

SDSBS attorneys reconstruct accident details to prove how it happened, resulting in \$1.5 million settlement

After proving where responsibilities lay, SDSBS reached settlement before trial.

In September 2009, Maynard Clark and his cousin, Carl Clark, decided to drive from their homes on the west coast of Florida to Pennsylvania to visit family. Carl, in his late 50's, was driving Maynard's Lexus 470 SUV, and Maynard, an active golfer in his late 70's, was in the front passenger seat. The weather was great – clear and sunny. Both men were wearing their seatbelts and shoulder harnesses. Driving north on I-75, they decided to stop in Ocala at a restaurant alongside the highway. After getting a bite to eat, they returned to their car and headed back onto the interstate to resume their trip. Carl drove up the entrance ramp and onto the right lane of northbound traffic of I-75.

On the same day that Maynard and Carl were driving north on I-75, Jerry Bomar, an employee of Mohawk Carpet Transportation of Georgia, LLC, was driving a tractor trailer rig north on I-75. Mohawk Transportation is a subsidiary of Mohawk Industries, Inc., a company that is a leading supplier of various types of flooring for commercial and residential use. Mohawk Transportation leases tractor units from Penske Truck Leasing Corporation to use for hauling Mohawk's trailers and products to customers throughout the southeast United States, including Florida. Jerry Bomar was driving one of Penske's tractors.

As Maynard and Carl reentered I-75 from the entrance ramp, Jerry Bomar approached the same area, also driving his tractor trailer in the right-hand lane. Several eyewitnesses traveling I-75 in that area saw the accident. These witnesses were interviewed by the Florida Highway Patrol following the accident. As is often the case, witnesses gave investigators conflicting accounts of how the accident occurred. Several witnesses stated that the Clark SUV

had abruptly stopped in the right-hand lane and that the tractor trailer crashed into the rear of the Clark SUV. Another witness, traveling behind the tractor trailer, stated he never saw brake lights appear on the trailer before the crash. Everyone agreed that the tractor trailer slammed into the rear of the Clark SUV with enough force to cause it to roll over and down an embankment, striking several trees before it came to rest.

Carl suffered some facial injuries in the crash. Maynard was seriously injured. He was transported to Shands Hospital in Gainesville, Florida, for trauma and emergency care. The enormous impact of the crash had caused a subdural hematoma, or brain bleed, and a lumbar spine region hematoma. The resulting spinal cord compression required emergency surgery. After recovering from surgery, Maynard was discharged from the hospital to an inpatient rehabilitation and treatment facility close to his home. Although he has done fairly well since the crash, Maynard's doctors diagnosed a traumatic brain injury (TBI). He continues to suffer from cognitive deficits and physical limitations. Fortunately, the medical community has made many great improvements in the treatment of TBIs, due, in part, to our brave veterans coming home from the wars in Iraq and Afghanistan after suffering battle-related injuries. Because the medical community is gaining more awareness of the signs and symptoms of TBI, diagnoses and treatments are improving.

Maynard's son, Don Clark, is an attorney who had, years ago, litigated a case against SDSBS attorney **Chris Searcy**. Reviewing the preliminary information concerning his father's injuries and the vehicle collision that caused them, Don asked Mr. Searcy to represent his father in a personal injury action against the negligent parties. SDSBS attorney **Cameron Kennedy** prepared and presented the case for Maynard. The

complaint was filed against numerous defendants. It charged that Jerry Bomar negligently failed to drive his tractor trailer at a safe speed, failed to maintain control of the vehicle he was driving, failed to reduce speed and exercise reasonable care in approaching another vehicle from the rear, and failed to take appropriate and timely evasive action to avoid the collision. The complaint also charged that Mohawk Industries and Mohawk Transportation were liable for the negligence of their employee, Jerry Bomar.

The personal injury action filed by Maynard Clark's attorneys also included the charge that Carl Clark was liable for negligently driving the *(Continued on page sixteen.)*

During litigation, Mr. Kennedy and engineering experts secured important evidence proving how the accident occurred.

The Clarks' car was not stopped prior to impact . . . and the truck was traveling at full speed under cruise control.



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(Continued from page three.)

Lexus SUV onto an interstate highway at a speed far slower than appropriate for approaching traffic.

During litigation, Mr. Kennedy and the engineering experts hired by SDSBS secured important evidence proving how the accident occurred. By downloading the “black box” computer data from the tractor and the Lexus SUV, Mr. Kennedy was able to reconstruct the accident knowing the relative speeds of the vehicles and the change in velocity after impact. Comparing the “black box” data to the physical evidence at the accident scene was critical and proved how the accident occurred. This evidence showed that the Clark SUV was not stopped prior to the impact, and that the tractor was traveling at maximum acceleration with the cruise control engaged before it crashed into the rear of the Clark SUV.

The plaintiff requested a trial by jury on all issues. Prior to trial, the parties reached a settlement for \$1.5 million. Maynard Clark is still working toward his recovery and making every effort to regain his active life and good spirit. ♦

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SDSBS receives award for commitment to diversity at all levels in the firm

The Palm Beach County Bar Association has presented **Searcy Denney Scarola Barnhart & Shipley** the Honorable Edward Rodgers Diversity Award. The award recognizes individuals and law firms that demonstrate a consistent pattern of commitment to diversity at all levels of the firm; foster an inclusive and equitable work environment; and promote and facilitate education, community outreach, and social engagement with and between people of various ethnic or religious backgrounds, gender, socioeconomic status, sexual orientation, and/or physical and mental capabilities. Law firms and individuals that attain this level of commitment ensure that persons of diverse backgrounds can enter and prosper in the legal field. Over 1,000 lawyers and judges were in attendance. ♦

Misfilled prescription causes serious damage to newborn baby

The medication was designated ‘high alert,’ requiring extreme caution

In April 2011, twins were born at a local hospital. Their mom and dad were thrilled with their beautiful, newborn girls. An examination shortly after birth revealed that one of the twins had been born with a congenital heart condition. The doctor prescribed a medication to help her heart function properly. The local pharmacy, however, misfilled the prescription, giving the newborn baby more than ten times the prescribed dosage. The incorrect medication was administered for a week, causing the baby to become violently ill. When the baby stopped breathing, the mother rushed her to the hospital where she was diagnosed with toxicity at a lethal level, a direct result of the misfilled prescription. The baby’s intestines had become twisted and it was necessary to surgically remove 75% of her small intestines. She was in the hospital’s intensive care unit for almost two weeks.

The medication prescribed for the baby was designated a “high alert medication,” meaning that pharmacies must use extreme caution when filling a prescription because of its potential to cause serious and deadly problems, especially for newborn infants. As a result of the misfilled prescription, the baby suffers a short bowel syndrome and is very weak in her legs, neck, and torso. The damage caused by the error has resulted in the decline of the baby’s physical and mental development, substantially below the growth and development of her twin sister.

The parents sought representation by SDSBS attorneys **Chris Searcy, Karen Terry, and Matt Schwencke** to hold the pharmacy accountable for the grievous injury suffered by their daughter because of its failure to properly and safely provide the medication. Prior to filing a lawsuit, the attorneys resolved the case for a substantial amount of money. The settlement will provide care for the child for the rest of her life. ♦

