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QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 97, NO. 2

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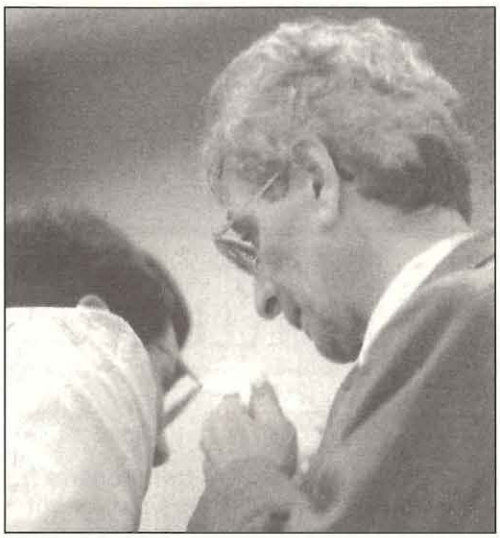
NOTE: The accounts of recent trials, verdicts and settlements contained in this newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case.

Misdiagnosis and Miscommunication - A Lethal Combination

JURY AWARDS KIDNEY PATIENT $3.5 MILLION

Mr. Ken Lugo went to the emergency room at the Columbia HCA Medical Center in Port St. Lucie with severe flank and stomach pains in June of 1992. The emergency room physician correctly diagnosed kidney stones. A radiologist reviewing the x-ray studies done on Mr. Lugo added a second diagnosis: "a suggestion of a mass in the upper right kidney." This radiologist was reading the study at a time when Mr. Lugo had been discharged and was told only of his kidney stone problem. The radiologist recommended follow-up studies.

Mr. Lugo followed up with a urologist, Dr. Michael Dennis. At the time Mr. Lugo saw Dr. Dennis, the second finding had not been reported to the doctor. Unfortunately, the report with the second diagnosis of a suggestion of a mass was received by Dr. Dennis after Mr. Lugo was discharged from Dr. Dennis' care. Dr. Dennis never reported to Mr. Lugo that there was a mass that needed follow-up. Also, no one at the hospital or the radiologist reported the finding of the mass to Mr. Lugo. **Continued on Page Two.**



Kenneth Lugo, (right), with attorney John Shipley.

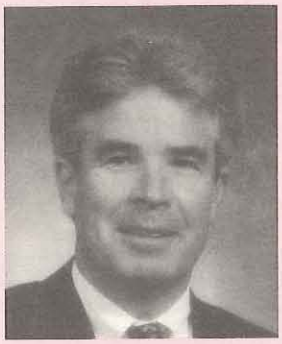
Crushing Injury To Minor Results In Over $2 Million Settlement

On August 6, 1995, Jarod Groothouse was seven years old when he was involved in a serious motor vehicle collision. Jarod and his two younger brothers were passengers in a vehicle driven by their mother, traveling southbound on U.S. Highway One in Port St. Lucie, Florida. The defendant was driving northbound on U.S. Highway One when he lost control of his vehicle, crossed the grass median, and smashed into the Groothouse vehicle. A passenger in the defendant's vehicle was killed in the accident. Jarod's mother and brothers suffered minor injuries. Unfortunately Jarod was not as lucky.

Jarod was taken from the scene by ambulance to a local Port St. Lucie hospital. He was then transferred to St. Mary's Hospital in West Palm Beach via helicopter because of the magnitude of the injuries he had sustained.

He was admitted to trauma services at St. Mary's Hospital. In the operating room he was found to have a lacerated **Continued on Page Nine.**

The Meeting Corner:



David J. White

David White graduated from the University of Notre Dame in 1969 with a B.A. in English Literature and graduated from Notre Dame Law School in 1973. Between his undergraduate and graduate years, Mr White taught English, Geography and French for a junior high-school in his home town of Boston.

After graduating from law school, he served as a law clerk for the Honorable Joseph L. Martinez, Supreme Court of New Mexico (1973-1974). Mr. White then moved to South Florida and clerked for the Honorable W.O. Mehrtens, United States District Court for the Southern District of Florida (1974-1975).

From his extensive clerking background, Mr. White went to work for Frates, Floyd, Pearson, Stewart, Proenza & Richman in Miami for one and a half years. He then moved to Beckham McAliley & Proenza for four and a half years, where he received much trial experience in Florida and Georgia.

In 1980 he left to start his own firm, Proenza & White P.A., in Miami. After Morris Proenza's death in May of 1995, he relocated to Palm Beach County. He joined Searcy Denney Scarola Barnhart & Shipley in February of 1997 and continues his practice in the fields of: Personal Injury, Age/Sex Discrimination, Product Liability, Medical Malpractice, and Commercial law.

Mr. White finds litigation exciting and challenging. He says that "it is a fascinating way to make a living because it is so unpredictable." He likes commercial and corporate litigation as a diversion, but not a daily routine. He likes the opportunity to help his clients. He believes that "the most satisfying part of Personal Injury litigation is that he can really help people and help change their lives for the better".

Mr. White and his wife Cathy have four children; Matt, who will be a senior at Colby College in Maine; Colin, who will be beginning Vanderbilt University as a freshman this fall; and Christian and Caitlin, who are attending the Benjamin School. He resides in North Palm Beach and plans a long and successful future at our firm. ■

"To be a great trial attorney, you must have the capacity to experience failure. If you cannot accept the fact that you can lose, you can never win."

-- David White

MISDIAGNOSIS AND MISCOMMUNICATION - A LETHAL COMBINATION

Continued from Page One.

From 1992 to 1995, Mr. Lugo had no symptoms; afterall, kidney cancer is a silent killer. In 1995 he went in for a different problem and his doctor started a workup for a possible ulcer. This workup revealed a massive tumor in his abdomen, too late for treatment.

Kidney cancer is curable if diagnosed before it spreads to other parts of the body. The x-ray from 1992 showed the tumor to be still within the kidney. X-ray studies of the lungs were clear, which meant that there was no spread to the lungs. By 1995, the tumor had spread to the stomach, lungs and intestines.

The jury found both the hospital and physicians responsible for this tragic case of malpractice, and ordered the parties to pay the sum of $3.5 million to Mr. Lugo. Mr. Lugo commented to a newspaper reporter that "a mistake was made. I'm just sorry it was made on me. I wouldn't want a thing like this to happen to anybody, but it happened to me." Mr. Lugo's attorney, John Shipley, was also quoted in the newspaper that it was an honor and a privilege to represent Mr. Lugo and his family. "Justice is a wonderful thing," Shipley said. "We can't give him his life back, but Ken is a winner today."

Mr. Lugo passed away on May 25, 1997, just over one month after the jury rendered their verdict. He was 57 years old and survived by his wife and 11-year-old son. As a highly regarded member of the Martin County Sheriff's Office, Ken's funeral was attended by a large honor guard and he received a rifle salute. ■

A Few Helpful Internet Sites for Legal Research ...

http://www.law.cornell.edu
The U.S. Supreme Court does not maintain their own website. However, The Cornell Law School offers collections of recent and historic Supreme Court decisions, its hypertext versions of the full U.S. Code, U.S. Constitution, Federal Rules of Evidence and Civil Procedure, and numerous other resources and links.

http://www.law.harvard.edu/library
HOLLIS, Harvard's On-Line Library Information System, provides access to the electronic catalog of Harvard's library collections as well as several indexes. HOLLIS Plus is a web page offering access to HOLLIS and other resources at Harvard and beyond.

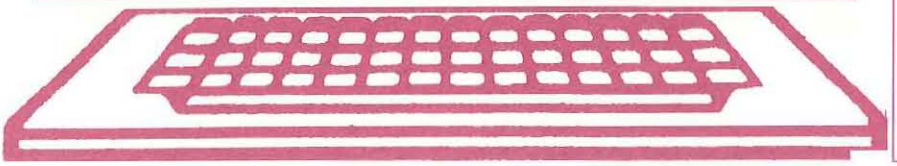
http://www.law.stetson.edu/law
The Stetson University Law School web page provides a definitive list of legal resources on the Internet. It provides extensive links and search engines necessary for effective legal research on-line.

http://www.lawflorida.net/search/search.htm
Law Florida provides an impressive list of links and searches including Florida Statutes, Florida Codes, Florida Supreme Court Cases and Decisions, as well as many Federal links.

http://www.lawguru.com/search/lawsearch.html
The Lawguru provides free legal research on over 250 legal search engines and tools.

http://www.findlaw.com/
FindLaw: Internet Legal Resources - information on a variety of legal topics including laws, lawyers and law schools.

http://www.AFTL.org
Academy of Florida Trial Lawyers - Searchable directory, attorney profiles, legal links, contact information and other resources.



"The best way to win an argument is to begin by being right."

--Jill Ruckelshaus

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Academy of Florida Trial Lawyers Reports on State Legislature

*(**ED NOTE:** For this* Of Counsel *issue we invited the Academy of Florida Trial Lawyers to submit an article summarizing the recent session of the Florida Legislature.)*

IT WAS A LONG AND TOUGH FIGHT... BUT ONLY A SMALL SAMPLE OF WHAT IS YET TO COME!

By Jacqui Sisto
Director of Public Affairs
Academy of Florida Trial Lawyers
Tallahassee, Florida

The 1997 Legislative Session proved to be exactly what we expected. The enemies of Florida's families pushed proposals that would dismantle our civil justice system and jeopardize the safety of the citizens of this state. The Academy of Florida Trial Lawyers fought these opponents of family safety head-on. At the end of the sixty day session, proposals such as: a teaching hospital immunity bill that would extend sovereign immunity to private teaching hospitals, a bill immunizing rental car companies, and a proposal to establish Auto Managed Care (PIP/EPO) were defeated or seriously wounded. The worst proposal of all was a bill the business and medical community coined "FAIR," the Florida Accountability and Individual Responsibility Act. "FAIR" was anything but fair to the citizens of this state. The "FAIR" bill was a complex proposal that contained sweeping provisions that would have taken away vital safeguards in our civil justice system. The proposal clearly was more than fair to large, out-of-state corporations and would put profits over the safety of Florida's families.

The "FAIR" bill would have made it incredibly difficult to punish wrongdoers for their acts, eliminated employers' responsibilities for the acts of their employees and established an unreasonably short time period to bring a case to recover for injuries caused by defective products. The provisions of the bill eliminated critical incentives for the business and medical community to produce, sell or provide services that are safe and will not injure or kill Florida citizens.

This year's assault was only the beginning. The enemies of Florida's families laid out a two year plan that has just begun. The Academy has braced itself for this inevitable war against the safety of Florida's families and will continue to fight to stop these dangerous proposals from passing.

AUTO MANAGED CARE...Senator Al Gutman (R-Miami) filed an auto insurance bill that would force Florida's families to go to insurance company controlled HMO doctors. Auto Managed Care would allow insurance companies to select the health care providers for those injured in auto accidents, taking away the injured person's right to choose their own doctor. This would result in less care for consumers, increased costs for public hospitals and greater profits for insurance companies. The Academy was able to defeat this proposal during the bill's first committee hearing. ■

TEACHING HOSPITAL IMMUNITY ... **Representative Alzo Reddick** (D-Orlando) filed a bill that would extend sovereign immunity to private teaching hospitals for their activities including the rendering of health care to paying patients. The House bill made it to the House floor. After a floor fight that crossed party lines, the bill's sponsor temporarily postponed the bill. **Speaker Daniel Webster** stated that the bill would be sent back to committee and the issue would be studied over the summer. ■

EVIDENCE CODE (HEARSAY) ... **Representative John Thrasher** (R-Orange Park) filed **CS/HB1597** which would have created unfair situations in lawsuits. The bill would allow the admission of prior testimony in a totally unrelated case to be used in the current lawsuit **even though the party against whom the testimony is being offered has never had an opportunity to cross examine the witness**. The bill passed both the House and Senate. However, on May 29, Governor Lawton Chiles vetoed **CS/HB1597** stating in his veto message, "I cannot support Committee Substitute for **House Bill 1597** because it reduces a party's ability to confront and question a witness. I do not see as beneficial a reform to the Evidence Code which creates an open-ended exception that precludes the right of a litigant to cross-examine witnesses at trial." The Academy of Florida Trial Lawyers opposed this bill and supported the Governor's decision to veto the legislation. ■

Continued on next page.

RENTAL CAR VICARIOUS LIABILITY REPEAL BILL ... Lobbyists for the big rental car companies were out in force this year trying to pass a bill that would have eliminated the current provision in Florida law that holds rental car companies responsible when someone rents a vehicle in Florida and causes injury or death to a Florida citizen. The big rental car companies don't want to play by the same rules as everyone else. They don't want to be held accountable when reckless and irresponsible renters maim and kill. They want the accident victims — and Florida taxpayers — to foot the bill. ■

WRONGFUL DEATH/MEDICAL MALPRACTICE ... Florida's wrongful death statute currently allows adult children and parents of adult children to recover damages in wrongful death cases where there are no survivors. When this issue was originally introduced, the medical community was able to carve out for themselves an exemption for medical malpractice cases. **Senator Ginny Brown-Waite** (R-Brooksville) and **Representative Mary Brennan** (D-Pinellas Park) filed bills this session that would have eliminated a current exemption that gives the medical community a special immunity when they cause the death of a patient due to medical malpractice. The bills would have deleted this special treatment of medical malpractice cases and allowed recovery by certain survivors in all wrongful death cases. A group of families, lead by Ms. Bonnie Strickland of St. Petersburg, who were unable to hold health care providers accountable for the death of a loved one came to Tallahassee to support passage of this bill. **SB 40** was heard and passed out of all its Senate committees of reference with no substantive amendments but the bill died on the Senate floor calendar. **HB 25** passed out of one House committee with substantive amendments. Due to the two year life that bills have under the House's new rules, **HB 25** is still alive and will begin the 1998 Session in the House Health Services Committee.

This "legal" loophole in Florida's law has received national attention. During the legislative session, NBC Nightly News and CNN/Impact highlighted two Florida families who had lost loved ones due to medical malpractice. Both shows reported on the "special treatment" the medical community seems to be getting in Florida. ■

PHYSICIAN FINANCIAL RESPONSIBILITY ... HB 1643 by **Rep. Alex Villalobos** (R-Miami), which would have provided for suspension of a physician's license if they do not pay a malpractice judgment, passed the full House and was sent to the Senate and referred to several committees. Once again, due to the new House rules the bill is still alive — and will be placed on the House calendar at the beginning of the 1998 Legislative Session. **SB 1986** by **Senator Howard Forman** (D-Hollywood), the Senate companion to **HB 1643**, would have removed the legal loophole in Florida law that allows members of the medical community to "go bare" by posting a sign in their waiting room to the effect that they have no insurance. The bill died in the Senate Committee on Health Care.

The Academy of Florida Trial Lawyers supports changing current law that does not hold doctors financially responsible and accountable for negligent medicine. Because of a "legal" loophole in Florida law, members of the medical community are able to shirk their responsibility to the citizens of this state and risk the safety of Florida's families. ■

WORKERS' COMPENSATION ... In contrast to the last couple of years of relative quiet on the workers' compensation legislative front, once again the business community has come out in force calling for cuts in benefits to injured workers under the guise of "reform". Leading this charge with a massive package of proposals was Associated Industries of Florida which, among many other things, called for eliminating permanent total disability benefits for workers over age 70 and all compensation for psychiatric impairment. Common to both this package and several other proposals was a provision to further restrict eligibility for permanent and total disability. Fortunately, none of these provisions passed. The only bill of substance that did pass was a bail-out provision to pick up payment of benefits to certain injured workers who had been covered by some now insolvent self-insurance funds. But, even this legislation has a down-side in that the bail-out will not pick up the attorney's fees incurred by these injured workers to secure their workers' compensation benefits. Look for a major legislative battle over workers' compensation next year. ■

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

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

KIMBERLEE DAWN BRAMMER AND ALAN FREY AS NATURAL PARENTS OF DUSTIN FREY vs. FLORIDA HOSPITAL/ WATERMAN

Dustin Alan Frey was born on October 26, 1994, to the delight of his parents, Kimberlee Brammer and Alan Frey. He was a healthy baby with the exception of a condition his doctor referred to as an under developed wind pipe. The doctor assured Dustin's mother that this condition was something he would outgrow. From the day of his birth, Dustin had a constant wheeze, and his mother always worried that he might have asthma; after all, his older brother has asthma. Over time, Dustin's mother's concern increased; her son suffered with chronic congestion and labored breathing. Finally, on February 14, 1995, Dustin was admitted to Florida Hospital/Waterman where he was diagnosed as having right lobe pneumonia and acute respiratory distress. After receiving respiratory therapy and treatment for the pneumonia for several days, Dustin was released and his mother was instructed to use a humidifier, a nebulizer, and medication in treatment of any residuals of this allegedly resolved pneumonia.

Kimberlee religiously administered the treatments prescribed by the doctor and the hospital nurses. Dustin's condition deteriorated over time. Night after night Kimberlee was up caring for her son. On the evening of March 7, 1995, Dustin's temperature soared to 103º, and his respiratory rate noticeably slowed. Although Kimberlee routinely alerted Dustin's doctor of his condition, she was not told to take him to the hospital. Kimberlee herself decided to admit her son to Florida Hospital/Waterman the following day. At the hospital, she requested that Dustin be examined by a doctor prior to x-rays and lab work being done. Her request was ignored and Dustin was sent to the lab and x-ray department. Kim stayed with Dustin as much as she could during this time. During the early part of the day, Dustin lost his voice. He continued to cry, but without any sound being emitted. At approximately 4:00 p.m., Dustin drank some formula and began choking. After an extended episode of coughing and choking, Dustin seemed to calm down. Shortly after, Kimberlee left the hospital to return home to cook dinner for her other child. She asked one of the nurses on duty if Dustin would be okay while she was away, to which the nurse responded that he certainly would, and that he was doing fine. She urged this nurse to keep an eye on Dustin until she returned in approximately two hours.

When Kimberlee returned to the hospital, she was told that Dustin had died. The actual cause of death was pneumonia and acute bronchitis, despite the doctor's indication that the child had died of Sudden Infant Death Syndrome (SIDS).

Through vigorous prosecution of this case, attorney Cal Warriner was able to establish that, although Dustin's room was directly adjacent to a nurses station which had as many as six nurses present at the time of Dustin's death, not one of these nurses recognized nor monitored Dustin's critical condition, and he was allowed to die for lack of attention. A respiratory therapist, who had come through the main doors into the pediatric ward claims he heard the pulse-oximeter monitor sounding audibly upon his entry into the ward, with no response from the attendant nurses.

As a tragic side note to this case, Dustin's mother had to have a hysterectomy shortly after his birth, thus her child-bearing days are over.

Cal Warriner was able to settle this case at mediation for $625,000. ■

MRS. DOE vs. SURGEON X

Mrs. Jane Doe awoke one morning in October of 1996 with severe abdominal pain. Her husband of 55 years immediately rushed her to the emergency room wherein she was diagnosed with an acute inflammation of the gall bladder. The hospital surgeon performed a laparoscopic cholecystectomy the following day. This was an arthroscopic procedure.

After surgery, the surgeon urged Mrs. Doe to try to walk as much as possible. She tried but still had abdominal pain. Her husband noticed a yellow discoloration around the surgical incision. The surgeon explained that this was normal; however, the nurses remarked that they had never seen such a discoloration. Mrs. Doe developed a fever, began vomiting, and her wound site developed discharge. Upon removing the dressing covering the incision site, the doctor noticed bile leaking from the incision site. Mrs. Doe was immediately taken for exploratory abdominal surgery.

After surgery, the surgeon explained to Mr. Doe that he had mistakenly cut the common bile duct instead of the cystic duct and that his wife had been leaking bile into her stomach since the original surgery. The surgeon admitted that he cut the wrong duct. However, he reassured Mr. Doe that his wife would have a complete recovery.

Mr. Doe slept in the hospital that night. At approximately 2:00 a.m., the hospital chaplain told him that his wife had taken a turn for the worse and was not expected to recover. Later, when Mr. Doe inquired about ending life support, the nurses told him that the surgeon had already signed off to remove his wife from life support. Mrs. Doe was 76 years old when she passed away.

The Personal Representative (PR) of the Estate of Mrs. Doe was prepared to file the claim against the surgeon and hospital. However, Karen Terry settled pre-suit for $307,500 plus the waiver of hospital bills. Had the PR filed suit, the surgeon and hospital most likely would have admitted liability for their actions and requested arbitration. If the PR accepted arbitration, the total damages would have been capped at $250,000 plus medical bills.

Mr. Doe died one month after the settlement of this case; he was 79 years old. The Does had been planning and were looking forward to spending the rest of their golden years with one another and enjoying their four children and grandchildren. ■

MOCHI vs. NURSING HOME FACILITY

Donald Mochi was a sixty-six year old man who, in December of 1993, had cardiovascular surgery which resulted in a post-operative stroke that left him paralyzed and suffering respiratory failure. Ultimately, he was transferred to a nursing home for rehabilitation and nursing home care. At that time, it was anticipated that Mr. Mochi would receive rehabilitation for a period of time and then be able to go home and lead a normal life with only partial paralysis.

Upon admission to the nursing home, it was well documented that Mr. Mochi's skin condition was excellent with no evidence of skin breakdown. Disabled patients are commonly at risk for decubiti (bed sores), upper respiratory infections, dehydration and other complications that can lead to physical deterioration. It is the duty of the nursing home staff to properly care for their bedridden residents to prevent these adverse affects.

Shortly after being admitted to the nursing home, Mr. Mochi developed bed sores which the records indicate measured 3 cm by 4.5 cm and ultimately developed to 6 cm by 8 cm, the sores became infected and required admission to the hospital for IV antibiotics. Mr. Mochi was diagnosed with septicemia. With proper care, this condition could have been avoided.

Florida's laws include a Nursing Home Residents Bill of Rights (F.S.§400.022) with Civil Enforcement Provisions (F.S.§400.023). These statutes are intended to allow individuals to seek enforcement of these rights since regulatory agencies are clearly overburdened with an ever increasing number of nursing homes.

When Mr. Mochi was discharged from the nursing home, his loving wife took care of him with the assistance of visiting nurses. Although they were successful in treating his skin breakdown condition, the devastation from the bed sores, dehydration and lack of proper care at the nursing home meant Mr. Mochi was unable to actively participate in his physical therapy. His condition continued to decline until he passed away in December, 1994.

During the litigation of this case, Mrs. Mochi also died. However, Earl Denney and Karen Terry were able to resolve this case on behalf of the Mochi's estate for $425,000.

There is an ever-growing population of senior citizens and cases like this should send a clear message to the nursing home industry that the public will not tolerate poor nursing home care. ■

*Decisions...***Continued on Page Eleven.**

"God forbid that the rights of the innocent should be lost and destroyed by the offence of individuals."

-- Sir John Eardley Wilmot,
English jurist; Chief Justice

Community Service

TRENDS ON VOLUNTEERISM

- 92% of corporate executives surveyed encourage their employees to become involved in community service.
- 77% of companies surveyed agreed that volunteer programs benefit corporate strategic goals.
- Approximately 80% of volunteer programs improve employee retention and enhance training.
- Approximately 90% of volunteer programs build teamwork skills, improve morale and attract better employees.
- 50% of the respondents have made community service a part of their company's mission statement.
- 31% of respondents claim to use volunteer programs as a part of the strategy to address critical business issues.
- 72% of the companies report ongoing endorsement of volunteer programs by CEO's.
- More than 50% of the participants acknowledged connection between corporate volunteer programs and profitability. Even more register stronger agreement to factors that affect profitability, (morale, teamwork, productivity).

Source: Corporate Volunteer Programs: Benefits to Business Sponsored by The Conference Board and the Points of Light Foundation. Report No. 1029

Taking... *Time to Care*

ABOUT THE POINTS OF LIGHT FOUNDATION

Founded in 1990, The Points of Light Foundation is an independent, nonprofit, nonpartisan organization whose mission is to motivate leaders to mobilize others for community service directed at solving the most serious social problems facing society today.

Through its affiliation with nearly 400 local member volunteer centers and over 70 corporate volunteer councils, the Foundation works with businesses, and nonprofit and educational organizations to build volunteer programs within their institutions. Working with the media, the Foundation raises public awareness about community service.

The Foundation helps the business community build corporate volunteer programs by providing training and consultation, identifying and publicizing creative solutions that work, and recognizing corporations for their efforts.

Recent news headlines indicate that the interest for volunteering in our local communities is increasing. Everyone agrees that volunteer programs can enhance the quality of life where we live.

According to a national survey conducted by the Points of Light Foundation in Washington, D.C., volunteering outside of the work place greatly increases productivity, morale, and efficiency within the corporate structure.

Establishing a volunteer program for a small business is as easy as a few simple phone calls. There is always volunteer work available for those willing to put in their time and effort. Here are a few easy steps to get an individual or a small business off and running in community service.

1) Identify an organization, problem or event that is of interest to the group/individual. For example: Habitat for Humanity, The Children's Miracle Network, the American Heart Association, local church or community center, or any nonprofit organization.

2) Contact that organization to request general information on their projects and goals.

3) Organize a meeting or some sort of orientation with that organization. Be sure you understand what their needs are and if you or your company can provide a valuable service given your constraints.

4) At the workplace, spread the word. Let your co-workers know that you are sponsoring a community service program. Encourage them to participate; form groups, sign up and represent your business.

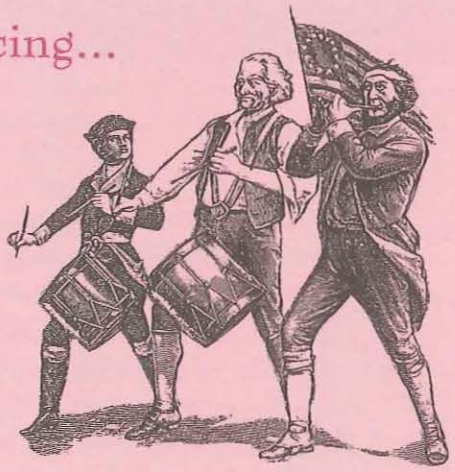
The Points of Light Foundation is one of many organizations and resources available to assist small businesses in creating and maintaining a successful community service and volunteer program. They have an abundance of "how to" manuals and great suggestions for implementing a volunteer program.

Volunteering can be a rewarding experience for all who participate. Companies and individuals benefit tremendously by "Taking ... Time to Care" in their respective communities. ■

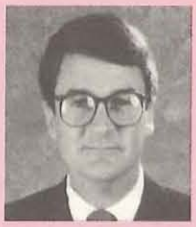
NOTE: You can reach the Points of Light Foundation by contacting them at:

1737 "H" Street, N.W.,
Washington, DC 20006
Telephone: (202) 223-0186
Fax: (202) 223-9256
Internet:
http://www.impactonline.org/points

Announcing...



David J. Sales
The firm is pleased to announce that David J. Sales has become a Board Certified Civil Trial Lawyer. ■



John Shipley recently spoke at Stetson University's College of Law. His topic was *"Medical Jurisprudence: The Medical Malpractice Case."* ■

Greg Barnhart
was elected to the Board of Directors of "1000 Friends of Florida." This prestigious statewide organization's primary mission is to protect and improve Florida's quality of life by advocating responsible planning for the state's population growth.

Greg Barnhart recently spoke at two seminars for the Academy of Florida Trial Lawyers:

"Creative Ways to Marshall Evidence in your Courtroom Performance"
('97 Workhorse Seminar, Orlando, Florida.)

"The Effect of Fabre and Subsequent Case Law on Your Settlements and Trial"
(Spring Seminar, Orlando, Florida.) ■

$2 MILLION SETTLEMENT IN CRUSHING INJURY

Continued from Page One.

mesentery vein which was repaired. Two weeks later, Jarod returned to the operating room to repair a significant fracture of the L-2 vertebrae in his lower back. It soon became apparent that there was instability in the lumbar area and that young Jarod would require an additional operation. He was taken back to the operating room on September 12, 1995 where he underwent further stabilization procedures for the lumbar spine. The entire L-2 vertebrae body was removed, the area was fused, and rods and screws were placed into Jarod's back. He tolerated the procedures well and was discharged from St. Mary's Hospital on September 17, 1995.

As a result of the severe spinal fracture and the reconstructive surgery that young Jarod has undergone, he has been restricted in his activities. He can play no contact sports. He has limitations with respect to bending and lifting. Jarod's limitations are a lifelong consequence of the original injury and the reconstructive surgery. He will be severely limited in his occupational alternatives as well. As of this date, he still has a prominence from the instrumentation in his back which occasionally causes him pain and discomfort. It is anticipated that at some point this summer Jarod will require additional surgery to remove the instrumentation that was placed in his back.

Christopher K. Speed was able to resolve this matter for $2,075,000 during the discovery phase of the litigation. A portion of the funds will be placed in a guardianship account to provide for Jarod's future medical needs. The remainder has been used to purchase an annuity that will ensure a lifetime income stream for Jarod. ■

Florida Physicians Financial Responsibility Act

(THIS IS THE ACT THAT REQUIRES PHYSICIANS TO MEET CERTAIN FINANCIAL REQUIREMENTS TO PAY CLAIMS ARISING FROM MEDICAL NEGLIGENCE.)

Legislation is currently pending in the Florida House of Representatives which proposes changes to Florida Statute 458.320. This is the statute that dictates the physician's financial responsibility to their patients.

Currently, a physician with hospital staff privileges practicing in Florida must meet a minimum financial responsibility of $250,000. This responsibility can be met by establishing an escrow account consisting of cash and assets; by obtaining and maintaining an irrevocable letter of credit; or by showing proof of liability insurance in this amount. Doctors without staff privileges have a minimum requirement of $100,000.

Not all practicing physicians however, are required to meet these standards. Some doctors are able to continue to actively practice without the above noted financial responsibilities if they meet **ALL** of the following criteria:

1) Actively licensed for fifteen or more years,

2) Has either retired from the practice of medicine, or maintains a part-time practice of no more than 1000 hours of patient contact per year,

3) Has no more than 2 claims for malpractice resulting in amounts greater than $10,000 in the previous five years,

4) Has no criminal convictions,

5) Has no license revocations in the past 10 years,

6) Has submitted all required forms to the Department of Health.

If the physician meets all of the above requirements and chooses not to comply with the financial responsibility act, the doctor must post a sign prominently displayed stating:

> UNDER FLORIDA LAW, PHYSICIANS ARE GENERALLY REQUIRED TO CARRY MEDICAL MALPRACTICE INSURANCE OR OTHERWISE DEMONSTRATE FINANCIAL RESPONSIBILITY TO COVER POTENTIAL CLAIMS FOR MEDICAL MALPRACTICE. HOWEVER, CERTAIN PART-TIME PHYSICIANS WHO MEET STATE REQUIREMENTS ARE EXEMPT FROM THE FINANCIAL RESPONSIBILITY LAW. YOUR DOCTOR MEETS THESE REQUIREMENTS AND HAS DECIDED NOT TO CARRY MEDICAL MALPRACTICE INSURANCE. THIS NOTICE IS PROVIDED PURSUANT TO FLORIDA LAW.

The changes to the statute in the pending bill do not address changes in that section of the law which discusses how certain physicians may elect not to comply with its financial responsibility requirements. Proposed changes would allow the Department of Health to issue an emergency order suspending the license of any physician who, after thirty days notice from the Department, has failed to properly satisfy a malpractice claim against him in the manner specified by the law. This would serve to give a greater regulatory authority to the Department of Health, but does not address all sections of the statute.

Be aware. Not all Florida doctors are required by statute to be financially responsible to their patients. ■

Decisions *Continued from Page Seven.*

MCGARRY vs. NOVACARE

Stephen McGarry contracted polio at the age of one which left him with damage to both extremities (his right side was more effected than his left). However, he worked hard to overcome his disability and eventually graduated from college and had a successful career as a manager for a large manufacturing company. He moved to Florida to start a contracting business which was becoming profitable at the time of this accident.

Mr. McGarry sometimes wore a steel leg brace on his right leg which was manufactured by Novacare, Inc. In April, 1994, Mr. McGarry was walking normally when one of the brace's uprights suddenly broke. He fell heavily to the ground and sustained a subtrochanteric fracture of the right hip. He required immediate surgery with an insertion of a screw into his right hip joint which left him with almost no range of motion to that extremity. As a consequence of this incidence, Mr. McGarry is now unable to walk without the aid of a leg brace or crutches and can only stay on his feet for short periods of time. His disability has caused his business to fail and left him unable to work.

The defendants in this case not only denied liability, they denied ever having made the brace. After a long investigative process, Bill Norton settled the case at mediation for $175,000. ■

"The roots of valid law...are, and can only be, within the individual conscience."

- - Harold J. Laski

Dr. Gary D. Dubler

[redacted]

The following is an unsolicited statement re:
Medical Malpractice Litigation

Our pain upon being told that our son's illness had caused him to become a "ticking time bomb" (that he could suddenly die literally any day) was exceeded only by the anguish of knowing that his circumstances were totally preventable, avoidable, and completely curable if he had been given correct medical care. The pediatrician, specialists, and hospitals we had trusted acted with incompetence (and in one instance, arrogance) at a time when only a ten-day window of opportunity existed to save my son from the incredible ordeal he would undergo due to their indifference. We were never informed of the treatment available, its 100% efficacy and easy availablility, or of its benign history even if it were administered without total confirmation of the diagnosis." As a result, my son endured multiple suffering, including double coronary bypass surgery at the age of six. His chest is permanently scarred, his activities restricted, and his life expectancy unknown.

This experience could have caused us to feel extreme animus toward the medical establishment. On the contrary, it was other caring, involved, and knowledgeable pediatric cardiologists, surgeons, nurses, and hospitals that gave our son back to us with at least a chance for a normal existence and life span. Medicine is not the enemy; it should be the ally. Incompetence, misfeasance, malfeasance, and non-feasance exist in every endeavor and those professions should encourage, rather than lobby against, the pursuit of legal litigation and judgments against those individuals.

In our specific case, all the culpable physicians were tragically under-insured. Their carriers tendered their limits to void a predictable judgment for many times these amounts because of what would have been their failure to protect their client from further liability. I am aware of strong movements within Florida and other states to limit liability for pain & suffering to $250,000 and otherwise handcuff plaintiffs from obtaining justifiable compensation for excruciating physical and mental pain. If anything, the legislature should be lobbied to require increased liability limits (perhaps $1,000,000 for regular physicians and $5,000,000 for specialists) instead continuing or reducing the present system. Just leasing an automobile requires the driver to carry $300,000 in liability coverage. Should physicians and other professionals exist under a less stringent standard?

Gary Dubler, Ph.D.

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QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 97, NO. 2

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Florida's Legal Legacy

The Florida Supreme Court has existed for more than 150 years, spanning two vastly different eras — 1845, when Florida became a state, and the least populated in the South; and today when it's population ranks fourth nationwide. However, its legal principles were derived from England and, as such, are connected to an ancient legal system. Among the first acts of the Florida Legislative Council was adoption of the "Common Law" as it existed in England. Because English Common Law dates roughly to around 1000 A.D., this means present-day Florida law has been a millennium in the making, and thus, far older than the state itself.

In the Supreme Court library is a collection of rare and very old books that contain decisions going back to the earliest days of English law. One written decision details the case against a woman named Mary Smith, in the year 1616. Her crime? Witchcraft. The details include the fact that Smith confessed to her crimes at the gallows shortly before her execution. Today's Florida law does not make witchcraft a crime.

Perhaps the oldest reported opinion in the library's collection is a case entitled "Proceedings Against Thomas Becket, Archbishop of Canterbury, for High Treason." The year? 1163 A.D., over 800 years ago!

The oldest of all the books in the library is a collection of Spanish laws printed in 1597. The United States did not acquire Florida as a territory until the 1800's, when a young federal military officer and future President named Andrew Jackson took possession of Florida from Spain and became the State's first territorial Governor. Jackson found two separate colonies: East Florida, governed from St. Augustine, and West Florida, governed from Pensacola. Territorial authorities later decided that the two should be combined and a single new capitol should be formed. To select a location, a party moved east from Pensacola, and another west from St. Augustine. They met in the middle near an old Spanish mission and a small Indian village whose name has become known to us today as Tallahassee.

Florida is rich in history — having paid allegience to five flags — and it's legal history is a reflection of the people that have made it one of the most popular places in the United States. ■