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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.

SDBS



Doctor Leaves Hospital Nurse Fails To Get Help Tragic Results



The Belote Family: Monte, Katrina and Jacob

Monte and Katrina Belote had done everything possible to prepare for the birth of their first and only child. Katrina is a mortgage finance officer in Tampa and her husband, Monte, is the Executive Director of the Florida Consumer Action Network. They are dedicated and caring people and parents. As is the case with most first time parents, there was some anxiety as they prepared for the birth of their child. Katrina had seen a large obstetrical group in Tampa called Tampa Obstetrics. They had a number of obstetricians and she rotated through most of them. As it turns out, Tampa Obstetrics' obstetricians deliver babies in a number of Tampa area hospitals, including University Community Hospital.

Katrina did everything possible to ensure the health of her baby. She followed the doctors' instructions to the letter, refrained from coffee, alcohol,

and anything other than vitamins, and took perfect care of herself during her pregnancy.

When it became clear that Katrina was going to have the baby shortly, Monte and Katrina went promptly to University Community Hospital. Once she was there, the labor and delivery room nurse hooked her up to a fetal heart monitor. The fetal heart monitor strip showed that the baby's heart rate, while healthy, was relatively low, indicating that the reserves of strength and nourishment that the baby would need to go through labor and delivery were questionable. Katrina's doctor, Joseph Saavedra, M.D., was **Continued on Page Four.**

Tort Reform: Their Profit vs. Your Safety

**By Stephen R. MacNamara
President, Coalition for Family Safety.**

The Florida Legislature will be addressing numerous critical issues during the 1998 session (March and April, 1998). The Coalition for Family Safety is very concerned about the impact of so-called "tort reform" proposals on the health and safety of Floridians.

There is not a person in Florida who does not think that our court system is in need of reform and streamlining. But in reforming the litigation process, we must

be concerned about two things. First, we must focus our reform efforts on those aspects of the system which generate the most lawsuits. Second, we must safeguard against proposals that would grant special immunities to multi-billion dollar corporations at the expense of the safety of our loved ones.

As heavily bankrolled tort reform groups push for limits on corporate accountability and liability, they fail to reveal the fact that most lawsuits filed against businesses are filed by other businesses, not injured consumers. **Continued on Page Eleven.**

The Meeting Corner:



Karen E. Terry

KAREN E. TERRY is a native Floridian, born in Miami and raised in Boca Raton. Raised in a family of attorneys and paralegals, Ms. Terry always wanted to be a trial lawyer. A graduate of the Pine Crest Preparatory School, Ms. Terry obtained her bachelor's degree from Duke University, where she graduated in three years (with honors). She is a graduate of the University of Florida Law School and also obtained a Masters Degree in Communications Law, primarily focusing on the First Amendment. Upon earning her law degree, Ms. Terry began working for Searcy Denney Scarola Barnhart & Shipley, P.A.

In two and a half years with the firm, Ms. Terry has devoted most of her time to nursing home, medical malpractice, and automobile negligence cases. She has found enormous satisfaction in representing the elderly.

Ms. Terry is a member of the Board of Directors of the Brain Injury Association of Florida, Inc., a non-profit organization committed to helping individuals and their families deal with traumatic brain injuries. She is helping to develop programs in Palm Beach County designed to meet the brain injured's rehabilitation needs, provide support for their families, and educate the public about the special problems of the brain injured reentering society and being accepted.

Ms. Terry is a member of the Million Dollar Advocates Forum. She is also a member of the Association of Trial Lawyers of America, Academy of Florida Trial Lawyers, the Executive Board of the Young Lawyer's Division of the Palm Beach County Bar Association, the Florida Association of Women Lawyers, and the Junior League of the Palm Beaches.

Before joining the firm, Ms. Terry gained experience by clerking in West Palm Beach and Boca Raton for



Daniel J. Calloway

DANIEL J. CALLOWAY grew up in Chicago, Illinois. He is a former high school teacher with nearly thirty years experience in the investigative and security fields. He studied linguistics on the graduate level at Georgetown University on a Fellowship and subsequently spent nine years with the Central Intelligence Agency, living and travelling in several foreign countries. He speaks, reads and writes fluent Spanish.

Mr. Calloway worked as an independent security consultant and licensed private investigator in Miami, Florida from 1976 to 1984 when he went to work as staff investigator for the law firm of Proenza & White, working primarily for plaintiffs. In 1994 he left the firm and continued as a licensed investigator in Western North Carolina.

In November 1997 he was reunited with attorney David White whom he primarily supports in cases involving personal injury, product liability, wrongful death and medical malpractice. Mr. Calloway is an active member of the National Association of Legal Investigators (NALI) and has extensive contacts throughout the United States, Latin America, the Caribbean and Europe. ■

Terry...Continued

law firms which focused on medical malpractice and complex commercial litigation. She also served as a law clerk for Judge Walter Colbath, Chief Judge for the Fifteenth Judicial Circuit.

Ms. Terry lives in Palm Beach and spends her free time biking, running, scuba diving, and playing tennis and golf. She spends many of her vacations in Jackson Hole, Wyoming where she enjoys climbing the Grand Teton mountains, white water rafting, skiing and snowmobiling. ■



Chris Searcy was presented with the United Cerebral Palsy Business Leadership Award. The award was given to Mr. Searcy for his many years of involvement and support of UCP. As a special surprise, his son, Henry, was part of the evening's festivities. ■



The Policy Planning Committee and Local Council for the Vocational Education and Rehabilitation of Persons with Disabilities presented their 1997 award to **Chris Searcy** and the law firm of Searcy Denney Scarola Barnhart & Shipley, P.A., in appreciation for hiring and providing outstanding support to persons with disabilities. ■

INSURANCE AND YOU:

Special Needs Trust

By Attorney Bill King

In certain situations, a law firm will need to consider whether a Special Needs Trust should be created. Special Needs Trusts for disabled children and adults are permitted and encouraged through the 1993 Omnibus Budget Reconciliation Act and various court decisions. A Special Needs Trust is primarily designed to preserve access to Medicaid services and to preserve the receipt of Social Security (SSI) disability benefits.

In Florida, a client who is eligible for SSI is automatically eligible for Medicaid. The SSI Disability Program, administered by the Social Security Administration, is impacted by considerations of income and assets. That is, under federal law, restrictions on income and resources are considered by the government in determining eligibility for SSI. A Special Needs Trust, which is designed to comply with the requirements of federal law, will allow a client who receives a personal injury award to deposit the proceeds of that award into the Special Needs Trust and preserve his right to Medicaid and SSI disability benefits. The impact can be significant.

By remaining eligible for Medicaid benefits, health care costs can be significantly reduced and the proceeds of a personal injury award can be preserved for uses consistent with the restrictions of the trust. For example, by remaining eligible for Medicaid benefits, a hospital bill may be paid entirely by Medicaid, through assignment, at no immediate cost to the client. Under current case law, in such a situation the hospital would not have the right to claim any "balance" of the bill over and above the amounts paid by Medicaid from the client. It must be recognized, however, that when the personal injury client, who is the beneficiary of the trust, either dies or turns 65, Medicaid must be reimbursed from any proceeds remaining in the trust for payments which have been made.

The rules relating to the creation of a Special Needs Trust and the utilization of proceeds deposited into that trust, are multi-faceted and each case must be evaluated independently. But Special Needs Trusts are an effective way to maximize benefits for an injured victim receiving monies from a personal injury award. ■

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

OF
COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 1

Jacob Belote *Continued from Page One.*

called and he showed up at the hospital within half an hour. During the time it took for the doctor to get there, the labor room nurse had noted several ominous patterns on the fetal heart strip. Indeed, she later testified in deposition that she recognized the patterns as being potentially ominous. The doctor examined Katrina and her baby and he too noted the ominous fetal patterns, and in fact, made marks of reference on the strip itself. He discussed the possibility of a cesarean section with both Monte and Katrina, which is performed when a baby is in fetal distress. The purpose of taking the baby by C-section, rather than putting him through the stress of labor and delivery, is to prevent the baby from suffocating. Some babies just do not have the strength or ability to undergo the stress that labor and delivery cause, and undergoing a prolonged course of labor is enough to asphyxiate them (starve them of oxygen), causing severe brain damage or death.

Dr. Saavedra remained at the hospital for about 40 minutes and then, unbelievably, and without telling Katrina or her husband, he left the hospital. The labor and delivery room nurse who was caring for Katrina later testified that she was quite surprised by his departure and noted it all over the records due to her concern for Katrina and her baby. The nurse's concern, however, was never communicated to Katrina or Monte and they did not learn that their doctor had left until about 45 minutes had passed.

It turns out that Dr. Saavedra had gone to another hospital to deliver another baby. He left instructions (and later testified in the lawsuit) that if there were any changes in Katrina's condition he wanted to be notified. He testified that he would have done a cesarean section to take Katrina's baby and avoid potential asphyxiation had he been notified.

Over the next 90 minutes Katrina's baby went from bad to worse. The fetal heart monitor strip showed a number of ominous developments, which the labor room nurse later admitted after she was sued.

"I told them it was going to be difficult from the beginning and they never once faltered."

As it turns out, the hospital had written policies in place for just such an event. Unfortunately, the nurse failed to follow them and get coverage from another doctor. Instead, she kept trying to reach Dr. Saavedra who was performing surgery on another patient at another hospital. Finally, Dr. Saavedra's partner was reached and roused out of bed in the middle of the night. He realized and appreciated that there was an immediate emergency and, according to his later testimony, drove 100 m.p.h. to the hospital. When he got there, he realized the seriousness of the situation and performed a cesarean section in under two minutes.

Unfortunately, the hospital and the doctor had waited too long, and little Jacob Belote had been severely asphyxiated, causing him a massive brain injury. Today, because of that brain injury, Jacob Belote has severe cerebral palsy and is 100 percent disabled. He will never walk or talk in the way we understand speech. He will be forever confined to a wheelchair and has a severely reduced IQ. Nonetheless, little Jacob is the apple of his parents' eyes. He is a beautiful little boy of four years old who has brought great love to his family, and he is truly an inspiration.

Due to Jacob's severe damage, he will need care for the rest of his life. The need for such care, which is enormously expensive, led Monte and Kristina to hire Greg Barnhart of Searcy Denney Scarola Barnhart & Shipley, P.A. The case was thoroughly investigated and then suit was filed against Dr. Saavedra, Tampa Obstetrics and University Community Hospital. After one and a half years of tough litigation, Greg Barnhart and Bill Norton settled the case one week before trial in Tampa for a present value of \$5,500,000. This settlement included an annuity which will pay to Jacob's guardianship over \$6,687,205 during the course of his life. "It was an honor and a pleasure to represent Katrina, Monte, and little Jacob Belote. I told them it was going to be difficult from the beginning and they never once faltered. Jacob is an inspiration to us all. It was a privilege to help provide the means to take care of him for the rest of his life," said Greg Barnhart. ■

Congratulations To The SDSB&S Team!

SDSBS placed 1st in the Charity Grand Prix Championship Race - Indy Car Division. Team members (from L-R) Jib Bell, David Kelley, Marc Collins (mechanic/engineer), Jackie Hilker, Kevin Walsh and Mark Vesely.

The Charity Grand Prix benefitted United Cerebral Palsy. UCP helps people in our area with developmental disabilities use their abilities so that they can lead independent and productive lives. ■



Taking... *Time to Care*



**IMPROVING
THE QUALITY OF LIFE
IN FLORIDA'S COMMUNITIES**

The statistics are alarming. In fifteen years, Florida will outgrow Texas to become the third most populous state in the nation. Every day in Florida, 450 acres of forest and 410 acres of farmland are bulldozed. This state has the dubious distinction of leading the country in pedestrian fatalities and the number of billboards. At times, the challenges ahead seem overwhelming.

1000 Friends of Florida, a statewide, not-for-profit membership organization, was formed a little over a decade ago to advocate for smarter growth in the Sunshine State. Its vision is of a Florida that has an improved quality of life for its residents and better protects its endangered natural resources while growing in a safer and saner manner. 1000 Friends strives to share with all Floridians the tools needed to keep communities liveable and thriving.

1000 Friends has had many accomplishments over the years, from fighting to protect the fragile environmental resources of the Florida Keys and the Everglades, to developing practical solutions to this state's transportation woes.

Through **Legal Advocacy**, 1000 Friends provides legal and technical assistance to individuals, associations, local governments and others to ensure smarter community planning decisions. It takes on legal cases of statewide significance, and works to uphold Florida's landmark growth management legislation.

Florida is a national leader in funding for **Affordable Housing**, thanks in part to the hard work of 1000 Friends of Florida. By monitoring state legislation and providing technical assistance to communities, 1000 Friends is helping to ensure that

all Floridians will one day have access to decent, safe and affordable housing.

The **Successful Communities Institute** (SCI) nurtures quality-of-life projects that serve as models throughout Florida. With Waterfronts Florida, 1000 Friends is helping to redefine and revitalize small waterfront communities. Its three-year Transportation Reform Initiative has resulted in a citizen participation process that can be used by any community desiring to plan for people instead of just cars. Leadership Training brings together local environmental, social service, economic development and other organizations to reorganize their shared visions and goals.

Through SCI, 1000 Friends played an instrumental role in establishing Florida's nationally-recognized Greenways Program. In 1990, 1000 Friends took this fledgling concept and nurtured it into a statewide network of protected natural areas, providing important wildlife and recreation corridors throughout the state. Florida's "emerald necklace" of protected lands continues to grow to this day, thanks to the foresight of 1000 Friends.

These are but a few of the many offerings of 1000 Friends of Florida. Join 1000 Friends of Florida in its efforts to improve the quality of life in Florida's communities. After all, Florida needs all the Friends it can get! ■

**To become a member or find out more, contact
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Decisions...Decisions...Decisions...

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

JOHN DOE vs. EXTENDED TERM CARE HOSPITAL

John and Jane Doe were a happily married couple. On a cold rainy October evening, John, who was 41 at the time, lost control of his motorcycle and hit a light pole. He was taken to a major medical center for multiple injuries, and was operated on seven times in order to help relieve pressure on his brain and repair other damage. Unfortunately, he remained in a virtually comatose state, and he was later transferred to an extended care hospital. The physicians there told his wife, Jane, that John would never recover, and that he would remain in a coma for the remainder of his life.

Coming from a very strong family background and being very religious, Jane refused to believe that John could not recover. She believed that with good care, a sound structured environment and daily therapies, along with a lot of love, care and attention by her and other members of John's family, that John would awaken from his coma. The long-term care hospital implemented a very aggressive care plan which provided John with continuous occupational, cognitive, physical and speech therapies. Though it initially looked hopeless, John slowly started to respond. Miraculously, he progressed to the point where he would recognize his wife and walk, with assistance, around the hospital. He slowly developed almost all of his activities of daily living. His family visited frequently, and they provided him with a lot of support and care.

Though he had made great progress, John was not fully recovered. He con-

tinued to have extreme difficulty walking any appreciable distance due to the inability to balance caused by his brain damage. He also suffered from an inability to utilize his brain capacity for short-term memory recall. For example, on occasion John would suddenly forget how to use the hospital call buttons.

Head injury patients are prone to becoming disoriented, especially at night, and John was no exception. It was decided to protect John from his propensity to wander at night by placing him in a vest restraint, called a posey, in order to keep him in bed through the night. A posey vest restraint fits around the torso and allows free movement of the arms. It is tied to the frame of the bed securely so that an individual like John cannot get out of the bed. John, however, managed to get out of the posey on several occasions and was sometimes found wandering around his room with ties of the restraint dragging behind him. John actually fell on two of these occasions, so his treating

physician and other hospital staff members knew that the posey restraint system was not adequately keeping John secured. The hospital policies and procedures provided for alternative methods of protecting patients, which included having a "sitter" stay with the patient overnight. The hospital, however, neglected to follow this policy, and the posey vest remained John's only form of security.

Early one morning, three months after his admission to the hospital, John was found on the floor of his room. Part of the posey was loose, and the other was still tied to the bed frame. John was found bleeding extensively from his head, and he told the nurse that he was trying to go to the cafeteria. He was taken to the emergency room for observation where he began to have seizures. He was immediately rushed to another hospital where additional brain surgeries were required. Sadly, John's condition was substantially worsened by this fall. He is now unable to walk and is permanently confined to a wheelchair, he cannot talk, and he is incontinent of bowel and bladder.

John's wife sought legal representation. Six law firms rejected her case before she visited the law offices of Paul Bernardini, in Daytona Beach. Mr. Bernardini referred Jane to attorney Earl Denney of Searcy Denney Scarola Barnhart & Shipley, P.A. As the investigation of John's case continued, scores of medical records were acquired. Still more records were acquired after a lawsuit was filed on John and Jane's behalf. Those records confirmed that there had been numerous instances where John had escaped from his posey and gotten out of his bed and wheelchair. The records confirmed that the posey restraint system was ineffective in keeping John secured.

The case against the hospital was ultimately settled for a confidential sum of seven figures. A "Special Needs Trust" is being set up on John's behalf, which will allow him to continue to receive Medicaid benefits from the State of Florida. Upon *Continued on next page.*

***"Where do
human rights begin?
In small places,
close to home--they are the
world of the individual person:
the neighborhood, the
school...factory, farm, office.
Where every man, woman
and child seeks equal justice,
equal opportunity, equal dignity.
Unless these rights
have meaning there, they have
little meaning anywhere.
Without concerted citizen action
to uphold them close to home,
we shall look in vain
for progress
in the larger world."***

-- Eleanor Roosevelt

John's death, monies remaining in the trust will be repaid to the State of Florida, after which any remaining balance will go to John's family. Mr. Denney sought the assistance of attorney David Lillesand of Miami, Florida, who has established himself as an authority in tailoring Special Needs Trusts on behalf of injured victims such as John. Mr. Lillesand was instrumental in preparing the documents necessary for the plaintiffs to receive court approval of the settlement. Though John is still profoundly damaged, at least he and his family have the financial wherewithal to provide him with an excellent level of care. ■

M. LAVIGNE vs. Kmart, CORP.

On October 10, 1994, Michelle Lavigne was twenty-one years old. She had just moved into her first real home, together with her daughter Gina and her niece. For Michelle, her life was just taking shape, with her work, her new home, and the financial ability to care for her ailing daughter and her niece. Michelle and a friend decided to go shopping at Kmart before picking up their daughters from school.

In the housewares section, Kmart had placed a display which consisted of two 2x8 planks running between two sets of shelves. The planks ran over the heads of the store's patrons at a height of seven to eight feet. On these planks were food dehydrators which were stacked 10 to 12 feet high.

As Michelle Lavigne passed under this storage shelving, a food dehydrator fell from above her, hitting her squarely on top of the head, driving her to her knees.

Michelle Lavigne was later found by her orthopedic surgeon to have suffered chondromalacia to her right knee and needed two arthroscopic surgeries. Michelle still has pain to this day. Kmart denied any wrongdoing.

Cal Warriner tried this case to a jury verdict of \$255,968. ■



SMITH vs. DEFENDANT DRIVER

Mr. Smith suffered a heart attack involving the anterior wall of the heart in May 1993. He underwent a cardiac catheterization, and it was determined that he needed a three-way bypass. Surgery was successfully performed, and after a brief recuperative period Mr. Smith was able to return to a normal lifestyle, which included working as a heavy equipment operator. He was also able to return to his lifelong hobby of piloting small aircraft for both pleasure and for missionary work in the Caribbean Islands. He was able to maintain his FAA license because his doctors had been able to prevent all but minimal heart damage.

In the early afternoon of December 3, 1995, Mr. Smith and his wife were driving to lunch following Sunday church services. They were traveling southbound along Congress Avenue in the center lane in Boynton Beach, Florida, when their vehicle was struck on the passenger side by another vehicle attempting to exit a parking lot. Within moments following the crash, Mr. Smith suffered a second heart attack requiring emergency transportation to a local hospital.

Upon arrival, Mr. Smith underwent another cardiac catheterization. An emergency angioplasty was performed where two stents were placed in the artery to keep it open and keep blood flowing. He tolerated the operation well and was discharged within days. Subsequently, he was diagnosed with akinesia of the inferior wall of the left ventricle, indicative of an area which had been scarred by a lack of oxygen to the heart muscle, thereby decreasing the ability of the heart to pump blood. Additionally, he was determined to have an interstitial pulmonary edema. As a result, Mr. Smith was unable to maintain his FAA license and his ability to pilot aircraft came to an end. Chronic fatigue from his condition also led to his retirement three to five years ahead of his anticipated retirement date.

The insurers for the at-fault driver vigorously defended the case, asserting that Mr. Smith's damages were preexisting, or in the alternative, were not causally related to the collision. However, Mr. Smith's treating cardiologist and a professor of cardiology from the University of Miami both attributed the heart attack and resultant symptomology directly to the automobile accident of December 1995.

Despite the asserted defenses, Greg Barnhart settled Mr. and Mrs. Smith's claim against the defendant driver for a total of \$250,000 at a mediation conference approximately two weeks prior to the scheduled trial date. ■

Decisions...Continued on Page Eight.

Decisions...*Continued from Page Seven.*

**RIGHTS OF THE DISABLED;
PLACES OF
PUBLIC ACCOMMODATION**

The firm recently settled a claim brought under the Florida Civil Rights Act for a disabled Viet Nam war veteran. R.S. served his country with great distinction during the Viet Nam war, suffering multiple complications arising from wounds sustained in battle and his exposure to Agent Orange. As a result of these disabilities, R.S. is confined to a wheelchair. He clearly experienced hell on earth in the jungles of Viet Nam, but neither his current physical condition, nor his past experiences has dampened his enthusiasm for life. His wonderful outlook on life affected every member of this firm with whom he came into contact.

In 1994, R.S. called a local movie theater to determine whether it was wheelchair accessible so that he could attempt to enjoy a film like any of us. He was advised that the theater was wheelchair accessible, but when arriving at the theater, he and his companion found out that it was not accessible to the handicapped. Entry to the theater was precluded by the existence of a steep staircase at the entrance to the theater. R.S. rejected offers by attendants to carry him and his wheelchair into the theater. Such an offer posed a great risk to R.S. because he suffered from brittle bone disease and because any such effort would be a blow to his dignity. He was then allowed access into the theater only through an emergency exit in the loading dock area. Unfortunately, he sustained an injury to his neck when the wheelchair had to be lifted over a curb. Once inside, though few others were in the theater, he was instructed that he would have to leave his wheelchair and sit in one of the seats. The theater was not equipped with wheelchair seating. Weeks later, R.S. was told by the same theater that he could see another film and

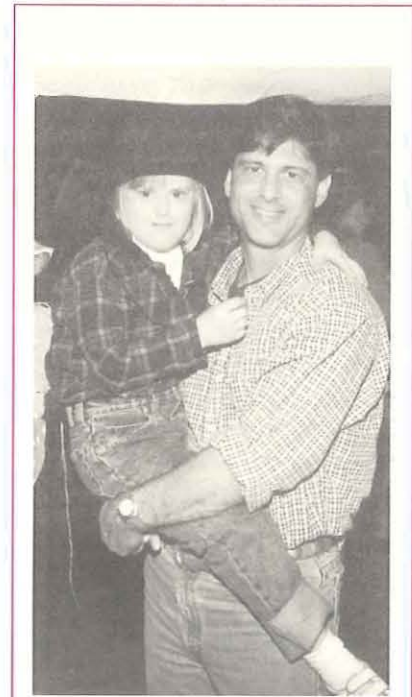
gain access to the theater through an emergency exit which emptied into the interior of the mall. After the late show was over, other patrons were able to exit the theater through the normal entrance, but R.S. had to leave through the emergency exit which led into the interior of the mall. Unfortunately, the mall had closed by that time and R.S. and his companion could not exit the mall until they were let out by guards sometime later through another exit of the mall. R.S. had to be wheeled completely around the mall in order to get to his companion's vehicle. After a third incident at the theater, R.S. came to our firm to see if the abuse of his rights could be vindicated.

***"Just as no one
could question
his courage under fire,
no one could
question his
loss of dignity."***

The attorneys handling the case recognized that the Americans With Disabilities Act did not provide relief for compensatory damages and sought relief under the Florida Civil Rights Act. The attorneys argued that the accessibility guidelines of the Americans With Disabilities Act were incorporated into Florida law under the provisions of the Florida Civil Rights Act and the Florida Americans With Disabilities Accessibility Implementation Act. Under this unique interpretation, the firm's attorneys argued that places of public accommodation, including movie theaters, had to take steps after January 26, 1992, to remove any architectural barriers (where such removal was readily achievable) in order to allow uninhibited access by wheelchair bound persons to these places of public accommodation. The attorneys argued that the theater's failure to install ramps leading into the theater, its failure to install wheel-

chair seating inside the theater, and its failure to modify its bathrooms to allow accessibility by wheelchair-bound persons violated the provisions of the Florida Civil Rights Act. The defendant theater argued that the provisions of the Implementation Act did not apply because of an exemption which existed under the Act for buildings built before October 1, 1993. The issue of law was argued before the court, but the case was settled prior to resolution of the issue by the court. The terms of the settlement were confidential.

Earl Denney and Bill King considered it an honor and a privilege to represent R.S. Just as no one could question his courage under fire, no one could question his loss of dignity when denied the simple pleasure of a movie. ■



Lance Block, pictured with his daughter Anna, was elected President of the Board of Directors of The Arc (The Association for Retarded Citizens of Palm Beach County). ■

Decisions...Continued from Page Eight.

**MR. B vs.
ANESTHESIOLOGIST**

Mr. B, age 65, had a history of serious cardiovascular difficulties and underwent a triple bypass in 1979. In April 1994, he began experiencing severe chest pains, went to the emergency room, and was hospitalized at a local hospital. A heart catheterization study indicated that he had three serious blockages. He was transferred to a more specialized medical facility where he was scheduled for another bypass surgery. The surgery took six hours and the family was advised that he would be able to receive visitors in the Intensive Care Unit a few hours later. The family went home to rest and received a devastating phone call that they will never forget -- Mr. B had died.

How could Mr. B have died when he did so well in the surgery? Mr. B had suddenly lost his blood pressure in the Intensive Care Unit post-surgery. No one knew what happened until the surgeon could not revive Mr. B with CPR postoperatively. The surgeon opened up Mr. B's chest to look at his heart. He found the heart to be hypovolemic and completely depleted of blood. Blood was spilling over from his right chest and into his mediastinum. The pleura was opened and there was a massive apical hematoma under tension. Two to three units of blood poured out of the hematoma when it was explored. In summary, Mr. B bled to death through a hole in his right subclavian artery.

The primary defendant in this case was the anesthesiologist. Preoperatively, the

anesthesiologist lacerated the subclavian artery in the upper right portion of the chest near the clavicle during an attempt to insert a Swan Ganz catheter. While it is not medical malpractice to lacerate the artery with a catheter, experts say that it is malpractice for an anesthesiologist to fail to recognize that the artery was lacerated with the catheter so the damage could be treated appropriately.

Ultimately, the anesthesiologist's defense was that he used an introducer needle and guide wire and never attempted to place a Swan Ganz catheter into Mr. B. If that were true, arguably the anesthesiologist did not commit medical malpractice. Yet, just before trial, lawyers for the anesthesiologist settled the case with Earl Denney and Karen Terry for \$505,000. ■

**OSBORNE vs.
TAMPA GENERAL HOSPITAL**

"Just under the wire" was the theme in a recent case which settled for \$1,000,000.

Cal Warriner received a call one year ago from a referral attorney in Bradenton, Florida who represented a widow and two minor sons. Kenny Osborne, their husband and father, had been ejected from his work truck in a single car accident. Tampa General Hospital's air ambulance responded. Triage revealed the patient to have a possible head injury and decreased breath sounds bilaterally. The patient began experiencing respiratory distress and signs of hypoxia. The paramedics correctly determined intubation (through rapid sequence induction) was

necessary. Interestingly, the flight team had only recently implemented the use of paralytic medication to aid in difficult intubation. Kenny Osborne was intentionally and temporarily paralyzed utilizing a drug called succinylcholine chloride. According to the flight record, the patient was successfully intubated on the second attempt. He was placed in the helicopter and during the fifteen minute flight his vital signs deteriorated and he coded. Upon arrival at Tampa General only minimal attempts at resuscitation were attempted and the patient was pronounced dead.

The anesthesiology record indicated that the endotracheal tube had been incorrectly placed in the esophagus. The defendants claimed the patient had been correctly intubated, however, the tube had become dislodged during patient transfer from the chopper to the ER. In support they pointed to pulse oxygenation values during flight which, if correct, would indicate normal blood oxygenation readings, hence proper intubation. Further, one paramedic testified he observed a resident pull on the endotracheal tube while transferring the patient to the ER stretcher.

Discovery revealed several interesting facts. The record upon which the paramedics relied was created after the fact from notes made on adhesive tape stuck to one paramedic's arm. Further, written policy had been violated when the paramedics allowed a friend from Hillsborough EMS to ride along and participate in the original intubation attempt. His participation was the subject of debate since the record was entirely silent as to his presence. ■

Greg Barnhart

was recently asked to speak at the investiture of Robert D. McAliley, a Judge of Compensation Claims for District I North. ■



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QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 1

Voluntary Disclosure Aids Large Settlement

The 52-year-old comatose victim of a car/truck intersection collision, along with members of her family, will share the proceeds of a nearly \$18 million dollar settlement which was negotiated with the truck owner's insurance carrier shortly before the case was scheduled to go to trial. Attorneys Chris Searcy, Bill King and Jack Scarola teamed together to achieve one of the State's largest personal injury recoveries for an adult crash survivor.

The litigation strategy implemented in this case included a complete voluntary disclosure of all relevant documents, including expert witness reports from physicians, accident reconstructionists, rehabilitation and life care specialists and economists. By avoiding formal discovery procedures, the normal delays associated with major lawsuits were avoided, the pre-trial preparation period was substantially reduced, and the parties were able to begin meaningful negotiations considerably earlier than would otherwise have been possible. The time from case filing to written confirmation of the settlement agreement was 11 months. ■

Decisions...Continued from Page Nine.

ence and participation. The ride-along paramedic denied any participation other than observation. Fortunately, one of the flight team members had a specific recollection that the "buddy rider" had attempted the first intubation without success and was bagging the patient during the flight.

A nationally renowned trauma surgeon from the University of Chicago testified that the hand-recorded pulse oxygenation values were physiologically impossible in light of the other machine-recorded vital signs. Stopping short of calling the values fraudulent, he did say the level of suspicion regarding their validity caused him grave concern. To his credit, the attending anesthesiologist who participated in the emergency room code effort specifically recalled no one touching the endotracheal tube while the patient was moved.

As a public hospital, Tampa General enjoys sovereign immunity, which limits its damage exposure in most cases. To make things worse, the plaintiff learned at mediation that Tampa General was becoming private, so there would no longer be any legal entity left to pay any judgment or claims bill obtained by the plaintiff. Investigation revealed a pool of funds had been set aside to satisfy contingent liabilities, however, when those funds were exhausted there would be no more.

Cal Warriner was able to negotiate a \$1,000,000 settlement for Kenny Osborne's wife and two sons. ■

ALZHEIMER'S PATIENT vs. NURSING HOME

Florida law guarantees certain rights to nursing home patients. Under the Nursing Home Residents' Bill of Rights Act, nursing homes must treat residents with dignity, courtesy and respect. They must also extend adequate health care to residents. The Act allows an action for damages caused by any such violations.

Our firm recently represented the family of an 80 year-old Alzheimer's patient. His family put its trust in a local nursing home to care for him. He was a difficult patient because of his Alzheimer's disease, and he would occasionally suffer bouts of aggressive behavior. The nursing home would counter this behavior by restraining him and overdosing him with medications. He was also denied adequate nutrition, hydration and proper skin care. The patient developed severe ulcers on his low back and he eventually died.

Karen Terry brought suit on behalf of the patient's family against the nursing home for its violations of the Act. In discovery, the nursing home claimed to have no records concerning the patient and even claimed that the family had stolen those records. When the nursing home did turn up limited records, they seemed to corroborate the obvious mistreatment received by the patient. Karen Terry settled the case for \$400,000. ■

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Tort Reform *Continued from Page One.*

According to the Florida Office of State Courts Administrator, 50% of civil cases are domestic in nature (divorce, child custody, adoption, etc.), 22.8% are commercial litigation (lawsuits between business), 18.8% are probate related, while tort cases related to personal injury are merely 8.4% of all civil cases. These statistics make a strong case for commercial litigation reform, domestic litigation reform, and probate reform, but not tort reform of our civil justice system.

Legislation currently pending in Tallahassee includes provisions that should concern every Floridian. They include:

Vicarious liability. Some proposals seek to eliminate this part of the law which holds nursing home corporations, day care providers and hospitals accountable for the on-the-job actions of their employees. This would make these care providers unaccountable to victims and the public when they hire people with violent criminal records and put them in a position to assault, molest or neglect our vulnerable family members.

Current law holds rental car companies accountable for accident damages when they rent cars to drivers with no insurance, or not enough insurance to cover accident damages that they cause. If their lobbyists are successful, rental car companies will be off the hook and the public and innocent victims will have to pay.

Statute of repose. A "statute of repose" would make manufacturers immune from lawsuits for defective products that are more than 12 years old. Such product liability lawsuits represent only one half of 1% of civil lawsuits in Florida. It's hard to think of a person or business in Florida that would benefit from such a limitation, but easy to see why out-of-state manufacturers are spending millions of dollars on lobbyists and deceptive ad campaigns to support it. This so-called "reform" guarantees them more profits and society less protection. Today, many expensive products that we use have a

useful life beyond 12 years, including automobiles and commercial aircraft. If a manufacturer knowingly makes a defective product, and successfully conceals the defect for 12 years, why should that manufacturer be immune from liability?

Punitive damages. Another dangerous proposal makes corporations immune from having to pay punitive damages in case they have, at any time in the past, been assessed punitive

damages in a similar case. This proposal is the civil law equivalent of saying that once you have been convicted and serve prison time for a crime, that you will never have to serve prison time again for repeating that particular crime.

Attorney Contingency Fees. Another proposal is to severely restrict the amount of money that an injured person's attorney can be paid through contingency fees. Most people could not afford to hire an attorney if they were required to pay them on an hourly basis. The payment alternative that makes quality legal representation affordable to the average person is contingency fees, or payment of a portion of the amount recovered. Legislation currently pending would limit contingency fees, making it difficult, if not impossible, for injured people of modest means to afford to hire an attorney. Meanwhile, there

is no proposed limit as to how much big corporations can pay their attorneys. This proposal is unilateral legal disarmament of ordinary citizens.

The primary focus of the laws of our state should be to safeguard the health and safety of all Floridians. But deep-pocketed out-of-state interests are trying to get the legislature to put their profits ahead of your family's safety.

Please join us in calling on your state legislator to protect your family's safety by preserving the laws that require corporate accountability.

You can also call 1-888-LAWS-256 (1-888-529-7256) for more information on how these current legislative proposals can adversely impact your family. ■

**"Who's
looking out
for the safety
of our
families?"**



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Jack Scarola presented a \$5,000 check to Robert Willis, fund chairman of "People Encouraging People," a scholarship fund established as a result of the settlement of a class action discrimination lawsuit against Caulkins Indiantown Citrus Company. This fund helps meet the educational needs of former class members and their families. Access to higher education and technical training is intended to enable scholarship recipients to escape the cycle of poverty facing many of these families. ■

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Taking....Time to Care

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