

OF COUNSEL

A quarterly report
to clients
and attorneys.

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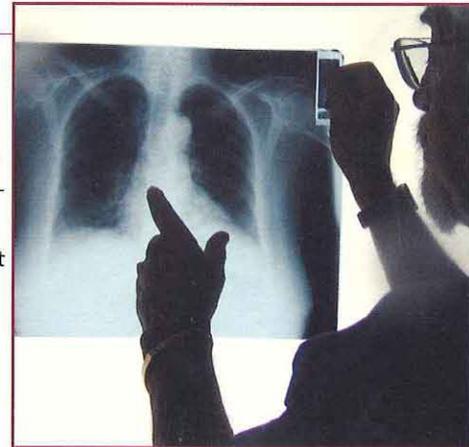
Unreported Chest X-rays Result in Inoperable Cancer

In May 1999, Charlotte Grimm was under the care of a doctor named Freeland Williams, M.D., who referred her to Dr. Elias N. Nasr for a hernia operation. In preparation, Mrs. Grimm was sent for a pre-surgical x-ray, and she was subsequently cleared for the operation. Unbeknownst to Mrs. Grimm and her husband, Darrell, that x-ray report was not placed in Mrs. Grimm's chart before the surgery was performed.

Roughly two years later and unrelated to her hernia procedure, Mrs. Grimm was diagnosed with stage IV lung cancer.

By that time, her cancer had advanced to the point where her doctors predicted that she had less than a year to live. Refusing to give in, Mrs. Grimm underwent extensive treatment in a gallant attempt to survive. Sadly, despite her best efforts, Mrs. Grimm lost her battle with cancer and passed away on October 29, 2002.

Following the diagnosis of cancer, Mr. Grimm became suspicious that his wife's care had not been up to par. He recalled a visit to Dr. Nasr in April of 2002, when Mr. Grimm and his wife told Dr. Nasr about the diagnosis of cancer. During that meeting, Dr. Nasr made mention about a prior x-ray, and began reading a report from his chart. He then suddenly stopped reading, closed the chart, and changed the subject. *Continued on page five.*



Misdiagnosed Shunt Malfunction Results in Death

Attorneys Lance Block and Jim Gustafson recently resolved a medical negligence case for \$2 million involving the wrongful death of a severely disabled 13-year-old girl, who died as a result of an untreated shunt malfunction.

A.L. had hydrocephalus due to spina bifida, a congenital abnormality of the spinal column and central nervous system. Hydrocephalus is an accumulation of excess

cerebral spinal fluid (CSF) within the skull. The excess fluid has no avenue of escape, which causes an increase in intracranial pressure. If untreated, the excess pressure can lead to death.

Treatment for obstructive hydrocephalus usually consists of the surgical placement of a shunt, a tube-like device that drains the excess fluid from the ventricles in the brain to the abdominal cavity, thereby restoring a normal amount of CSF within the skull.

Shunts, however, can malfunction, and health care providers should presume the worst when confronted with signs and symptoms indicative of such. Symptoms of shunt malfunction can include severe headache, nausea, vomiting, lethargy, sleepiness, stiffness and pain in the neck, and abnormal behavior. A child that presents with symptoms of shunt *Continued on page seven.*

**Voter Registration Information
In This Issue!**
FIND OUT HOW AND WHERE
TO REGISTER...
(PAGES 6-7)

**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY PA**
*Attorneys
at Law*

WEBSITE: www.searcylaw.com



2139 PALM BEACH LAKES BOULEVARD
WEST PALM BEACH, FLORIDA 33409

TOLL FREE: 800-780-8607 • LOCAL: 561-686-6300
FAX: 561-478-0754



THE TOWLE HOUSE, 517 NORTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32301

TOLL FREE: 888-549-7011 • LOCAL: 850-224-7600
FAX: 850-224-7602

ATTORNEYS AT LAW:

ROSALYN SIA BAKER-BARNES
F. GREGORY BARNHART
LAWRENCE J. BLOCK, JR.
EARL L. DENNEY, JR.
SEAN C. DOMNICK
JAMES W. GUSTAFSON, JR.
DAVID K. KELLEY, JR.
WILLIAM B. KING
DARRYL L. LEWIS
WILLIAM A. NORTON
DAVID J. SALES
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JOHN A. SHIPLEY
CHRISTOPHER K. SPEED
KAREN E. TERRY
C. CALVIN WARRINER III
DAVID J. WHITE

PARALEGALS:

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EDITOR: JUDSON WHITEHORN

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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.

**\$1.25 Million
Settlement:**

**CLAIM FOR
UNINSURED
MOTORIST
BENEFITS**

Bizarre Chain of Events Results in Woman's Brain Injury

Uninsured Motorist (UM) coverage is an extremely important form of insurance that is too often overlooked by Florida drivers and automobile owners. This coverage protects policyholders, and sometimes others, for injuries caused by negligent drivers who have insufficient liability coverage. Though insurance companies are required to offer UM coverage to all customers with liability coverage, many people choose not to carry it.

Fortunately, Erin Wolfe was protected by UM coverage when she was seriously injured in an accident on August 21, 2001. Erin was a passenger in a car owned by her father and driven by her friend, Greg Lambert. Erin and Mr. Lambert were returning to college, traveling northbound on the Florida Turnpike at night, when a southbound vehicle driven by Johnny Lee Hodge veered out of control. Mr. Hodge's vehicle overturned several times in the median before coming to rest on the northbound side of the roadway. Amazingly, Mr. Hodge was able to exit his vehicle, but his SUV was now totally disabled in the path of oncoming traffic. The electrical system had been damaged and the lights were not functional. Mr. Hodge walked to the median to attempt to warn approaching drivers and to seek medical assistance.

Traveling ahead of Ms. Wolfe and Mr. Lambert was a truck driver operating a large tractor trailer rig. Seeing it at the last minute, the truck driver avoided colliding with Mr. Hodge's broken down SUV by swerving into the breakdown lane. One of the two trailers he was towing overturned as a consequence, but the truck driver was able to stop his rig safely. He immediately turned on his flashers to warn other motorists.

Unlike the trucker, Mr. Lambert did not recognize the danger ahead in time to safely avoid it. (He would later admit that he had been traveling in excess of the speed limit.) He swerved to his left at the last instant, but struck the disabled vehicle. That impact sent him into the median,

where he struck and killed Mr. Hodge. The car then careened across the southbound lanes, eventually striking a tree in a heavily wooded area. Tragically, one of the tree branches penetrated the windshield on the passenger side, striking Erin on the right forehead.

Erin was rushed in a TraumaHawk helicopter from the crash scene to a local trauma center. She was diagnosed with a fractured collar bone, a dislocated shoulder, and a "degloving" injury to her scalp. She also suffered numerous facial lacerations that required extensive reconstructive surgery. Worst of all, she suffered a depressed skull fracture, causing a brain injury that would leave her with significant memory deficits and cognitive dysfunction.

Erin was forced to postpone attending college for about a year, but her will, discipline, and determination enabled her to return to school to successfully complete her degree in elementary education. Nevertheless, she will have to utilize memory aids for the remainder of her life.

Both Mr. Hodge and Mr. Lambert were negligent in operating their respective vehicles, and therefore both were responsible for causing the tragic and disfiguring injuries to Erin. Unfortunately, neither carried bodily injury liability coverage at the time of this fateful crash. Erin, however, carried uninsured/underinsured motorist coverage that effectively took the place of the liability coverage rejected by the two at-fault drivers.

Though Erin's UM coverage was in effect, her insurance company refused to recognize the enormity of her damages. She therefore enlisted the services of F. Gregory Barnhart to investigate the facts of the accident and to pursue a claim against Erie Insurance Company on her behalf. After roughly a year and a half of litigation, Mr. Barnhart was able to resolve Erin's claim for \$1.25 million. The settlement was reached just before a binding arbitration hearing was to commence to determine the extent of Erin's damages. ■



Searcy Denney Scarola Barnhart & Shipley Opens New Branch Office in Tallahassee

On Monday, April 12, 2004, the Grand Opening of our new branch office in Tallahassee was attended by hundreds of colleagues and friends.

The reception was hosted by attorneys Lance Block and Jim Gustafson.

Built in 1847 by attorney Simon Towle, one of Tallahassee's first mayors and the fourth Comptroller for the state of Florida, The Towle House is one of the grand homes within Tallahassee's Calhoun Street Historic District. With its six towering columns, broad porch, and Gothic trim, it remains a unique example of classic Territorial and Antebellum Florida architecture.

Our law firm purchased The Towle House in 2002, and for the next two years the structure underwent a total restoration. Everything in this historic home was rehabilitated, including the floors, windows, roof, plumbing, and electric. Ultimately, it was restored to its original configuration, circa 1875.

We are honored and proud that The Towle House has thus far received two very prestigious honors:

- The Florida Trust for Historic Preservation, Inc. (a state-wide agency) awarded The Towle House Honorable Mention in the Restoration and Rehabilitation of Historic Structures.
- The Towle House is a Contributing Structure in the Calhoun Street Special Character District, which is listed on the National Registry of Historic Places.



Lance Block



Jim Gustafson

90 mph Runaway Car Kills Two, Injures Another

Tim Langston, 21, was excited when he purchased his first car — a brand new 1997 Chevrolet Cavalier — in February 1997. Unfortunately, soon after the vehicle was purchased, it became plagued with electrical and mechanical problems. In the first month of its use, Mr. Langston was forced to take the car for repairs on multiple occasions. Each time the GM dealer returned the car with an assurance that it was in good working order.

On April 14, 1997, around noon, Mr. Langston was near home, operating the Cavalier on Fate Conn Road in Cherokee County, Georgia. His friend, Lee Anderson, then age 15, was a front seat passenger, and Lee's sister, Alana Anderson, 16, was in the back seat. After participating in a church activity, the three teens intended to stop at Tim's house and then continue on to the local mall. They were traveling at the 40 mph speed limit on Fate Conn Road, which was steep and winding and which would eventually dead-end into a major highway, when something with the vehicle went terribly wrong.

Alana Anderson would later recall, *"Right as the hill was starting to go down, all I hear is Tim goes, 'Oh, s—,' like that, and I look at him and he had both hands on the steering wheel and he has this intense look on his face. And I knew... I knew something was wrong and he... Something was terribly wrong."*

What had gone wrong was that the Cavalier had begun to accelerate all on its own. Tim tried desperately to control the runaway vehicle, and Alana observed him frantically negotiating the curves and undulations in the roadway. Alana would recall the bridges they passed whizzing by faster than she had ever seen, and her last memory was seeing the speedometer pass 90 mph. As the Cavalier sped toward the T-intersection ahead, Tim and his passengers could see a small truck at the stop sign at the bottom of the hill. Having no other choice, Tim steered to the left to avoid the truck and in an apparent attempt to steer the speeding car into an open field beside the roadway. Tragically, the vehicle clipped a guy wire and flew airborne into a tree near the side of the road. The car

struck the tree, roof first, with such momentum that it wrapped around the tree like a horseshoe and stuck there, suspended above the ground. The two young men inside were killed instantly. Miraculously, Alana Anderson survived the crash, cocooned inside the back seat of the wreckage. Alana suffered a severely broken ankle, traumatic brain injury, and severe psychological damage.

Convinced that a defect in the Cavalier had caused the tragic crash, the families of the teenagers contacted attorney Tommy Malone in Atlanta, Georgia, who then referred them to Chris Searcy due to his experience with product liability cases. Attorneys Chris Searcy and Harry Shevin began combining through sudden acceleration data collected in several states throughout the country. Suit was eventually filed against General Motors and others in Marietta, Georgia. Mr. Searcy and Mr. Shevin litigated the case with Mr. Malone and two other Georgia attorneys, Larry Wight and Matthew Flournoy.

Physical evidence, gathered before and after suit was commenced, confirmed that Tim Langston had been applying his brakes before the crash, but that his braking had not been effective.

An investigating law enforcement officer inspected the brake light filaments and found evidence of "hot shock deformation," confirming that the brake lights were on when impact occurred. However, an investigation of the roadway revealed "yaw" marks just before the crash scene, indicating that the Cavalier's tires were still spinning when the car left the pavement. Clearly, the brakes had not been working adequately. Additionally, the brake pedal was bent, indicating that a tremendous amount of force had been applied to the brake before and/or during impact.

Though circumstantial evidence was compelling, experts were unable to identify a specific defect that caused the Cavalier to accelerate and then brake ineffectively. The car was damaged so severely that many forms of testing were rendered impossible. *Continued on next page.*



Confidential Settlement:

DEADLY
MANUFACTURING
DEFECT IN
MOTOR VEHICLE

Furthermore, as with any vehicle, Chevy Cavaliers utilize electronics and computers, any of which could malfunction intermittently, leaving no evidence that the defect had occurred. It was therefore crucial to demonstrate that the apparent defects leading to this crash were not indicative of a purely isolated incident. Though its attorneys objected vehemently, GM was forced to provide documentation of all incidents of unwanted acceleration reported by its customers.

Attorney Shevin explained, "We took videotaped depositions of more than a dozen people throughout the country who at one time could not control a runaway GM vehicle. For example, testimony was elicited from a young woman forced to jump from a moving vehicle, as well as a trained ambulance driver who could not stop her runaway vehicle by applying the brakes."

Experts retained by the plaintiffs indicated that a simple, fail-safe device could have been implemented that would automatically prohibit acceleration whenever the brakes were being applied. Such a safety measure would have prevented this and other horrific crashes, and would thereby safeguard the public from future incidents. General Motors maintained an avid defense, and a jury trial was scheduled to begin on September 15, 2003. However, on the eve of trial, a settlement was reached with the families of the two deceased boys, the sums of which must be held confidential. Reflecting on the litigation of this case, Chris Searcy stated, "It was always clear to us that no one in his right mind would purposely go down that road at 90 mph, and all of the circumstantial evidence clearly showed that Tim was trying with all his might to stop the vehicle. No matter how costly or time consuming, we were going to turn over every stone to prove that fact." ■

In the event that your vehicle has had an episode of unwanted acceleration, we urge you to immediately contact the vehicle manufacturer and the National Highway Traffic Safety Administration to report what could prove to be a deadly manufacturing defect.

Website: www.NHTSA.dot.gov
Toll Free: 1-888-DASH-2-DOT

Unreported Chest X-rays Result in Inoperable Cancer

Continued from page one.

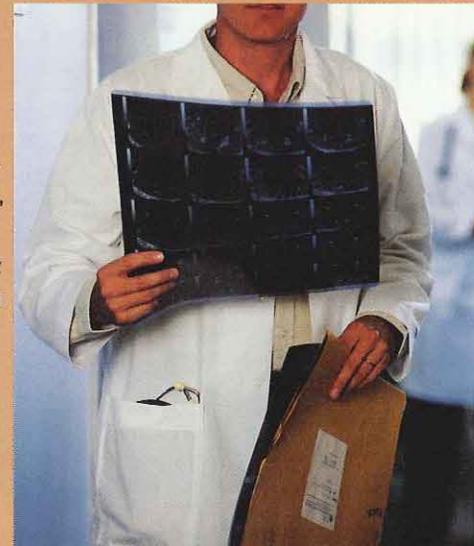
Acting on his curiosities and suspicions, especially about that meeting, Mr. Grimm asked Dr. Nasr's assistant for copies of any radiology reports. Within those records was the July 1999 chest x-ray report, which described a "15 mm paratracheal density just beneath the right sternoclavicular joint, neoplasm must be excluded." In short, the report had suggested cancer. There was also a comparison done to another report that recommended a CT scan. Tragically, the x-ray findings and recommendation for further testing had never been relayed to the Grimms.

Mr. Grimm contacted attorney John Shipley to investigate his wife's medical care. Records produced to Mr. Shipley by Dr. Nasr included a handwritten page of notes indicating that Dr. Nasr's office had called the Grimms several times and eventually notified Mrs. Grimm of her need for additional studies. Given the fact that Mr. Grimm and his wife vehemently disputed that information, Dr. Nasr's original chart was requested so that ink and handwriting studies could be made in an attempt to determine when the notes were written. In response to that request, Dr. Nasr's office advised that the original chart could not be located.

This case was tried in Vero Beach against Dr. Nasr and a second physician, Dr. Williams, who was named as a defendant because Dr. Nasr's chart indicated that Dr. Williams had been contacted with the results of the chest x-ray. Dr. Williams refuted that allegation. Surprisingly, Dr. Nasr admitted that he had not personally discussed the findings with Mrs. Grimm, nor had he sent her a letter with the results of the chest x-ray. Although Mrs. Grimm died before the trial, her testimony was presented by way of a videotape done just before she died.

Evidence was presented at the trial that the delay in Mrs. Grimm's diagnosis allowed the cancerous tumor to grow, from the size of a walnut to the size of a half loaf of bread, and to spread to other areas. The cancer, which would have been curable in 1999, had therefore progressed to the point where it was not curable.

The jury found Dr. Nasr 100% liable for the death of Charlotte Grimm, and awarded damages of \$1.54 million. After nearly 40 years of marriage, nothing can make up for Mr. Grimm's loss, but at least the verdict provided him with a measure of justice. ■

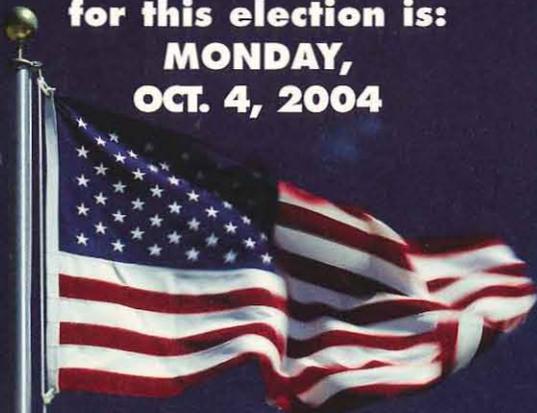


**\$1.54 Million
Verdict:**

**IGNORED
X-RAY REPORT
RESULTS IN
WRONGFUL DEATH**

THE GENERAL ELECTION IS ON TUESDAY, NOV. 2, 2004

The deadline for voter registration for this election is: **MONDAY, OCT. 4, 2004**



You must be registered for at least 29 days before you can vote in an election. (For new registrants, the date on which the application is postmarked or hand delivered to the County Supervisor of Elections Office will be the "new voter's" registration date.)

WITH A VOTER REGISTRATION FORM YOU CAN:

- Register to vote in the State of Florida
- Update your address
- Change your name
- Register with a political party or change a party affiliation
- Update your signature, which may have changed due to aging, disability, illness, etc., since the last time you voted
- Replace your defaced, lost, or stolen registration ID card

"Nobody will ever deprive the American people of the right to vote except the American people themselves - and the only way they could do this is by not voting."

- - Franklin D. Roosevelt,
U. S. President

"VOTING BY ABSENTEE" - GETTING A "MAIL-IN BALLOT"

Even if you are going to be home on Election Day, you may still vote by mail.

If you want to vote by mail, contact your local Supervisor of Elections Office approximately 30 days before November 2. (This should allow sufficient time for you to receive the ballot, complete it, and return it in time for your vote to be counted.)

HAS YOUR SIGNATURE CHANGED?

The signature on your absentee ballot will be compared to the one on file with the Supervisor of Elections office.

If your signature has changed over the years since you registered to vote, you may want to provide a new signature by filling out a new voter registration form and checking the box at the top for "Signature Change."

CHECK THE INTERNET TO FIND OUT WHERE TO VOTE ON ELECTION DAY

Access your local Supervisor of Elections web site and look for "Precinct Finder" or "Where to Vote."

For example, in Palm Beach County go to

www.pbcelections.org

Click on "Precinct Finder," - then enter your address and find your polling place.

NOTE: The Florida Department of State - Division of Elections has assembled Home Pages for all the County Supervisor of Elections Offices. You can access this site by going to: <http://election.dos.state.fl.us> - clicking on "Election Information" and then on "Supervisor of Elections."

HELPFUL PHONE NUMBERS:

Florida Department of State -
Division of Elections
Voter Assistance Hotline
Toll Free: 1-866-308-6739

For people using TTY: **1-800-955-8771**

Palm Beach County
Supervisor of Elections:
561-656-6200 or 561-276-1226



ON LINE VOTER REGISTRATION

You can call your local Supervisor of Elections Office and ask them to send you a voter registration application in the mail, or you can also start the registration process online (via the internet).

NOTE: You can not actually register online, but you can start the process by requesting a voter registration application.

SOME HELPFUL WEB SITES TO GET A VOTER REGISTRATION APPLICATION:

■ The League of Women Voters:

www.lwv.org

(then click on "Register to Vote")

■ The Florida Department of State - Division of Elections:

<http://election.dos.state.fl.us>

(then click on "Voter Registration")

■ for Palm Beach County:

www.pbcelections.org

(then click on "Voter Registration")

Be sure to start the process of getting a voter registration application form so that you give your local Supervisor of Elections enough notice to mail you the application form. If you don't hear from the Elections Office within three weeks, call to find out what's happening with your registration.

If your application is complete and you qualify as a voter, the Supervisor of Elections will mail you a voter registration card as official notification of your registration.

*A special thanks to
State Senator Ron Klein's Office
for providing valuable information for the
upcoming General Election.*

Misdiagnosed Shunt Malfunction Results in Death

Continued from page one.

malfunction requires immediate evaluation. The work-up includes a CT scan of the brain and a series of plain x-rays showing the length of the shunt.

An increase in the size of the ventricles of the brain, where CSF emits from the brain, or evidence of an obstruction or disconnection of the shunt should be cause for intervention. Only a neurosurgeon is qualified to rule out and treat shunt malfunction after an appropriate work-up is completed.

In A.L.'s case, her shunt was inserted shortly after her birth. Eight days prior to her death, she was admitted to a local hospital to have a plastic surgery procedure on her lower back for a condition totally unrelated to her shunt. Following that procedure, however, A.L. began complaining of headaches, nausea, and sleepiness. A CT scan showed an increase in the size of her ventricles, and a neurosurgeon was called in to assess her. The neurosurgeon did not perform a shunt revision, and thereafter the nurses did not notify any physicians about A.L.'s complaints of neck pain. A.L. was discharged home on the July 4th holiday. She went to bed that night, and the next morning her parents found her dead.

An autopsy was performed and the medical examiner determined that A.L.'s death, while consistent with the consequences of shunt malfunction, was not due to shunt malfunction. His reasoning and the basis for his opinions, however, were vulnerable on cross examination during his deposition. Plaintiff's liability

and causation witnesses included world renowned experts in neurosurgery, nursing, neuroradiology, infectious disease, forensic pathology, and neuropathology. They concluded that A.L. died as a result of shunt malfunction and that her health care providers were negligent in failing to diagnose and properly treat her condition.

There were no economic damages that could legally be claimed, but A.L.'s parents were devastated by the loss of their 13-year-old daughter. While A.L. was disabled and had special needs, she was mainstreamed in school, was popular among her friends and in her community, and was a source of pride and inspiration to her parents and younger brother. According to psychiatric experts on grief- and bereavement-related illnesses, A.L.'s parents both suffered intense and complicated grief responses due to the sudden and unexpected death of their teenage daughter. The experts testified that A.L.'s parents' grief was further complicated because they believed that she suffered from painful headaches and distress before her death. Had reasonable medical care been provided, her unjust death would have been prevented.

The case was settled with both defendants shortly before the scheduled trial date. As a condition of the settlement, the defendant health care providers insisted that their names not be disclosed. ■

\$2 Million Settlement:
NEGLIGENCE IN DIAGNOSING MALFUNCTION OF A SHUNT

Faulty Sea Plane's Bilge Pump Causes Fatal Crash

Mr. X was a pilot employed by an airline that flew sea planes. In March 1994, Mr. X and his copilot were commissioned for a charter flight to a dock in Key West. After dropping off their passengers, they planned to fly to the Key West Airport to refuel and await their next group of passengers. As they took off from the water and gained altitude, the aircraft suddenly stalled and they could not regain control. The plane plummeted into the sea, and while Mr. X and his copilot survived the impact, both drowned as a result of the crash.

The aircraft in which Mr. X and his copilot had crashed had a tendency to take on water. For that purpose, the airline installed bilge pumps to remove sea water, as is often the case in standard watercraft.

Following the crash, an investigation ensued as to why the plane had stalled and why control could not be regained by the pilots. It was suspected that the bilge pumps were installed in such a

way so as to allow excessive water to remain in the aircraft, unbeknownst to the pilots. It was discovered that, as the aircraft gained altitude, excess sea water in the bilge flowed to the rear, causing a shift in the plane's center of gravity. The result was catastrophic.

Attorneys Earl Denney and Karen Terry were hired to represent Mr. X's

spouse and their two young sons. During the litigation of this case, significant hurdles existed pertaining to the "exclusive remedy" provisions of worker's compensation law. Having provided worker's compensation coverage to the family following the crash, the airline argued that it was immune from owing any additional damages to the families. Complicating matters further, the airline declared bankruptcy while the case was pending. Finally, the

The litigation spanned ten years, with legal battles regarding liability, worker's compensation immunity, bankruptcy, and applicability of insurance coverage.

airline's insurance carrier attempted to deny coverage on the basis of exclusions written in the general liability policy carried by the airline, including a watercraft exclusion, an aircraft exclusion, and an exclusion pertaining to cases in which worker's compensation was involved.

The litigation of this case spanned ten years, and the legal battles regarding liability, worker's compensation immunity, bankruptcy, and the applicability of insurance coverage remained vehemently contested. Ultimately, the coverage issues were overcome and the case was resolved on behalf of Mr. X's family for a substantial confidential sum. Attorneys representing the family of the deceased copilot also made a successful recovery. ■



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



DUI Motorcyclist Causes Crash

On March 23, 2002, Mark Summerall was traveling southbound on U.S. Highway 441 in Okeechobee, Florida. Mark and his wife, Donna, had recently moved to the area from West Palm Beach, and on the date of the crash Mark was on his way to work. As Mark approached the intersection of U.S. 441 and S.E. 126th Avenue, he was struck suddenly by a motorcyclist on the driver's door of his Jeep Wrangler. The impact caused Mark to suffer a large disc herniation at C6-7, which would later require surgical intervention and postoperative rehabilitation.

On the date of the crash in question, Mr. Doe was driving his Harley Davidson motorcycle behind a friend in the Okeechobee area. Mr. Doe had consumed several alcoholic drinks at a local restaurant called the Brahma Bull just prior to causing the crash. Mr. Doe was traveling behind Mark, who in turn was behind three or four other vehicles on U.S. 441, which is a two-lane roadway. Mr. Doe, becoming irritated because Mark was driving "too slowly," attempted to pass Mark and the vehicles in front of him, despite being in a "no passing" zone. As Mark attempted to make a left turn at the intersection, Mr. Doe, in his attempt to pass, struck Mark's vehicle at an estimated 45-50 miles per hour. The Summeralls retained attorney Sia Baker-Barnes to prosecute their case. Prior to filing suit, Ms. Baker-Barnes demanded the limit of bodily injury liability coverage from Mr. Doe's insurance company. The carrier failed to issue a response to the demand within the time allotted, and Ms. Baker-Barnes therefore filed suit against Mr.

Doe. Several weeks later, the insurance carrier attempted to offer Mr. Doe's policy limits, but due to the late response the offer was declined.

A thorough investigation revealed that Mr. Doe was under the influence of alcohol and clearly responsible for the crash. Meanwhile, Mr. Summerall made a good recovery from his injuries and resulting surgery. After convincing Mr. Doe and the insurance company to admit liability for the crash, Ms. Baker-Barnes reached a settlement of \$175,000 just before trial, a sum well in excess of the previously demanded policy limit. ■

\$175,000 Settlement:
SETTLEMENT EXCEEDS DEMANDED POLICY LIMIT

Insurance Verdict Brings Justice To Family

Reverend Stan Hannan was excited about living in South Florida, having recently moved his family to a new parish in Plantation, Florida. He did his best to take advantage of the outdoor lifestyle here, and invited members of his family to visit. Following a visit to the beach, Rev. Hannan was returning home when he and his family were struck violently from behind by another motorist. The collision injured Rev. Hannan, as well as his daughter, Kerri-Ann. Fortunately, his wife, Norma, and his grandson managed to escape uninjured.

The Hannans hired attorney Harry Shevin to represent them for the crash. Mr. Shevin filed suit against the at-fault driver, who carried only \$20,000 of liability insurance coverage. He also brought a claim against Traveler's Insurance Company (doing

business as First Floridian), which was the Hannan's own Uninsured/Underinsured Motorist insurance carrier.

While the Hannans' case was ongoing, the at-fault driver's insurance company tendered its \$20,000 limit of coverage. Kerri-Ann Hannan, who suffered from soft-tissue injuries to her neck, then settled her individual claim against First Floridian for \$55,000.

Rev. Hannan, however, had more serious injuries, including a herniated disc in his neck. As the trial of his case approached, the \$100,000 insurance policy limits were demanded from First Floridian. Contemporaneously, a Civil Remedy Notice of Insurer Violation complaint was filed with the Department of Insurance, giving First Floridian 60 days to pay the policy limits. First Floridian responded with an offer of \$75,000, thereby refusing to tender the full amount of coverage within the 60 days allotted. Trial was set to begin shortly after the 60-day period expired.

On the morning of trial, Traveler's offered its \$100,000 policy limits. The Hannans, however, having consulted with Mr. Shevin, elected to turn the offer down in favor of taking a verdict in the case. After a four-day trial, the jury returned a verdict of over \$193,000 for Rev. Hannan's personal injuries and his wife's loss of consortium. First Floridian agreed, post trial, to pay the entire judgment amount, plus the Hannans' costs. Attorney Shevin explained, "*The carrier wrongly assumed that our clients would fold when the policy limits were finally offered, even though it was after the statutory time period had expired. They were wrong, and they paid for their mistake.*" ■

\$193,000 Verdict:
VERDICT RESULTING FROM CAR CRASH INJURIES

Child Dies Following Misdiagnosed Infection

Most American families look forward to the summer season as a time when they can share vacations, spend time together, and enjoy family outings. The M family anticipated the summer of 2001 with great excitement. Their children, ages two and four, were looking forward to trips to amusement parks and visits with grandparents. Unfortunately, that summer would bring an unexpected tragedy to the family – one that could have been prevented had proper medical care been rendered.

On July 2, four-year-old R.M. came down with a raging fever, said to be between 103 and 105.5 degrees. Her parents made an immediate call to their pediatrician's group and made an appointment for later that day. Upon arrival, R.M. was examined by a nurse practitioner, and her parents gave a thorough history of her fever and of noticeable red spots that had appeared on her arms. The nurse practitioner explained these away, suggesting that they could be a result of the Tylenol they had used in an attempt to lower the fever. Nevertheless, blood was drawn, and the next day the sample indicated a positive finding for Epstein Barr, the virus causative of mononucleosis. Earlier in the spring, R.M.'s brother, age two, had contracted mononucleosis, so the nurse practitioner and physicians assumed that R.M.'s fever was likely the result of having contracted the illness from her younger brother. A more tragic assumption could not have been made.

The following day, R.M.'s condition worsened. Her fever remained high and she began to develop labored breathing. Her parents placed another call to the pediatrician's office, reporting R.M.'s short and fast breaths and the development of a cough. Soon thereafter, R.M. and her parents returned to the office, and this time saw the pediatrician. Once again, the doctor believed that the child had mononucleosis and that there was really nothing to be done other than to monitor the fever and wait it out.

Over the next few days, R.M.'s condition failed to improve. Her parents placed multiple calls to the pediatric group, continually complaining about labored breathing and continued high fever. R.M.'s parents also called the pediatrician's home telephone number at least three times over those days. The parents began to perceive

that the pediatrician's group was becoming annoyed with their frequent calls and, at one point, an unidentified worker at the pediatrician's group responded by saying, "When your child's blue, call 911."

At 7:30 a.m. the following morning, R.M.'s father drove her to the pediatrician's office without an appointment. They were seen by another pediatrician within the group, and R.M.'s fever at that point was 103.7. The physician recognized that R.M. had become dehydrated from her ongoing fever, and therefore recommended that R.M. be hospitalized immediately. Still, no attention was paid to R.M.'s respiratory status.

The medical staff failed to recognize a common, yet fatal, bacterial infection that warranted early treatment with antibiotics.

Upon R.M.'s arrival at the hospital, emergency room personnel immediately commented that, "It looks like she has pneumonia." A chest x-ray revealed that all of one lung and approximately half of the other lung were filled with infectious fluid. By late Sunday evening, R.M. was placed on a ventilator to help

control her respirations. She then underwent an emergency surgery in an attempt to remove most of the pus-like material from her lungs. Nevertheless, her condition continued to deteriorate, and she was transferred on July 13 to Miami Children's Hospital for a last-resort procedure called an ECMO, or extracorporeal membrane oxygenation. Unfortunately, despite the heroic measures of those in Miami, R.M. passed away on July 18. Her cause of death was listed as pneumonia and related septicemia.

The M family retained attorney F. Gregory Barnhart to investigate the treatment rendered to their daughter by her pediatricians and nurse practitioners. A lawsuit was later filed against the group alleging that the examination and treatment of R.M. failed to recognize a common, yet fatal, bacterial infection that warranted early treatment with antibiotics. The family alleged that the pediatric group failed to take an adequate history and chart the examinations, failed to establish a differential diagnosis, failed to adequately dictate follow-up instructions to the parents, failed to take chest x-rays and blood cultures, and failed to administer antibiotics in the face of an ongoing infection.

In November 2003, after approximately one and a half years of litigation and just before trial, Mr. Barnhart settled this matter for \$1 million. ■

\$1 Million Settlement:

NEGLIGENCE IN DIAGNOSING FATAL INFECTION

State Trooper Injured by Reckless Truck Driver

On a rainy morning in July 2003, Florida Highway Patrolman James Bond had pulled over a speeding motorist on I-95. As he sat completing paperwork in his cruiser, he was struck by a tractor trailer, the driver of which had lost control on the wet roadway and jackknifed.

Trooper Bond was badly injured in the crash and therefore sought legal representation from attorneys Chris Searcy and Harry Shevin. Mr. Shevin immediately sought to have the tractor and trailer impounded. An inspection of the truck revealed that it had bald tires and ineffective brakes, findings also discovered independently by inspectors for the Department of Transportation. Under federal regulations pertaining to large commercial vehicles, the truck should have been labeled an "out of service" vehicle and parked for repairs. (The phrase "out of service" is utilized when a defect is "likely to cause a crash.") Nevertheless, the trucker ignored those conditions and chose instead to operate the vehicle at highway speed on wet pavement.

In addition to inspecting the brakes and tires, data was retrieved from the truck's "black box," revealing that the driver had been traveling at 80 m.p.h. for roughly 1,000 of its 50,000 total miles. In fact, the truck's governor had been set at 80, well in excess of speed limits throughout Florida. These facts suggested that the trucking company had clearly ignored issues pertaining to the safe operation of this vehicle, leading the SDSBS firm to delve even deeper into the trucking company's safety record.

Suit was filed against Dunkin' Donuts Southeast Transportation and various other entities hired and controlled by Dunkin' Donuts to haul donut supplies. Once in suit, discovery revealed that the truck driver had previously been fired by the same trucking company for his involvement in three prior, preventable crashes, but that he had been rehired nevertheless. Furthermore, an analysis of the trucker's logs suggested that he had driven the semi in excess of the amount of time permitted under government regulations, and that he had falsified his logs to conceal that fact. Reluctantly, the truck driver eventually admitted under oath that he had shown a reckless disregard for human life by driving in the rain with bad tires and brakes, and that he had not been wearing his prescription eyeglasses when the crash occurred.



Trooper Bond's damaged patrol car and (inset right) the bald tires of the tractor trailer.

Discovery in this case suggested that Dunkin' Donuts made conscious decisions to forego certain safety procedures in order to increase the productivity of the trucks it utilized. In light of the company's willingness to put profits ahead of safety, the SDSBS firm amended its complaint to add a count for punitive damages. Although it is typically very difficult to meet the burden necessary to prosecute a defendant for punitive damages, the trial judge in this case ruled that it was an element of damage that should be contemplated by the jury. That decision clearly put pressure on the defendants to resolve this case before trial.

Trooper Bond injured three levels of his lumbar spine in this crash, and broke a bone in his face that required surgery. His spinal injuries kept him out of work for quite some time, though he eventually returned, first on light duty and then full-time. Doctors indicated that his lumbar injuries were significant, but that surgery would not likely improve his condition. Trooper Bond would have to live with his back pain, as well as ongoing headaches requiring the administration of anti-seizure medications.

On the eve of trial, this case was settled with all defendants for \$850,000. The proceeds from the settlement will assist Trooper Bond greatly, as he is no longer able to tolerate the demands of his position with the Florida Highway Patrol. He anticipates taking a medical retirement in the near future, and will then seek a form of employment less physically demanding. And though the case was successfully resolved, Mr. Shevin laments the fact that a dedicated public servant can no longer protect the public due to the greed and recklessness of the corporate entities involved in this case. ■

\$850,000 Settlement:
TRUCKING ACCIDENT CAUSES SIGNIFICANT INJURIES

Six Firm Members In Top 2% Of Florida Lawyers



Chris Searcy



Greg Barnhart



Lance Block



David J. Sales



Sean C. Donnick



Darryl L. Lewis

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY ^{PA} *Attorneys at Law*

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- F. GREGORY BARNHART
- DAVID J. SALES
- LANCE BLOCK
- JOHN LACRO SCAROLA
- EARL L. DENNEY, JR.
- CHRISTIAN D. SEARCY
- SEAN C. DONNICK
- HARRY A. SHIPLEY
- JAMES W. GUSTAFSON
- JOHN A. SHIPLEY
- DAVID K. KELLEY, JR.
- CHRISTOPHER K. SPEED
- WILLIAM B. KING
- KAREN E. TERRY
- DANIEL L. LEWIS
- C. CALVIN WASHINGTON, II
- WILLIAM A. HORTON
- DAVID J. WHITE



Six members of Searcy Denney Scarola Barnhart & Shipley have been chosen for *Florida Trend's* "Florida Legal Elite," a select group comprising the top two percent of lawyers practicing in Florida. ■

Accolades



**Chris
Searcy**

Chris Searcy will receive the **Perry Nichols Award** from the Academy of Florida Trial Lawyers. The Academy's Board of Directors voted unanimously to present the most prestigious award to Mr. Searcy. The Award will be presented at the Academy's Fall Convention to be held in Orlando this November. First established in 1977 as a tribute to one of the Academy's founders, the Perry Nichols Award is the highest honor the Academy bestows. It is being presented to Mr. Searcy in recognition of his outstanding and distinguished lifetime service to the cause of justice in Florida and the nation. ■

On March 1, 2004, Mr. Searcy was inducted into the prestigious **International Society of Barristers**. The organization, which is an honor society with membership limited to 600 outstanding trial lawyers chosen by their peers, is dedicated to:

- Excellence and integrity in advocacy
- Preservation of the adversarial system and of the right to trial by jury
- Encouragement of young lawyers to enter the field of trial practice ■



**Karen
Terry**

In June 2004, Karen Terry was promoted to the position of **Shareholder at Searcy Denney Scarola Barnhart & Shipley**. Karen has enjoyed tremendous success since joining the firm nine years ago, and she looks forward to the victories and challenges that lie ahead. **Congratulations!** ■



**Darryl
Lewis**

Darryl Lewis was recently elected to the **Board of Directors of the Academy of Florida Trial Lawyers**. ■



**Sia
Baker-Barnes**

Sia Baker-Barnes was elected to the **Academy of Florida Trial Lawyers Young Lawyers Board of Directors** for a 2-year term that will span from 2004 to 2006. The Young Lawyers Board is an excellent way for young Academy members to become involved in the leadership of the Academy and to be active in the legal community. ■

In June, Ms. Baker-Barnes was elected to the position of **Secretary of the F. Malcolm Cunningham, Sr. Bar Association** in West Palm Beach. The F. Malcolm Cunningham, Sr. Bar Association is an organization founded by black attorneys, which boasts a multi-cultural membership. The organization awards scholarships each year to law students preparing to take the bar examination, and works to maintain a strong relationship between attorneys and the community. ■

Ms. Baker-Barnes was recently appointed to the **Board of Directors of Inlet Grove Community High School** in Riviera Beach. Inlet Grove is a charter school that provides a technology-based learning environment dedicated to the integration of academics and career preparation. ■



**Cal
Warriner**

Cal Warriner was selected by the **South Florida Legal Guide** as a **Top Lawyer**. According to a recent article in the south Florida *Sun-Sentinel*, the attorneys listed in the 2004 edition of the *South Florida Legal Guide* "earned their placement as a result of gaining top nods from their peers in anonymous balloting held this spring ..." ■



**Sean
Domnick**

Sean Domnick was recently elected to the **Board of Directors and the Executive Committee of the Academy of Florida Trial Lawyers**. ■

Taking... *Time to Care*



Operation Hope Summer Camp Program

In May 2004, SDSBS donated computers and equipment to Operation Hope for their Summer Camp Program. Operation Hope is a nonprofit organization dedicated to serving the homeless in Palm Beach County. Their mission is to provide temporary housing and essential support services, as well as to directly assist the homeless, in becoming productive, self-supporting members of the community. ■



l. to r. April Kriberney with her dog Bali, Robin and Mandi Kriberney, Jud Whitehorn with his dog Arthur, and Britni Smith

Peggy Adams Animal Rescue League's Annual Walk for Pets

On Saturday, March 13, 2004, SDSBS employees and their family members participated in the Peggy Adams Animal Rescue League's Annual Walk. More than 367 people and 325 dogs attended the event held at Currie Park in West Palm Beach. Proceeds from the event exceeded \$104,000 and will be used to offer a free spay/neuter program for pets in Palm Beach County. ■



Palm Beach County Literacy Coalition Reception

SDSBS sponsored the "Champagne Reception" that preceded the Love of Literacy Luncheon, held at the Kravis Center in March 2004. The event, which benefited the many programs of the Palm Beach County Literacy Coalition, welcomed guest speaker LeVar Burton. Mr. Burton has been captivating audiences through acting, directing, producing, and writing for the past two decades. He is currently celebrating his nineteenth season as host and co-executive producer of the highly acclaimed PBS children's television series *Reading Rainbow*. He is most proud of the series' ability to use the medium of television to help instill in children a passion for literature. ■

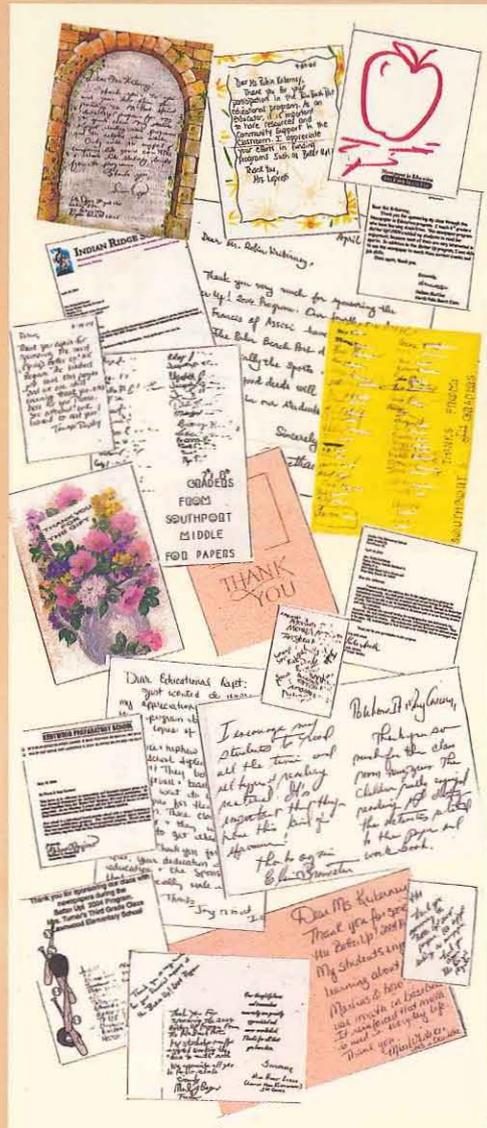
l. to r. Joan Williams, Robin Kriberney, LeVar Burton, and Phoebe Harris

Palm Beach Post's "Batter Up" Program For School Children

SDSBS was the sole sponsor of *The Palm Beach Post's* 2004 Batter Up Program. Used by teachers in the classroom, the baseball-themed educational supplement was designed to help school children with reading, writing, and math skills. More than 7,000 children throughout the Palm Beach County school system received the supplement.

After the program, SDSBS received many letters from area students and teachers thanking the firm for its support. ■

Shown are the "Thank you" letters from teachers and students for the 2004 Batter Up Program.



Speaking Engagements...



Attorney **Chris Searcy** has spoken to various groups on subjects they requested he address, as follows:

"Jury Selection in the Storm of Tort Reform"
Palm Beach County Trial Lawyer Association
2004 Dinner Meeting

"Closing Arguments — Death of a Child"
Law Education Institute
2004 National CLE Conference

"Voir Dire"
Academy of Florida Trial Lawyers
2004 Annual Convention



In June 2004, **Darryl Lewis** was the Program Chair for the Civil Litigation For Paralegals and Legal Assistants held in conjunction with the 2004 AFTL Annual Convention.



In February 2004, attorney **Harry Shevin** was the guest speaker

for the program entitled *"Trying the Soft Tissue Case: What you Need to Know."* The seminar was sponsored by the Palm Beach County Bar Association. The topic about which Mr. Shevin spoke was *"Cross Examination of the Defendant's IME Expert."*

Mr. Shevin also lectured at the "Florida Nursing Home Negligence Update," as part of a seminar held by the Professional Education Systems Institute (PESI). The topic was *"2001 Tort Reform — Plaintiff's Perspective."*



Greg Barnhart was a guest speaker at the following programs:

"Consumer Arbitration Agreements and The Arbitration Experience"
Academy of Florida Trial Lawyers
January 2004

"Voir Dire"
2004 Medical Malpractice Seminar
Academy of Florida Trial Lawyers
May 2004

"Voir Dire in the Era of Tort Reform"
Association of Trial Lawyers of America
Annual Convention in Boston
July 2004



At the Annual Convention of the Association of Trial Lawyers of America, held in Boston, MA, **Jim Gustafson** was elected Chair-Elect of the Professional Negligence Section. He also established the topics and assembled the speakers for the convention's seminar on Professional Negligence.



On July 5, 2004, **Lance Block** was a featured speaker at the American Trial Lawyer Association (ATLA) Convention in Boston. The panel discussion was entitled *"Trial Lawyers and Voting Rights."*

CONSUMER WARNING: BAD PROPOSAL

Amendment 3 on November Ballot

“Truly a wolf in sheep’s clothing.”

- - Justice Fred Lewis, Florida Supreme Court

July 13, 2004

Here’s what newspapers in Florida are already saying about Amendment 3:

**“FMA Proposal
is
Bad
Medicine.”**

TALLAHASSEE DEMOCRAT

September 7, 2003

**“What such an
amendment
would really
guarantee is that
the only people who
could hire the best
lawyers would be
doctors.”**

TAMPA TRIBUNE

September 8, 2003

**“Another
Bad Idea.”**

“It’s a terrible idea that deserves
the deep six.”

“The proposal really would make it
virtually impossible for patients
to sue for malpractice,
no matter how bad.”

floridatoday

September 4, 2003

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COUNSEL**

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