

Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 15, NUMBER 1

\$8.5 million awarded for medical service's negligence, fraud, and false advertising

Nationally recognized concierge medical service found responsible for patient's loss of leg.

In February 2015, a Palm Beach County, Florida, jury found MDVIP, Inc., a medical concierge firm, responsible not only for a misdiagnosis by one of its doctors that resulted in the amputation of a Boca Raton woman's leg, but also for fraud and false advertising. The jury awarded the woman's estate \$8.5 million in damages. SDSBS attorneys **Karen Terry, Jack Scarola, and Andrea Robinson** represented the estate of Joan Beber, and her husband, Robert Beber, in a lawsuit alleging that MDVIP had promised, but had failed, to provide appropriate and timely medical care in its treatment of Joan Beber. Other defendants named in the lawsuit – Dr. Charles E. Metzger, Jr., Florida Back Institute, Inc., and other medical personnel – had reached settlements with Joan's estate prior to this trial. Those settlements did not reduce the damages this jury assigned to MDVIP, and did not include its liability for attorney fees and costs estimated at \$1 million or more.

In 2007, MDVIP advertised that it was associated with the best hospitals and doctors nationwide. (MDVIP is now owned by Summit Partners, a private equity firm.) In exchange for an annual membership fee of \$1,500, members would be assured that MDVIP would actively coordinate their medical care, provide comprehensive physical examinations, and facilitate referrals to specialists and leading national health centers. MDVIP, founded in 2000, had grown to one of the largest concierge medical providers in the nation. In May 2007, Joan and Robert Beber signed up for membership in MDVIP, seeking access to its guarantee of "exceptional doctors, exceptional care, and exceptional results."



(l-r:) SDSBS attorneys Karen Terry, Jack Scarola, and Andrea Robinson.

In early 2008, Joan visited Dr. Metzger, and other healthcare providers to whom she was referred by Dr. Metzger's nurse, complaining of persistent problems with her left leg. Over the ensuing weeks, her leg, calf, shin, and foot became cold, painful, and blue. Robert Beber wanted Dr. Metzger to send Joan to either Jackson Memorial Hospital or Mount Sinai Hospital, two exceptional medical centers in South Florida. Despite MDVIP's claim that only top doctors with access to the best hospitals participated in its programs, Dr. Metzger told Robert that he did not have privileges at either hospital. Instead, the doctor referred Joan to a community hospital.

For three weeks, all of the medical personnel treating Joan considered her leg problem to be related to an orthopedic condition. Despite indications that her problem could very likely have been the result of a vascular condition, the doctors failed to refer her to a vascular surgeon. Dr. Metzger had also failed to provide Joan's medical records to the orthopedists treating her – records which might have led them to an examination of her vascular system. Eventually, other medical personnel discovered that a blood clot had lodged in Joan's leg and had caused such severe damage that the leg had to be amputated above the knee. "The MDVIP doctor who treated Joan had tunnel vision and his blinders on since he never considered a vascular cause to her complaints," said Karen Terry.

For the next several years, Joan endured relentless pain and frustration learning to cope as an amputee. She required intense medical care, extensive therapy and rehabilitation, *(Continued on page three.)*



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SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
ATTORNEYS AT LAW

\$8.5 million awarded for medical service's negligence, fraud, and false advertising

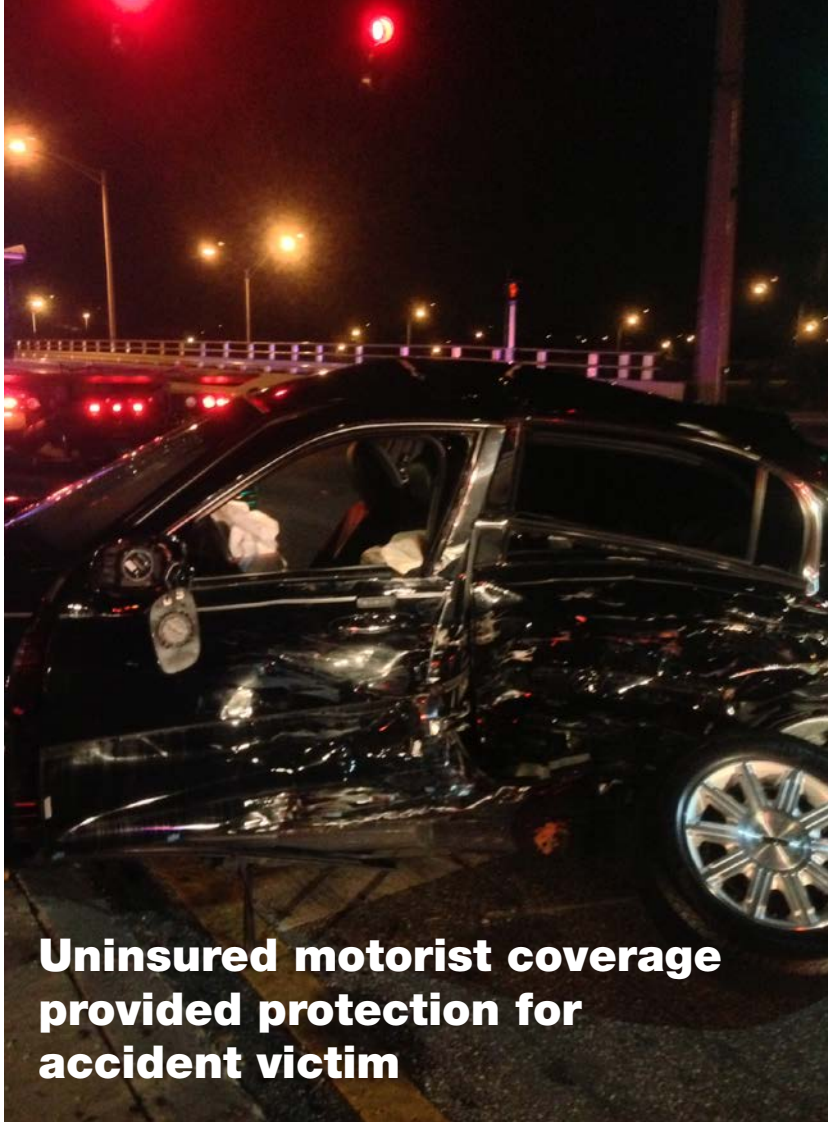
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and nursing and attendant care. Her health continued to deteriorate and in 2012 Joan died of leukemia at the age of 77. Robert was devastated by the suffering his wife of 55 years had endured because of the negligent and careless treatment provided to her by MDVIP's associates. Robert, former general counsel for W. R. Grace & Co., declined to seek damages for himself, asking only \$1 in recognition of his own loss. "It's not about him, it's about Joan, it's about their grandchildren, and about the charities they loved," said Karen Terry.

"MDVIP's very business model is at issue," added Ms. Terry. "The company convinces the public that retainer payments to a concierge ensure superior services. As this landmark case sadly demonstrates, we need to take a much more critical look at how this entire industry actually operates." Mr. Scarola stated, "MDVIP's scheme worked just like most other con games. MDVIP essentially took money for a service that did not exist and which they never intended to provide. Had Ms. Beber not been duped, she never would have suffered the tragic and traumatic injury that ensued."

MDVIP convinced the public that retainer payments to a concierge ensure superior services ... services that did not exist.

The Bebers had specifically sought membership in MDVIP because they wanted the top-rated professional, personalized, and focused medical care that MDVIP had advertised, and they were willing to pay the extra fees to obtain that care for themselves. MDVIP and its associates fraudulently took their fees and then provided totally substandard, inadequate, and untimely services. ♦



Uninsured motorist coverage provided protection for accident victim

On June 18, 2013, an impaired driver, traveling at high speed, ran a red light and crashed into a vehicle driven by Jane Jones (not her real name). Ms. Jones was driving her company's car at the time of the collision. She suffered injuries to her neck and back, and her doctors recommended surgery. Recognizing the lengthy rehabilitation and expenses she faced because of the accident, Ms. Jones and her husband asked SDSBS attorney **Brian Denney** to represent them in a legal action. Mr. Denney's investigation revealed that the impaired driver had no insurance that would cover Ms. Jones' injuries. However, Ms. Jones and her husband had purchased stacked uninsured motorist coverage on both their company car as well as their personal vehicle. They asked the insurance companies covering both cars to compensate her for the injuries caused by the collision. The insurance company covering the company car tendered its policy limits after Mr. Denney advised that he would be filing suit in Palm Beach County Circuit Court. The insurance company covering the personal car declined his request, and Mr. Denney proceeded with a lawsuit against that company under the policy's uninsured motorist provision. With a trial date approaching, the insurance company settled the case with Ms. Jones for a confidential sum. "If not for the purchase of uninsured motorist coverage, my clients would not have had any recourse for their injuries, which would have been a gross injustice. This case is proof positive that all motorists in Florida should purchase uninsured motorist coverage," said Mr. Denney. For further information on the subject, Mr. Denney produced a video in which he discusses how insurance impacts litigation. The video may be viewed at <https://www.youtube.com/watch?v=pX1IfcounqI> ♦