

A REPORT TO CLIENTS & ATTORNEYS  
VOLUME 10 - NUMBER 2

# OF COUNSEL

## \$21 Million Verdict Won After Proving Tobacco Companies Intended Nicotine Addiction

On April 14, 2010, SDSBS attorneys **Bill Norton**, **Brian Denney**, and **Hardee Bass** won a \$21 million verdict against tobacco companies R. J. Reynolds Company and Liggett Group for the wrongful death of long-time smoker, Janie Mae Clay. An Escambia County, Florida, jury awarded Janie Mae's survivors, Teddy, Janie, and Larry Clay, \$3.4 million for compensatory damages and another \$18 million for punitive damages against Reynolds and Liggett.

Janie Mae Clay was a bus driver working for the Head Start Program and the Escambia County School Board. Janie Mae's husband, Teddy, whom she loved deeply, was born into a sharecropping family in rural Alabama in 1935. By the time Teddy was seven years of age he was working in the fields and by age 12 he was working as a pulp wooder. Eventually he started his own pulp wood business. Teddy never had a chance to go to school and could not read or write. Throughout their married life, Janie Mae helped her husband manage his business, not only performing the business tasks that had to be done, but working alongside her husband hauling timber out of the north Florida woods.

Their daughter, Janie, now an adult, was developmentally delayed and had lived with her parents until Janie Mae's death. With Janie Mae's daily care, daughter Janie had been able to accomplish many of life's routine milestones, including gainful employment in a job she loved. Their son, Larry, relied on Janie Mae for advice and guidance as he grew up in the family's home. Janie Mae Clay was, indeed, the centerpiece of a close and loving family.

Janie Mae began smoking as a teenager in 1958. Despite numerous attempts to quit, she continued smoking for 40 years, until she was diagnosed in 1998 with chronic obstructive pulmonary disease (COPD) caused by the cigarettes. Her final effort to quit smoking came too late. In 2003, Janie Mae Clay died of COPD at the age of 58.



Her family sat with her to the end, as she struggled for each breath. They prayed for her survival.

Mrs. Clay's family sought representation by SDSBS attorneys, who charged the tobacco companies with her wrongful death due to the addiction caused by nicotine in the cigarettes. The Clay case is one of thousands of cases filed in Florida, and one of a series of recent verdicts that have ruled against the tobacco companies. The tobacco companies argued that Mrs. Clay was not addicted to nicotine, and that she could have stopped smoking at any time had she wished to do so. Prior to trial, the Clay family had offered to settle the case with Reynolds for \$75,000, and with Liggett for \$25,000. Each company rejected the offer. Motions for the imposition of attorneys' fees and costs are pending.

Through the use of tobacco companies' documents, plaintiff's attorneys demonstrated to jurors that the industry had set about to addict smokers to the nicotine in cigarettes and to maintain that addiction at all costs. Documents presented showed that the companies had privately admitted the addictive nature of their products. The tobacco companies had actually expressed satisfaction that their products were addictive. They continued to sell billions of dollars worth of cigarettes despite the knowledge that long-term smokers would likely die of smoking-related illnesses such as COPD.

Not surprisingly, the tobacco companies argued that smoking was merely a matter of choice, and that punitive damages should not be awarded against the companies. The jury found that the actions of the tobacco companies, during the 50-year cover-up of the effects of smoking on health, exhibited a reckless indifference to the health and safety of the public. They awarded \$18 million in punitive damages. Mrs. Clay's family takes comfort in the fact that the Escambia County jury understood their loss and administered justice on their behalf. ♦

Through the use of tobacco companies' documents, plaintiff's attorneys demonstrated **that the industry had set about to addict smokers to the nicotine in cigarettes.**

**SDSBS  
Attorney  
Chris Searcy  
Inducted as  
President of  
IATL**  
(Page two)

## SDSBS Attorney Chris Searcy Inducted as President of the International Academy of Trial Lawyers

SDSBS attorney **Chris Searcy** was inducted as president of the International Academy of Trial Lawyers at their April 2010 annual meeting in Phoenix, Arizona. The IATL is an invitation-only organization of trial lawyers representing both sides of the Bar – prosecutors and defense attorneys in criminal cases, and plaintiff and defense counsel in civil litigation. The Academy's bylaws limit U. S. Fellowship to just 500 active trial lawyers. While the majority of the Fellows are from the United States, the Academy includes attorneys from more than 30 countries.

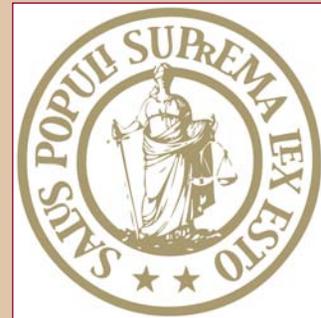
Mr. Searcy previously served as vice-president of the IATL. He has been recognized numerous times as one of the most highly respected attorneys in Florida, and in the United States, by publications such as the *Best Lawyers in America*, *South Florida Legal Guide*, and *Florida Super Lawyers*.

"My induction as president of the IATL is an honor," said Mr. Searcy. "The organization exemplifies my personal philosophy of advocacy, which is a quest for justice to protect standards of fairness on behalf of people whose rights have been violated." ♦



*Chris and Priscilla Searcy with outgoing IATL President Dennis Suplee and his wife Pat.*

*The IATL, founded in 1954, cultivates the science of jurisprudence; promotes reforms in the law; facilitates the administration of justice; elevates the standards of integrity, honor, and courtesy in the legal profession; and cherishes the spirit of brotherhood among members.*



### SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA Attorneys at Law

*A Passion for Justice™*



2139 PALM BEACH LAKES BLVD.  
WEST PALM BEACH, FLORIDA 33409  
TOLL FREE: 800-780-8607  
LOCAL: 561-686-6300  
FAX: 561-478-0754



THE TOWLE HOUSE  
517 NORTH CALHOUN STREET  
TALLAHASSEE, FLORIDA 32301  
TOLL FREE: 888-549-7011  
LOCAL: 850-224-7600  
FAX: 850-224-7602

#### ATTORNEYS AT LAW:

ROSALYN SIA BAKER-BARNES  
F. GREGORY BARNHART  
T. HARDEE BASS III  
LAURIE J. BRIGGS  
BRIAN R. DENNEY  
EARL L. DENNEY, JR.  
BRENDA S. FULMER  
JAMES W. GUSTAFSON, JR.  
JACK P. HILL  
DAVID K. KELLEY, JR.  
WILLIAM B. KING  
DARRYL L. LEWIS  
WILLIAM A. NORTON  
PATRICK E. QUINLAN  
EDWARD V. RICCI  
DAVID J. SALES  
JACK SCAROLA  
CHRISTIAN D. SEARCY  
JOHN A. SHIPLEY  
CHRISTOPHER K. SPEED  
BRIAN P. SULLIVAN  
KAREN E. TERRY  
C. CALVIN WARRINER III

#### PARALEGALS:

VIVIAN AYAN-TEJEDA  
ALYSSA A. DIEDWARDO  
RANDY M. DUFRESNE  
DAVID W. GILMORE  
JOHN C. HOPKINS  
DEBORAH M. KNAPP  
VINCENT LEONARD  
J. PETER LOVE  
CHRISTOPHER J. PILATO  
ROBERT W. PITCHER  
MARK PONCY  
KATHLEEN SIMON  
STEVE M. SMITH  
BONNIE STARK  
WALTER STEIN

#### WEBSITE:

[WWW.SEARCYLAW.COM](http://WWW.SEARCYLAW.COM)

### OF COUNSEL

NEWSLETTER  
VOLUME 10 NUMBER 2

MANAGER: JOAN WILLIAMS  
EDITORS: DIANE TRUMAN & PAULINE MUELLER  
ASSOCIATE EDITOR: ROBIN KRIBERNEY  
CREATIVE DIRECTOR: DE CARTERBROWN

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.

## Disregard of Physical Therapy Evaluation Results in Neurological Impairment

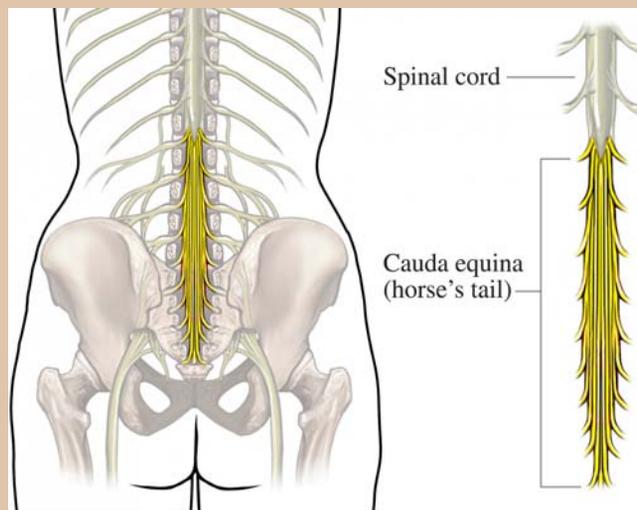
A 70-year-old man weighing 250 pounds was admitted to a south Florida hospital for hip replacement surgery. Imaging studies depicted severe arthritis and all medical evaluations concluded that the hip surgery was indicated. The patient had a past history of back problems and told the nurses, on admission to the hospital, that he had a "disc" in his back. The operating surgeon requested his medical records from another state. Those records indicated that the patient had suffered intermittent back problems. He was medically cleared for surgery, and the hip replacement was performed.

On the first postoperative day, he had the usual complaints of pain in his hip due to the surgery. Medication was administered for pain relief. On the second postoperative day, he had some numbness in the foot of the operated leg. A covering orthopedic surgeon examined him and found that he had a

peroneal nerve palsy. This can be a complication of hip surgery. That same day, in the morning, a physical therapist saw the patient. She tried to get him out of bed, and he was unable to stand. On evaluation of his lower extremities, she found that the patient's feet had neither reflexes nor muscular control. This was entered into the patient's physical therapy record as four zeros in the area of each of the reflex areas on each foot. He had a classical "drop foot". This meant he could not dorsiflex his toes towards his knees. The therapist did not verbally report her findings to anyone. No other nurse or physician read the written physical therapy report.

The patient's lower extremity symptoms began to worsen, and the physicians requested a neurological evaluation. The order was noted by a nurse, indicating that the consultant was called. The neurological consultant testified that he was never called. On the third postoperative day, the patient was examined again, and at that time, the physicians felt that he

had severe neurological sequela which probably represented cauda equina syndrome. They could not get him into an MRI because he was too large. When they finally were able to do a study, it revealed that he had incurred a large herniated disc that was encroaching on an area of his spine called cauda equina. As noted in the picture, it is a bundle of filaments or nerves that form at the first lumbar vertebra and distribute downward like a horse's tail. Cauda equina in Latin means "horse's tail".



Medical Illustration Copyright © 2010 Nucleus Medical Media, All rights reserved. www.nucleuminc.com

Medical literature has conflicting information regarding whether or not early surgical intervention can resolve the symptoms of a cauda equina impingement. Some authorities indicate that surgery will not alleviate cauda equina symptoms once the symptoms become evident. Other studies indicate that the earlier the surgery is done, the better the outcome.

Obviously, the defense took the former position, and plaintiff the latter. By the time he was operated on, he had bowel and bladder incontinence and bilateral drop feet. Post-operatively, he underwent an extensive course of recovery complicated by severe pressure sores that eventually healed.

After his total rehabilitation, he was able to walk with a walker, but still had bowel and bladder incontinence. A significant issue in the case is whether or not he would have ended up with some degree of neurological impairment, even with earlier operative intervention.

The case was resolved for an amount of compensation in seven figures. As a result of the concerns raised in this case, the hospital now requires physical therapists to report patient findings to nurses and that the findings be reviewed by one of the treating physicians. The Plaintiff contends it's a very responsible action on the part of the hospital, and will help to prevent such findings from being ignored in the future.

*(Continued on page eight.)*

# FairDistricts Amendments 5 and 6: A Vote to Restore Real Democracy in Florida

This November, vote for government  
that serves the people, not the politicians.

Vote for fair representation  
at the state and federal levels.

**VOTE YES ON AMENDMENTS 5 AND 6!**

On November 2, 2010, we have a chance to make a real difference in Florida by voting YES on Constitutional Amendments 5 and 6. These are called the **FairDistricts Amendments** and our **YES** votes will impact our state for generations to come.

Every ten years, Florida legislators redraw Congressional and state legislative district lines (House and Senate). When they do, they have no rules to follow so they design districts to protect themselves and ensure their own reelections. To accomplish this, they meet in back rooms, look up voter registrations and how folks voted in previous elections, decide which voters would be favorable to them, and put those voters into "sure win" districts. Legislators have no real opposition to worry about. In the last ten years, out of 505 incumbent legislators up for re-election, only 10 have been defeated! Yes, over 98% of incumbent legislators have won re-election!

As a result, while the politicians are almost guaranteed re-election, the citizens of Florida lose. Districts are bizarrely shaped and it is not uncommon for a politician to live over a hundred miles from some of the people they represent. Districts sometimes go from the Atlantic to the Gulf. These rigged districts senselessly splinter Florida's communities. Some small towns have four different members of Congress representing them. Instead of voters choosing their representatives, politicians have been choosing their voters.

FairDistricts Amendments 5 and 6 will put an end to this self-interested practice. These amendments will prohibit the drawing of lines to benefit incumbents and political parties. They will also require politicians to draw districts that are compact and follow existing city, county and geographical boundaries. And they will create strong protections for minority voting rights.

The FairDistricts Amendments have been widely endorsed by nonpartisan groups, including the Florida League of Cities, Florida League of Mayors, Florida Association of Counties, League of Women Voters of Florida, Florida NAACP, Democracia Ahora, and numerous others. ♦

**For more information about  
Amendments 5 and 6, please visit  
[www.fairdistrictsflorida.org](http://www.fairdistrictsflorida.org)**



The senator lives in his district in Palm Beach County but the district also spans 115 miles across the state to Ft. Myers and covers parts of five counties.

Florida newspapers unanimously support the  
FairDistricts Amendments.  
Here is what some of them say:

**"Amendments 5 & 6 will give control of elections  
back to Florida's voters, where it belongs."**

- *The Miami Herald*

**"Opponents of the amendments should just be  
honest about it and admit they don't want to change  
a system that helps them hold on to power."**

- *South Florida Sun-Sentinel*

**"This bipartisan campaign deserves  
broad bipartisan support."**

- *Palm Beach Post*

**"End the political gerrymandering  
that harms democracy."**

- *Florida Today*



The Pinellas part  
of this district does not  
touch any other land  
in the district!  
It is only connected  
by a causeway over  
Tampa Bay.

## Vote YES on Amendments 5 & 6

The founding fathers intended  
for voters to choose their  
politicians -- not the other way around.  
Let's restore true democracy to Florida!

**JOIN US!**



# Physician Ignores Patient's Allergic Reaction to Allopurinol, Resulting in Death

In November 2007, Geraldine Speier was referred to Dr. X to be treated for mild anemia and elevated uric acid levels. Dr. X gave Mrs. Speier a prescription for Allopurinol, 200 mg daily. Allopurinol is a highly toxic medication. The most frequent allergic reaction to Allopurinol is a skin rash. The literature accompanying the prescription is replete with warnings that skin reactions can be severe and sometimes fatal, and that treatment should be discontinued immediately if a rash develops. When prescribing potentially harmful medications such as Allopurinol, the prevailing standard of medical care requires that the physician evaluate the patient at each visit to determine whether or not there are symptoms of any allergic reaction to the medication.

At Mrs. Speier's very first follow-up appointment with Dr. X, she presented a condition which Dr. X described as "a faint rash over the upper extremity." Despite the appearance of this tell-tale rash, Dr. X did not take Mrs. Speier off of the prescribed Allopurinol.

Throughout the holiday season, Mrs. Speier's energy level and appetite significantly decreased. Her husband and their friends noted that her rash was getting progressively worse. In December 2007, Mrs. Speier again presented to Dr. X's office for another follow-up evaluation. At this time, Dr. X's physician assistant noted that Mrs. Speier had a "head to toe macular popular rash with some pruritis (itching) to it." Incredibly, the physician assistant failed to consider the symptomatic significance of the worsening rash as a potentially fatal allergic reaction to Allopurinol. Rather than following the prevailing standard of care, the physician assistant instructed Mrs. Speier to go to the pharmacy and purchase over-the-counter Benadryl tablets and cream. Mrs. Speier, relying on the specific instructions of the physician assistant, immediately purchased the Benadryl medications and began using them. Her physical condition began to deteriorate rapidly.

Within days, Mrs. Speier called Dr. X's office complaining of worsening symptoms. She had been unable to get out of bed for the last few days, and was eating and drinking very little. She had developed a high fever. Dr. X admitted Mrs. Speier for an emergency examination in his office and observed that the rash had spread throughout her entire body. She had hive-like patches, increased pruritis, and pain at any touch. Dr. X's notes confirmed that her rash was now "quite severe".

Siegbert Speier, Geraldine Speier's husband for over fifty-two years, demanded that his wife be taken to a

hospital immediately for further evaluation. Mr. Speier then drove his wife to Delray Medical Center and was referred to a dermatologist who immediately noted her "wide-spread rash, fever, and hypotension." The consulting dermatologist also noted significant crusting and blistering on Mrs. Speier's body, obviously indicative of a "severe drug hypersensitivity syndrome."

Mrs. Speier's condition was so severe that the physicians at Delray Medical Center immediately transferred her to the Jackson Memorial Hospital Intensive Care Burn Unit. Her condition was listed as critical.

Despite the intensive care, Mrs. Speier's condition continued to deteriorate. The failures of Dr. X and his staff to timely suspend the Allopurinol medication had resulted in Mrs. Speier developing septic shock, multi-bacterial infection, and acute renal failure. She died within days of her admission.

Siegbert and Geraldine Speier were a loving couple. They had two loving sons, and two wonderful grandchildren. Mr. Speier, shocked and heartbroken by the

loss of his wife, contacted SDSBS attorney **Karen Terry** to investigate what he believed was medical neglect resulting in the death of his beloved wife.

The defense argued that Mrs. Speier's pre-existing medical conditions had weakened her immune system, resulting in her reaction to the Allopurinol medication. Karen Terry retained experts who strongly contended that, had Dr. X and his staff immediately stopped Mrs. Speier's use of Allopurinol upon the first signs and symptoms of a developing rash, she would, more than likely, be alive today.

Within months of initiating suit, Ms. Terry was successful in obtaining a substantial settlement for Mrs. Speier's family. ♦



Above: Siegbert and Geraldine Speier

When prescribing potentially harmful medications... the prevailing standard of medical care requires **that the physician evaluate the patient at each visit to determine if there are any allergic reactions.**

## Speaking Opportunities



Greg Barnhart

**Greg Barnhart** spoke at a seminar held by the Florida Justice Association and the Palm Beach County Justice Association on "Lessons from the Courtroom." Mr. Barnhart's topic was "Lessons Learned in Trial." The seminar was held May 19, 2010, in West Palm Beach, Florida. ♦



Sia Baker-Barnes

**Sia Baker-Barnes** provided welcoming and opening remarks at the Palm Beach County Bar Association's seminar, "The Impact of the Current Economy on Personal Injury/Wrongful Death Cases," held April 16, 2010, at the Association's offices in West Palm Beach, Florida. She also presented the topic "Outcomes of Personal Injury/Wrongful Death Trials/Settlements During the Economic Downturn." **Darryl Lewis** also spoke at the seminar on the topic of "Demonstration of High-Impact Statements – How to Get the Jury on Your Side from the Beginning in the Current Economy." ♦



Darryl Lewis



Greg Barnhart

This year's annual convention of the Florida Justice Association was held in June at Walt Disney World's Grand Floridian Resort & Spa. A number of SDSBS staff participated in the convention's seminars and other events. Attorney **Greg Barnhart** was the master of ceremonies at the FJA's Annual Presidential Luncheon held June 11 and was given the honor of introducing the incoming FJA president, Rich Newsome. Attorney **Brenda Fulmer** participated in the convention as program chair for the seminar on "Perfecting Your Competitive Edge: Advanced Trial Skills for Top Litigators." Ms. Fulmer also participated in a panel discussion on "Mining Your Database and Case Portfolio for Mass Torts."



Brenda Fulmer



John Hopkins

**John Hopkins**, Registered Florida Paralegal, was program chair for the seminar on "Tools for Proven Results: Civil Litigation for Paralegals and Legal Assistants." Mr. Hopkins' several topics included "Digital Discovery from the Outset," "Preparing a Virtual Trial Notebook," and "VTC – What Is It? How Does It Work? What Does It Cost?" **Bonnie Stark**, Registered Florida Paralegal, also participated in an FJA website seminar on "Clients, Witnesses, Experts, Jurors, Social Websites, and Investigative Tools." The FJA is dedicated to strengthening and upholding Florida's civil justice system and protecting the rights of Florida's citizens and consumers. ♦



Bonnie Stark



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

AVIATION & RAILROAD DISASTERS  
BOATING & WATERCRAFT INJURIES  
CATASTROPHIC VEHICLE ACCIDENTS  
COMMERCIAL DISPUTES  
CONSTRUCTION DEFECTS  
DEFECTIVE DESIGN  
INTELLECTUAL PROPERTIES  
MASS TORTS  
MEDICAL MALPRACTICE  
PREMISES LIABILITY  
PROFESSIONAL LIABILITY  
TRUCKING ACCIDENTS  
UNSAFE PRODUCTS  
WILL AND TRUST DISPUTES



WEST PALM BEACH  
TALLAHASSEE  
**800.780.8607**  
WWW.SEARCYLAW.COM

*"True peace  
is not merely the  
absence of tension,  
it is the  
presence of justice."*

— Dr. Martin Luther King

**Article Published in  
AAJ Trial Magazine by  
SDSBS Attorney  
Jim Gustafson.**



An article written by SDSBS attorney **Jim Gustafson** and Jim Girards, Girards Law Firm, Dallas, Texas, was published in the May 2010 issue of *Trial* magazine, the national monthly publication of the American Association for Justice. The article, entitled "Blind Faith," concerns the tragic complication of permanent and total blindness occurring during elective back surgery. The complication, called postoperative visual loss (POVL), is caused by long operating time in the face-down position, blood loss, and a decrease in blood flow and oxygen to the optic nerve. It most often results from patient positioning (face-down) during lengthy spinal surgery. The article describes the medical condition itself, its causes, and the legal issues to be addressed in pursuing a medical negligence case involving POVL. As Mr. Gustafson points out, "People trust doctors to get them through spinal surgery safely, but patients who wake up in the post-op room suffering inexplicable vision loss learn quickly that their trust was misplaced. This complication is preventable, so why does it happen?" ♦



**Log on to...**

**www.SearcyLaw.com**

**for the latest news  
and information on  
Searcy Denney Scarola  
Barnhart & Shipley**

**Twelve SDSBS  
Attorneys Named Tops  
by Super Lawyers  
Magazine**



**Chris Searcy**



**Earl Denney**



**Jack Scarola**



**Greg Barnhart**



**John Shipley**



**Jim Gustafson**



**Darryl Lewis**



**Bill Norton**



**Chris Speed**



**Karen Terry**



**Sia Baker-Barnes**



**Jack Hill**

**Chris Searcy in "Top Ten"  
and Jack Scarola in "Top 100".**

*Super Lawyers* magazine recently named SDSBS attorneys **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, Jim Gustafson, Darryl Lewis, Bill Norton, Chris Speed,** and **Karen Terry** as "Florida Super Lawyers 2010." **Chris Searcy** was also named in the publication's "List of Top 10 Florida Super Lawyers." **Jack Scarola** was also named in the "List of Top 100 Florida Super Lawyers." **Sia Baker-Barnes** and **Jack Hill** were named "Florida Rising Stars 2010," the publication's list of the state's up-and-coming attorneys. *Super Lawyers'* selection process is a comprehensive effort to list lawyers that have attained high peer recognition, met ethical standards, and have demonstrated some degree of achievement in their field. Candidates are generally nominated by a peer and evaluated by the publication's research team. Final selection is made by a "blue ribbon" panel of attorneys within each practice area. ♦

## Boca Aviation v. Proskauer Rose

Boca Aviation was a fixed-base operator providing a broad range of aeronautical services at the Boca Raton Airport in Florida. A fixed-base operator is the primary provider of services to aircraft and other operators located at an airport. There are currently over 3,000 fixed-base operators in the United States. Boca Aviation is highly regarded within its industry, having recently been selected as the 13th best fixed-base operation in the United States. It was also named the fourth best fixed-base chain operation by the 2010 Professional Pilot Survey.

In 1997, Boca Aviation engaged the law firm of Proskauer Rose to represent them in the drafting and negotiation of a lease intended to expand the company's fixed-base operation at the airport. The head of Proskauer Rose's real estate department in Boca Raton was Christopher Wheeler. Unfortunately, serious errors in the legal services provided to Boca Aviation by Mr. Wheeler and Proskauer Rose resulted in the loss of Boca Aviation's lease rights to one of its competitors. The legal errors resulted in the loss of future profits for the 28 years that remained on Boca Aviation's original lease.

Boca Aviation sought representation by Steven Katzman and Craig Rubinstein of Katzman, Wasserman, Bennardini and Rubinstein, Boca Raton, Florida, who were joined by SDSBS attorney **Jack Scarola**. Together, they filed a legal malpractice lawsuit against Mr. Wheeler and Proskauer Rose. Mr. Wheeler resigned his position with Proskauer Rose shortly before trial began in May 2010.

Following a six-week trial, the six-person jury was unable to reach a unanimous decision after three days of deliberations. On June 11, 2010, the judge declared a mistrial. The judge then queried the jurors for their individual advisory verdicts (non-binding decisions), and four of the six jurors reported that they would have found defendant Proskauer Rose liable for the negligent advice given in the commercial real estate transaction, and for breach of the fiduciary duty owed to their client, Boca Aviation. In closing arguments, plaintiff's attorneys had revised their claim for lost profits to \$60.1 million to reflect the year 2000 values, and added \$3.6 million in legal fees and other costs. According to the four jurors' advisory verdicts, they would have found damages due Boca Aviation at just under \$64 million, every penny of damages claimed by the plaintiff's attorneys in closing argument.

The jury's inability to reach a unanimous verdict means that the case will now be retried, probably early next year. ♦

## Disregard of Physical Therapy Evaluation Results in Neurological Impairment

*(Continued from page three.)*

This is the second case at SDSBS where the examination evaluations of physical therapists were significant with regard to alerting medical personnel about severe complications in a hospitalized patient. Physical therapists are an important part of a medical treatment team, and their evaluations are a significant part of patient care.

---

*Many medical malpractice cases involve the issue of timing. The physical therapy notes were not reported, they were not reviewed, and appropriate timely action was not taken.*

---

The patient and his family sought representation by SDSBS attorneys **Earl Denney** and **Chris Searcy** in a civil action filed against the hospital and medical personnel for medical malpractice. Many medical malpractice cases involve the issue of timing. In this instance, the window of time would be between the earliest possible time that surgery could be performed on the patient, and the last hour beyond which there would have been no difference in the patient's outcome. The earliest possible time for emergency surgery would have occurred when the physical therapist's notes on the critical condition of the patient were reported by the physical therapist to nurses and physicians, who would have reviewed the condition and taken appropriate and emergent action. The physical therapy notes were not reported, they were not reviewed, and appropriate timely action was not taken. ♦

## Accolades

### Three SDSBS Attorneys Actively Involved in Helping FJA's Women's Caucus



Brenda Fulmer



Sia Baker-Barnes



Laurie Briggs

At this year's Florida Justice Association annual convention, SDSBS attorney **Laurie Briggs** was named secretary of the FJA's Women's Caucus Section. The Section works to identify and promote diversity and minority participation in both the Caucus and the FJA, while raising the profile of women trial attorneys. Among the Section's many activities are membership building, continuing legal education, mentoring, and community service. Ms. Briggs' appointment places her in the officer-succession line for the Section. SDSBS attorneys **Brenda Fulmer** and **Sia Baker-Barnes** continue to be active on the Section's board of directors. Ms. Baker-Barnes also serves on the FJA's board of directors. ♦

### Sia Baker-Barnes Describes FSU Law School Experiences in Online Article



Sia Baker-Barnes

Florida State University College of Law asked alumna **Sia Baker-Barnes** to provide a description of her experiences while attending the law school. Her thoughts were recently published by the College on an email communication sent to students and faculty. Ms. Baker-Barnes said that her experience at the College of Law was fascinating, and led her to a career as a personal injury trial lawyer with SDSBS. The location of the law school at Florida State included the opportunity to conduct an oral argument before the justices of the Florida Supreme Court, and to work with the state attorney general's office. ♦



Karen Terry

### Florida Trend Magazine Recognizes Attorney Karen Terry as "Legal Elite 2010"

Florida Trend's "Florida Legal Elite 2010" recognized SDSBS attorney **Karen Terry** among the top tier of attorneys practicing in Florida as chosen by her colleagues. The top tier attorneys exemplify a standard of excellence in the profession. All in-state members of the Florida Bar were asked to participate by submitting ballots naming attorneys they hold in the highest regard or would recommend to others. The list of 1,160 attorneys represents approximately 1.8% of the over 64,000 active Florida Bar members who practice in the state. ♦



### FJA Young Lawyers Names Brian Denney to Board of Directors



Brian Denney

The Florida Justice Association's Young Lawyers Section recently appointed SDSBS attorney **Brian Denney** as an at-large member of the Section's 2010/2011 Board of Directors. The FJA Young Lawyers Section is actively involved in the FJA's goals of protecting the civil justice system and providing opportunities for young lawyers to network on a statewide level. ♦

## Taking... *Time to Care*



(l-r) Ken Torres, Darlene Fernandez, John Shipley, Marianne Stapleton and Chris Searcy

### Funds contributed by SDSBS aid in building Children's Memorial Garden for 'Angel of Hope Project'.

SDSBS attorneys **John Shipley** and **Chris Searcy** support the "Angel of Hope Project," a group of parents who share a common tragedy – the loss of a child. A Palm Beach County, Florida, chapter of "Compassionate Friends," an organization dedicated to helping families who have lost a child, is working with Our Lady Queen of Peace Cemetery to raise funds to build a Children's Memorial Garden at the cemetery, with an "Angel of Hope" statue as its centerpiece. SDSBS has contributed funds to help them reach their goal.

The statue was originally introduced in the novel *The Christmas Box* by Richard Paul Evans. The story tells of a mother mourning the loss of her only child, grieving at the base of an angel monument. Following reports of grieving parents seeking the monument described in the novel as a place to mourn their loss and to heal, an "angel" monument was sculpted in 1994 and placed in Salt Lake City, Utah. Additional monuments have been placed throughout the United States. The nondenominational memorial at Our Lady Queen of Peace, in Palm Beach County, will serve as a beacon of support for all those who are coping with the emotional and physical absence of a child by providing a quiet place for healing and reflection. The path to the garden will be paved with bricks dedicated to children who have died. The memorial will be privately funded through donations and the sale of Remembrance Bricks. ♦

For additional information, please contact Darlene Fernandez at (561) 346-2274, or Marianne Stapleton at (561) 389-3801. You may also contact Our Lady Queen of Peace Cemetery at (561) 793-0711. Or visit [www.ourqueen.org/angel\\_of\\_hope.htm](http://www.ourqueen.org/angel_of_hope.htm)



### SDSBS Tallahassee team in the first annual 'Tulip Trot' to support and promote awareness of Parkinson's Disease.

The North Florida Parkinson's Awareness Group, Inc., held the First Annual Tulip Trot 5K on May 22, 2010, at the Tom Brown Park in Tallahassee, Florida. SDSBS team members: (above, l-r) **Kristin Cline**, **Bonnie Stark**, **Jonny Warren**, **Ashley Cline**, and **Joanne Cline** participated in the event, which was held to raise funds to provide support, information, education and advocacy for all people with Parkinson's Disease. ♦



### Big Brothers Big Sisters group supported by SDSBS Tallahassee office in the "26th Annual Bowl for Kid's Sake Benefit."

The 26th Annual Bowl for Kids' Sake benefit was held May 22, 2010, at Crenshaw Lanes on Florida State University's campus in Tallahassee. Participants included, (above, l-r) **Bonnie Stark**, **Kristin Cline**, **Joanne Cline**, **Gwen Drake**, **Ashley Cline**, and **Jonny Warren**. The event raised funds to support the Big Brothers Big Sisters of the Big Bend in Tallahassee. The event raised a total of \$30,000, well over their goal of \$25,000 – funds that will provide 310 children in need with caring mentors who will help the children navigate through the difficult teen years. ♦



**SDSBS Team in Corporate Run event promoting support for Leukemia & Lymphoma Society.**

The 2010 West Palm Beach Mercedes-Benz Corporate Run was held April 14th in downtown West Palm Beach, Florida. Over 50 companies were represented by over 1,000 participants, including the SDSBS Team: (above, l-r) **Pat Quinlan, Logan Wiggins, Curtis Reynolds, Bobby Marques, Linda Miller**, (team organizer) and **Aaron Ledford**. In addition to promoting good health and physical fitness, the benefit event provides support for the Leukemia & Lymphoma Society, the American Red Cross, and other charities. ♦



*Chris Searcy and Karen Terry.*

**SDSBS participates in benefit auction for Juvenile Diabetes Research Foundation and American Heart Association.**

**Karen Terry** participated in the Third Annual Young Professionals Bachelor & Bachelorette Auction held May 6, 2010, at Sky309, West Palm Beach. Funds raised will benefit the Juvenile Diabetes Research Foundation and the American Heart Association. ♦



**“Take...Time to Care,” SDSBS’ long-time public service campaign, begins major plan to inspire community help through Volunteer-a-Thon.**

Homelessness, joblessness, man-made and natural disasters, a record number of pets delivered to community animal shelters – the nation’s economy has increased the need for each and every non-profit service organization in our various communities to offer support for those of us in need of help. It is an overwhelming task, made all the more difficult by the shared struggle to find volunteers that have the time, energy, and commitment to help each of these many organizations fulfill their obligations to provide relief for those that need a helping hand.

SDSBS’s long-time public service campaign, “Take...Time to Care,” has recently begun a major initiative to inspire and to spotlight volunteerism. Public service announcements produced by SDSBS and aired in the Palm Beach media market encourage viewers to get involved. Viewers are directed to the SDSBS website, where they will find a Volunteer Information page listing numerous organizations that need their help. Viewers can link directly to each organization for detailed information to assist them in determining the best match for their skills and interests.

On April 22, 2010, SDSBS teamed up with WPTV NewsChannel 5 during “National Volunteer Week” to do a live “Volunteer-a-Thon” phone bank during the noon and early evening newscasts. This was a broadcast “first,” with representatives from many non-profit organizations manning the phones as hundreds of viewers called in to offer their time and effort.

SDSBS attorney **Sia Baker-Barnes** spoke to NewsChannel 5’s news anchor, Jim Sackett, about the importance of getting involved and the firm’s commitment to increasing volunteerism now, as these organizations struggle with reductions in both charitable donations and the number of volunteers able to help provide support for those in need. ♦

Visit our website:  
[www.SearcyLaw.com](http://www.SearcyLaw.com)

**Learn about the various service organizations and their goals, and contact one of them today – get involved . . . volunteer!**

# OF COUNSEL

VOLUME 10 • NUMBER 2

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

PRSR STD  
U S POSTAGE  
PAID  
MID-FL FL  
PERMIT NO. 392

P. O. BOX 3626  
WEST PALM BEACH  
FLORIDA 33402-3626



## Celebrating our 50th Edition of OF COUNSEL

Dear Colleagues,

As we celebrate the 50th edition of **Of Counsel**, I want to thank you for your ongoing interest in our firm's activities, and for sharing our passion for justice.

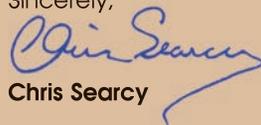
When we first initiated our newsletter, our purpose was to keep clients and attorneys abreast of current issues in tort law and informed about some of our exemplary cases. We have continued this focus, adding updates on legislation, reporting on legal trends, and alerting you when we believe that citizens' legal rights are threatened. Now, we are seizing the opportunity of our "golden anniversary" to ask you for some input.

I would be grateful if you would tell us what you have found most useful and what things we might add that could be of better service to you and your clients. Please take a few minutes to share your views with my Litigation Coordinator, **Vince Leonard**, at 561-686-6300, or, if you would prefer, email him at [VLL@searcy.com](mailto:VLL@searcy.com). Vince has been with our firm for several years and has my ear, so feel free to contact him to discuss referral relationships, as well.

The practice of law is changing as new communication technology allows us to disseminate information faster and more broadly. At Searcy Denney, we recognize that the more all of us share what we know, the better citizens' rights to justice are protected and advanced.

Thank you again for being a part of the **Of Counsel** family.

Sincerely,

  
**Chris Searcy**

