

OF COUNSEL

A quarterly report
to clients
and attorneys.

VOLUME 01
NUMBER 4

Deputy Recovers Insurance Policy Limits After Favorable Judgment

On April 5, 1998, Deputy Doe pulled off the side of a busy interstate highway to assist a motorist who had run out of gasoline. Deputy Doe walked to the trunk of his patrol car to obtain flares for the roadway to caution approaching motorists. Though it was broad daylight, another motorist approaching the scene ran into the back of the patrol car, pinning Deputy Doe between the two cars. The impact resulted in the traumatic bilateral amputation of both of Deputy Doe's legs. It also resulted in massive injuries to his body, as well as serious head injuries.

The disabled vehicle and the vehicle which struck Deputy Doe from behind were underinsured and uninsured respectively. Consequently, Deputy Doe turned to the coverage carried by his department, on his patrol car, for additional compensation. Florida Statute 768.28 dictates that governmental entities, such as the Sheriff's department in this case, enjoy sovereign immunity with liability limits capped at \$100,000 per injury and a total of \$200,000 per occurrence. Deputy Doe's department chose to be self-insured for the \$100,000/\$200,000 sovereign immunity limits. Over and above that, the department purchased insurance coverage to respond to any claims exceeding the statutory limits.

In the state of Florida, every motor vehicle bodily injury liability policy must provide uninsured motorist coverage with limits equal to the amount of liability coverage provided by the policy. In order to carry lesser uninsured motorist coverage, Florida Statutes require the policyholder to specifically reject the coverage by signing a particular form. **Continued on page nine.**



Accident site where Deputy Doe was injured.

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NOTE: The accounts of recent trials, verdicts and settlements contained in this newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case. Omitting Clients' names and/or Defendants' names are result of requests for anonymity.

Motorcycle Drive Turns Tragic For Newly Married Couple

Mr. Jose Ayala was celebrating 11 years of sobriety. His experiences with alcoholism had led him to help others who were struggling with their own addictions. He counseled more than 60 men at two recovery facilities, Bridge Back to Life and Sober Living in South Florida. As a consequence of his work helping others obtain sobriety, Mr. Ayala was well respected in the local community.

Mr. Ayala and his wife Tina had known each other for several years and were married on April 3, 1999. On Sunday, May 7, 2000, just a year after their wedding date, Mr. and Mrs. Ayala got on their Harley Davidson motorcycle, a recent purchase by Mr. Ayala, and drove northbound on South Ocean Boulevard in Highland Beach, Fla. At the same time, Paul Natalie, a delivery driver for Fratelli's Italian Restaurant, was driving south on South Ocean Boulevard. Without warning, Mr. Natalie turned directly in front of the Ayalas on their motorcycle, leaving them no chance to stop in time or avoid a collision. Both Mr. and Mrs. Ayala were thrown from the motorcycle. Mr. Ayala was pronounced dead later that evening at Delray Beach Community Hospital. Mrs. Ayala sustained severe injuries, including large lacerations and fractured bones in both legs. She had surgery and still is undergoing physical therapy today.

Attorney John Shipley was hired by Mrs. Ayala to investigate and prosecute her case. She was referred by attorney Michael Moskowitz of Moskowitz & Simowitz in Ft. Lauderdale. The insurance company for the restaurant was presented a claim for Mr. Ayala's death. In March of this year, prior to a lawsuit being filed, the insurance company agreed to a confidential settlement for Mr. Ayala's death. With these proceeds, Mrs. Ayala will be able to have some financial security to assist her in overcoming her tragic loss. ■



***Tina and Jose Ayala
on their wedding day,
April 3, 1999.***

Woman Falls Into Coma After Outpatient Surgery

Deborah Pitts was experiencing abdominal pain when she saw her Ob/Gyn, Dr. A, on Aug. 19, 1996. Dr. A immediately recommended that Mrs. Pitts undergo laparoscopic surgery. In spite of the fact that Mrs. Pitts had similar surgeries in the past with no relief, she followed her doctor's advice and agreed to undergo the procedure. Outpatient surgery was scheduled for Sept. 12.

In his operative report, Dr. A indicated that he was unable to gain access to the abdominal cavity with the laparoscope. Dr. A attempted to enter the abdomen a second time, but was again unable to gain entrance.

Suddenly, Mrs. Pitts' heart began to race and her blood pressure plummeted. Suspecting a vascular injury, Dr. A called for a vascular surgeon. In the meantime, Dr. A opened the abdominal cavity and applied pressure to the aorta. Luckily for Mrs. Pitts, a vascular surgeon arrived quickly and began to work frantically to save Mrs. Pitts' life. Massive amounts of fluid were infused into Mrs. Pitts' system. The vascular surgeon was able to document at least four perforations to the aorta, two to the small bowel, and one to the mesentery. Because this particular outpatient surgery center had no blood products, the surgeon was forced to use volume expanders rather than blood, causing Mrs. Pitts' blood to become thin and watery. A nurse described her blood as looking like "pink lemonade."

Once the perforations were mended, Mrs. Pitts was transported to a nearby hospital in extremely poor condition. She was unresponsive and in respiratory failure. Her temperature was 91° and her pupils were fixed and dilated. Fortunately, due to the heroic efforts of the vascular surgeon, Mrs. Pitts survived. Though she had entered the hospital in a coma, she recovered well enough within one week to be released from the hospital.

While Mrs. Pitts is very thankful to be alive, she was left with significant residual effects from the botched laparoscopic surgery. She now has a long, jagged scar running the length of her upper body, which is extremely painful. She undergoes regular injections into the scar site to help ease the pain. The severe loss of blood also affected Mrs. Pitts' cognitive ability. Although she is able hold a responsible position in an office, she suffers from a detectable loss of cognitive function.

Attorney Bill Norton worked closely with the treating physicians and the plaintiffs' experts to document Mrs. Pitts' injuries. After extended litigation, this case was settled for a total of \$520,000. ■



Deborah and Phil Pitts

Firm and Attorneys Selected as Tops in South Florida Legal Guide

The *South Florida Legal Guide* has printed its second annual edition of South Florida's Top Lawyers and Law Firms. **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, David Sales, and Cal Warriner** were among those listed as top lawyers in South Florida. The law firm of Searcy Denney Scarola Barnhart & Shipley was also selected as one of the top firms in the area.

Approximately 5,000 ballots were sent to South Florida lawyers asking them to identify who they would recommend if a family member or loved one needed legal counsel. Those lawyers and law firms mentioned most often then qualified as candidates for the honors. An independent group of lawyers then reviewed the list of qualifiers and made the final selections. In this year's edition, 253 lawyers and 100 law firms have been selected.

The *South Florida Legal Guide* is designed to provide a handy resource tool for individuals, corporate executives, and other attorneys in need of legal representation. ■



Chris Searcy



Earl Denney



Jack Scarola



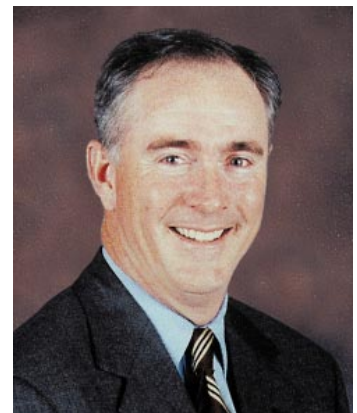
Greg Barnhart



John Shipley



David Sales



Cal Warriner

The Meeting Corner:



Christopher J. Pilato

Searcy Denney Scarola Barnhart & Shipley is pleased to announce the hiring of Christopher J. Pilato as a paralegal. Mr. Pilato will work with attorney Darryl Lewis on primarily personal injury and medical malpractice cases.

Mr. Pilato grew up in Princeton, N.J. He attended the University of Florida and received a bachelor's degree in marketing in 1985. Following graduation, Mr. Pilato joined Allstate Insurance Company where he was a claims analyst and manager for 16 years, specializing in automobile and general liability cases.

As a founding member of the Allstate Political Action Team, Mr. Pilato was involved in various legislative and lobbying efforts. During his tenure, he helped to establish the Hurricane Catastrophe Fund, designed to keep the homeowners' insurance market stabilized during and after hurricane strikes.

Mr. Pilato and his wife, Tracey, reside in Coral Springs. They have been married for 15 years and have three boys, Michael, age 12, Steven, age 8, and Christopher, age 3. Mr. Pilato is active in his church and he coaches Little League Baseball and soccer. ■



L. to r. Amber, Rebecca and Brandon Carroll

Update:

Hospital Settles After Man's Tragic Death

In Vol. 00, Number 4, *Of Counsel* reported on the case of Ronald Carroll. On May 16, 1998, Mr. Carroll, who was employed as a truck driver, was driving from Indiana to St. Petersburg. He began to experience shortness of breath and stopped at an area drug store. The pharmacist, recognizing the serious of Mr. Carroll's situation, called 911. He was transported to Hospital A in Gainesville where he was treated by the emergency room staff and an emergency room physician, Dr. B. In spite of documented chest pain, an abnormal chest x-ray, and an abnormal EKG, Mr. Carroll was discharged and continued to drive the remaining three hours to St. Petersburg. Mr. Carroll died of heart failure shortly after arriving at his home on May 17, leaving behind his wife Rebecca, daughter Amber, and son Brandon.

Attorneys Chris Searcy and Bill Norton previously settled with the emergency room physician for his policy limits of \$1 million. In that case, the hospital and physician had admitted liability in an attempt to cap damages at \$350,000. Mr. Searcy and Mr. Norton cited the [St. Mary's Hospital v. Charles Phillippe](#) case that provides \$350,000 for each claimant, in addition to the economic damages caused by Mr. Carroll's death.

Mr. Searcy and Mr. Norton worked closely with vocational rehabilitation and economic experts. In May of this year, they were able to secure an additional settlement of \$700,000 from Hospital A. The total settlement will provide the Carroll family with a measure of economic security as they cope with the loss of their beloved husband and father. ■

Mrs. K v. West Coast Hospital

Mrs. K was a 39-year-old wife and mother of three who suffered for years with asthma. She used prescribed inhalers on a routine basis to manage her condition. On one particular day, however, Mrs. K had a serious asthmatic flare-up, which required her to go to her local hospital for emergency treatment.

In the emergency room, Mrs. K was promptly triaged and seen by medical personnel. During the first hour, she was monitored, provided medications, and received respiratory therapy to help with her labored breathing. Subsequently, a decision was made by the emergency room physician to intubate Mrs. K to provide her oxygen through an endotracheal tube.

Following the intubation, Mrs. K was placed on a mechanical ventilator to assist in the delivery of oxygen to her lungs. Tragically, the mechanical ventilation equipment was set at a level such that oxygen was being pushed into Mrs. K's lungs, but was not providing enough time for air to be expelled. One of the greatest difficulties for an asthmatic having an attack is the inability to adequately exhale. The mechanical ventilator used on Mrs. K did not provide any assistance in that regard. As the air pressure in Mrs. K's lungs increased, it caused pressure on her heart, thereby causing her to go into cardiac arrest. Once the emergency room team dis-

covered the problem, they attempted to resuscitate Mrs. K, but her heart had been stopped long enough to cause a serious brain injury. Mrs. K went into a coma for a period of months and then passed away.

Attorneys Chris Searcy and Chris Speed were retained to handle this case. As often happens in complex medical cases, which require several weeks to try, this case had been set for trial four different times over the past two years. Once a firm trial date was finally set for this fall, Mr. Searcy and Mr. Speed were able to resolve the case on behalf of Mrs. K's family for \$1.575 million. The majority of the money has been placed into annuities that will provide financial security for Mrs. K's three children. ■

Leasing Company Settles with Family of Deceased Child

On Oct. 31, 1998, a young boy, his older sister, and their cousins were enjoying Halloween night, trick-or-treating. As the group of children crossed a street, the driver of an automobile hit the young boy. The boy, described by his first grade teacher as an angel and a perfect student, was killed.

Attorneys Jack Scarola, Darryl Lewis, and Ellen Brandt were hired by the boy's family to investigate the crash. Witnesses were brought to the scene to show investigators their exact vantage points on the night of the tragic accident. Photo-

graphs of each witness's view were incorporated with other findings to help establish that the driver was negligent.

With strong liability on the driver established, attention was turned to the limited insurance coverage carried by the at-fault driver. However, the driver of the car was operating a vehicle that had been leased under a long-term lease agreement. Generally, a company that leases a vehicle to a lessee under a long-term lease is entitled to enjoy a statutory exemption from liability, provided the company strictly complies with the terms and conditions of the statute. In this case, however, strict compliance of that statute was called into question based on the limited insurance coverage carried by the lessee. Suit was therefore filed against the leasing company.

Arguing strict compliance with the statute governing leasing companies, the company in this case moved for Summary Judgement. At the hearing, Darryl Lewis successfully argued that the leasing company failed to strictly comply with the terms and conditions of the statute. The company's Motion for Summary Judgement was therefore denied and the case proceeded to trial. Several days into the trial, Jack Scarola, Darryl Lewis, and Ellen Brandt reached a confidential settlement with the leasing company on behalf of the deceased child's family. ■



Decisions...Decisions...Decisions...



Woman and Baby Die During Childbirth

Mrs. Doe was a 37-year-old wife and mother, and was preparing to give birth to her third child at a local hospital. It was a beautiful spring-time Saturday afternoon when Mrs. Doe began experiencing contractions. She was admitted to the local hospital and her labor progressed nicely throughout Saturday and into Sunday afternoon.

After being on pitocin for some time, which is a drug administered to augment labor, there was some fluctuation and decrease in Mrs. Doe's baby's heart rate. Out of concern for the well being of the baby, a decision was made to perform a cesarean section on Mrs. Doe.

Mrs. Doe had already been prepped earlier in the day for the potential need for a cesarean section. A line had been inserted for epidural anesthesia. As can sometimes happen when the needle is inserted in the spine for the anesthesia, the needle penetrated into Mrs. Doe's spinal canal rather than stopping in the area outside the canal.

Mrs. Doe received a full dosage of the epidural medication to anesthetize her from the chest down, thereby permitting the surgery to begin. Unfortunately, the anesthesia administered made its way into Mrs. Doe's spinal canal through the hole created when the preparatory tap had been done. This caused Mrs. Doe to experience paralysis of her lungs, preventing her from breathing on her own. Normally, this is a circumstance that, while serious, is easily treated. By intubating her, Mrs. Doe should have been able to

receive proper oxygenation until the epidural anesthetic wore off. Tragically, the life saving effort failed. Mrs. Doe's brain was deprived of oxygen for an extended period of time, and she and her baby died within two days.

...the needle penetrated Mrs. Doe's spinal canal rather than stopping in the area outside the canal.

Mrs. Doe is survived by her husband and two children. Attorneys Chris Searcy and Chris Speed handled the case. They were able to satisfactorily resolve this case in the weeks before trial for a confidential sum in excess of \$1 million. The Doe family intends to use the majority of the money to further the education of the children. It will also be used to replace the income Mrs. Doe had been earning in her full-time occupation. ■

**SEARCY
DENNEY
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BARNHART
& SHIPLEY PA**
*Attorneys
at Law*

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www.searcy.com New Look and Design

On Nov. 26, Searcy Denney Scarola Barnhart & Shipley launched its new and improved internet website. With a bold new look and design, the website is available for you to retrieve information about the law firm, as well as breaking news in the legal and political industries. The website is complete with the following information:

- The firm's history
- What clients can expect from the firm's professional staff
- Complete descriptions of the firm's areas of practice
- Current and past press releases
- Past issues of the firm's newsletter, *Of Counsel*
- News on political happenings in Florida and nationwide, as well as summaries of new cases making law
- The firm's involvement in the community
- Internet links useful to consumers and members of the legal community

The new website also includes photographs and biographies of the firm's 20 attorneys, as well as a new section featuring photographs and biographies of the firm's 17 paralegals. Future sections of the site will also include newspaper clippings featuring the firm's attorneys, clients, and cases.

Please visit the website and write us or give us a call with your thoughts. We'd enjoy hearing from you. ■

Anniversaries

Searcy Denney Scarola Barnhart & Shipley would like to recognize our employees each quarter for their hard work and dedication.

Congratulations to all.

October

10/05	Helen Weaver	14 years
10/05	David W. Gilmore	14 years
10/02	Shirley D. Devin	12 years
10/02	Joseph K. Cain	12 years
10/10	Robin Kriberney	11 years
10/08	Graciela M. Piacentini	9 years
10/01	Christopher K. Speed	7 years
10/18	Angela J. Eckman	5 years
10/20	Beatrice Henry	2 years
10/09	Carole L. Dixon	1 year

November

11/16	Linda M. Miller	18 years
11/05	David R. True	16 years
11/23	Deane L. Cady	14 years
11/15	Thaddeus E. Kulesa	10 years
11/16	David R. Bidmead	7 years
11/28	Jackie A. Hilker	7 years
11/17	Daniel J. Calloway	4 years
11/05	Carla S. DaCunha	2 years
11/29	Margaret H. Jerico	2 years
11/01	Tiffany L. Glasgow	1 year

December

12/03	Mary Susil	17 years
12/10	Lawrence J. Block	17 years
12/22	William H. Seabold	15 years
12/01	Delonzia Ellis	14 years
12/16	Patrick A. Landy	10 years
12/11	Linda D. Calhoun	6 years
12/11	Novik I. Stubbs	5 years
12/23	Brian P. Sullivan	2 years

Favorable Summary Judgment For Injured Deputy

Continued from page one.

However, according to the statute, this rejection requirement only applies to what are deemed to be “primary” policies.

In Deputy Doe’s case, his department’s insurance company took the position that the insurance coverage it had purchased was “excess” coverage, given the fact that they were self-insured up to the statutory \$100,000/\$200,000 cap. By arguing that the policy was not primary, the carrier took the position that it was not subject to the uninsured motorist coverage rejection procedures required by statute. Deputy Doe took the position that the department’s “self-insurance” was not insurance at all, and that the excess insurance coverage purchased by the department was actually the primary insurance policy available to Deputy Doe.

In response to the insurance company’s Motion for Summary Judgment, the court ruled that this policy at issue was indeed a “primary” insurance policy that was subject to the rejection requirements of the Florida statute. Since the carrier had never obtained an appropriate rejection form, the carrier was held responsible for providing excess uninsured motorist protection for Deputy Doe as a matter of law.

Attorneys Chris Searcy and Earl Denney, along with attorney Todd Middlebrooks of Ft. Lauderdale, represented Deputy Doe. In the end, Deputy Doe’s case was resolved for the full amount of his department’s excess coverage, plus an aggregate total of \$300,000 in the coverage provided by his personal insurance policy and the insurance policies carried by the other motorists involved. ■

Curb Stop Causes Woman’s Fall In Parking Lot

Shirley DeVos is an energetic and creative woman. At 80 years of age, she paints and volunteers her time helping others. In 1997, during the holiday season, Ms. DeVos was shopping at the Delray Village Shops. Cars were parked three deep in some places while shoppers hurried into the stores for last minute holiday gifts.

Feeling lucky to have found an empty parking spot, Ms. DeVos parked her car and proceeded to walk between a pathway of cars to her favorite bagel shop. As she rounded the front of her parked car, her foot came in contact with an exposed piece of metal that protruded from a curb stop in disrepair. Ms. DeVos was caught off guard and fell to the ground. Her left elbow sustained the full force of her fall, shattering the bones.

Ms. DeVos was transported to Delray Beach Community Hospital where surgery was required to install hardware into her severely damaged elbow. After being released from the hospital and healing for quite some time, it was later determined by her doctors that a second surgery was required to remove the hardware from Ms. DeVos’s elbow. Throughout her care and treatment, Ms. DeVos endured great pain and discomfort and could no longer give of her time and talents.

Acting on the advice of family members, Ms. DeVos consulted with attorney Philip Stillman of Margate, Fla. He referred the case to attorney David Sales, who later sought the assistance of his colleague, attorney Ellen Brandt, in prosecuting the case.

The lawsuit filed against the premises where Ms. DeVos fell alleged that they had failed to properly maintain the busy parking lot. The defendants denied the allegations, but made a preliminary good faith payment to Ms. DeVos of \$5,000. During a follow-up deposition, Ms. DeVos’ honesty, sincerity, and the extent of her injuries became apparent to the defendants. At mediation, Ms. DeVos’ claims were settled for \$149,000. Ms. DeVos still has limited use of her left arm. She lives with pain on a daily basis, but is attempting to take up painting again and to resume the lifestyle she previously enjoyed. ■



Shirley DeVos showing her injured arm.

Taking... Time to Care

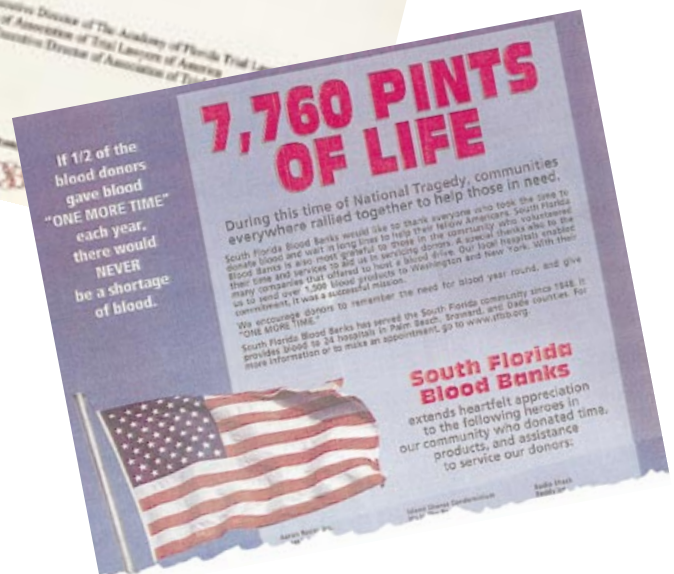
National Day of Prayer

On Friday, Sept. 14, at 12:00 p.m., Searcy Denney Scarola Barnhart & Shipley's employees joined with the rest of the nation in a moment of prayer. The prayer vigil was to honor the thousands of innocent victims who perished as a consequence of the Sept. 11 attacks. Employees gathered outside around the flag in the front of the office as Chris Searcy led the prayer vigil. On that day, employees were also able to leave work early to attend worship services in remembrance of the fallen victims and our nation.

As part of the relief efforts, the law firm and its employees have also taken an active role in raising and donating funds for the relief effort.

Some of the relief activities include:

- \$25,000 donation to Governor Pataki for the New York State World Trade Center Relief Fund;
- \$5,000 donation to the American Lung Association of New York to assist rescuers and victims struggling with respiratory ailments;
- \$735 in American flag t-shirt sales to aid the New York Firefighters 9/11 Disaster Relief Fund;
- \$360 to the South Florida Blood Bank to purchase additional blood bags; and
- \$196 to the Palm Beach County Salvation Army for their relief efforts.



Light The Night Walk

On Friday, Sept. 26, Searcy Denney Scarola Barnhart & Shipley's employees, family members, and friends participated in a walk for the Leukemia and Lymphoma Society in West Palm Beach. The Light the Night Walk is a three-mile walk designed to assist patients and their families and to raise money for research programs. It also raises public awareness about leukemia, lymphoma, and other cancer-related diseases. This year, SDSBS Team walkers raised \$1,037. ■

Front row kneeling l. to r. Jonathan Speed, Lisa Dodds, Dawn Pitts, Jackie Pitts, and Steve, the dog. Second row l. to r. Ashleigh Manke, Cory Rubal, Scott Ovia, Jan Speed, Donna Miller, Marilyn Hoffman, Michelle Holly, Jennifer Manke, and Sally Graziano. Back row l. to r. Chris Speed and Brad Hoffman.



Operation Baby Safe



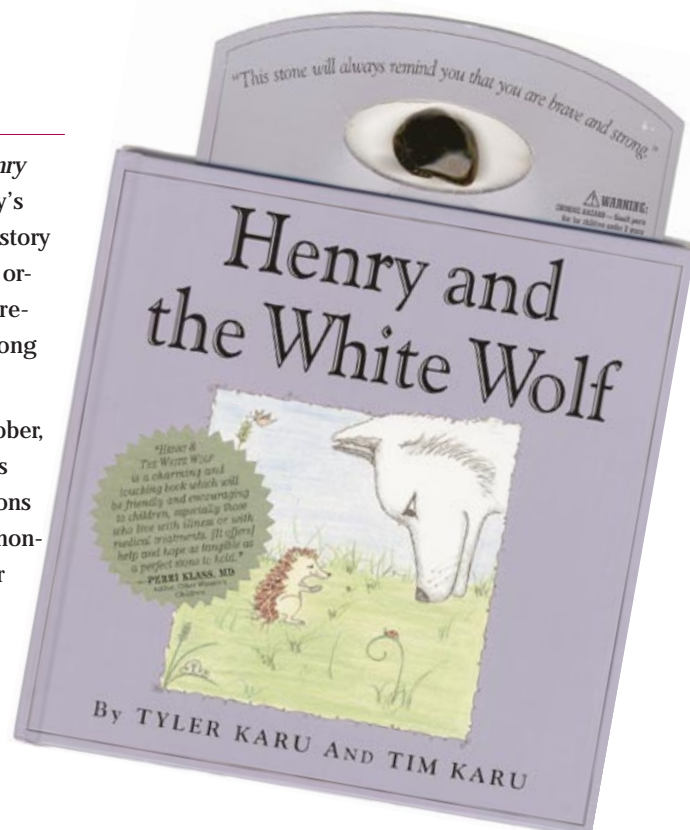
Searcy Denney Scarola Barnhart & Shipley partnered with the Palm Beach County State Attorney's office and the Palm Beach County Community Alliance to produce and air a series of radio and television Public Service Announcements (PSAs). These PSAs were designed to reach teens and young adults who may be considering abandoning their newborn babies.

Called "Operation Baby Safe," the television and radio PSAs instructed young parents and unwed mothers that they can remain anonymous and free from prosecution if they leave their babies at a fire station or hospital within three days of birth. The initiative is part of the Florida Legislature's Abandoned Baby Law, which was passed to reduce the number of infant deaths at the hands of teenage parents. There are currently nine cases in Florida involving mothers charged with abandoning their newborns. ■

Henry and the White Wolf

Searcy Denney Scarola Barnhart & Shipley donated 500 copies of *Henry and the White Wolf* to children in the pediatric cancer unit of St. Mary's Medical Center in West Palm Beach. *Henry and the White Wolf* is the story about a hedgehog that gets sick and undergoes medical treatment in order to get better. Each book comes with a little stone, which helps to remind the children, like the hedgehog in the story, to be brave and strong while receiving their care.

On Tuesday, Oct. 9, and every Tuesday throughout the month of October, Searcy Denney Scarola Barnhart & Shipley attorneys and their spouses read *Henry and the White Wolf* to the children. The storytelling sessions took place bedside and in group playrooms. The firm was graciously honored with a Certificate of Appreciation from St. Mary's Medical Center and the Art in Healthcare staff. ■



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