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QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 96, NO. 1

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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.

The Leardi Case: A Tragic Manatee County Medical Malpractice Case Settles For $6 Million

Katherine Martinez and Jack Scarola reached a $6 million settlement with a hospital and five physicians days before trial was to begin in Manatee County. This settlement, in a historically conservative county, was even more remarkable for the recovery of $150,000 in excess of the doctors' medical malpractice coverage. During the course of the four-year long litigation, a multitude of medical experts were retained and over fifty depositions were taken.

Lynette Leardi's tragic case began in April of 1990 while a patient at Manatee Memorial Hospital in Bradenton, Florida. She was misdiagnosed with "primary cerebral vasculitis", a very rare fatal inflammatory disease. There are about 100 reported cases in the medical literature confirming this rare disease. Recurrent cerebral infarction leading to death within a few years is the usual course. Other diseases may, however, present with similar clinical and angio-graphic features. In Lynette's case, she has undergone 10 operations including total shoulder and hip replacements. All of these surgeries occurred before Lynette celebrated her 35th birthday.

When Lynette went to the emergency room of Manatee Memorial Hospital she had symptoms similar to what she had experienced in the past. **Continued on Page Eight.**

$2,375,000 Settlement Obtained Despite Vigorous Defense

GORSE v. HOSPITAL X AND DRS. CONLEN AND ZANN

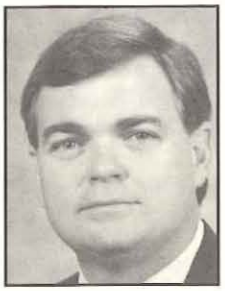
Lyssa Gorse was an expectant new mother in her 34th week of pregnancy. One morning, she noticed that her baby wasn't moving as much as usual. Even though she was a gestational diabetic, her obstetrician had never warned her that this could be a matter of concern. So, when a friend explained that babies tend to move less as a pregnancy progresses, Mrs. Gorse accepted the explanation. She became more concerned as the day progressed and called her physician who told her to come to the hospital.

When Mrs. Gorse arrived at the hospital, an external fetal heart monitor was placed which showed that the baby's heart beat lacked variability. This finding was interpreted to mean that the baby had suffered some injury or stress which affected her ability to react and cope with the stresses of labor. A number of tests were performed which indicated that the baby was in distress, but mature enough to be delivered immediately. The doctors decided to order an Oxytocin Challenge Test (OCT) which consists of inducing labor and monitoring the baby to obtain **Continued on Page Two.**

The Gorse family, (Keith, Lyssa & Anna), with Bill Norton

The Meeting Corner:

William A. Norton



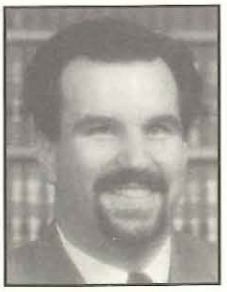
William A. Norton received his B.S. in Advertising from the College of Journalism and Communications at the University of Florida, in 1973 and graduated from the University of Florida, College of Law, in 1976. He joined Searcy Denney Scarola Barnhart & Shipley, P.A. in 1988, with six years experience in criminal trial practice, and four years experience in civil trial practice defending all classes of personal injury, products liability and wrongful death cases.

Since joining the firm, he has achieved numerous impressive verdicts in personal injury, medical malpractice and commercial litigation. In addition, he has developed an expertise in the arbitration and litigation of cases involving stockbroker and stockbrokerage firm fraud. He is frequently asked to lecture on investment related issues and cases involving personal injury and wrongful death.

Mr. Norton's professional memberships include The Academy of Florida Trial Lawyers (EAGLE member), The Florida Bar, The Association of Trial Lawyers of America, the Federal District Court (Southern and Middle Districts of Florida), the American Bar Association, Palm Beach County Trial Lawyers Association, Palm Beach County Bar Association, and the Public Investors Arbitration Bar Association. Currently, he serves on the Board of Directors of the Center for Children in Crisis, a nationally recognized treatment center for sexually and physically abused children in Palm Beach, Martin and St. Lucie Counties.

Mr. Norton has been selected for inclusion in *Who's Who in American Law* and is a Florida Bar Board Certified Civil Trial Lawyer. ■

J. Peter Love



J. Peter Love is a paralegal/investigator with Searcy Denney Scarola Barnhart & Shipley, P.A. Having joined the firm in 1990, he works primarily with William A. Norton assisting in investigation, evaluation, negotiation of settlements and trial preparation of cases.

Mr. Love graduated from the University of Florida in 1985 and began working as a claims investigator for Florida Farm Bureau Insurance Company in Delray Beach. He received a Masters Degree in Business Administration from Florida Atlantic University in 1994.

Mr. Love has worked extensively in the areas of personal injury, medical malpractice, commercial and securities litigation. ■

Gorse...

Continued from Page One.

her reaction to the stress of harsh, Pitocin-induced contractions. The early testimony by a delivery nurse (which was later recanted) stated that she objected to the test because it would endanger the baby's health. After an hour, it became clear that the baby had little strength left and needed to be delivered right away. The doctors were still discussing the possibility of a vaginal birth when the parents requested a Cesarian section be performed. By this time, over seven hours had passed. As Mrs. Gorse was being prepped for surgery, the baby's vital signs crashed. The cumulative effects of the OCT had exhausted the child's limited reserve of energy. An emergency C-section was performed. Anna Gorse was born with an Apgar of 0 and required full resuscitation. She had seizures immediately after birth and was comatose.

Although Anna suffered severe brain injuries and is developmentally delayed, she has made tremendous progress. Her parents have worked tirelessly to ensure that Anna receives the best and most complete care, both at home and with her doctors and therapists.

The Defendants retained over twenty-five of the most highly regarded experts in their respective fields to defend this case. The Defendants' experts testified that all of Anna's injuries occurred during the period of decreased fetal movement before her mother arrived at the hospital. They also took the position that they clearly met the standard of care. Despite the vigorous defense, William A. Norton achieved a settlement with all Defendants totalling $2,375,000. ■

"Aggressive fighting for the right is the noblest sport the world affords."

- - President Teddy Roosevelt

Disabled Man Wins $4.824 Million Jury Award

BASS v. GMAC, ENTERPRISE LEASING, INC. AND JOSEPH BROOKS

A Palm Beach County jury recently awarded Darrell Bass $4,824,000 for crippling injuries he received in an automobile collision on August 22, 1991. Chris Searcy and Todd Stewart represented the 38 year old Wellington man in the three week long trial.

Darrell Bass was stopped at a red light on Okeechobee Blvd. in West Palm Beach, when a Cadillac driven by Joseph Brooks slammed into the rear of Mr. Bass' car at approximately 45 mph. Mr. Brooks' car was owned by General Motors Acceptance Corporation and leased through Enterprise Leasing of St. Louis, Missouri, all of whom were named as defendants.

Darrell Bass suffered multiple comminuted fractures of the neck, and despite three surgeries and extensive rehabilitation has been left with partial paralysis of the left leg. He is in constant pain and is totally dependent upon crutches and a wheelchair. Half of the award was given to compensate him for future lost wages and medical expenses.

"Darrell Bass is totally disabled and in pain every moment of his life," said Chris Searcy. "Although the verdict represents a substantial amount of money, there's no doubt that he would give every penny back to return to the life he had before this catastrophe," said Searcy. ■

"Do not squander time -- it's the stuff life is made of."

-- Benjamin Franklin

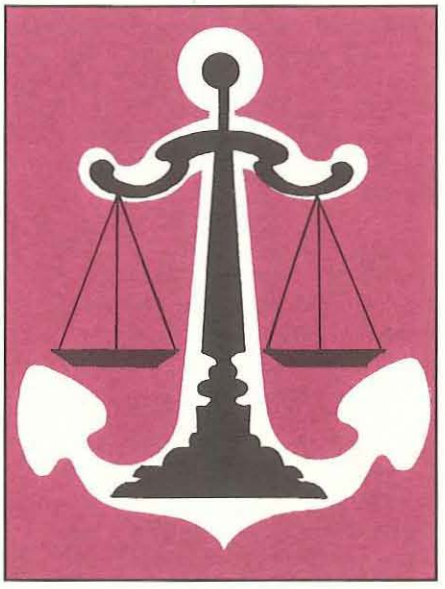
Floridians To Benefit From Recent U. S. Supreme Court Decision

Twelve-year-old Natalie Calhoun was killed in a tragic accident while vacationing at a beach-front resort in Puerto Rico. The Yamaha "Wavejammer" jet ski she was riding went out of control and crashed into a vessel anchored off-shore.

Alleging that the jet ski was defectively designed and manufactured, Natalie's parents sued Yamaha under Pennsylvania's wrongful death statute and its survival statute. Pennsylvania law allows recovery for a wide variety of damages in wrongful death cases. Yamaha argued that since Natalie died on navigable waters, federal maritime law rather than state statutes should govern the case. Federal maritime law evolved from ancient times and is based on a policy favoring shipping interests. The type of damages recoverable under maritime law is severely limited.

The Calhoun's suit sought damages for lost future earnings, loss of society, loss of support and services, funeral expenses and punitive damages - - all recoverable under Pennsylvania law. Arguing that federal maritime law provided the exclusive basis for recovery, Yamaha contended that the Calhouns could recover as damages only Natalie's funeral expenses.

The United States Supreme Court decided in the Calhouns' favor, finding that the damages available for Natalie's jet ski death are properly governed by state law. *Yamaha Motor Corporation v. Calhoun* provides that state remedies remain



applicable in maritime wrongful death cases in which no federal statute specifies the appropriate relief. When death occurs within the territorial waters of the state, the generous state remedies would not be displaced by the more limited remedies available under federal maritime law. Congress has not passed a federal law governing recovery for wrongful deaths of civilians in territorial waters. The states are, therefore, free to create their own legislative remedies to provide recovery for their injured citizens.

This landmark ruling has tremendous significance for Florida, a state that is surrounded by water and in which much of the recreational activity is related to water. Justice will be served by the availability of state remedies in future maritime wrongful death actions. ■

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

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

EVANS v. CSX

Earl Denney and Chris Searcy represented survivors of a tragic Amtrak Silverstar Railroad derailment. As you may recall from a prior "Of Counsel", on July 31, 1991, the Amtrak Silverstar derailed near Lugoff, South Carolina killing 8 people and injuring over 70. Among those fatalities was Jean Grimes Price. Mrs. Price was returning from Florida where she had visited her daughter and ex-husband. Mrs. Price was survived by three adult daughters, one of whom was mentally challenged from birth.

When Mrs. Grimes did not arrive at her destination, the family, having heard about the crash, tried to find information about their mother. The railroad first claimed she was not on board, then claimed she was not a victim. Finally, it was determined that their mother had, in fact, been killed in the crash. Her body had been discovered in the morgue. This failure of the railroad to make appropriate notification promptly caused extreme anxiety on the part of these three daughters. The case was settled recently for $750,000.

Of particular interest is that under Florida law, until recent years, adult children of a deceased parent could not even make a claim under Florida's Wrongful Death Statute. In fact, under Florida's Wrongful Death Statute as it applies to medical malpractice matters, no claims such as this could be brought since Mrs. Price did not have a surviving spouse, only the three adult children. Our legislature has continually, with pressure from insurance and medical related lobbies, carved away at our rights. Had Mrs. Price been killed as a result of medical malpractice then these three surviving daughters would have virtually no claim at all.

As we reported to you in a previous issue of "Of Counsel", the Palank case (a victim of this same Amtrak crash), continues on the issue of punitive damages. It is important that society requires corporate America to provide safe goods and services rather than an all-out pursuit of profit at the risk of lives. ■

WILSON v. PALM BEACH COUNTY MEDI-CAR AND MACLEN REHABILITATION CENTER

Doug Wilson, an 81 year old decorated WWII veteran, was one of the first men on the Omaha Beach in the Normandy invasion. Eight years ago arteriosclerosis caused his arteries and veins to become so clogged in his right leg that it had to be amputated below the knee. He was resilient and was able to lead a relatively normal life with a below the knee prosthesis.

More recently, he developed the same problem with the arteries and veins in his left leg and required another operation to amputate it below the knee. Again, Mr. Wilson's toughness carried him through and he was able to ambulate with his new prosthesis. He was recovering from the second operation at the Maclen Rehabilitation Center. When he went for his final fitting for his new prosthesis, he was taken by Palm Beach Medi-Car, in a van which was fitted with a lift type elevator specially modified to accommodate wheelchairs. As the Palm Beach Medi-Car van pulled into the parking lot of the artificial limb supplier, the van attendant negligently pushed his wheelchair so hard that he went flying off the elevator lift and landed in the parking lot four feet below. He suffered a spiral fracture of the left femur and was rushed to the hospital.

Ultimately, he was discharged with a brace on his left thigh and was

taken back to the Maclen Rehabilitation Center for rehabilitation. Maclen Rehabilitation failed to give Mr. Wilson appropriate physical therapy and failed to notify his doctors, which caused him to develop a contracture at his left knee joint. Instead of his knee being able to move like a normal knee, the knee froze in a position where he can never wear a prosthesis again.

This meant a life sentence of never being able to ambulate with his two artificial limbs. It also meant continued pain. Because of these problems, Mr. Wilson is going to need additional nursing care at home to relieve the terrible stress and burden his injury has placed on his wife, Jean and himself.

Greg Barnhart represented Mr. Wilson in his cases against both the medical car company and the rehabilitation center. Just before trial, a $700,000 total settlement was reached, $500,000 of which came from the medical van company, and $200,000 from the rehabilitation center. ■

GIAQUINTO v. LLOYD

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pregn out? You probably can't,
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for y
managed the diabetes, through the time of Genna's birth.

Consequently, Genna suffered intrauterine fetal distress and has mild developmental delays. She has since made consistent progress, but is still behind her chronological age expectancy. It is anticipated that as she gets older, her gross and fine motor skills will probably become age appropriate. However, she may continue to experience problems with language and learning.

Chris Speed resolved this case for a present day value of $500,000 which includes a structured settlement designed to protect Genna and provide for her lifetime security. ■

BOTTOM v. HERNANDEZ AND CRAWFORD

Eric Belcher, a fifteen year old high school student, was shot with a pellet gun by his cousin in the home of the Hernandezes. Without adult supervision, Eric and his cousin were playing with their pellet guns when the cousin, believing his gun was not loaded, pointed his gun at Eric and pulled the trigger. Unfortunately for Eric, the gun was loaded, and a pellet entered his abdomen.

Eric was rushed to the emergency room and had an immediate exploratory laparotomy performed on his abdomen in the hopes of removing the pellet and minimizing danger to his other organs. The pellet entered into Eric's abdominal cavity but did not go through the back of the abdomen. The pellet also bruised Eric's pancreas. Eric began to suffer from orthostatic and postural hypotension as a result of this pellet wound, causing him to experience frequent dizziness when he would change positions from lying or sitting to standing. In addition to his abdominal scar, he has to face a future of potential gastrointestinal problems.

Represented by Earl Denney and Karen Terry, Eric Belcher's mother, Donna Bottom, sued her relatives, the Crawfords, and the owners of the home where the shooting occurred. They recently settled the case for $73,000 against both defendants. ■

JOHN DOE v. COUNTRY CLUB X

Greg Barnhart represented a longtime teaching golf pro well known in golf teaching circles. This 83 year old gentlemen had the misfortune of being behind his own golf cart at a time when a negligent golf cart driver ahead of him accelerated backwards instead of forwards. The collision caused our client's own golf cart to hit him and throw him to an asphalt roadway. The force of the collision was violent and the golf pro suffered a serious fracture of the neck of his femur (thigh bone, close to the hip). He was hospitalized for a long period of time and then was bedridden at home for months. While the fracture healed, it left him with a pronounced limp and considerable disability. He now has to use a cane and is unable to walk for any length of time without pain. Tragically, his golf playing days are now over.

An investigation revealed that many of the club's golf carts failed to have the required warning device which alerts golfers when a golf cart is in reverse gear. It was also discovered that the Country Club had a number of problems with these warning devices and still allowed golfers to use the golf carts even when the backward beepers were malfunctioning or were not working at all. Greg Barnhart settled the case shortly before trial for $550,000. It is one of the largest settlements in Florida history for a fractured femur. ■

WHITE v. NELSON, M.D.

Fifty-six year old Joseph White retired from police work and moved with his wife to Titusville. He planned to start an electrical subcontracting business with his two sons who were both under twenty-five. In August of 1993, he began experiencing chest pain, shortness of breath while working, and radiating pain in his left arm. He saw Titusville internist Richard Nelson where he was evaluated and diagnosed with reflux esophagitis, a complication of his long standing hiatal hernia. The symptoms persisted and at a follow-up visit two weeks later Dr. Nelson confirmed the diagnosis. Despite his continuing cardiac symptoms, no stress test was ever considered. Three weeks later, while at work, Mr. White suffered a heart attack and died in his son's arms. Despite existing damage caps, Cal Warriner was able to settle the case for $850,000 before the first deposition was taken. ■

*Decisions...***Continued on Page Six.**

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Decisions...decisions...

Continued from Page Five.

RIX v. ALAMO RENT A CAR

Joanne Rix, 50, was travelling through Pahokee with her husband on her way home to Okeechobee. The Rix's were driving through downtown when their vehicle was struck on the passenger side by a car driven by a lost English tourist looking for I-95, which was forty miles away.

Mrs. Rix was taken to the hospital. She suffered a collapsed lung, several broken ribs, and neck pain, which was diagnosed as a small herniated disk requiring no surgery. She was hospitalized for four days.

Mrs. Rix's pre-existing medical history included the fact that, at the time of the accident, she was disabled from her work as a nurse due to a back injury, and suffered from a long-standing diabetic neuropathy which caused similar symptoms. The defendants contended that Mrs. Rix's injuries were mainly as a result of her pre-existing medical conditions, and that her inability to work was also related to her pre-existing medical conditions.

Bill Norton worked closely with Mrs. Rix's treating physicians to assert that the automobile accident was the cause of her current work disability. After prolonged litigation, Mr. Norton was able to settle the case shortly after mediation for $175,000. ■

U P D A T E :

Landmark Settlement Reached

HUNGERFORD v. PALM BEACH COUNTY

Bill Hungerford, 17, was injured when the car he was driving ran into a guardrail along Haverhill Road in West Palm Beach. A metal pipe attached to the guardrail tore through the car's engine block, through his abdomen and out the back of his car. He was transported to the hospital with a section of pipe still through his abdomen and out his back. Billy's small intestine, small bowel, one kidney and part of his pancreas and colon were destroyed but Billy miraculously survived. He can now only eat through an intra-abdominal feeding system that he carries with him 15 hours a day. The feedings cost about $175,000 a year and cause long-term liver damage. The intestine and liver transplants he may eventually require will cost about $1 million.

On Billy's behalf, Jack Scarola brought suit against Palm Beach County, the State Department of Transportation and the guardrail installer for negligence in attaching the metal pipe to the guardrail. The guardrail contractor previously agreed to a $1 million policy limits settlement. Palm Beach County Commissioners recently approved a $3 million settlement, the county's largest legal payout ever. Due to a state law that places a $200,000 limit on injury claims against local governments, the state legislature must approve this record-breaking settlement. Commissioners have agreed as part of the settlement to actively support a claims bill in Tallahassee. Litigation is proceeding against the sole remaining defendant, the State Department of Transportation. ■

Announcing...

The Westside Kiwanis Club of West Palm Beach has honored **Emilio Diamantis**, paralegal with SDSBS, with the George F. Hixson Fellowship. Named for Kiwanis' first president, the fellowship recognizes individuals on whose behalf a Kiwanis Club has donated $1,000 to the Kiwanis International Foundation. The funds donated in honor of Mr. Diamantis will be placed in an endowment from which the interest will be used for grants. ■

The Palm Beach County Board of County Commissioners has appointed **Emilio Diamantis** to the Palm Beach County Fair Housing and Equal Opportunity Board. ■

Katherine A. Martinez, an associate with SDSBS, has been elected to the Board of Directors of the Urban League of Palm Beach County.

Insurance and You

Can you think of a single expense that you pay more for than your auto insurance but that you know less about? You probably can't, but you're not alone. South Florida is one of the more expensive places in the country to insure an automobile, yet most people here don't understand the coverage they are buying.

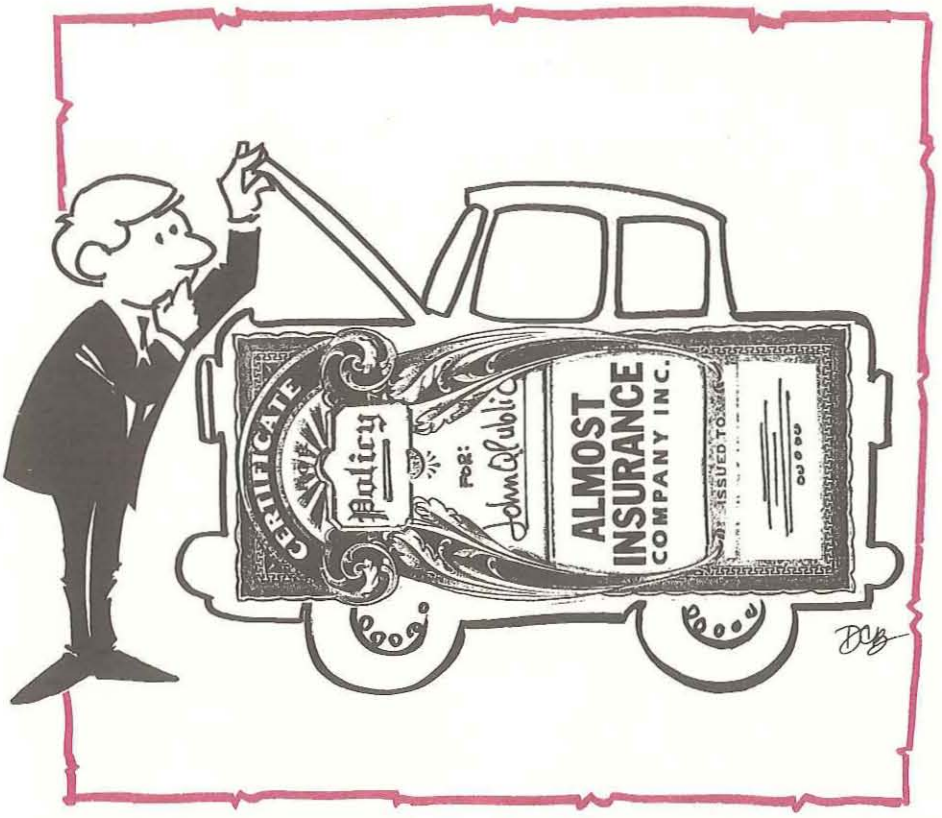
The minimum policy of auto insurance required by law consists of just two forms of coverage: Personal Injury Protection (PIP) and property damage liability. PIP pays 80% of the medical bills a policyholder incurs for injuries caused by a crash, regardless of who was at fault. Property damage liability pays for damage to a third party's property caused by the policyholder's negligence.

Conspicuously missing from the state required coverage are the following:

Bodily Injury Liability: This coverage pays for injuries to third parties caused by the policy-holder's negligence. This is the coverage that protects you if you hurt someone. It is sold with limits as low as $10,000 and as high as seven figures.

Medical Payments: PIP pays only 80% of the bills you incur if you are hurt in an accident. "Med Pay" picks up the remaining 20%. Without this coverage you would likely have to involve your health insurance for that 20%, if you are fortunate enough to carry any. Med Pay is usually sold with limits of $1,000, $2,000, or $5,000, but limits much higher can be purchased from the larger insurance carriers.

Uninsured/Underinsured Motorist: Because rates are so high, South Florida is full of drivers who carry too little insurance or no insurance at all. If such a driver negligently hurts you, "UM" will protect you as if it were the liability coverage that the uninsured/underinsured driver failed to carry.



Comprehensive & Collision: These are the coverages that take care of damage to your insured vehicle caused by collisions or vandalism, theft, etc. Many people feel that once their car gets too old to warrant this type of coverage they can drop all their coverage limits. However, just because a car is old doesn't mean that it can't hurt someone else or that you cannot get hurt while driving it. Dropping "comp & collision" can sometimes be a wise financial decision, but be cautioned not to automatically drop other coverages with it.

Specialty coverages: Many additional coverages can be purchased from the larger carriers, such as rental reimbursement, towing, fire, sound system, and tape/CD coverage. Many of these coverages are surprisingly inexpensive. Specific needs should be discussed with your agent.

Most people would benefit greatly from an in-depth discussion with their agents about the coverage they carry on their auto policies. Agents are sometimes difficult to corner, but be persistent. Nobody likes writing checks for premiums, but the alternative is to run the risk of being underinsured, which could prove to be a very costly mistake in the long run. ■

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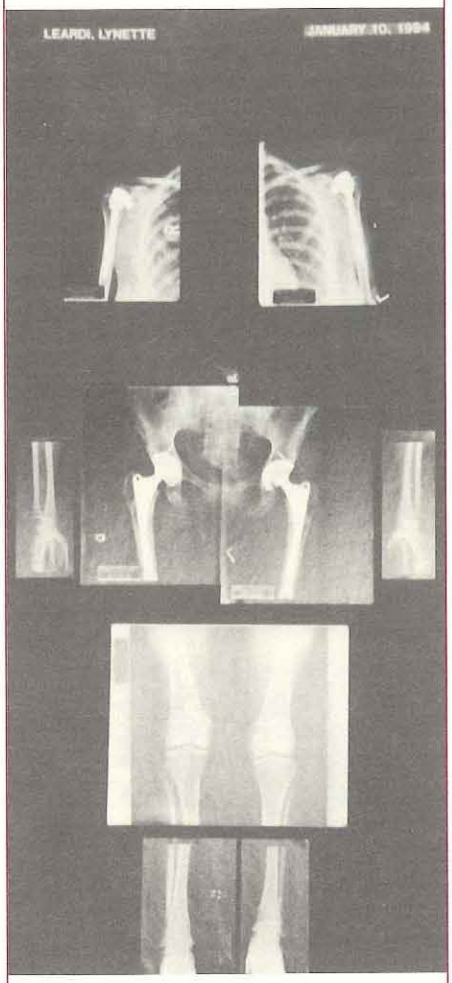


Trial exhibit: Full body x-ray indicating the hip and shoulder prostheses in Ms. Leardi.

Leardi Case...

Continued from Page One

These included right-sided weakness, numbness, headache, loss of vision, nausea and dysphasia. She repeatedly informed all of her nurses and doctors of her prior medical history, location of her medical records, and the similarities between her current symptoms and those she had experienced since she was 18 years old while living in Ohio. Had any of her physicians bothered to listen, they would have learned about her prior medical history.

It all started 15 years ago when Lynette suffered from episodes of right-sided weakness, numbness, stuttering and occasional right-sided facial weakness. These episodes would last from 20 minutes to several hours, accompanied by severe headaches half of the time. The possibility of migraine was brought up by her Ohio physicians. In 1979, she was placed on a daily dose of Pavabid and did well, suffering only occasional episodes 5-10 times for the first year, with decreasing frequency over subsequent years. Lynette remained episode free for six years leading up to a 1989 incident.

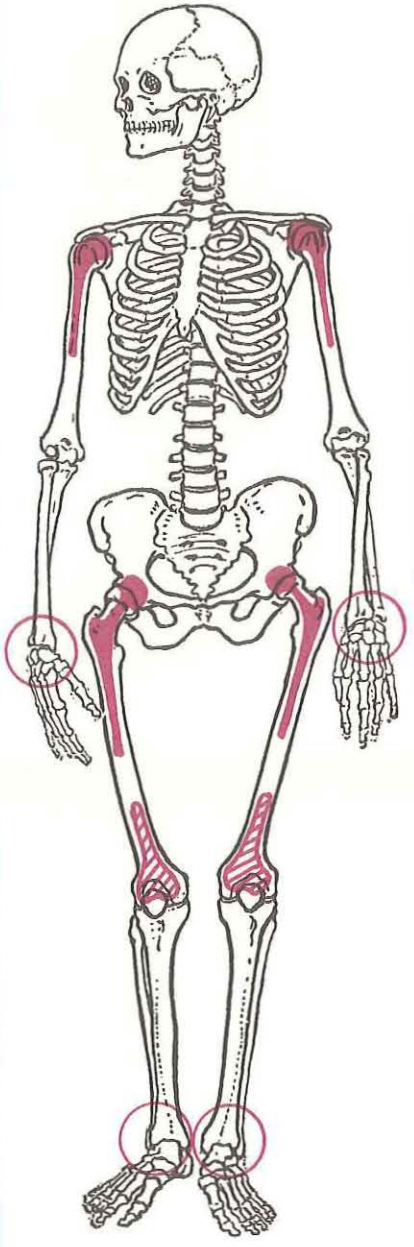
In April of 1989, while at work as an ultrasound technician at Manatee Memorial Hospital, Lynette struck her head on an x-ray machine and suffered a mild concussion. A CT Scan and MRI demonstrated a small infarction in her left temporal pole. Because of this finding and the increase in frequency of the episodes following the blow to her head, she consulted a Board Certified neurologist in Sarasota, Florida. The neurologist concluded that her symptoms may be related to underlying migraine. She was given some medications in an attempt to reduce the frequency of the episodes. She took both drugs for a period of time, showed improvement, and subsequently discontinued all drugs. She was episode free until one year later when she arrived at Manatee Memorial Hospital's Emergency Room and was admitted with similar complaints. When Lynette went to the hospital in April of 1990, she was initially seen by an internist on call, Dr. S.R. Kothapalli, and his wife, family practitioner Dr. Manjula Kothapalli. They remained on her case for a substantial part of her admission and agreed with the consultants' diagnosis and treatment. Lynette was evaluated by Dr. W. Alvin McElveen, a neurologist, and Dr. Richard L. Brown, a rheumatologist, both of whom concluded she suffered from a form of vasculitis. A neuro-radiologist, Dr. Steven Ricciardello, performed an arteriogram which he interpreted as consistent with vasculitis. During the course of the litigation there was considerable fingerpointing among these various doctors. The clinicians blamed the radiologist while the radiologist pointed the finger at the clinicians.

Even though Lynette's symptoms had basically resolved within 8 days of admission and the lab work continued to be inconclusive for vasculitis, Lynette's physicians continued to treat her for this extremely rare condition. A treatment regimen of extraordinarily high-dose steroids was instituted. Throughout her admission of 27 days, a battery of diagnostic and lab tests were performed. At no time during her hospitalization did any physicians attempt to obtain any prior medical records or speak with any of her prior physicians. At no time was a diagnosis of migraine properly considered or ruled out. Lynette's proper diagnosis was the relatively common migraine and not the extremely rare primary cerebral vasculitis.

As a result of their misdiagnosis, her physicians started a course of treatment with dangerous drugs which would later prove a disaster. Lynette received 12,741 mg of steroids. This calculates to be a mean daily dose of 554 mg of Prednisone for 23 days. Even assuming she had the rare inflammatory disease, this amount and frequency of steroids was totally unacceptable. The proper treatment for the initial six weeks of therapy includes only 40 to 60 mg of steroids a day.

Leardi Case...

Continued from Page Eight.



Existing prosthetic devices.

Avascular necrosis.

Anticipated areas of future necrosis

Avascular necrosis (death of bone) is the most serious side effect of long-term corticosteroid therapy. This side effect was never discussed with Lynette. She was simply told that she had a life-threatening condition which had to be treated with massive doses of steroids, or she would probably die.

During her admission, Lynette suffered a number of complications due to the drug therapy she was receiving. Near the end of her admission at Manatee Memorial Hospital Lynette began to suffer from terrible arthralgia (joint pain). At no time did any of her doctors indicate that her arthralgia could be related to the massive steroids she was taking. In fact, when Lynette confronted her physicians about the relationship between the steroids and her arthralgia, they denied the two were related and suggested that she was suffering from pre-existing arthritis.

Because her health continued to deteriorate (blurred/double vision, edema, open sores, thrush, nausea, vomiting, bowel problems, constant headaches), Lynette was referred to Tampa General Hospital. After a brief four day admission during which a detailed review of the records, films and lab results from Manatee Memorial Hospital was undertaken, and following their own tests and evaluations, the physicians at Tampa General Hospital could not conclusively diagnose Lynette with "primary cerebral vasculitis". As a result, they began weaning Lynette off of the high-dose steroids prior to sending her home. Lynette continued to seek treatment from her rheumatologist, Dr. Brown, who continued to give her prescriptions for steroids which she took for approximately six more weeks.

In December of 1990, Lynette suffered another episode requiring admission to Manatee Memorial Hospital. Again, she came under the care of Dr. Brown, Dr. McElveen, and Dr. Ricciardello. Again, they misdiagnosed her and inappropriately started her on high-dose steroids during her three day admission. Lynette has not taken any more steroids since December of 1990 and has not experienced an episode since November of 1991. Lynette sought no medical care for this 1991 episode which resolved within one hour with no residual problems.

Predictably, in January of 1991, Lynette experienced right arm pain. She was evaluated and, on MRI, was found to have bilateral avascular necrosis of the shoulders. She then underwent numerous operations including left and right shoulder joint replacements.

Soon thereafter, Lynette began experiencing bilateral hip pain. Surgeries were performed on the right and left hip. Because her hip pain continued (including a fracture of the right hip), she eventually underwent bilateral total hip replacements. A 1993 MRI of her knees shows signs of avascular necrosis as well. It is just a matter of time before she will undergo bilateral knee replacement surgeries.

Lynette is also expected to need joint replacement surgeries every 10-15 years as each prosthesis wears out. She is facing a future of multiple periodic joint replacement surgeries for the rest of her life. Coping with her pain and disability has been very difficult for Lynette. Hopefully, with the lawsuit resolved, Lynette can feel some closure to this terrible ordeal. ■

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QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 96, NO. 1

Beware Your HMO

Some can be counted on in a pinch, but many delay or deny crucial care if you require expensive tests or procedures. Here's how to protect yourself.

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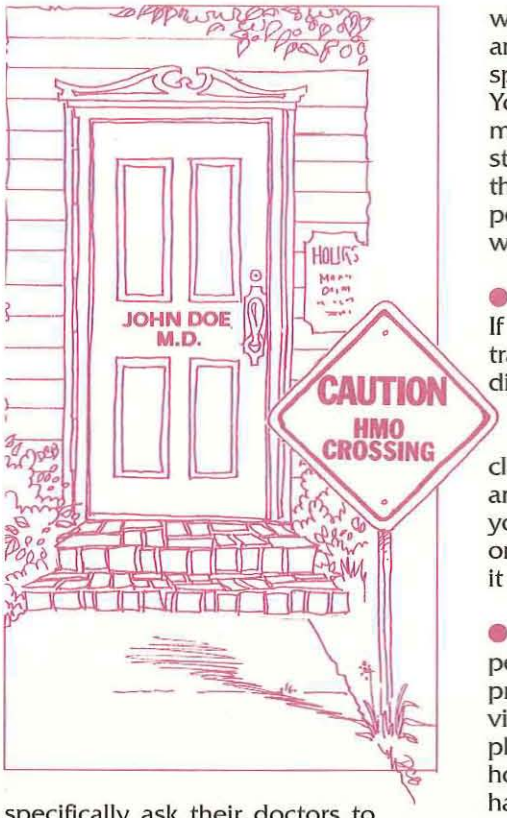
People think their worst nightmare is getting a terrible disease, but they're wrong. It's getting a terrible disease and not being able to get treated for it.

If you're healthy, like most people, you're probably delighted with HMOs -- particularly their tiny out-of-pocket cost to you. But if you're sick and require expensive tests or consultations with specialists, there's mounting evidence that your HMO might delay (or deny outright) crucial care.

You can protect yourself and your family. But doing so is neither easy nor cheap. The first step is to understand what makes an HMO tick. The second is to become a warier, more aggressive consumer of HMO-style health care. Here are four real-world facts you should know:

HMO doctors often make more money by denying you care. The crucial question to ask your HMO: how do you compensate the doctor? If he is "capitated," he receives a set amount per month, say $25, for every HMO member under its care. If he is also "at risk," he loses money if the cost of caring for an HMO enrollee exceeds this stipend. Thus, a doctor who orders $1,500 in tests on your gastrointestinal system has to pay for it himself -- and loses money on you as a patient. The fewer tests he orders, the more money he makes.

HMO doctors may be asked to treat conditions they're not trained for. Increasingly, HMOs



specifically ask their doctors to practice in areas outside their expertise.

HMO doctors stand to lose their livelihood if they provide "too much" care. Financial incentives aren't the only way HMOs pressure doctors to keep costs down. Another technique is dismissal.

HMOs frequently reserve the right to fire physicians without cause -- and don't hesitate to exercise it. The message of such firings isn't lost on the doctors who remain in an HMO: Provide too much expensive care to your patients and you'll be out of a job. The more patients a doctor has from a single HMO, the more powerful that message becomes.

HMO doctors can't speak freely about the HMO. Many HMOs gag their doctors. Under some contracts doctors may not ever complain, they may not tell their patients what's wrong with an HMO, they may not go to a public body and say anything negative about an HMO and they may not get into a fight with an HMO administrator who's refusing to let a patient have an expensive procedure. If they do speak out, they can be terminated. Your HMO doctor, in other words, may be practicing medicine in a straitjacket. Once you understand that, it's easier to get the best care possible out of your HMO. Here's what you can do:

- Don't give up your legal options. If possible, don't sign an HMO contract requiring you to arbitrate a dispute. Arbitration usually works in favor of companies. Refuse to sign, or cross out the arbitration clause and initial it. Check for an arbitration clause in the contract your employer signed. If there is one, lobby your employer to have it changed.

- Find out how your HMO compensates your doctor. Ask it to provide you with an unaltered provider contract, or ask your employer to request one. Understand how it influences your doctor's behavior. Capitated doctors with full risk, shared risk or whose HMOs hold back a large percentage of their payment (called a "withhold") usually have the most to gain by denying care. Doctors who are on salary or who are paid a fee for each service have less of a financial incentive to ration.

- Get copies of claims filed on your behalf. Enrollees usually don't have to file claims because the HMO does it. Review the claims and supporting documentation, and supply any missing information to the HMO's central office. Keep these records in case they become pertinent later.

- Confront your doctor. If he won't order a test or refer you to a specialist who can get to the root of your symptoms, let him know that you know how he's compensated. If he still refuses, ask him to put the denial in writing. Call the HMO's central office to verify that you're covered for the treatment you want. Get it in writing.

- Go outside the network for a second opinion. Some HMOs pay

Continued on Page Eleven

for them. If yours doesn't, spend your own money to protect yourself. If the second doctor believes you need the test or procedure, ask him to write the HMO on your behalf, with a copy to your HMO doctor. Also write to the HMO's president, head of marketing, medical committee and board of directors. Enlist your employer's help.

- File an immediate appeal. HMOs are finicky. Follow the HMOs instructions exactly. Communicate by registered mail and keep copies. The first response is likely to be negative, but pursue the appeal until you've exhausted all the steps. In every letter you write, let the HMO know that you are willing to seek a solution in court.

- Consider paying for the test yourself. Once you step outside your HMO's network, your chances of getting reimbursed by your HMO are slim. But some conditions can't wait for the appeals process or legal remedy. Ask your second-opinion doctor about the risks of waiting for the test or procedure, or how to research those risks. If they are high, go ahead and pay up.

- File a complaint. Don't look to state agencies for real help--they're slow and lax. But you can extend your paper trail by filing a formal complaint with your state's department of corporations or department of insurance.

- Hire a lawyer. Ask a family attorney or your state's bar association for the names of lawyers who specialize in "bad faith" claims or insurance matters.

- Consider alternatives. If your employer offers an old-fashioned fee-for-service indemnity plan, consider switching. Your out-of-pocket costs may be higher, but you could stand a better chance of covering big-ticket medical costs. Remember, sooner or later, you or a loved one will probably experience a major medical emergency requiring specialized care -- be prepared. So, design your coverage around the worst-case scenarios, not routine medical expenses. ■

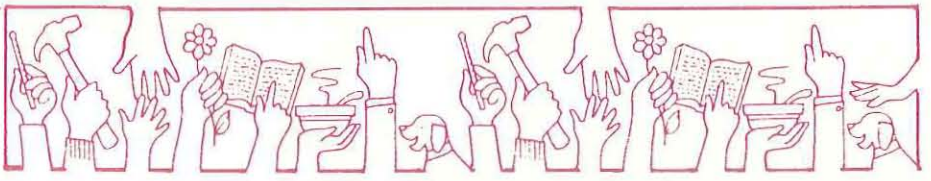
Taking... *Time to Care*

SDSBS Grand Prix Team

Go-Carting For Charity

Searcy Denney Scarola Barnhart & Shipley continues its commitment to our community by sponsoring special events to benefit local charities. The firm sponsored a car in the weekend-long United Cerebral Palsy M-Car Grand Prix. Our mini-grand prix car, a scale version of Indy 500 cars, was driven by a team from the firm led by Chris Searcy. While we did not win the race, we were proud to have raised funds and awareness for UCP.

Since 1947, United Cerebral Palsy Association of South Florida has provided services to meet the long term needs of children and adults with cerebral palsy and other developmental disabilities. Operating 35 facilities, UCP is the second largest health care provider in South Florida. Monies raised through events like the Grand Prix remain locally, to serve people in our community. ■



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