long protracted litigation, Earl Denney obtained a $535,000 settlement.■

B AND A vs. C AND XYZ CASUALTY COMPANY

Plaintiff, Mr. A, was driving his vehicle northbound one evening on an unlit road in Ft. Pierce. Plaintiffs, Mr. and Mrs. B, were traveling in their vehicle northbound following A's car. Defendant, Mr. C, pulled his tractor-trailer out in front of these two approaching vehicles and began to proceed northbound. Prior to C's full execution of this maneuver, Mr. A crashed into the rear of the trailer, propelling the trailer into a 90 degree jackknife position. In order to avoid a collision with Mr. A's car, Mr. B applied his brakes and veered into the southbound lane. Seconds later, the B vehicle collided with the trailer which was obstructing the southbound lane. Not only had C violated the right-of-way of both vehicles but also the lighting on his trailer was inoperable or insufficient.

Mr. C maintained a commercial liability policy with XYZ Casualty Company (XYZ) providing $300,000 in coverage for any one "accident." The policy defined "accident" to include continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage." In an action for declaratory relief filed by the insurance company, the court ruled in favor of the injured parties. It found that two "accidents" had occurred because the impacts were separated by time and distance and the "conditions" had changed following the first impact due to the obstruction of the southbound lane by the jack-knifed trailer. The Fourth District Court of Appeal ruled that indeed two accidents occurred for the purpose of policy interpretation.

Mr. A suffered a fractured leg and hip, lacerations, and multiple internal trauma. Mr. B's injuries included multiple rib fractures. Mrs. B had a right hip dislocation with extensive fracture of the acetabulum, a broken thumb and multiple lacerations. James Nance settled the cases for a total of $1.1 million. Mr. A received $300,000 from his underinsured motorist carrier and $300,000 from XYZ. Mr. and Mrs. B received $200,000 from their underinsured motorist carrier and $300,000 from XYZ.■

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
Attorneys at Law

OF COUNSEL

SPRING 1995 - QUARTERLY REPORT TO CLIENTS AND ATTORNEYS

Tempest In A Coffee Pot: McDonald's Hot Coffee Spill Verdict

Proponents of tort reform have distorted the facts of the McDonald's hot coffee verdict in their nationwide attack on the civil justice system. Public opinion has been unfairly influenced by these distortions. It is time for the full story of this $2.9 million verdict to be told.

In the McDonald's case, eighty-one year-old Stella Liebeck spilled a small cup of coffee while sitting in a car. She suffered third degree burns over 6% of her body. Her inner thighs, buttocks, genital area and groin were burned. She was hospitalized for eight days and required painful skin grafts and debridement. At the time of the spill, Mrs. Liebeck was trying to remove the cup's lid to add cream and sugar. She was not driving the vehicle nor was the vehicle moving.

McDonald's was well aware that its coffee caused burns. At trial, company documents showed more than 700 customers had complained of coffee burn injuries ranging from mild to third degree between 1982 and 1992. That amounts to more than one complaint per week over the decade. Some of the burns were similar to Mrs. Liebeck's burns. The *Wall Street Journal* reported that McDonald's had settled many of these scalding injury claims for more than $500,000.

McDonald's, known for its fastidious control over franchisees, requires keeping its coffee at 180-190 degrees Fahrenheit. That is far hotter than coffee sold at other restaurants or coffee brewed at home, which generally ranges from 135-140 degrees. McDonald's quality assurance manager testified that the company knew that a burn hazard existed with a food substance served above 140 degrees. He admitted that the coffee, at the temperature it was poured, was not fit for human consumption because it would burn the mouth and throat. He testified that McDonald's had no intention of reducing the temperature of its coffee.

Another McDonald's executive testified that McDonald's knew its coffee sometimes caused serious burns, but had not consulted burn experts about it. He testified that McDonald's had made the decision not to warn customers about the possibility of severe burns. He also testified that McDonald's did not intend to change any of its coffee policies or procedures.

The jury quickly arrived at the conclusion that McDonald's was liable. One juror stated that the case was about the "callous disregard for the safety of the people." Another juror flatly asserted, "They were not taking care of their customers."

The jury awarded compensatory damages of $200,000 which they reduced to $160,000 after determining that Mrs. Liebeck was 20% at fault for spilling the coffee. The jury also found that McDonald's had engaged in willful, reckless, malicious or wanton conduct. It awarded punitive damages of $2.7 million which is the equivalent of two days of company-wide coffee sales. The trial judge reduced the punitive damage award to $480,000, three times the compensatory damages.

The previous 700 complaints of burn injuries had no effect on McDonald's policies. It took the punitive damage award to drive home the message that McDonald's coffee was too hot. A post-verdict investigation revealed that the local Albuquerque McDonald's where Mrs. Liebeck had been injured had lowered its coffee temperature to 158 degrees. Because of the effort to recover damages in this case, future injuries will be prevented. Once again, the civil justice system had a direct positive impact upon the safety and well-being of consumers. ■

Recent Seminars Taught By Firm Partners

"How to Select a Jury in a Medical Malpractice Case"
GREG BARNHART,
Academy of Florida Trial Lawyers' "Workhorse Seminar",
January, 1995

"Proving Damages at Trial"
GREG BARNHART,
Palm Beach County Bar Seminar
February, 1995

"The Nuts and Bolts of Deposing the Defendant Physician"
CHRIS SEARCY,
Academy of Florida Trial Lawyers "Workhorse Seminar",
January 1995

"Proving Damages in Significant Personal Injury and Wrongful Death Cases"
CHRIS SEARCY,
Florida Bar Seminar - Trial Lawyer Section
February, 1995

Scarola...
Continued from Page Two

that proved their claims of racial discrimination and resulted in a post-trial settlement of $13.5 million.

Mr. Scarola is a Board Certified Civil Trial Lawyer. While he devotes a substantial portion of his practice to personal injury, wrongful death and medical negligence cases, he has developed a special interest in representing individuals and small businesses damaged by abuses of corporate power.

Mr. Scarola is former President of the Palm Beach County Trial Lawyers Association, and he has played an active leadership role in both County and Statewide professional associations. He is a recipient of the Florida Bar President's Pro Bono Service Award and the Legal Aid Society's 1994 Community Service Award, recognizing his sustained involvement in rendering free legal assistance to countless individuals and community groups.

Mr. Scarola lives in Jupiter with Anita, his wife of 26 years, and their five children.

Medicare...*Continued from Page One*

medical expenses of the plan's elderly beneficiaries. Medicare would make only those payments that were not reasonably expected to be paid by those group health plans. The shifting of responsibility from Medicare to group health insurers was expected to save the government $1.2 billion for 1983-85 alone.

The insurance industry generally resisted the 1982 amendments. The industry, including the defendant insurance companies, continued to promote and write employer-sponsored "Medigap" group health plans rather than the primary payer insurance required by law. Private insurance company payments continued to be made secondary to Medicare payments -- in violation of the law.

A government report concluded that Medicare was paying hundreds of millions of dollars each year in medical bills that should have been paid by private health insurance companies. In 1993, the United States Department of Health and Human Services Health Care Financing Administration began contacting "Medigap" insurers to remedy that situation. Demand was made for repayment of all sums paid by Medicare for medical services provided to specific elderly employees. Following the denials of liability from "Medigap" insurance companies, demands were made on employers for reimbursement. Employers with group health plans are now subjected to substantial reimbursement claims by Medicare for the provision of benefits to their aged employees.

When Medicare began denying payment of benefits for current medical expenses of some elderly employees, these individuals were left without medical coverage, since neither Medicare nor the employees' group health insurers would acknowledge responsibility as the primary payer. Not only are current medical expenses in jeopardy, but also past medical benefits are threatened by the government's enforcement actions. Medicare's payments are made on a conditional basis which may result in covered employees becoming legally obligated to repay Medicare in the future for past benefits.

According to a government report, there are up to 3 million elderly people with employer-sponsored health insurance which is primary to Medicare coverage. The final bill from Medicare is likely to run into the hundreds of millions, or even billions, of dollars nationwide.

This complex case promises to be significant for millions of elderly working people who are covered by group health plans and Medicare. We will keep you advised on future developments. Anyone desiring further details regarding the important issues involved in this litigation is invited to contact the firm. ■

Malpractice Damage Cap Is No Cure

As a lobbyist for the insurance industry, Frank Cornelius helped persuade the Indiana Legislature to reform the medical malpractice laws. They instituted a $500,000 cap on damage awards and eliminated all damages for pain and suffering.

From his wheelchair, Cornelius now rues that accomplishment. What changed his mind on tort reform was a horrendous series of incidents beginning with a routine arthroscopic surgery on his knee. After surgery, he developed a degenerative nerve disorder caused by trauma or infection. His condition was further complicated when a physical therapist misread instructions on a medical device and sent an electrical shock through his leg. In a subsequent procedure, a physician, using the wrong instrument, left several holes in his leg's main vein. Another physician punctured his lung while trying to prevent him from bleeding to death.

The cascading series of medical disasters has left Cornelius confined to a wheelchair, dependent on a respirator and unable to work. He has less than two years to live.

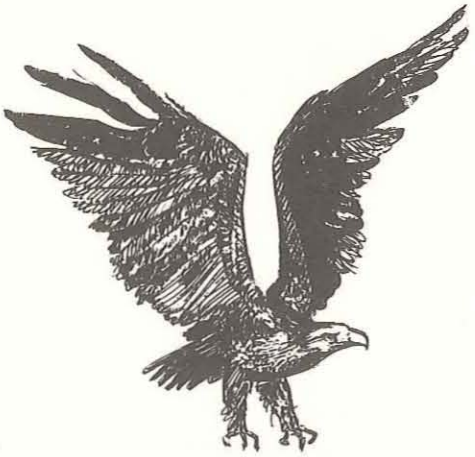
His medical costs and lost wages are estimated to exceed $5 million. However, his claims against the hospital and physical therapist have been settled for $500,000, the limit of damages allowable for a single malpractice incident. The Indiana Legislature has since raised the cap to $750,000. Cornelius may be able to collect some additional damages if he can sue those responsible for the incident that nearly killed him.

Cornelius acknowledges that there is an aspect of poetic justice in his fate. He fought to enact the very law that limits his compensation. Aside from his own personal tragedy, Cornelius asserts that the law has not accomplished its stated purpose. Indiana's health-care costs increased 139.4% from 1980 to 1990 which is approximately the national average. The damage cap has not curbed health-care spending. Cornelius now believes the two have almost nothing to do with each other.

In an article Cornelius wrote for the *New York Times*, he concluded: "Make no mistake, damage caps make it harder to seek and recover compensation for medical injuries; extend unwarranted special protection to the medical industry; and remove the only effective deterrent to negligent medical care. Medical negligence cannot be reduced simply by restricting consumers' legal rights. That will happen only when the medical industry begins to effectively police its own. I don't expect to live to see that day." ■

"So in the Libyan fable
it is told,
That once an eagle,
stricken with a dart,
Said,
when he saw
the fashion
of the shaft,
'With our own feathers,
not by others' hands,
Are we now smitten."

- - Aeschylus



SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.
Attorneys at Law

OF COUNSEL

SPRING 1995 - QUARTERLY REPORT TO CLIENTS AND ATTORNEYS

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A., ATTORNEYS AT LAW
P. O. DRAWER 3626, WEST PALM BEACH, FLORIDA 33402-3626

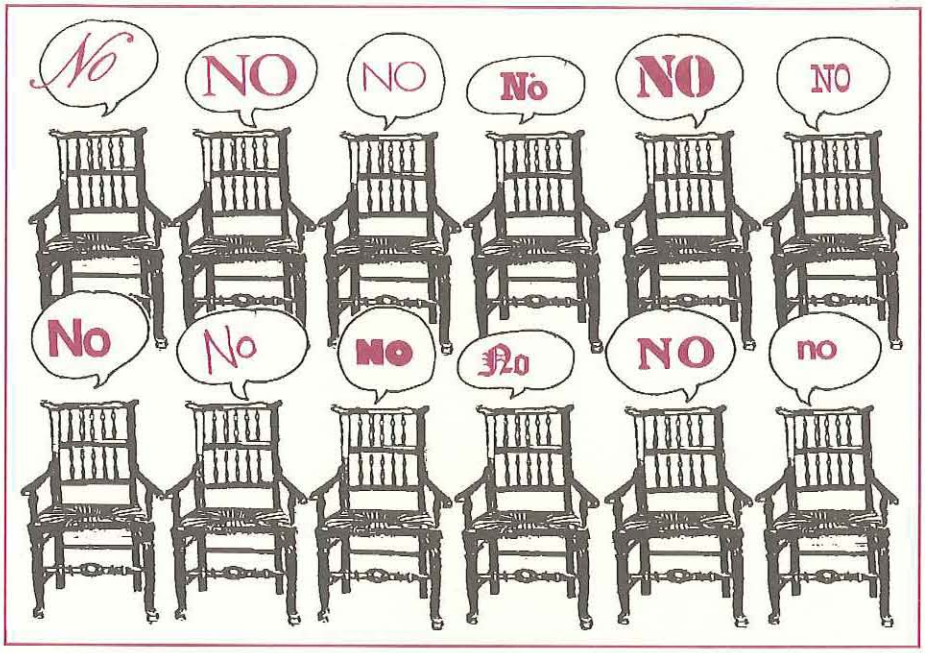
Breast Implant Update

In February, the Claims Office released a newsletter updating the progress being made in reviewing claims. The newsletter also contained preliminary claim forms for other monies available under the Breast Implant Global Settlement. We will assist our clients in completing these forms.

The appeals filed by foreign claimants and health insurance carriers have not yet been heard by the United States 11th Circuit Court of Appeals. On January 12, 1995, Judge Pointer heard motions to determine if Dow Chemical should again be added as a defendant under the Settlement. Dow Chemical had been released as a defendant earlier in the settlement based upon representations that they were not involved in manufacturing or distributing implants. We will contact our clients as soon as a decision is made.■

Insurance Co. CEO's Among America's Best Paid

According to a story in Business Insurance, "lists of the nation's rich and famous are starting to look an awful lot like a 'Who's Who' in the insurance industry." The weekly corporate risk/employee benefit publication noted that almost half of the CEO's from the leading commercial insurers and reinsurers are included in Forbes list of the best paid CEO's in America. Insurance CEO's averaged $1,191,756 in base salary and annual bonus in 1993. The CEO's of Travelers, American International Group, USF&G, CNA, Chubb and Aetna all ranked among the top ten highest paid on a national basis. Of the 37 CEO's listed, 16 made more than $1,000,000 in salary and bonus, up from only 9 in 1992. Although insurance carriers are constantly complaining about narrow profit margins and the need for tort reform, the salaries paid their chief executives suggest that times are not as lean as they portray.■



Juries Are Just Saying 'No'

(Excerpts reprinted from the New York Times, *January 16, 1995)*

The Common Sense Legal Reform bill, soon to be considered by Congress, is the magnum opus of the tort reform movement. This item in the "Contract With America" would make major changes in Federal civil litigation, especially concerning product liability suits and punitive damages, all in response to a perceived groundswell of dubious lawsuits.

But there is a problem: It's too late. The tort reform movement has already been heard, loud and clear, by its target audience: the jury. Jurors have listened attentively to the argument that American business, staggering under the burden of giant verdicts, is losing its competitiveness.

The jury is in, and the verdict is for the defendant -- and his insurance company. Civil juries are finding for the defendant as never before. The trend is clear in the number of cases filed. From 1985 to 1991, the number of product liability cases (excluding asbestos claims) in the Federal courts decreased by 40 percent. Not only are product liability verdicts going for defendants, but defendants' odds of winning are improving in negligence cases in general, including ordinary motor-vehicle and slip-and-fall lawsuits.

And how goes the medical malpractice "crisis"? A recent national study showed that doctors win 71 percent of the time -- this despite a Harvard Medical School finding that in one recent year in New York State alone, 23,000 to 31,000 patients suffered injuries while hospitalized, leading to as many as 7,000 deaths. Only about 2 percent of people injured by a physician's negligence ever file suit, according to The New England Journal of Medicine. Those who do sue hardly clog the courts. Only 9.8 percent of medical malpractice cases go to trial, and only 5 percent go all the way to verdict.

While doctors are understandably upset over huge malpractice premiums, they should turn their ire toward the folks who collect them. According to the National Association of Insurance Commissioners, medical malpractice insurance is the most profitable line of business.

There is strong evidence that there was never a problem to begin with. A General Accounting Office study questioning the existence of a "litigation explosion" noted that only 10 percent of the seven million cases filed in state courts across the country are tort cases of any kind. This is not surprising in light of a Rand Corporation study that of all accident victims, only 7 percent receive compensation through the court system.

Just as the health care debate led to massive adjustments in the health system, so has the legal reform debate resulted in a new industry of arbitration and mediation known as alternative dispute resolution. An entire shadow justice system is sprouting before our eyes. Reform is here! But the reformers still clamor for more.

The tort system has grown with the accumulated wisdom of centuries of common law. Just as the criminal justice system is society's way of expressing disapproval of certain behavior, the civil justice system is society's way of righting a wrong by compensating the victim. To the extent that we tamper with the right to a day in court, we risk leaving that victim with nothing but anger and feelings of revenge, emotions that our society already has in superabundance.■

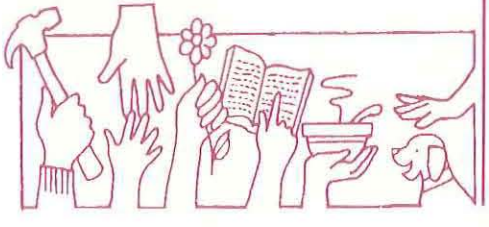
Congratulations to
LOIS FRANKEL
on her appointment as
Chairperson of the
House Select Committee
on Child Abuse and Neglect.

Best wishes for success in the Florida Legislature.

Taking... *Time to Care*

Searcy Denney Scarola Barnhart & Shipley, P.A. is well known for its commitment to our community. One of the many ways we work towards improving the quality of life in our community is by encouraging our attorneys, paralegals and support staff to take an active leadership role in a diverse array of local nonprofit organizations. Our firm currently has people serving on the Board of Directors of a broad variety of charities. Some of these include:

Association for Retarded Citizens
Board Marketplace of Palm Beach County Leadership
Center for Children in Crisis
Children's Place and Connor's Nursery
Cities In Schools
Florida Easter Seal Society
GFWC West Palm Beach Junior Women's Club
Goodwill Industries
Growing Together
Guatemalan Tomorrow Fund
Jeff Industries
Kidzette
Kiwanis Club of Westside, West Palm Beach
The Lord's Place
MADD
Marine Life Center
Mental Health Association
Special Olympics
Tri-County TEC
United Cerebral Palsy
WXEL Radio and Television



Hungerford...
(Continued from Page One)

that might strike the inside guardrail support beams, a galvanized pipe was affixed to the top of those beams running parallel to and a couple of feet above the ground. The pipe ended a few feet before the properly buffered end of the rail. As Billy's car struck the rail end, the guardrail yielded to the force of impact and deflected the car exactly as it was designed to do. The pipe, however, did not deflect away.

The metal tipped end of the pipe broke through the car's radiator, passed the engine block, through the firewall and into the passenger compartment. When paramedics arrived, they found Billy fully conscious and pinned behind the steering wheel -- the pipe piercing completely through his body, the seat back, the rear seat and out the trunk. He was transported to the hospital with a section of pipe still through his abdomen and out his back.

Despite severe damage to almost every major organ in his lower abdomen, Billy Hungerford miraculously survived. Although he is unable to ingest foods by mouth and is required to sustain himself indefinitely through an intra-abdominal feeding system, Billy is back at school and doing a remarkable job of trying to return to a normal lifestyle. His valiant recuperative effort in the face of terrible future medical uncertainties is truly a profile in courage.

Searcy Denney Scarola Barnhart & Shipley, P.A. attorneys, Jack Scarola and David Sales, assisted by West Palm Beach lawyer, Marnie Poncy, have been privileged to play a small role in helping Billy Hungerford. Within weeks of the firm's retention, the guardrail installer was identified, a nationally recognized expert was retained, and theories of liability were investigated and supported. The swift investigative action primarily on the part of paralegal, Emilio Diamantis, led to a large policy limits settlement on behalf of the installer which will assist with Billy's immediate medical needs. It leaves the door open for further recovery from both Palm Beach County and the State Department of Transportation for their roles in designing and approving the dangerous rail configuration.

Insufficient Automobile Insurance Coverage Is Cause for Concern

After an automobile accident, many of our clients discover they have insufficient insurance coverage to provide them with maximum benefits. Insurance agents, for whatever reason, often do not fully explain the advantages of various coverages, including excess medical payments and stacking uninsured motorist (UM) coverage.

We recommend that all of our clients seriously consider purchasing excess medical payment coverage on their automobile insurance policies. Coverage for excess medical payments provides payment of the 20% of medical bills which are not covered by Personal Injury Protection (P.I.P.) or would be in excess of the $10,000 limit in P.I.P. While group health insurance often covers these excesses, the money must be paid back as part of the subrogation agreement with the group health company. The benefit to be derived from excess medical payment coverage is that the sums paid out do not have to be repaid.

In addition, we recommend the purchase of "stacking" UM coverage instead of "nonstacking." This is the least expensive form of coverage you can purchase. In families with multiple vehicles, stacking UM coverage will permit adding together or "stacking" the UM coverage on each of those vehicles. Payments are not limited to the coverage amount on only the vehicle that was involved in the accident as would be the case with "nonstacking" coverage.

Don't wait until after an accident occurs to review your automobile insurance policies. Examine your policies to ensure you have sufficient insurance coverage to protect yourselves and your loved ones. ■

"An ounce of prevention is worth a pound of cure." -- Proverb

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

OF COUNSEL

SPRING 1995 - QUARTERLY REPORT TO CLIENTS AND ATTORNEYS

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A., ATTORNEYS AT LAW
P. O. DRAWER 3626, WEST PALM BEACH, FLORIDA 33402-3626

P.O. DRAWER 3626
WEST PALM BEACH
FLORIDA 33402-3626

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.
Attorneys at Law

COUNSEL

SPRING 1995 - QUARTERLY REPORT TO CLIENTS AND ATTORNEYS

BULK RATE
U. S. POSTAGE
PAID
WEST PALM BEACH, FLORIDA
PERMIT NO. 3076

An important message to Holmes Regional Medical Center patients who developed post-surgical infections:

- We currently represent numerous families who have claims against Holmes Regional Medical Center after having sustained injuries or death from infection after heart surgery.
- Investigation is continuing and we are very interested in any information Brevard area residents may have to offer.
- If you, a family member, or a friend received treatment at Holmes Regional Medical Center and acquired an infection, please call us.
- Your call will be kept confidential.

1-800-780-8607

SEARCY DENNEY SCAROLA BARNHART AND SHIPLEY P.A.
Attorneys at Law

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.
Attorneys at Law

PERSONAL INJURY
AUTOMOBILE ACCIDENTS
PRODUCTS LIABILITY
MEDICAL MALPRACTICE
WRONGFUL DEATH
AIRLINE & RAILROAD DISASTERS
COMMERCIAL LITIGATION

NIGHT & WEEKEND AVAILABILITY

1-800-780-8607

EN ESPANOL: 1-800-220-7006