

P. I. r e v i e w

Volume Nine

Issue One

Devoted to excellence, justice and maximum compensation for victims of serious injuries, neglect and wrongful death

Humor, Family and Settlement Help Bike Victim

On Valentine's Day 1999, 14-year-old Jeffrey (Stefan) Fadley went to a local motocross track to practice riding his YZ 80 motorcycle. Stefan was a "Class C" beginner rider, but, due to an inexperienced track flagman and lack of supervision on the track, he found himself on a track with riders from different classes. Suddenly, his helmet was hit by the rear wheel of an RX-250C bike driven by a Class A driver who had come over a hill and "caught air."

Seriously injured, Stefan was airlifted to St. Mary's hospital, where he remained for seven months, suffering from damage to the nerves in his cervical spine. He endured a series of surgeries, including spinal fusion in which metal rods were placed in his neck and spine.

Today, Stefan is a quadriplegic due to the injuries he sustained in this accident.



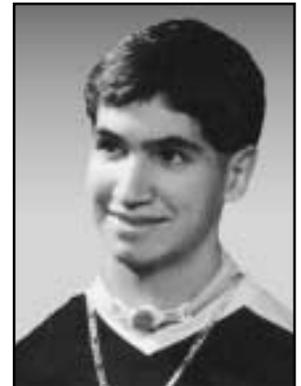
However, Stefan and his family never gave up hope. In March 2002, he was flown to Shriner's Hospital in Philadelphia for spinal repair and is scheduled for more surgery there in the future. Orthopedic specialists were not optimistic about the outlook for Stefan ever to walk again or even be able to control a hand-powered wheelchair, but with faith, perseverance and motivation, Stefan has learned to manage his wheelchair without assistance!

At times, Stefan is restricted by debilitating and painful spasms, and a tracheotomy limits his ability to talk, but his attitude is wonderfully positive.

"My family's support and humor have helped me deal with this situation," he said. "We are always joking and laughing together."

Stefan also has never given up his dreams to walk again, to be a pro Freestyle BMX rider, and to be a Major League soccer player. He works hard

at physical therapy three times a week and does strengthening exercises regularly. Stefan dedicates his hard work to his best friend who died in a tragic accident.



Jeffrey Stefan Fadley

Stefan has a safety message for other motorcycle and bicycle riders: "ALWAYS wear a helmet. It is better to be safe than sorry."

This case was settled for policy limits with Lloyd's of London. 

Safe, Safer and Safest

- About 80% of reported motorcycle crashes result in injury or death, compared to 20% of automobile crashes.
- More than 70% of all bicycle deaths are caused by head injuries.
- Alcohol is the single largest factor involved in motor vehicle deaths.
- Automobiles are the number one cause of death for young children. Yet, studies have shown that proper safety seat usage can reduce fatalities by almost half and serious injuries by more than half.

Bayer Pays \$350,000 to Baycol User



Bayer

After short-term use of Baycol, a statin prescribed by his doctor for elevated cholesterol, a man had to be hospitalized for a month with kidney

failure and was diagnosed with rhabdomyolysis. He has permanent side effects from the Baycol, including serious fatigue, muscle pain and partial paralysis. The man's insurance company had required the use of Baycol over other statins because it was cheaper. Baycol was pulled off the market. 

MANAGING YOUR HealthCare

Surviving a Trip to the ER

Each year, Americans make more than 100 million visits to hospital emergency rooms. To ensure that you get the best possible care:

- **Speak up.** Be assertive. Request a specialist or a more senior physician if you are uncomfortable with how you or a loved one is being handled.
- **Focus on your main complaint.** Emphasize the main reasons you came to the ER — the most important symptoms.
- **Check credentials.** You have the right to ask about the experience levels of the doctors who treat you in the ER or who perform any tests, procedures or surgery.



- **Know your doctors and medications.** If you have a chronic condition, keep a list in your wallet of your doctors and the medications you are taking. Call your family doctor on the way to the hospital, and he/she may meet you in the ER or at least make a call to expedite your treatment. Don't withhold information from the ER doctors and nurses.
- **Bring a friend.** A friend or family member can act as your advocate, which is especially important if you are too sick or weak to be assertive.
- **Avoid unnecessary tests and treatments.** Don't agree to any tests unless you know the risks involved, what the tests will show, and how the results will change your course of treatment. Your goal is to participate fully in the decision-making process.
- **Trust your instincts.** If you have a reasonable suspicion that something is wrong, ask for another opinion.

Caution: Do not leave the hospital if you do not feel better or if you feel worse than when you first arrived. Tell the doctor how you feel or ask for a second opinion. 

Questions That Could Save Your Life

Surgery has moved outside the hospital operating room; 13% of surgical procedures are now done in doctors' offices, and the number is climbing.

These include cataract surgery, biopsies, ear tube insertions, cosmetic and plastic surgery, and even hernia repairs.

Office surgery costs less than similar procedures done in hospitals or outpatient surgical facilities, and it can be more convenient for patients, but there are some potential risks. Before you agree to an office-based procedure, find out if the doctor:

- Has "privileges" to do the procedure at the local hospital. This ensures that the doctor is choosing to do the procedure in the office, not forced to do so.
- Is board-certified for the type of surgery to be done, indicating a level of skill.
- Has performed many of these procedures. Surgeons do get better with practice.
- Uses a board-certified anesthesiologist or a certified nurse-practitioner-anesthetist to administer the sedation.

- Is assisted by at least one registered nurse (RN) with training in advanced cardiac life support.
- Is prepared for in-office emergencies. Is there resuscitation and life-support equipment and medicine on hand in case things go wrong?
- Limits procedures to those under four hours. Anything longer should be done in a hospital. 

Did You Know?

Medical Errors

are one of the leading causes of death and injury in the United States. A recent report by the Institute of Medicine estimates that as many as 44,000 to 98,000 people die in U.S. hospitals each year as the result of medical errors. This means that more people die from medical errors than from motor vehicle accidents, breast cancer, or AIDS. It's roughly the equivalent of a jumbo jet full of passengers crashing every 24 hours for an entire year. Another 400,000 Americans are victims of medical negligence and misdiagnosis every year. 



Hosting a *Social Event* Creates a Liability



Are you planning a wedding, birthday party, barbecue, or company picnic? Many of these celebrations will include alcoholic beverages, and guests may over-imbibe. Some of those inebriated guests will drive home. So may teenagers who are leaving a friend's party where they were illegally served alcohol. Unfortunately, some of these

impaired drivers will be involved in automobile accidents. What is the legal liability of the person who hosted the party — the social host — who serves alcoholic beverages to a guest who later causes an accident or contributes to one?

Social hosts may be liable for resulting property damage and personal injury if (1) they served alcohol to someone they knew, or should have known, was intoxicated, and (2) they knew the person would be driving afterwards.

The term "social host" means anyone who hosts a social gathering, including private individuals, homeowners, employers, and organizations. An intimate dinner party for two can result in social host liability if the guest leaves and causes a drunk driving accident. Employers can be found liable for injuries that result from providing alcohol at company-sponsored parties. The same liability risk applies to homeowners if they are having a party in their home for adults or for their children.

There are criminal penalties for providing alcohol to anyone under the legal drinking age, and law enforcement is becoming stricter about enforcing these laws. It is against the law for any person to sell, give, serve or permit to be served alcoholic beverages to a person under 21 years of age. An adult is criminally liable for contributing to the delinquency of a minor if the adult encourages, provides or causes the minor to commit such acts.

An adult also may become civilly liable for injuries or accidents that occur on or near the premises used for the party. Additional care is needed to be sure that children leaving a party do so in a condition that promotes safety. Thus, hosting parents are responsible for safeguarding underage children.

Parents should:

- Limit the number of guests the child invites and have plans for handling "party crashers."
- Have chaperones who monitor guest activities both inside and outside the house.
- Call a child's parents immediately if the child appears to have been drinking or doing drugs.
- Don't allow "soft containers" to be brought to the party. Only allow guests to drink what is provided by the host.
- Ban smoking at the party since most drugs can be smoked.

What can a social host do to avoid the potential liability when serving alcohol to guests?



- 1. Eliminate open bars, punch bowls, and beer kegs.**
The days of help-yourself bars are long over. Without supervision, guests are more likely to drink too much, substantially increasing the likelihood that they will injure themselves or others. Don't sponsor or host any event at which unsupervised drinking takes place, especially when there are teenagers in the home. That even includes informal gatherings in hospitality suites.
- 2. Don't let alcohol be the sole focus of an event.**
Make sure there are sufficient amounts of food and non-alcoholic beverages available. This will reduce the probability that people leave the event inebriated.
- 3. Serve alcohol for a reasonable time.**
Alcohol should not be served for too long or too short a period of time. Avoid service intervals that do not allow guests to pace themselves, and don't make a "last call" announcement. Consider using a system that provides some control over consumption. For example, even when drinks are free, give guests a limited number of drink tickets.
- 4. Hire a trained bartender.** Never allow your organization's employees or family members to serve drinks. If you hire a professional bartender, the bartender or his or her employer comes between you and potential liability. Professionals are trained to recognize when to stop serving someone, and they tend to be covered by someone else's insurance.
- 5. Arrange designated drivers.** Make arrangements with a service to provide transportation for guests who may have had too much to drink. Tell attendees about the service before the party.
- 6. Get insurance.** You can't eliminate all potential liquor liability. It's prudent to obtain the appropriate insurance coverage. Contact your insurance agent to discuss your coverage needs. 

Over 10,000 contracts have been provided to families of young drivers and organizations.

Please call our offices if you have a new young driver to get your award-winning, **FREE** S.O.S. contract.



Advantages of Mediation



More than 95% of lawsuits settle out of court. Settlement is always preferable to the stress, expense and uncertainty of going to court. In Florida, before judges place a case on the trial docket, they will order the parties to get together in an informal setting to conduct serious settlement negotiations under the guidance of a specially-trained mediator.

This mediation program is successful in resolving most of the cases it handles. A mediation session typically is set after the attorneys have had ample opportunity to discover and evaluate the strengths and weaknesses of each side's case. Certified court mediators, typically experienced attorneys or retired judges, have met certain educational and experience requirements and are selected by agreement of all parties or appointed by the court.

The mediator's job is not to decide disputed issues of fact or to give an opinion on the merits of anyone's position. Rather, it is the mediator's

role to help the parties rationally assess the strengths and weaknesses of their side and to reach a compromise.

Under mediation rules, all parties and their attorneys must be present at the meeting, and if an insurance company is involved, a company representative must be present at the mediation as well — and must have the authority to make the final decision on whether to settle and how much the company is willing to pay, up to the full amount of the insurance coverage available.

In a typical mediation session, the mediator gives a brief description of the process and invites each side to make a brief opening statement of its position. Then, the parties break into separate groups in different rooms. The mediator shuttles back and forth, helping the parties analyze their case, relaying offers and counter-offers in an attempt to reach a settlement. Usually, an amicable settlement is reached, and the parties reconvene in a room to sign a settlement agreement.



Mediation's advantages over the uncertainty of taking a chance in court includes:

- It eliminates the risk of an unsatisfactory outcome.
- It brings the matter to an early conclusion.
- It is much less stressful than formal court proceedings.

Insurance Facts

What type of insurance is required to purchase and maintain a Florida tag?

Florida's minimum coverage is \$10,000 personal injury protection (PIP) and \$10,000 property damage liability (PDL). If you have been involved in a crash, or been convicted of certain offenses, you may be required to purchase bodily injury liability coverage (BIL).

What is "Personal Injury Protection" insurance (PIP)?

Personal Injury Protection (PIP) is sometimes referred to as "no-fault" insurance. It covers you and relatives residing in your household for injuries sustained in an automobile accident regardless of who is at fault.

What is "Bodily Injury Liability" insurance? (BIL)

Bodily Injury Liability coverage pays for serious and permanent injury or death to others when you cause an accident involving your automobile. Your insurance company will pay for injuries up to the limits of your policy and provide legal representation for you if you get sued. This pays for injuries caused by you or members of your family who live with you, even if they were driving someone else's vehicle. It may also cover others who drive your automobile with your permission.

What is "Property Damage Liability" insurance? (PDL)

This coverage pays for damages you or members of your family cause (and are liable for) to another person's property in a crash involving a motor vehicle.

Some Mold is Toxic

There are tens of thousands of mold types. The overwhelming majority of molds are harmless, but exposure to a few types has been associated with the potential for adverse health effects. These include: arimonium, aspergillus, penicillium, stachybotrys, chartarum (S. atra) and trichoderma.

The adverse health effects related to these molds include headaches, rashes, respiratory ailments, inhibition of the immune system, lung disease, cognitive memory loss and brain damage. Exposure pathways include inhalation and skin absorption.

If you or someone you know has suffered from toxic mold exposure, please do not hesitate to call our law firm.



www.nursinghomeneglect.com

The hiring of an attorney is an important decision and should not be based solely upon advertisements. Before you decide, ask us to send you free written information about qualifications and experience.

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SETTLEMENTS & VERDICTS

Death By Sepsis And Bronchopneumonia: \$555,000 Settlement

A client developed, stage IV gangrenous decubitus ulcers on the sacrum and both heels that led to his death from sepsis. The patient's chart was falsified by staff at an understaffed facility to hide the fact that they were not feeding patients who needed assistance. The family frequently visited and consistently found their father lying in urine and feces, with soiled diapers and serious diaper rash. When they tried to report this, they could only find one staff member on the entire floor. On another occasion, their father had soiled, green, smelly bandages which, according to the medical chart, had not been changed in a week. The man became ill with aspiration pneumonia that went unrecognized in the chest x-rays. ER doctors said the ulcers were the worst decay they had ever seen.

\$351,000 Settlement. Death by Asphyxiation

An Alzheimer's patient was placed in a local hospital by her family to receive supervised care. In the evening, the patient was strapped to her bed to prevent her from falling. She became very restless and anxious and began to thrash in her bed. She squirmed until she was trapped in the harness that was supposed to protect her. The harness was so tight on her chest area that she died of asphyxiation.

\$325,000 Paid By Local Nursing Home

Due to their mother's severe arthritic condition, family members were forced to take her to a local hospital nursing home, expecting quality care. However, during her stay she developed two large sacral decubitus ulcers. The facility had deplorable conditions, failed to turn her on a scheduled routine and failed to provide quality skin supervision.

Death in Nursing Home: \$300,000 Settlement

A female client residing in a nursing home was discovered by family members with several serious decubitus ulcers, unexplained bruising, sepsis, and pneumonia. She was almost comatose. The patient also had suffered a 15% weight loss over a short period of time. Family members and social workers requested that the bed rails be up at all times to prevent her falling from the bed, but the staff did not do that, and the woman fell out of bed, broke her hip and died. The nursing home was charged with neglect and agreed to settle. The social worker on the case said she wished she could promise that none of these terrible problems would occur again, but she couldn't.

\$265,000 Settlement in Mediation

A 41-year-old, health care worker was rear-ended by a semi-trailer and pushed more than 150 feet from the light where she had stopped. The impact was so severe that her vehicle was a total loss. In an effort to reduce the pain, she underwent paraspinal nerve root block injections of the cervical spine. Surgeons performed two complete discectomies. As a result of these injuries, the client has been declared totally disabled by Social Security.

Fall Precautions Could Have Saved Elderly Woman:

\$250,000 Settlement

An elderly woman was placed in the care of a local nursing home for supervision and adequate health care. This lady had over eleven documented falls and was evaluated at admission as having an "unsteady gait," being "dizzy" and a "fall risk." However, the nursing home made no fall precautions to protect her, and she immediately broke her hip and died.

Family Whose Father Died Needlessly: \$220,000

This client was transferred to a nursing home and diagnosed with many serious health issues, including stage III and IV decubitus ulcers. An aggressive care plan was discussed, man's nutritional requirements were never met, and orders to supplement his nutritional needs were not rendered for nine days later. As a result of this lapse in care, the man became severely under-nourished. Nursing notes recognized the problem stating: "Feeding does not meet the patient's caloric needs and (he) is at risk for weight loss." The doctor instructed that the man's head should remain at a 45° angle to prevent aspiration, but this never occurred. Thus, the client aspirated and went into respiratory failure, filling his lungs with food product. 911 wasn't called until 16.5 hours after he went into distress. For this severe diabetic, the consequences of this facility's inferior care were severe — he rapidly declined, was hospitalized and died.



YOU ARE
ONE OF
A KIND

\$1,000
Scholarship
Winner!



Mario Navarro (left) and
Philip DeBerard at Okeechobee
Scholarship Night 2003.

Mario Navarro is our 2003 "You Are One of A Kind" Scholarship winner. Philip DeBerard presented \$1,000 to him recently at Scholarship Night 2003 at Okeechobee High School.

Students of the Month - Okeechobee High School

Jessica Cade, Christopher Douglas, James Lakeman, Mario Navarro, Jonathan Prado, Jennifer Robbins, Glorybee Rodriguez, Tameka Rosa

Eagle Award Winners - Morningside Academy

Sebastian Abondano, Kathryn Adams, Nathan Adams, Clint Baker, Kira Bettineschi, Christina Burton, Robert Chenier, Cassidy Cintron, Breanne D'Amato, Kaitlyn Daughtry, Kyle Dunkelberger, Matthew Dunkelberger, Frankie Fabozzi, Bradley Fick, Kara Hanny, Christopher Kelly, Mike Kinne, Emily Lisi, Michaela Lopez, Matthew Lucas, Talia Meizinger, Sasha Nelson, Kate Orr, Desirae Reyes, John Reyes, Kayla Roe, Valerie Sasselli

Seminars Presented by Philip DeBerard

Always Available Home Health

Do's and Don't's of Proper Documentation

Indian River Community College, Business Class

Protect Your Business From a Lawsuit

Sponsored Programs

- **Safe Kids, Vero Beach**
Bicycle Safety Rodeo & Car Seat Safety Check
- **Okeechobee Central Elementary School**
Bike Safety Day
- **Leukemia & Lymphoma Society**
Disney Marathon
- **Martin County High School Grad Night**

Refer A Friend

If someone you know has been injured, we can help!

Our convenient phone numbers: Stuart.....286-1000

Outside this area, Fort Pierce.....464-8000

Toll-Free 800-299-8878

Okeechobee.....467-7100

Our E-mail address: deberard@flainjurylawyer.com

Please give our number to someone who might need our services.

We appreciate the trust you have placed in us.

Over
25 years
experience!