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OF COUNSEL

SUMMER 1994 - QUARTERLY REPORT TO CLIENTS AND 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.

SDSBS

Precedent Setting Securities and Accounting Negligence Case is Affirmed

Arthur Young and Company, now known as Ernst & Young, a Big Six accounting firm, found out the hard way the importance of following accounting guidelines and securities laws. After an intensely fought trial and appeal, Arthur Young was required to pay Mariner Corporation $4.4 million, including attorneys fees and interest, for violations of state and federal securities laws, common law fraud and negligence.

Greg Barnhart, with help from Marcia Dodson and others at Searcy Denney Scarola Barnhart and Shipley, P.A., sued Arthur Young on behalf of Mariner Corporation, an investment company now known as Boca Raton Capital. The lawsuit involved Arthur Young's role in Mariner's buyout of Dielco, Inc. Mariner thought they had found in Dielco a likely acquisition candidate. What Mariner did not realize when examining the Arthur Young prepared selling memorandum and financial statement was that Arthur Young had contracted with the sellers of Dielco for a secret contingent fee based upon the sale of Dielco. Arthur Young had just started a "merger and acquisition" department to take advantage of the large commissions generated in such sales.

Under Florida law, CPA's are forbidden from accepting contingent fees because their independence could be impaired. A CPA certifies his independence as an accountant and must be completely above board. This was not the case with Arthur Young. Their secret fee structure was designed to give the accountants considerable incentive to obtain the highest possible price for Dielco. No fee would be obtained if the sale was not closed.

As a condition of the purchase, Mariner's sophisticated investors required an audit of Dielco's financial statement. The purchase price was based upon a contractual agreement of a minimum net worth which was to be confirmed by the audit. Arthur Young was retained by Mariner to do the audit since it was already familiar with Dielco's books and records. The accounting firm's financial interest in the Dielco sale remained undisclosed.

Based upon Arthur Young's assurances in the audit, Mariner purchased the company's stock. Authur Young received its $50,000 commis-

sion. Dielco turned out to be a lemon and promptly went out of business.

The flattering audit was flawed in several respects, including the overstatement of net worth. The audit confirmed a net worth which exceeded Mariner's minimum requirement by a mere $67. The audit contained factual inaccuracies and omissions which greatly inflated the value of Dielco. Barnhart successfully argued that the accountants' anticipated contingent fee impaired their ability to remain

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Jury Finds Racial Bias at Caulkins Indiantown Citrus Company

After twelve years of pre-trial proceedings and six weeks of trial, a Federal jury found in favor of hundreds of African-American workers on race discrimination claims against Caulkins Indiantown Citrus Company and various company executives. Caulkins, one of the largest groves and juice producers in the state, subsequently agreed to pay $13.5 million in damages to the class action plaintiffs.

Searcy Denney Scarola Barnhart & Shipley, P.A. lawyers, Moses Baker and Jack Scarola, served as lead trial counsel throughout the case, working closely with referring lawyers Jeffrey Pheterson, Joseph Vassallo and Peter Helwig, Director of Florida Rural Legal Services. The joint effort, primarily financed by the firm, cost over one million dollars to prosecute.

Further details concerning the law suit and the settlement will appear in the next issue of this newsletter.■

The Meeting Corner:

Greg Barnhart

Greg Barnhart is a partner of the firm Searcy Denney Scarola Barnhart & Shipley, P.A. of West Palm Beach, Florida. He is a graduate of Vassar College where he received his A.B. *cum laude* in 1973. He graduated with honors from Cornell Law School in 1976. For eighteen years, Mr. Barnhart has been practicing law in West Palm Beach.

Mr. Barnhart has served as Treasurer, Secretary, President-Elect and is currently President of the Academy of Florida Trial Lawyers. He is the Past President of the Federal Bar Association and was an elected member of the Board of Directors of the Academy of Florida Trial Lawyers. He is also Chairman of the Board of Trustees of the Florida Lawyers Action Group, the political arm of the Academy of Florida Trial Lawyers, and serves on the Board of Directors of the Academy Foundation. From 1986 to 1990, he served on the Judicial

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Joel Padgett

Joel C. Padgett is a Paralegal / Investigator at Searcy Denney Scarola Barnhart & Shipley, P.A. He is a graduate of Florida State University. Mr. Padgett came to Palm Beach County in 1972 where he worked as a probation and parole officer for two years. He then worked as a criminal investigator for the State Attorney's office for six years handling mostly fraud, corruption, and organized criminal cases. He has been with the firm for 13 years, and works primarily with Greg Barnhart, helping clients, assisting Mr. Barnhart in trial and in the development and management of cases.

Mr. Padgett is very active in fund raising for Florida State University, having helped found the local booster chapter as well as serving two terms on the National Booster Board. He is also an active board member for Tri-County TEC in Martin, St. Lucie, and Okeechobee counties, which serves children and adults with disabilities. ■

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

JANE DOE vs. DR. DOE AND DOE HOSPITAL

Plaintiff, a 57 year old woman with acinic cell adenocarcinoma, sued the pathologist and hospital that failed to accurately diagnose her disease and caused a two year delay in her treatment. She had visited a surgeon complaining of pain in her left ear. The surgeon performed a biopsy of the ear at the hospital. The pathologist misinterpreted the biopsied tissue as noncancerous when, in fact, it was cancerous. The surgeon relied on the pathologist's interpretation. Consequently, she did not receive cancer treatment. Two years later, she was correctly diagnosed and underwent surgery on the lower left side of her face and neck, with follow-up radiation therapy. As a result of the delay, the facial nerve was sacrificed, leaving her with facial disfigurement on the left side and requiring reconstructive plastic surgery. In addition, the delay increased the chances of the disease recurring and the need for additional treatment, which has occurred. Chris Searcy and Lance Block negotiated a $1.1 million settlement for the woman. ■

JANE DOE vs. VAN LINES COMPANY

An unlicensed, impaired truck driver drove his 31-ton tractor-trailer at a speed exceeding 65 m.p.h. into a parked family car. The fiery crash killed three young children and their father. The mother / wife, Jane Doe, survived the crash and witnessed the death of her husband and three children. She was horribly burned while unsuccessfully attempting to save her burning children from the fire and is physically disfigured and emotionally destroyed for life.

The truck driver had never even applied his brakes when he slammed into the family car as it was parked on the paved shoulder of the Florida Turnpike. The truck driver was physically and medically impaired, overworked, sleep deprived, malnourished and was driving with a suspended license. He had failed his ICC medical examination three times as a result of poor vision and intractable high blood pressure. We contended the van lines company was or should have been fully aware of the driver's legal, medical and physical impairments and disqualifications. In clear violation of ICC regulations and Florida Statutes, they ordered the driver to make this trip.

Jane Doe's purpose in filing suit was to force safety reforms within the trucking industry. In fact, this case helped persuade regulatory authorities to reject proposed measures that would have permitted truck drivers to work longer without sleep and would have made it easier for trucking companies to avoid other safety restrictions. Shortly before trial, Chris Searcy and Jack Scarola reached a settlement with the van lines company and several insurers for a total recovery in excess of $20 million. ■

JOHNSON vs. SIDEREAS

Mr. Johnson, a 51 year old man, had a new neighbor who bred pit bull dogs and allowed them to run loose on his property. The dogs dug a hole under the neighbor's fence and came onto Mr. Johnson's property. After complaints to the neighbor went unanswered, Mr. Johnson attempted to stop the animals by driving stakes into the hole under the fence. Five of the pit bulls charged under the fence and attacked our client, knocking him to the ground, going for his throat, ripping off part of his ear and biting him in the arm and side. The terror of the attack had him in fear for his life. Mr. Johnson underwent three surgeries to reconstruct his ear, had extensive psychological counseling and incurred $25,000 in medical expenses. Greg Barnhart obtained a $320,000 arbitration award, one of the largest dog bite verdicts ever recorded in Florida. This case should send a message to the owners of pit bulls that they are at financial risk for maintaining these animals. ■

MELTON vs. McCABE

Plaintiff, a 19 year old man, was involved in an automobile accident on I-95 early one morning. He was struck head-on by a drunk driver who was traveling south in the northbound lanes. He suffered a shattered femur and a fractured tibia, both of which required surgical insertion of metal rods. James Nance negotiated a settlement of $540,000 with Allstate Insurance Company, the carrier representing the drunk driver. ■

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Decisions... Decisions...
Continued from Pg. 2

ZWISLER vs. COMMUNITY HOSPITAL OF THE PALM BEACHES AND DAVID KINER, D.O.

Plaintiff, a 70 year old man suffering from recurring bouts of depression, was hospitalized at the Community Hospital (Humana) psychiatric unit. He was prescribed Dolobid and aspirin despite his prior history of peptic ulcer disease. A bleeding ulcer ensued which resulted in his transfer to the adjacent medical hospital. While undergoing an endoscopy procedure, the nurses noted gross distension of the abdomen. None of the three physicians who saw him that afternoon did a proper investigation to rule out a perforated ulcer. One gallon of a solution was then given to him to drink in preparation for further gastrointestinal tests. Much of this fluid passed through the hole in his stomach, resulting in peritonitis being spread throughout his abdominal cavity. He died from an overwhelming systemic infection. John Shipley obtained a $411,736 jury verdict for the 72 year old widow. Our post-trial motion for attorneys' fees is pending, as we recovered 25% more than the amount we were willing to settle for months ago. ■

JANE DOE vs TARMAC OF FLORIDA, INC.

Jane Doe was traveling in her Chevy Blazer in Delray Beach when it was struck by a fully loaded cement truck which turned left in front of her. The Blazer was completely crushed, with the cement truck perched on top of it. For years, Jane suffered from a variety of injuries, including myofascial pain syndrome and severe headaches. Her doctors diagnosed her with a mild organic brain injury, as well as post-traumatic stress disorder. Through the use of a neuropsychologist, the defense took the position that Jane was a malingerer and had faked her symptoms and psychological testing results. At trial, Jack Scarola and David Sales established that the defense expert's methodology was flawed and that Jane was, in fact, seriously injured. The jury returned a verdict of $547,000 which Scarola and Sales later settled for $605,000. The defendants settled for an amount greater than the verdict because they were facing the imposition of a substantial attorney's fee. ■

Duke Study Vindicates Jury Awards

The civil jury is often used as a symbol of the supposed "litigation crisis" in America. Powerful interest groups have exploited and misrepresented findings about jury malfeasance in order to further their agendas of tort reform. The claim that juries are biased against doctors and hospitals is frequently leveled by physicians, liability insurers and commentators critical of our tort system. It is claimed that juries award large medical malpractice judgments for pain and suffering because doctors and hospitals have the "deep pockets" to provide compensation.

This "deep pockets" hypothesis has recently been debunked by Duke law professor Neil Vidmar in an extensive critique and empirical study published in the *Duke Law Journal* (Vol. 43, Page 217). What was once an integral part of American legal folklore has been discredited by Vidmar's scholarly research.

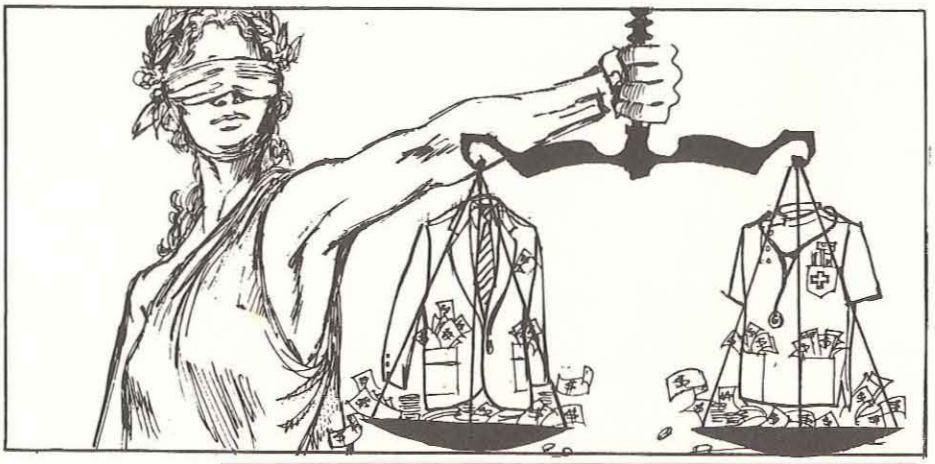
Vidmar conducted a detailed analysis of the existing empirical evidence supporting the "deep pockets" hypothesis. He determined that the prior research was seriously flawed, rendering the conclusions unreliable.

Professor Vidmar conducted a controlled experiment to test the "deep pockets" hypothesis without the confounding variables that had rendered prior studies invalid. He surveyed 147 people called to jury duty in North Carolina. The jurors were asked to award damages for pain and suffering to a young woman who had experienced a broken leg and resultant complications. For some jurors, medical negligence was ascribed to either one or two doctors or a hospital. For other jurors, the cause was attributed to negligence involving the operation of a motor vehicle with either one or two defendants or a business corporation. In all cases, the jurors were told that liability had been established and their only task was to assess the amount of damages for pain and suffering.

The study found that the average jury awards in each of the categories was reasonably similar. Whether medical malpractice or automobile negligence caused the injury made no difference in the size of the awards.

A survey was also conducted of 56 experienced attorneys, representing both plaintiffs and defendants in North Carolina. The attorneys were given the same negligence scenarios and asked to render awards. The attorneys and jurors, on average, rendered essentially the same awards for pain and suffering.

The Duke study concluded "the jury's reputation for reaching into the perceived 'deep pockets' of health care providers and giving excessive awards for pain and suffering is not warranted." Proponents of tort reform will have to look elsewhere for their symbol of the "litigation crisis." ■



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Lawsuits Force Drug Recall

Abbott Laboratories has withdrawn the new antibiotic, Omniflux, from the market in response to the serious reactions experienced nationwide by many people who took the drug. The FDA is conducting an ongoing investigation into this matter.

Our firm is currently handling several cases against Abbott Laboratories for people who sustained injuries as a result of reactions to Omniflux.

One such case involved a 60 year old woman who was prescribed Omniflux as treatment for an infected insect bite. Almost immediately after taking the drug, she became extremely ill and was rushed to Palatka Hospital. The severity of her condition necessitated her evacuation to Gainesville where an emergency laparotomy was performed. After an extended hospital stay, she recovered. Chris Searcy and Bill Norton negotiated a $215,000 settlement for her.

We are continuing to pursue other cases in which our clients sustained injuries from reactions to Omniflux. If you, a family member or a friend have used Omniflux and experienced a serious adverse reaction, please call us. Your call will be kept confidential. ■

Quote taken from the ABOTA video on historical background of the right to trial by jury entitled: "Justice by the People."

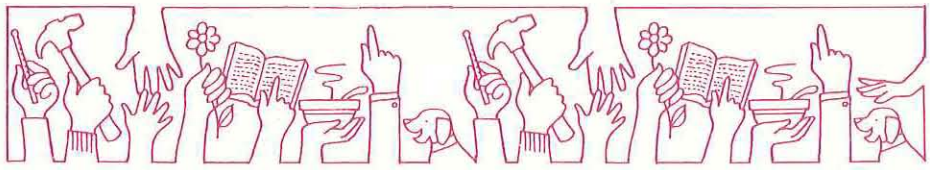
"The jury is the only agency of government with no ambition and no political gain to be had from their verdicts. The jury's role is essential to the system."

—Former Supreme Court Justice William O. Douglas

Taking... *Time to Care*

Searcy Denney Scarola Barnhart & Shipley, P.A. believes financial contributions alone do not fulfill our commitment to the community. Of equal importance are the many volunteer hours we provide assisting local charities with their fund raising efforts. Our attorneys, paralegals and support staff continue to donate their personal time to improve the quality of life for people in our community.

Recently, groups from our firm assisted with an Easter Seals softball tournament fund raiser, volunteered as mentors in the Cities in Schools dropout prevention program, coordinated the volunteers for Special Olympics local games, worked on an Association of Retarded Citizens fund raising flower sale, helped with a Legal Aid fashion show fund raiser, and re-landscaped the Palm Beach Habilitation Center. Our employees participated in the Susan G. Komen Race for a Cure benefiting breast cancer research, the Good Samaritan Foundation Walk, the March of Dimes annual Walk America and the United Way - Human Race Walk-a-thon benefitting 86 local charities. This year, we will again sponsor race car drivers in the United Cerebral Palsy Mini- Grand Prix. ■



Securities, Continued from Pg. 1

independent and impartial in conducting the audit, leading to their violation of a number of accounting principles.

After a well publicized trial in Ft. Lauderdale, a jury returned a verdict against Arthur Young on every count, including an award of punitive damages. The jury found that the irregularities and misrepresentations in the audit were responsible for the sale of Dielco and its eventual downfall and liquidation.

The Fourth District Court of Appeal affirmed the jury verdict in a precedent-setting opinion. The court ruled that accountants could be held directly responsible under the Florida Securities Acts for illegal actions in the sale of a business involving the transfer of stock. The decision made it clear that CPA's are not exempt from liability when rendering services in connection with the regular practice of accounting.

The decision sent shock waves around the accounting profession. Barnhart stated "A jury, trial court judge and now the appellate court judges have told CPA's and particularly large CPA firms that their obligation to the public must remain true. This is a very important decision for large and small businesses and for anyone who uses CPA's. It is a wake up call for CPA's who are trying to make a fast buck by representing both sides against the middle."

Note: A prominent educational firm is using an adaptation of this case in a seminar currently being conducted throughout Florida to teach CPA's what not to do when representing their clients. ■

Barnhart,
Continued from Pg. 2

Nominating Commission, the group which selects all of the trial judges for Palm Beach County.

Mr. Barnhart is a Board Certified Civil Trial Lawyer and is designated in the areas of Trial Practice - Personal Injury and Wrongful Death. He has been recognized in *Who's Who in American Law* and *Who's Who of Emerging American Leaders.* His career as a trial lawyer has included several multi-million dollar jury verdicts and settlements. He is a frequent lecturer and author in the jury trial field.

Committed to the community, Mr. Barnhart served on the board of Directors of WXEL, public radio and television station, for eleven years, and the Board of Directors of Cities In Schools. ■

Congratulations Judge Baker!

MOSES BAKER, JR.,

a partner with
Searcy Denney Scarola
Barnhart & Shipley, P.A.
has been appointed by
Governor Chiles
to the
Fifteenth Judicial Circuit Court.

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COUNSEL

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Academy President Barnhart Presents Nichols Award

Academy of Florida Trial Lawyers President Greg Barnhart presided over the Perry Nichols Award Ceremony during the Spring Convention. This year attorney Fred Levin received the award, which the Academy gives annually to recognize outstanding achievements and contributions of Florida's lawyers and judges. Among the participants and speakers were former Governor Rubin Askew, Dean and former President of the Senate W. D. Childers and well known trial lawyers from different parts of Florida. In his comments, Barnhart recounted the number of times throughout our country's history that lawyers have fought often against terrible odds to protect and vindicate our most important, basic rights. Trial lawyers have played a key role in the development of racial integration, environmental protection, safer consumer products and medicine. As the forces that control the medical delivery and insurance

industries continue to consolidate and grow in strength, Barnhart asserted that it is only the trial lawyer who has the ability and the resources to stand firm against such power. Barnhart warned of an insurance and industry campaign to destroy the right of the individual citizen to seek damages in court for injuries caused by wrongdoers. ■