SEARCY DENNEY SCAROLA BARNHART & SHIPLEY P.A.

OF COUNSEL

A quarterly report to clients and attorneys.

VOLUME 05
NUMBER 3

SDSBS Teams Up To Win Landmark Victory

Perelman: $1.58 Billion
Morgan Stanley: 0

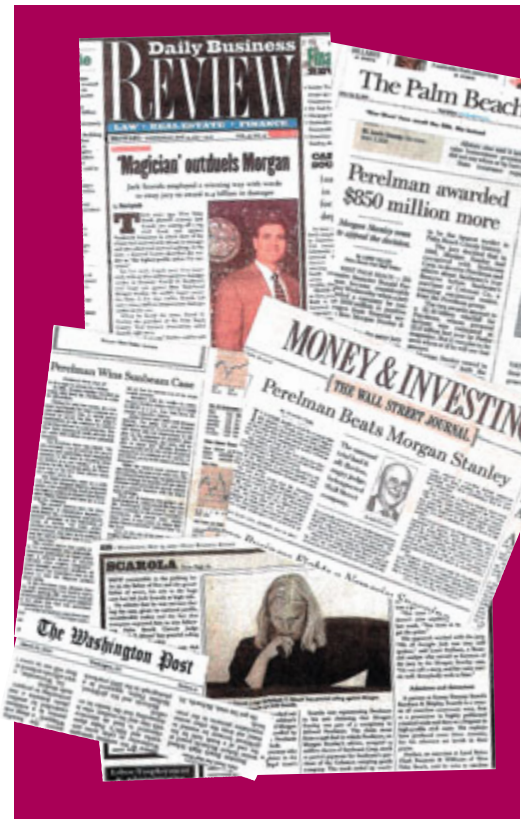
On May 18, 2005, a jury in West Palm Beach, Florida delivered an historic judgment of almost $1.45 billion against Morgan Stanley & Co. on behalf of financier Ronald O. Perelman's company, Coleman (Parent) Holdings, Inc. The jury found the investment banker liable for its role in a fraud relating to the 1998 sale of Coleman Company to Sunbeam Corporation. Reportedly, it is the largest judgment ever returned in the U.S. for the benefit of a single individual. The case was marked by the defendant's efforts to evade obligations to produce evidence and its accusations of improper conduct against everyone from the judge to its own lawyers.

It was a David vs. Goliath battle. Mr. Perelman's David, however, had the determination and resources necessary to pursue Morgan's Goliath. The battle took place before Palm Beach County Circuit Court Judge Elizabeth T. Maass, who frequently found herself and the integrity of the legal system challenged by Morgan's aggressive defense.

In December 1997, Mr. Perelman, with controlling interest in Coleman, was approached by Sunbeam with an offer to buy Coleman. No agreement was reached. Morgan then contacted Mr. Perelman on behalf of Sunbeam, and negotiated the sale. The sale was completed in March 1998, netting Mr. Perelman $1.5 billion, $680 million of which was in Sunbeam stock. Morgan's fee was $10 million.

Weeks later, Sunbeam's market value dropped. New sales and earnings figures conflicted with earlier statements backed by Morgan. Sunbeam's accountant, Arthur Andersen, withdrew an audit of the company's books. In 2001, Sunbeam filed for bankruptcy and its shareholders were left with worthless stock. Mr. Perelman focused on Andersen's role in Sunbeam's demise.

During the Andersen litigation, Mr. Perelman's legal team discovered a letter from Andersen to Morgan dated days before the Coleman-Sunbeam sale closed. It outlined Sunbeam's decreasing sales, escalating debts, and accumulating losses. Nonetheless, Sunbeam issued a press release, drafted with Morgan's approval, that presented Sunbeam's economic performance as optimistic, concealing the true facts.



Charged by Mr. Perelman with fraud for its part in the cover-up, Morgan argued that it had accurately reported all of the information available to it at the time, and that it, too, was being lied to by Sunbeam. However, Morgan not only knew of Sunbeam's financial difficulties, but had participated in concealing them. In May 2003, Mr. Perelman sued Morgan.

Jerold Solovy, of Jenner & Block, was the primary litigator for Mr. Perelman. Mr. Solovy had successfully partnered with Jack Scarola, of Searcy Denney Scarola Barnhart & Shipley, for a $70 million ***Continued on page two.***

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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.

SDSBS Wins $1.58 Billion Verdict Against Morgan Stanley Financial Services Firm

Jack Scarola

(Continued from page one.)

settlement on the case against Andersen. Jack Scarola was asked to partner on the case against Morgan.

During discovery, Morgan engaged in a concerted effort to delay and obstruct the litigation. It failed to produce court-ordered documents, destroyed evidence, and falsely certified that it had disclosed other documents.

Confronted with Morgan's misconduct, Judge Maass opted for sanctions against Morgan, directed at correcting the misconduct rather than punishment. Morgan continued to evade court orders, charging the judge with bias and emotionalism. The Court escalated sanctions against Morgan.

In March 2005, Judge Maass concluded that the abuses by Morgan during discovery had come to "infect the entire case". She directed the jury to accept as fact that Morgan had conspired with and assisted Sunbeam in perpetrating a fraud. As the Court summarized its findings, "[D]iscovery abuses and misrepresentations by Morgan Stanley . . . would take a volume to recite." The plaintiff no longer had the burden to show that fraudulent behavior occurred, but only to show that Mr. Perelman had relied on false information from Sunbeam/Morgan and had suffered damage as a result.

Morgan tried to have Judge Maass removed from the case, arguing that she had "bias, antagonism, and hostility" toward the company. Morgan's motion was denied by Judge Maass and by the appellate court. On May 16, the jury awarded Mr. Perelman $604 million in compensatory damages for having relied on Morgan's misrepresentations. Two days later, the jury awarded Mr. Perelman $850 million in punitive damages. And a month later, the trial judge added millions in interest owed by Morgan Stanley to Ronald Perelman. The judgment now totals $1.58 billion. Morgan said it plans to appeal the verdict.

Lawyers representing Mr. Perelman's company, Coleman (Parent) Holdings, Inc., intend to pursue contempt sanctions against Morgan, including millions of dollars in attorneys' fees and costs. Federal regulatory and enforcement agencies have focused on the disclosures made in this case. Morgan's current CEO, Philip Purcell, recently announced his resignation following the earlier departure of several other Morgan executives. The very future of Morgan Stanley, a Wall Street giant, is in question.

Morgan's Goliath may not be dead, but Ronald Perelman has certainly brought this Goliath to its knees. ■

"Justice is most often depicted in art as a woman. She is blindfolded. In one hand she holds scales, and in the other hand a sword. The reason for the blindfold is because justice is, indeed, blind to power, position, wealth, religion, national origin. Those things do not matter.
The scale is there so that equity and justice may be accurately weighed. And when the scale is placed out of balance, when it is tipped in a way that results in injustice, that strong and powerful woman is prepared to use her sword in order to restore the balance, in order to make certain that the scales are not tipped unfairly again. Each of you, no matter what your gender may be, have your hand on that sword.
It is an awesome responsibility.
It is a tremendous power that you have."

- - Excerpt from Jack Scarola's closing argument

$3.4 Million Verdict:

IGNORED SYMPTOMS RESULT IN MEDICAL NEGLIGENCE VERDICT AGAINST DOCTOR

Ignored Symptoms Cause Woman's Death

On May 15, 2000, fifty-year-old Irma Imelda Carter was found slumped over her bed by her 22-year-old son, Stephen, and 16-year-old daughter, Lauri. Stephen attempted cardiopulmonary resuscitation, but was unsuccessful in reviving his mother. The fire-rescue paramedics arrived in response to the 911 call, and they, too, attempted to revive Irma as Stephen and Lauri watched in horror. Their efforts were futile as well. Moments later, Stephen had to call his father, out of town on business, and tell him that, tragically, his wife of thirty-three years was dead.

The Carter family requested an autopsy to determine the cause of death. The report stated that she had died of congestive heart failure. In the two weeks before she died, Irma had been under the care of Dr. Agustin Sanz, an internist, but there had been no indications from the doctor of any problem that would have resulted in her abrupt demise. Stephen requested copies of his mother's medical records from Dr. Sanz, and the family was shocked at what the records revealed.

Irma Carter had an overactive thyroid, a condition that can result in the development of congestive heart failure. She had been referred to Dr. Sanz by Dr. Tania Serrano, an obstetrician/gynecologist who had recently placed Irma on hormone replacement therapy. When Dr. Sanz first saw Irma on May 1, 2000, he documented a completely normal physical examination. He noted the test results indicating an overactive thyroid and an elevated liver function, but specifically stated that she had no chest pain, no swelling, and that the palpitations of which she complained occurred only upon lying down at night.

Stephen, however, had been present in the examination room for the May 1 office visit, and specifically recalled his mother telling Dr. Sanz that she was experiencing shortness of breath, and feeling weak and tired. Stephen had explained to Dr. Sanz that his mother continued to have swelling of her legs and ankles. In fact, he actually raised her leg upwards and pressed on it, showing that the swelling was so severe that when he pressed on the legs and ankles, his finger left an indentation. In addition to other symptoms he described to Dr. Sanz, Stephen pointed out that he could see a vein in his mother's neck pulsating. Dr. Sanz did not record any of these findings; his report appeared as if Irma Carter's examination revealed nothing out of the norm.

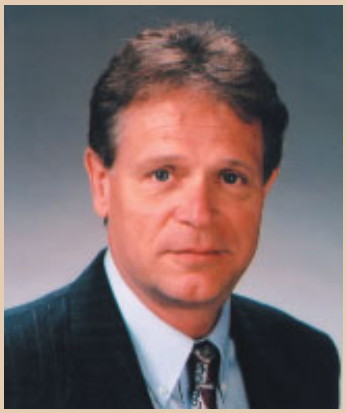
On May 10, 2000, Irma underwent two tests ordered by Dr. Sanz – an abdominal ultrasound and a 24-hour Holter monitor. The abdominal ultrasound revealed fluid in the abdominal cavity, a sign of a serious problem including the possibility of heart disease. The Holter monitor's results were also alarming. Between May 10 and 11, Irma's heart rate was over 220 beats per minute for the entire study. Because Dr. Sanz never requested the results of the Holter monitor study, they were not reported to him until after Irma's death.

On May 12, Irma was still feeling very sick and she returned to Dr. Sanz' office. Dr. Sanz by this time had the ultrasound report of fluid in the abdomen. He noted a soft and non-tender abdomen in his examination of Irma, but also included in his examination notes that Irma's heart, pulse, and respiratory rate was normal, despite the fact that she had recorded an extraordinarily high pulse and respiratory rate during the 24 hours under the monitor. Dr. Sanz sent Irma home, and three days later she died.

After reviewing the medical records and autopsy report, the Carter family hired attorneys Darryl Lewis, Sia Baker-Barnes, and Jack Hill, with Searcy Denney Scarola Barnhart & Shipley, to pursue charges of medical negligence. The trial began on February 28, 2005, and lasted three weeks. Throughout the trial, the SDSBS team worked hard to disprove Dr. Sanz' records using testimony of family members, admissions in Irma Carter's email correspondence where she had described her symptoms, and most importantly, the fact that it was nearly impossible, medically, for Irma to appear as described by Dr. Sanz.

The defense argued vehemently that Dr. Sanz' records indicated a normal patient, that ***Continued on page four.***

The Meeting Corner:



Randy M. Dufresne

RANDY M. DUFRESNE grew up in Northern Michigan. He attended the University of South Florida, receiving a Bachelor of Arts degree in Finance in 1977. While working for Aetna, Travelers, and Reliance Insurance Company over the past 23 years, he gained an extensive background in all areas of the insurance industry. He was engaged in all aspects of the claims industry ranging from claims adjusting to claims management. Randy joined Searcy Denney Scarola Barnhart & Shipley in 2004. Working primarily with Harry Shevin, Randy's experience includes personal injury, contract, wrongful death, latent construction defect, medical malpractice, nursing home, and product liability claims. ■

Many Ignored Symptoms Cause Woman's Death

Continued from page three.

the family members were not telling the truth, and that Irma Carter herself held back her symptoms from Dr. Sanz. Experts for the defense claimed that Dr. Sanz had no reason to suspect any heart problem and, according to defense's pathology expert, the medical evidence was consistent with Irma Carter developing congestive heart failure in the three days after she last saw Dr. Sanz. Defense also attempted to blame family members by suggesting that if her condition was as bad as they described, they would have, and should have, taken her to the hospital.

Plaintiffs' attorneys were able to successfully demonstrate that Dr. Sanz' records did not accurately reflect Irma Carter's true symptoms; that the test results would have been available to Dr. Sanz if he had requested them; and that if Irma Carter had been timely diagnosed and treated, she would likely have survived to live out her normal life. The jury deliberated only four hours before reaching a verdict in favor of the Plaintiffs. The jury specifically found that Dr. Sanz was negligent in his treatment of Irma Carter, and that his negligence caused her death. After assigning 100% responsibility to Dr. Sanz, the jury awarded the family approximately $3.4 million in damages. In addition to awarding compensation for the loss of the central member of the Carter family, the jury provided the family with the long-awaited justice they deserved. ■

(l-r) John Shipley, Earl Denney, Senator Bill Nelson, Karen Terry, Bill Norton, and David Kelley.

Senator Bill Nelson Honored At Breakfast by SDSBS

On March 21, 2005 SDSBS hosted a breakfast for Senator Bill Nelson at the Governors Club in West Palm Beach. ■

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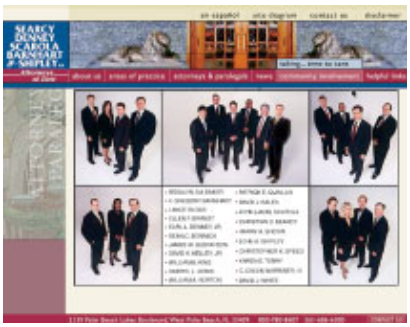


...for the latest news and information about Searcy Denney Scarola Barnhart & Shipley

Failure by Doctor and Hospital to Provide Proper Evaluation Results in Coma for Young Girl

At 12 years of age, Juliette J was a young girl with more than her share of life's difficult circumstances. At the age of two, she had contracted spinal meningitis, leaving her dependent upon a shunt placed in her brain to drain excess cerebral spinal fluid down into her stomach. The shunt enabled her to reduce intracranial pressure brought about by a build-up of the spinal fluid. Ten years later, Juliette's pediatric neurosurgeon, Dr. C, examined her and found that the original shunt was now too short. He recommended replacing it.

On May 31, 2000, Juliette was admitted to Defendant Hospital for shunt replacement. The procedure appeared to be successful, it functioned properly, and Juliette was discharged to go home the next day, June 1.

Five days later, Juliette's family noticed she was not responding normally, and was lethargic – not the usual behavior for a young and active girl. Around 8:30 pm on June 6th, Kathleen J, Juliette's mother, became alarmed and took Juliette to the emergency room at Defendant Hospital where Juliette was examined and tested. Around midnight, Dr. C, responding to the hospital's call, determined that a tap was needed to clear potential blockage in the newly replaced shunt. According to Dr. C, a blockage was causing her symptoms, and, if left in place, could lead to serious brain injury.

Dr. C performed the tap procedure and determined that Juliette's condition had immediately improved. He left the hospital shortly after, leaving Juliette's care in the hands of the emergency room physician, Dr. L. Juliette remained in the emergency room for over an hour, and about 3:00 am the next morning, was discharged to go home with her mother. No further instructions were given to the family for Juliette's care, or for conditions that must be monitored.

The exhausted family went to bed after returning home, and awoke at 8:00 am. When they checked on Juliette, she was totally unresponsive. Kathleen J immediately called 911 and an emergency crew rushed her daughter back to Defendant Hospital. Juliette never regained consciousness. A blockage in her shunt had caused a dangerous increase in the intracranial pressure, causing severe brain damage.

"She is in a minimally conscious state, requiring 24-hour care, pulmonary follow-up and surgical revisions for the remainder of her life."

Twelve-year-old Juliette remains, at present, in a minimally conscious state. She has sleep/wake cycles and responds to stimulations, but does not communicate or interact with those around her. She requires 24-hour care, totally dependent on her family and outside caregivers. She will require pulmonary follow-up and possibly a tracheotomy and gastrostomy revisions for the remainder of her life. In order to care for her, her family will need a completely accessible home, including LPN/RN nursing care.

The family contacted attorney Christopher K. Speed, of Searcy Denney Scarola Barnhart & Shipley, who set up a 'special needs trust' for Juliette. The trust qualified Juliette for Medicaid benefits, which would otherwise not be available to her. Juliette's guardian retained special counsel, Scott M. Solkoff, to draft the documents. In reviewing the evidence, Mr. Speed established that Defendant Hospital staff had failed to provide full and appropriate surveillance, monitoring, and neurologic evaluation of Juliette's condition. The hospital and its staff also failed to provide appropriate neurosurgical intervention to prevent the coma that Juliette will suffer for the remainder of her life. An action was brought on behalf of Juliette, charging the hospital with medical negligence.

$7.5 Million Settlement:
NEGLIGENCE FROM FAILURE TO PROVIDE PROPER MEDICAL CARE

Following extensive negotiations, Chris Speed was able to obtain a settlement between the J family and the hospital for $7.5 million. A separate settlement had previously been made with the neurosurgeon for $250,000, his insurance policy limits. This money will be placed in Juliette's trust to provide her with optimal care for the rest of her life. ■

$1.3 Million Verdict:
FAILURE TO MAINTAIN SAFE ROAD CONDITIONS RESULTS IN $1.3 MILLION VERDICT AGAINST FDOT

Lack of Road Maintenance and Safety Procedures Results in Deadly Crash

August 12, 2000, was a typical summer day in Jacksonville, Florida. A heavy rainstorm had dumped a large amount of water on the northeast part of the state. At the east end of the Hart Bridge Expressway in Jacksonville, the accumulation of rain created a huge, shallow lake – 281 feet long and one foot deep. The monster puddle covered the entire left through-lane. A car belonging to WTLV-TV (Multimedia Holdings), driven by a Mr. Doug Lockwood, came east-bound over the bridge and directly into the water. The car skidded out of control and slammed into the retaining wall. Another vehicle, driven by a Ms. Shana Williams, came over the bridge right behind Mr. Lockwood's vehicle and it, too, hit the water, skidded, and slammed into the retaining wall. Both drivers pulled their cars over to a stripe-marked area on the roadway, to the right of the through-lanes and near the Atlantic Avenue exit of the Hart Bridge.

The Jacksonville Sheriff's Office responded to the two accidents. As the deputy talked with Lockwood and Williams, a third vehicle, driven by Mr. Jason Keiffer, came over the bridge. Like the first two vehicles, Mr. Keiffer's car hit the lake and skidded out of control, still in the through-lane.

Behind Mr. Keiffer's vehicle was a large gasoline tanker-truck driven by Christian Darby Stephenson, coming over the Hart Bridge directly towards the lake and the accident scenes spread before him. The truck driver, a 29-year-old married father with a young daughter and a son on the way, immediately realized that he had three very hard choices to make as his truck came toward the scene: he could continue straight ahead in the through-lane and plow over Mr. Keiffer's vehicle; he could avoid Mr. Keiffer by moving toward the area where Lockwood, Williams and the Sheriff's deputy waited with their vehicles; or he could try to make a hard right onto the Atlantic Avenue exit, avoiding the other vehicles but placing himself in great danger. Christian Stephenson heroically chose option three. Tragically, in attempting the tight turn, the tanker jackknifed, struck the guard rail, overturned and exploded, killing Christian. He is survived by his wife Amie, and their two children, Hailey and Christian, Jr.

In the aftermath of the accident, Amie brought a wrongful death action against the Florida Department of Transportation (FDOT) for its failure to maintain the road at the accident site so that rain water would have drained properly, for its failure to warn drivers of the dangerous condition, and for its failure to remedy the dangerous condition. The Stephenson family was represented by attorneys Chris Searcy, Sean Domnick and Lance Block of Searcy Denney Scarola Barnhart & Shipley, and co-counsel Howard C. Coker of Jacksonville.

FDOT is responsible for the maintenance and safety of Florida's roads and highways. Evidence in the case showed that FDOT failed to maintain the roadway drains on a regular basis. During the ensuing investigation of the series of accidents, it was revealed that the cause of the standing water at the base of Hart Bridge was a drain clogged by a vehicle's mud flap or similar large piece of plastic lodged in the drainage system. The mud flap/plastic mysteriously disappeared after FDOT took custody of it following the investigation. Despite the loss of this crucial piece of evidence, the Duval County Circuit Court issued a final judgment in April 2005 for Amie and the children in the amount of $1.3 million. ■

$1.75 Million Settlement:
IGNORING CRITICAL MEDICAL INFORMATION RESULTS IN WRONGFUL DEATH

Failure By Medical Experts to Detect Massive Aneurysm Results In Death

On June 3, 1998, Alan R, a 55-year-old recently-retired VA hospital administrator, awoke at 3:00 a.m. with acute onset of back pain so severe he immediately went to the emergency room. He was discharged from the ER within one hour of his arrival, and sent home with a prescription for painkillers and muscle relaxants. The back pain persisted that morning, and Mr. R went to his primary care physician. Once again, he was sent home with painkillers and muscle relaxants. Two days later, Mr. R called 911 from home and was transferred by ambulance back to the same hospital, where he was diagnosed with a ruptured abdominal aortic aneurysm (AAA). The aneurysm had been the cause of the persistent severe back pain, and was missed by both physicians. The aneurysm was the size of two regulation softballs.

When Mr. R initially went to the emergency room of the hospital, the ER physician's working diagnosis was (1) musculoskeletal back pain, or (2) AAA. Despite the life-threatening nature of AAA, the ER physician did no diagnostic studies to rule out AAA. Instead, the ER physician concluded that Mr. R's back pain was probably musculoskeletal in nature. He prescribed injections of painkillers and muscle relaxants, and discharged Mr. R home, less than one hour after Mr. R's arrival at the ER.

Mr. R's severe back pain persisted, unrelieved, despite the prescription medications from the ER. Mr. R called his family doctor and asked for an appointment. Like the ER physician, Mr. R's family doctor ordered no diagnostic studies, not even an abdominal examination. Mr. R's wife, who was present at her husband's visits to the hospital and to the family physician, testified that the family physician "never laid a hand on my husband." The family doctor concluded that Mr. R's back pain was due to musculoskeletal problems, and he sent Mr. R home with prescriptions for narcotic pain relievers, muscle relaxants, and steroids. Mr. R was instructed to return to the family physician if he did not improve in three days.

Two days later, at approximately 9:00 a.m., paramedics responded to Mr. R's 911 call for help. The paramedics documented a pulsatile abdominal mass, stating in their records "suspected AAA". They immediately transported him to the hospital. Upon arrival, Mr. R was in shock from loss of blood due to the ruptured aneurysm. An ultrasound before emergency surgery showed an aneurysm the size of two regulation softballs. Mr. R's blood loss due to the ruptured aneurysm was so massive that during surgery he required the transfusion of two and one-half times the total blood volume in his body.

"Experts for the defense failed to explain why an aneurysm the size of two softballs in a man with a 35 inch waist went undetected."

Unable to withstand the massive blood loss, and preoperative shock, Mr. R went into cardiac arrest and died immediately after the surgery was completed.

Mr. R had a 35-inch waist. All of the experts, both plaintiff and defense, agreed that the aneurysm found in Mr. R, and documented by the hospital's radiologist, was massive. In addition, all experts testified that the aneurysm was the same size when Mr. R initially presented himself to the hospital, as it was two days later, when he returned to the hospital in an ambulance.

Medical experts for Mr. R testified that there is no way that a competent abdominal examination would not have detected such a huge aneurysm. The ER physician even testified that he would expect to be able to feel something that large upon physical examination. Paramedics detected the same aneurysm that the defendant physicians failed to detect. Experts for the defense failed to offer any explanation as to why an aneurysm of such proportions went undetected in a man with a 35-inch waist. After having the original chart of the family doctor examined by a documents ***Continued on page nine.***

The Meeting Corner:

Vincent L. Leonard, Jr.

Vincent L. Leonard, Jr. grew up in Hicksville, New York, the youngest of six children. In the late 1970's, his family moved to Stuart, Florida, where he graduated from Martin County High School. Mr. Leonard attended the University of Florida and Florida Atlantic University, earning a Bachelor of Business Administration - Finance in 1985.

Mr. Leonard has over 20 years experience in the finance and insurance industry. He has extensive experience in the most complex issues of insurance claims, coverage, liability, and damage analysis. While employed with Allstate Insurance Company as Florida's litigation process expert, he provided leadership on litigation protocols and management. Mr. Leonard was the lead process expert in training and management of Allstate's compliance process relating to extra contractual liability and related laws. In 2003, Mr. Leonard accepted a temporary assignment for Allstate's home office to work on a development project in Chicago, Illinois. During that assignment, he gained extensive experience in the corporate legal environment of the insurance industry. His duties on that assignment included leadership and project management, technology, finance, product development and marketing, and customer service.

Since joining the firm of Searcy Denney Scarola Barnhart & Shipley in February, 2005, Mr. Leonard has worked as a paralegal/investigator with attorney Karen Terry. As part of Ms. Terry's team, he utilizes his particular skills and experience in various areas of the firm's practice, particularly including cases of personal injury, medical malpractice, automobile negligence, and related matters.

Mr. Leonard is a member of the Academy of Florida Trial Lawyers and the Palm Beach County Trial Lawyers Association. Mr. Leonard and his wife, Missy, have been married 20 years. The Leonards and their four children reside in Royal Palm Beach. ■

Four SDSBS Attorneys Listed In Top 1.7% in Florida by Florida Trend *Magazine*

Chris Searcy

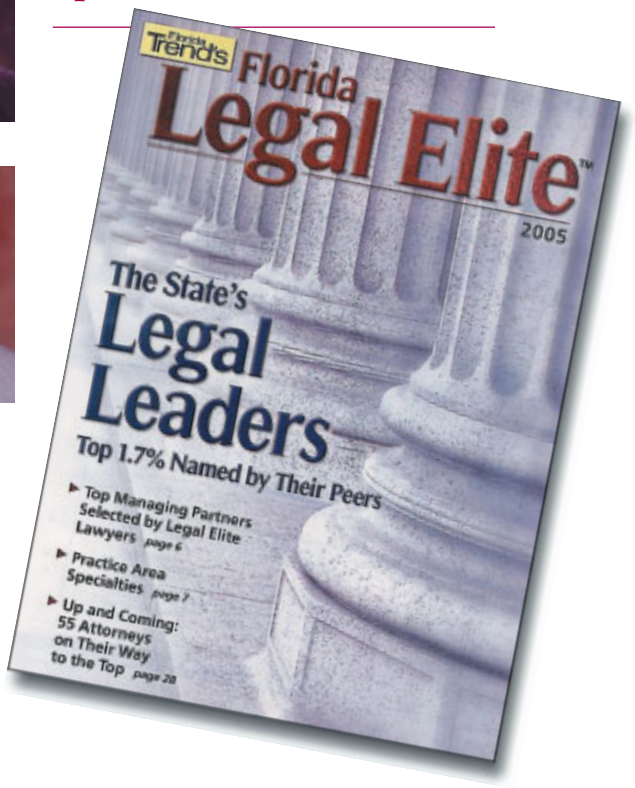
Greg Barnhart

David Sales

Darryl Lewis

Florida Trend business magazine, in its second annual edition of 'Florida Legal Elite', has chosen four members of Searcy Denney Scarola Barnhart & Shipley as being in the top 1.7% of attorneys practicing in Florida. This prestigious group is described by the magazine as lawyers who have earned the trust and confidence of those who know their work the best. ■

"These attorneys are part of the top 1.7% of the 56,513 Florida Bar members who practice in the state."



Failure by Medical Experts To Detect Massive Aneurysm Results in Death

Continued from page seven.

expert, Lance Block and James Gustafson offered uncontested proof that the family doctor destroyed the original record of Mr. R's office visit, and rewrote a fraudulent record after Mr. R died.

Plaintiff's vascular surgery expert, a former director of the vascular surgery division of a major clinic (and an expert providing testimony in prior cases for all of the defense firms), testified that Mr. R would have had a 90% chance of survival if surgery had been performed on him before he lapsed into shock on the morning of June 5.

Alan R served his country in Vietnam, and upon returning home, he continued to serve his country and fellow veterans in the VA hospital system. He and his wife, Rita, worked together in the VA hospital system throughout the United States through 28 years of marriage. For over 20 years, they drove to work, ate lunch, and drove home together every day. They raised a daughter who lives in the same neighborhood, and were looking forward to enjoying retirement and their new grandson when Alan's life was cut short by substandard medical care.

After extensive trial preparation, attorneys Lance Block and James Gustafson of Searcy Denney Scarola Barnhart and Shipley, negotiated a settlement in the amount of $1.75 million. ■

Speaking Opportunities:

Chris Searcy

Chris Searcy spoke on "Prematurity" to the Association of Trial Lawyers of America, at the Birth Trauma Litigation Group meeting held in February 2005, at the Ritz-Carlton in Atlanta, Georgia. ■

Greg Barnhart

Greg Barnhart spoke on "Voir Dire in the Vehicular Crash Case" at the 2005 Voir Dire – Brain Storming with the Masters Seminar hosted by the Academy of Florida Trial Lawyers, on April 7-8, 2005, in Orlando, Florida. ■

Harry Shevin

Harry Shevin chaired the Trauma for Trial Lawyers II Seminar for the Palm Beach County Trial Lawyers Association. The seminar was held on May 13, 2005, in Palm Beach, Florida. Mr. Shevin serves as Secretary of the Association. ■

Accolades...

Sean Domnick

Sean C. Domnick was re-elected to the Board and to the Executive Committee of the Academy of Florida Trial Lawyers. ■

Sia Baker-Barnes

Sia Baker-Barnes has been elected President of the West Palm Beach Chapter of The Links, Inc. She will serve a two-year term beginning in May. The organization has more than 11,000 members in 267 chapters covering 40 states, Germany, and the Bahamas. Its mission is to provide a "chain of friendship for its members that includes a deep bond of purposeful and committed public service". ■

Taking...

Time to Care

SDSBS Employees, Family and Friends Participate in Corporate 5K Run for Fitness

On April 7, 2005, 29 SDSBS employees, with their friends and relatives, participated in the inaugural "Corporate 5K Run" in West Palm Beach. The Corporate 5K is an event organized to promote physical fitness and camaraderie by getting team members out of the office and running or walking together. This was a first-time event in West Palm Beach, drawing nearly 2,000 participants from various local businesses. (The Corporate 5K has been held annually for the past 20 years in Miami and the past seven years in Ft. Lauderdale.) In addition to helping employees become more physically active, the event provided an opportunity to donate funds to assist the Leukemia and Lymphoma Society in its efforts to find new treatments and cures.

Participants on the SDSBS Team were (pictured above): **Earl Denney, Karen Terry, Jack Hill, Laurie Briggs, Vivian Ayan-Tejeda, Erica Lucas, Bobby Marques, Tom Peterson, Michelle Peitz, Susan Gordon, Linda Miller, Janet Hernandez, Jasmine Thomas, Helene Walker, Lori Villario, Cheryl Phillips, Phoebe Harris, Judy Lancaster, Angela Eckman, Robbie Dunlap and Shirley Lucas.** Also participating in the event were **Steve Smith, Pam Henney, Suzanne Valentage, Connie Abel, Susan Hanlon, Ana Wright and Pam Roberts. Kimberly Miller** was the official timekeeper for the team. The team of **Linda Miller, Phoebe Harris and Karen Terry** won First Place in the Women's Legal Division.

As part of the event, businesses were also asked to provide originally-designed t-shirts to be worn by team members during the race and to enter the designs in the Corporate 5K T-Shirt Contest. The SDSBS shirt (pictured here), was designed by **Vincent Lucas** (brother of employee/participant Erica Lucas). Vincent's design won First Place as the "Most Original Design" in the race. ■

Celebration Benefits Big Bend Cares Organization

In February, **James and Josie Gustafson** hosted "An Evening with Friends" celebration to benefit Big Bend Cares, a non-profit organization that provides education and comprehensive support to people infected with, or affected by, HIV/AIDS. Big Bend Cares serves an eight-county area in Florida's Panhandle. It is the primary provider for AIDS educational services in the mainly rural area. ■

(l-r) Randy Kriberney, Robin Kriberney, dog Bali, Marilyn Hoffman and Britni Smith

4th Annual 'Walk for the Animals' Benefits Animal Rescue League

In March, **SDSBS employees** participated in the Fourth Annual Walk for the Animals. The event, hosted by Peggy Adams Animal Rescue League, was held at Okeeheelee Park. Participants raised $123,000 for the League's low-cost veterinary spay/neuter clinic in Palm Beach County. ■

International Academy of Trial Lawyers China Program

Chris Searcy serves as Secretary of the International Relations Committee of the International Academy of Trial Lawyers (IATL). IATL sends lawyers to Asia and Eastern Europe to promote the rule of law in developing countries. The IRC sponsors trial lawyers from these countries for membership in IATL. Photos taken at a recent meeting in Hawaii. ■

(l-r) Bill King, Jack Hill, Rigoberta Menchu Tum, and Jack Scarola

SDSBS Hosts Reception Honoring Guatemalan Nobel Peace Prize Winner

On June 18, 2005 SDSBS hosted a reception honoring the 1992 Nobel Peace Prize Winner and historic representative of the Indigenous Maya People, Rigoberta Menchú Tum. Ms. Menchú Tum was visiting West Palm Beach through the invitation of Ana Maria de Monteagudo, the Consul General of Guatemala. ■

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Bill Norton and Pete Love Join SDSBS Office in Tallahassee

Attorney **Bill Norton** and paralegal **Pete Love** will join attorneys **Lance Block** and **James Gustafson** in our firm's Tallahassee office. Mr. Norton is a shareholder with SDSBS, and Mr. Love has worked with Mr. Norton at the firm for 15 years. The office is located in the beautiful and historic Towle House at 517 North Calhoun Street. (Telephone 850-224-7600) ■

In this issue:

SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY PA
Attorneys at Law

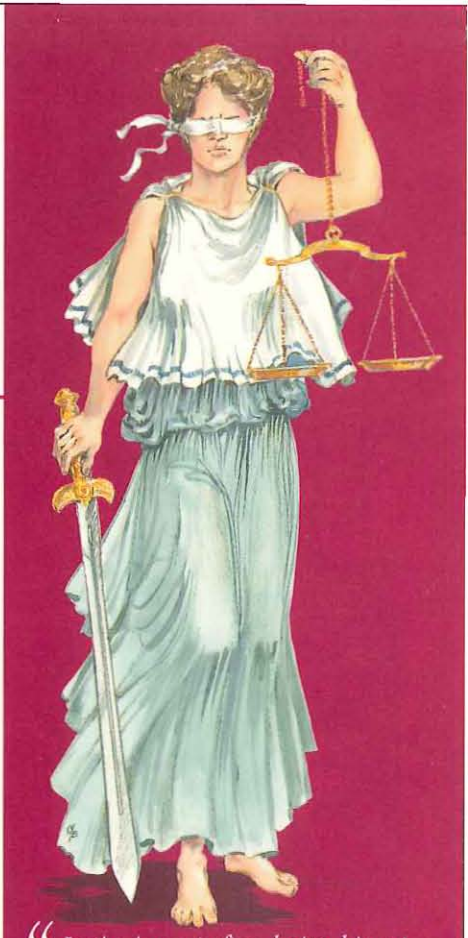
SDSBS Teams Up To Win Landmark Victory

Perelman: $1.58 Billion
Morgan Stanley: 0

On May 18, 2005, a jury in West Palm Beach, Florida delivered an historic judgment against Morgan Stanley & Co. on behalf of financier Ronald O. Perelman's company, Coleman (Parent) Holdings, Inc. The jury found the investment banking firm liable for its role in a fraud relating to the 1998 sale of The Coleman Company, the well-known camping gear manufacturer, to Sunbeam Corporation, known for its production of small household appliances. The award (for compensatory and punitive damages) totaled almost $1.45 billion. This is reportedly the largest judgment ever returned in the U.S. for the benefit of a single individual. The case was marked by the defendant's extra-ordinary efforts to evade its court-ordered obligations to produce evidence, and its accusations of improper conduct against everyone from the judge to its own lawyers.

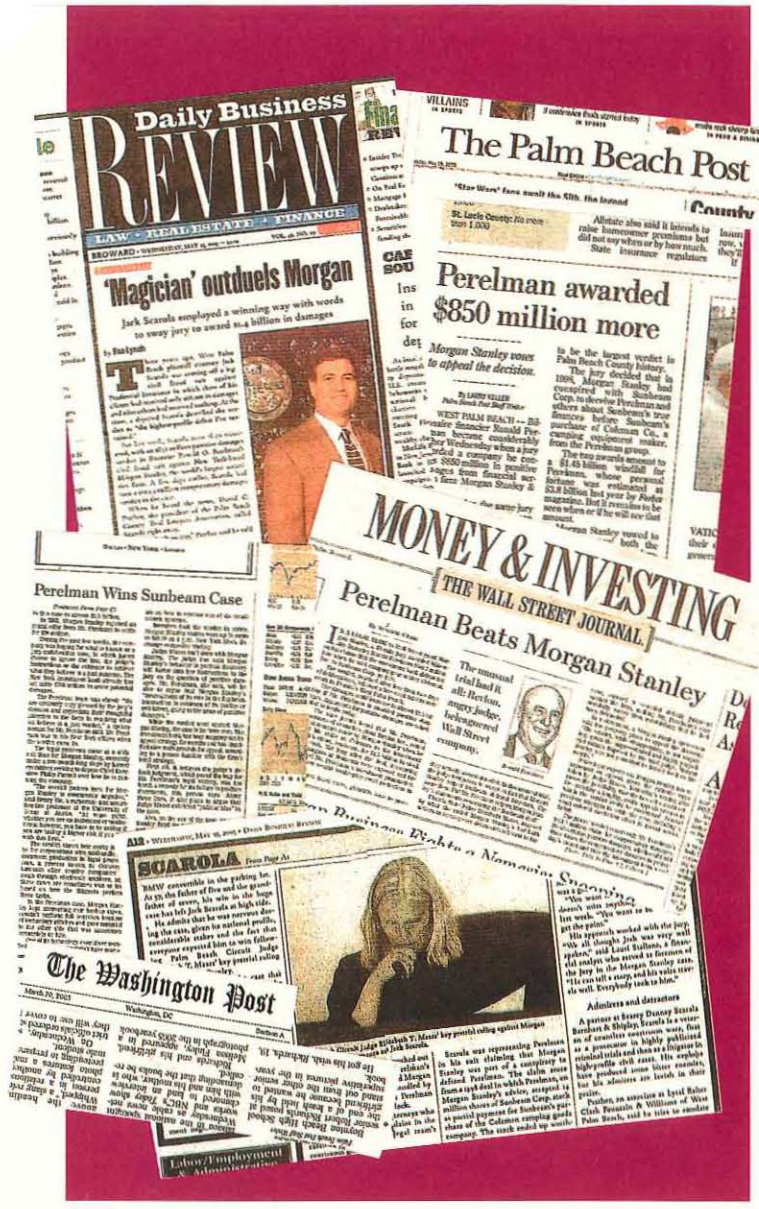
It was a David vs. Goliath battle between one of the nation's most astute investors, Mr. Perelman, and a group of equally astute investment bankers. Mr. Perelman's David, however, had the determination, the resources, and the highly-skilled legal team necessary to pursue Morgan's Goliath to a spectacular decision. He also had the great fortune of having the battle take place before Palm Beach County Circuit Court Judge Elizabeth T. Maass, an extremely competent jurist who found herself and the integrity of the legal system challenged by Morgan's aggressive behavior at every turn.

Mr. Perelman charged that the investment firm had participated in a massive fraud involving the 1998 sale of Coleman to Sunbeam. In December, 1997, Mr. Perelman, who owned controlling interest in Coleman (with 82% of its stock) was approached by Sunbeam's new chief executive, Mr. Albert ("Chainsaw Al") Dunlap, with an offer to buy Coleman. Discussions went poorly and the two men parted with-out agreement. Shortly thereafter, Morgan re-initiated contact with Mr. Perelman on behalf of Sunbeam, and negotiated a deal for the sale of Coleman to Sunbeam. Morgan had brokered the first of many deals with Mr. Perelman 20 years ago, and Mr. Perelman felt confident in working directly with Morgan. The sale, completed in March 1998, was calculated to net Mr. Perelman about $1.5 billion, $680 million of which was in Sunbeam stock. As Sunbeam's exclusive investment banker, Morgan earned a $10 million fee on completing the deal.



"Justice is most often depicted in art as a woman. She is blindfolded. In one hand she holds scales, and in the other hand a sword. The reason for the blindfold is because justice is, indeed, blind to power, position, wealth, religion, national origin. Those things do not matter.
The scale is there so that equity and justice may be accurately weighed. And when the scale is placed out of balance, when it is tipped in a way that results in injustice, that strong and powerful woman is prepared to use her sword in order to restore the balance, in order to make certain that the scales are not tipped unfairly again. Each of you, no matter what your gender may be, have your hand on that sword. It is an awesome responsibility. It is a tremendous power that you have."

- - Excerpt from Jack Scarola's closing argument



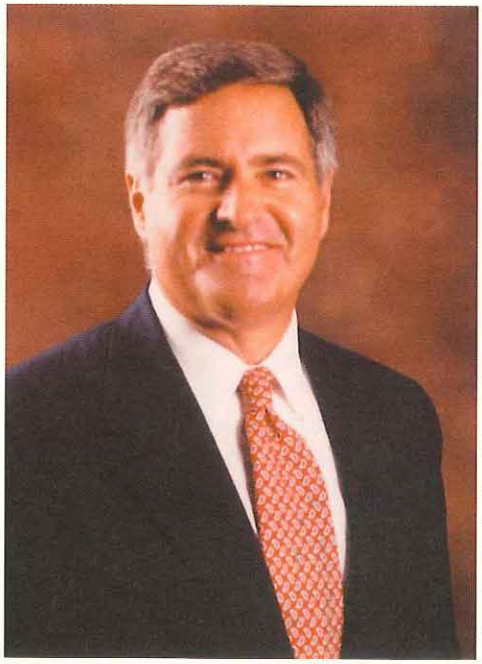
Just weeks after the deal closed, the market value of Mr. Perelman's Sunbeam holdings began to evaporate. Newly published sales and earnings figures dramatically conflicted with earlier Sunbeam statements that had been backed-up by Morgan. The revelations led to the ouster of Sunbeam CEO Dunlap, and then its accountant, Arthur Andersen, withdrew an audit of the company's books. The Securities and Exchange Commission (SEC) later charged Mr. Dunlap with fraud in "cooking the books" of Sunbeam to create an illusion of financial success brought about by his leadership, when, in fact, the company was in deep financial trouble. Mr. Dunlap was later fined by the SEC and barred for life from running any public company because of the fraud he had conducted at Sunbeam. In 2001, after efforts to save the doomed company failed, Sunbeam filed for bankruptcy and all of Sunbeam's shareholders, including Mr. Perelman, were left holding worthless stock. Unable to seek meaningful compensation from bankrupt Sunbeam, Mr. Perelman focused on Andersen's role in contributing to Sunbeam's demise.

During the course of the Andersen litigation, Mr. Perelman's legal team discovered a letter dated just days before the Coleman-Sunbeam deal was to close. That letter from Andersen to Morgan Stanley was delivered to Morgan, as the bank also prepared to close Sunbeam's $750 million bond offering needed to finance the Coleman deal. The letter outlined serious financial troubles at Sunbeam, including decreasing sales, escalating debts, and accumulating losses. Rather than face the loss of tens of millions of dollars in transaction fees, Morgan Stanley made the decision to help conceal Sunbeam's true condition. A press release drafted with Morgan's cooperation and issued by Sunbeam with Morgan's approval continued to paint a grossly misleading picture of Sunbeam's economic performance. Other documents prepared by Morgan for Sunbeam's bond offering further misrepresented Sunbeam's financial condition, enabling Morgan to attract enough other deceived investors to earn a $22.5 million fee for its work on that offering. A week after the offering closed, Sunbeam acknowledged that its sales would fall dramatically short of earlier estimates. Three years later, Sunbeam filed for bankruptcy.

Morgan Stanley argued that it had accurately reported all of the information available to it at the time, and that it, too, was being lied to by Sunbeam. Mr. Perelman's position was that Morgan not only knew of the financial difficulties behind the scenes, but had a hand in preparing documents that concealed the financial ill health of Sunbeam, and had a duty to make accurate disclosures to Mr. Perelman even though Morgan sat on the opposite side of the negotiating table. In May 2003, after months of investigation, argument, and fruitless negotiating efforts between the parties, Mr. Perelman sued.

Legendary litigator Jerold Solovy, the highly-respected Chairman of the 400-plus lawyer Chicago-based firm, Jenner & Block, was chosen as the primary architect of Mr. Perelman's trial strategy. Mr. Solovy had successfully partnered with Jack Scarola of Searcy Denney Scarola Barnhart & Shipley to secure a $70 million settlement on behalf of Mr. Perelman against Arthur Andersen. When the battle lines formed with Morgan Stanley, Mr. Perelman and Mr. Solovy naturally turned once again to Searcy Denney Scarola Barnhart & Shipley and Jack Scarola to round out the trial team.

From the very beginning and throughout the trial, counsel for the defendant battled aggressively with the plaintiff, plaintiff's counsel, and the judge. During discovery before the trial, Morgan engaged in protracted, deliberate and concerted efforts to delay and obstruct the litigation by failing to produce e-mail and other documents demanded by the plaintiff and ordered to be produced by the court; by destruction of evidence; by representing that documents had been destroyed when it knew back-up and archived data existed; by concealing the fact that its lead banker on the merger was being criminally prosecuted for complicity in bribery at the very time he was representing Morgan on the merger; and by falsely certifying to plaintiff and the court that it had searched for, located and disclosed documents.



Jack Scarola

Confronted with compelling and largely unrefuted evidence of Morgan Stanley's misconduct, Judge Maass responded at several critical junctures in the trial with tempered restraint. At each step, she opted for carefully measured, minimal sanctions against Morgan expressly directed at correcting the imbalances created by the misconduct rather than punishment. Morgan's response was to continue to evade court orders and to openly charge the judge with bias and emotionalism. As Morgan's conduct continued unabated, the Court was compelled to escalate the level of sanctions imposed against Morgan in an effort to alleviate the harm done to the plaintiff by Morgan's repeated and intentional violation of court orders.

In March 2005, shortly before the trial began and following days of evidentiary hearings, Judge Maass concluded that the abuses by Morgan during discovery had come to "infect the entire case", and she announced her intention to issue a partial default order, directing the jury to accept as established fact that Morgan had conspired with and assisted Sunbeam in perpetrating a fraud. Morgan had forfeited its right to defend itself only on those issues directly related to the evidence that Morgan had destroyed or concealed. The court stopped significantly short of the full relief available under Florida's procedural rules and well-established case law. In an obvious effort to buy more time and divert attention from its own misconduct, Morgan notified the judge that it intended to fire its own lead counsel – that very day, without notice – and asked for a six-month continuance to find new counsel. Noting that two other law firms had been actively defending Morgan for months, the judge denied the request.

As the Court summarized its findings, "[D]iscovery abuses and misrepresentations by Morgan Stanley . . . would take a volume to recite . . . Morgan Stanley has deliberately and contumaciously violated numerous discovery orders . . . it chose to hide information about its violations and coach witnesses to avoid any mention of additional, undisclosed problems. . . . the prejudice to [Mr. Perelman and Coleman (Parent) Holdings, Inc.] from these failings cannot be cured . . ." The jury was instructed to accept as fact that the investment bank participated in a scheme to mislead Mr. Perelman and to cover up its involvement in Sunbeam's fraud on Mr. Perelman. Considering Morgan's relentless assault on the integrity of the judicial system, and its persistent and serious abuses, the trial court's measured response was not only justified but essential. However, the court's order left significant issues open for trial and Morgan had plenty of fight and virtually limitless resources left to continue its relentless defense. At this point, the plaintiff no longer had the burden to show that fraudulent behavior had occurred, but only to show that Mr. Perelman had relied on the Sunbeam/Morgan Stanley lies and had suffered damage as a result of that reliance. While important battles had clearly been won, the war was hardly over. Proving that Ronald Perelman, a hugely successful investor, with a large and sophisticated team of business advisors of his own, placed any reliance on Sunbeam and Morgan's statements in deciding to enter

into a $1.5 billion deal would prove to be a daunting task. Mr. Scarola spent four hours in opening statement to lay the complex foundation for the case, which took almost two months to try despite the fact that the issues had been substantially narrowed.

Morgan's next response was an attempt to have Judge Maass removed from the case, arguing that her "bias, antagonism, and hostility" toward the company undermined the integrity of the court and the ability of the defendant to obtain a fair trial. Morgan's motion was denied twice – first by Judge Maass herself and then by the appellate court, which acted in support of Judge Maass with extraordinary swiftness. The appeal was denied within hours of the appellate court's receipt of Morgan's papers. Morgan then sought a mistrial by alleging jury tampering, one of dozens of unsuccessful mistrial motions that peppered the trial proceedings. Morgan completely underestimated the judge's determination to conduct a fair and equitable trial, and the jury's ability to comprehend the massive scope and complexity of Morgan's fraud. On May 16, the jury awarded Mr. Perelman $604 million in compensatory damages for having relied on Morgan's misrepresentations about Sunbeam's finances. The second phase, to determine both entitlement and amount of punitive damages, started immediately.

Two days later, the jury awarded Mr. Perelman $850 million in punitive damages. The two jury awards totaled $1.45 billion. On June 23rd, the trial judge added interest owed by Morgan Stanley to Mr. Perelman. The judgment now totals $1.58 billion. That amount sends a message to businesses like Morgan Stanley that transparency is the order of the day, that honesty is essential in business transactions and in litigation, and that deception will not be tolerated. Morgan said it plans to appeal the verdict.

Jack Scarola stated in an interview following the trial that Judge Maass is an extremely bright, scrupulously fair, and well-respected judge who is very rarely reversed at the appellate level. She carefully documented the basis of every one of her rulings and acted well within the bounds of established precedent. "We are extremely confident that this is a record that is going to withstand the most rigorous appellate review," Scarola said.

The after-shocks of the verdict are significant. Lawyers representing Mr. Perelman's company, Coleman (Parent) Holdings, Inc., intend to pursue contempt sanctions against Morgan, including millions of dollars in attorneys' fees and costs expended in establishing the bank's willful violation of court orders. Mr. Perelman's counsel has received numerous inquiries from lawyers throughout the United States seeking information on behalf of their clients who are investors with serious questions of their own regarding Morgan Stanley's business practices. Federal regulatory and enforcement agencies have focused attention on the disclosures made in this case concerning Morgan Stanley's activities. Morgan's stock price has reacted to the bad news, and its current CEO, Philip Purcell, recently announced his resignation following the earlier departure of numerous high-ranking Morgan Stanley executives. The very future of Morgan Stanley, a Wall Street giant, is in question.

Morgan's Goliath may not be dead, but Ronald Perelman has certainly brought this Goliath to its knees. ■