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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.



\$6.1 Million Verdict In Railroad Death

**PALANK
vs. CSX**

Almost four years to the date of the death of Sergeant Paul Palank, Christian D. Searcy, F. Gregory Barnhart, and Todd S. Stewart received a verdict of \$6.1 million on behalf of Angelica Rose Palank and her children, Joe and Taylor. This verdict, following five weeks of trial, represented the jury's compensation award for the tragic loss this family has suffered. Due to the complex issues and enormity of this case, the trial judge trifurcated this matter, dividing it into separate phases for compensatory damages, punitive liability and punitive damages. The punitive liability and damage phases of this case remain to be tried.

On July 31, 1991, the AMTRAK Silver Star derailed near Lugoff, South Carolina, killing eight and injuring over seventy. Among those fatalities was Sergeant Paul Palank of the Miami Police Department. Sergeant Palank was traveling to join his family on vacation in Washington, D.C.

As Angelica arrived at the train station to meet Paul with her four year old son and nine month old daughter, she was informed



of the derailment and was provided an 800 number for more information. Little Joe Palank, who had been planning a "special day" with his Dad, wanted to know what the lady in the station meant by "derailment." After several frantic phone calls, she was contacted by a South Carolina coroner, who relayed the tragic news as she stood in the train station. **Continued on Page Ten.**

School Bus Tragedy Focuses On The Rights Of The Disabled

**TUCKY vs.
BROWARD COUNTY
SCHOOL BOARD**

Although she was profoundly retarded and required near constant care, 7 year old Megan Tucky was a beautiful, precious little girl in the eyes and hearts of her parents, Tom and Lisa Tucky of Ft. Lauderdale. However, in 1992, Megan was terminally brain injured and subsequently died due to a seizure and asphyxiation while en route home from school on a Broward County school bus for disabled children, and the Tucky's lives were forever changed.

Megan died because no one, including the bus attendant who was supposed to monitor the children, saw Megan's face turn blue, her

body stiffen, or her legs jerk so violently that one of her shoes came off. Moreover, when the bus arrived at Megan's stop, the attendant and the driver handed her over to her babysitter, limp and barely breathing, and then drove off, not even using the emergency radio on board the bus. Megan never regained consciousness and died the next day.

The Tucky's filed suit against the Broward County School Board for wrongful death and for violating Megan's rights as a disabled person. On the eighth day of trial in Ft. Lauderdale, the case was settled for \$700,000. **Continued on Page Eight.**

The Meeting Corner:

Lance J. Block



Lance J. Block, a partner at Searcy Denney Scarola Barnhart & Shipley, P.A., has been with the firm for ten years. Before joining the firm, he was an Assistant Public Defender, 11th Circuit, Dade County, Florida. Mr. Block's trial practice has been devoted exclusively to representing consumers and victims of personal injury and wrongful death.

Mr. Block graduated cum laude from Florida State University in 1979 and received his JD from the same university in 1983. He attended Oxford University in England to augment his legal studies. Many of his cases have involved the representation of injured or abused children. His cases have included large compensatory damage verdicts to parents due to the wrongful death of a child, as well as important rulings concerning the rights of parents to recover damages for injuries to their children.

His professional and community involvement includes membership in the National Association of Counsel for Children and the American Professional Society on the Abuse of Children. He is Vice President and a member of the Board of Directors for the Palm Beach County Association for Retarded Citizens and a member of the State Board of Directors for the Advocacy Center Foundation for Persons with Disabilities. Mr. Block is a member of the Executive Committee and Board of Directors for the Academy of Florida Trial Lawyers. He was the recipient of the Academy's 1994 "Most Valuable Player" award and the 1995 "Staff Appreciation Award." ■

Frank Cotton



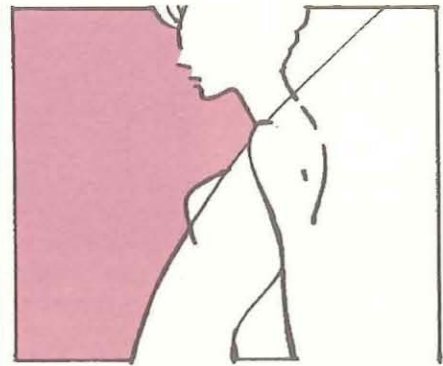
Frank Cotton is a paralegal/ investigator with Searcy Denney Scarola Barnhart and Shipley, P.A., joining the firm in 1982. He works primarily with Lance Block and brings a great deal of experience to his position. He assists with case investigation, evaluation, negotiation of settlements and trial preparation.

Mr. Cotton's claim handling experience began in 1956, following graduation from Florida Southern College. He was the District Claim Manager for Allstate Insurance Company, in Birmingham, Alabama and Pensacola, Florida, as well as the Assistant Vice-President of Claims for Carolina Casualty Insurance Company in Jacksonville, Florida.

His knowledge of the insurance industry is a considerable asset in all areas of personal injury claims, including automobile liability, product liability and medical malpractice claim handling. Mr. Cotton's gentle humor and southern charm are often noted and appreciated by clients and co-workers. ■

"We can't give up specialized training in the highly complex structure of law today, but we do have to return to a feeling of what the whole legal system stands for -- how it relates to our own conception of the person as a human being."

***- - Paul A. Freund, professor
Harvard Law School***



Breast Implant Update

The Breast Implant Claims Office has reported that more than 440,000 women filed claims with the Global Settlement. After extensive evaluations of the claims, attempts to restructure the original settlement, and attempts to re-negotiate with the manufacturers for more funds, it was determined that benefits could only be paid if they were reduced to approximately 5% of the amounts originally designated under the Settlement.

On October 7, 1995, Judge Pointer, who oversees this litigation, issued an order declaring that women would be given the option of withdrawing from the Global Settlement and pursuing individual claims against the manufacturers of breast implants. Women who are a part of the Settlement will be mailed information concerning their rights under this new order, but no opt-outs will be accepted by the court until December 1, 1995.

Three of the manufacturers, Bristol Myers, Baxter, and 3M, have negotiated a proposed settlement with women who received their implants. This settlement has not been approved by the Plaintiff's Steering Committee (lawyers at the national level representing those breast implant recipients who filed with the Global Settlement). It will be submitted directly to the women in the Settlement for their consideration. ■

Medical Records: Getting Yours

(Reprinted from the September/October 1995 issue of Public Citizen Magazine with permission.)

Thomas Jefferson's axiom that information is power now applies to access that patients have to their medical records. Since *Public Citizen* published its original Health Research Group study--*Medical Records: Getting Yours*--in 1978, Public Citizen has produced more information for consumers on health care practitioners, including hospital mortality rates, c-section rates, and success rates for certain operations.

Medical Records: Getting Yours, 1995 Edition updates the 1992 edition and reflects specific changes in individual states' laws over the past three years. For the first time, half of all states now have laws granting patients access to their records held by hospitals and doctors. Arizona, Missouri, and Nevada recently expanded laws or passed new laws or regulations requiring patient access to medical records. Laws still vary greatly, however, from state to state.

"Thanks to the Federal Freedom of Information Act, it is much easier for most of us to obtain copies of

our CIA or FBI files than to get our medical records," observes author Dr. Sidney Wolfe, director of Public Citizen's Health Research Group, in the new book's preface. "Even though Americans will spend approximately \$1 trillion this year on health care, the records of why we went to the doctors or hospitals, what they found wrong (or right) with us, what diagnoses they made, what drugs they prescribed or surgery they performed, and whether we improved as a result are generally kept from us."

This new 74 page book is a consumer's guide to obtaining and understanding medical records. It tells why consumers should have a copy of their medical records, how to request a copy of medical records, how to understand what is in their records, why some doctors and medical organizations may refuse to release patients' records, the state laws that may assist consumers in getting access to their records, and the relevant federal statutes and regulations.

Copies of *Medical Records: Getting Yours*, 1995 Edition, are available for \$10 from Public Citizen Publications, 1600 20th Street, NW, Washington, D.C. 20009. ■



Todd S. Stewart

Todd S. Stewart, an associate with the firm, has been devoting a large amount of his practice during the past three years to litigation involving railroads. He has gained substantial knowledge about the daily operation of railroads during this time. Not only has this experience trained him in the proper method of safety and inspections of the rails and switches, but also the maintenance and repair of a railroad's signaling systems. He has investigated issues such as: proper Maintenance of Way inspections, appropriate policies and procedures regarding safety inspections, appropriateness of different types of switching mechanisms, the effect track variance has upon train movement, operation of side bearings, and derailment reconstruction. In the *Palank v. CSX* case, Mr. Stewart was pivotal in investigating and proving the mechanism of the accident, as well as debunking other causes for this accident. He is the New Lawyer Division's liaison to the Association of Trial Lawyers of America's Railroad Litigation Section. Mr. Stewart is available to answer your questions regarding railroad litigation, as well as other areas of trial practice. ■

"The laws put the safety of all above the safety of one."

-- Cicero,
c. 50 BC



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

**REPORTED "DECISIONS"
OMITTING CLIENTS'
AND/OR
DEFENDANTS' NAMES
ARE AS A RESULT OF
REQUESTS FOR
ANONYMITY.**

FLANAGAN vs. ST. MARY'S HOSPITAL

Christina Flanagan, a 39 year old mother of three, became seriously ill with meningitis. After receiving specialized neurological care at Miami's Jackson Memorial Hospital, she was transferred to St. Mary's Hospital in West Palm Beach for rehabilitation treatment. She was improving, able to speak, following commands and tracking with her eyes. Medical experts predicted she would have improved to where she could have carried on the activities of daily living without help. While she would have had deficits resulting from her bout with meningitis, she could have functioned as a wife and mother, enjoying her life relatively independently.

At St. Mary's, Mrs. Flanagan's medical condition deteriorated, necessitating a transfer to the intensive care unit. The nursing staff in the ICU failed to properly monitor her condition. Her respirations and heart rate dropped. Her respiratory line had fallen out, setting off an alarm. The nurse was on break and failed to hear the alarm or read the telemetry at the nurse's station as her respiratory status deteriorated. Mrs. Flanagan arrested and was without oxygen for six to nine minutes until finally being resuscitated. She suffered severe brain damage and will remain in a coma for the rest of her life, forever dependent upon attendant care.

St. Mary's Hospital admitted their liability under a new medical malpractice statute which limits non-economic damages (e.g. pain and suffering) to \$250,000. After a bitterly fought discovery and investigative process conducted by F. Gregory Barnhart and David J. Sales, a settlement was reached for \$3,085,000. The vast majority of the settlement amount was for long term care and lost wages. ■

SUSAN WELLS vs. FRANK FILIBERTO, M.D.

Susan Wells, a 51 year old high school teacher, broke her nose while vacationing in Canada. Upon her return home, she sought out treatment from Dr. Filiberto, the otolaryngologist (ENT) who had provided care for her several years earlier for polyps on her larynx. Dr. Filiberto told her she needed rhinoplasty and septoplasty to repair the damage to her nose.

During surgery, in addition to the scheduled procedures to which she had consented, the doctor performed a turbinectomy and removed the turbinates from Ms. Wells' nose. It was only after the surgery had been performed and healing was not progressing as expected that the doctor disclosed that this additional procedure had been performed.

Following the surgery, she developed chronic nasal infections. After antibiotics failed to work, she had treatments ranging from debridement in her nose to hyperbaric chamber treatment. Ms. Wells continues to suffer from severe rhinitis caused by a lack of turbinates. She has difficulty with atmospheric pressure (i.e. flying) and her sense of taste and smell have been affected. Katherine Martinez and Lance Block negotiated a settlement of \$150,000 at mediation. ■



JACKSON vs. PATEL

Burton Jackson was married to Eleanor Jackson for 44 of his 67 years. They raised children and were surrounded by extended family in the Tampa area. He was in fine health, but his wife had been diagnosed and surgically treated for very advanced cancer. Mr. Jackson was admitted to a Tampa area hospital for abdominal pain and cramping. He was assigned to the on-call surgeon who chose not to see him for almost eighteen hours. Eventually the surgeon saw Mr. Jackson. His pain picture had changed, resulting in a diagnosis of diverticulitis. Unfortunately, the surgeon remained committed to his diagnosis for six days. On the sixth day, a cat-scan revealed an abdominal mass. Tragically, surgery was not performed for another eighteen hours. During surgery a ruptured appendix was discovered. Mr. Jackson became septic and remained critically ill for almost a month before he passed away. Cal Warriner settled the case on the eve of trial for \$505,000 after a long debate over Mrs. Jackson's life expectancy. ■

ROWE vs. XYZ PHARMACY

Janie Rowe was a twin born at 36 weeks gestation. She had severe respiratory problems and was transferred to a higher level hospital and then ultimately to a Children's Hospital in South Florida. Janie required a protracted course of mechanical ventilation, having developed pulmonary emphysema and multiple pneumothoraces requiring chest tubes. Since some of her medication, including Lasix, was potentially toxic to hearing (ototoxic) a special test was performed on this infant which determined that her hearing was normal.

Upon discharge, her physician prescribed "oral Lasix, 4 mg. (0.4 cc.) a day". Janie's parents had this prescription filled at a local pharmacy and mistakenly, the pharmacy's instructions on the label indicated "take 4 cc. (4 ml) daily". This calculates to 10 times the actual prescribed dosage. Janie's mother followed the prescription to the letter. In fact, she phoned the pharmacy when she observed difficulty in giving her small child such a large volume of medication. The pharmacy's personnel simply responded "put it in her formula".

Subsequent to this massive overdose, it was discovered Janie's hearing was impaired and her hearing was tested again. These results were very abnormal and indicated permanent and profound hearing loss. Janie continues to this day with absolutely no hearing as a result of this misfilling of the prescription. The economic damages, the emotional damages, and Janie's future losses due to her total hearing loss were substantial.

Earl Denney and Chris Searcy resolved this case for the total sum of \$1.8 million. The settlement provided for very substantial sums initially to pay the substantial medical costs involved and

provide for Janie's immediate needs. It included a structured settlement involving periodic payments which would protect Janie and provide for her lifetime security. This settlement will assure Janie's ability as a totally impaired individual to be secure in a world not always a friendly place for the hearing impaired. ■

THOMAS vs KIDD AND HUMANA MEDICAL PLAN, INC.

Howard Thomas, a 69 year old diabetic, had a small ulcer on the side of his right fourth toe. As a Humana Gold Plus Plan patient he went for treatment to Richard Kidd, D.O. at a primary care center. For three months, Dr. Kidd treated the problem with periodic office examinations and antibiotics. No cultures and sensitivity studies were performed, no consultations were ordered, and the patient was never evaluated for osteomyelitis or a deep wound infection. Mr. Thomas' condition gradually worsened. He was admitted to the hospital with cellulitis, probable osteomyelitis, and gangrene in his right foot. He underwent the surgical amputation of two of his toes, then his right foot and finally his right lower extremity below the knee. T. Michael Kennedy settled the case for a total of \$550,000. Humana settled one week before trial for \$40,000. On the eve of trial, Dr. Kidd and his P.A. settled for their policy limits of \$500,000 plus an additional \$10,000 above the policy limits. ■

JOHN DOE vs PRUDENTIAL SECURITIES

In connection with the largest incident of securities fraud in Wall Street history, defrauded investors are now pursuing claims of unsuitability and misrepresentation against Prudential Securities, Inc. for its sale of limited partnership investments during the 1980's. After reaching an accord with federal and state regulators, Prudential agreed to set up a restitution fund for defrauded investors who had limited partnership losses stemming from Prudential's misconduct.

In the summer of 1994, John Doe, a 77 year old retiree from Hillsboro Beach, Florida, filed a claim with the restitution fund in connection with limited partnership investments sold to him by Prudential shortly after the death of his wife. Mr. Doe's limited partnership investments totaled close to \$600,000. Despite determining Mr. Doe's net loss, excluding interest, exceeded \$47,000, Prudential rejected his claim and made him no offer of settlement.

Mr. Doe then retained William A. Norton and co-counsel Robert H. Rex of Dickenson Murdoch Rex and Sloan who demanded an arbitration hearing on his behalf. Rex and Norton have handled hundreds of investor claims against Prudential. Following a one-day hearing, at which Norton and Rex presented evidence regarding the unsuitability of the investments and the misrepresentations made to Mr. Doe, the arbitrator awarded him the sum of \$136,904. ■ **(Decisions... Continued on Page Six.)**

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

OF
COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 95, NO. 3

Decisions...Decisions...
(Continued from Page Five.)

**HARVEY vs.
MILLAN, WESTLEY
AND HUMANA HOSPITAL**

George Harvey was at work at Winn-Dixie in the early morning hours of December 17, 1991 when he fainted. He was rushed to the emergency room of the former Humana Hospital in West Palm Beach. CT scans showed fresh blood was leaking in Mr. Harvey's brain. The radiologist who reviewed the CT films, Kurt Westley, M.D., failed to detect the presence of blood. Mr. Harvey was admitted to the hospital under the care of a neurologist, Adolfo Millan, M.D.

Mr. Harvey remained in the hospital for six days, during which time he repeatedly showed signs of suffering from a cerebral aneurysm. During this time, Dr. Millan and the hospital ignored possible neurologic causes for Mr. Harvey's condition. Dr. Millan insisted that he was suffering from some kind of heart condition, despite repeated assurances from cardiologists to the contrary. On December 23, an infectious disease specialist ordered a spinal tap to rule out meningitis. Mr. Harvey's spinal fluid contained blood, which allowed doctors to finally diagnose his condition. By that time, Mr. Harvey had suffered at least one additional rupture of his aneurysm and his condition was very grave. On December 23, a neurosurgeon ordered an immediate transfer of Mr. Harvey to Good Samaritan Hospital, where he planned to do surgery to repair the aneurysm the next morning. During the early morning hours of Christmas Eve, Mr. Harvey died.

Represented by David Sales and Jack Scarola, Mr. Harvey's widow, Darleen, and her two young daughters, sued the former Humana Hospital, Dr. Westley and Dr. Millan. The case recently set-

tled for a total of \$2,200,000, including \$500,000 from Dr. Millan (his insurance policy limits), \$925,000 from Dr. Westley (on limits of \$1,000,000) and \$775,000 from the hospital. ■

STICKS AND STONES ...

Dr. Alastair McAlees, President of the Palm Beach County Chiropractic Society, paid a \$25,000 judgment for defaming his local colleague, Richard E. Stopek, D.C., in a case prosecuted by David Sales and Jack Scarola on behalf of Dr. Stopek. Dr. McAlees was charged with having made slanderous statements about Dr. Stopek to an executive with Integon Insurance Company.

Although the apparent effort by Dr. McAlees to divert business away from Dr. Stopek was unsuccessful, Dr. Stopek decided to pursue the case when Dr. McAlees rejected informal pre-suit efforts to resolve the claim against him and instead republished the defamatory remarks by printing a settlement demand letter in the Chiropractic Society's newsletter.

The ultimate beneficiaries of Dr. Stopek's commitment to protect his professional reputation were local charities to whom proceeds from the litigation were donated. ■

*Wishing
you and yours
a
Holiday Season
filled with
caring
and
sharing.*



Announcing...



KATHERINE A. MARTINEZ has been appointed to the Fifteenth Circuit Judicial Nominating Committee by Governor Chiles. She will serve a four-year term.



GREG BARNHART enjoys public speaking. His speeches are well received by legislators, lobbyists, consumer groups and other trial attorneys as his "after speech ratings" attest. Recently he spoke at:

The Annual Auto Negligence and Insurance Seminar (Miami). Topic: "What we have learned since *Fabre vs. Marin*."

Academy of Florida Trial Lawyers "Proof of Damages" Seminar (Ft. Lauderdale and Tampa). Topic: "Arguing Non-Economic Damages: The Art of Persuasion in Explaining Pain." ■



LANCE J. BLOCK was awarded the 1995 "Staff Appreciation Award" at the Academy of Florida Trial Lawyers annual convention in October, 1995. ■



TODD S. STEWART has been elected Secretary of the Young Lawyers Section of the Academy of Florida Trial Lawyers. ■

**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY^{PA}**
*Attorneys
at Law*

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AIRLINE & RAILROAD DISASTERS
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Jury System Still Works Best For America

(This letter was written in July, 1995 to the "Ann Landers" syndicated column -- prior to the conclusion of the O.J. Simpson Trial and while Larry Stewart was the President of the Association of Trial Lawyers of America)

DEAR ANN LANDERS: I urge you to re-examine the sympathy you recently expressed for abandoning the time-tested American jury system. Unfortunately, many views have been shaped by what is happening in the O.J. Simpson case, which is hardly typical of a normal trial in the courtrooms of America.

The truth is that Americans benefit from the countless jury verdicts that have led individuals and corporations to improve their products, services and behavior. Because of the jury system, flammable pajamas no longer kill infants. Life-threatening asbestos is no longer used in schools, homes and work places. Contraceptive devices that caused sterility have been recalled. Trucks now have alarms that beep when they back up. Farm machines that amputated limbs now have protective guards installed.

Countless improvements aimed at preventing injuries and saving lives might never have occurred without a trial by jury.

If replacing citizens with a panel of judges, as you suggested, is such a sound idea, why are countries that have this system studying the American jury system as a

solution to their judicial problems? It was the abuses of one such panel, the Star Chamber, that led to England's establishment of a jury system a few centuries ago. Do we want to return to such abuses?

The jury system is a positive, decisive process for influencing our government and community. Justice by the people, for the people, is a heritage all Americans should proudly share. Please don't trample on it. -- Larry S. Stewart, Esq.

DEAR LARRY STEWART: Sorry I "trampled." You are right when you say the O.J. Simpson case is hardly typical of a normal trial. Your letter is a splendid explanation of why the jury system is vital to a democratic society. Thanks for making the point. ■

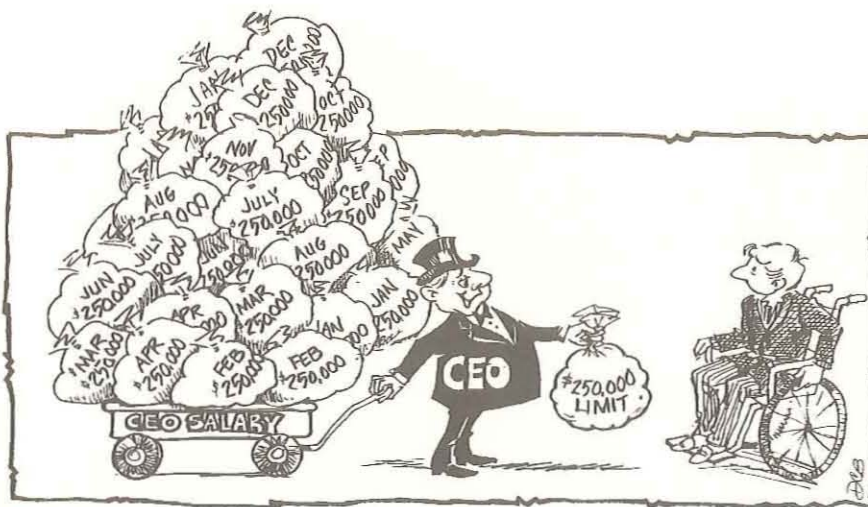
**"Public
participation
-- as in the jury trial --
is the cornerstone
in the
administration
of justice
and vital
to our
system of law."**

-- June L. Tapp,
American
psychologist

**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY^{PA}**
*Attorneys
at Law*

**OF
COUNSEL**

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 95, NO. 3



Civil Suits Awards A Pittance Compared To CEO Salaries And Corporate Profits, Study Shows

Health care and insurance companies seeking to limit the lifetime cap to \$250,000 on injury awards for pain and suffering are run by CEOs, some of whose earnings even exceed \$250,000 in just two weeks, Ralph Nader recently pointed out in a new study.

The study addresses two bills before the Senate: S.565, which seeks to limit punitive awards in defective product suits, and S.454 which seeks to cap pain and suffering awards in medical malpractice suits. The study is based on Public Citizen's Congress Watch's research which examined the profits and salaries of CEOs of the largest companies that spent millions to pass legislation restricting consumers' access to civil justice and which have the most to gain by reducing their liability for defective products and medical malpractice.

For example, Maurice Greenberg, the CEO of American International Group Insurance Company, a longtime supporter of limiting civil liability, made \$12,080,000 in 1994, or \$464,615 every two weeks. Many other CEO's of the corporations examined in the study were paid more than \$250,000 every two weeks of 1994.

How can a corporate CEO justify a \$250,000 lifetime cap on pain

and suffering when they are making over \$250,000 every two weeks?" Nader asked. He added: "These CEOs believe that two weeks of their time is worth the same amount of money as a lifetime of pain and suffering."

According to the Consumer Federation of America, the entire cost in 1994 of all product liability settlements and verdicts, insured and uninsured, totalled \$4.1 billion. In 1994 Ford Motor Company had net profits of \$5.3 billion and General Electric had net profits of \$5.9 billion.

"Obviously, product liability lawsuits can not be hurting our economy or our competitiveness if single corporations make more in profit that it costs to transfer the product liability payouts of the entire nation," Nader said. "Members of the Senate should ask themselves why they are even considering the legislation to deform the product liability system, when no evidence exists that the system is in need of repair. S.565 is the most unnecessary and cruel legislation to be considered by Congress so far this year." ■

(Reprinted from the September/October 1995 issue of Public Citizen Magazine with permission)

Tucky

(Continued from Page One)

more than three times the sovereign immunity cap applicable in suits against governmental agencies and bypassing the arduous Legislative claims process.

Seemingly healthy at birth, Megan began regressing at the age of one year and soon lost all of her learned skills. After nearly two years of tests by various doctors, she was diagnosed with Rett's Syndrome, a rare disorder that would leave her completely dependent, profoundly retarded, autistic, and unable to talk. Megan had to be fed and wore diapers, and although she walked with difficulty, girls with Rett's syndrome usually are in wheelchairs by their teens or twenties. Many Rett's girls have seizure disorders, breathing abnormalities and other medical complications. Megan Tucky had a seizure disorder that was difficult to control. Life expectancy for girls with Rett syndrome is usually in their twenties or thirties. Megan's neurologist testified that he saw no reason for Megan not to live into her twenties or thirties.

Megan rode a bus to a school for developmentally disabled children. Because she and other children on board the bus were disabled and medically fragile, there was an attendant on board to assist the driver. The attendant's responsibilities were to help the children on and off the bus, and to sit in the rear of the bus and observe the children during the course of the transport.

On the afternoon of November 18, 1992, Megan was assisted on the bus by a teacher's aide, who incorrectly fastened her harness restraint device. The manufacturer of the restraint system testified at trial that because of the incorrect fastening of the harness, Megan could have slid downward, or submarined in her seat, and that under the wrong circum-

Continued on Page Nine.

(Continued from Page Eight.)

stances, either the restraint or the child's posture could cause positional asphyxia or otherwise obstruct her airway.

In addition to the incorrect harness securement, the attendant failed to sit in the rear of the bus, as school board policy required. Instead, she sat in the front seat next to the driver during the entire transport. Megan was located some distance behind her on the other side of the bus. The attendant testified that she only saw Megan on two occasions prior to arriving at Megan's bus stop. On both occasions, she could not see Megan's face because Megan was slumped forward with her chin in her chest. The attendant said that she thought Megan was sleeping.

When the bus arrived at Megan's stop, approximately fifty minutes after it departed the school, the attendant got up to arouse Megan. When she lifted Megan's head back, she saw that Megan was "blue around the mouth". The attendant called the bus driver back to Megan, who unfastened her, picked her up and took her to the babysitter who was waiting by the door of the bus. When the babysitter saw Megan, she inquired as to what happened and how long Megan had been in that condition. The driver simply said, "She must have had a seizure." The babysitter then rushed Megan to the house while the bus left the scene without even making a call for assistance on the emergency radio.

When the babysitter got Megan in the house, she detected no pulse and Megan did not appear to be breathing. The babysitter immediately called 911, who responded promptly and resuscitative efforts were successful. Megan was rushed to the hospital and placed on life support, but tests indicated that she was virtually brain dead. The next day she was taken off a breathing machine, and she died soon thereafter.

The defense argued that there are numerous documented cases of unexplained sudden death in the Rett Syndrome population, and that Megan died of such unknown causes. The coroner determined the death to be from "natural causes", although he offered no explanation as to the mechanism of her death. In addition, the defense maintained that Megan often fell asleep on the bus during the afternoon transport, and that the attendant acted reasonably in assuming that Megan was simply napping on the ride home.



Megan Tucky at 8 years old.

The testimony at trial revealed that the Tucky's were totally devoted to Megan. Like most parents with a handicapped child, the Tucky's initially grieved over their child's disability, as well as their own lost expectations. However, they soon learned to appreciate the challenges and responsibilities of raising an exceptional child, and viewed the rearing of Megan to be a special opportunity that few parents are blessed with.

Because Megan's death was sudden, unexpected, and due to neglect, experts testified that the Tucky's grief has been especially intense and difficult to resolve. "Tom and Lisa invested so much of themselves into loving and caring for Megan that it is no wonder why letting go has been so painful," said Lance Block, who tried the case with Chris Speed.

Although a larger verdict was expected from the jury, the Tuckys

were told by School Board attorneys that the decision would be appealed and a fight in the Legislature over any amount above the \$200,000 cap would then follow. Tom Tucky said, "At mediation, the School Board only offered \$49,000. It was ridiculous. Then, just before trial, they offered the \$200,000 limit, which still seemed unfair. We only wanted to be treated fairly, and after eight days of making them face the truth in a courtroom, we felt the \$700,000 offer was reasonable."

The Tucky trial generated much publicity, including television news stories and editorials, as well as feature articles in the Miami Herald, Ft. Lauderdale Sun-Sentinel, the South Florida Business Review, two school transportation publications, and an Associated Press wire story that ran in newspapers statewide. "We brought this case primarily for the other disabled children riding those buses everyday," said Tom Tucky. "Hopefully, Megan's case will be the last."

In preparing the case, Lance Block found the Tucky trial to be "particularly challenging" because of Megan's profound disability and shortened life expectancy. "What we had to do was show the jury that despite Megan's disabilities, her life had great meaning to her parents," Block said. "We had to overcome the prejudices and beliefs that some people have that parenting a disabled child is just a burden." But conveying that to a jury can be difficult because the lawyer cannot prove substantial economic losses or any other reason the parents should be compensated besides their mental pain and suffering. "Children like Megan are called special kids because they need special care, and Tom and Lisa Tucky learned a lot about themselves by devoting so much love, time and energy to Megan," Block said. "That's why the Tucky case was so important, and why it was such a privilege to represent them." ■

Palank vs CSX...

Continued from Page One.

The investigation of this derailment quickly focused on a faulty switching mechanism on the CSX rails. As the investigation continued, the appearance of neglect and decay on this particular area of track became quite evident. Several railroad experts have testified that the switch in question had been left in a defective condition for at least seven months.

Further, the Federal Government's investigation discovered a retaining pin, which should have been in place at the time of the accident, was instead buried five inches deep in hard packed mud under the switch stand.

The evidence revealed that this switch had been operated on numerous occasions while in its defective condition and could easily have been visualized and repaired. Despite the railroad's guidelines which provide for bi-weekly inspections, as well as additional monthly and annual inspections, not one railroad employee observed this obvious defective condition. Furthermore, discovery revealed that CSX had systematically cut back on its safety forces since deregulation in the early 1980's to half their original size. This required railroad safety inspectors to be responsible for more miles of rails than they could reasonably inspect. While even CSX admits an inspector could cover no more than 20 miles per day, these inspectors were routinely called upon to inspect 50 to 100 miles per day due to the pressure of these corporate cutbacks.

Many of the inspectors could not possibly perform an adequate inspection under these time constraints. Reports showing areas too large to safely inspect were continuously ignored as were the inspectors' complaints to supervisors. Several railroad employees have come forward and testified



that the managing agent for the railroad in charge of safety in this area had also falsified government safety inspection reports. The report falsification continued even after this derailment. At the end of each month, this employee would determine the amount of track which was federally mandated to be inspected, but remained uninspected, and would simply fill out reports to make up the difference. Outrageously enough, this employee, while pretending to be on the track, would contact the dispatcher to receive clearance to inspect areas of track. He would remain in his office for the allotted time it would take to inspect that area of track. When that time expired, he would then phone the dispatcher with the false report that he had inspected the area of track and wished for clearance for still another area of track. After which, this employee would fraudulently submit inspection reports for these areas.

After three and a half years of hard fought litigation, the railroad admitted liability for compensatory damages and asked for

the case to be trifurcated. The trial judge granted this request and Phase I went to trial on the amount of compensatory damages. After almost two days of deliberation, the jury returned their verdict of \$6.1 million, one of the largest in the State of Florida for a single wrongful death.

The Palank family continues to seek justice through a punitive damage verdict. But their ultimate goal is the reform of the railroad industry. The evidence has revealed that CSX has saved over \$3 billion as a result of cutting their safety forces in half since deregulation. Allowed to make decisions with little regard for individuals such as Paul, corporations will continue to tear apart the core of this nation --- its families --- as this one did when it killed eight individuals and injured many others. A Fort Lauderdale jury will be called upon to render punishment to this corporation and these individuals for their reckless behavior and outrageous conduct. The Palank family awaits a trial date for Phase II (punitive liability) and Phase III (punitive damages). ■

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QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 95, NO. 3

**This holiday season
we acknowledge
some of the special friends
we have worked with
over the past year
whose caring has
enriched the lives
of so many:**

ADOPT A FAMILY ■ ADVOCACY CENTER FOUNDATION FOR PERSONS WITH DISABILITIES ■ ALZHEIMER'S ASSOCIATION ■ AMERICAN CANCER SOCIETY ■ AMERICAN HEART ASSOCIATION ■ AMERICAN LUNG ASSOCIATION ■ AMERICAN RED CROSS ■ AREA AGENCY ON AGING ■ ASSOCIATION FOR RETARDED CITIZENS ■ AUTISM SOCIETY ■ BIG BROTHERS/BIG SISTERS ■ BLOWING ROCKS PRESERVE ■ BOCA RATON HISTORIC SOCIETY ■ BOYS & GIRLS CLUBS ■ CENTER FOR CHILDREN IN CRISIS ■ CENTER FOR FAMILY SERVICES ■ CHILD CARE RESOURCE & REFERRAL ■ CHILDREN'S HOME SOCIETY ■ CITIES IN SCHOOLS ■ COMMUNITY FOUNDATION FOR PALM BEACH AND MARTIN COUNTIES ■ COMPREHENSIVE AIDS PROGRAM ■ CONNOR MORAN CHILDREN'S CANCER FOUNDATION OF PALM BEACH COUNTY ■ CONNOR'S NURSERY/CHILDREN'S PLACE ■ CRISIS LINE INFORMATION & REFERRAL SERVICES INC. ■ DAILY BREAD FOOD BANK ■ D.A.R.E. ■ DELRAY BEACH CHILDREN'S THEATRE ■ DELRAY BEACH HISTORICAL SOCIETY ■ DICK WEBBER CENTER ■ EASTER SEAL SOCIETY ■ FARMWORKERS COORDINATING COUNCIL OF PALM BEACH COUNTY ■ FLORIDA ASSOCIATION FOR WOMEN LAWYERS ■ FLORIDA HEAD INJURY ASSOCIATION INC ■ FLORIDA HIGHWAY PATROL ■ FLORIDA JEWISH THEATRE ■ FRATERNAL ORDER OF POLICE ■ FRIENDS OF ABUSED CHILDREN ■ GFWC WPB JUNIOR WOMENS CLUB INC ■ GOODWILL INDUSTRIES ■ GROWING TOGETHER ■ GUARDIAN AD LITEM ■ HABITAT FOR HUMANITY ■ HEALTHY MOTHERS/HEALTHY BABIES ■ HOLIDAY PROJECT ■ HOPE HOUSE ■ HORSES & THE HANDICAPPED ■ HOSPICE ■ I MAKE A DIFFERENCE ■ INDIANTOWN JAYCEES ■ JEFF INDUSTRIES ■ JEWISH FAMILY & CHILDREN'S SERVICE ■ JUNIOR ACHIEVEMENT OF PALM BEACH ■ JUNIOR LEAGUE OF THE PALM BEACHES ■ KIDZETTE ■ KIWANIS INTERNATIONAL ■ LEAF ■ LEGAL AID SOCIETY ■ LEUKEMIA SOCIETY OF AMERICA ■ LOVE WORKS INC ■ PALM BEACH COUNTY BAR ASSOCIATION ■ THE FLORIDA BAR ■ THE LORD'S PLACE ■ THE LUPUS FOUNDATION OF AMERICA ■ MADD ■ MARCH OF DIMES ■ MENTAL HEALTH ASSOCIATION ■ MORIKAMI MUSEUM ■ MUSCULAR DYSTROPHY ■ NAACP ■ NATIONAL ASSOCIATION OF WOMEN BUSINESS OWNERS ■ NORTHWEST NEIGHBORHOOD REUNION FESTIVAL ■ NATIONAL SOCIETY OF FUND RAISING EXECUTIVES PBC ■ OPTIMIST CLUB ■ PALM BEACH COMMUNITY COLLEGE ■ PALM BEACH COUNTY FAMU ■ PALM BEACH COUNTY HEAD INJURY SUPPORT GROUP ■ PALM BEACH COUNTY LITERACY COALITION ■ PALM BEACH COUNTY CRIME PREVENTION OFFICERS ASSOCIATION ■ PALM BEACH COUNTY FISHING FOUNDATION ■ PALM BEACH COUNTY SCHOLASTIC ACHIEVEMENT COMMITTEE ■ PALM BEACH COUNTY SHERIFF'S OFFICE ■ PALM BEACH MARINE INSTITUTE ■ PALM GLADES GIRL SCOUTS ■ PARENTS ADOPTION LIFELINE ■ PARTNERSHIP FOR A DRUG FREE COMMUNITY ■ SEAGULL INDUSTRIES ■ SHARE PREGNANCY AND INFANT LOSS OF PALM BEACH COUNTY ■ SHAW UNIVERSITY ■ SICKLE CELL FOUNDATION ■ SOCIALITES CLUB ■ SOROPTIMIST INTERNATIONAL ■ SOUTH FLORIDA SCIENCE MUSEUM ■ SPECIAL OLYMPICS ■ STOP! CHILDREN'S CANCER ■ SUN SENTINEL VOLUNTEER FAIR ■ T & M RANCH ■ TRI-COUNTY TEC ■ TV-12 PROJECT THANKSGIVING ■ UNITED CEREBRAL PALSY ■ UNITED NEGRO COLLEGE FUND ■ URBAN LEAGUE ■ VERY SPECIAL ARTS OF FLORIDA ■ VINCEREMOS RIDING CENTER INC ■ VOLUNTEER BUREAU OF UNITED WAY ■ WJNO HOLIDAY CHILDRENS FUND ■ WPTV - FOOD FOR FAMILIES ■ WESTSIDE KIWANIS ■ WOMENS AMERICAN ORT ■

Taking... *Time to Care*

FLORIDA KICK OFF CLASSIC Benefitting the Advocacy Center Foundation for Persons with Disabilities

On July 28, 1995, thirty college football stars and their coaches from Florida State, Florida, Miami and Central Florida gathered in Palm Beach County to spend the day with disabled children and adults. That evening they raised funds for the Advocacy Center Foundation for Persons with Disabilities.

The day began with the football players visiting various local programs for persons with disabilities. The players tossed footballs, danced and visited with program participants at Tri-County Tec in Stuart, the Association for Retarded Citizens of Palm Beach County, the Mental Health Association's "Peer Center", Easter Seals of Palm Beach and the Palm Beach Habilitation Center.

That evening, the players and coaches attended a reception and banquet dinner with more than 250 guests. There was a touching multimedia presentation of the day's events as well as replayed football highlights from last year's season. The guests heard insights and predictions from the coaches on this year's college football season.

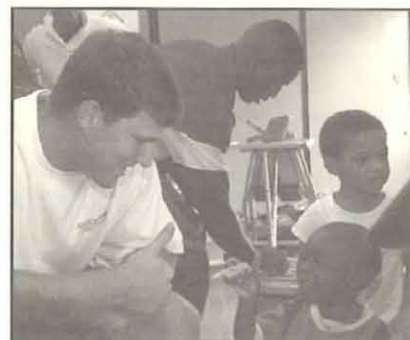
It was truly a rewarding day and evening for the players, the disabled participants, and the attendees of the banquet. Everyone gained a new understanding and sensitivity for those in our com-

munity who have special needs. The proceeds raised from the event were contributed to the Advocacy Center Foundation for Persons with Disabilities, a non-profit charitable foundation dedicated to protecting and advocating for the rights of persons with disabilities.

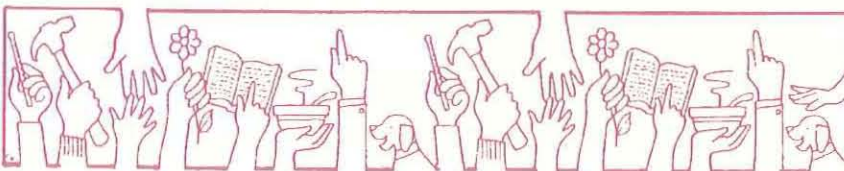
Our firm was proud to be a major corporate sponsor of this inaugural event, and we look forward to continuing our support for the 1996 Advocacy Center Kickoff Banquet, which will be held on August 2, 1996.

**If you would like
more information on the
Advocacy Center Foundation
for Persons With Disabilities
and the important services
it provides, call:**

**1-800-342-0823
or 904-488-9071. ■**



**FSU Quarterback and
Heisman Trophy candidate
Danny Kanell visiting with
an ARC youngster.**



SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA

FROM ALL OF US AT



Season's Greetings

SEARCY
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