

Despite Catastrophic Injuries, Man's Indomitable Spirit Inspires All

**Confidential
Settlement:**
**PRODUCTS
LIABILITY**

On Monday evening, January 20, 2003, around 8:00 p.m., Robert Smith and several friends were playing their regular game of basketball in the gym of a local church. Mr. Smith, 41 years of age, was in excellent physical shape. He had graduated in 1999 from a college in Texas with a Bachelors Degree in Physical Education, and had been working two part-time teacher assistant jobs in south Florida. He had worked as a physical education instructor in a school in Washington, DC and in other schools in south Florida. He was fit, muscular and athletic, and stayed that way by working out regularly and participating in sports such as his Monday evening and Saturday morning basketball games. Robert's sister had remarked how extremely athletic Robert was. "He found the love of basketball and he used to practice more than Michael Jordan ... I used to tell him Michael Jordan doesn't practice as much as you do." The church gym is a full-length basketball court with linoleum tile flooring and padding covering parts of the walls at each end of the court. The padding on the wall begins nearly 13 inches above the floor. On this particular evening, the game had been going for over an hour. Mr. Smith saw the ball heading out of bounds at the west end of the court and leaped to catch it. While throwing the ball back into play, the momentum of his leap caused him to fall and slide toward the wall. His head struck either the concrete wall or the bottom of the padding on the wall. Depositions from witnesses at the scene of the accident varied in stating exactly where Mr. Smith's head struck the wall. Regardless, the impact shattered Mr. Smith's cervical spine with a burst fracture at the C-5 level. In one quick moment, Mr. Smith was rendered a quadriplegic.

Two and one-half months later, Mr. Smith was discharged from the Florida hospital and airlifted to Texas, where he was admitted to a nursing home. He was now suffering from severe bedsores, malnutrition, feeding difficulties, urinary dysfunction, chronic nausea, anxiety, depression and neuropathy. He devel-

oped pneumonia and, on April 10, 2003, he stopped breathing and was rushed to a local hospital. Mr. Smith remained at the hospital for a little over two weeks, under treatment for respiratory failure and the persistent bedsores. His condition was listed as serious and the prognosis was poor. He was transferred to another nursing center in Texas that specializes in care for individuals with respiratory problems. As his respiratory condition deteriorated, and his spinal wounds worsened, with bedsores forming on his heels and hip, Mr. Smith was transferred to the hospital again and, when he briefly improved, he was returned to the nursing center. His care and medical treatment would be intensive for the remainder of his life. Mr. Smith's will to



live was at its lowest ebb for weeks after the accident. However, his deep faith and loving family allowed him to believe that tomorrow would be a better day. His spirit became strong and he had a positive outlook. Robert defied the odds and willed his way off his ventilator. He truly believed that someday he would walk and play basketball again.

Robert's case was referred to Chris Searcy and Lance Block of Searcy Denney Scarola Barnhart & Shipley

by Jeff Walker, a former Fort Lauderdale attorney who now practices in North Carolina. A legal team was assembled which included Chris Searcy, Darryl Lewis, William King and Jeff Walker, to prosecute claims on behalf of Robert and his children.

Suit was filed against Company A, the manufacturer of the wall padding, and Company B, the Florida distributor of the wall padding, for products liability including claims of strict liability and negligence. Suit was also filed against the general contractor and the architect for negligence, and claims were filed against the church for negligence and premises liability. A claim for negligence was also instituted against Company C, a wall pad installer who had later installed padding adjacent to the padding struck by Robert.

During the investigation of the case, it was determined that the wall padding itself **(Continued on next page.)**

(Continued from previous page.) was not safe for its intended use. The padding did not provide protection from catastrophic injury upon impact. It was determined that the manufacturer had not performed any testing on the padding to ensure that it would provide safety for those who might run into the padding during basketball games or other activities. Rather, the evidence demonstrated that the padding could “bottom out” by simply pushing one’s hand into the padding so that one could feel the wall behind it. The evidence also showed that the padding was installed at a height of about 13 inches above the floor, well above the manufacturer’s recommended installation height of 3 to 4 inches above the floor. The manufacturer had adopted the recommended installation height as a result of an incident which occurred in 1989, when a young New York high school basketball player was paralyzed when he slid into a portion of the gymnasium wall below the level of the padding which had been manufactured by Company A. The evidence revealed that the manufacturer did not change its recommendations concerning a minimum installation height until December 1993, after the padding had been installed at the defendant church. No one, including the defendants, took any action to lower the height of the padding after the manufacturer became aware of the danger of installing the padding at too high a level. At one point, padding was installed by Company C adjacent to the padding which would ultimately be struck by Robert Smith. The installer observed that the earlier padding was installed too high, but still, no remedial action was taken to lower the padding.

Damages suffered by Robert as a result of his catastrophic injury were enormous. He sustained signifi-

cant past medical costs and would face an enormous burden for future medical costs and costs required to allow him to live on his own outside an institutional setting. His intangible losses, his pain and suffering and the loss of his enjoyment of life, were incalculable. His children also sustained significant losses as a result of Robert’s inability to provide them with his care and companionship as a result of this catastrophic injury. His daughter, who was 15 years of age at the time of Robert’s injury, reflected upon how close her father was to her. “Throughout the weekdays he would pick me up after school from my grandmother’s house and take me to his basketball games. Other than that, we just hung out together like we were the best of friends.”

***“In spite of knowledge of the danger,
no action was taken to lower the padding
to a safer height.”***

After intensive discovery, a confidential settlement was reached in the case. Robert ultimately would leave the critical care facility in Texas and move back to Florida to be close to his family. He was living on his own, attended by family members and medical personnel. Plans were made for his family from throughout the country to visit him over Christmas. Robert and members of his legal team were looking forward to attending a Miami Heat game together. Robert was a true Miami Heat fan. Robert’s spirits were soaring. Tragically, Robert succumbed to his injuries and passed away just before Christmas. His death was a devastating blow to all of his friends and family. Robert’s smile and indomitable spirit will be remembered by all those who had come to know him and who had joined with him in his valiant fight. ■