

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. ■