

A REPORT TO CLIENTS & ATTORNEYS
VOLUME 10 - NUMBER 3

OF COUNSEL

SDSBS: 3, Big Tobacco: 0

The battle continues against the tobacco industry's cover-up of the health risks of smoking and their intentional efforts to addict smokers.

On August 16, 2010, SDSBS attorneys won their third verdict against the tobacco industry after proving once again that tobacco companies had purposefully set about to addict smokers to the nicotine in the cigarettes they sold, sustaining and increasing sales of products that were defective and unreasonably dangerous. A Palm Beach County, Florida, jury awarded the widow of a long-time smoker \$4 million for the wrongful and premature death of her husband. The award was later reduced to just under \$2.5 million after factoring in comparative negligence.

SDSBS attorneys **Jack Scarola, Greg Barnhart, David Sales, and Sia Baker-Barnes**, brought an action on behalf of Liz Plendle against RJ Reynolds Company and Phillip Morris USA, Inc., charging that the to-



bacco companies were responsible for the death of Liz's husband, Charles. Charlie Plendle died in 1996 at the age of 55 years – eight months after he was diagnosed with small cell lung cancer, a disease almost entirely attributed to smoking. Charlie began smoking in his early teens and continued smoking up to two packs of cigarettes a day for over 30 years. He tried to quit numerous times, but failed. "There is a point in addiction where it is no longer about choice," Greg Barnhart told the jurors. "About 95 percent of those who quit will relapse." Charlie was finally able to quit in 1989. It was, however, too late.

The Plendle trial was the first in Palm Beach County to seek damages for an individual smoker. It is one of 8,000 cases filed statewide **Continued on page six.**

Negligent Truck Driver Caused Traffic Accident, Severely Injuring Other Driver



The Andersons with attorneys Jack Hill and Brian Denney.

On December 3, 2007, 59-year-old Niven Anderson was on his way to West Palm Beach to connect with some of his business customers and had stopped his car at a traffic light in Belle Glade, Florida. Without any warning, the flatbed trailer of a passing commercial vehicle swerved from its lane and smashed its left rear tire into Mr. Anderson's car. The truck driver did not stop. Fortunately, a local law enforcement officer was at the intersection when the collision occurred, and the truck driver was stopped and apprehended some distance down the highway. In spite of the obvious physical evidence, and eyewitness accounts of the accident, the truck driver denied having anything to do with the accident.

In March 2007, just nine months prior to this accident, Mr. Anderson had suffered severe injuries when, as a pedestrian, he was struck by a passing motorist. He spent 24 days in a hospital undergoing treatment for a badly broken right leg and a cervical fracture. Through outstanding medical treatment and his own hard work, Mr. Anderson was able to slowly put his life back together. **Continued on page four.**

Class Action Settlement Raises Questions About the Deceptive Practices of Other Propane Providers

Attorney **Jack Scarola** and co-counsel Lance Harke of Harke, Clasby and Bushman settled a class action lawsuit brought under the Florida Unfair and Deceptive Trade Practices Act against Florida Public Utilities. The class representative alleged that the company had been deceiving its customers by charging them a monthly "regulatory compliance fee" when in fact, the company had no regulatory compliance costs. The class included only those customers who buy propane and not those who buy natural gas, which is subject to regulatory compliance costs. The matter was materially handled in less than six months: The case was filed on May 27, 2010 and the Preliminary Approval Order determining the fairness of the settlement was issued on October 7, 2010. The suit settled for just under \$1 million with over 15,000 class members receiving automatic cash refunds of a substantial portion of the amounts they had been wrongfully charged over a four year period. Attorneys' fees were considered separately and will not affect the class' proceeds. Additionally, the company has agreed to change its billing practices so that they are no longer deceptive. The legal team that investigated and corrected the corporate plundering has become aware that other propane providers have been charging similarly deceptive "regulatory compliance fees" when, in fact, no regulations apply to the propane industry as opposed to the natural gas industry which is subject to government regulation.

Heritage Propane and Sawyer Gas are currently being reviewed for practices similar to those in which Florida Public Utilities was engaging. If you have noted such charges in your propane bills from these or any other propane companies and would like to learn more, visit searcylaw.com and fill out the on-line "contact us" form. ♦



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**NEWSLETTER
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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 the result of requests for anonymity.

Ignoring Warnings of Severe Infection, Hospital Proceeds with Elective Surgery

Susie Smith (not her real name) had a history of problems with her left knee, and the problems were beginning to have an adverse effect on her life. Susie, age 46, worked as a licensed practical nurse at a hospital in Florida. After exhausting all conservative treatment, and doing some soul-searching about her condition with her husband, Sam, Susie decided to have a total knee replacement. She consulted with her orthopedist, Dr. Able (not his real name), and was assured that she was an excellent candidate for the procedure.

Susie was admitted to the hospital by Dr. Able on June 3, 2005. She had a history of deep vein thrombosis which required her to take the blood thinner, Coumadin. In order to complete the knee replacement surgery safely, Dr. Able ordered a transition from Coumadin to another blood thinner, Heparin. That process required the placement of a peripherally-inserted central catheter (PICC) in Susie's chest for the continuous administration of the medication. The procedure went well and surgery was scheduled for June 9, 2005, leaving ample time for the transition of the medications.

On the evening of June 8, 2005, Susie Smith spiked a fever of 101.6. Her temperature then increased to 102.2. Hospital protocol for PICC lines required the nurses on duty to notify the on-call physician of any temperature in excess of 101.5. The nurses' notes do not indicate that the on-call physician (or the surgeon or anesthesiologist) was ever notified of Susie Smith's elevated temperatures. The on-call physician later testified that the nurse did call him that evening, but did not inform him of Susie's temperature spike. The patient's chart indicates that the physician just ordered additional pain medication.

The hospital's standing orders also required lab work to be drawn at 4:00 am on June 9th, the morning that surgery was scheduled. The results of the lab work, available shortly thereafter, showed an elevated white blood cell count, indicating an infection. The anesthesiologist's records indicated that she had reviewed Susie Smith's chart, which clearly was not the case. Hospital policies and procedures require that the circulating room nurse review any recent lab results and verify that the patient is fit for surgery. There is no indication that this occurred. The lines of communication between the doctors and other hospital staff were so poor that no one noticed that the surgery should have been halted. The insertion of a

foreign body into a patient with an infection is clearly contraindicated. At virtually every point, the systems designed to protect Mrs. Smith failed. The surgery went forward and the prosthetic knee was inserted.

On June 10, 2005, Susie Smith again spiked a temperature, this time to 105. Blood cultures were ordered and found to be positive for *Serratia marcescens*, a very serious infection.

Susie's internist suspected that the PICC line had become infected and ordered the line replaced and cultured. In spite of the order, the nurses removed the PICC line and threw it away. The culture was never done.

Susie Smith was discharged from the hospital on June 16, 2005, beginning a long medical odyssey. The *Serratia* infection imbedded itself around the prosthesis which had to be removed and replaced several times. Additionally, Susie had to endure long courses of intravenous antibiotic therapy. Ultimately, all efforts to eradicate the infection were unsuccessful. In going forward with an ill-advised, elective surgery, the defendants drove the infection deep into the bones of Susie Smith's left leg, making it impossible to eradicate. On June 29, 2007, Susie's left leg was amputated above the knee.

Shortly after this ordeal, Susie and Sam Smith contacted SDSBS attorney, **Bill Norton**, to request an investigation of Susie's medical treatment.

In the first round of depositions, Mr. Norton was able to elicit testimony from the doctors and nurses, essentially blaming each other. The individual doctors and hospital personnel acknowledged that the surgery should not have gone forward, but each placed the blame on someone other than themselves. As the litigation progressed, the defendants tried to present a uniform front, claiming that Mrs. Smith's infection was a common surgical complication that occurred absent medical negligence.

After protracted litigation and two mediations, Mr. Norton was successful in obtaining a settlement of \$2.95 million to provide for Susie Smith's lifetime medical needs. ♦

In going forward with an ill-advised, elective surgery, the defendants drove the infection deep into the bones of Susie Smith's left leg, making it impossible to eradicate.

Susie Smith's left leg was amputated above the knee.

Negligent truck driver caused traffic accident, severely injuring other driver

(Continued from page one.)

Unfortunately, the injuries caused by this accident made Mr. Anderson's neck and spine more susceptible to further injury should he be involved in another accident. Following the accident caused by the inattentive truck driver in Belle Glade, Mr. Anderson was set back to square one in his physical condition. Because of the damage done by the second accident, he eventually had to endure a four-level cervical fusion of his spine.

Adding insult to injury, trucking company and driver refused to admit responsibility **despite evidence and witnesses.**

The trucking company, Gypsum Express Limited, not only refused to accept responsibility for the injuries caused by their negligent truck driver, but even refused to acknowledge that the crash had happened. Mr. Anderson and his wife, Betty, were forced to file suit in Palm Beach County and sought representation by SDSBS attorneys **Jack Hill** and **Brian Denney**. Fol-

lowing two years of pretrial litigation, they were able to present their case to a jury. The attorneys spent eight days fighting the trucking company's many attempts to explain why it was not responsible for Mr. Anderson's injuries. The trucking company argued that its driver did not hit Mr. Anderson's car, and that, even if the truck had hit the car, Mr. Anderson's problems were the result of a combination of degenerative changes and the March 2007 injuries. The trucking company even blamed the driver of a vehicle behind Mr. Anderson's car, who, in the face of the sudden and unexpected emergency caused by the truck slamming into the Anderson car, had rear-ended the Anderson vehicle. Ultimately, the jury rejected each of the trucking company's excuses. The jury found the company 100% responsible for Niven Anderson's injuries and awarded the Andersons over \$720,000.

"Through their verdict, it is apparent that the jury was able to see through all of the trucking company's laundry list of excuses, right to the heart of the case," said Mr. Hill. Because the defendants had failed to accept the Andersons' offer to settle the case for \$425,000, attorneys Hill and Denney will now seek to recover attorney fees as well. ♦

Speaking Opportunities



Brenda Fulmer spoke at a meeting of the Executive Board of the Florida Alliance for Retired Americans (FLARA) on September 20, 2010 in Tampa, Florida. The subject of her presentation was "Protecting Yourself from Dangerous Drugs." She also spoke on the same subject at an October 21, 2010, meeting of the Mid-Florida UAW Retiree Council in Winter Haven. The subject is very timely and of great concern to many older people. ♦



Karen Terry served as program coordinator for the Palm Beach County Chapter of the American Board of Trial Advocates' seminar on "Masters in Cross-Examination: Cross-Examination and Impeaching Lay and Expert Witnesses." The event was held September 24, 2010, at the Marriott Hotel in Palm Beach Gardens, Florida. ♦



SDSBS Paralegal Mark Poncy also a published novelist



Mark Poncy, paralegal for SDSBS attorney Jack Scarola, is now a published novelist. His book, *Revelation: The Epiphany of Cassandra Phillips*, was published in September 2010 by iUniverse, and is currently available on Amazon.com. The novel is about a DNA scientist who has developed a unique method of translating genetic code that is faster and more accurate than conventional methods. In the process of discovery, she must confront issues that may ultimately define the meaning of life. ♦

Failures to Diagnose Condition in High-Risk Pregnancy Resulted in Mother's Tragic Death

The early months of 2004 represented the most exciting time in the lives of Mr. and Mrs. X and their three young boys. The family had recently relocated to the United States from Sweden and was looking forward to the birth of their fourth child, the little girl they had longed for. In early February, the expectant mother experienced vaginal bleeding and was diagnosed with placenta previa, a condition in which the placenta covers all or part of the cervix. The condition typically requires a cesarean delivery. She was advised to go to the hospital if the bleeding continued. Placenta previa is also a risk factor for a potentially deadly condition called placenta accreta, where the placenta grows beyond the uterine cavity. There are varying degrees of the condition, including circumstances where the placenta extends through the uterine wall and sometimes into other organs. Undiagnosed, placenta accreta can be deadly because of severe bleeding that may occur when the placenta is detached from the uterus.

On February 17, 2004, the expectant mother again noticed that she was bleeding, and she and her husband went to the hospital. The hospital assigned an obstetrician to evaluate the woman and her baby. The obstetrician noted that Mrs. X had major risk factors for placenta accreta – the placenta previa had resulted in the placenta completely covering her cervix; her advanced maternal age; and multiple prior pregnancies including a prior cesarean section. The doctor promptly consulted a perinatologist, a doctor specializing in high-risk pregnancies, who performed an ultrasound-guided amniocentesis and determined that the baby's lungs were mature enough for delivery. He advised the obstetrician that it was safe to proceed with a cesarean section. The perinatologist,

however, had failed to examine the placenta during the ultrasound to determine whether accreta was present. The ultrasound images had also been interpreted by a hospital radiologist, who also failed to make the diagnosis. The obstetrician was led to believe that the woman did not have placenta accreta.

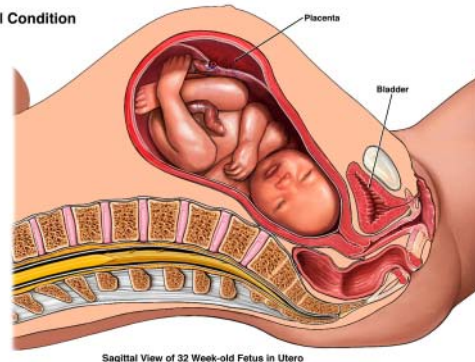
What followed was an operating room catastrophe. The obstetrician began the cesarean section, delivering a healthy baby girl. He then proceeded to remove the placenta. What he did not know was that Mrs. X's placenta had grown through her uterine wall and into her bladder. When the obstetrician removed the placenta, a rush of blood filled her body, resulting in a fountain of uncontrollable bleeding. Mr. X watched in horror, terrified as his wife quickly lost consciousness and went into shock. Doctors were able to temporarily stop the bleeding, but the removal of the placenta had caused large tears in Mrs. X's uterus and bladder. The next day following the tremendous blood loss and shock, Mrs. X died.

Mr. X and their three young boys were devastated. They went from the excitement of welcoming a little girl into the world, to the shock and sadness of losing their beautiful wife and mother. The youngest boy, only three years old, cried all night long for weeks, waiting for his mother to come home. The baby girl never got a chance to meet her mother.

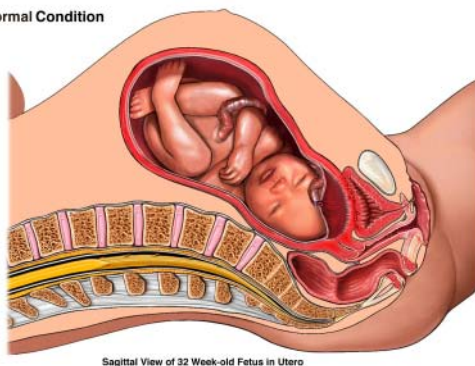
In their quest for answers following their loss, the family

sought the assistance of SDSBS attorneys **Sia Baker-Barnes**, **Bill King**, and **Jack Scarola**. Through detailed investigation and prosecution of this complex case, the team established that the woman's death could have been prevented. The team retained renowned experts in the fields of obstetrics, perinatology, and radiology, all of whom **Continued on page seven.**

Normal Condition



Abnormal Condition



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SDSBS: 3, Big Tobacco: 0

The battle continues against the tobacco industry's cover-up of the health risks of smoking and their intentional efforts to addict smokers.

(Continued from page one.)



(l-r) Liz Piendle with SDSBS attorneys Sia Baker-Barnes, David Sales, Greg Barnhart and Jack Scarola

as a result of a landmark class action suit filed in 1994 by a Miami Beach long-time smoker named Howard Engle. The jury in the Engle case ruled against the tobacco companies in 2000, holding that smoking was addictive and caused a variety of diseases including lung cancer. The jury awarded \$145 billion in damages. In 2006, however, the Florida Supreme Court reversed the award, ruling that each person in the class action must prove his/her damages individually. Since then, SDSBS filed actions against tobacco companies on behalf of two other members of the Engle class action suit. The firm won both of the earlier cases. In August 2009, an Escambia County jury awarded \$7.8 million in compensatory damages to Franklin D. Campbell, Sr., whose wife, Betty, died in 2006 at 64 years of age from chronic obstructive pulmonary disease caused by her addiction to nicotine. SDSBS attorneys **Bill Norton**, **David Sales**, and **Laurie Briggs** represented the plaintiff in that case, filed against Reynolds, Phillip Morris, and Liggett Group. At the announcement of the verdict, David Sales said that while the verdict is important, "people should not forget that nicotine and cigarettes still claim the lives of 440,000 in the country annually, and thousands of other Engle class members are waiting for their day in court."

In April 2010, SDSBS attorneys **Bill Norton**, **Brian Denney**, and **Hardee Bass** obtained a \$21 million

verdict against Reynolds and Liggett Group for the wrongful death of Escambia County resident, Janie Mae Clay. Mrs. Clay began smoking as a teenager and continued smoking for 40 years. She died in 2003 at the age of 58 years from chronic obstructive pulmonary disease caused by smoking. SDSBS represented Mrs. Clay's survivors – her husband, Teddy, their daughter, Janie, and son, Larry. SDSBS is not accepting any additional cases following the Piendle action, since the deadline for filing has passed.

Not surprisingly, the defendant companies in all three cases argued that smoking was a choice and, like millions of other smokers, the plaintiffs could have quit if they chose to do so. The tobacco companies stated that punitive damages should not be awarded against the companies for this reason. Further, the companies argued that since a 1964 surgeon general's report, it was widely known that cigarettes are inherently dangerous. In the Piendle case, they argued that Charlie should have quit smoking. Jack Scarola countered this argument by stating that the tobacco companies minimized the reports from medical experts by producing misleading advertising to persuade consumers, particularly young people, that smoking was "sexy, sophisticated, and safe."

A separate Piendle trial was held to determine punitive damages. In this case, Greg Barnhart and Jack Scarola argued that the tobacco companies could not blame Charlie Piendle for believing their decades-long misinformation campaign. Greg Barnhart told the jury at closing, that if companies lie, deceive, and conceal defective products that kill people, it is not right. "They killed people for profits over safety." The Piendle case drew considerable attention from lawyers throughout the state and a private court reporting firm was

permitted to stream live coverage of the trial online.

As part of the Piendle verdict in the punitive damages trial, the jury found that the conduct of the tobacco companies was egregious and that the companies had put defective and unreasonably dangerous cigarettes on the market, and, therefore, punitive damages were justified. As with the two prior cases, SDSBS was successful in obtaining justice for its clients. ♦

Greg Barnhart told the jury at closing, that if companies lie, deceive, and conceal defective products that kill people, it is not right.

"They killed people for profits over safety."

Failures to diagnose condition in high-risk pregnancy resulted in mother's tragic death

(Continued from page five.)

confirmed that placenta accreta could have, and should have, been diagnosed. Had Mrs. X's doctors properly diagnosed her condition, preventive measures could have been taken to limit the bleeding associated with placenta accreta which would have saved the woman's life. Mrs. X's perinatologist, radiologist, and the hospital vigorously defended the case, arguing that the obstetrician had all the information he needed to prepare for the surgery; that placenta accreta cannot be definitively diagnosed prior to surgery; and that even with preventive measures, Mrs. X's condition was so severe that she would have died anyway.

Key to proving liability in this case was the deposition of the obstetrician. The team was able to establish through his testimony that if the perinatologist and radiologist had advised him that Mrs. X had placenta accreta, he would have transferred her to a high-level hospital and would have sought the assistance of surgical specialists including urological and gynecological surgeons and critical care specialists. Following the deposition of the obstetrician, the perinatologist tendered his insurance policy limits. However, the hospital and radiologist continued to defend the case despite the fact that the radiologist had limited insurance coverage. Just days before trial, the hospital and radiologist settled, with the radiologist paying double his policy limit. The case was resolved in total for \$2.5 million despite statutory limitations on the recovery of non-economic damages. While the settlement proceeds will not bring Mrs. X back to her family, they take comfort in the fact that their efforts in pursuing this case uncovered the truth, and resulted in justice. ♦

Potentially Lethal Combination of Drugs Used to Treat Spider Bite Caused Permanent Damage

In September 2005, a 55-year-old Florida man suffered a spider bite to his left ankle. The man reported the bite to his family doctor who recommended that he treat the bite with a topical ointment. At first, the bite wound appeared to improve, but then began to worsen, and the man was referred to a dermatologist. The dermatologist began treating the wound, but the man's condition worsened and the wound became a red, swollen, ulcerated hole in the man's leg. Eventually, he was referred to an internist whose practice was located in the wound care center of a central Florida hospital.

In October 2006, the man began a lengthy period of care at the hospital's wound care center, under the direction of the internist. The diagnosis at this time indicated that the wound was infected. He was treated with various courses of antibiotics, debridements, and wound care monitoring. For the next eight months, the internist continued to manage the man's worsening infection on an outpatient basis, without consulting with an infectious disease specialist. The wound and infection continued to worsen. In May 2007, the internist elected to administer antibiotic therapy intravenously in an attempt to gain control of the advancing infection. The doctor prescribed and monitored this therapy using home care agencies. Again, he chose not to engage an infectious disease expert for consultation.

The internist ordered a dangerous combination of vancomycin and gentamicin intravenous medications in high dosages. Weeks later, the doctor increased the dosages. Not only did the medications fail to treat the infection, they produced toxic systemic damage. The man began to experience dizziness, loss of balance, ringing in his ears, bouncing vision, and severe headaches. He reported the symptoms to the doctor and to the home health care representatives. The medications were eventually discontinued, but the damage had already occurred. A neurologist later confirmed that, as a result of the combination of antibiotics, the man had suffered permanent toxic damage to his inner ear – a bilateral peripheral vestibulopathy. The treatment left him permanently disabled, requiring him to walk with a cane due to his inability to balance. He continues to suffer from the dizziness, loss of balance, ringing in his ears, bouncing vision, and severe headaches. His life changed dramatically, from being a vibrant husband and father, and an energetic, hard-working assistant principal, to someone who cannot walk or stand without assistance.

Believing that it was medical negligence that had caused his permanent disabilities, the man and his wife sought the assistance of SDSBS attorney **Sia Baker-Barnes**. Shortly after filing suit against the doctor and the hospital, Ms. Baker-Barnes was able to obtain a substantial settlement on behalf of the man and his wife. The amount of the settlement and the names of the parties remain confidential. ♦

Help Stop Government Waste

The federal government recently announced two separate settlements against major pharmaceutical companies. One company had been actively promoting the “off label” use of one of its prescription products leading to the improper expenditure of government funds to reimburse product purchasers. While “off label” use (the use of drugs by physicians in ways not expressly approved by the Food & Drug Administration) is not itself illegal, drug manufacturers are not permitted to promote the use of their products for purposes for which they have not been tested, reviewed, and sanctioned by the FDA. The company’s improper conduct cost it \$600 million. A significant aspect of this case was that it was initiated through private citizen complaints. The four individuals who alerted the federal government to the improper practices shared an incentive fee of over \$37 million. The second settlement for \$750 million involved the marketing of pharmaceuticals that lacked the proper ingredient mix. The whistleblower, a former quality assurance manager for the manufacturer, will receive \$96 million out of the government’s recovery. This is reportedly the largest payment in U.S. history for a single individual involved in alerting the government to fraudulent practices.

These are just two examples of many instances where concerned individuals have been handsomely rewarded when they recognized and reported circumstances in which state or federal agencies have been defrauded, leading to the successful prosecution of claims under the Federal False Claims Act. Commenting on such claims, referred to as *qui tam* actions, Sen. Charles Grassley (R-IA) and Rep. Howard Berman (D-CA) noted:

“Studies estimate the fraud deterred thus far by the *qui tam* provisions (of federal law) runs into the hundreds of billions of dollars. Instead of encouraging or rewarding a culture of deceit, corporations now spend substantial sums on sophisticated and meaningful compliance programs. That change in the corporate culture—and in values-based decisions that ordinary Americans make daily in the workplace—may be the law’s most durable legacy.”

Nevertheless, government alone, with its limited resources, remains overmatched in the fight against fraud. The False Claims Act creates a powerful public-private partnership for uncovering and combating the extensive fraud that still costs American taxpayers billions of dollars every year.

The opportunity for public service and the chance to be financially rewarded for assistance in putting a stop to fraudulent practices that take money out of all our pockets should be strong motivations to step forward when you suspect that the government is the victim of fraud.

WHO THE LAW APPLIES TO

In general, the False Claims Act covers fraud involving any federally funded contract or program, with the exception of tax fraud.

While many *qui tam* actions in the late 1980’s and early 1990’s involved Department of Defense contracts, in recent years most *qui tam* actions have been used to fight Medicare fraud and fraud against other federally funded health care programs. A broad array of scenarios can constitute FCA violations. Some examples include the following:

- A contractor falsifies test results or other information regarding the quality or cost of products it sells to the government;
- A health care provider bills Medicare for services that were not performed or were unnecessary, or;
- A grant recipient charges the government for costs not related to the grant.

TYPES OF FRAUD PROSECUTED UNDER THE FCA

The following list gives some idea of the scope of the false claims on the government that have been uncovered to date:

- Billing for goods and services that were never delivered or rendered.
- Billing for marketing, lobbying or other non-contract related corporate activities.
- Submitting false service records or samples in order to show better-than-actual performance.
- Presenting broken or untested equipment as operational and tested.
- Performing inappropriate or unnecessary medical procedures in order to increase Medicare reimbursement.
- Billing for work or tests not performed.
- Billing for premium equipment but actually providing inferior equipment.
- Automatically running a lab test whenever the results of some other test fall within a certain range, even though the second test was not specifically requested.
- Defective testing—Certifying that something has passed a test, when in fact it has not.
- Unbundling—using multiple billing codes instead of one billing code for a drug panel test in order to increase remuneration.
- Bundling—Billing more for a panel of tests when a single test was asked for.

- Double billing—Charging more than once for the same goods or service.
- Upcoding—Inflating bills by using diagnosis billing codes that suggest a more expensive illness or treatment.
- Billing for brand—Billing for brand-named drugs when generic drugs are actually provided.
- Phantom employees and doctored time slips; Charging for employees that were not actually on the job, or billing for made-up hours in order to maximize reimbursements.
- Upcoding employee work: Billing at doctor rates for work that was actually conducted by a nurse or resident intern.
- Failing to report known product defects in order to be able to continue to sell or bill the government for the product.
- Billing for research that was never conducted; falsifying research data that was paid for by the U.S. Government.
- Winning a contract through kickbacks or bribes.
- Prescribing a medicine or recommending a type of treatment or diagnosis regimen in order to win kickbacks from hospitals, labs or pharmaceutical companies.
- Billing for unlicensed or unapproved drugs.
- Forging physician signatures when such signatures are required for reimbursement from Medicare or Medicaid.

SDSBS and Nine Attorneys Named “Best Firm” and “Lawyers” by U.S. News-Best Lawyers’ Publication



Chris Searcy



Jack Scarola



Greg Barnhart



John Shipley



Darryl Lewis



David Sales



Chris Speed



Karen Terry



Cal Warriner

SDSBS has been ranked at the Tier 1 level in the metropolitan area of West Palm Beach by U.S. News Media Group-Best Lawyers 2010 Inaugural Edition Best Law Firms in plaintiff practice areas of mass tort litigation/class actions, medical malpractice law, personal injury litigation, and product liability litigation. SDSBS was ranked by the publication at the Tier 2 level in general commercial litigation. *Best Lawyers*, a peer-review publication in the legal profession, partnered with U.S. News Media Group to survey thousands of leading lawyers and law firm clients, managers, marketing officers, and recruiting officers, on factors considered important in the selection of an effective and successful law firm. The firms that were reviewed were then ranked in 81 practice areas in 171 metropolitan areas and seven states. *The Best Law Firms* publication also listed the following SDSBS attorneys as the best lawyers in the noted areas of practice: **Chris Searcy** (medical malpractice, personal injury, and product liability); **Jack Scarola** (commercial, mass tort, medical malpractice, personal injury, and ‘bet-the-company’ litigation); **Greg Barnhart** (medical malpractice and personal injury); **John Shipley** (medical malpractice); **Darryl Lewis** (medical malpractice); **David Sales** (legal malpractice and product liability); **Chris Speed** (personal injury); **Karen Terry** (medical malpractice and personal injury); **Cal Warriner** (personal injury). ♦

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A Passion for Justice

if you believe you may have information that the government is being deceived into paying for goods or services that are not really being provided the way they should be.

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(l-r) Edrick Barnes, Sia Barnes, Darryl Lewis, Debbie Malone, Thomas Malone, Salonia Lewis.

SDSBS sponsors gala for Just the Beginning Foundation whose goal is to increase diversity in the legal and judicial professions

SDSBS was a sponsor of the Just the Beginning Foundation's gala held October 2, 2010, in Atlanta, Georgia. JTBF was founded as a multiracial not-for-profit organization of judges, lawyers, and citizens brought together to preserve the rich stories of the legal profession's members of color. The lessons learned from these trailblazers inspired the organization to develop programs that would open the pipeline of opportunity for young people with diverse backgrounds. JTBF's long-term goal is to increase diversity in the legal profession and on the federal bench. ♦

SDSBS participates as a sponsor of National Coalition of 100 Black Women's 'Power Breakfast 2010'

SDSBS was a sponsor of the National Coalition of 100 Black Women's "Power Breakfast 2010," held September 22, 2010, at the Airport Hilton in West Palm Beach, Florida. The featured speaker was Walter A. McNeil, secretary of the Florida Department of Corrections. He spoke about methods used to reduce crime in the community. ♦

Photo at right: Rosalyn Baker, Secretary Walter A. McNeil, and SDSBS attorney Sia Barnes.



Chris Searcy selected as one of Lawdragon Magazine's 2010 list of "500 Leading Lawyers in America"

In May 2010, **Chris Searcy** was selected as one of the "2010 Lawdragon 500 Leading Lawyers in America." Lawdragon, a leading provider of guides to the legal profession and legal news, publishes Lawdragon Magazine. The "Lawdragon 500" listing, published annually in the fall edition of the magazine, is the ultimate guide to the best lawyers in the nation, representing less than 1% of the legal profession. The selection process involves extensive online nominations and balloting followed by independent research and surveying to identify the top practitioners in any region or practice field who display intellect, passion, judgment, dedication, and extraordinary achievement. ♦



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Seriously Injured Bicyclist Learns the Importance of Having Uninsured/Underinsured Motor Vehicle Insurance

On a beautiful evening in July 2010, Mr. K, a thirty-five-year-old computer analyst, was riding his bicycle on a sidewalk in downtown Oviedo, Florida. Suddenly, a motor vehicle operated by twenty-eight-year-old Ms. W pulled out of a parking lot and drove head-on into Mr. K, throwing him violently onto the pavement. Witnesses later stated that Ms. W's car actually ran over Mr. K's left leg.

Police and emergency medical technicians were summoned and Mr. K was taken to the emergency room of Florida Hospital. Examination at the hospital revealed that Mr. K had suffered a bicondylar tibial plateau fracture. He was immediately taken to surgery where he underwent an open reduction with internal fixation requiring a tibial locking plate, multiple locking screws, and hardware.

The surgery was successful and Mr. K was discharged to a regimen of physical therapy. Unfortunately, like so many of our fellow citizens today, Mr. K had been out of work for some time. Although he had very recently been hired by an excellent company, his

new health insurance coverage would not begin until he had been on the new employer's rolls for 90 days.

Both Mr. and Mrs. K were frantic. How would they provide for their three children? What if Mr. K suffered complications regarding his injury? What if another surgery was necessary? How would the family survive? How were they going to be able to pay the \$65,000 in medical bills that Mr. K had already incurred for treatment and care?

Mrs. K contacted a local law firm for help in recovering costs for the damages caused by the accident. That firm expressed concern about whether or not there was adequate coverage under Ms. W's insurance policy, and stated that they "were not sure we can help." She next turned to Ohio attorney Frederick Weisman who referred her to SDSBS attorney **Chris Searcy**. Both Mr. Weisman and Mr. Searcy are fellow members of the International Association of Trial Lawyers. Mr. Searcy is currently serving as president of IATL.



Chris Searcy, along with SDSBS attorneys **Karen Terry** and **Brian Sullivan**, investigated the case and the available liability coverage. Unfortunately, but not surprisingly, they quickly learned that Ms. W had only \$10,000 in bodily injury coverage, a woefully inadequate amount for the serious and permanent injuries she had caused Mr. K. The state of Florida does not require drivers to have bodily injury liability insurance (an amount available to be paid should the at-fault, covered driver cause an accident involving injury). It is estimated that 35% to 40% of Florida motor vehicle drivers do not have any liability insurance coverage which would permit an injured party to seek recovery for injuries and costs.

Fortunately, however, Mr. and Mrs. K had purchased uninsured-underinsured motorist coverage (UM) from their own insurance provider. Purchase of this coverage allows a non-negligent party who is injured by a negligent motorist to recover for their injuries from their own insurance carrier, should the at-fault driver be found uninsured or underinsured.

The SDSBS attorneys made an immediate demand on Ms. W's bodily injury policy limits. Upon securing the negligent driver's policy limits, the attorneys demanded that Mr. and Mrs. K's insurance carrier provide the full and complete limits of their uninsured-underinsured motorist coverage. Within 30 days, Mr. and Mrs. K's insurance carrier agreed to tender its full policy limits, resulting in a six-figure recovery.

Everyone reading this article should review their own insurance coverage to ensure that they are covered by uninsured/underinsured motorist protection. It may be arguably the most important insurance coverage a Florida resident can purchase.

The K family's substantial medical and hospital bills were then successfully negotiated by SDSBS attorneys to conform to their limited recovery in this case, allowing the K family a significant net recovery. The K family discovered the importance of careful planning in selecting insurance coverage. ♦



SDSBS paralegal Debbie Knapp presents keys to her family's home to the new owner and her children.

SDSBS paralegal Debbie Knapp and family recognized by Habitat for Humanity for their generous donation of family home

SDSBS paralegal **Debbie Knapp** was recognized in September 2010 for her donation of her family home to Habitat for Humanity. "Habitat" is a non-profit organization dedicated to the elimination of sub-standard housing by building or rehabilitating simple, decent, safe, and affordable houses for low-income, hardworking qualified families in partnership with community volunteers, and local organizations.

More than fifty years ago, Debbie and her family lived in the three-bedroom/one-bath home on Date Palm Drive, Lake Park, Florida. Her father, Phillip R. Scott, had been a U. S. Air Force pilot during World War II. His B24 plane was shot down over Austria. He managed to survive several days adrift at sea until he was rescued and taken to a small island off the coast of Italy – the sole survivor of the incident. Eventually, he received a medal for his bravery and an honorable discharge. He returned to his family stateside and began a second career at Pratt & Whitney in Connecticut, later transferring to the Palm Beach Gardens plant and into a new home in Lake Park, Florida.

The Knapp and Scott families wanted to give back to their community and to the Town of Lake Park, and decided to donate their family home so that another family could benefit from the experience of having their own home. The new homeowners are Jomekeyia McNeil and her three sons, Ramon, 9; Dakota, 5; and Tarvarus, 4. They are thrilled with the opportunity to build fond memories in a house that already has 50 years of wonderful family memories. ♦

www.habitatpbc.org

Accolades



Greg Barnhart elected chair of Fourth District Court of Appeal's Judicial Nominating Commission

Greg Barnhart was unanimously elected chair of the Fourth District Court of Appeal's Judicial Nominating Commission. Members of the Commission are appointed by the governor of Florida. The Commission conducts formal interviews of judges and lawyers, selecting applicants to send to the governor as nominees for appointment to the Fourth District Court of Appeal. The Court's jurisdiction covers Florida from Vero Beach south to Fort Lauderdale and west to Lake Okeechobee. Florida is one of the few states that use this selection process to ensure that the governor has access to a list of the most talented people available for nomination. Mr. Barnhart was appointed to the Court by Governor Crist after being recommended by the Board of Governors of the Florida Bar. ♦



Jim Gustafson selected for membership to American Board of Trial Advocates

In October 2010, Jim Gustafson was admitted to membership in the American Board of Trial Advocates. ABOTA's mission is to elevate the standards of integrity, honor, and courtesy within the legal profession. The organization aids in educating and training trial lawyers, preserving our jury system, and improving procedures within the present trial court system. ♦



Earl Denney accepted into the Craig S. Barnard Chapter of the American Inns of Court

In August 2010, **Earl Denney** was accepted into the Craig S. Barnard Chapter of the American Inns of Court LIV. American Inns of Court actively involve more than 25,000 state, federal, and administrative law judges, attorneys, legal scholars, and law students. The Inns are designed to improve the skills, professionalism, and ethics of the bench and bar. Most Inns concentrate on issues surrounding civil and criminal litigation practice, meeting about once per month to hold programs and discussions on litigation issues. ♦



Sia Baker-Barnes appointed chair of Palm Beach County Bar's Personal Injury/Wrongful Death CLE Committee

In June 2010, **Sia Baker-Barnes** was appointed chair of the Palm Beach County Bar Association's Personal Injury/Wrongful Death Continuing Legal Education Committee. The Committee is responsible for developing seminars to assist practitioners in improving their practice in these areas of the law. Ms. Baker-Barnes also serves on the Association's Committee for Diversity and Inclusion, co-chairing the Marketing Subcommittee responsible for development of the diversity website and brochure. ♦



The Inner Circle of Advocates
100 OF THE BEST PLAINTIFF LAWYERS IN THE U.S.



Chris and Priscilla Searcy with acting President Mark Davis.

Chris Searcy inducted into Inner Circle of Advocates as one of 100 lawyers considered best in the country

In August 2010, attorney **Chris Searcy** was inducted as a member of the Inner Circle of Advocates, an invitation-only organization of civil plaintiff trial lawyers. The Inner Circle of Advocates is limited to only 100 lawyers considered to be the best in the country. To qualify for invitation, attorneys must have tried at least 50 personal injury trials and must have won at least three verdicts in excess of \$1 million, or one verdict in excess of \$10 million, for their clients within the past five years. According to Mark S. Davis, president of the Inner Circle of Advocates, Mr. Searcy was invited to join the organization "because of his extraordinary career and remarkable successes in the courtroom. He is a person who is universally respected among his peers and one of the great trial lawyers in the United States."

"The invitation to join the Inner Circle of Advocates is quite an honor," said Mr. Searcy, upon receiving the invitation this past spring. "The organization exemplifies my personal philosophy of advocacy, which involves achieving justice for clients, and achieving change for the good of society as a whole." ♦



SDSBS employees participate in 16th annual Buddy Walk to benefit Gold Coast Down Syndrome Organization

SDSBS employees participated in the 16th Annual Buddy Walk to support the Gold Coast Down Syndrome Organization of Palm Beach County. The Walk, held October 17, 2010, at the John Prince Park in Lake Worth, Florida, raised a total of \$120,000. Close to 2,500 people were in attendance. The Gold Coast Down Syndrome Organization is a driving force in raising awareness and advocating for high expectations and acceptance of individuals with Down syndrome. Funds raised by the Buddy Walk support projects focused on education and advocacy. ♦ www.goldcoastdownsyndrome.org

SDSBS employees and friends active in 25th annual International Coastal Cleanup by Ocean Conservancy

SDSBS employees and friends, including Marilyn and Brad Hoffman, Robin, Randy, Mandi and April Kriberney participated in the 25th Annual International Coastal Cleanup sponsored by The Ocean Conservancy, the world's largest organization focusing exclusively on the health of the marine environment. Volunteers gathered on September 25, 2010, at one of Palm Beach County's cleanup locations coordinated by Keep Palm Beach County Beautiful, Inc. The volunteers do much more than remove trash. By using detailed, standardized records about the types and sources of debris found, the organizations can raise awareness of the impact on wildlife and habitat, and assist in the enforcement of regulations against illegal dumping. ♦ www.keeppbcbeautiful.org



Taking...

Time to Care



Safe Harbor Animal Hospital and Sanctuary aided during drive for supplies and cash donations by SDSBS and its employees

SDSBS and its employees participated in a drive sponsored by the Florida Association of Women Lawyers to obtain supplies and cash donations for the Safe Harbor Animal Hospital and Sanctuary located in Jupiter and Palm City, Florida. The firm provided a drop-off box in its lobby during September 2010 for the collection of supplies. The drive gathered pet bedding materials, cat and dog food, garbage bags, cat litter, cleaning supplies, and cash donations. The Sanctuary is a 'no-kill' animal shelter that has been located in the Jupiter area for 25 years. ♦ www.safeharborrescue.com



SDSBS employees and family members volunteer in 2010 Jerry Lewis MDA Telethon

SDSBS employees and family members volunteered their time to answer telephones during the 2010 Jerry Lewis MDA Telethon held September 6, 2010. The telethon was broadcast on WTVX CW Network in West Palm Beach, Florida. SDSBS participants included **Brenda, Bob, and Mollie Fulmer, Logan Wiggins, Roger Katz, Tammy Grass, AnneMarie and Craig Simon, Olga Paterson, Suzanne Mabie, and Hardee Bass.** Brenda Fulmer presented MDA a check for \$3,000 in contributions raised during her "incarceration" in the "MDA Lock-Up." ♦

www.mdausa.org



Pat Quinlan runs in 26.2 mile San Diego fundraising marathon to benefit Leukemia & Lymphoma Society with Palm Beach County Team raising over \$60,000

Pat Quinlan completed the 2010 San Diego Rock and Roll Marathon held in June 2010 to benefit the Leukemia & Lymphoma Society. The annual 26.2 mile race had around 30,000 participants this year. Pat's personal efforts raised over \$5,200 for LLS, and the Palm Beach County Team raised over \$60,000 for LSS. Nearly \$13 million was raised by the entire 'Team in Training' at the San Diego race. "Most of these dollars will go toward funding the research that I believe will, one day soon, cure pediatric leukemia," said Pat. ♦

www.leukemia-lymphoma.org

SDSBS employees and friends sponsor School Uniform Exchange by collecting, distributing clothing for families in need

SDSBS helped sponsor the Second Annual School Uniform Exchange held in August in West Palm Beach. The event was a huge success in its efforts to collect and distribute school uniforms for children in families in need of assistance. Over 1,200 uniform pieces were distributed to over 250 families, a nearly 300% increase over the number of items distributed in 2009. The event attracted 82 volunteers to help clean, mend, iron, and distribute the clothing. Participating in the event were SDSBS employees **Joan Williams, Cathy Coia, and Brenda Fulmer,** joined by Brenda's husband, **Bob,** and their daughter, **Mollie.** ♦

For more information: 561-478-4115 or email karenwilkerson4498@comcast.net



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