

A REPORT TO CLIENTS & ATTORNEYS
VOLUME 12 - NUMBER 1

OF COUNSEL

Horrific Crash Caused by Tired Truck Driver Results in \$17.5 Million Settlement for Family

On a clear, sunny day in November 2006, Vince Modica drove to the Jacksonville, Florida, airport to pick up his wife, Judy. The couple then headed home, southbound on I-95. Nearing the Dunn Avenue exit, they came to a stop behind a line of vehicles stalled due to a disabled vehicle two miles further down the road. As they waited for the traffic to clear, a tractor-trailer truck driven by Michael Wright, an employee of the Tree of Life, a health food distributor in St. Augustine, Florida, came barreling south on I-95. The truck slammed into the back of the Modicas' car so hard that it pushed them into the back of a tractor-trailer truck in front of them. The Modicas' vehicle was totally crushed and caught fire immediately. Vince and Judy Modica died, their bodies mangled and burned beyond recognition.



The centerpiece in Vince and Judy's 43-year marriage was their family. They loved their two sons, Kevin and Brian, as well as their daughters-in-law and their grandchildren. Although they had both retired from long-term jobs some years earlier, they continued to work because they enjoyed the social interaction and the satisfaction of doing a good job. They were having fun, traveling, and enjoying work and family. Kevin and Brian were devastated by the loss of their parents in such a sudden and horrific way. Vince's brother-in-law, Dr. Orland Ghionzoli, was appointed personal representative for Vince and Judy Modica's estate. On behalf of Kevin and Brian, Dr. Ghionzoli asked SDSBS attorneys **Chris Searcy** and **John Shipley** to represent them. Mr. Searcy enlisted the help of attorney Howard Coker, Jacksonville, Florida, to assist in the trial.

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Multi-Million Dollar Verdict Increased on Appeal

Alan Schein and his company, Results Technologies, Inc., entered into a business venture with Superior Bank. To assure himself of the bank's stability and the security of his financial ties with the bank, Mr. Schein required that he be provided with the bank's audited financial statements prepared by accounting giant Ernst & Young. Ernst & Young later, and without warning, acknowledged that it had made mistakes in determining the value of the bank's assets. As a result, Superior Bank was declared insolvent, taken over by federal regulators, and eventually closed down. Mr. Schein and Results lost the value of their interests in the business venture.

Mr. Schein and Results sued Ernst & Young for accounting malpractice. In July 2009, the jury returned a verdict in the plaintiffs' favor, and the trial court entered a judgment for \$17.2 million. Both sides then

appealed. Ernst & Young asked that the entire judgment be thrown out. Mr. Schein and Results appealed a reduction in the amount of their damages based upon a finding that they had negligently contributed to their own losses. In January 2012, the Fourth District Court of Appeal rejected Ernst & Young's challenge and agreed with the plaintiffs that there was no basis for finding Mr. Schein and Results negligent. As a result of this ruling, the judgment in favor of the plaintiffs was increased from \$17.2 million to more than \$30 million.

SDSBS attorneys **Jack Scarola** and **Patrick Quinlan** represented the plaintiffs, along with co-counsel Robert Mayer, at both the trial court and appellate levels. Their appellate victory ended an eight-year legal battle against a large and powerful company that boasted of its record of success in the courtroom. ♦

Failure to Monitor Antibiotic Therapy at Nursing Facility Results in Death

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Medical records at Palm Beach Gardens Medical Center indicated that Holly's condition had substantially worsened from the date of her discharge from Palms West. The infection in her leg had spread to her ankle and foot. She had developed open sores and signs of necrosis. Palm Beach Gardens Medical Center began emergent antibiotic care for Holly. However, the spread of the infection worsened and she now required debridement surgery to remove necrotic tissue. Despite massive efforts to control her infection, Holly went into septic shock and suffered multi-system organ failure. She died on October 3, 2007. Her family was devastated.

Michael contacted SDSBS attorneys **Karen Terry** and **Brian Sullivan** and asked them to represent him in an action challenging Manor Care's lack of care for Holly. An aggressive investigation of medical records, along with depositions from defendant physicians and nurses, revealed that Manor Care staff had ignored the directive for Holly's antibiotic therapy. Their failure to monitor her PICC line function and physical condition had resulted in her untimely death.

On the eve of the summary jury trial, defendants jointly settled the case for \$1.56 million.

Michael DeRosa mourns the loss of his wife and soul mate. He continues his work for the local police department. He still finds time to volunteer at his church and provide care for the animals Holly loved so much. ♦

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The defendants were willing to take partial responsibility for the accident, but they denied any responsibility for punitive damages. The driver, Mr. Wright, gave differing statements as to how the accident occurred. His basic story was that he was looking in his mirrors and towards the on ramp to see if there were any vehicles getting ready to enter the highway. SDSBS hired an accident reconstructionist, Dr. Brian Pfeifer, to determine the view that Mr. Wright would have had immediately before the accident, and to prepare an animation to show what happened. The animation showed that Mr. Wright would have had a view of the truck in front of the Modicas' vehicle 14 seconds prior to impact. The animation also showed that Mr. Wright would have had a complete view of the Modicas' vehicle, stopped or slowing to a stop, 10 seconds before impact. In the distance of over 1,000 feet, the driver could have brought his truck to a complete stop before hitting the car in front of him. What was the truck driver doing?

After an extensive investigation, the attorneys were able to demonstrate that the driver had been consistently working more hours than allowed under federal regulations. The driver and the company were covering the excessive hours by not logging all of the driver's hours on duty. They specifically failed to record the driver's pre- and post-trip inspections. There was also a question as to whether the company was involved in tampering with the XATA system used on the truck to track driving times and locations.

On the day before the accident, Mr. Wright had worked from approximately 3:30 a.m. until at least 8:15 p.m. This would have been two hours in violation of the hours of service regulations. The driver had testified that he did not leave the Tree of Life facility until 6:30 a.m., the day of the crash. However, attorneys for the Modicas' estate were able to show that he could not have completed all of his deliveries on the day of the accident unless he had gone on duty much earlier than 6:30 a.m. Additionally, Mr. Wright lived almost an hour's drive from work. He had almost no time to sleep in the short time he was off-duty. Hours of service regulations require 10 continuous off-duty hours after a day of driving. Therefore, it was illegal for the Tree of Life to dispatch Mr. Wright as a driver on the day of the accident.

After two and one-half weeks in trial, the defendants finally grasped the magnitude of their negligence. The case was settled for \$17.5 million. Although no amount of money could make up for Kevin and Brian's loss, they feel some justice has been gained in being able to describe to the judge and jury the tremendous grief they experienced in losing both parents in a horrible and senseless tragedy.

Every day our highways are crowded with commercial drivers hauling goods across America. Kevin and Brian Modica hope that these drivers and their employers take notice of this tragic case, and that they accept their responsibility to comply with the federal and state laws that restrict work hours in order to maximize safety for everyone. ♦