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March 20, 2002

Members of The Inner Circle of Advocates

Dear Friends:

The case described in the enclosed news clippings, which was settled on the day we were scheduled to begin trial, involved several matters which you may find of interest.

1. My client, a 30 year old single woman, on Social Security disability for years because of juvenile diabetes, chronic gastroparesis and depression was extremely vulnerable to life threatening infection and, therefore, it was especially important to obtain as early a trial setting as possible. I contacted **Dr. Craig Lichtblau**, a physiatrist of Palm Beach Gardens, Florida (561) 842-3694 and **Bernard Pettingill**, a Ph.D. economist also of Palm Beach Gardens, Florida, (561) 622-0330, who were identified in a letter Larry Grassini had sent to the Circle regarding their participation in his case, which resulted in a \$51,000,000.00 verdict. Both were willing to address the relevant damage issues immediately and Dr. Lichtblau promptly flew to Chicago to examine the Plaintiff, photograph her and secure the necessary information concerning costs and services provided by local long-term life care facilities. I believe Dr. Pettingill spoke at a Circle convention several years ago. Their prompt attention to the case helped us obtain a March 11th trial, which was only 10 months from the date we filed suit, which is most unusual for the Circuit Court of Cook County.

2. The Defendant, Louis A. Weiss Memorial Hospital's first layer of insurance was with St. Paul Insurance Company. You will recall an exchange of e-mails last year describing St. Paul's total lack of interest in realistically valuing medical malpractice cases involving the clear liability of its insureds. I was, therefore, not surprised that I experienced similar conduct from St. Paul which ignored this case until 3 weeks prior to trial, when it made its first offer of \$3,000,000.00.

Two days before trial, I was called by Defendant's counsel and told that the Senior Vice President in charge of claims for St. Paul had been fired and a claims executive from Traveler's Insurance Company was hired to replace the fired Vice President. He flew to Chicago to engage in settlement negotiations two days before trial was to commence, which resulted in the settlement on the day of trial.

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3. The client was diagnosed by the treaters, as being in a persistent vegetative state (PVS), which by definition, describes individuals who experience no pain and are unaware of self and environment and have a significantly diminished life expectancy. Recently, a multi-society task force established criteria for the diagnosis of a "minimally conscious state" (MCS), of patients who may appear to be PVS, which is published in the February edition of *Neurology*. The importance of that differentiation, from a litigation standpoint, is that individuals who are in a MCS experience pain and have a prognosis for continuing cognitive improvement, as well as a diagnosis for a longer life expectancy. In the same edition of *Neurology*, Dr. James L. Bernat, poses the various questions which still need to be addressed about MCS. There is also an informative exchange of correspondence regarding the problems with both the PVS diagnosis and the MCS diagnosis.

4. The defense in our case, claimed the Plaintiff to be in a PVS, which was supported by Dr. Ronald Cranford, a University of Minnesota neurology professor who has been very involved with the two multi-society task forces addressing these issues. Dr. Cranford, testified in his deposition, that since 1995 he has testified in 42 civil cases involving the issue of the level of consciousness of a Plaintiff, always testifying for the defendant with regard to the lesser state of consciousness and the lesser projected life expectancy. He earns 25% to 40% of his annual income as such a witness. I forwarded the deposition transcript for inclusion in the Circle database.

Sincerely,



Eugene I. Pavalon

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