SEARCY DENNEY SCAROLA BARNHART & SHIPLEY
ATTORNEYS AT LAW

Of Counsel

A REPORT TO CLIENTS & ATTORNEYS
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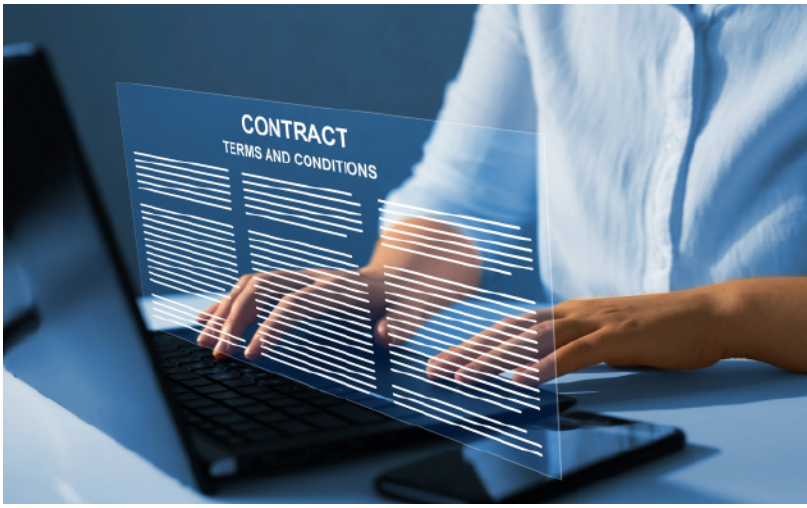
IN THIS ISSUE:

Searcy Denney reached settlement for $4.5 million on an insurance policy with a $1 million limit

Florida's Bad Faith Law: It holds insurance companies accountable

If you have been following the news lately, you have undoubtedly seen reference to the Florida Governor's and Legislature's tort "deform" agenda. One of the targets of this agenda is Florida's Bad Faith Law.

What is Bad Faith Law? In Florida, if you are hurt due to negligence and the person who hurt you has insurance, the insurance carrier has a duty to settle your claim within the policy limits when it could and should have done so. If an insurance company plays games and fails to settle a claim when it could and should have done so, Florida's Bad Faith Law says that the insurance company may be responsible for the ENTIRE amount of damage, even if it far exceeds the policy limits. Our current Bad Faith Law, therefore, protects injured folks from the risk that the insurance company will refuse to pay fair value for injuries caused by their policyholder and choose instead to drag the claims process out as long as possible, hoping to wear the injured parties down to accepting only a fraction of what they are entitled.



At Searcy Denney, we have repeatedly held insurance companies accountable when they have handled claims in bad faith. Recently, attorneys **Chris Searcy** and **David Vitale** represented a couple who were severely injured when a tractor-trailer lost control and crossed into oncoming highway traffic, barreling into our clients' car and smashing it into a telephone pole. The car was effectively ripped in two. Miraculously, both clients survived this horrific crash, although one had to be airlifted to the *(Continued on page four.)*

Combined $3.5 million settlement for two families with newborns

In two unrelated cases, Florida hospitals failed to provide proper medical care for pregnant mothers resulting in severe damage to babies.

Tragically, two families suffered very similar fates when they entered two different Florida hospitals seeking care in their pregnancy and the delivery of their newborn children. In the first instance, the mother, experiencing an uncomplicated pregnancy, arrived at the hospital prepared to give birth. After almost 24 hours in labor, the situation became dire as the fetal heart monitor began to show signs of fetal distress. Despite hours of prolonged labor and the use of high-risk medications to progress the labor, no doctor was summoned to examine the mother or baby. An hour before delivery, more signs of fetal distress began to emerge. Rather than immediately securing delivery of the fetus, the medical team – without a physician on duty – continued urging the patient to deliver the baby vaginally. Their persistence and delay resulted in the baby suffering poor Apgar scores – an index evaluating the condition of a neonate (specifically color, heart rate, stimulation response, muscle tone, and respiration). Ultimately, the infant was diagnosed with moderate hypoxic ischemic encephalopathy – a brain injury that will affect the child for life. *(Continued on page two.)*

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nearest Level 1 trauma center. There, the client had emergency surgery to repair a broken neck which left the client with significant and permanent neurological deficits on the dominant right side. In addition, the client suffered numerous broken ribs, a collapsed lung, and a traumatic brain injury. The injuries were quite clearly catastrophic. Our client spent eight weeks in the hospital and in a long-term rehabilitation center before transitioning to outpatient therapy for five days per week. This therapy regimen continued for months. The road to partial recovery was long and difficult and included a second neck surgery to stabilize the spine.

The tractor-trailer company whose driver caused the crash that nearly killed our clients had an insurance policy that offered only $1 million in liability coverage. After months of providing the insurance company with medical records, bills, and video statements from our clients, the insurance company failed to make any offer to our injured clients. Finally, we demanded the full $1 million policy limit. The insurance company did not bother to respond. The insurance company could and should have settled the case but refused to do so.

Understanding the application of Florida's current Bad Faith Law, Mr. Searcy and Mr. Vitale filed suit and aggressively litigated the case for nearly two years. Although the insurance carrier eventually offered the $1 million policy limit, Searcy Denney told them it was too late. They were in bad faith and, under Florida's Bad Faith Law, were now responsible for the full value of our clients' damages. On the eve of trial, we were able to obtain a settlement of **$4.500.000** from the insurance company, **350%** greater than its policy limit.

Cases like this are important because they allow deserving clients to receive a fair settlement based upon the damage and injuries they have suffered, as opposed to a settlement that is limited simply to policy limits. This case also sends a warning to other insurance carriers that they need to deal in good faith with injured persons in Florida. Should they not act in good faith, Florida's current Bad Faith Law will make them pay. We can only hope that this law, which serves to protect injured persons from powerful insurance companies, will not be deformed. ◆

UPDATE

Just before going to press with our newsletter, Bad Faith Law was "deformed" by new laws passed in the Florida legislature. Sadly, our clients in future cases may be at the mercy of insurance companies who do not want to pay just amounts for their insured's negligence. In a future newsletter we will update you on the many changes to Florida tort law.

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CLIENTS,
WE HAVE A
TOLL-FREE NUMBER
THAT WILL BE ANSWERED
BY OUR
SPANISH-SPEAKING
PERSONNEL.

◆

Para servirle mejor a nuestros clientes que hablan español, tenemos un número telefónico gratuito (800) que será contestado por nuestro personal de habla hispana.

800-220-7006

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA

ABOGADOS

Pasion Para La Justicia