

# Long Legal Saga of Noel Berk Ends Successfully

On May 20, 1993, Noel Berk suffered devastating quadriplegic injuries. Mr. Berk had attended a minor league baseball game in Jacksonville that evening and was traveling home on his motorcycle when a vehicle pulled in front of him from a side street controlled by a stop sign. The driver of that vehicle did not see Mr. Berk's motorcycle approaching from his left until he was blocking nearly the entire lane of travel. Mr. Berk skidded in an attempt to stop, was thrown from his motorcycle and suffered a broken neck.

When Mr. Berk was taken to the hospital, routine blood work was drawn. One of the tests run was an alcohol screen, which indicated Mr. Berk was

above the legal limit for intoxication. Mr. Berk's fall caused him traumatic amnesia and he did not have a recollection of drinking any excessive amount of alcohol that evening. All of the witnesses with him confirmed that they never saw him drinking excessively, nor did he appear intoxicated when he left the ball park. It was this questionable test result which caused the defendants to vigorously fight Mr. Berk's claim.

A second hurdle in attempting to obtain compensation for Mr. Berk was the fact that the car operator had insufficient insurance limits of \$100,000. The insurance carrier, Atlanta Casualty Company, made *continued on page four*

## Long Legal Saga of Noel Berk Ends Successfully

(continued from page one)

a serious mistake when it failed to supply requested information concerning the insurance that existed on the Defendant's automobile. On three separate occasions, attorney Lance Block wrote to Atlanta Casualty asking for specific information, and on each occasion Atlanta Casualty failed to respond. A lawsuit was therefore filed against Mr. Jones, the driver of the automobile.

In early deposition testimony, Mr. Jones contended that part of the reason he entered the intersection through the stop sign was because of dense foliage on the corner property to his left. He stated in deposition testimony that the foliage blocked his view. Attorney Chris Speed therefore filed an Amended Complaint suing the land owner for the violation of a Jacksonville Municipal Code which prohibited a land owner from allowing foliage to grow in such a way as to obstruct the vision of drivers within twenty five feet of an intersection. Mr. Speed also made a claim against the City of Jacksonville for the inappropriate placement of the stop sign at that intersection.

After significant delays due to extensive pretrial discovery, Mr. Searcy and Mr. Speed began on Jan. 25, 1999, what was anticipated to be a five week trial. The Defendants at that time were Jones and Kraft Foods, the owner of the foliage-covered property. The City of Jacksonville had already settled its claim for an amount just below the sovereign immunity limitations set by state statute.

On the morning of trial, a settlement was effectuated with Kraft Foods. The trial then began against Mr. Jones, who

was the only remaining defendant. Mr. Searcy and Mr. Speed sought to obtain a significant verdict against the driver Mr. Jones, and then file a bad faith lawsuit against Atlanta Casualty on behalf of Mr. Jones for its failure to comply with statutory requirements back in 1993. Atlanta Casualty's acts of bad faith forced the plaintiffs to sue Mr. Jones, rather than settling with him and releasing him from the case.

Significant legal research and expert testimony was developed to attack the credibility and trustworthiness of the alcohol test results taken on the night of Mr. Berk's accident. On the second day of trial, the judge ruled that the Defendants had not been able to establish an appropriate basis for the admission of that blood alcohol test, and that without some further offer of proof, it would not come into evidence.

Atlanta Casualty then recognized the potential exposure it had. On the third day of trial, it agreed to pay \$1.25 million on behalf of Mr. Jones despite his \$100,000 policy limit. The total recovery Mr. Searcy and Mr. Speed achieved for Noel Berk and his wife Sharron, was \$3.275 million.

Mr. Berk will be receiving a substantial part of his settlement in cash, with the remainder being used to purchase a *lifetime annuity for his future care*. There are substantial modifications needed in his home to accommodate his quadriplegic status, as well as the purchase of a new wheelchair-accessible van. The settlement provides the opportunity to hire additional daily care for Mr. Berk, thereby relieving Mrs. Berk from the strain of being his primary caretaker. With the funds now available to him, Mr. Berk's quality of life will be greatly improved. ■