

# OF COUNSEL

A QUARTERLY REPORT  
FROM

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*Attorneys at Law*

TO CLIENTS & ATTORNEYS  
VOL. 00, NO. 3

## **Irreversible Brain Damage from Medical Negligence**

### *Cosmetic Surgery Results in Coma*

**O**n Sept. 26, 1997, Lizbeth Budde arrived at Dr. Poser's office to undergo liposuction surgery and remove fatty deposits from the backs of her thighs. Dr. Poser contracted with Brenda Mull, a nurse anesthetist, to administer the anesthesia. During the procedure, Nurse Mull negligently administered a high epidural. She improperly placed the catheter in the spinal canal and too much anesthesia was administered to the patient. Such a mishap can be very dangerous because it can stop a person's respiration and heartbeat. Immediately after receiving the epidural, Mrs. Budde began having a difficult time breathing and her blood pressure dropped.

At 10:24 a.m., someone from Dr. Poser's office called 911 and reported that Mrs. Budde's heart had stopped and that she was not breathing. When the paramedics arrived at 10:31, Mrs. Budde was in cardiac arrest. They also noted that someone had improperly administered a tube into Mrs. Budde's esophagus instead of her airway. The paramedics successfully resuscitated Mrs. Budde and then left at 10:51.

Dr. Poser called an anesthesiologist, Dr. Erik H. Zander, to continue with the liposuction procedure. Dr. Zander authorized the surgery and advised his medical staff to proceed.

At 2:56 p.m., another call came from Dr. Poser's office to 911, requesting that Mrs. Budde be transported to Alachua General Hospital in Gainesville. The paramedics returned to Dr. Poser's office *continued on page four*



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NOTE: The accounts of recent trials, verdicts and settlements contained in this newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case.

Omitting Clients' names and/or Defendants' names are result of requests for anonymity.

## The Meeting Corner:

### *Rosalyn Sia Baker*

Rosalyn Sia Baker was born in Tampa, Fla. and raised in West Palm Beach. In December 1996, Ms. Baker completed her undergraduate studies at Florida State University. She received a Bachelor of Arts Degree in Communication. Between 1995 and 1996, Ms. Baker worked as an intern for Governor Lawton Chiles, assisting him in the preparation of all his local, statewide, and national appearances.

Upon entering Florida State University College of Law, Ms. Baker was awarded a three-year scholarship from the Virgil Hawkins Fellowship for academic achievement.

During her law school tenure, Ms. Baker was a member of the Moot Court Team and the Journal of Transnational Law & Policy. She was also inducted into the National Order of the Barristers in 2000 for her achievements in Moot Court oral arguments.



**Rosalyn Sia Baker with her father,  
the Honorable Moses Baker, Jr.**

Ms. Baker received her law degree from Florida State in May 2000. On Sept. 22, her father, the Honorable Moses Baker, Jr. of the 15th Judicial Circuit Court, and a former shareholder at the law firm of Searcy Denney Scarola Barnhart and Shipley, swore Ms. Baker into the Florida Bar. Ms. Baker will work with partner Jack Scarola, focusing on personal injury and commercial litigation cases.

Ms. Baker resides in West Palm Beach. When not working, she enjoys biking, shopping, playing tennis, watching football and walking her dog, Rocky. ■



### *Walter Stein*

Mr. Stein, a native of New York, holds a Bachelor of Science degree in accounting from Brooklyn College. His legal career began in 1964 following his graduation, with honors, from New York University School of Law. He spent his first six years in practice with two New York City law firms.

From 1970 until 1989, Mr. Stein held various executive and legal positions for several private and public corporations. He has also

worked as the vice president, secretary, and general counsel of a national full-line property and casualty insurance/reinsurance company in New Jersey.

Mr. Stein opened his own insurance consulting practice in 1990. The practice specialized in insurance regulatory matters and represented California, New Jersey, and Pennsylvania Insurance Departments. From 1996 to 2000, Mr. Stein focused on more than 15 national class action litigation cases against the life insurance industry.

Mr. Stein relocated from New Jersey to South Florida and will assist Jack Scarola as a paralegal until admitted to the Florida Bar. Mr. Stein and his wife, Susan, have a college-bound daughter, Jaclyn. He also has a 33-year-old son and three grandsons living in Charlotte, N.C. Mr. Stein is an avid amateur photographer and enjoys swimming and antiques. ■

## Deadly Drug Reaction



# Mom's Untimely Death Attributed to Psychiatrist's Arrogance

Leslie and Brian were very excited about the birth of their first baby. On Aug. 22, 1996, Leslie delivered a baby girl. Unfortunately, due to the negligence of the physicians who became involved in this very unusual case, Leslie would never get to know her newborn.

Very soon after her little girl's birth, Leslie started suffering from postpartum depression. This fairly common condition developed into a far rarer condition called postpartum psychosis. Due to her extremely bizarre behavior, Leslie was admitted to a mental hospital where she was closely monitored and followed by a professional psychiatric staff and physician.

Leslie was in and out of the hospital three times, and each time she returned home, her symptoms became more severe and difficult to treat. In spite of the fact that her family was taking good care of her at home and making sure she took her medication, Leslie was not improving.

*The death would have been entirely preventable had the psychiatrist just listened.*

One of the many medications that Leslie was prescribed was Tegretol. Although this is primarily a medication to control seizures, it has on rare occasions been effective (in conjunction with other medications) to treat severe postpartum psychosis. Leslie's treating psychiatrist testified he knew that Tegretol was a potentially dangerous drug, with side effects and reactions set forth in the *Physicians' Desk Reference* including severe rash and death.

About a week after Leslie started taking Tegretol, her husband and family noticed a rash on her body. A home health care nurse also noted the rash. Leslie's husband attempted to call attention to the problem, but he could not get the psychiatrist's interest. When the home health care nurse called the psychiatrist to tell him about the rash and to report on the patient's condition, the psychiatrist very arrogantly told the nurse he did not want to be bothered with these matters. He made it clear that he was the doctor and that the home health care nurse was only a nurse. This arrogant attitude turned out to be the psychiatrist's downfall in this case.

As a result of the psychiatrist's failure to stop the Tegretol earlier, Leslie went on to develop what could be described as a rash on the inside of her body. This resulted in many serious complications. Leslie's bowel had perforated and she slipped into septic shock. In spite of emergency air transport to the University of Florida, and the herculean efforts of the physicians there, Leslie passed away on Nov. 13, 1996.

Leslie's husband enlisted the help of attorney Robert Sussman of Palm City, who in turn referred the case to Chris Searcy and John Shipley. The key to the case turned out to be the testimony of the psychiatrist himself. At his deposition, the psychiatrist testified he was never told by the home health care nurse or by the patient's husband that Leslie had the rash. He said he knew he had not been told about the rash because, if he had, he would have immediately stopped the Tegretol. As it turned out, a very careful review of the medical records **continued on page four**



## Cosmetic Surgery Results in Coma

*(Continued from page one)*

at 3:01 p.m. and found Mrs. Budde unconscious and suffering from seizure activity. They then transported her to Alachua General Hospital. Dr. Poser noted on Mrs. Budde's personal history and physical examination forms that she had received a high epidural which resulted in a possible allergic reaction.

As a result of the negligence committed by the two doctors and the nurse, Mrs. Budde, a mother of two little boys, suffered permanent and irreversible brain damage. She now lives in a comatose state.

This case was referred to Greg Barnhart from attorney G. Russell Petersen in Vero Beach. Mrs. Budde's mother, Janice Pestrichelli, and her ex-husband, Gregory Budde, sought to pursue a medical negligence claim against Dr. Poser, Dr. Zander, and Nurse Mull.

*She improperly placed the catheter  
in the spinal canal and  
too much anesthesia  
was administered to the patient.*

During discovery, Mr. Barnhart uncovered that Dr. Zander was trying to distance himself from any wrongdoing in the case. Dr. Zander made notes in Mrs. Budde's file claiming that Dr. Poser intentionally withheld critical information from him. He also contended that he had arrived at Dr. Poser's office at 11:00 a.m., instead of 10:30 a.m., as reported by more than ten eyewitnesses. Dr. Zander also falsely testified that he was never informed that Mrs. Budde received CPR and, had he known such facts, he would have insisted on hospitalizing her. Both Dr. Poser and Nurse Mull testified that Dr. Zander was informed that CPR was performed. In fact, the paramedics revealed that Dr. Zander arrived just after Mrs. Budde went into cardiac arrest and was present when they were performing CPR. Had Mrs. Budde been transferred to the hospital while receiving CPR, she would have suffered a lesser brain injury, or perhaps no permanent injury whatsoever.

Mrs. Budde and her family have suffered tremendously and needlessly. Mrs. Budde will require constant medical care for the rest of her life. She lives in a nursing home in Vero Beach. Based in part on the overwhelming evidence against Dr. Zander, Mr. Barnhart settled with all the defendants for \$3.5 million on behalf of Mrs. Budde and her family. ■

## Psychiatrist's Arrogance Attributed to Death

*(Continued from page three)*

revealed that he had been told about the rash and had prescribed Benadryl on that date over the phone. Benadryl is a medication used specifically to control rashes and inflammation.

The defendants in the case, primarily the psychiatrist and his insurance company, paid a settlement that was acceptable to Leslie's husband, including an annuity for Leslie's little girl. Although Leslie's daughter will never know her mom, her financial needs will be taken care of for the rest of her life.

This was quite an unusual case, as a severe drug reaction like this one is rare, even with Tegretol. However, had the psychiatrist simply paid attention, Leslie's death would have been entirely preventable. ■



## Head-on Collision Causes Brain Injury

# *Virginia Man Faces Major Medical Setbacks*

On Dec. 5, 1998, around 6:30 p.m., Henry "Mac" Hughes was driving northbound in his 1985 Toyota van. He was traveling on Conduit Road in Colonial Heights, Va. Unknown to Mr. Hughes, 16-year-old Jason Paul Mapes was driving a 1992 Toyota van southbound on the same road. Mr. Mapes crossed over two lanes of traffic and struck Mr. Hughes's car head-on. Mr. Hughes was airlifted to the Medical College of Virginia in Richmond, where he underwent surgery for a forearm fracture and the removal of a blood clot in his brain. Unfortunately, he would never fully recover.

Mr. Hughes and his wife, Julie, have three children: Allison (21), Corey (19), and Ashley (17). Mr. Hughes was the owner of H&L Flowers in Colonial Heights. For the past 20 years, Mr. Hughes held the prestigious honor of joining other florists to decorate The White House during the holiday season.

Mr. Hughes sustained lost earnings of \$30,000 per year. Attorneys David White and Chris Speed handled the case in Virginia, where they were able to obtain workers' compensation benefits for Mr. Hughes. They also filed a lawsuit for negligence against Mr. Mapes, USAA, Allstate Insurance Company, Travelers Insurance Company, and GEICO Insurance Company, seeking bodily injury insurance benefits, as well as underinsured motorist benefits.

Mr. Hughes was evaluated by a neuropsychiatrist Dr. Gregory O'Shanick, a rehabilitation expert Sharon Revis, and a vocational assessment expert Peder Melberg. Because of the brain injury, it was determined that Mr. Hughes was permanently and totally disabled, and that he would be unable to return to work. Economist N. Fayne Edwards, Ph.D. prepared an analysis of Mr. Hughes's lost earning capacity and the cost of life care plan.

Mr. White and Mr. Speed prepared for a May 1, 2000 trial, but shortly before, the case was settled for \$1.3 million. Mr. Hughes will use the settlement to care for himself and his family. Sadly, since the settlement, a more serious complication has developed for Mr. Hughes. He was recently diagnosed with Stage III-B Squamous Cell Carcinoma of the lung and is currently being treated with a combination of chemotherapy and radiation. ■



## Volunteer Thrown From Golf Cart

In May 1997, Sandra Cosby offered to volunteer at a charity golf tournament. The tournament was being sponsored by a restaurant in Palm Beach County. Sandra was assigned to monitor one of the holes during the tournament. The owner of the restaurant, who was sponsoring the tournament, offered to take Sandra and another volunteer to their assigned holes on her golf cart. Because the golf cart had only two seats, Sandra stepped on the back of the golf cart and held on for the ride. The restaurant owner stepped on the gas pedal and initiated a quick and sudden turn. Sandra was thrown off the back of the cart and onto the asphalt pavement where she struck her head. Sandra suffered a significant head injury which ultimately resulted in partial paralysis to the right side of her face.

Suit was filed against the restaurant owner because it was determined that she was acting in the course and scope of her employment at the time of the incident. Suit was also filed against the lessee/operator of the golf course because the golf cart was leased for the tournament. It was determined that the lessee was responsible for the operation of the golf cart under the doctrine of dangerous instrumentality.

The case was settled in May for \$1 million. Attorneys Jack Scarola and William King represented Sandra and her husband. The money will be used to help defray the cost of the medical bills Sandra has incurred because of the accident. ■

## AB v. RPB Nursing Home

On Jan. 13, 1996, an elderly woman named "AB" was admitted to a nursing facility by her daughter. AB had been having trouble walking at home and her family could no longer care for her.

Within a month after her arrival, AB had developed a serious ulcer which progressed and became grossly infected. AB also developed a bone infection called osteomyelitis which her family members alleged had ultimately contributed to her death.

AB's daughter retained the services of attorneys Earl Denney and Karen Terry to investigate the lack of care rendered by the nursing home. When Ms. Terry went to the nursing facility, she found AB lying in feces. Ms. Terry took photographs of the deplorable condition in which she found AB. Ms. Terry also became a witness in the case.

After many years of arduous discovery, the nursing home was forced to produce staffing statistics demonstrating the number of nurses on staff at the time AB was there. The figures revealed that the nursing home was understaffed, thereby compromising the care rendered to AB and the other 120 residents. In fact, on some shifts it was discovered that there was not a single registered nurse working in the facility.

On behalf of AB's surviving family members, Mr. Denney and Ms. Terry settled the case with the nursing facility for \$542,500. ■

## BC v. WPB Nursing Home

In December 1994, an elderly woman named "BC" was admitted into a West Palm Beach nursing home facility. She was having trouble ambulating, so, together with her family, BC decided to enter the nursing home facility.

While BC was at the facility, she fell a total of 22 times. In the worst of those falls, she suffered a fractured left hip. An orthopedic surgeon evaluated BC and decided it would be best not to perform surgery on the hip, but rather to let it heal naturally.

Four days later, a pregnant certified nursing assistant was attempting to lift BC into her bed. The assistant dropped BC and her leg got caught in the siderail of the bed. BC suffered a fractured right tibia and re-fractured her left hip. Due to the seriousness of the situation, BC underwent surgery to repair the fractures. Unfortunately, her health began to deteriorate rapidly thereafter.

Attorney Karen Terry was retained by BC's family. During a careful review of the nursing home notes, Ms. Terry found that several of BC's falls occurred because

**continued on  
next page**



# *Decisions...Decisions...Decisions...*



certified nursing assistants had forgotten to utilize bed monitors. A bed monitor is a sensing device which sounds an alarm when patients attempt to get out of their beds. Ms. Terry's investigation also revealed that BC suffered more falls in the afternoons and at night, a result of the inadequate staffing during those two shifts.

As a consequence of her injuries, BC's family transferred her in August 1996 to another nursing home facility. She remained a resident there until she passed away in May 1999.

During the case, a decision by the Fourth District Court of Appeals came down which would have essentially extinguished BC's claim against the nursing home.

Beverly Enterprises-

Florida, Inc. v.

Knowles dictates that if someone has a claim against a nursing home, but then dies unrelated to the claim, no wrongful death recovery can be made under Florida Statute 400. The Knowles decision would have been devastating to this case because BC passed away years later, and the falls were not in any way related to her death.

Negotiations were well under way when the Knowles decision was rendered. Ms. Karen Terry negotiated a \$375,000 settlement for BC's family in the nick of time. ■



*P.R. Director Cory Rubal and Attorney Earl Denney with President Bill Clinton.*

## *President Clinton in Palm Beach County*

On Monday, July 31, President Clinton was in Palm Beach County attending two fund raisers in support of the Democratic National Committee and Bill Nelson for U.S. Senate respectively. During a dinner held at a private residence in Palm Beach, President Clinton gave an impassioned speech on issues about education, health care, gun control, and Supreme Court nominations. He also spoke about the nation's prosperous economy, and how a Republican president would have a negative effect on it. Referring to the host's elaborate home, President Clinton quipped, "This is Exhibit A for the proposition that if you want to live like a Republican, you should vote Democrat." He concluded his 20 minute speech by asking everyone in the room to help elect Vice-President Al Gore as the next President of the United States. ■

### **Newsletter Format Updated**

In 1993 we launched our first **Of Counsel** newsletter. Seven years and 22 editions later, we present you with a new **Of Counsel** -- filled with color photos and art, bolder headlines, and printed on different stock. We opted for the change to offer you, our readers, a new feel and a fresher look.

While the look has changed, the news and information contained in **Of Counsel** remains the same: important news about our law firm, announcements on new hires and promotions, updates on tort reform, and legislative happenings both on a state and national level. More importantly, **Of Counsel** will continue to highlight the courage, spirit, and fortitude of our clients who have engaged in the litigation process. We will also recognize our attorneys, paralegals, and legal assistants who have marched into battle on behalf of those clients.

We hope you enjoy this edition of **Of Counsel**. Give us a call, write us, or e-mail us with your thoughts about our new look. We'd enjoy hearing from you.

**Of Counsel** Editorial and Design Staff

# SAVE A LIFE



**More than 6.5 million Firestone tires have been determined to be defective and are subject to deadly blow-outs. Many people have already been hurt or killed.**



**SOME OF THE TIRES WHICH HAVE BEEN RECALLED INCLUDE FIRESTONE ATX AND ATX II TIRES AND FIRESTONE WILDERNESS AT TIRES, ALL IN THE P235/75R15 SIZE. THERE MAY ALSO BE SERIOUS PROBLEMS WITH OTHER FIRESTONE TIRES.**

The law firm of Searcy Denney Scarola Barnhart & Shipley strongly encourages you to go to your nearest dealership to have these defective tires replaced. If your dealer cannot replace the tires due to the overwhelming response to the recall, we encourage you to spend the money, get the tires replaced, and then seek a refund from the dealership later. Too many people have tragically lost their lives or have been badly hurt in crashes caused by these defective tires.

Our firm is currently representing a number of individuals who have sustained serious injuries as a result of crashes caused by these faulty tires. We are also representing families who have lost loved ones. If you know anyone who needs our

help, please have them immediately contact our law firm. We will provide an initial consultation at no charge.

Searcy Denney Scarola Barnhart & Shipley has been successfully litigating major product liability cases for several decades. Our firm has achieved some of the most noteworthy verdicts in the nation, including a \$25.5 million verdict against General Motors and a \$56 million verdict against CSX Transportation. The firm's 20 attorneys have garnered national attention for their extraordinary results as advocates for families, and they have set precedents in Florida state law. They are supported by 16 paralegals/investigators, five registered nurses, and more than 100 support staff members.

**IF YOU KNOW SOMEONE WHO HAS SUFFERED INJURY AS A CONSEQUENCE OF THESE FAULTY FIRESTONE TIRES, PLEASE CONTACT CHRIS SEARCY DIRECTLY AT 561-686-6300 OR 800-780-8607.**



## Why Vote This Election Year?

Most people today have a million excuses for not getting to the polls to vote. Some common excuses tend to be, "I'm working," "I don't like the candidates," or, "My one vote is not going to make a difference." It's that one vote, however, that can make all the difference. Here are some examples of how one vote changed the course of history:

### Important deadline to remember:

The deadline  
to obtain an  
absentee ballot  
for the  
general election  
is  
**November 6.**



Wir  
sprechin  
deutsch?

- **California, Idaho, Oregon, Texas and Washington became states by just ONE vote.**
- **In 1776, ONE vote made English the official language of the United States instead of German.**
- **In 1800, ONE vote in the House of Representatives elected Thomas Jefferson as the third President of the United States.**
- **In 1868, ONE vote in the U.S. Senate saved President Andrew Johnson from impeachment.**
- **In 1923, ONE vote gave Adolf Hitler leadership of the Nazi Party.**
- **In 1948, Lyndon B. Johnson became a U.S. Senator by just ONE vote, and then became the 36th President of the United States.**



This year's election in the State of Florida will bring crucial changes. The following positions will need to be filled:

- Commissioner of Education
- Treasurer
- Insurance Commissioner
- State Attorney (Circuits 1-19)
- Public Defender (Circuits 1-19)
- State Senator (odd numbered Districts)
- State Senator (District 32)
- State Representative (all Districts)

Additionally, the terms of judges on the state level and the District Courts of Appeal will expire in January 2001. On the national level, some people have estimated that two, possibly four, new U.S. Supreme Court Justices may be appointed over the next four years.

So many issues involving each and every citizen's fundamental rights are at stake, including consumer privacy rights, civil rights, patient rights, and the legal rights of workers. Tort reform is a very important and key issue which could be impacted by Congress and the next President. So, do you still think your ONE vote doesn't count?

The sad truth is, less than half of the voting-age population turned out to vote in the last presidential election. And congressional elections, where one vote could easily have an impact, have had still lower turnouts than presidential elections.

*It does count. Vote.*



## United Cerebral Palsy Benefits from Clematis By Night

On Thursday, Aug. 17, Searcy Denney Scarola Barnhart & Shipley employees volunteered for United Cerebral Palsy in South Florida. As part of West Palm Beach's Clematis By Night Concert Series, these employees raised money for United Cerebral Palsy by serving beer to concert-goers. During the four hour event, more than \$2,400 was raised to benefit UCP.

Each week, Clematis By Night offers a non-profit agency the opportunity to participate in their Concert Series and benefit from the donations. United Cerebral Palsy is dedicated to assisting people with developmental disabilities. They also help families and their loved ones learn to live independent and productive lives within the community.

SDSBS volunteers who participated were Nancy Bullard, Michelle Holly, Novik Stubbs, and Yvonne Volcy. ■

**Taking...**

*Time to Care*

## Bowling for Make-A-Wish Foundation

On Saturday, Aug. 26, Searcy Denney Scarola Barnhart & Shipley employees and their family members bowled to benefit the Make-A-Wish Foundation of Southern Florida. Employees raised more than \$2,000 and bowled two games each during the event.

Overall proceeds raised for Make-A-Wish totalled \$17,000. This money will be used to grant the wishes of children with life-threatening illnesses. This year alone, Make-A-Wish will grant over 400 wishes to children living in South Florida.

SDSBS volunteers who participated were Laurie Briggs, Dan Calloway, Carla DaCunha, Travis Gallagher, Marilyn Hoffman and husband Brad, Shannon Kent and husband George, Robin Kriberney and husband Randy, Kris Leal and husband Sef, Ann Marie Leonardis, Jennifer Manke, Tobi Perl, Dawn Pitts, Cory Rubal, Chris Shelby, Novik Stubbs, Mary Susil, Nicole Talcik, Sally VanderWende, Linda Wells and daughters Dana and Taylor. ■



## Back To School Bash in Lake Worth

On Saturday, Aug. 12, Searcy Denney Scarola Barnhart & Shipley employees and their family members turned out for the Back To School Bash in Lake Worth. The Bash provided free backpacks, notebooks, pens, pencils, and school supplies for underprivileged children entering the 2000-2001 school year. During the event, more than 2,200 children in Palm Beach County were served. Searcy Denney Scarola Barnhart & Shipley employees and their family members worked with school-age children, assisting them in selecting school supplies for their particular age group.

Seven non-profit agencies were involved in putting The Bash together. They were Adopt-A-Family, The Center for Family Services, The Lord's Place, YWCA, Department of Children & Families, People Without Walls Church, and The Legal Aid Society.

SDSBS volunteers who participated were Tiffany Beach, Nancy Bullard, Cathy Doll and daughter Courtney, Dorlynn Maynor and son Kelby, Summer Moore, Pam Roberts, Cory Rubal, Walter Stein, Brian Sullivan, Yvonne Volcy, and Vi Ware. ■



## Esta Silverman

1913-2000

On Thursday, Sept. 21, Searcy Denney Scarola Barnhart & Shipley lost a friend and employee, Esta Silverman. Ms. Silverman began working at the law firm in 1990. She worked part-time, clipping newspaper articles and assembling client manuals.

Ms. Silverman was loved by the employees of this law firm. She will be dearly missed. ■



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Volume 00, No. 3

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AIRLINE & RAILROAD DISASTERS  
AUTOMOBILE ACCIDENTS  
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NURSING HOME LITIGATION  
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WRONGFUL DEATH

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