SEARCY DENNEY SCAROLA BARNHART & SHIPLEY

OF COUNSEL

A quarterly report to clients and attorneys.

VOLUME 06
NUMBER 2

Brain Injury Caused By Failure to Provide Timely Medical Care

Mother of four young children is now totally disabled.

On May 30, 2002, Mrs. A underwent surgery for removal of a meningioma, a slow-growing tumor that often causes damage to the brain. The surgery was performed by Dr. X, and lasted about ten hours. Shortly after surgery, Mrs. A was placed in the post-anesthesia care unit under the care of Nurse Y, a registered nurse with years of experience.

When Mrs. A was first examined by Nurse Y, her neurological condition was excellent. Her Glasgow Coma Score was 14 out of a possible 15 – indicating that Mrs. A was responding appropriately to standard stimuli by opening her eyes and mouth, or otherwise responding. Her Patient at Risk (PAR) score in the care

Above, brain scan showing tumor.

unit was 9 out of 10, an excellent score following surgery of this nature. Nurse Y later testified that Mrs. A's neurological condition improved the whole time she cared for her, and that when she handed the patient over to Nurse Z, things were going very well.

Nurse Z then took responsibility for the care of Mrs. A. Over the next several hours, Mrs. A's neurological condition took a precipitous ***(Continued on page six.)***

Undetected Problem at Birth Results in Brain Damage

Baby Girl was born at a hospital in south Florida under the care of a well-known obstetrician-gynecologist. The pregnancy had been at high risk due to the age of the mother and multiple prior miscarriages. During the pregnancy, there were multiple ultrasounds performed on the fetus and each examination indicated everything was normal and that Baby Girl would be a healthy newborn.

In March 1999, at 35½ weeks pregnant, the mother suffered a premature rupture of her membrane. She was admitted to the hospital and Baby Girl was born via spontaneous vaginal delivery. During the labor and delivery the mother requested that a cesarean section be performed because she was in tremendous pain. The Apgar scores an index evaluating the newborn infant's condition at birth were recorded as excellent. The only abnormalities noted were the placenta and spinal cord; they were described by the OB/GYN as being abnormal in appearance. The umbilical cord was lost and there was no pathology examination performed on it. Otherwise, Baby Girl was described as in excellent health yet, shortly after birth, ***(Continued on page seven.)***

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

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.

Defective Component Is Responsible for Eye Infections

As trial attorneys, we are taught to investigate all sides of the issues when reviewing cases for our clients. The Bausch and Lomb litigation is an example of how that thinking can be useful to our clients. Back in April, we began receiving calls from folks nationwide to discuss their problems with Bausch & Lomb's ReNu with MoistureLoc. What we noted, upon our internal review of all calls received, was the fact that we were getting a high number of calls from folks who had contracted the fusarium fungal infection, but also a significant number of calls from folks who had contracted bacterial infections. As such, when we initiated our investigations into this eye solution, we kept alert to the possibility that Bausch's ReNu with MoistureLoc may not have been tainted by a contaminant in the factory at Greenville, South Carolina, but rather that the product itself had component defects that were defeating its ability to protect the eye from infections. In fact, we hypothesized, the product's components may have been attracting or creating a breeding site for fungal or bacterial infections by virtue of some defective chemical component within the solution.

In recent weeks, through discussions with biochemical experts and expert optometrists and ophthalmologists, and as more facts have become available, our earlier gut feeling has been to a large degree confirmed. First, word started spreading that the company was being alerted to a higher incidence of infections in Europe than was normal. The ReNu with MoistureLoc which is sold in Europe is not manufactured in Greenville, South Carolina, but in Milan, Italy. It would be highly unlikely that contaminants of the same type would be found in both these factories at the same time. Moreover, the United States Center for Disease Control (CDC) recently completed its investigation of Bausch's Greenville plant with no findings of a fusarium contaminant.

Research and news reports from the CDC and Bausch itself have all surfaced in the last couple of weeks with evidence supporting the fact that this product has a defective component or components which may cause not only trauma to the eye where fungus can breed, but also create a trap or sealing effect that disallows the introduction of disinfectant to the afflicted area.

This combination of chemical events has caused blindness and the need for complex surgical procedures, including corneal transplants, in our clients' cases. We have now spoken with over 220 people who have, in some manner, been affected by this product; we currently represent 23 seriously injured clients, and have 22 additional cases we are reviewing for prospective clients. In two of our clients' cases, lawsuits have already been filed, with more being prepared for filing.

We do not intend to involve our clients' cases in a class action. We have worked over 27 years representing individual clients in such cases where they have been seriously injured, and intend to fight for each individual client's fair measure of justice from Bausch and Lomb. The fact that Bausch and Lomb may have knowingly placed our clients and millions of other contact lens wearers in harm's way is exceedingly troublesome to us and we intend to ensure they do not escape the sword of justice. ■

If you or someone you love has contracted an eye infection as a consequence of using the Bausch and Lomb product ReNu with MoistureLoc, you may have a case warranting review. If you would like to discuss the facts of your use of this product, please contact Cal Warriner or Kevin Walsh, at 800-780-8607.

Truck Driver's Failure to Warn Traffic Causes Crash

Semi-trailer truck driver fails to provide safety warnings that would have cautioned oncoming drivers.

On the evening of January 10, 2003, Beverly and Earle Knowles, winter residents of Jensen Beach, Florida, were driving home on State Road 60 after visiting with relatives near Tampa. The portion of the road they traveled that night is located in rural Hillsborough County. It was sparsely populated, dark, and surrounded by miles of orange groves. As 69-year-old Earle drove east in the darkness, he unexpectedly came upon a semi-trailer truck completely obstructing the road. He had no time to take evasive action to avoid the horrific collision between his car and the truck. The impact was so severe that the Knowles' vehicle was later declared a total loss.

The semi-trailer truck was owned by C. Young Citrus, Inc. That night, the operator was attempting to back the huge vehicle across SR 60 and into an orange grove for loading. He failed to take any action to ensure safety or to provide warnings prior to blocking the roadway with his truck. Despite the driver's knowledge of the likelihood that there would be oncoming traffic, traveling at least 60 miles per hour toward him, the operator attempted this dangerous traffic maneuver without any of the precautions required by Florida statute, such as placing flares or reflective triangles on the roadway, or utilizing a flagman.

> *"Had this injury not been discovered, she could have been paralyzed from her neck down for the rest of her life."*

While Earle was stunned and shaken, he was not seriously injured. Beverly, 69 years of age, was in the rear passenger seat of the vehicle. At the scene of the accident, she experienced difficulty breathing and complained of severe pain in her chest, back and neck. She was immediately taken by ambulance to Lakeland Regional Hospital where she was admitted, suffering from a sternal fracture, right rib fractures and a duodenal hematoma.

Beverly Knowles remained hospitalized for four days. Despite the significant treatment and care she received at Lakeland, Beverly continued to suffer increasing pain and severe discomfort in her neck. Following her release, Earle and Beverly returned to their home in Michigan. Upon arrival in Michigan, she presented to an orthopedic surgeon who diagnosed her as suffering a severe subluxation and hyperextension of her neck, which meant that her neck was significantly out of position. Beverly's doctor literally wheeled her to a neurosurgeon, located in the same building, who confirmed a severe cervical spine injury at the C6-7 level. Beverly's injury was so potentially dangerous that the neurosurgeon immediately admitted her to the hospital and scheduled her surgery. Had this injury not been discovered, Beverly could have been paralyzed from the neck down for the rest of her life. The following morning, Beverly underwent a cervical spinal fusion followed by an extended recovery and physical therapy regimen.

Beverly and Earle sought local counsel, who initiated a lawsuit against the citrus company and the truck's operator. They believed that those at fault would assume responsibility and admit liability for their actions. Incredibly, the defendants' insurer denied liability and, instead, sued Earle Knowles alleging that he was responsible for the collision. The case was set for trial.

Local counsel referred the Knowles case to Searcy Denney Scarola Barnhart & Shipley. Attorneys Greg Barnhart and Sia Baker-Barnes immediately initiated extensive discovery which included locating and scheduling the deposition of a key eyewitness who testified as to the failure of the company's driver to provide any warning and the driver's reckless conduct in blocking the roadway.

The gathered evidence was forcefully presented over five days at trial. Eventually, justice was served. Earle Knowles was absolved of any liability, and the citrus company was held 100% negligent and accountable for the full amount of the $738,000 judgment for their actions. ■

$738,000 Verdict

AUTO ACCIDENT: NEGLIGENCE BY SEMI-TRAILER TRUCK DRIVER

Reconstruction of Fatal Accident Proves Responsibility

Young husband, falsely accused of causing the accident that resulted in his wife's death, was determined to find the truth.

In September of 2003, life was good to John and Jane Doe. They were very much in love and very happy together. The Does had been married almost one year, and lived comfortably in southwest Florida. Jane, age 30, worked in hotel management, and was making plans to attend graduate school. She was looking forward to earning a master's degree in education. John, 36 years old, owned a small business. The Does had enjoyed a honeymoon which had seemingly lasted a year. Together, they had traveled to Europe and cruised the Caribbean, were avid bicycle enthusiasts, and were active in their church. Their future plans included raising children, which was why Jane would soon begin graduate studies in education. The couple had decided that if she chose teaching as a career, it would enable her to earn a living and still have the flexibility to maximize her time with their children. Needless to say, their future was bright.

In the early evening of September 29, 2003, southern Florida was drenched with torrential rainfall. As was their routine, John picked up his wife after work. While on their way home on this soggy evening, the Does visited John's sister for a short time. Then they began the drive home together in John's pickup truck, traveling northbound over the bridge that connected the resort island they worked on to the mainland. Because of the rain, travel conditions were dangerous. Visibility was affected by the rain and the roads were wet. John traveled at a speed of 20 to 25 miles per hour – considerably under the posted speed limit of 45 miles per hour.

That same day, Employee Y, an unskilled laborer employed by Corporation X, was driving his employer's truck from the opposite direction, southbound on the same state road, approaching the bridge. The heavy rain had halted company operations earlier that day, and Employee Y and his coworkers were rained out from work. Employee Y and his crew were working locally but were not from the area. Because they had been rained out that day, he and several others decided to spend part of the day drinking alcohol in their rooms at a local hotel. A few hours before driving the truck, Employee Y smoked a marijuana cigarette, according to the Florida Highway Patrol Traffic Homicide Investigative Report, although he denied it when his deposition was taken. Late in the afternoon, Employee Y decided to drive to the resort island for dinner, a place he had never been before. He left the hotel driving one of the company's heavy-duty pickup trucks. The keys to the company vehicle were readily available.

In the meantime, as John Doe drove north over the bridge and through the rain, he suddenly saw the headlights of Employee Y's vehicle. It appeared that Employee Y's truck was in the wrong lane, coming at the Does' truck just as they were departing the bridge and entering the causeway area of the road. With only seconds to react, John heard Jane say, "What's he doing in our lane?" So John abruptly steered his truck into the southbound lane to avoid Employee Y's oncoming truck, figuring the two vehicles would bypass one another in the opposite lanes. However, the right front corner of Employee Y's truck slammed into the Does' passenger door. It was later estimated that despite the severe weather conditions on the road that day, Employee Y was driving in excess of the speed limit, perhaps as much as 50 to 55 miles per hour at impact on a roadway posted at 45 miles per hour.

The impact of the crash was so severe that John's pickup truck was spun partway around, off the road and onto the west shoulder of the causeway-highway. The passenger door was sheared partially off. The right rear cab was crushed inward and the corner panel torn. The rear wheel was crumpled and the tire and rim torn apart. The windows were shattered and the roof line bent downwards almost 12 inches. Employee Y's heavier truck did not fare much better – the front of the truck was crushed into the engine compartment, the hood crumpled and windows shattered. The front tires and wheels were damaged.

Following the impact, John looked over at his wife, who was unconscious. Jane was leaning over in the front seat towards what was left of the passenger door, still restrained in her safety belt. She was totally unresponsive. John got out of the vehicle and approached her from the passenger-side door. He held her in his arms until the emergency personnel arrived. The emergency technicians were still working on his wife when he was taken by helicopter to the hospital for his own injuries, from which he has now fully recovered. Jane died of blunt trauma while being transported to a nearby hospital. ***(Continued on page five.)***

Below: the Does' severely smashed pickup truck.

7-figure Confidential Settlement

AUTO ACCIDENT CAUSED DEATH

On the night of the accident, Employee Y voluntarily gave a statement to the Florida Highway Patrol. He admitted to having consumed three or four vodka drinks and a "blue" alcoholic drink up to an hour before the accident. He also admitted that he had smoked marijuana probably two or three hours prior to the accident. In his deposition taken in the lawsuit years later, however, Employee Y testified that he had slept all that day and had stopped drinking by mid-morning. He also denied smoking marijuana. The results of Employee Y's blood tests taken on the evening of the crash were .161 grams of ethanol alcohol per 100 milliliters of blood, more than two times the legal presumptive limit for blood alcohol. He was arrested and charged with driving under the influence. He pled no contest to the charges, and his license was suspended for a number of years.

The Highway Patrol conducted a traffic homicide investigation of the accident. Employee Y stated that John had cut in front of him. There were no eye witnesses other than the parties. While it was clear from the physical evidence - scuff marks, vehicle debris, and vehicle resting positions - that the collision occurred in the southbound lane of the highway, the Highway Patrol findings never offered an explanation as to why John was in the southbound lane, nor did the report address the importance of the point of impact on the Does' truck. Despite Employee Y's intoxicated condition, the Highway Patrol's report determined that John was responsible for the accident.

Despite the crushing grief he suffered, John's spirit and resolve were strong. He knew that the Corporation X driver was responsible for the accident and for his wife's death, and was determined to prove it.

So John sought legal counsel from Collier County attorney and former Florida Bar Governor Chris Lombardo of the Woodward, Pierce and Lombardo firm, who then co-counseled the case with SDSBS partner Lance Block of the Tallahassee office.

A team of experts was retained to reconstruct the accident, study the human factor reactions, evaluate alcohol and drug test results and Employee Y's level of impairment, and analyze the personnel and safety practices of Corporation X. The crash study team made multiple trips to the accident scene and supplemented the Highway Patrol's measurements, carefully examined the vehicle crush patterns, and set up a computer-generated reconstruction of the collision. The comprehensive study left no stone unturned, and concluded that the Highway Patrol's accident reconstruction was inaccurate and not possible. More importantly, the study also confirmed John's version of the accident. The forensic evaluation determined that based on crush measurements and the initial points of impact on the two vehicles – the right front quarter panel of the Company truck and the passenger door on the Doe vehicle – that Employee Y was, in fact, in the wrong lane before the crash, suddenly realized it, and in a panic steered his truck into the Does' vehicle from the wrong lane.

Above: an aerial view of the bridge and crash site.

A leading toxicologist evaluated the drug and blood alcohol tests, and he concluded that Employee Y had drunk the equivalent of nine mixed drinks. Because the test was performed hours after the accident, it is likely that Employee Y's blood alcohol level was higher than .161 at the time of the crash. The toxicologist concluded that on the night of the crash, Employee Y was profoundly impaired.

An expert with extensive experience in personnel and employer motor safety requirements for company fleets evaluated Corporation X safety policies and practices, and the drug policies applicable to its drivers. Corporation X admitted during discovery that Employee Y was within the scope of his employment at the time of the accident, and Mr. Block's motion to include a claim for punitive damages was granted by the Court.

Additionally, Mr. Block retained a board certified forensic psychiatrist with extensive experience in the treatment of post traumatic stress disorder, complicated grief syndrome, and grief-related depression. The expert provided a comprehensive evaluation of John's grief response, and referred him for treatment locally.

In the spring of 2006, shortly before a two week trial was to begin, a second mediation was conducted and the defendants, Employee Y and Corporation X, and their insurers, agreed to a confidential settlement in multiple seven figures. John plans to establish a charitable foundation in his wife's memory.

John visits his wife's grave every day. His grief remains intense, but he is mending. When he began his legal confrontation, he not only faced the loss of the most important person in his life – his loving wife Jane – but the outrageous allegation that he was the one responsible for her death. Lance Block and Chris Lombardo set the record straight as to who was responsible for John's loss, and provided the justice he sought for his wife's memory. ■

Brain Injury Caused by Failure to Provide Timely Medical Care

(Continued from page one.)

turn for the worse. Her Glasgow score for responding to stimuli fell from 14 to 12, then to 11, and finally to 6. Instead of progressing toward becoming a fully-responsive patient, Mrs. A deteriorated in her ability to move or respond. As the patient's condition worsened over several hours, Nurse Z took no action. She did not call Dr. X, she did not call the emergency room for assistance, and she took no other action to minimize her patient's risk of permanent, irreversible brain damage. At 5:15 a.m. the next morning, May 31st, some five hours after the first, clear signs of deterioration of the patient, Nurse Z called Dr. X, who ordered a CAT scan of Mrs. A's brain.

Dr. X's deposition was most telling. Prior to his testimony in this action, he apparently had no knowledge about what had taken place – or what had not taken place – regarding the care of his patient following surgery. When the truth was revealed, Dr. X testified that Nurse Z did not provide the accepted standard of care for Mrs. A, and that Nurse Z should have called him much sooner. Dr. X also acknowledged that the delay contributed to massive, irreversible brain damage to the patient.

At 7:00 a.m. on May 31st, Dr. X received the results of the CAT scan which revealed fluid build-up in Mrs. A's brain. He ordered the nurse to immediately give Mrs. A mannitol, a medication that reduces vascular pressure. Mannitol is often used as a temporary measure to reduce pressure until surgery can be performed. As is well known, time is of the essence in responding to swelling in the brain.

For some unknown and unjustifiable reason, the mannitol was not given to the patient until 9:30 a.m., approximately 2½ hours after the doctor's order for immediate treatment. Pharmacists at the hospital later testified that the medication mannitol is supplied on the care unit in the hospital, and that it is a simple matter for nurses to obtain it quickly. In fact, it is standard procedure for nurses to use the unit's supply of mannitol in responding to orders such as that given by Dr. X. The treatment was not provided, and the failure of the nursing staff was indefensible.

The nurses, however, were not the only ones to blame. After ordering the scan for Mrs. A at 5:15 a.m., Dr. X went back to sleep. At 7:00 a.m., when he was told of the results of the scan, he ordered an immediate treatment of mannitol for Mrs. A, but failed to request a pressure monitor to continue oversight of his patient or to follow up on his request for medical treatment. Had Dr. X conscientiously followed up on the evaluation and care of his patient, Mrs. A would likely have received the medical treatment and possible surgical intervention in sufficient time to make a difference to her life. Dr. X bears a fair share of responsibility for the failure to provide proper care for Mrs. A.

The wrong done in this case not only affected Mrs. A, it affected her entire family. Her husband and their four children share the burden every day. At the time that this tragedy occurred, Mrs. A was 40 years old. She and her husband had been married for 13 years. Both Mr. and Mrs. A had been born in the West Bank in the Middle East. Mr. A had come to the United States 17 years ago to attend college, and had struggled to obtain a good job after graduation. He eventually moved to Florida to work with friends and family. He returned to his home in the West Bank to marry and bring his new wife, a religious studies teacher, back with him to their new home in the United States. Both Mr. and Mrs. A became U.S. citizens. While Mr. A worked 60 hours a week, Mrs. A was a stay-at-home mom, making sure that her husband and the children were well cared for, and that the children were properly tutored in their studies. At the time of Mrs. A's surgery, their children were seven, nine, eleven and twelve years of age.

Following surgery and the tragic lack of proper care, Mrs. A now lives in a nursing home, her brain dysfunctional, her every daily need the task of professional caretakers. She cannot care for herself, and certainly can no longer care for her family. She has difficulty recognizing her own family, including the husband who loves her, and her response to them is painful to bear. She suffers from anxieties that include the feeling of abandonment. Mr. A must still work long hours to provide the ***(Continued on page seven.)***

Confidential Settlement

MEDICAL MALPRACTICE: BRAIN-INJURED MOTHER

(Continued from page six.)

resources necessary to sustain his family. The children now raise themselves – they are depressed, angry, and in need of support.

When Mr. and Mrs. A came to the United States, they believed in the American dream of life, liberty and the pursuit of happiness. Her loving family life, her liberty, and certainly the entire family's pursuit of happiness were abruptly severed by the tragic failure on the part of medical personnel to provide appropriate, professional care and concern.

"When the truth was revealed, Dr. X testified that Nurse Z did not provide the accepted standard of care for Mrs. A, and that Nurse Z should have called him much sooner. Dr. X also acknowledged that the delay contributed to massive, irreversible brain damage to the patient."

Struggling with his new and greater responsibilities and the difficulties faced by his wife and children, Mr. A sought representation by Sean Domnick and Lance Block of Searcy Denney Scarola Barnhart & Shipley. A medical malpractice action was filed in January 2005. The trial began on May 1, 2006, and the action settled for a confidential amount as opening statements were about to start. ■

Undetected problem at birth causes brain damage.

(Continued from page one.)

Baby Girl was admitted to the hospital's neonatal intensive care unit, where she was treated for several weeks for intrauterine growth retardation, swallowing difficulties, apnea, gastroesophageal reflux, hyperbilirubinemia, and possible sepsis.

Baby Girl was then transferred to a teaching hospital in south Florida. There, she was observed to be suffering from hypotonia, anemia, gastroesophageal reflux, and feeding problems. During this time, Baby Girl underwent a genetics evaluation which concluded that she was not suffering from any congenital defects which would explain the presence of hypotonia, anemia, gastroesophageal reflux or feeding problems.

After discharge from the teaching hospital, Baby Girl was followed by a pediatric neurologist. Approximately one year after birth, Baby Girl underwent a magnetic resonance imaging (MRI) of the brain. The MRI revealed that her brain was abnormal. Two years later, Baby Girl underwent a second MRI which indicated "moderate hypoxic/ischemic encephalopathy". This interpretation of the MRI indicated that Baby Girl had experienced a reduction of oxygen around the time of birth, resulting in significant brain damage. She is now totally disabled.

Chris Searcy and David White of Searcy Denney Scarola Barnhart & Shipley settled this case during mediation for a substantial amount of money. The settlement will help provide security for Baby Girl's future in terms of medical care, custodial treatment, and lost earning capacity. ■

Confidential Settlement

MEDICAL MALPRACTICE: UNDETECTED PROBLEM RESULTS IN BRAIN INJURY

Speaking Opportunities:

Chris Searcy

Chris Searcy spoke on "Putting Your Best Foot Forward - The Persuasive Opening Statement in a Workplace Injury Case" at the Academy of Florida Trial Lawyers 21st Annual Workhorse Seminar. The seminar was held in February 2006 at the Renaissance Orlando Resort at Sea World, Orlando, Florida.

Mr. Searcy also spoke at the Masters in Trial Seminar held in February 2006 and sponsored by the American Board of Trial Advocates. His topic was "Closing Arguments and Rebuttal for the Plaintiff," which included details of a case involving a pedestrian struck by a truck. The seminar was held at the Hilton Palm Beach Airport Hotel, West Palm Beach, Florida.

He also spoke on "Opening Statements: Developing Your Theme and Conditioning the Jury to Award the Full Measure of Damages" at the Boca XI Advanced Litigation Tactics and Procedures Seminar sponsored by Ohio attorney Fred Weisman. The seminar was held at the Deerfield Beach Resort, Deerfield, Florida.

Mr. Searcy spoke on "Jury Selection" and participated in a panel discussion on "Trends in Jury Selection" at the 2006 Academy of Florida Trial Lawyers Convention which took place in June 2006 at the Westin Diplomat Resort & Spa, Hollywood, Florida. ■

Bill Norton

Bill Norton was the guest speaker at the Monticello Kiwanis Club in Jefferson County, Florida, in April 2006, where he spoke on "Myths About the Civil Justice System." ■

Darryl Lewis

Darryl Lewis spoke at the 2006 Jury Selection Seminar held in March 2006 at the Sheraton Fort Lauderdale Airport Hotel. His topics were "Jury Selection Regarding a Medical Malpractice Case" and "Jury Selection Demonstration – Medical Malpractice Case." ■

Harry Shevin

Harry Shevin spoke at the 2006 Medical Malpractice Seminar held in April 2006 at the Florida Mall Hotel, Orlando, Florida. His topic was "Themes for Opening Statement and Closing Argument in the Medical Malpractice Case." ■

Sia Baker-Barnes

Sia Baker-Barnes spoke at the Academy of Florida Trial Lawyers 2006 Workhorse Seminar which took place in February 2006 at the Renaissance Orlando Resort at Sea World, Orlando, Florida. Her topic was "Understanding Medical/ Physical Examinations and Then Using the Results to Do the Best for Your Client through Meaningful Interrogation – Direct and Cross – and Argument."

Ms. Baker-Barnes was also a guest speaker at Bear Lakes Middle School in West Palm Beach, Florida, for Career Day in May 2006. She spoke to the students on the importance of education and staying focused. ■

Laurie Briggs

Laurie Briggs presented an all-day seminar in May 2006 for Lorman Education Services. Her topic was "Helping Your Trial Lawyer Win in Florida: Essential Trial Preparation and Techniques for Paralegals." The seminar was held at The Palm Beach County Convention Center in West Palm Beach, Florida. ■

Unnecessary Use of Force at Birth Damages Newborn

Jim Gustafson and Lance Block, along with Gainesville attorney Carl Carillo, recently resolved an obstetrical negligence case in which the defendant obstetrician's decision to manually deliver a 12-pound baby resulted in a brachial plexus injury to the baby. The case was settled for the available policy limits, a confidential amount.

J.D. was the eagerly-anticipated, first-born child of his young parents. Throughout her pregnancy, J.D.'s mother sought prenatal care as instructed by her obstetrician. Nearing the anticipated due date, J.D.'s mother exhibited known risk factors for fetal macrosomia (large birth weight). Fetal macrosomia is a recognized risk factor for shoulder dystocia, a potentially devastating complication of delivery in which the baby's shoulder gets hung up on the mother's pelvis, thereby preventing the baby from descending through the birth canal. If not treated properly, shoulder dystocia can result in a brachial plexus injury (damage to the nerves in the shoulder and neck), brain injury, or even death.

> *"Large-sized baby should never have been forced through the birth canal."*

Just days before the scheduled delivery date, the defendant obstetrician noted that J.D. was at least 8 1/2 pounds, but he was unable to get an accurate fetal weight due to complicating conditions. The defendant did nothing further to accurately estimate the fetal weight despite the mother's risk factors for fetal macrosomia. Two days later, J.D.'s mother presented to the hospital for induction of labor. Although she didn't know it, she was about to attempt to deliver a 12-pound baby.

The records revealed a doctor in a hurry. The defendant obstetrician wrote that J.D.'s mother was "fully dilated" at 8:00 p.m. and he instructed her to begin pushing. However, the nurses' notes and the notations on the fetal monitor strips stated that J.D.'s mother was not fully dilated until 8:30 p.m. Despite the fact that she was not even fully dilated, J.D.'s mother was instructed that she was not pushing hard enough. The defendant then wrote that the baby "seemed a tight fit."

Unhappy with J.D.'s high station within the birth canal (-1 or -2), and with the baby's inability to descend further down the birth canal, the defendant began using a vacuum extractor to deliver J.D. A vacuum extractor should not be applied until the baby is at a low station (+2). After applying the vacuum extractor too early to a baby that was too large to fit through the birth canal, and with the baby at such a high station, the defendant, records show, then pulled on the vacuum extractor for 32 minutes.

At 12 pounds, J.D. was simply too large to fit through his mother's birth canal and his left shoulder got hung up on her pelvis. The defendant responded to the shoulder dystocia by instructing the nurse to apply fundal pressure while he continued to pull on the baby. Application of fundal pressure in the presence of shoulder dystocia is unreasonable obstetrical care because it is known to cause brachial plexus injuries to babies like J.D. In fact, the labor and delivery nurse testified that she told the defendant she would not apply pressure which might further lodge the shoulder of the baby unless the defendant told her that it was the only way to get the baby out, and only then would she do so. The defendant obstetrician instructed the nurse to apply the pressure.

The fundal pressure did not "get J.D. out." Instead, the pressure tore the nerves from his spinal cord and the nerves within his neck. Finally, the defendant performed an acceptable maneuver and J.D. was delivered. J.D.'s left arm, with the nerves torn from the spinal cord, was floppy and useless. The maneuver that injured him - fundal pressure - was not only unsuccessful in delivering him, it was unnecessary and had actually delayed his delivery.

The nurses present at the delivery had 50 years' experience between them. J.D. was the only 12-pound baby any of them could recall who was born by vaginal delivery.

At the age of one year, J.D. underwent extensive surgery to attempt repair of the nerve damage to his neck and left shoulder. The surgery involved harvesting nerves out of his legs and feet and transplanting them into his neck and left shoulder to graft them onto the nerves that had been torn from his spinal cord. The surgery returned some of J.D.'s ability to use his left arm and hand, although he will need to continue physical and occupational therapy for years.

The case was settled after the defendant obstetrician testified at deposition, without further discovery. The settlement proceeds were used to purchase a structured settlement annuity to provide for J.D.'s future needs. ■

Settlement Reached in Botched Thyroid Surgery

Simple outpatient surgery results in vocal cord paralysis and chronic breathing problems for healthy, active woman.

In April 2002, Mrs. X was a healthy, active woman, truly representative of the American dream. She had successfully balanced marriage, raising a family, and a career of nearly 25 years. Mrs. X had worked her way up from the position of receptionist to become one of the leading telephone sales representatives working in the male-dominated construction supply industry. Her husband was in the twilight of his own 25-year career driving trucks. The couple had successfully raised three beautiful children. Like many people raising children, this was the time in their lives when they could look forward to completing their careers, and focus on their planned retirement. Unfortunately, their plans would be changed forever by a simple, routine surgery.

Mrs. X had been advised, based on routine blood tests, that her thyroid might not be functioning properly. Upon the advice of a doctor whom she trusted, she agreed to the thyroid surgery that he had recommended. She was assured by the surgeon that the procedure would be simple, and that she would be in and out of the clinic very quickly, perhaps a little bit hoarse for a day or two. In fact, she was told that if she came into the outpatient clinic on Thursday, she would be back to work on Monday morning. Relying on the surgeon's expertise, Mrs. X consented to the removal of a portion of her thyroid.

Unbeknownst to Mrs. X, on the day of the surgery the doctor decided to do a complete or total thyroidectomy. Sadly, that decision, and the manner in which the surgery was performed, would forever alter her life. During the procedure, the surgeon severed both of Mrs. X's recurrent laryngeal nerves. He had done the unthinkable, paralyzing her vocal cords.

$2 Million Settlement

MEDICAL MALPRACTICE: BOTCHED SURGERY

During litigation, it was revealed that the surgeon had subscribed to a school of thought that it was unnecessary and too time consuming to identify and preserve the recurrent laryngeal nerves during surgery. Under this different method, the complete thyroidectomy considerably increases the risk of permanently severing or damaging the recurrent laryngeal nerves. The amount of time the surgeon took to perform this procedure on Mrs. X (45 minutes) paled in comparison to the average time this same procedure takes most qualified surgeons (3½ hours).

Following surgery, Mr. and Mrs. X not only learned of the substandard manner in which the surgery had been performed, but also learned that there were few, if any, options for restoring her voice and breathing abilities. Severed recurrent laryngeal nerves result in paralysis of the vocal cords. The paralysis severely narrows and constricts air passage to the lungs.

Today, despite repeated surgeries to attempt to regain breathing and speaking ability, Mrs. X can barely speak and can use only 15% of her lung capacity. She is chronically fatigued because she cannot oxygenate her body as a normal person does. She is unable to speak above a whisper because she no longer has use of her vocal cords, and is in constant risk of choking.

The main focus for Mrs. X, now, is on maintaining her health and staying alive. Activities like breathing, swallowing, and talking, which the average person takes for granted, require work and purposeful effort. She will require a tracheostomy in order to sustain her life. Mrs. X lost the career she loved, and the financial future and retirement plans of both Mr. and Mrs. X have been shattered.

When Mr. and Mrs. X came to the law firm of Searcy Denney Scarola Barnhart & Shipley, they wanted answers and justice. Chris Searcy and Karen Terry had the honor of representing them and, through diligent litigation, were able to effectively and persuasively convince the defendants and their insurance carrier to compensate Mr. and Mrs. X with the full amount of all available insurance proceeds, $2 million.

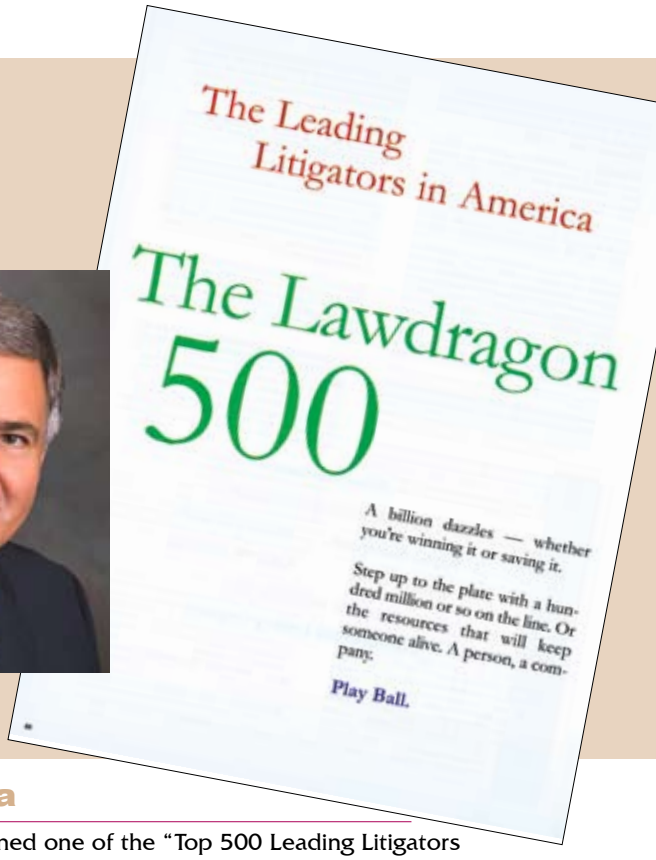
Mr. and Mrs. X are now better able financially to cope with the burdens they face. While money will never replace the horrendous losses that Mrs. X and her family suffered, Mr. and Mrs. X know that without the representation of Searcy Denney Scarola Barnhart & Shipley and the passionate pursuit of justice that followed, their future would have been bleak. ■

Accolades:

Chris Searcy

Chris Searcy received the War Horse Award 2006 from the Southern Trial Lawyers Association (STLA). The award was presented to Mr. Searcy, and fellow recipient John Walker of Arkansas, at the organization's annual banquet held in March 2006 in New Orleans. Nominated by STLA members, War Horse Award recipients are acknowledged leaders in their communities. Recipients have been in active practice for more than 30 years, have demonstrated skills as trial advocates, and have shown exceptional commitment to furthering the cause of justice. ■

Chris Searcy accepted an award in March 2006 from the Palm Beach County Trial Lawyers Association for Searcy Denney Scarola Barnhart & Shipley's commitment to the preservation of the civil justice system. ■



Jack Scarola

Jack Scarola was named one of the "Top 500 Leading Litigators in America" by Los Angeles-based *Lawdragon Magazine* (Spring 2006 edition). Lawdragon is a quarterly publication that looks at personalities and practices in the legal profession and compiles rankings of judges and lawyers. The mission of *Lawdragon* is to help consumers of legal services, whether corporate counsel or individuals, have access to better information about lawyers and make better choices when hiring lawyers. ■

Sia Baker-Barnes

Sia Baker-Barnes was selected by *Success South Florida Magazine* (April/May 2006 edition) as one of south Florida's "40 Most Influential & Prominent Black Professionals Under the Age of 40." The magazine is a business and news publication serving the south Florida black professional community. ■

Chris Searcy, Plaintiff's Warrior

An interview with *Of Counsel* magazine, a publication that focuses on the legal profession.

In a recent article published in *Of Counsel* magazine, Chris Searcy's partner, John Shipley, related stories demonstrating Searcy's single-minded concern for victims of corporate malfeasance whom he represents as the founder of his West Palm Beach 21-attorney plaintiffs firm of Searcy Denney Scarola Barnhart & Shipley. "Chris leads by example," Shipley says. "He's the hardest worker in the firm and the best partner you could ever have." The article in *Of Counsel* continues:

"In October 2005, Searcy was honored with the prestigious Perry Nichols Award by the Academy of Florida Trial Lawyers, whose board voted unanimously to present the annual award to him. Searcy had his other four partners draw names to see who would introduce him at the awards ceremony, and Shipley won the honor. In his speech, Shipley characterized his partner this way: 'Chris is a warrior, and those of us who have been to battle with him would follow him through the gates of hell. He's a hero.'"

Of Counsel magazine interviewed the 57-year-old Searcy about his career, cases, tort reform, the recent focus on generating commercial clients, billing rates, and other aspects of his practice. Excerpts from that interview were published, as follows.

Of Counsel: Why did you decide to become a lawyer?

Chris Searcy: *That's a good question. I've always known people who from the time they were in grade school knew what their mission in life was, and I thought there was something wrong with me because I never knew. My dad was a civil trial attorney. I worked for him for a few summers. I thought that the civil trial attorneys who I met through that experience were more fun than most adults. They cut up and they didn't act like staid, sober adults, but you could tell they were into what they were doing.*

Anyway, I was going through college and didn't know what I wanted to do. I thought that I'd take courses that would help me become a trial lawyer and sort of go down that path until I'd get the epiphany that would tell me what it is I really want to do in life. So, I majored in speech and drama, minored in English literature. I thought that would be good, if you were going to be communicating for a living. Then I graduated from college and still hadn't figured out what I wanted to do. Even after I graduated from law school, I wasn't sure about what I wanted to do. It wasn't until I was in my 40s, with years of trial experience, that I figured that I must have wanted to do this all along."

FINALLY FIGURING IT OUT

OC: That almost sounds like legal profession by default.

CS: *I guess so. But in another respect, in my profession I have found myself gravitating largely to cases involving brain-injured individuals and cases involving wrongful death, particularly the wrongful death of children.*

OC: Is that primarily because of the personal tragedies that you suffered in your life with your son being mentally handicapped at birth because of medical malpractice and also the death of your brother?

CS: *I believe, in retrospect, seeing my little brother killed [from a car accident]. He was 6 and I was 12. I was the big brother, and it was my job to take care of him, and I always did. He was killed right there in front of my eyes [Searcy was also in the car], and I couldn't do anything about it. Then my first-born son, who I would obviously give up my life to protect, gets brain injured right there in front of my eyes, and I couldn't do anything about it. I think gravitating toward the type of litigation that I've done has given me the feeling that I'm doing something about it for people other than my brother and my son. I think that those two events in my life have a great deal to do with the passion I feel for representing the people that I represent.*

OC: You can kind of get into the shoes of the people you're representing.

CS: *Passion is the best way that I can describe it. These people have their lives catastrophically ruined, and I have a burning passion to try to help them.*

OC: One of your first cases, or maybe it was your first such case, involved a death on the rail lines. That was sort of an against-all-odds case, but you ended up winning it. Could you talk about that case?

CS: *That was a young man who was college age and from New Hampshire. It gets so cold there in the winter that, if you were a construction worker, you couldn't work there in the winter. So, they come down and get jobs in Florida for* ***(Continued on page thirteen.)***

the winter. He was busing tables for the Boca Raton Hotel. The place where they had their employees live was near the railroad tracks. There was a college-type bar across the railroad tracks, and he'd been over there drinking with his friends and left before all of his friends. According to them, he hadn't had much to drink and left to go home early.

In any event, at 3:35 in the morning he's unconscious on the tracks, and this train comes along and cuts his legs off. The police officers get out there. He's lying there with his two stumps and a big pool of blood. They shine their flashlights in his eyes and he wakes up and says, "Don't mind me officer; I'm just drunk."

From looking at that you'd think there is no case there. But upon closer study, there was. They were very concerned because they didn't know who this man with no legs was. They scoured the scene, but never found a wallet. He had this massive lump on the back of his head, and his head hadn't received any trauma from the train. He was lying with his feet in the middle of the tracks and his knees about where the rail was. So that big lump on the back of his head came from elsewhere. There was strong circumstantial evidence that he had been mugged and left there. The question became if he was mugged and left there in a condition of helpless peril, would the railroad, if it had been acting like a normally careful railroad, been able to avoid this?

We had a statement from the engine man that he had seen something the size of a man in the hot spot of his light, which is 800 feet down the track. We showed that the train could be stopped in less than 800 feet. But the engine man, even though he sees something the size of a man on the track, keeps going—the speed limit there was 25 miles an hour—he keeps going at full speed with no attempt to brake to where he can make absolutely sure that it's a man. When he's absolutely sure it's a man, tries to stop, but it's way too late. That's our concept about negligence. I only got that case because no other lawyer would take it.

OC: Because it was such a hard case to fight. You ended up with a $1 million settlement.

CS: *We got a $1 million verdict, [which was] reduced by 40 percent, so it was a $600,000 settlement."*

TORT REFORM OR A FAIR SHAKE IN COURT

OC: To shift gears here a little, with the efforts for tort reform, a lot of people wouldn't want that plaintiff to receive that kind of an award. Of course, the efforts for tort reform are ongoing. What's your prognosis? What will be the effect of tort reform on medicine and law?

CS: *It depends on what the tort reform is. I think with some few exceptions, most citizens in this country would like people who are wrongfully injured to be fairly compensated. Unfortunately what's called tort "reform" is largely stacking the deck against injured victims.*

My passion in representing injured people is to try to make sure that the average citizen, which is who I'm usually representing, can get a fair shake in the courtroom, even when that person is taking on the most powerful interests. If you look at the way that things are today, the big pharmaceutical and insurance industries, big oil companies, and other very large mega-corporations are dominating our political process. If the average citizen hopes to get any fairness out of the Congress or the legislature, I think they're not living in the real world. In cases where you get large corporations acting irresponsibly by producing unsafe products or polluting the environment, swindling their employees and other such behaviors to pad their profits, if the average American citizen is going to get a fair shake it's going to be in court. That's the only way they're going to hold them accountable.

I think tort reform should be about making sure that the process is fair to all—fair to the defendants and fair to the plaintiffs. And that's not what the tort reform has been about. The tort reform that we've seen is about taking away the rights of average citizens—our rights, my rights, our families' rights—and I don't think that's good. We ought to focus on making sure that there are penalties for abusive or frivolous actions, actions that never should have been brought in the first place, but there are procedural ways to do that that don't involve taking away people's valuable rights. Everything that we see that's being called tort "reform" are efforts by the large corporations that see themselves as perpetual defendants to limit the rights of wrongfully injured victims. ***(Continued on page fourteen.)***

Chris Searcy's interview with *Of Counsel* magazine.

(Continued from page thirteen.)

OC: You know the so-called tort reform advocates, including corporate defense attorneys and, of course, members of the Bush administration, point to frivolous lawsuits as the chief reason why the country needs tort reform. But a lot of these lawsuits that they call frivolous really aren't, or often they're tossed out before any settlement has been reached. Isn't that the case? Isn't there already a mechanism in place to toss out what might be deemed frivolous?

CS: *Yes, there is. What are called summary judgments, motions to dismiss complaints. There are rules that can chastise parties and lawyers who bring frivolous matters. But if you look at President Bush, for instance, and the interests he represents, he strongly advocated putting a $250,000 cap on all medical negligence cases. The purported reason is to get rid of frivolous lawsuits. Now, if you've got a frivolous lawsuit, you'd be delighted to get $50,000, so how is a $250,000 cap going to discourage a frivolous lawsuit?*

But if you have a meritorious lawsuit, where your child has been paralyzed from the neck down and is going to have hundreds of thousands of dollars in medical bills every year, what Bush is proposing would limit that family and that child to $250,000. That is not tort reform, that is tort deform. That is stacking the deck against the injured, innocent victim to enable the powerful interests to line their pockets."

"But if you have a meritorious lawsuit, where your child has been paralyzed from the neck down and is going to have hundreds of thousands of dollars in medical bills every year, what Bush is proposing would limit that family to $250,000. That is not tort reform, that is tort deform."

GENERATING COMMERCIAL CLIENTS

OC: I know you often represent individuals, but your firm recently has been getting commercial cases, and, of course, your firm won a stunning victory, a celebrated case, against Morgan Stanley. Do you think that case will generate other commercial clients?

CS: *I would presume so. The litigation arena is a very difficult arena, with a lot of pitfalls. When lawyers and law firms are able to negotiate that arena to successful conclusions on enormous cases, I think that people with enormous cases tend to take note of that."* ■

22 SDSBS Participants in Corporate 5K Run/Walk Event for Second Year

For the second year, SDSBS participated in the Corporate Run, an annual event with the goal of getting people out of their offices and active. The Corporate Run is a 5K run and walk event. This year, the firm had 22 participants, including three runners - Melanie Weese, Todd Falzone and Anne Marie Panton. In addition to active employee participation in the Run, businesses are encouraged to design their own team t-shirts combining the logos of both the event and the company. This year, the t-shirt for the SDSBS team was designed by Vincent Lucas and Debi Valle, from Above and Beyond Reprographics. Led by partner Earl Denney, the SDSBS team enjoyed a fun evening socializing as they completed the course with thousands of employees from businesses throughout Palm Beach County. In addition to encouraging exercise by all participants and supporters, the Corporate Run also donates a portion of the entry fees to the Leukemia and Lymphoma Society. ■

SDSBS Participates in Seagull Industries' Fifth Annual Silver Cup Golf Tournament

SDSBS participated in Seagull Industries' Fifth Annual Silver Cup Golf Tournament held at Frenchman's Reserve, Palm Beach Gardens, Florida, in May 2006. The organization raised approximately $20,000. The funds will be used in the day and residential programs that provide quality services to developmentally-challenged adolescents and adults. The programs are designed to encourage self-reliance, achievement and economic independence. ■

(l-r) Bob Pitcher, Frank Hayden, Mike Williams and Jerry Blankenship

Taking...

Pictured are SDSBS participants: (listed alphabetically) Connie Able, Vivian Ayan-Tejeda, Rosie Cardona, Earl Denney, Todd Falzone, Jody Hansel, Alina Lindstrom, Shirley Lucas, Donna Miller, Ann O'Keefe, Anne Marie Panton, Amy Poole, Mary Roberts, Britni Smith, Mindy Walsh and Melanie Weese. Not shown: Linda Miller, Rose Brenkus, Joni Baker, Laurie Briggs, Deane Cady and Rose Anne Raies.

(l-r) Front row: Rhonda Myers, Mary Susil, Bonnie Landrigan, Jodi Clark; back row: Linda Miller, Debbie Knapp, Mary Roberts, Debbie Hatcher

SDSBS Proudly Acknowledges Support Staff With Over 20 Years' Service

Our support staff now includes eight employees who have each provided over twenty years of dedicated service to SDSBS and its clients. As a family, we work very hard together, sharing both the triumphs and the difficulties that are part of seeking and securing justice. We are very proud of the commitment made by our co-workers, and look forward to sharing many more years with them. ■

Time to Care

Volume 06, No. 2

OF COUNSEL

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
Attorneys at Law

P. O. DRAWER 3626
WEST PALM BEACH
FLORIDA 33402-3626

ADDRESS SERVICE REQUESTED

In this issue: