SUMMER 2024 NEWSLETTER

SPANGENBERG SHIBLEY & LIBER

TRIAL LAWYERS



$1.5 MILLION VERDICT FOR VIETNAM VETERAN



MIKE LEWIS



STUART SCOTT

"My dad's about as American as they come," says Robert Remali. And his life's work proves it. John Remali, now 77, served two tours in Vietnam and became a Green Beret. He undertook extremely dangerous missions as part of a small reconnaissance team—the "tip of the spear."

"John's team would go out ahead to find enemy positions, and then call in air or artillery strikes," says Spangenberg partner Stuart Scott. He earned a Purple Heart, returned to America to raise a family with his wife, Mirta, and worked for over twenty years at the Ford plant in Lorain.

Four years ago, John rolled his ankle, went to see an orthopedic doctor—and wound up losing part of his leg and almost his life. "When we sought a second opinion and that doctor told us my dad may die within a year if they don't amputate", Robert says, "we all wondered: how did we get from a simple treatment for a minor ankle injury to this?"

That led the Remali's to the Spangenberg law firm. "We were proud to represent them," Stuart says. The critical decision by Dr. David Marsh was to choose a walking boot as the best treatment. "Dr. Marsh said he believed John had peripheral vascular disease. One effect of that condition is that people have poor blood circulation to their feet," Stuart says. John also has Type II diabetes, brought on by exposure to Agent Orange in Vietnam.

The doctor also thought it was possible that John had peripheral neuropathy—a condition where someone may not feel what is actually happening inside, say, a walking boot. Despite the doctor's concerns, he prescribed the walking boot and a technician came in to fit it. The defense said the tech would have told John to take the boot off every day, but both John and Robert (who took his dad to the doctor) were adamant at trial: the tech told him not to remove the boot. When he did remove it days later at a follow-up appointment, John's leg was in such bad shape that part of it eventually had to be removed.

At trial, Spangenberg attorney Mike Lewis, who served as lead attorney, hammered home the importance of patients being able to trust their doctors. "The cornerstone of that trust," Mike says, "is informed consent." "It has three elements to it," Mike continues, "that patients are told the risks of a treatment, its potential benefits, and what alternatives may be available."

Mike says the Remali's were never told about possible alternatives— such as having John use a walker or a cane. What's more, they were never told the risks a boot may pose to someone with poor blood circulation and Type II diabetes. The doctor indicated he left the informed consent to the tech. At trial, Mike Lewis blew that apart. "We asked the tech about the material risks of a wearing a boot, and about the dangers it may pose to someone with peripheral vascular disease," he says. "It was clear to the jury she didn't know what I was talking about because informed consent is not her job—it's the doctor's."

The jury came back with a verdict for John for $1.5 million dollars. "Our family's not given to hyperbole," Robert says, "but afterwards, we were talking about our lawyers, and one of us said 'not all superheroes wear capes.' And we all agreed."

The amputation means John won't be able to teach his grandson the skills his father taught him about tracking animals in the woods, skills John had passed on to Robert, and skills he had used in Vietnam. Still, Robert says the verdict "brought a little more life back into my dad." Going to court wasn't easy. But John hoped doing so might help other families. So he stood up for what's right. Just like he's always done.

$6 MILLION VERDICT FOR WRONGFUL DEATH

DUSTIN HERMAN & NICK DICELLO

Patricia Breckenridge had been married to Jack for over fifty years. And that Thursday, she just knew something was wrong. "When visiting hours were over and I left the nursing home, I was very concerned." By Friday, Jack was rushed to the hospital and, about a week later, he died.

"On Thursday," Patricia recalls, "I kept telling the nursing home staff that Jack was different. I kept asking if his blood test results were back, and what was going on with him. I got no help." Heritage of Hudson nursing home, owned by the largest nursing home corporation in Ohio, Foundations Health Solutions, LLC, saw it differently. They said Jack didn't show signs of rapid decline until Friday, and all of the nursing notes said there was no change in Jack's condition on Thursday.

DiCello and fellow partner Dustin Herman, the lead trial attorney, assured Patricia and her family that it wasn't just her word against that of a nursing home. "They knew exactly what they were doing, and made us feel very confident and comfortable," says Abby Kreitzburg, one of Jack and Patricia's three grown daughters. "They became like part of our family."

For one thing, the Spangenberg attorneys did their homework. They found that Jack's blood test results—showing an increase in his white blood cell count that could signal an infection—had come back when Patricia was told they were still out. The results were left sitting on a fax machine. They were never sent to a doctor. At trial, Dustin got a nurse to admit to the jury that the test results just "fell through the cracks" of the nursing home system. The nursing home countered that the results were not alarmingly high, and did not show his health had changed dramatically.

So how would the Spangenberg lawyers show that Jack was already in rapid decline on that Thursday, and that the nursing home failed to pay attention? "A year before trial," Dustin says, "we invited the nursing home's attorneys to a forensic download of Patricia's daughter's cellphone that contained text messages from Patricia sent on that Thursday. We did this so the authenticity of the text messages could not be disputed." Next, the Spangenberg lawyers had to overcome a "hearsay" issue—that those texts would be used to prove the truth of what Patricia was saying without other verification. Dustin laid a foundation for the text messages at trial through Patricia's testimony and argued the texts were Patricia's "present sense impressions" of what she was seeing in real-time. The judge agreed.

One of Patricia's texts to her and Jack's daughters on that Thursday read in part: "Something is definitely wrong. He is shaking really bad…This is nothing like he has been." "Dustin was very disciplined," Nick recalls, "and put in only text messages we could absolutely defend on appeal."

Within an hour the jury came back with a unanimous verdict. They awarded the Breckenridge family $6 million dollars. "These jurors saw this case for what it was—nursing home neglect," Nick says, "and it was an honor to represent this family. Jack was a veteran, a blue-collar worker, and he and Patricia raised a wonderful family. He deserved better than this."

That night, the family and the attorneys had dinner at Carlo's Trattoria in Hartville—where all three daughters have worked for over twenty years and where Patricia went back to work when money got tight after Jack's passing. "That dinner," Patricia remembers with a smile, "is the most relaxed I've felt in years." "I know Dustin and Nick are busy," adds Abby, "but honestly, they make you feel like you're their only clients."

"Nursing home corporations like this one can sometimes cut corners and put profits over people—especially when they don't think the life of a 79-year-old man like Jack is worth a whole lot," says Dustin.

"With this case and this verdict, we can help change the math—which will make nursing homes safer for everyone."

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2022 | SPANGENBERG VERDICTS | 2024

- **$17 MILLION**
  ROAD CONST. (DEATH 54/M) I OCTOBER 2022 I CUYAHOGA
- **$7 MILLION**
  MED MAL (DEATH 53/M I OCTOBER 2023 I MAHONING
- **$6.5 MILLION**
  MED MAL (DEATH 52/F) I APRIL 2022 I LORAIN
- **$6 MILLION**
  MED MAL (DEATH 68/F) I FEBRUARY 2023 I CUYAHOGA
- **$6 MILLION**
  NURSING HOME (DEATH 79/M) I APRIL 2024 I SUMMIT
- **$5.8 MILLION**
  AUTO CRASH (DEATH 54/M) I MAY 2022 I ALLEN
- **$1.5 MILLION**
  MED MAL (LOWER LEG AMPUTATION 77/M) I APRIL 2024 I CUYAHOGA

