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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.



## \$50 Million Verdict Affirmed by Judges

Three judges from the Fourth District Court of Appeal in West Palm Beach, handed down a decision Aug. 25, affirming a Cooper City, Fla., woman's \$50 million punitive damage verdict. The plaintiff, Angelica Palank, with the help of attorneys Christian Searcy and Greg Barnhart, filed suit against CSX Transportation, Inc., for the death of her husband Paul in a train wreck. Mr. Palank was a Miami Police Sergeant.

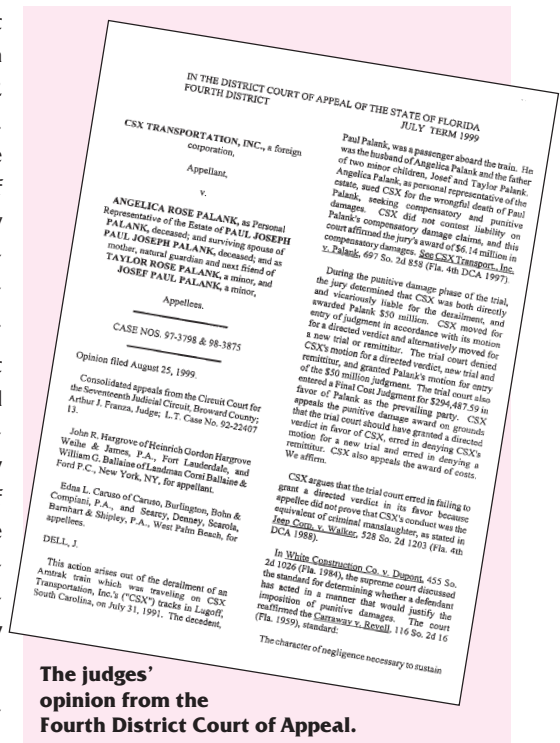
On July 31, 1991, eight people, including Palank, were killed in Lugoff, S.C., when the last six passenger cars of a Miami-to-New York Amtrak train went onto a sidetrack and smashed into nine freight cars. By Federal Safety Regulations, railroads are required to carefully inspect mainline switches at least twice a week. A faulty mainline switch, which was known by CSX to be broken for at least 7 1/2 months, opened and caused the train to derail. CSX, a Jacksonville based company, owns the Lugoff tracks and approximately 30,000 miles of track between New York and Miami. Records show that an audit done by the Federal Railroad Administration (FRA) as early as 1987, showed gross deficiencies in CSX's staffing and inspection practices.

On July 30, 1997, a jury rendered a verdict that the accident was caused by a poorly maintained railroad track and awarded Mrs. Palank the damages. On Oct. 10, 1997, Broward Circuit County Judge Arthur Franza upheld the jury's verdict of \$50 million. In his 19 page order he wrote, "These inspections were not professional, not reasonable and did not comply with CSX and FRA regulations. It should have been known to eventually lead to, and end in, tragedy."

Shortly after the order was released, CSX appealed the decision. **continued on page seven**



Sgt. Paul Palank in 1984.



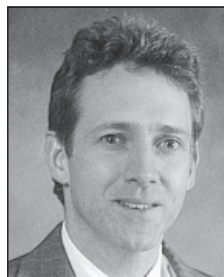
The judges' opinion from the Fourth District Court of Appeal.

## The Meeting Corner:



**Darryl L. Lewis**

In 1989, Mr. Lewis began working with the law firm of William N. Hutchinson, Jr., P.A., in Ft. Lauderdale, Fla., and in August 1990, was called to serve as a Judge Advocate General (JAG) Officer in Ft. Stewart, Ga., in support of Operations Desert Shield and Storm. In 1991, he resumed his law practice with William N. Hutchinson, Jr., and in 1995, began a partnership with the firm. Lewis has represented clients in Washington, Kentucky, South Carolina, Georgia, Alabama, Louisiana and Tennessee. Lewis has also received numerous honors and awards, both for his civic involvement and military participation. At Searcy Denney Scarola Barnhart & Shipley, P.A., Mr. Lewis will mainly work on personal injury and commercial litigation cases. Mr. Lewis is married to his wife of eight years, Salonia. They have two children, Yashmeen, 6, and Taariq, 3. During his spare time, Mr. Lewis enjoys sports and reading. ♦



**Patrick E. Quinlan**

In 1987, Mr. Quinlan began his career working at the law firm of Moyle, Flanigan, Katz, FitzGerald & Sheehan, P.A., in West Palm Beach. From 1991 to 1994, he worked for two United States District Court Judges in West Palm Beach, Judge Daniel Hurley and Judge James Paine. In June 1994, he began working for the Florida State Attorney's Office, then moved to the Palm Beach County Attorney's Office in March 1997. Mr. Quinlan was the President of the Hope House of the Palm Beaches from 1993-1994, an organization dedicated to providing housing to persons affected with HIV. He also won a Pro Bono Award from the Legal Aid Society and the Palm Beach County Bar Association in 1990. Mr. Quinlan is married to his wife of 10 years, Nancy. They have one son, Brendan, 3. During his spare time, Mr. Quinlan enjoys sports and music. ♦

## Accolades:

### Florida Bar Board Certification



**Sean C. Domnick**

**Sean C. Domnick** of Searcy Denney Scarola Barnhart & Shipley, P.A., has become Board Certified with the Florida Bar. His certification was confirmed on June 1, 1999. To become board certified, Mr. Domnick demonstrated his skill, knowledge and proficiency in the area of civil trial law. Only certified attorneys may identify themselves as "Florida Bar Board Certified" or "Specialist." There are approximately 3,000 certified attorneys in the State of Florida.

Mr. Domnick specializes mainly in personal injury, medical malpractice and nursing home litigation with the firm. ♦

### Million Dollar Advocates Forum



**David K. Kelley, Jr. Harry A. Shevin**

Two attorneys from Searcy Denney Scarola Barnhart & Shipley, P.A., have been certified as members of the Million Dollar Advocates Forum. They are **David K. Kelley, Jr.** and **Harry A. Shevin**. Membership is limited to trial lawyers who have demonstrated exceptional skill, experience and excellence for achieving a verdict or settlement of \$1 million or more. The Forum began in 1993, and there are approximately 1,500 members throughout the United States.

Mr. Kelley and Mr. Shevin both specialize in personal injury, wrongful death and medical malpractice with the firm. ♦

# Maintenance Company's Error Causes Helicopter Disaster

On April 8, 1999, Jane Doe was a passenger in a 1991 Aero Spatiale AS350B Helicopter. The helicopter crashed during take off at a South Florida airport. Plastic sheeting, left in and around the transmission oil cooler by employees of an aviation maintenance company, was found to have caused the crash.

While replacing the helicopter's windshield, an employee of X Corporation used a roll of plastic to protect the windshield and paint the metal perimeter. In order to install the windshield, the employee had to work at the level of the cabin roof and he left the roll of plastic just in front of the transmission oil cooler.

The helicopter was repaired and then returned to the line as "airworthy." Jane Doe, 38, was a real estate appraiser and a passenger. She was part of a group going to appraise a piece of real estate property at the request of a governmental agency. The helicopter was piloted by a very experienced Vietnam veteran pilot who testified he did not see the roll of plastic while conducting his pre-flight inspection. The manufacturer of this helicopter publishes a manual that includes step-by-step pre-flight inspection procedures, but does not require the pilot to inspect the roof of the helicopter.

The helicopter was also on skids and placed on a dolly that was 18 inches high at the time of lift-off. There was no way that the pilot could see the roll of plastic during the pre-flight inspection.

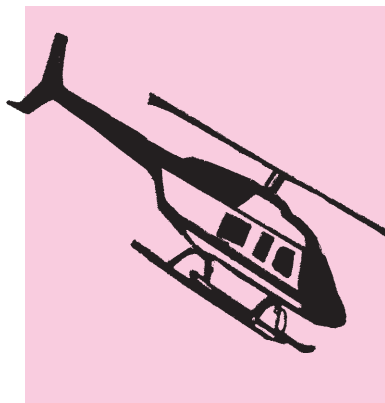
While the helicopter was lifting off the dolly, the plastic roll unfurled and became entangled in the engine rotors. The pilot lost engine power due to the plastic being sucked into the engine vent, which caused the crash.

Jane Doe was treated at a local hospital for a period of two weeks. She underwent a series of operations including an incision in her abdomen, the resection of her small bowel, the repair of her stomach membrane, and the evacuation of air

trapped inside her abdomen membrane. She also sustained paralysis to the sixth cranial nerve, contusions, abrasions, significant abdominal scarring and trauma all over her body.

After the crash, Jane Doe was also treated at a world famous eye institute for double vision and non-tracking. Her right eye made some recovery, but the left eye developed contractures. She also received Botox injections, but still had gaze and double vision problems.

As a result of her injuries, which also included headaches, inattentiveness, decreased mental processing and lower back pain, Jane Doe was referred to a South Florida physiatrist. MRIs revealed central disc protrusion at C3-4, along with a mild disc bulge at L4-5. There was also evidence of swelling of muscle tissue adjoining the sacrum. Jane Doe underwent intensive rehabilitation and was treated for neck pain radiating into her left shoulder and back pain radiating down both legs. Jane Doe also received biofeedback. Ultimately, a small central disc herniation at C5-6 was revealed by MRI.



Jane Doe also underwent psychotherapy for phobia, post-traumatic stress disorder, and major depression. She was prescribed antidepressants. A neurologist also diagnosed Jane Doe with neurogenic bladder (the inability to control her bladder) and initiated conservative treatment. A South Florida economist was retained to testify as to the present money cost of her future medical care and treatment, as well as her loss of future earning capacity. Chris Searcy and David White were prepared to try the case. However, after negotiations and mediation, the case was settled by X Corporation. The amount of money will be sufficient to provide Jane Doe with all of her future medical care and treatment, and will satisfy her future loss of earning capacity. ♦

SEARCY  
DENNEY  
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*Attorneys  
at Law*

OF  
COUNSEL

QUARTERLY REPORT TO CLIENTS AND ATTORNEYS - VOL. 99, NO. 2

## Decisions...Decisions...Decisions...

### HOSPITAL LOSS OF MEDICAL RECORDS TURNS COSTLY

Chris Searcy and Chris Speed recently resolved a medical malpractice case on behalf of their brain damaged baby client. The case was against a South Florida hospital and the attending obstetrician. The baby and her family will receive more than \$6 million.

When Mr. Searcy and Mr. Speed first began investigating the case, it was discovered that the most critical medical record for an analysis of what occurred, the fetal monitor strip, was missing. During the course of depositions, it was learned that the fetal monitor strip had been taken to the hospital risk manager's office. The hospital risk manager is in charge of evaluating and investigating cases in which potential claims can be later made against the hospital.

In this particular case, it became the position of the hospital and its employees that no one knew the whereabouts of the fetal monitor strip. All parties concerned with the handling of the strip testified that they had no knowledge about where it had gone, nor did anyone remember if it had been taken to the hospital risk manager.

Under Florida law, a presumption exists that missing records can contain information which may be helpful to the plaintiff and harmful to the party who destroyed the records.

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OMITTING CLIENTS'  
AND/OR DEFENDANTS'  
NAMES ARE RESULTS  
OF REQUESTS FOR  
ANONYMITY.

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Mr. Searcy and Mr. Speed set about to reconstruct the fetal monitor strip and to ensure that it was consistent with the other medical information contained in the baby's file. With the help of experts in fetal maternal medicine, a reasonable theory was developed to explain how the hospital and obstetrician were at fault. It was determined that the baby was healthy when the mother arrived at the hospital. During the course of labor, the baby's brain was injured due to a loss of blood flow and oxygen to the brain. This loss of blood flow resulted from a reverse flow of blood from the fetus to the mother through the placenta - a condition known as fetal maternal hemorrhage.

The hospital argued that the mother was hemorrhaging prior to her arrival at the hospital, and that they could not have prevented the injury.

In July 1999, Mr. Searcy and Mr. Speed mediated the case. The missing fetal monitor strip played a substantial role in the mediation and contributed to the defendants' desire to resolve the case. With the settlement fund, an annuity was purchased for the baby which will provide a monthly flow of income so the family can provide for her medical needs. ♦

### \$500 OFFER TURNS INTO \$112,500 JURY VERDICT

On Nov. 8, 1996, Corporal Robert Borman, traveling in his Florida Highway Patrol 1993 Ford Mustang in Palm Beach County, came to a complete stop at a red light. Christopher Clark Cole, however, failed to observe the red light and

his car impacted another car, thereby pushing it into Cpl. Borman's vehicle.

Cpl. Borman has been employed with the Florida Highway Patrol since 1974. He has an exemplary record of performance on the job and a spotless driving record. In his career with the Florida Highway Patrol, he had never filed a workers' compensation claim, nor had any significant on the job injuries before this crash.

Cpl. Borman was taken to Jupiter Medical Center where x-rays were performed. He was diagnosed with a traumatic herniated disc at L4-5 resulting directly from the motor vehicle accident. He was also diagnosed with herniated discs at levels L3 through S1. Recommendations by his attending doctors included future epidural injections and anti-inflammatory medications. Should these conservative measures fail, lumbar surgery was a consideration. Such surgery would entail economic damages for loss of time from work, as well as the additional expense of the surgery itself and follow up rehabilitation.

Cpl. Borman has had to alter his physical fitness regimen which is a requirement for staying in condition to perform his duties as a Florida Highway Patrolman. His medical expenses totaled more than \$4,800, not including prescription medications. Damage to his car was approximately \$900.

Allstate Insurance Company, the carrier insuring Mr. Cole, offered Cpl. Borman only \$500. Faced with the \$500 offer, attorneys Cal Warriner and Sean Domnick filed suit against Allstate. Mr. Warriner asked for \$112,500 to compensate Cpl. Borman for his injuries, medications and future medical needs. On May 6, 1999, a jury verdict awarded Cpl. Borman exactly that amount. ♦



#### AIR CRASH VICTIM RECEIVES RECOVERY

On May 7, 1994, Janna Knox was a passenger in a single engine aircraft. It was her first experience in a small aircraft.

Unfortunately, the pilot began experiencing problems with the aircraft stalling. While flying low over a beach, the pilot made an emergency landing. Upon landing, the plane flipped over, suspending both Ms. Knox and the pilot upside down. The pilot was able to unfasten his seatbelt, but was not able to free Ms. Knox from her's. The plane then caught on fire. Ms. Knox was eventually freed from the plane, but not before suffering extensive burns to her lower torso.

Ms. Knox was first taken to a hospital in the Florida Panhandle and then to the University of South Alabama Medical Center where she remained a patient for one month. It was determined that

she suffered second and third degree burns to approximately 35 percent of her legs and buttocks.

One of the most significant injuries that a burn victim experiences is post-traumatic stress associated with the horror of being burned. Because of her significant post traumatic stress, Ms. Knox was unable to continue her work as a nurse. She had also been attending classes to obtain a masters degree as a nurse practitioner, but was unable to return after the crash.

The carrier insuring the plane attempted to settle Ms. Knox's case for an amount less than the \$100,000 policy limit. The carrier offered only \$85,000, despite the fact that Ms. Knox' medical bills were in excess of \$100,000.

Ms. Knox sought the assistance of an attorney in Pensacola who brought suit on her behalf. In the fall of 1998, the case was referred to Chris Speed to evaluate whether the insurance company had acted in bad faith, and whether there was potential recovery in excess of the \$100,000 policy limit.

At mediation, Mr. Speed effectuated a settlement on Ms. Knox's behalf in the amount of \$1.1 million - \$1 million more than the policy limit.

There is a law in the state of Florida which requires insurance companies to make good faith attempts to resolves cases. It is the duty of an insurance company to protect its insured. If it fails to do so, additional liability can become the responsibility of the insurance company. In this case, the insurance company subjected themselves to the additional \$1 million exposure. Had the insurance company acted properly, they could have settled for the \$100,000 and avoided four years of litigation. ♦

#### \$950,000 SETTLEMENT FOR DEFECTIVE CHAIR

Joseph Hall received a \$950,000 settlement due to a faulty chair. Chris Searcy and Chris Speed represented Mr. Hall in the case.

In September 1996, Mr. Hall was visiting friends when the Rubbermaid chair he was sitting on collapsed without warning. He was thrown backwards, and suffered a herniated disc in his lower back. Mr. Hall had to undergo two lower back surgeries to repair the disc and to prevent a spinal fluid leak, which began shortly after the first surgery.

Because of the herniated disc and spine injury, Mr. Hall has a condition known as neurogenic bladder and bowel. He is no longer able to appropriately control normal bladder and bowel functions. He is faced with a lifetime of urinary urgency and dysfunction, as well as a loss of rectal sensation and bowel control. He also suffers from pain in his lower back that extends into his legs.

In their review of the case, Mr. Searcy and Mr. Speed determined that the components of the chair in which Mr. Hall was seated were not appropriately made and had significant defects. The defects in construction and manufacturing resulted in the arms of the chair snapping under very little pressure. This caused the chair and Mr. Hall to be thrown backwards.

Suit was filed in Port St. Lucie against the manufacturer of the chair. Several weeks before trial, Mr. Searcy and Mr. Speed were able to effect a settlement for Mr. Hall in the amount of \$950,000. ♦

## INSURANCE AND YOU

### Hurricane Season

According to forecasters at Colorado State University, more hurricane activity is expected to develop in the Atlantic this year. Forecasters anticipate 14 tropical storms will develop this year, with nine actually becoming hurricanes.

What you can you do before and after a hurricane strikes:

- 1) Take pictures and make an inventory of all your household and personal possessions.
- 2) Store the information in a safe location and away from the house, i.e., a bank safe deposit box.
- 3) Review your insurance policies. Most people have a policy known as a Homeowners-3 (HO-3). Hurricane damage is usually covered under the HO-3.
- 4) Floods are not covered, so if you live near the water or in a flood area, you may want to consider purchasing flood insurance.
- 5) There may be some restrictions on your coverage for wind damage, so consult with your agent.
- 6) Always insure your home and belongings to their full replacement cost, NOT actual cash value. Actual cash value means the replacement cost less depreciation.
- 7) If you rent, consider purchasing renter's insurance.
- 8) If a hurricane hits, and you must make temporary repairs, keep all your receipts. Most insurance companies will cover reasonable expenses.
- 9) If you were forced to vacate your house, contact your insurance agent immediately to let he or she know how to contact you.
- 10) Recognize that the most serious hardship and loss cases are given priority by insurance companies and agent.

**For more information, please call the  
National Insurance Consumer Hotline at  
1-800-942-4242;**

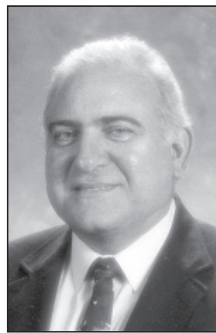
**or The Florida Insurance Department's storm hotline  
at 1-800-22-STORM.**

### *Taking... Time to Care*



#### **LEUKEMIA WALK**

**Employees** of Searcy Denney Scarola Barnhart & Shipley, P.A., **and their families** joined in The Leukemia Society "Light The Night" Walk. The three mile walk took place on Friday evening, Sept. 24, in West Palm Beach. The 17 employees and their families raised more than \$800 which will help fund research to find cures for leukemia, lymphoma, Hodgkin's disease and myeloma. Employees were given illuminated red balloons to mark their participation and fundraising efforts for the event. ♦



#### **AMERICAN LUNG ASSOCIATION**

**Emilio Diamantis**, a paralegal with Searcy Denney Scarola Barnhart & Shipley, P.A., has been named the Vice President of The American Lung Association of Southeast Florida. As President-elect, Mr. Diamantis will help lead the Association in fighting asthma, emphysema and other lung diseases throughout South Florida. Mr. Diamantis has been with the firm since 1987 and works mainly with Jack Scarola on personal injury and medical malpractice cases. ♦



#### **GREAT GROWN UP SPELLING BEE**

Searcy Denney Scarola Barnhart & Shipley, P.A., employees **Diane Dulcie**, **Cory Rubal** and **Jud Whitehorn** participated in the Great Grown Up Spelling Bee. The spelling contest was held on Saturday, Sept. 25, in Boynton Beach. Proceeds for the event went to the Palm Beach County Literacy Coalition to promote literacy. Searcy Denney Scarola Barnhart & Shipley, P.A., was one of 25 corporate sponsors of the event. Mrs. Dulcie, Ms. Rubal and Mr. Whitehorn came in seventh place. ♦

## Chris Searcy Featured As One Of The Best Trial Lawyers

In a recent *Daily Business Review*, Chris Searcy was featured as one of the top trial lawyers in South Florida. In the ten-page story, Mr. Searcy, along with four other trial lawyers, were interviewed about how they got to the top of their profession. The story was written by Jim Oliphant.

Below is a portion of the story:



### Christian Searcy: The crusader

**T**here is little doubt that Christian Searcy sees trial work as war. His office tells you all you need to know: A painting that depicts a Hungarian rebellion in the Middle Ages. Another one from the American Revolution. A sword from the Crusades.

"Methodical" is a word that people use to describe Searcy. "Driven" is another.

"I hate to lose," Searcy says tightly. "There's a very thin veil that separates hating to lose from being afraid to lose. You've just got to hate to lose with a passion. You can't be afraid into settling the case."

He has his reasons. When he was 12, he was in an auto accident in which his 6-year-old brother was killed. His oldest son, Henry, was a victim of medical malpractice. When he was born, a doctor pulled him from the womb with forceps -- before he should have. Henry's brain was damaged. Today, in his 20's, he has the mind of a child.

"I've raised a child who can never compete," Searcy says. "There is no way you can hurt a person worse than hurting their child."

Searcy, 51, has made a career out of litigating what are somewhat coldly labeled brain-dead baby cases. Much of his repu-



tation was made in rural Florida counties in suits against well-known local doctors.

"Trying a medical negligence case is the most challenging form of civil litigation," Searcy says. "You're starting out with a jury that believes doctors don't do things wrong. It's like trying an auto accident on Mars."

"Chris has a great presence," says C. Steven Yerrid, a Tampa lawyer who has both litigated against Searcy and worked with him. "He brings a warmth and a depth to a case that clients appreciate. He is able to walk in the plaintiffs' shoes."

Searcy likes to work and isn't much for hobbies. But he has recently taken up golf. Why? Because

Henry Searcy likes to play. "It's something we can do together," he says.

#### LARGEST AWARDS:

- \$50 million verdict, wrongful death, CSX Transportation Inc., 1997
- \$25.4 million verdict, products liability, GM minivan, General Motors Corp., 1996
- \$12.5 million verdict, medical malpractice, infant, 1990

## \$50 Million Verdict Affirmed By Judges

*(Continued from page one.)*

This recent seven-page opinion was written by the Honorable Judge John Dell, and Honorable Judges Mark Polen and Matthew Stevenson concurred. Part of the opinion reads, "This Court finds the evidence to be clear and convincing, sufficiently showing that the Defendant's conduct in breaching its duty was deliberate, reckless, willful, and wanton, evincing a reckless disregard for the safety of rail passengers and the public at large." Another part of the opinion reads "This Court does not find that the \$50 million verdict in the instant matter was influenced by prejudice, passion, or corruption or that the jury misconceived the merits of this case."

Ms. Palank, a mother of two and a city commissioner in Cooper City, will use a major portion of the proceeds to set up a foundation which will help abused, abandoned and neglected children. ♦



**CSX train wreck on July 31, 1991.**

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# OF COUNSEL

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PARALYSIS  
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PROBATE LITIGATION  
PRODUCTS LIABILITY  
SECURITIES LITIGATION  
WRONGFUL DEATH

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