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

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 3

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.

$3.3 Million Jury Verdict In Commercial Litigation

On September 14, 1998, a Palm Beach County jury awarded Mr. Phillip Carnes and his wife NanC $3,271,725.61 in a case against Great Harbour Cay Realty and Investment Company, Limited, a Bahamian Corporation. The Carnes were represented by attorney Jack Scarola.

Mr. Carnes was hired in 1989 as the CEO of a group of entities involved in developing a major real estate project in the Berry Islands in the Bahamas. The project focused primarily on Great Harbour Cay and other surrounding islands. The development activities had begun a decade earlier and included a large marina, airport, hotel, golf course, private residences and attendant infrastructure such as roads, power plants and water treatment plants.

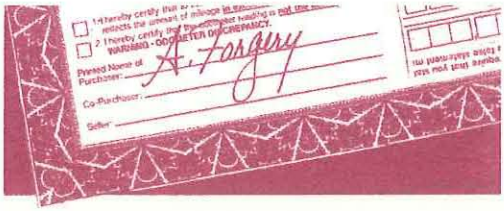
Mr. Carnes had a previous ownership interest in the project, but lost that interest when the group ran out of development capital in the 1970s.

In 1989, Mr. T. D. Fender took over the project and sought out Mr. Carnes to assist him due to his extensive prior experience with the project.

Although Mr. Carnes began working on the project in 1989, it was not until ***Continued on Page Three***

Forged Auto Title Exposes True Liability

College student A and college student B were classmates at a college in South Florida in the Fall of 1996. College student B was the son of the owner of an automobile dealership located out of the state of Florida.



During the latter part of October 1996, college student B drove his 1984 automobile from South Florida to his home out-of-state. While at home, he left his automobile and drove back to South Florida in a different automobile owned by an out-of-state automobile dealership. This different automobile was operated with dealer plates and registered to the non-Florida automobile dealership. College student B paid no money for this automobile, signed no financing agreement, and made no trade-in.

On October 30, 1996, college student A and college student B were traveling on a major avenue in South Florida. While college student B was driving the different vehicle, he lost control of the car, engaged in a clockwise rotation and slid the driver's side of the vehicle into three pilings holding up a sign. College students A and B were badly injured as a result of the accident. College student B died later in November 1996 while college student A, who was not wearing a seat belt, sustained a serious brain injury.

College student A developed a hemorrhage in the right basal ganglion and sustained a shearing injury from the left rear to the right front of his brain. He was treated in a local hospital and eventually transferred to a hospital out-of-state where he remained for an extended period of time. In the out-of-state medical center, he underwent extensive rehabilitation treatment and eventually was admitted to one of the ***Continued on Page Two***

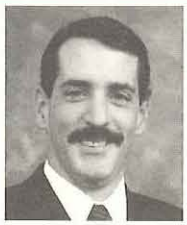
The Meeting Corner:

Laurie J. Briggs

Laurie J. Briggs was raised in Afton, New York and received her B.S. in Business Education from the State University of New York at Albany in 1982. She earned her M.S. degree in Educational Administration from the State University of New York at Plattsburgh in 1987. From 1982 until 1990, she was a high school business teacher and soccer, volleyball and softball coach in upstate New York. She moved to Florida in 1990 to pursue a legal career. In 1993, she graduated from Nova Southeastern University Shepard Broad Law Center with her J.D. and was admitted to the Florida Bar in October 1993.

Ms. Briggs began working for Searcy Denney Scarola Barnhart & Shipley in early 1994 and works primarily with David J. Sales, assisting him with medical malpractice, products liability, personal injury, and commercial litigation cases. She has worked extensively with the nationwide product liability case regarding breast implants since joining the firm.

Her charitable work at the firm involves the employees' annual Adopt-A-Family holiday food and gift drive and assisting local families in crisis. She is a member of The Florida Bar Association, Academy of Florida Trial Lawyers, Association of Trial Lawyers of America, Florida Association for Women Lawyers, and the American Bar Association. ■



Kevin Walsh

Kevin Walsh began working at the firm in September 1996. Born near Philadelphia, PA, Mr. Walsh lived for extended periods of time in Mexico City and Sao Paulo, Brazil. He speaks, reads and writes Spanish and Portuguese fluently. After graduating from Florida Atlantic University with a B.S. in Finance in 1991, he worked with Ford Motor Credit in Miami as an account representative in this predominantly Spanish speaking market. He then moved on to State Farm Insurance Company, where he progressed to the position of Senior Claims Representative. While there, Mr. Walsh was active with charities including United Cerebral Palsy and The United Way. Mr. Walsh was also active in legislative affairs, acting as liaison between local members of the Florida legislature and the company.

Mr. Walsh joined Searcy Denney Scarola Barnhart & Shipley as Paralegal/Investigator for attorney C. Calvin Warriner III. Working with Mr. Warriner, Mr. Walsh's areas of expertise are case analysis/evaluation, trial preparation, witness procurement and preparation, and negotiation. He utilizes these skills to support Mr. Warriner's prosecution of medical malpractice, product liability, wrongful death, nursing home liability, and automobile personal injury cases. ■

Forged Auto Title Exposes...

(Continued from Page One)

leading rehabilitation institutions in the United States.

College student A was diagnosed as sustaining traumatic encephalopathy, left hemiplegia, right hemiparesis, cognitive deficits, speech impairment, and a very limited ability to walk.

A life care plan was prepared for college student A because he was determined to be 100% disabled and unemployable. An economist evaluated the cost of the life care plan that was created as well as the vocational evaluation. One of the nation's leading authorities on diffuse axonal injuries to the brain was retained and was ready to testify that college student A, had he been wearing a seat belt, would have sustained the same brain injuries. A leading accident reconstruction expert was retained and was prepared to testify that college student A was traveling at 54 m.p.h. on the major roadway at the time he veered off the road and impacted the three pilings at approximately 30 m.p.h. Another nationally recognized accident reconstruction expert - medical doctor, was prepared to testify that had college student A been wearing a seat belt there would have been no difference in the injuries he sustained.

After college student B died in late November 1996, the title and registration of the different vehicle were changed from out-of-state automobile dealership to college student B. During our investigation, it was determined through a handwriting expert that the signature of college student B on the transferring title form from out-of-state automobile dealership was a forgery. During the discovery phase, the title clerk of the out-of-state automobile dealership testified that she, in fact, forged college student B's signature.

Chris Searcy and David White were set to try this case, but it settled during mediation for a significant amount of money. Part of this money will be placed in a structured settlement which will provide security for college student A's future in terms of medical care and treatment and loss of earning capacity. ■

High Speed Chase Leads To Devastating Injuries

PBC Sheriff's Office Settles for $2.5 Million

In the early morning hours of July 3, 1990, Elizabeth Menendez was returning from an evening out with friends. She was twenty-two years old, beautiful and pursuing her dream of becoming a psychologist. Elizabeth was en route to her home when her automobile was struck by a traffic offender fleeing deputies of the Palm Beach County Sheriff's Office. The crash was the result of a high-speed chase which had begun over a simple traffic offense, running a red light. Contrary to Sheriff's office policy, which prohibited high speed chases for such offenses, as many as four deputies had pursued the traffic offender for several minutes at speeds up to 100 miles per hour. When the high speed chase approached the interchange of Southern Boulevard and I-95, Elizabeth was preparing to turn left onto the southbound ramp of I-95. As she turned, the fleeing traffic offender's vehicle struck Elizabeth's vehicle--with deputies in hot pursuit--at a speed estimated to exceed eighty-five miles per hour.

Elizabeth's injuries were devastating, including a transected pancreas, rupture of the diaphragm, collapsed lung, fractured eye socket, broken back and broken arm. According to the trauma surgeon, this was the most acute trauma patient he had ever seen--who lived. Miraculously, after life-saving surgery and multiple procedures, Elizabeth recovered from many of her physical injuries. Unfortunately, she also suffered a closed-head injury in the accident. Doctors discovered a traumatically-induced aneurysm as the source of constant headaches and eventually performed brain surgery. The impact, however, left Elizabeth with permanent brain injuries, including serious cognitive deficits and problems with her short-term memory.

Elizabeth, although able to perform many activities of daily living, is entirely dependent on others. In particular, her short-term memory deficits cause her to require around-the-clock supervision.

Jack Scarola and David Sales represented Elizabeth at the trial against the Sheriff's Office. The Plaintiff's case focused on the recognized danger associated with high speed chases, the violations of Sheriff's Office policy, and multiple inconsistencies in the testimony of the pursuing deputies and their superiors. The Sheriff's attorneys focused on the actions of the traffic offender and urged the jury to pin most or all of the blame on him. During jury deliberations, the parties agreed to a settlement of $2,500,000. Sovereign immunity prevents recovery of judgments in excess of $100,000 against agencies of State government. As part of the settlement, the Sheriff agreed to cooperate with efforts to recover the balance of the settlement through a claims bill. A claims bill is an act of the Legislature appropriating funds for the payment of claims which exceed the $100,000 statutory limit. Efforts are already underway to secure these funds for Elizabeth's future care. ■

$3.3 Million Commercial Litigation Verdict... *(Cont. from Page One)*

July 1991 that the business relationship was formalized in a written contract. Under the terms of the contract, Mr. Carnes was authorized to hire his wife, NanC, as a secretarial assistant and was promised a compensation package which included cash severance benefits and a 10% interest in the value of the corporation overseeing the further development activities. After accomplishing many of the major tasks for which he was responsible, Mr. Carnes was terminated in September 1992. Upon termination, Mr. Fender refused to pay Mr. Carnes. Jack Scarola undertook Mr. Carnes' representation shortly after his termination and continued to represent him for the following six years, both in prosecuting his claims against his former employer and defending a variety of related actions brought in an effort to justify his termination. A jury rendered a verdict representing 10% of the value of the corporation, as well as the severance benefits due the Carnes. Additionally, the Carnes are entitled to be reimbursed for attorneys fees and costs in amounts yet to be determined by the court. ■

DID YOU KNOW...

A poll from The Wall Street Journal and NBC News released on September 18th also shows growing public support for managed care accountability. 71% favor a patients' rights bill that guarantees the right to sue HMOs for improper care but that might result in higher premiums compared to 20% who favor a patients' rights bill that doesn't permit the right to sue but might hold down fees. ■

Update:

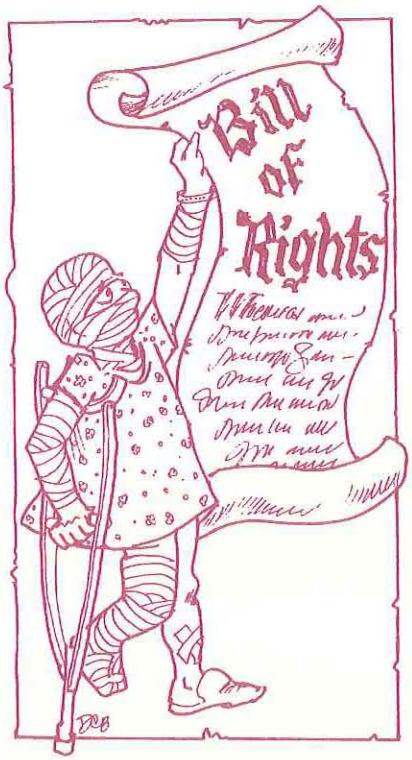
Federal Legislation regarding "Patients' Bill of Rights."

When the 105th Congress adjourned in October, they failed to enact the "Patients' Bill of Rights" which would have guaranteed the right of states to allow patients to hold managed care organizations accountable for the delay or denial of treatment that results in injury. The legislation fell only five votes short of passage in the House of Representatives.

Some Historical Background:

A decade ago, when HMOs and managed care covered relatively few Americans, denial of coverage meant an insurance company didn't pay a bill after treatment, and the law wasn't a big issue. But there has been a revolution in the way health care is provided, and now 138 million people, or three-quarters of Americans with private health insurance, rely on managed-care plans.

Those plans limit costs by tightly controlling access to many types of care. Decisions authorizing or denying care may be made by claims clerks and managers. For patients in those plans, denial of coverage can mean they don't see the doctor or specialist they want or don't get a medical procedure their doctor recommended. They may not even be informed of expensive treatments or clinical trials that hold promise for life-threatening illnesses such as cancer. A health plan can limit the options its doctors discuss with patients. "In non-managed care, it's not an issue because the physician makes the decision and is accountable," says Dr. Thomas Reardon, president of the American Medical Association. "It's when you have a third party second-guessing the physician that this becomes a problem."



When the new Congress convenes in January, 1999 this issue will undoubtedly resurface. Most believe that the fight to ensure the passage of legislation to protect patients will be long and difficult. ■

FOR UPDATED INFORMATION ON THIS CRITICAL LEGISLATION, TWO WEB SITES WILL BE VALUABLE RESOURCE TOOLS:

http://www.ATLAnet.org

As the world's largest trial bar, ATLA (The Association of Trial Lawyers of America) promotes justice and fairness for injured persons, safeguards victims' rights -- particularly the right to trial by jury -- and strengthens the civil justice system through education and disclosure of information critical to public health and safety. With about 60,000 members worldwide, and a network of U.S. and Canada affiliates involved in diverse areas of trial advocacy, ATLA provides lawyers with the information and professional assistance needed to serve clients successfully and protect the democratic values inherent in the civil justice system.
Phone: 1-800-424-2725

http://www.consumerwatchdog.org

The Foundation for Taxpayer and Consumer Rights is a nationally-recognized California-based, non-profit education and advocacy organization. Their job is to fight to protect our interests every day. They provide people with FACTS, not propaganda; and hold the politicians and the special interests accountable when they endanger the public.
Phone: 310-392-0522

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
Attorneys at Law

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 3

Local Doctors Strike Blow Against HMO For Patients Everywhere

West Palm Beach ophthalmologists Drs. Salomon Melgen and Mark Michels today settled a three year long legal battle against managed care middlemen Eye Management, Inc. (EMI) and its owner, Dr. Robert Mondshine of Miami shortly before trial with the announcement of a $1.525 million settlement in favor of the doctors. EMI is the insurance broker for eye care services for tens of thousands of south Floridians including those insured by Blue Cross/Blue Shield Health Options, Cigna, and others. Melgen and Michels were specialty providers for EMI when their dispute with EMI began in 1995.

The dispute arose when Melgen and Michels began to understand that non-physicians often made decisions about specialty ophthalmology care for which they had little if any training or experience. The doctors also learned that EMI pays primary care ophthalmologists a markedly discounted fixed fee per patient regardless of how much or how little care is provided. Further, 20% of this money is withheld until year's end in order to pay for subspecialty care like that provided by Melgen and Michels. Primary care ophthalmologists were given this money only if it wasn't spent on patient care. The system has an obvious disincentive to provide specialized eye care. EMI itself is paid by major insurers on the basis of a fixed fee per patient. When fees for specialized eye testing or surgery exceed this 20% amount, the difference cuts into EMI profits. The fewer the services provided to patients, the higher EMI's profits. EMI therefore refused to pay for services unless they were authorized in advance, albeit often by untrained personnel.

When Melgen and Michels complained that EMI's authorization process was threatening to deny patients needed services, Mondshine responded by sending a letter to other south Florida ophthalmologists accusing Melgen and Michels of making treatment decisions without regard to patient welfare. He encouraged these doctors to send their patients elsewhere for specialty eye care. Drs. Melgen and Michels demanded a retraction and apology immediately. When no letter was written, a lawsuit was filed.

"We enjoy an excellent reputation among our peers for following the highest professional standards," said Melgen. "We simply could not allow Dr. Mondshine's terrible attack on our integrity to go unanswered." Drs. Melgen and Michels were awarded two of the three high honors given annually to Florida ophthalmologists by their peers in 1997. Dr. Melgen received the James Clower Community Service Award and Dr. Michels received the Curtis Benton Outstanding Young Ophthalmologist Leadership award. Dr. Melgen has been a leader in the local implementation of new and complex surgical procedures which are now the commonly accepted standard of care. He has been a Director of the American Board of Eye Surgeons, and in 1995 Governor Lawton Chiles appointed Dr. Melgen to the prestigious position as Chairperson of the State's Physician Advisory Panel, a position in which he continues to serve. Dr. Michels was the first vitreoretinal surgeon in Palm Beach County to perform true outpatient retina surgery so patients could avoid the inconvenience and expense of hospitalization. Dr. Michels is currently 1st Vice President of the Florida Society of Ophthalmology and just completed his 4th term as President of the Palm Beach County Ophthalmology Society. He serves as the American Academy of Ophthalmology's liaison to US Senator Bob Graham.

"We couldn't stand by and let some corporate bureaucrat tell us how to treat our patients. That's not what we trained so long to do", Michels said. "I felt we were being punished for putting patient concerns ahead of EMI's profits. The more thorough we were, the more it ate into Dr. Mondshine's bottom line. We insisted on treating patients as if they were family. Since we weren't intimidated by Dr. Mondshine, it seemed clear to us we were being singled out as part of an effort to keep all of the doctors in EMI's network from challenging EMI's interference in patient care decisions." The defamation claim was broadened to encompass the economic pressures they impose on doctors to cut corners on quality care.

As part of the case settlement, Mondshine was required to provide Drs. Melgen and Michels a written retraction of his criticism on their practice and the apology they sought back in 1995. Jack Scarola, who represented Drs. Melgen and Michels, described the settlement as a complete victory for his clients. "More importantly," he said, "this case is a very significant victory for patients. The quality of health care is caught in a terrible economic squeeze. Unless doctors have the courage to fight to preserve their professional independence as Drs. Melgen and Michels did, we all will suffer." ■

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

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

KING vs. SOUTHERN ERECTORS

In the early morning of October 1, 1993, Tommy Joe King was working on the hydro pulper unit at the Port St. Joe Forest Products Company plant in Port St. Joe, Florida. Mr. King operated the "guillotine," which was used to chop large rejected paper rolls in half which were then recycled and re-used to make finished paper products. The paper rolls were placed on a roll table by a forklift and rolled forward prior to their being cut by the guillotine blades. The roll table and guillotine were elevated approximately 6' above the ground, and the design of the machinery forced workers such as Mr. King to stand next to the machine while operating it.

The roll table itself is approximately 10' wide and 30' long. It holds a number of rolls up to 5' in diameter and ranging in length from 10', which were stable and easy to control, to less than 2' long. The 2' rolls are still up to 5' in diameter, are very unstable, and are called "butt rolls." The only protection afforded the workers by the designers of this equipment was a 4" lip on either side to hold back the up to 60" in diameter rolls. The roll table was designed and built in about 1989.

The accident occurred when Mr. King was working alongside the roll table while it was being loaded. A co-worker who had previously been warned against this specific practice, attempted to overload the table by forcing additional rolls onto the table with a motorized forklift. His attempt to overload the table was with such force that it caused all the rolls to move forward. A "butt roll" rolled up on a previously cut roll, came back down the table and jumped over the 4" lip falling onto Tommy King. That roll was later found to weigh 1,890 pounds.

The roll landed on Mr. King's lower back crushing his pelvis and upper left leg. The force of the great weight severed Mr. King's ureter and caused massive soft tissue damage to his left lower extremity. Because of the severe crush injuries Mr. King sustained, he required the implantation of a significant amount of hardware in his pelvis and leg. He also required numerous surgeries to remove the tissue that was destroyed by the weight of the paper roll. His initial hospitalization lasted over two months, and he has had to undergo a number of urologic, orthopedic, and vascular surgeries in an effort to ease his unrelenting pain and restore some function to his left lower extremity. His vascular system was so compromised that his doctors still are not able to rule out amputation of his left leg in the future.

The roll table and guillotine machinery were designed and manufactured by three companies, Rust Engineering & Construction, Inc. of Alabama; Voith Sulzer Paper Technology North America, Inc. of Wisconsin; and James Brinkley Company of Washington. These defendants have designed and manufactured paper processing equipment which is in use all over the world. However, they failed to follow the most basic engineering, safety, and guarding standards in designing this machinery. The manufacturers defended this case not only by alleging that their machine was designed correctly and safely, but also by blaming Mr. King, his employer, and his co-workers for the accident.

Attorney William A. Norton was confronted with the defense of the mill, the mill's employees and the plaintiff's negligence under the *Messmer and Fabre* decisions. The defendants were able to produce documents indicating the prior warning issued against the co-worker for overloading the table, as well as substantial testimony from co-workers and management level employees that rolls had fallen off of the table for years previous to the incident involving the plaintiff.

Evidence was introduced that the mill had failed to call these problems to the attention of the defendants and did nothing to remedy the situation. Accordingly, the defendants sought, under *Messmer and Fabre*, to apportion fault on the verdict form amongst the plaintiff, his co-workers and the mill itself for the failure to correct dangerous practices and a dangerous condition. Some of the plaintiff's own co-workers testified that the plaintiff was negligent for having his back to the machinery while in operation. In this case, even though the employer and the co-employees would be put on the verdict form, the immunity afforded by the Workers' Compensation Statute would not allow the plaintiff to sue them.

After protracted litigation, and on the heels of successful depositions of the defendants' corporate representatives, the case was mediated by Mr. Norton successfully for a total settlement of $1,036,000. The Kings were able to place a significant portion of the settlement in an annuity which will provide income and security for the family throughout Mr. King's lifetime. ■

"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever does."

-- Margaret Mead

HEDGES OBSTRUCT VISION OF DRIVERS; FETUS SUFFERS BRAIN DAMAGE AS A RESULT

On July 21, 1994, at an intersection in South Florida, Driver Jane Doe was driving a 1991 vehicle which was leased by her husband, John Doe. She was proceeding northbound on a minor street and stopped at a stop sign and was planning to turn left onto a major avenue. Driver Betsy was driving a 1985 vehicle and was proceeding east on the major avenue towards the intersection of the minor street where Driver Jane Doe was proceeding from the stop sign and making a left turn. At the intersection where Driver Jane had stopped there was a large hedge which obstructed the vision for Driver Jane as she approached the intersection. The City owned the right-of-way adjacent to this property, onto which a portion of the hedge grew.

Dating back, as far as 1987, the hedge on the southwest corner of the intersection had obstructed motorists' vision as they approached this intersection on both the major avenue traveled by Driver Betsy and the minor street traveled by Driver Jane. The hedges spanned the entire length of the property parallel to the major avenue. In 1987, the City first notified the property owners that this hedge was a visual obstruction and a danger to oncoming motorists. Thereafter, the property was cited by the City on numerous occasions because the hedge violated the visibility triangle at that intersection. The visibility triangle is an area at an intersection, 25-feet on each side, which requires that no visual obstruction be higher than 30 inches from the ground.

Over the years a number of automobile accidents occurred at the intersection. In 1992, a high school student was seriously injured there while driving a moped onto the major avenue after having stopped at the stop sign on the main street. This high school student sued the other driver as well as the City. Beginning July 6, 1994, the City hired surveyors to perform a specific purpose survey of the intersection and hedges. The survey showed that the southwest corner where the hedge was located actually grew into the right-of-way owned by the City. The Interim Director of the Public Works Department of the City testified that the Zoning Ordinance required that vegetation in the visibility triangle could not exceed 30 inches. The survey, however, showed these hedges to be greater than 30 inches, and that they actually extended from the property owners' land into the public right-of-way owned by the City. The Interim Director also testified that because the hedges grew into the right-of-way, the Department of Public Works had the responsibility of correcting the problem in the right-of-way. He also testified that Building and Zoning was responsible for notifying the landowner of the violation of the hedge on her property, vis-a-vis the visibility triangle.

In addition, a Code Enforcement Inspector for the City testified that he inspected the encroachments into the public right-of-way, and as part of his job, enforced and inspected the visibility triangle. He testified that before January of 1994, he actually went to this intersection and hacked part of the hedge back with a crew of City workers.

In summary, the City was on notice for many years that the hedge created a danger and obstruction to oncoming motorists, but did nothing about it. At least one lawsuit was filed for the same problem prior to this lawsuit and that a number of automobile accidents occurred before July 21, 1994.

On July 21, 1994, one day before the finalization of the specific purpose survey, Driver Jane was driving her vehicle on the side street approaching the major avenue. At the same time, Driver Betsy was driving on the major avenue, approaching the side street. Neither driver saw the other's automobile until almost at the time of impact. Driver Betsy was traveling at approximately 48 m.p.h., some 18 m.p.h. above the speed limit. Only a portion of her vehicle's roof was visible to Driver Jane as she approached the intersection.

As a result of the accident (involving the front of Driver Betsy's vehicle and the driver's side of Jane's vehicle), Driver Jane, eight months pregnant, was taken to a local hospital. Two days later, her daughter was born with a severe brain injury as a result of the automobile accident.

Baby Doe is now 4 years old and totally disabled. A well known expert provided a life care plan and an economist evaluated both the loss of earning capacity and future medical care and treatment. Chris Searcy and David White were set to try this case. However, after negotiations and mediation, the case settled. The money has been placed in a guardianship account to care for this beautiful little girl for the remainder of her life, which will provide for her medical care and treatment and loss of earning capacity. ■

Decisions...*(Cont. from Page Seven)*

JANE DOE vs. XYZ BASEBALL CLUB

On March 14, 1997, Jane Doe was struck by an automobile in the 500 block of Vine Street in Kissimmee, Florida. She was near the curb and adjacent to the right outside lanes for eastbound traffic. The accident occurred at approximately 10:00 p.m. following a Major League Baseball spring training game. The vehicle was rented by XYZ Baseball Club and was being driven by their sports information director. At the conclusion of the game, he intended to return to XYZ's spring training site located approximately forty-five miles away. Upon leaving the game, he became confused as to which direction he should be going. He initially drove west on Vine Street, then stopped and turned to head east. As he proceeded to drive eastward, looking from side to side for landmarks to determine his location, he struck 43-year-old pedestrian Jane Doe at or near the right-hand curb, causing her massive head injuries.

Jane Doe was transported from the accident scene to Orlando Regional Medical Center where she underwent a craniotomy to remove a large subdural hematoma. After remaining in the hospital for three months, she was transferred to a nursing home in Oklahoma near her parents' residence. Although medically stable, she was determined to be severely neurologically impaired as a result of the head injuries and required around-the-clock nursing care, supervision and care to provide maximum assistance in all activities of daily living. She was also wheelchair dependant. Unfortunately, Jane's rehabilitation needs were not able to be met by the facility in Oklahoma. She was eventually transferred back to Florida to attend and participate in an intense neurologic rehabilitation program where she remained for an additional eight months, focusing on basic skill development.

The day of the accident, upon her admission to Orlando Regional Medical Center, Jane Doe was found to have a blood alcohol level of .267. She had no health insurance, was not employed, and had no permanent residence. Her doctors determined that she would forever require 24-hour care to assist her with even the most basic of daily activities such as eating, grooming, dressing, etc. The hospital lien exceeded $250,000.

There was only one witness to this accident. Initially, the witness indicated that she saw the pedestrian cross the roadway which consisted of seven lanes of travel and, upon reaching the curb, turned as though to go back across the street. The witness stated, and later signed an affidavit, that the pedestrian had one foot on the curb and one foot on the roadway when she was struck by the driver. She also had stated that she heard the driver admit that he never saw the pedestrian prior to impact and that he was not looking forward at the time his vehicle struck her. The witness even agreed to be photographed at the accident scene, posing in the position in which the pedestrian would have been at the time she was struck by the automobile. However, at her deposition, the witness recanted her statement and affidavit, and testified that Jane Doe was obviously intoxicated and had stumbled into the path of the automobile driver, and that the driver had no opportunity to avoid contact with the pedestrian.

The insurers for the driver vigorously defended the case, relying heavily on the plaintiff's blood alcohol results at Orlando Regional Hospital and the deposition testimony of the only witness, asserting that the driver of the automobile maintained his speed within the speed limit and never wavered outside his lane of travel. They asserted that the accident was unavoidable and that the pedestrian darted out or stumbled into his lane of travel.

In order to overcome the assertions made by the defense, plaintiff's counsel conducted an extensive accident scene investigation. Photographs were taken in both daylight and at night showing the width of the lanes of travel and the distances between the solid white line marking the right lane of travel and the curb. The investigation revealed

Continued on next page.

Decisions...*(Cont. from Page Eight)*

that the location of the accident typically has a considerable amount of pedestrian traffic at that time of night. A review of the street lights along Vine Street by plaintiff's accident reconstruction expert showed the area to be extremely well-lit, allowing a driver to see an object in the roadway at a considerable distance in order to avoid it. Finally, the plaintiff was able to make significant use of the driver's statement to police at the accident scene when he admitted that he had been looking from side to side trying to determine his location immediately prior to impact with the pedestrian.

Despite having the only witness to the accident recant her earlier statement of facts, and the assertions of the defense that Jane Doe herself was responsible for her injuries, Greg Barnhart was able to settle Jane Doe's claim against the Defendant driver at mediation for $3.5 million. ■

Para atender mejor a nuestros clientes que hablan Español hemos instalado un numero de telefono 800 que será contestado en Español por nuestro personal.

1-800-220-7006

IN ORDER TO BETTER SERVE
OUR SPANISH-SPEAKING CLIENTS,
WE HAVE INSTALLED A
TOLL-FREE NUMBER THAT
WILL BE ANSWERED BY OUR
SPANISH-SPEAKING PERSONNEL.

Taking... Time to Care

FIRM EMPLOYEES WRAP THEMSELVES IN THE HOLIDAY SPIRIT BY CARING FOR OTHERS

Throughout the year, our employees give hundreds of personal volunteer hours to numerous charities. During the holiday season we especially come together as a firm and contribute to organizations that serve the needy in our community.

Through our efforts, we help collect food, clothing, toys and educational materials for those less fortunate.

If you would like to organize a campaign of donations, these groups would be happy to let you know how you can help. ■

FOOD FOR FAMILIES This annual WPTV Channel 5 "Food For Families" food drive is held from mid-October to mid-November. All food donated is distributed to over 100 non-profit agencies in our five county area. After the initial drive is over, they refer callers to other agencies that feed the poor throughout the year. They are:

Cafe Joshua, Joe Gamarano .....**(561) 823-5446**
Daily Bread Food Bank , Larry Hershfield.....**(561) 659-5070**

Year after year our employees have collected food, sorted canned goods and volunteered at the distribution center.

ADOPT-A-FAMILY Adopt-A-Family's mission is to return families in crisis to stability and self sufficiency by providing all encompassing services to these parents and their children.

At our firm, we purchase holiday gifts, food, clothing and toys for needy families that Adopt-A-Family assigns us. We wrap all the presents and then take them to the families. Each family receives a holiday dinner certificate which ensures they get a holiday meal with all the trimmings.

In 1997 we were delighted to assist 13 families at this very special time of year. Contact Terry Bozarth at **(561) 434-4960.**

COMMUNITIES IN SCHOOLS The mission of CIS is to connect needed community resources with schools and neighborhoods to help young people learn, stay in school and prepare for life. Their goal is to provide every child with "The Four Basics" every child needs and deserves: a personal, one-on-one relationship with a caring adult; a safe place to learn and grow; a marketable skill to use upon graduation; and a chance to give back to peers and community.

We collect donations of clothing and educational reading material which are desperately needed by many of the students in this fine program. Contact Ilene Silber at **(561) 582-0820**.

Wishing you and yours a holiday season filled with caring and sharing.

A Win-Win Proposition (The False Claims Act)

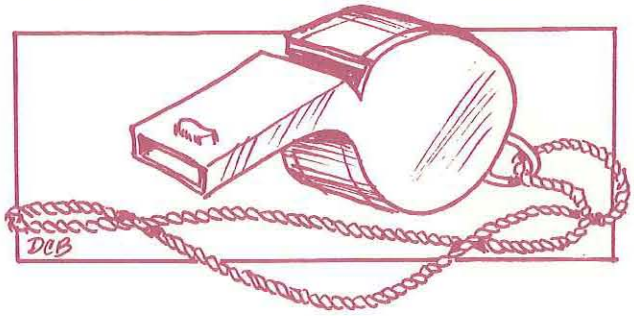
How often do you get the opportunity to help curb the high cost of health care, reduce the government's debt, and help yourself at the same time? The False Claims Act allows you to do just that.

The False Claims Act was initially enacted during the Civil War when President Lincoln needed a weapon with which he could fight against those trying to profit from the war at the expense of innocent people. The Act was brought back to life in 1986 when Congress needed just such a weapon to combat fraud in the government -- particularly defense procurement at that time. Since then, fraud and overspending in defense has been sharply curtailed, and the focus is now on improving the egregious situation being faced by the health-care system.

Under the provisions of the False Claims Act, individuals who have first-hand knowledge of fraud or improper billing procedures used in Federal government programs, such as Medicare and Medicaid, can bring suit against the company and/or individuals responsible for such overcharging and get a handsome reward for helping the government to recoup some of its losses.

Bringing a lawsuit against a large company is often a frightening concept, but it needn't be. The biggest obstacles most see to suing is that they are just one person trying to fight a big organization, the time and expense a lawsuit consumes, and the possible personal ramifications to them. These concerns have been addressed by the False Claims Act. The government has the option to join in the lawsuit, thereby putting the government on the "whistle-blower's" side. All of the costs of the suit, including attorney fees and costs, are assessed against the offending party at the end of the suit, so that no funds are required by the filing party during the suit. In addition, should the company take any adverse steps against the "whistle-blower" in their employment, the employee can sue to be returned to the position they were in prior to filing suit, get twice the back wages owed if they are let go, and all costs of the suit are paid by the employer.

The real up-side to all this for the "whistle-blower" is the possibility of a large reward for their time and effort at the end of the suit. The informing party will generally receive from 15 to 30 percent of the amount recovered by the government, depending upon how active a participant in the suit the filer is. And the recovered amounts are generally very large. Each infraction by the individuals and/or companies brings with it a $5,000 to $10,000 penalty per infraction. In addition, the amount of the over-billing or fraudulently-obtained funds are tripled at the outset. Therefore, what would seem to be an insignificant amount can increase exponentially. For example, any "padding" on billing procedures are multiplied by $5,000 to $10,000 per bill sent out. Even $1.00 improperly billed to 100 different customers/patients could render a judgment of over a million dollars. Last year alone, there was $625 million recovered by the government, according to U.S. News & World Report, and that number is rapidly increasing. It is anticipated that a single company will soon be facing a $1 billion payment to the government, and the persons responsible for bringing the action will be seeing a $150 million payment -- just for doing what is right.



The suits are brought in Federal court, which brings with it many procedural complications, and the False Claims Act itself has many procedural requirements which must be met. The legal aspects of such a case can be complex, and it is important that they are handled properly. Coordination with the Department of Justice is required, and there are various confidentiality provisions with which strict compliance is mandated.

It should also be noted that health care is not the only area in which the False Claims Act is applicable. In fact, any governmental abuse falls within the Act. This includes defense contractors, fraud in loan applications for Federal funds, misrepresentations made in obtaining Federal funds, and any such related infractions.

These actions are also not limited to the Federal government. The State of Florida has a statute, virtually identical to the Federal Act, which provides for suits against individuals and/or companies which improperly or fraudulently obtain funds from the State government. The recovery for the party bringing suit is equivalent to that at the Federal level. It is important not to wait to let us know about these situations. While there is a fairly long statute of limitations -- generally 6 years at the Federal level and 5 years at the State level -- only the first person to bring an over-billing, fraud or other infraction of government property and funds can bring the suit. Therefore, any abuses should be exposed at the earliest possible time.

At Searcy Denney Scarola Barnhart & Shipley, we have been successful for clients in retrieving money from the government, curbing abuses of the government programs, and getting well-deserved rewards for bringing abuses to light.

Should you have any questions or want to discuss the possibility of bringing such a suit, please contact us. ■

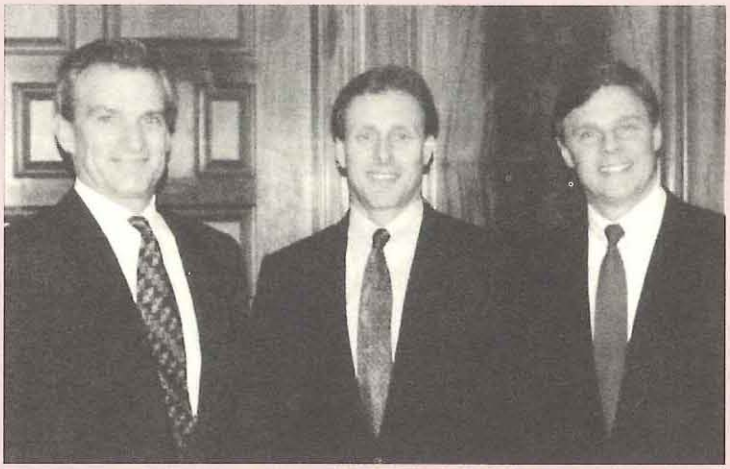
Announcing...

On November 25, 1998, **Ellen F. Brandt** was sworn in as a member of the Florida Bar by attorney Jack Scarola. ■

Jack Scarola went Behind Bars for Good -- for a good cause, that is. He was locked up at the "MDA Lock-Up" and couldn't be released until he raised sufficient bail money. All money collected benefitted the local chapter of the Muscular Dystrophy Association. ■

Greg Barnhart was recently appointed to represent the Academy of Florida Trial Lawyers on the advisory panel to the Auditor General, who will study the actuarial soundness of the Florida Birth Related Neurological Injury Compensation Plan.

The advisory panel will assist the Auditor General in developing the study, and providing the legislature with a final report. This study is of critical importance to infants who are severely injured at birth and their parents. Mr. Barnhart's input to the study will be aimed at protecting the safety of Florida's families. ■



Once again, **Chris Searcy, Greg Barnhart** and **Chris Speed** have been named in the most recent edition (1999-2000) of *Best Lawyers in America* in the personal injury field. Since attorneys must be voted onto the list by their peers, and listings cannot be purchased, inclusion in *"Best Lawyers"* is widely regarded as a notable honor in the legal profession. ■

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

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 3

Holidays are for caring and Sharing.

WISHING YOU AND YOURS
A HAPPY HOLIDAY...

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

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

OF COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 98, NO. 3

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

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

ADDRESS SERVICE REQUESTED