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

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 2

2139
PALM BEACH LAKES BLVD.
WEST PALM BEACH
FLORIDA 33409

800-780-8607
(561) 686-6300
FAX: (561) 478-0754

P.O. DRAWER 3626
WEST PALM BEACH
FLORIDA 33402

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.

Legislature Approves Funds For Injured Infant

On September 13, 1990, Melanie Alonso brought her otherwise healthy and normal two-week-old infant, Jeanette, to Jackson Memorial Hospital in Miami, Florida because of a recent onset of flu-like symptoms. The infant was admitted to the pediatric unit to undergo tests. Over several days the baby's condition generally worsened. In fact, she started experiencing seizure-like activity (abnormal jerking motions of her legs) and respiratory distress.

The intern responsible for Jeanette's care on the evening of September 17 was Dr. Noelle Ruddock. She had been at Jackson Memorial less than three months. Dr. Ruddock, a citizen of Jamaica and a graduate from the University of the West Indies Faculty of Medicine in the Bahamas, was not, nor was she required to be, licensed in Florida at the time she treated Jeanette Alonso.

The Alonso Family: Frank Jr., Melanie, Jeanette and Frank Sr.

Near the beginning of Dr. Ruddock's shift on September 17, a nurse noticed and reported to her that Jeanette was having blood-tinged "burps." Dr. Ruddock theorized the baby may have been burping up blood swallowed at birth, or that she had either an irritated stomach lining or a sore in her mouth. Later, a nurse also noted that Jeannette had an abnormally low body temperature of 95.8. The nurse put a blanket on the baby and moved her to a warming bed. ***Continued on Page Four.***

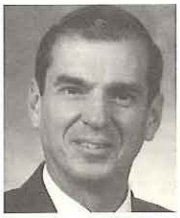
Toddler Finally Diagnosed On Third ER Visit

A.J. Mathis was four months old in September of 1994 when he was taken by his parents to the ER Department at Martin Memorial Medical Center on three consecutive days. On September 19, they reported that he had not had a bowel movement in three days, he had vomited and appeared to be having significant abdominal pain. A diagnosis of constipation was made by the ER physician and he was sent home.

On September 20, his parents felt he was worse and took him to the ER again. He had been vomiting consistently over the prior 24 hours. A diagnosis of a stomach infection (gastroenteritis) was made and he was again sent home.

On September 21, the family took A.J. back to the ER for a third time. He was noted to have diarrhea tinged with blood, ***Continued on Page Three.***

The Meeting Corner:

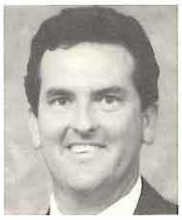


William B. King

William B. King joined our firm in 1996 from the law firm of Moyle Flanagan Katz Fitzgerald and Sheehan, where he was a partner. His practice areas are commercial litigation, personal injury litigation, and criminal law.

The holder of an undergraduate degree from Duke University, Mr. King received his law degree from Rutgers University. He served as an editor of the Rutgers University Law Review and as law clerk to the Honorable C. Clyde Atkins, U.S. District Court in Miami from 1973 to 1975. He also served as Assistant State Attorney in Palm Beach County from 1975 to 1980. He was an Assistant United States Attorney for the Middle District of Florida from 1980 to 1983 where he served as Chief of the Narcotics Section. Mr. King practiced law in West Palm Beach with Moyle Flanagan et al. from 1983 to 1996.

William King is a member of the Florida Bar and the New Jersey Bar. He has been active in the coaching of youth sports for over fifteen years and has served as a member of the Board of Directors of the South Florida Science Museum. ■



Steve M. Smith

Steve M. Smith grew up in Southeast Texas and graduated from Texas A & M University with a degree in Business Management in 1979. He relocated to Florida and began his career working with Allstate Insurance Company as a claims representative. Over a career of twelve years, he advanced within the claims department of Allstate, ultimately obtaining the position of Property Claim Manager for Palm Beach County. He subsequently took on the position of Staff Claim Analyst, the highest claim position available.

Mr. Smith ended his career in January 1992, with Allstate, and accepted the position of Paralegal/Investigator with Searcy Denney Scarola Barnhart & Shipley, P.A. Steve currently works primarily with F. Gregory Barnhart and is active in the investigation and trial preparation of medical malpractice, auto liability, premise liability, product liability and wrongful death claims. He is a member of the Inter-Industry Council on Automobile Collision Repair and the Academy of Florida Trial Lawyers.

Mr. Smith lives in Palm Beach Gardens and has continuing participation and involvement with the March of Dimes, United Cerebral Palsy and Communities in Schools. He enjoys spending his free time with his wife Tracy and their seven-month old son, Ryan. ■

Ellen F. Brandt

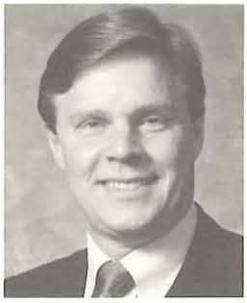
Ellen F. Brandt attended Miami University in Oxford, Ohio, and received an A.A. and B.S. in Special Education in 1975. After teaching for ten years, Ms. Brandt began her legal career by attending the University of Toledo Law School where she was awarded an Alumni Scholarship for academic achievement.

Upon graduation with honors, Ms. Brandt was admitted to the Ohio Bar in 1992 and opened her own law firm with two fellow law school graduates. She enjoyed a successful practice there prior to moving to Florida in 1996. Her practice in Ohio included business and real estate law, employment discrimination, civil and criminal litigation. While practicing in Ohio, Ms. Brandt was a member of the American Bar Association, the Ohio Bar Association, the Defiance and Williams County Bar Associations, Business and Professional Women's Association, a member of the Defiance County Residential Housing Board, Ohio Association of Trial Lawyers and Council for Exceptional Children.

Prior to her employment with Searcy Denney Scarola Barnhart & Shipley, P.A., Ms. Brandt was the Administrator of Sandpiper Cluster, an eighteen bed residential facility for mentally disabled persons, and an Administrator of a Skills Training Program for thirty disabled persons.

Ms. Brandt began working for Searcy Denney Scarola Barnhart & Shipley, PA. in January 1998 and works primarily with Jack Scarola, assisting him in his extensive commercial litigation practice, both in state and federal court.

Ms. Brandt continues her affiliation with the American Bar Association and the Ohio Bar Association, and looks forward to her participation in the Florida Bar and the Palm Beach County Bar Association as she passed the Florida Bar exam in February 1998. ■



Chris Searcy has been appointed by the Florida Bar as Chair of the Committee on Professionalism. Additionally, he will serve on two other committees: Judicial Evaluation and Civil Procedure Rules. ■

Searcy Denney Scarola Barnhart & Shipley, P.A. was selected by the Traffic Safety Committee of the Palm Beaches to receive the 1998 Distinguished Corporate Award. ■

Chris Searcy receiving the award for the firm.

Toddler Finally Diagnosed On Third ER Visit

(Continued from Page One.)

would not eat and was very lethargic. Twelve hours after arriving at the ER, x-rays were done which showed a potential obstruction in A.J.'s bowels. It was then decided that he needed a pediatric surgical consult, which would have to be done at St. Mary's Medical Center in West Palm Beach since no such physician is on staff at Martin Memorial Medical Center. Four hours after that decision was made, A.J. was finally transferred to St. Mary's.

A.J. was diagnosed with a bowel obstruction called intussusception. With this problem, a portion of small intestine folds back over itself which causes blood flow to dramatically decrease or cease, causing the death of the surrounding tissue. Immediate surgery was performed on A.J. A subsequent surgery was also necessary, resulting in the loss of two thirds of A.J.'s small intestine.

As a result of this bowel loss, A.J. was unable to properly assimilate food orally and had to be fed by means of a tube affixed to his stomach. He has gradually improved to the point where the majority of his food can be eaten normally and only small nutritional supplements need to be tube fed.

As a result of his initial surgeries and bowel loss, A.J. experienced many infections and illnesses, requiring additional hospitalizations. As he has grown older, those have become much less frequent.

For the rest of his life, A.J. will have "short bowel syndrome." He will need vitamin supplements and will have multiple daily soft stools. Despite his disability, A.J. is a happy, well-adjusted four year old who will begin his pre-K schooling this fall.

Chris Speed negotiated a settlement of $2,050,000 with insurance adjusters representing the hospital and the three emergency room physicians. A significant portion of A.J.'s net proceeds will purchase an annuity which will disburse a lifetime stream of income for him. ■

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

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 2

Legislature Approves Funds For Injured Infant *(Continued from Page One.)*

When Dr. Ruddock was informed of this later, she felt it was because the rooms on the ward were kept cold at night causing this low tempertature. In summary, she failed to realize the significant connection between these symptoms and the seizures that Dr. Ruddock had herself witnessed and charted earlier that night.

A day before September 17, Jeanette's sodium level began to plummet to what Dr. Ruddock later admitted was an "abnormally low level." She attributed Jeanette's low sodium, or hyponatremia, to Syndrome of Inappropriate Antidiuretic Hormone Secretion (SIADH). Dr. Ruddock erroneously concluded that Jeanette was not actually low on sodium, but was retaining water which diluted her existing sodium level. Dr. Ruddock mistakenly elected not to add sodium via an IV drip, but rather restricted Jeanette's fluid intake. She left instructions that Jeanette was to be given no oral fluids and she reduced Jeanette's IV drip rate by one third. Unfortunately Jeanette's low sodium level remained critically low.

Dr. Ruddock's orders, which were based on an incorrect diagnosis, led to the continuation of seizures and respiratory arrest. By the time the error was discovered, Jeanette's brain was irreversibly damaged, and she was transferred to the pediatric intensive care (PICU). The admitting physician there noted that the seizures were likely secondary to decreased sodium, a condition that could have been remedied with a $2 bag of sodium chloride had it been diagnosed properly and timely.

Jeanette Alonso is now profoundly mentally handicapped. She is non-ambulatory and she has limited vision. Her hearing, however, is largely intact and she responds to familiar voices by smiling.

In September 1997, attorney David Kelley, pursuant to an agreement with Jackson Memorial Hospital, filed a claims bill in the Florida Legislature. Due to a State law placing a $200,000 limit on injury claims against government-owned hospitals, this formal legislative appeal, called a "claims bill," was required.

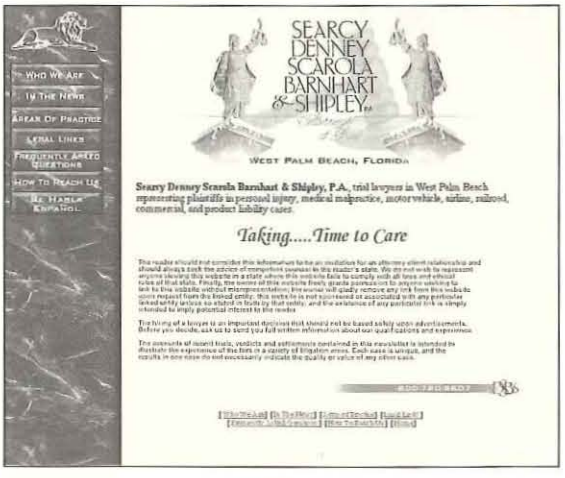
At the Special Master's hearing, the attorney representing the Dade County Public Health Trust, which operates Jackson Memorial Hospital, summed up the hospital's position in one word -- "indefensible." He said after the facts had been investigated through the litigation process, the Public Health Trust assumed responsibility for the catastrophic injuries to Jeanette Alonso caused by the employees of the hospital. Due to the devastating damages in this case, the claims bill received full support in the Florida Senate, which voted 39 to 0 to pass the bill. Later, the House agreed by a vote of 91 to 19 to pass the bill as well. Governor Chiles allowed the bill to become law on April 14, 1998, thus authorizing a multi-million dollar settlement. This enabled Jeanette Alonso to receive the necessary funds for care over her lifetime. ■

Visit Our Website At:

http://www.Searcylaw.com

Information about
Searcy Denney Scarola Barnhart & Shipley, P.A.,
and breaking legal news is only a
keystroke away on our new website.
Your feedback and recommendations
for future articles
will be most appreciated.

■



Taking... *Time to Care*

The Arc

CELEBRATING 40 YEARS OF SERVICE TO THE COMMUNITY

Although constituting an estimated three percent of the nation's population, people with developmental disabilities were all but invisible to the general public as recently as the 1950s. At its inception in 1958, The Association for Retarded Citizens of Palm Beach County's role was one of advocacy and support for some of the community-based services which were just beginning for this very special population. When it became apparent that necessary programs were unavailable in the community, The Arc's role expanded to include direct services. The Arc now operates a host of direct and indirect services for children and adults with developmental disabilities and their families.

The Association changed its name to The Arc in 1996 to more appropriately reflect the depth of services provided to a broad spectrum of infants, children and adults and their families.

Now in its fortieth year, The Arc continues to expand its programs to meet the growing needs of individuals in Palm Beach County. This year The Arc instituted a Supported Living Program which helps adults with developmental disabilities lead more independent lives. Through the assistance of a "coach," participants locate apartments and suitable roommates, establish bank accounts, and develop other areas of their lives so they may live on their own in the community. The coach offers continual support to help the adults manage the activities and trials of everyday life.

Another breakthrough this year for adults with developmental disabilities was the establishment of The Arc's Community Inclusion Program. This program, the first of its kind in the country, provides opportunities for adults to actively participate in programs and educational activities not traditionally open to them. The goal for each person is to explore new areas of interest and become more independent in the community. The Arc's two community facilitators interview participants to find out particular areas of interest. The facilitator then designs an individualized plan to reach specific goals. For example, a client may express that she likes children, would like to lose weight, is interested in learning how to read and wants to work at a store someday. The client's proposed action plan could include taking a child care certification course, receiving a volunteer or paid position at a day care center, joining a weight loss center and attending a literacy course while learning employment-related skills.

The Arc has also received approval through the Palm Beach County School System to establish Potentials Charter School. Opening in fall 1998, Potentials will be the first charter school in the state specifically designed for children who are severely developmentally disabled and medically involved. Children ages three to ten will benefit from a comprehensive educational program designed in concert with appropriate therapeutic services. Potentials will enroll fifteen children at The Arc's Riviera Beach Courim Center for the upcoming school year. Over the next three years, Potentials plans to expand the school to enroll 30 students at two sites.

The Arc has grown tremendously over the last forty years and now operates twenty-three facilities in Palm Beach County and annually serves the needs of over 1,000 people. The Arc is proud of the services it provides for individuals with special needs, but acknowledges the many barriers that still need to be overcome.

If you are interested in learning more about The Arc or would like to volunteer, please call 561-842-3213. ■

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

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

BABY DOE vs. HOSPITAL

Ms. Doe enjoyed an uneventful pregnancy while expecting her second child. Near the end of her pregnancy she had been convinced by her obstetrician to attempt a vaginal delivery, despite the fact that her first labor never really materialized, resulting in her first child growing to ten pounds by the time of delivery.

When it came time to deliver Ms. Doe's second baby, her obstetrician induced labor, but then left Ms. Doe in the care of the nursing staff. The doctor checked on Ms. Doe only once during the day, and determined that all was well. Unfortunately, shortly after the doctor's visit, Ms. Doe experienced a bright red bloody show concurrent with a fairly drastic rise in the fetus's heart rate. This pattern continued for several hours without note or concern by the nursing staff and no telephone report to the doctor, who was still absent. Later in the afternoon, additional bloody show was discovered and the fetal heart tones became significantly disturbing. The doctor was finally called in, yet she chose to continue to administer Pitocin (the drug used to induce labor) and encourage the mother to push. Eventually, the baby ran out of reserves and he crashed intrauterine. An emergency c-section was ordered by the obstetrician, but neither an anesthesiologist or assistant surgeon was available for twenty minutes, further delaying the delivery. Baby Doe was eventually delivered in a severely compromised state. It was also discovered that the mother's uterus had ruptured during labor.

Attorney Cal Warriner was able to demonstrate that the decision to attempt vaginal delivery in light of the prior history and present circumstances was ill-fated. Furthermore, the level of monitoring once that course was chosen was woefully inadequate. The bloody show and increase in fetal heart rate should have caused the nursing staff to cease Pitocin administration and call the doctor immediately. Had the doctor been aware of those findings, she would not have chosen to encourage Ms. Doe to push for over an hour, ultimately leading to the rupture in her uterus.

Fortunately, Baby Doe suffered virtually no cognitive deficits. Motor skills, however, were not spared. Although ambulatory, Baby Doe will require significant levels of physical and occupational therapy since his gait and coordination are significantly impaired. Mr. Warriner was able to successfully settle this case for $3,500,000. ■

"Knowledge comes, but wisdom lingers. It may not be difficult to store up in the mind a vast quantity of facts within a comparatively short time, but the ability to form judgments requires the severe discipline of hard work, and the tempering heat of experience and maturity."

-- Calvin Coolidge

JOHN DOE vs. MEDICAL CENTER

Mr. Doe, a forty two-year-old male, presented to the emergency room at a local Medical Center at approximately 3:00 a.m. on November 12, 1995. He complained of rapidly increasing severe throat pain and an inability to swallow. An initial assessment was done by the nursing staff. Upon examination by the emergency room physician, the record reflects that he noted "beefy red tonsils." Mr. Doe was administered an injection of antibiotics and was observed over the next twenty minutes in case he experienced an adverse reaction to the antibiotics. He was then discharged home.

Mr. & Mrs. Doe returned to their home and Mr. Doe continued to complain of pain and the inability to swallow. His wife retired to bed for the night thinking that his symptoms would diminish overnight. She was awakened approximately two hours later by Mr. Doe who was gasping for air and indicating he could not breathe. He collapsed on the bed. Emergency rescue personnel summoned to the scene immediately intubated Mr. Doe and began cardiopulmonary resuscitation. He was transported back to the Medical Center where he was pronounced deceased at approximately 6:00 a.m. An autopsy revealed the presence of Hemophilus influenzae, causative of epiglottitis, a life-threatening condition.

Mrs. Doe, as Personal Representative of the Estate of Mr. Doe, contended that the emergency room physician and the nurses at the Medical Center failed to recognize the signs and symptoms of acute epiglottitis during his first visit to the emergency room. Despite a vigorous defense by the hospital and the emergency room physician, Greg Barnhart was able to settle the case at mediation for $350,000. ■

WESTLEY
vs.
G.M.P. INDUSTRIES, INC.

In the early morning hours of February 26, 1996, Thomas Westley was traveling south on Interstate 95 in St. Lucie County en route to his employment as a school bus driver for the St. Lucie County School Board. Prior to employment with the St. Lucie School Board, Mr. Westley had driven school buses for several years in Baltimore, Maryland, and was a retired Army veteran with several years of experience driving large vehicles. He had always maintained an exemplary driving record throughout his military and civilian careers and was the recipient of numerous safety awareness awards.

As he traveled in the right lane of southbound I-95, a well-drilling truck owned by G.M.P. Industries, Inc. attempted to merge into the right lane from the right shoulder or breakdown lane. The truck was loaded with cinder blocks and had an estimated weight in excess of seven and one half tons. As the truck entered his lane of travel at a very slow rate of acceleration, Mr. Westley's vehicle slammed into the rear of the truck causing extensive damage to Mr. Westley's vehicle and resulting in multiple fractures of his tibia, fibula, femur, hip and wrist. His life was saved only because he was properly seat belted in conjunction with the deployment of the air bags. Despite numerous operations to repair the fractures, Mr. Westley experienced a non-union of the mid shaft femoral fracture, leaving him non-ambulatory for approximately eighteen months after the accident. The failure of the bone to heal necessitated an additional surgery to insert an intermedullary rod into the femur. After months of therapy, Mr. Westley walks with difficulty, and is permanently disabled.

The major dispute in Mr Westley's case against the defendant owner and driver, was the allegation of the defendant that his rig was properly marked, well lighted, and that he had properly signaled entry onto the roadway. The defense alleged that Mr. Westley himself was responsible for causing the accident by failing to maintain a proper lookout for traffic ahead and failing to control his vehicle. Despite the contentions of comparative negligence, Greg Barnhart was able to successfully negotiate a settlement in the amount of $400,000 just prior to the commencement of trial. ■

LAWTON CHILES
GOVERNOR

STATE OF FLORIDA

Office of the Governor

THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001

May 18, 1998

Honorable Sandra Mortham
Secretary of State
PL 02, The Capitol
Tallahassee, Florida 32399

Dear Secretary Mortham:

By the authority vested in me as Governor of Florida, under the provisions of Article III, Section 8, of the Constitution of Florida, I do hereby withhold my approval of and transmit to you with my objections, Committee Substitute for Senate Bill 874, enacted during the 30th Session of the Legislature of Florida convened under the Constitution of 1968, during the Regular Session of 1998, and entitled:

An act relating to civil actions; . . . .

Our system of civil justice has two primary purposes: to redress wrongs, and to correct harmful behavior for the protection of our citizens. Our civil courts system awards damages to injured persons who are victims of negligence or other unlawful conduct. It is fair that the damages are paid by wrongdoers, and we expect those who are responsible for harming innocent victims to modify their future actions to avoid harmful consequences.

The innocent victims of defective products, or negligent or reckless actions, suffer a variety of losses. Among these losses are physical and mental health, which may deprive a victim of the ability to earn a living, and victims may require extensive medical rehabilitation. Our civil justice system addresses the rights and needs of victims of such societal harms as drunk driving, abuse, and neglect. The civil courts system also addresses wrongs that are not of a physical nature, including racial discrimination, age or gender discrimination, and other violations of our constitutional or civil rights.

Much of the debate over civil justice reform has portrayed the battle simply as trial lawyers pitted against the economic survival of struggling small businesses. To portray the issues in this way is hopelessly misleading. While I recognize that our litigation system has an impact on the economy, my objections to this bill are principally economic, as well, but also are grounded on principles of fundamental fairness and protection of our citizens.

I recognize that products manufacturers and service providers often pass on to consumers the costs of liability insurance and damage awards, which result in higher consumer costs. But our system also expects those who cause injury to others to be primarily responsible for compensating those who are injured by their defective products or harmful actions. If victims do not receive adequate compensation for their injuries by wrongdoers, Floridians overall will pay. Floridians will be forced to pay increased costs of medical care, and the financial burden of caring for victims will shift -- from those who caused the injuries -- to the taxpayer, who will be required to support expanding government-provided rehabilitation and support programs for victims who have been injured but are not compensated fully by the wrongdoer.

I made it clear to the 1998 Florida Legislature that I could not accept a civil reform bill that gave untoward economic windfalls to big business, that did not provide adequate compensation to innocent victims, and that failed to protect Florida consumers. I urged the Legislature to enact a balanced bill that corrected the problems in our civil justice system, while ensuring that there remain adequate remedies to victims of unlawful harm.

Our law firm wants to make sure that our clients, referring attorneys and members of our "legal family" are aware that on May 18, 1998, Governor Lawton Chiles vetoed Senate Bill 874 (shamelessly and inaccurately referred to as the "tort reform bill.")

As lawyers who represent injured victims, we believe that the Governor's veto revealed that Senate Bill 874 was far more than a battle between trial lawyers and business lobbyists. The right to recover medical bills, rehabilitation expenses, lost wages, etc. by catastrophically injured victims is protected by the veto, and the rights of those victims has been preserved.

We are grateful that the Governor had the courage to do what is right for the citizens of Florida, albeit not politically popular.

We are printing the full text of the veto message so that others can also understand the Governor's position. ■

I supported true reform that would have improved our civil justice system by eliminating needless delay, enhancing penalties for frivolous lawsuits, reducing the costs of litigation, and improving the efficiency of our civil trial system. I also urged the Legislature to put in separate bills the most questionable of its proposals to change our civil justice system, so that I was not forced to take "all or none" of the bill, having to veto positive reforms in order to protect Floridians from the most harmful impacts of the bill.

Unfortunately, a deeply divided Legislature sent me a highly controversial and extreme bill that would leave Floridians exposed to potentially harmful products and actions without adequately compensating victims for injuries those products and actions will cause. This bill would make some helpful changes to our civil justice system, but because this bill will do much more harm than good to Floridians, I am compelled to veto Committee Substitute for Senate Bill 874.

There are a number of provisions in the bill that deeply trouble me. Those outlined below reflect the most serious concerns that cause me to veto the bill.

Statute of Repose -- Under the bill, a manufacturer of a defective product would not be liable for medical costs, loss of income, or other damages if the product is over 12 years old, regardless of when its defects are discovered, the dangerousness of the product, or how many injuries it causes. While I appreciate that the bill allows for a 5-year window within which those who are injured by existing products may bring suit, it thereafter would create a 12-year "statute of repose" for all products, old and new, even for those designed to be used for much longer than 12 years.

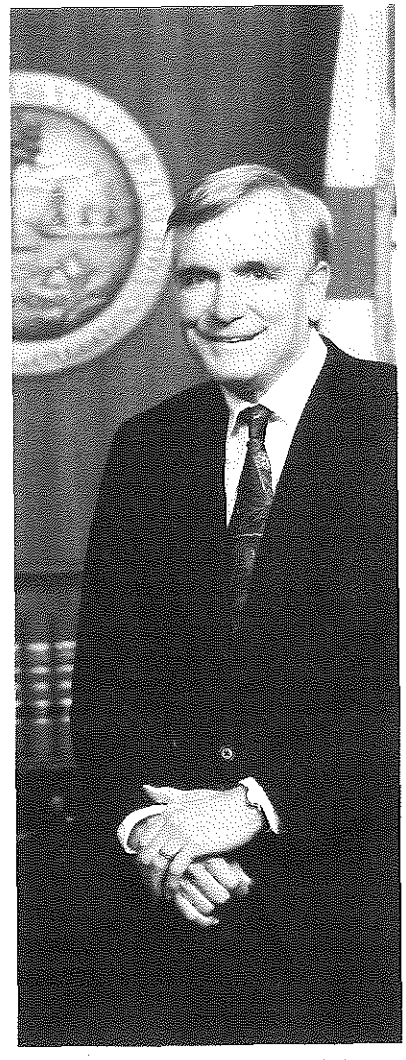
In this past week alone, the Federal Aviation Administration grounded scores of Boeing 737 airliners to check for what may be manufacturing defects in wiring that could result in fires or explosions. Through news accounts, we learned that a large number of these jets have been in service for 20 years and longer. These commercial airliners are designed to last much longer than 12 years, but undiscovered manufacturing defects can reveal themselves many years after manufacture. Luckily, the FAA discovered the possible defect in the 737's before a catastrophic collision resulted. But under this bill, if a manufacturing defect is not discovered and a plane crashes in Florida as a direct result of the defect, the injured passengers or the families of the victims could not recover damages from the manufacturer if the airliner is more than 12 years old.

If I were to allow this unnecessary limitation on liability to become law, other products such as medical devices, machine tools, commercial trucks, and industrial machinery all would not be subject to liability awards for defective manufacture during many years in which they are still in widespread use.

This provision will shield large, out-of-state manufacturers from liability at the expense of Florida consumers, and I cannot allow it to become law.

Joint and Several Liability -- When more than one defendant is responsible for causing an injury, and at least one of the defendants is insolvent and cannot pay damages, Florida law spreads the damage payments over the solvent defendants through what is known as "joint and several liability." While sometimes this process results in unfairness to a particular defendant, we have long recognized that it is important to fully and fairly compensate an innocent victim and to apportion damages among those who committed the wrongful act. While I have supported reasonable new restrictions on the application of joint and several liability to correct some of the inequities toward defendants, this bill again goes too far.

Among the bill's provisions is a $300,000 cap on the application of joint and several liability for economic damages, which include such losses as past and future income, medical expenses, lost support and services, and the replacement value of destroyed property. This has the potential to deny full compensation to those who need it most: those victims who suffer catastrophic injuries, some of whom may require a lifetime of medical care, or the families of victims who are killed by a wrongful act. If these costs are not borne by the wrongdoers, they inevitably will be unfairly borne by all Floridians.



Florida Governor Lawton Chiles

Continued on Page Ten.

Vicarious Liability -- "Vicarious liability" is a principle of long standing that imposes indirect legal responsibility on those in authority for the negligent acts of those over whom they have authority; the principle applies to such relationships as employer/employee and principal/agent. This principle evolved primarily to allocate risks associated with business enterprises, and it helps to ensure that innocent victims are compensated fully for their injuries or losses even if the negligent employee or agent is uninsured or insolvent. Since the 1920's, our Florida courts have held that an automobile is a dangerous instrumentality, and that an automobile owner may be liable for injuries caused by the negligence of someone entrusted to use the automobile.

I supported reasonable modifications to the application of vicarious liability, but I believe that this bill goes too far in limiting the liability of owners of motor vehicles -- including rental car companies -- for the negligent acts inflicted by drivers of those vehicles. The limitations on liability also would apply to rental trucks, which have the potential to inflict more serious injuries and greater damage because of their size and weight.

As in my other objections to various provisions of this bill, these limitations will shift responsibility from the owner of the motor vehicle to the taxpayers in order to ensure that innocent victims of negligent drivers are fully compensated for their injuries and property losses. I cannot in fairness allow Floridians in general to bear the costs of these overreaching limitations.

Punitive Damages -- Like most Floridians, I have heard the outrageous story where millions of dollars were awarded as punitive damages against a restaurant whose hot coffee spilled and injured someone. For the most part, we hear about these extreme cases when juries award excessive punitive damages, but not when trial judges or appellate courts later reduce the awards to reasonable levels, as happened in the coffee-spill case.

Punitive damage awards are very rare -- even those that are within reasonable limits -- but they serve the important purposes of punishing wrongdoers for the most egregious conduct and deterring that conduct both by the wrongdoer and others. Dangerous and defective products, including the Ford Pinto and the Dalkon Shield IUD, were removed from production following punitive damage awards.

Here, too, I supported reasonable limitations on punitive damage awards. But again, the bill goes too far. It imposes arbitrary caps on punitive damage awards, stiffens the standard of conduct necessary for imposing punitive damages, and imposes limitations on multiple awards of punitive damages, even for those punitive damages that are awarded against the defendant by courts in other states. In some circumstances, the bill allows the court to deduct from punitive damage awards the amount of prior punitive damage awards even though the harmful conduct continues. If punitive damages are to be effective in protecting our citizens from the most dangerous actions or the most hazardous products, their application cannot be so narrowly limited as they are in this bill.

I have long been a strong proponent of small business and economic development. I know how important a healthy economy is to our state, and how it benefits our citizens. This bill does not promote a strong economy, but exposes our citizens to risk and injury, and imposes upon our taxpayers unwarranted and unjustified expenses. That is not fair to Floridians. The people of Florida, and visitors to our state, deserve to be protected and compensated in the unfortunate event that they are injured or victimized. This bill would not only erode those protections significantly, but it would shift the costs of the system from wrongdoers to Florida taxpayers. As Governor, I am duty bound to protect our citizens, and I must ensure that those who commit wrongful acts remain primarily responsible for paying for those wrongful acts. I cannot allow this bill to become the law of this state.

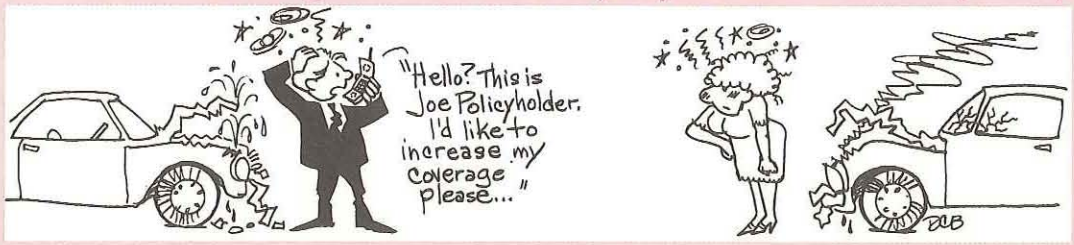
For these reasons, I am withholding my approval of Committee Substitute for Senate Bill 874, and do hereby veto the same.

With kind regards, I am

Sincerely,

INSURANCE & YOU...

Understanding Personal Injury Protection (PIP)



Automobile insurance in the state of Florida is tremendously expensive. But like it or not, it is a "necessary evil." Stolen cars and congested highways lead to a high volume of insurance claims, and insurance companies are quick to pass those costs on to consumers. Furthermore, because insurance premiums are so high, some people neglect to buy coverage entirely, forcing other consumers and their insurance companies to absorb their losses.

Nobody likes to spend money on automobile insurance, so consumers look for ways to scale back their premiums. Personal Injury Protection (PIP) coverage is often the target. Insurance agents offer PIP coverage with as much as a $2,000 deductible, providing their customers with a lower premium in return. But beware! Saving a few dollars now could cost you dearly if you get injured in an accident.

PIP coverage pays 80% of a medical bill for an injury caused by a car crash. For example, an insurance company pays $80 of a given $100 medical bill. However, if the policyholder carries a deductible on his or her PIP coverage, that $80 would merely be applied to the deductible and none of the $100 bill would be paid. Policies carrying a $2,000 deductible require a consumer to incur $2,500 in bills before the deductible is met ($2,500 x 80% = $2,000). Until then the insurance company does not pay a penny of its insured's medical care.

Insurance agents often justify PIP deductibles by suggesting that health insurance can pay the bills which are subject to the deductible. That is sometimes the case, but it's not always easy. Coordinating PIP benefits with health insurance, especially when a managed care health insurance policy (HMO) is involoved, can be frustrating, time consuming, and very confusing.

Finally, PIP coverage is also available to pay lost wages to a policyholder injured in a car crash. Carrying a large deductible on your PIP coverage could prevent you from recovering lost income if you are unable to work due to your crash-related injuries. Health insurance, on the other hand, very rarely reimburses a policyholder for lost income.

If you carry a PIP deductible on your automobile insurance policy, make an appointment to visit your agent. Review your coverage and evaluate for yourself whether the money you save in premiums is worth the risk you assume by carrying insufficient coverage. Ask about your deductible, and about "med pay" coverage, which pays the 20% of a bill not covered by PIP. Unfortunately, an accident-related injury can happen to you, so be prepared. ■

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, PA
Attorneys at Law

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 2

ADDRESS SERVICE REQUESTED

P. O. DRAWER 3626
WEST PALM BEACH
FLORIDA 33402-3626

SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY, PA

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 2

COUNSEL

BULK RATE
U. S. POSTAGE
PAID
WEST PALM BEACH,
FLORIDA
PERMIT NO.
3076

Please remember to VOTE
during this important election year--it's your right.

Primary Election:	2nd Primary (Runoff):	General Election:
SEPT 1, 1998	OCT 1, 1998	NOV 3, 1998

"Nobody will ever deprive the American people of the right to vote except the American people themselves--and the only way they could do that is by not voting."

--Franklin Roosevelt, 1944