SEARCY DENNEY SCAROLA BARNHART & SHIPLEY

OF COUNSEL

A quarterly report to clients and attorneys.

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Hospital's Use of Life Threatening Drug Results in Brain Damage for Newborn

In December 1999, Tracie and Ulysses Jackson were anxiously awaiting the birth of their second child, a little girl. For the Jacksons, this would be the completion of their family – they already had a ten-year-old son, Jacquan, and they were excited about their new addition. On December 7, 1999, Tracie was admitted to Hospital X for the birth of her child. Tracie had delivered Jacquan via cesarean section, but planned to deliver this baby by "VBAC" (vaginal birth after cesarean).

Baby Jacqueline

Once she was admitted to the hospital, Tracie's doctors decided that they needed to induce her labor. To induce labor, Hospital X allowed its doctors to use a drug called Cytotec (known also as misoprostol), despite the fact that it was not FDA-approved for induction of labor. Cytotec is a strong drug ***Continued on page twelve.***

Chris Searcy and Chris Speed recently resolved a medical negligence claim on behalf of Helene Wilkinson against University Medical Center and the Florida Board of Regents for the sum of $6.15 million.

Helene Wilkinson, 44-year-old wife and mother of four, suffered significant and irreversible brain damage on May 5, 1997, while a patient at University Medical Center in Jacksonville, Florida. Hospital personnel failed to recognize an impending disaster in Mrs. Wilkinson, which deprived her brain of oxygen and caused her to suffer a cardiac arrest. Her story is a tragic example of how the inattentiveness of medical personnel can result in devastating injuries.

In March and April of 1997, Helene Wilkinson had begun to experience symptoms of an ongoing infective process. She was initially examined at Orange Park Hospital, though a definitive diagnosis could not be made there. After several weeks as an in-patient in that facility, she was transferred in mid-April to University Medical Center. She remained there as a patient for the next three weeks under the care of an internal medicine team and by various infectious disease specialists. Again, no definitive cause of her fever and infection was determined, though several tests were run during her hospitalization. A decision was eventually made to discharge her, on May 1, with home nursing to be provided to monitor the ongoing administration of antibiotics. ***Continued on page ten.***

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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.

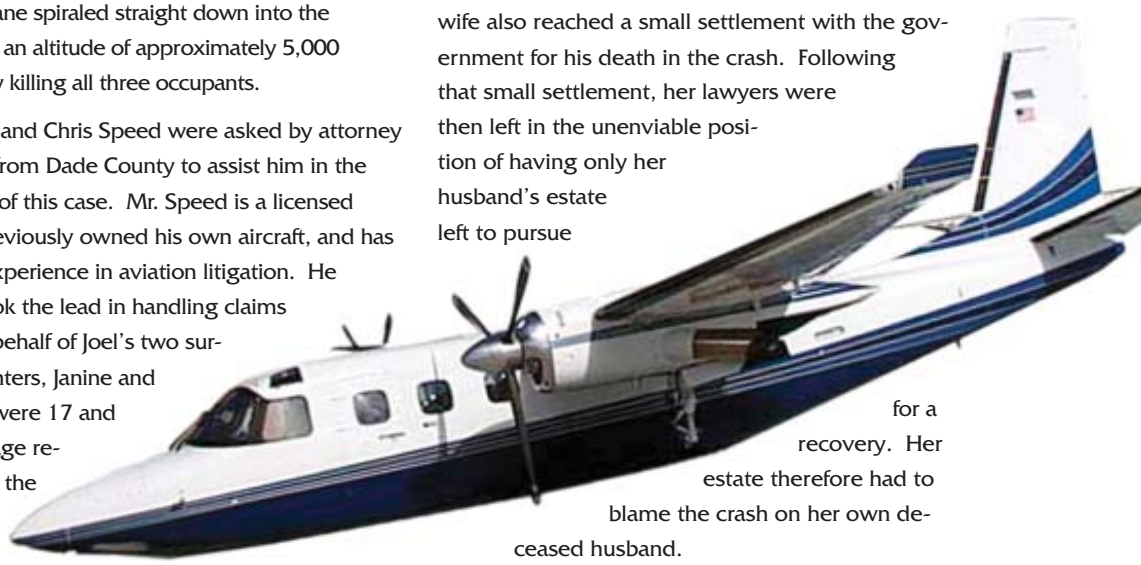
Omitting clients' names and/or defendants' names are the result of requests for anonymity.

Plane Crash Kills Three

Tragedy struck the family of Joel Mintz on January 21, 1998, when the plane in which he was a passenger crashed following takeoff in Boca Raton. Joel Mintz, a retired businessman, was flying to Georgia with his brother and his brother's wife. His brother, Michael Mintz, owned a Gulfstream Twin Commander, which he was piloting on the fateful day.

Following takeoff from the Boca Raton Airport, the plane encountered severe weather conditions, which caused Michael to lose control of the aircraft. The plane spiraled straight down into the ground from an altitude of approximately 5,000 feet, instantly killing all three occupants.

Chris Searcy and Chris Speed were asked by attorney Gil Haddad from Dade County to assist him in the prosecution of this case. Mr. Speed is a licensed pilot, has previously owned his own aircraft, and has significant experience in aviation litigation. He therefore took the lead in handling claims brought on behalf of Joel's two surviving daughters, Janine and Laura, who were 17 and 15 years of age respectively at the time of the crash.



A year after the tragedy, the National Transportation Safety Board (NTSB) released a report stating that pilot error was the cause of the crash. Nevertheless, the lawyers representing Michael Mintz's estate expended significant time and effort attempting to determine whether any mechanical problems may have played a role in the crash. Their extensive investigation, however, revealed none.

Additional attention was given to whether the air traffic controllers were negligent in their failure to instruct Michael Mintz to divert the course of the plane, thereby avoiding the heavier areas of convective activity. Air traffic controllers have the primary responsibility of keeping aircraft separated using the weather radar equipment in the plane. Pilots, however, have the ultimate responsibility for the safe operation of their aircraft, and Michael Mintz had the best opportunity to navigate around the threatening storms.

Mr. Speed and Mr. Searcy, who believed that the primary responsibility for this crash fell upon the pilot, negotiated an early settlement with the government for the role played by the air traffic controllers. As the remaining case approached its trial date of January 2003, interesting alliances developed among the various parties. Mr. Speed and Mr. Searcy were aligned with the government's air traffic controllers, contending that the crash was caused by the pilot. The pilot's lawyers, however, contended that the crash was the responsibility of the controllers. The estate of the pilot's deceased wife also reached a small settlement with the government for his death in the crash. Following that small settlement, her lawyers were then left in the unenviable position of having only her husband's estate left to pursue for a recovery. Her estate therefore had to blame the crash on her own deceased husband.

On the day prior to the start of trial, a final settlement was reached on behalf of Joel Mintz's estate for the sum of $2.25 million. No agreement could be reached between the pilot's estate and the government, and therefore that case was tried in the Federal District Court in West Palm Beach. Judge Ryskamp, who heard all of the evidence in that claim, ruled that there was no fault on the part of the controllers. The pilot's estate therefore made no recovery at all.

Funds from the settlement have enabled Janine to attend graduate school and have assisted her sister, Laura, in pursuing her undergraduate degree. Through the use of annuities, they have a much more financially secure future.

Failed Lasik Surgery Ends in Litigation Success

HOCH v. TLC AND BRINT

While LASIK eye surgery is often an effective solution to the inconvenience of glasses, the procedure, which involves laser reshaping of the cornea, can lead to tragic results if pre-surgery screening or the procedure itself is not performed with proper care. West Palm Beach attorney and retired workers' compensation judge, Rand Hoch, learned the hard way that "guarantees" about the safety and effectiveness of LASIK surgery cannot always be relied upon.

Judge Hoch chose his surgeon carefully when he decided in 1998 to undergo laser correction of his nearsightedness. Following the recommendation of his local optometrist, Judge Hoch made an appointment with Dr. Stephen Brint, a LASIK pioneer and internationally preeminent ophthalmic surgeon. Dr. Brint was associated at the time with a chain of laser surgery clinics located throughout the country called The Laser Center, Inc. (TLC).

Using assembly-line-like procedures, TLC-employed optometrists oversaw initial testing procedures, pre-qualified patients for surgery, and then lined up surgical candidates upon whom Dr. Brint would fly in to operate. Surgery was performed on both of Judge Hoch's eyes on the same occasion.

By all accounts, Dr. Brint's surgical technique was flawless. By Dr. Brint's own candid admission, however, Judge Hoch never should have been operated on at all. The screening tests conducted by TLC and provided to Dr. Brint for review before surgery showed that Judge Hoch had a condition called keratoconus – irregularly shaped corneas – that disqualified him for LASIK surgery. Instead of improving Judge Hoch's vision, the surgery triggered a series of worsening vision problems that led to legal blindness in one eye that could only be improved – though not completely cured – by a corneal transplant. The need for at least one additional corneal transplant in the other eye is expected.

Attorneys Bill King and Jack Scarola filed suit on Judge Hoch's behalf against both TLC and Dr. Brint, who were separately insured and separately represented. Although Dr. Brint admitted for the first time at deposition that he had fallen below the generally accepted standard of care, TLC vigorously continued to contest liability, and both defendants challenged every element of Judge Hoch's damage claims. The defendants focused substantial attention on the fact that Judge Hoch had continued a very successful practice as a workers' compensation mediator and was earning more after his LASIK surgery than before.

Following more than three years of litigation involving some of the top LASIK and vision correction experts in the world, and with a lengthy trial scheduled to begin in just weeks, TLC agreed to pay $900,000 to settle the portion of the case directed against it. Trial preparation for the case against Dr. Brint continued until a separate negotiated settlement was reached with Dr. Brint's liability insurance carrier. The amount of the second settlement is confidential.

Lance Block and Scott Carruthers, Executive Director of the Academy of Florida Trial Lawyers

Lance Block Honored by Krupnick Award

Attorney Lance J. Block was recently bestowed with the **Jon E. Krupnick Award** for the year 2003. The award was established in the year 2000 to annually recognize a trial lawyer champion. The award is designed to honor a lawyer whose efforts on behalf of a particular client reflect relentless commitment and perseverance, and the fortitude to seek justice in spite of whatever obstacles might be encountered. Jon E. Krupnick, the first recipient of the award, set a standard with his tenacity and professional excellence in representing a four-year-old child in a case that spanned 15 years. That case survived several difficult trials and appeals before Mr. Krupnick finally emerged victorious for his client. It was that effort that exemplified the concept that, through perseverance and relentless pursuit of justice, "…it is to the one who endures that the final victory comes."

Mr. Block was given the Jon E. Krupnick award for his work on the Godwin case, featured elsewhere in this issue of *Of Counsel*. The award is selected annually by the Board of Directors and is presented at the Academy of Florida Trial Lawyer's Annual Convention.

Profoundly Handicapped Woman Awarded Millions for Years of Abuse

Kimberly Godwin is a 32-year-old profoundly retarded woman. She was born in February 1971 in West Palm Beach. Kimberly has an un-testable IQ, but experts estimate her to function at the level of an 18-month-old toddler. Kimberly is non-verbal, usually incontinent, and stands less than 4 feet tall. She resides with her father, Jimmy Godwin, and her stepmother, Diane, in rural Telogia, Florida, near Tallahassee. Kimberly's natural mother, Darlene Godwin, died of breast cancer in 1998.

When she was approximately ten years old, Kimberly's many special needs prompted social workers to encourage Kimberly's parents to consent to her placement in a private, HRS-contracted group home for the developmentally disabled. Those social workers, who were employed by the Florida Department of Health and Rehabilitative Services (HRS), now known as the Department of Children and Families (DCF), initially placed Kimberly in the Manor Group Home in West Palm Beach. Tragically, several years later, Kimberly was beaten and confirmed as abused in that facility. At her parents' insistence, HRS relocated Kimberly to another private contracted group home called the Schenck Group Home, located in Ft. Pierce.

Kimberly's abuse didn't stop there. Between 1987 and 1992, multiple signs of abuse and neglect were documented by the day program Kimberly attended, by her physician, and even by several DCF employees. Then, in December 1991, it was discovered that Kimberly had been raped and impregnated by the 16-year-old son of the group home operator. He stood 6 feet 2 inches tall – a giant compared to Kimberly's tiny, 3 foot 11 inch frame.

Even after Kimberly's pregnancy was diagnosed in December of 1991, DCF left Kimberly in the Schenck Group Home for almost two months before her parents were finally contacted and advised of her condition. Even then, contact came not from DCF, but by a court appointed victim's advocate in a criminal case filed against the perpetrator.

Darlene Godwin was finally notified of Kimberly's abuse and condition in late January of 1992. She immediately contacted attorney Lance Block to assist her in regaining custody of her daughter and addressing Kimberly's medical needs.

Kimberly Godwin and her father in West Palm Beach in 1998

Discovery revealed that DCF's supervision of the group home was so inadequate that the agency had been unaware that the perpetrator was living in the home and sharing a room with other group home residents. Moreover, even though the home's operator was paid more than $100,000 per year, the facility had no employees and no nighttime supervision. Evidence presented at trial revealed that the group home operator had concealed Kimberly's rape and pregnancy until Kimberly was more than five months pregnant. Only after the school principal insisted, in writing, did DCF finally have Kimberly tested for pregnancy.

When Mr. Block began work on the civil case in late January 1992, Kimberly was more than five months pregnant and still living in the group home where she had been raped. Although she was an adult and profoundly retarded, Kimberly had never been legally declared mentally incompetent. Her family felt that Kimberly was not physically, mentally, or emotionally capable of carrying a baby to term and delivering it, much less providing care for a child after birth. However, no competent physician would terminate the pregnancy without the consent of a legal guardian, and thus far no one had been appointed. Mr. Block immediately filed a petition to appoint Mrs. Godwin as Kimberly's temporary, emergency guardian. To have sought permanent guardianship status would require lengthy notice provisions and stringent evidentiary requirements, which would have taken months to accomplish, thereby making it impossible to carry out an abortion in a timely manner. ***Continued on next page.***

In accordance with the emergency guardianship rules, the court appointed an attorney ad litem for Kimberly, as the prospective ward. The attorney ad litem was surprisingly contentious, arguing that there was no legal basis for an emergency guardianship. He maintained that the fetus should have a guardian appointed, and was steadfastly opposed to the abortion planned for Kimberly. However, during a lengthy evidentiary hearing, where testimony was elicited from the Godwin family and Kimberly's physicians, the court granted the petition appointing Mrs. Godwin as Kimberly's temporary guardian, and thereby approved the abortion. Kimberly's court-appointed attorney ad litem immediately appealed the decision. However, the Fourth District quickly affirmed the trial court's decision, and the Florida Supreme Court dismissed a subsequent petition for certiorari, also filed by the attorney ad litem. Mr. Block associated appellate specialist Philip Burlington, Esquire to assist with the appeal.

Immediately after the hearing, Darlene Godwin rushed Kimberly to the closest hospital. By then, Kimberly was lethargic and feverish. DCF and the group home had failed to provide Kimberly with medical care during the course of her pregnancy, and she was suffering from pneumonia, dehydration, and anemia. Kimberly remained hospitalized for almost a week. After her discharge from the hospital, her pregnancy was terminated, after which Kimberly returned home to north Florida to reside with her parents. She has resided there ever since.

In 1995, suit was filed against the group home and DCF, alleging negligence and violations under Chapter 393.13(3) of the Florida Statutes, known as the "Bill of Rights of the Developmentally Disabled." Over a span of almost five years, dozens of depositions were taken to uncover the truth about Kimberly's ordeal while under state care. Countless trial dates were postponed due to motions for continuance filed by DCF and as a consequence of an overburdened 19th Judicial Circuit docket. During that time, Darlene Godwin lost her courageous four-year battle with breast cancer, and she died in 1998.

At mediation in the fall of 1999, DCF and the uninsured group home offered Kimberly and her father, Jimmy, now acting as the guardian, $50,000 to settle the case. The offer was summarily rejected.

The civil trial began in March 2000 in Ft. Pierce and lasted almost two weeks. Mr. Block tried the case with assistance from his Searcy Denney associate, Harry Shevin. Evidence was presented that Kimberly, who could not describe the trauma she had endured or the damage it had caused, suffered enormously from the abuse and neglect she experienced while living under state care. At trial, Kimberly's father described her as "numb" and "zombie-like" upon her return home. Within a few months, her numbness turned to anger, violence, self-abuse, and destruction of property in the home. Her mother's testimony, taken by deposition before her death, was corroborative. Kimberly's behavioral therapist testified that Kimberly exhibited severe behavioral dysfunction consistent with chronic physical and sexual abuse of a profoundly retarded person. Her teachers at the day program testified that Kimberly became more withdrawn and that her self-abusive behavior intensified after her rape and while she was pregnant. The Assistant State Attorney, who prosecuted the perpetrator criminally, also testified at the trial, stating that Kimberly had moaned in open court at the sight of the rapist during his attendance at a sentencing hearing.

From an economic standpoint, Kimberly's father testified that he could no longer trust DCF to safely care for his daughter due to her abuse history in state-contracted group homes. Even if returning Kimberly to his rural home meant that her rights to community-based services would be adversely affected, her family had no intention of returning Kimberly to the state's care. Evidence was therefore presented to fund a private life care plan for Kimberly, whereby she could receive adequate services within the safe confines of her family home.

Continued on page 14.

Recent Changes in Medical Malpractice Law Caps on Damages

The Florida legislature recently passed sweeping changes affecting medical negligence cases. Contained within the bill are caps on damages and procedural changes designed to make it more difficult, lengthy, and costly for injured victims to recover full compensation.

All of the caps discussed below will not apply to cases already ongoing.

While the effects of these changes cannot be accurately predicted with certainty, these are the major points:

CAPS ON EMERGENCY ROOM CASES

With respect to claims against practitioners (doctors), regardless of the number of defendants, non-economic damages are capped at $150,000 per claimant, with the maximum being $300,000, regardless of how many claimants are involved. These caps apply to emergency room physicians for care rendered prior to such time as a patient is stabilized in the emergency room. What "stabilized" means in a given case is subject to determination. These caps also apply to emergency care rendered to a patient prior to the patient's arrival at a hospital emergency room.

For an injury that results from a non-practitioner's emergency services, non-economic damages are capped at $750,000 per claimant regardless of the number of defendants, but not to exceed $1.5 million from all non-practitioner defendants, regardless of the number of claimants.

Generally, a practitioner is defined as a specified type of physician, while the non-practitioner definition would apply to nurses and other hospital personnel.

GENERAL CAPS ON NON-ECONOMIC DAMAGES

Applies to Personal Injuries and Wrongful Death as a Result of Medical Negligence

Non-economic damages are generally defined as damages for injury, pain, disability, disfigurement, and the loss of capacity to enjoy life. They differ from economic damages, which are damages to recover for lost wages, medical bills, and other such damages.

Non-economic damages are capped at $500,000 from each practitioner (doctor) defendant, but not to exceed $1 million from all practitioner (doctor) defendants, regardless of the number of claimants. The caps are $750,000 per claimant from all non-practitioner defendants, not to exceed $1.5 million from all non-practitioner defendants, regardless of how many claimants. Thus, the total available for a given injury, regardless of how many victims there are, is $2.5 million.

However, if the negligence results in a permanent vegetative state or death, the non-economic damages are capped at $1 million, regardless of the number of claimants and regardless of the number of practitioner (doctor) defendants, and $1.5 million from all non-practitioner defendants, regardless of the number of claimants.

In addition, the injured patient may recover non-economic damages up to $1 million for the injured patient from all practitioner (doctor) defendants, and $1.5 million for the injured patient from all non-practitioner defendants if the injury is as a result of certain specified catastrophic injuries, which include such things as severe head injuries and brain injury, spinal cord injuries, serious burn injuries, blindness, and loss of a limb.

CHANGES IN BAD FAITH LAW

Florida law has historically required insurance companies to act in "good faith" towards their policyholders. The policyholders in medical negligence cases are generally doctors, nurses, hospital personnel, and other health care providers. The good faith requirement compelled insurance companies to pay claims early on in a case, often within thirty (30) days of receiving demands, to protect their policyholders from jury verdicts in excess of their available insurance limits.

These laws benefited not only policy-holders, but our clients as well. Early payment of insurance benefits provided compensation needed by victims, and also kept clients' costs low.

In addition, if a timely demand for insurance coverage was made and yet not paid

by the insurance company, the company could be held in "bad faith," which had the effect of allowing the injured victims to recover their full damages from the policyholder's insurance company.

THE NEW BAD FAITH LAW

The new law gives the insurance company a much longer period of time to make the decision as to whether it should pay claims. An insurance company is not going to be held liable in bad faith if it offers its policy limits by the earlier of either of the following two dates:

1. The 210th day after serving the complaint. However, this date can be extended 60 days by the Court, if it finds that the plaintiff has amended his or her witness list or provided new evidence, and if either of those events materially affects the value or theory of the case;

2. The 60th day after the conclusion of the depositions of all claimants, defendants, expert witnesses, the initial disclosure of witnesses and documents, and mediation.

The effect of this change in the law cannot be accurately predicted, although it is clear that it will make it much more difficult for plaintiffs to resolve their cases early on, even if all of the evidence points to the fact that early resolution should take place.

Searcy Denney Scarola Barnhart & Shipley is committed to obtaining full and appropriate compensation for our injured clients. We are able and prepared to commit substantial resources to cases we prosecute, no matter how long and costly those battles may last.

Judge Swats Down Gag Order Request by "Buggy" Hospital

It was a smashing victory for the First Amendment and a major setback for Palm Beach Gardens Medical Center when Palm Beach County Circuit Judge David Crow turned down its request for an immediate gag order. Numerous reporters and media representatives attended the June 19 hearing to publicly oppose the gag order request.

Facing more than 100 lawsuits alleging that the hospital did not do enough to control life-threatening post-operative infections, Palm Beach Gardens Medical Center asked the court to prohibit participating parties and their counsel "from making extra judicial comments to the print, radio, and television that relate to:

> Evidence regarding the occurrences, incidents, or injuries involved in the cases;
>
> The character, credibility, or criminal record of any party, witness, or prospective witness;
>
> The performance or results of any examination or tests, or the refusal or failure of a party to submit to such; and
>
> Plaintiffs' counsel's opinions as to the merits of the claims or defenses of any party."

After listening to the hospital's argument, the judge decided that the gag order request had bugs in it. But, then, so does Palm Beach Gardens Medical Center – as many of its patients unfortunately found out.

In fact, since 1999, Palm Beach Gardens Medical Center has received numerous warnings from several different pest extermination companies about unsanitary conditions leading to bug infestations at the hospital. Despite these warnings, the hospital allowed the unsanitary conditions to continue.

As reported in *The Palm Beach Post*, "An attorney suing Palm Beach Gardens Medical Center claimed Thursday the hospital is combating a flying insect problem by installing 'bug-zappers' in its operating rooms," and has copies of multiple reports from Palm Beach Gardens Medical Center's exterminators to prove it. "If Palm Beach Gardens Medical Center has bugs in operating rooms, ants crawling around ICUs, rat bait stations outside the hospital and flies breeding in the mops, the public has a right to know," declared Cal Warriner of Searcy Denney Scarola Barnhart & Shipley.

"Sometimes a request for a gag order backfires… The effort to quash negative publicity arising from the suits' allegations provided a platform for (the lead plaintiff counsel) to describe alleged conditions at the hospital that would make anyone gag – in disgust," opined the *Daily Business Review*, which described the hospital's failed effort as "a public relations disaster."

In fact, when Palm Beach Gardens Medical Center made a routine promotional announcement one month later, *The Palm Beach Post* continued to focus on the hospital's bug problem:

"Palm Beach Gardens Medical Center is still showing scars from last year, when government inspectors found numerous infection control problems that nearly shut down the hospital. Admissions at the 204-bed hospital have fallen every month since May 2002, according to state data compiled by the Treasure Coast Health Council. Emergency room visits and births are down. Worse yet, patients looking for open-heart surgery, one of the most lucrative medical services, are choosing competitive (sic) hospitals. Doctors say patients still question their judgment to send them to Palm Beach Gardens Medical Center out of worry that their health could be in jeopardy."

War Hero Receives Justice for Loss of His Loving Wife

Jean Applebaum was born on March 1, 1915, in Brooklyn, NY. She met her husband, Leon, at a resort in the Catskills and they fell in love and got engaged. During their engagement, Jean and Leon knew that Leon was going to Europe to fight in World War II, and he was indeed deployed in that conflict just after they were married. Leon courageously fought for his country and was personally involved with saving Jewish children from the Nazis. Amid the horror that surrounded him, Leon's love for his new bride remained strong. They were reunited after the war and they remained together for the rest of Jean's life.

In addition to proving himself as a committed soldier, Leon was also a devoted husband, father, and eventually a grandfather. His life with Jean revolved around their family as they were blessed with a daughter, Joan, whom they raised in New York, and two grandsons. The whole family spent every summer together in upstate New York, playing tennis, swimming, and engaging in a host of other recreational activities. Years later, Jean and Leon became "snowbirds," and they eventually retired to live full time in Florida.

Unfortunately, as time passed, Jean's mental status began to deteriorate. She was diagnosed with Alzheimer's disease, and it finally became too difficult for her husband to take care of her. Though it was terribly difficult for Leon to relinquish his care for Jean to professionals, he and his family entrusted a facility called Morse Geriatric Center to take care of Jean's ever-developing needs. Unfortunately, Morse Geriatric violated that sacred trust, causing Jean and Leon irreparable harm.

On March 18, 1996, Jean was admitted to Morse Geriatric. In her care plan, it was noted that she had a potential for wandering and a potential for injury. In fact, the nursing home's records stated that "due to confusion she must be monitored carefully." Consequently, on May 5, 1999, Morse Geriatric performed a Fall Risk Assessment, which determined that Jean was at an extremely high risk for falling. Unfortunately, the nursing home failed to take steps to safeguard Jean from that well-identified risk.

On March 15, 2001, Jean suffered a fall which caused her to seriously fracture her femur. Her injury, in light of her age and mental status, proved to be devastating. Jean developed acute pneumonia shortly after her fall and she succumbed to the illness just two weeks after falling.

It is absolutely inexcusable that there were no safeguards taken to prevent this fall, including bed alarms and additional supervision.

After Jean's death, Leon Applebaum and his daughter, Joan Freemont, who was acting as his guardian, hired attorney Harry Shevin to investigate the care rendered by Morse Geriatric. After an initial investigation, suit was filed alleging that Jean was wrongfully killed due to Morse Geriatric's violations of Florida's Nursing Home Bill of Rights. During the prosecution, the Administrative Head of Morse Geriatric Center, Teresa Nichols, admitted that the nursing home failed to follow its normal protocols for a resident who had suffered previous falls. Nurse Nichols testified, "We take steps - if somebody is having falls, then we take steps to prevent them from falling: Bed alarms, chair alarms, certain positioning devices in their seats." Unfortunately, Jean was never protected by those preventative measures, nor was she adequately supervised. As a consequence, she suffered a fall that ultimately led to her death.

The case was scheduled for trial in Palm Beach County on an expedited basis due to Leon's poor health and advanced age. However, at mediation on the eve of trial, the case was settled for $312,500. Leon and Joan were pleased that Morse Geriatric paid for its neglect. After the case settled, Joan stated, "My father and I felt that we owed it to my beloved mother to pursue this matter, and we are very satisfied that this matter was resolved and feel that it has provided my family a sense of justice and closure." Leon was 96-years-old while the case was pending and, sadly, has since passed away.

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

Mary Jane and Joe Scotti with their daughter and grandchildren.

Hospital Fails to Protect Visitors

By the year 2000, Mary Jane and Joe Scotti had been married for over thirty years and had retired to Florida. They devoted time to their church, raised their seven-year-old granddaughter, Chelsea, and enjoyed spending time with their other three grandchildren. In April 2000, Mary Jane learned that a young girl was in critical condition after a terrible car accident. Upon hearing the story, she felt compelled to visit and support the family in their time of need.

Mary Jane was visiting the family of the injured girl at Hospital X on the night of April 12, 2000. As she left the hospital, she noticed that the area leading to the parking lot was extremely dark and the sidewalk was bordered by hedges. Fearing for her safety, Mary Jane walked to her car on the blacktop driveway instead of using the sidewalk. Due to the insufficient lighting in the area, Mary Jane was unable to discern the difference between the surface of the asphalt driveway and the sidewalk curb. She tripped and fell over the curb, suffering a fractured shoulder. Mary Jane required surgery to repair and partially replace her shoulder, and then endured months of extensive rehabilitation and physical therapy.

Mary Jane and Joe sought the assistance of attorney Jack Scarola, who then sought assistance from attorneys Darryl Lewis and Sia Baker. Hospital X vehemently denied responsibility for Mary Jane's injuries, taking the position that she simply wasn't watching where she was going. Mr. Lewis and Ms. Baker, however, were able to establish evidence of numerous lighting deficiencies in the hospital's parking lot. In fact, the on-duty security guard testified that he knew the parking lot was dark because the light in the area had not functioned in over eight months. In addition, numerous other witnesses testified that they too avoided the sidewalk due to the dimly lit area. Eventually, Mr. Lewis and Ms. Baker were able to establish that the hospital's maintenance department was aware of the lighting deficiency, but failed to remedy it, thereby placing the hospital's visitors at risk. After litigating the case for quite some time, Mr. Lewis and Ms. Baker settled the case just prior to trial for $225,000.

Man's Leg Crushed By Heavy Equipment

In February 2000, Bruce Vernooy, age 49, agreed to assist his nephew with the removal of a CT scanner from Jackson Memorial Hospital in Miami, Florida. A company called Dynamic Imaging of California had hired Mr. Vernooy's nephew to dismantle the CT scanner so that it could be transported to California for refurbishing. Dynamic Imaging also hired North American Van Lines to transport the CT scanner. A company called Molina Towing was also contacted in order to assist in the loading process. Molina was hired to place the CT scanner on the back of one of its flatbed trucks, and the CT scanner would then be transferred to the North American Van Lines trailer.

North American Van Lines, by agreement, was to hire a sufficient number of personnel to load the CT scanner, which weighed in excess of three tons. Unfortunately, North American Van Lines failed to arrange for the additional personnel needed. Consequently, on the morning of the planned move, the driver of the North American Van Lines tractor-trailer asked for assistance from Mr. Vernooy and his nephew in loading the CT scanner.

Once the CT scanner was placed on the back of Molina's flatbed truck, it was secured there by two connecting cables. However, unbeknownst to Mr. Vernooy, the cables securing the scanner were unhooked during the process of transferring it from the back of the flatbed onto the trailer. The scanner rolled forward, crushing Mr. Vernooy's lower leg as he stood behind the machine.

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Untreated Infection Leads to Brain Injury

(Continued from page one.)

In the days following her release, Mrs. Wilkinson's condition declined, and she returned to University Medical Center On May 3. She was admitted through the emergency department to a medical floor. She arrived late on a Saturday evening and was not seen by any attending physicians on that evening or on the following day, Sunday. She was seen infrequently by interns and residents over the weekend, and then her attending physician eventually saw her for the first time at 2:00 p.m. on Monday. Up to that point, no cardiac consultations were ordered, nor had any consideration been given to a potential cardiac issue being the cause of her problems. An infectious process in Mrs. Wilkinson's heart was finally suspected, after which an echocardiogram was ordered late in the afternoon on Monday, May 5.

As soon as the technician began performing the "echo," it was apparent to him that Mrs. Wilkinson had a condition known as a pericardial effusion present around her heart. The condition, which consists of a significant amount of fluid in the sac surrounding the heart, has the potential to be devastating if the fluid is allowed to collect to the point where it squeezes tightly on the heart. Despite the tech's recognition of the condition between 5:00 and 5:30 p.m., no physician was called to Mrs. Wilkinson's bedside until approximately 6:00 p.m.

When the cardiology team arrived at 6:00 p.m., they recognized immediately that Mrs. Wilkinson was experiencing what is known as cardiac tamponade, where fluid was trapped and squeezing down on her heart muscle. Nevertheless, it took another 45 minutes for Mrs. Wilkinson to be transferred to the cardiac care unit. By then, she was found collapsed on the floor next to her bed. Clearly she had had a fainting spell consistent with the presence of excess fluid bearing down on her heart.

The only way to address the ominous condition experienced by Mrs. Wilkinson was for doctors to insert a needle into the space around the heart, or to surgically open the pericardial sac, to drain the excess fluid. Mrs. Wilkinson was wheeled to the cardiac care suite at 6:45 p.m., but her heart stopped beating en route and she went into cardiac arrest. The doctors emergently drained the fluid from around the heart. However, by the time the resuscitation was complete and Mrs. Wilkinson's heart was properly functioning again, it was apparent that she had sustained a significant brain injury caused by lack of oxygen to the brain during the arrest.

Had there been more efficient communication between the echo technician and the doctors, and had the doctors responded sooner, Mrs. Wilkinson's arrest and brain injury would not have occurred. Had she been transported to CCU in a more expeditious manner -- had she arrived in the cardiac care unit only 15 minutes sooner --this tragedy would not have occurred.

Mrs. Wilkinson is currently in a vegetative state and totally dependent on those around her for all of her needs. She does have sleep/wake cycles, and therefore is not in a coma, but she is virtually unaware of her surroundings. She has a tracheotomy tube in place for respiratory emergencies, and is fed on a daily basis through a gastrointestinal tube.

Since the time of this tragedy, Mrs. Wilkinson's husband, Webster, has been her primary caretaker. Mr. Wilkinson has performed all of the medical and household services for his wife, including feeding her through her G-tube five times daily, with each feeding lasting up to an hour. He bathes her, addresses her toileting services, and has to turn her every 30 minutes to prevent bedsores and other complications caused by immobility. When Mrs. Wilkinson is awake, her husband performs physical stimulus and range of motion exercises.

Settlement funds recovered in this case by Mr. Searcy and Mr. Speed will provide Mr. and Mrs. Wilkinson with the means to obtain much more concentrated care. Importantly, they will relieve Mr. Wilkinson of the tremendous burden he has endured alone for the past five years. After having given up his employment to devote himself to his wife's round-the-clock needs for so long, he will now have outside assistance. The funds will also provide substantial monthly annuity payments to guarantee a lifetime stream of income for the enormous medical care that Mrs. Wilkinson requires.

Ray Coleman, a prominent Jacksonville trial lawyer, referred this case to the Searcy Denney firm. He provided significant help on numerous occasions as Defendants delayed the conclusion of this case with four separate trial continuances.

Accolades

Karen Terry

Attorney **Karen Terry** was recently featured in the July 2003 issue of Florida Trend Magazine as one of the state's "top-notch young lawyers." One of seven attorneys featured in the issue, Ms. Terry was noted for her academic excellence and impressive accomplishments in the courtroom, including two featured cases yielding verdicts in excess of $1 million. The article also referenced Ms. Terry's inclusion in the Million Dollar Advocates Forum (a group of attorneys with $1-million-plus verdicts), a distinction she earned just one year after joining the Bar.


Florida Trend

LAW

Exhibit A

Young lawyers are making a name for themselves and winning multimillion-dollar verdicts.

By Mike Vogel

KAREN E. TERRY

July 2003

Florida Trend

Sia Baker

Sia Baker has been appointed to the Board of Directors for the Young Lawyers Section of the Academy of Florida Trial Lawyers. She currently serves as Co-Chair of the Young Lawyers Section's Annual Mock Trial Competition, scheduled for November 9-10, 2003. Ms. Baker was also recently elected to the Board of Directors for the Women's Caucus Section of the Academy of Florida Trial Lawyers for a two-year term.

Bob Pitcher

Paralegal/Investigator **Bob Pitcher** was elected to the Board of Directors of Seagull Industries for the Disabled in May 2003. Seagull Industries is a private, non-profit social service agency that provides vocational and supported living programs for emotionally, physically, and mentally challenged adults in Palm Beach County. Seagull's mission is to improve the quality of life for this special population through training and advocacy. The program teaches self-reliance and economic independence through self-employment training, job placement, and the development of appropriate social skills.

Laurie Briggs

Laurie Briggs has joined the Board of Child Outreach, Inc. Ms. Briggs will assist Child Outreach with its numerous community programs. Ms. Briggs has been involved with this organization as a volunteer for the past 5 years.

Child Outreach, Inc. provides several programs to benefit our local community. Their goal, "Building Strong Minds Today In Order To Empower Our Youth To Face The Many Challenges of Tomorrow," is evident in their many community-based endeavors, including:

- Visits to local assisted living /elder care facilities
- Providing backpacks and school supplies to more than 1,000 children each August
- Feeding over 2,600 needy people for Thanksgiving
- Providing food, clothing, and toys to over 3,000 children during the holidays
- Distributing food to over 200 families each month

Hospital's Use of Life Threatening Drug Results in Brain Damage for Newborn

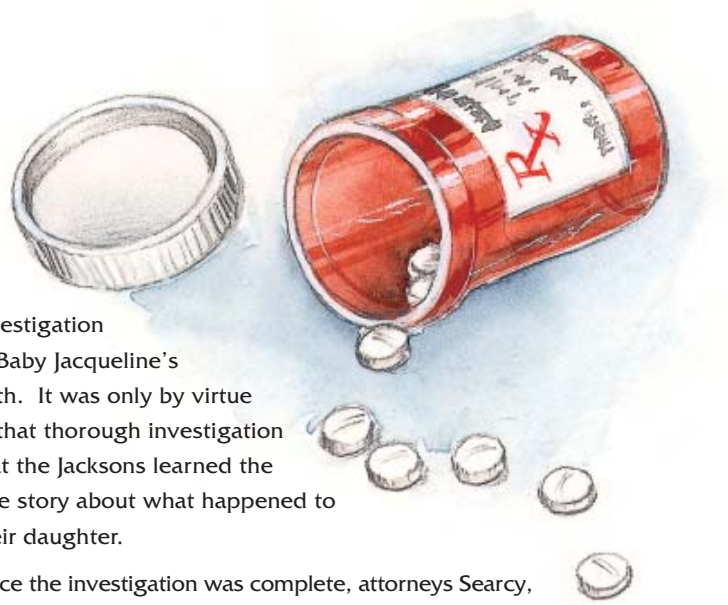
(Continued from page one.)

that is only FDA-approved for treating ulcers. Cytotec's dangerous side effects include violent and rapid contractions, bleeding, uterine rupture, infertility, severe brain damage, and maternal or fetal death. Because of the dangerous and potentially life-threatening side effects, the manufacturer of Cytotec issued warnings prohibiting the drug's use during deliveries.

Despite this clear warning, Hospital X allowed its doctors to use Cytotec to induce labor, without their patients' knowledge or permission. Doctors at Hospital X preferred Cytotec over the standard induction drugs because it caused strong, fast contractions and accelerated the birthing process. Women were delivering babies faster than ever. However, in 1998, medical researchers studying Cytotec's effects discovered that women undergoing VBACs were more likely to suffer uterine ruptures, resulting in severe brain damage and even death, than those who had not had previous cesarean sections. As a result, the researchers concluded that VBAC patients were at even higher risk for untoward outcomes when Cytotec was used to induce labor. Finally, the researchers demanded that their colleagues in the medical profession discontinue the use of Cytotec in VBAC patients. In 1999, both the manufacturer of Cytotec and the American College of Obstetrics and Gynecology (ACOG) issued written warnings prohibiting Cytotec's use in VBAC patients.

On December 7, 1999, ignoring all the warnings, Hospital X continued to allow the use of Cytotec on its pregnant patients. Tracie's doctor used the drug to induce her labor, without her knowledge or consent and without any explanation of the risks associated with the drug. Due to violent contractions caused by the drug, Tracie suffered a ruptured uterus, and her baby girl was forced into her abdominal cavity. Doctors took over an hour to respond to emergency calls from the nurses while the baby suffered severe oxygen deprivation. The Jacksons' little girl, Jacqueline Simone, suffered severe brain damage as a result. She will never be able to walk or talk and she will require 24-hour care for the rest of her life.

The Jacksons hired attorney Sia Baker to investigate the events surrounding the birth of their daughter. In turn, Ms. Baker sought the assistance of partners Chris Searcy and Darryl Lewis, and the team undertook an extensive investigation of Baby Jacqueline's birth. It was only by virtue of that thorough investigation that the Jacksons learned the true story about what happened to their daughter.



Once the investigation was complete, attorneys Searcy, Lewis, and Baker placed Hospital X and the doctors on notice of their intent to pursue legal action for the tragic injury suffered by Baby Jacqueline. Hospital X and the doctors, however, argued that they were immune from suit under NICA, the Birth-Related Neurological Injury Compensation Act passed by the Florida Legislature. The Act prohibits patients from filing lawsuits against physicians and hospitals participating in the plan, providing instead limited compensation to those suffering from birth-related neurological injuries. Under the plan, Baby Jacqueline's recovery would be limited to the payment of NICA-approved medical expenses, and her parents' recovery would be limited to $100,000 for pain and suffering.

The Jacksons' attorneys vehemently opposed the NICA classification in this case. They argued that this horrific event that severely injured Baby Jacqueline and changed the lives of their family forever, fell within a narrow exception to NICA immunity. The exception prevents hospitals and physicians from hiding behind the shield of NICA immunity when they engage in conduct that is willful, wanton, and in total disregard of the human safety of their patients. The legal team was able to mount a strong argument that the conduct displayed by Hospital X, in ignoring warnings about the drug Cytotec and allowing its physicians to use it on VBAC patients without their knowledge or consent, fell outside the scope of NICA and therefore constituted willful and wanton disregard of the safety of their patients.

After months of arduous debate regarding the Hospital's claim of NICA immunity, Mr. Searcy, Mr. Lewis, and Ms. Baker effectuated a settlement with Hospital X for $6 million. The doctors, however, continue to claim NICA immunity. Litigation against them is ongoing. For now, the partial settlement has enabled the Jacksons to address Baby Jacqueline's immediate medical needs.

Taking... *Time to Care*

Each Friday, Searcy Denney Scarola Barnhart & Shipley hosts a "Casual Day for Charity." Proceeds collected from our employees are contributed to a different charitable organization each week. So far this year, the following organizations have been selected by our employees and have received a financial contribution:

Adopt-A-Family
Alzheimers Community Care
American Cancer Society
American Heart Association
American Red Cross
Angel Flights Southeast
Bettie Bates Memorial Fund
Busch Wildlife Sanctuary
The Children's Coalition
Child Outreach
Children's Miracle Network
Community Child Care Center
Deaf Dog Education Fund
Florida Elks - Child Therapy Services
Friends of Abused Children
Friends of Jupiter Beach
Girl Scouts of
Palm Glades Council, Inc.
Glaucoma Research Foundation
Habitat for Humanity
Hearts & Hope
Hospice of Palm Beach County
Jeff Industries, Inc.
Junior Achievement
Juvenile Diabetes Research Foundation
Lighthouse for the Blind
March of Dimes
Mothers Against Drunk Driving (MADD)
Multiple Sclerosis
Operation Hope
Ovarian Cancer Research Fund
Peggy Adams Animal Rescue League
Safe Harbor
Seagull Industries
Sickle Cell Foundation of PBC
Tigers for Tomorrow
Turtle Nest Village
Urban Youth Impact
Vickers House
WOW (Winners on Wheels)

On August 15, 2003, representatives of **Searcy Denney Scarola Barnhart & Shipley** delivered a voluminous supply of food, clothing, hygiene products, toys, bedding, and other items to the City of Riviera Beach to assist victims of the August 7 tornado that ripped through the city. An estimated 236 structures were damaged by the tornado. Many of the city's residents lost their homes altogether or suffered significant structural damage, and many lost all of their personal belongings. Searcy Denney was pleased to participate in a community-wide effort to support those who suffered losses in the storm.

School Supplies Gathered For Child Outreach

On August 1, 2003, an organization called Child Outreach took delivery of a huge volume of school supplies aimed at assisting underprivileged students from Indiantown and Pahokee, Florida. The supplies, and the funds to purchase them, were provided largely by the employees of the Searcy Denney law firm. Among the supplies collected were over 800 pens, 800 notebooks, 300 pencils, reams of loose-leaf paper, folders, and Elmer's glue. Money was also donated to assist in the rental of the truck necessary to move the school supplies. Paralegal/Investigator Laurie Briggs spearheaded the project and was on hand to assist in the delivery of the supplies to Child Outreach.

Profoundly Handicapped Woman Awarded Millions for Years of Abuse

(Continued from page five.)

On March 29, 2000, the jury returned a verdict of $8 million for four separate violations of Kimberly's rights, the largest verdict ever under Florida's Bill of Rights statute. Specifically, the jury awarded $5 million for economic damages and $3 million for Kimberly's mental pain and suffering and other non-economic losses.

Florida Statute 768.76 provides for sovereign immunity protection for governmental/municipal entities such as the DCF. A claim brought by a single individual is capped under this statute at only $100,000 per occurrence, regardless of the severity of the damage done. Given the capped exposure afforded by this statute, the Department was required to pay $100,000 per occurrence, or a total of $400,000 for the four separate violations found by the jury. The Governor's office, however, initially took the position that DCF should only pay $100,000. In order to obtain payment in excess of the $100,000 single-occurrence cap, Mr. Block filed a Petition for Writ of Mandamus. After a hearing on that issue, the per occurrence limits of $400,000 were finally paid by the state.

In order to seek payment of the remaining $7.6 million awarded by the jury in this case, a claims bill was subsequently filed in the Florida Legislature. Bill sponsors included Senators Ken Pruitt and Al Lawson, as well as Representatives Nancy Argnenziano, Gaston Cantens, Richard Machek, Sandy Murman, Ann Gannon, and Susan Bucher. A two-day long legislative hearing was held before House and Senate Special Masters, who issued a recommendation that only $2.6 million be paid to Kimberly's guardianship. The Governor's office and DCF officials, including then Secretary Kearney, intensely lobbied legislative leaders behind the scenes, urging them to either not fund or only partially fund the Godwin claims bill. However, a committed legislative contingency, combined with favorable media coverage and numerous editorials, helped persuade the legislature to vote overwhelmingly in favor of the bill during the 2002 session, and Governor Bush signed the bill into law.

The bill, as passed, provided for a present value structured settlement of the entire $7.6 million balance owed on the judgment. Unfortunately, Mr. Block ran into roadblocks from the legal staffs of the Comptroller and Attorney General, and the Comptroller refused to execute the necessary documents to formalize the terms of the structured settlement. Once again, an action seeking a Writ of Mandamus was filed in order to require the Comptroller, on behalf of the state, to execute the necessary documents. Two hearings were held in the fall of 2002 before an agreement was finally reached. In December 2002, Jimmy Godwin, as his daughter's guardian, signed a structured settlement agreement with Chief Financial Officer Tom Gallagher, who signed on behalf of the state. Kimberly Godwin's entire verdict was therefore paid and her case was concluded after almost eleven years of litigation.

Man's Leg Crushed By Heavy Equipment

Continued from page nine.

Mr. Vernooy underwent multiple surgical procedures, including an internal/external fixation of fractures of both bones in his lower leg. He sustained a permanent impairment to his badly injured leg and was rendered unable to work any longer as a heavy equipment mechanic.

Mr. Vernooy retained Jack Scarola and William King to prosecute a case against the responsible parties. Suit was initiated against North American Van Lines, Dynamic Imaging, Molina Towing and the drivers of the two trucks involved. The case was eventually settled for a combined sum of $775,000.

Speaking Opportunities For Firm Lawyers

Attorneys and other members of **Searcy Denney Scarola Barnhart & Shipley** are often asked to speak at functions throughout the state of Florida. If you have a program or event for which you believe we can offer a unique or interesting perspective, especially as it pertains to matters of law, please contact Joan Williams or Robin Kriberney in our office.

Here are a few examples of recent speaking engagements:

Chris Searcy

Attorney **Chris Searcy** was a featured speaker at the Al J. Cone Trial Advocacy Institute in Orlando, which began on August 21. Addressing the Young Lawyers section of the Academy of Florida Trial Lawyers, Mr. Searcy led a workshop on opening statements and addressed strategies for Voir Dire, or jury selection, from the plaintiffs' side.

Greg Barnhart

Attorney **Greg Barnhart** was featured at an event hosted by the Palm Beach Chamber of Commerce on July 10, 2003, at the Breakers Hotel on Palm Beach. Mr. Barnhart was one of three featured speakers, providing the legal perspective for a program entitled, "Florida's Medical Malpractice Mayhem – Three Views: The Doctor, The Insurer, The Trial Lawyer."

Harry Shevin

Attorney **Harry Shevin** addressed the concerns of tort reform legislation, and how it affects consumers and injured victims, at a Town Hall Meeting on July 17, 2003. The event was hosted by Florida House Representative Eleanor Sobel and it took place at the Hollywood City Hall in Hollywood, Florida.

Log onto

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The Balance of Justice...

...means Justice for ALL.

Lady Justice stands blindfolded, holding a sword in one hand and balanced scales in the other.

The blindfold symbolizes equality.

The sword represents the strength of our justice system.

The balanced scales illustrate that the court begins with no preconceived notions.

We are facing a crisis in tort law... a crisis that could weaken the principles upon which our justice system is based.

So called "Tort Reform" would result in...

Removing the blindfold on Lady Justice, so she becomes biased by what she sees, leaving victims without equal rights before the court.

Dulling her sword - "Tort Reform" would diminish victims' rights by weakening our laws, leaving lawmakers prone to pressure from special interest groups with monetary/political clout.

Unbalancing her scales - "Tort Reform" drastically tilts the scales with the weight of arbitrary damage caps (**before** any evidence is heard) resulting in **imbalanced and unfair** applications of justice.

Support efforts to preserve Justice for all.
Support the fight against "Tort Reform."

The public must have access to Justice in our court system... "an inherent right."