

A REPORT TO CLIENTS & ATTORNEYS
VOLUME 12 - NUMBER 1

OF COUNSEL

Horrific Crash Caused by Tired Truck Driver Results in \$17.5 Million Settlement for Family

On a clear, sunny day in November 2006, Vince Modica drove to the Jacksonville, Florida, airport to pick up his wife, Judy. The couple then headed home, southbound on I-95. Nearing the Dunn Avenue exit, they came to a stop behind a line of vehicles stalled due to a disabled vehicle two miles further down the road. As they waited for the traffic to clear, a tractor-trailer truck driven by Michael Wright, an employee of the Tree of Life, a health food distributor in St. Augustine, Florida, came barreling south on I-95. The truck slammed into the back of the Modicas' car so hard that it pushed them into the back of a tractor-trailer truck in front of them. The Modicas' vehicle was totally crushed and caught fire immediately. Vince and Judy Modica died, their bodies mangled and burned beyond recognition.



The centerpiece in Vince and Judy's 43-year marriage was their family. They loved their two sons, Kevin and Brian, as well as their daughters-in-law and their grandchildren. Although they had both retired from long-term jobs some years earlier, they continued to work because they enjoyed the social interaction and the satisfaction of doing a good job. They were having fun, traveling, and enjoying work and family. Kevin and Brian were devastated by the loss of their parents in such a sudden and horrific way. Vince's brother-in-law, Dr. Orland Ghionzoli, was appointed personal representative for Vince and Judy Modica's estate. On behalf of Kevin and Brian, Dr. Ghionzoli asked SDSBS attorneys **Chris Searcy** and **John Shipley** to represent them. Mr. Searcy enlisted the help of attorney Howard Coker, Jacksonville, Florida, to assist in the trial.

(Continued on page twelve.)

Multi-Million Dollar Verdict Increased on Appeal

Alan Schein and his company, Results Technologies, Inc., entered into a business venture with Superior Bank. To assure himself of the bank's stability and the security of his financial ties with the bank, Mr. Schein required that he be provided with the bank's audited financial statements prepared by accounting giant Ernst & Young. Ernst & Young later, and without warning, acknowledged that it had made mistakes in determining the value of the bank's assets. As a result, Superior Bank was declared insolvent, taken over by federal regulators, and eventually closed down. Mr. Schein and Results lost the value of their interests in the business venture.

Mr. Schein and Results sued Ernst & Young for accounting malpractice. In July 2009, the jury returned a verdict in the plaintiffs' favor, and the trial court entered a judgment for \$17.2 million. Both sides then

appealed. Ernst & Young asked that the entire judgment be thrown out. Mr. Schein and Results appealed a reduction in the amount of their damages based upon a finding that they had negligently contributed to their own losses. In January 2012, the Fourth District Court of Appeal rejected Ernst & Young's challenge and agreed with the plaintiffs that there was no basis for finding Mr. Schein and Results negligent. As a result of this ruling, the judgment in favor of the plaintiffs was increased from \$17.2 million to more than \$30 million.

SDSBS attorneys **Jack Scarola** and **Patrick Quinlan** represented the plaintiffs, along with co-counsel Robert Mayer, at both the trial court and appellate levels. Their appellate victory ended an eight-year legal battle against a large and powerful company that boasted of its record of success in the courtroom. ♦



Chris Searcy



Earl Denney



Jack Scarola



Greg Barnhart



John Shipley



Chris Speed



Karen Terry



Cal Warriner



Brian Denney

South Florida Legal Guide 2012 Edition Selects SDSBS as a Top Law Firm and Eight SDSBS Attorneys as Top Lawyers

The 2012 edition of the *South Florida Legal Guide* selected SDSBS as one of their "Top Law Firms." In addition, the publication named eight SDSBS attorneys as "Top Lawyers" – **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, Chris Speed, Karen Terry, and Cal Warriner.** "Top Up and Comers" named in the 2012 Guide included **Brian Denney.** "Top Law Firms" are nominated on an annual ballot submitted by "Top Lawyers." The nominations are then reviewed and the top 150 law firms are selected. "Top Lawyers" are selected in a peer nomination process. "Top Up and Comers" are nominated by "Top Lawyers" as the next generation of leaders in the south Florida legal community. ♦

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NEWSLETTER
VOLUME 12 NUMBER 1

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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.

Improper Electrical Wiring Results in Worker's Death

In September 2005, 43-year-old Sam Smith (not his real name) headed off to work as an appliance installer. Sam, married and father of two little girls, was looking forward to celebrating his youngest daughter's birthday after work. Sam and his employer drove to Clermont, Florida, to install appliances in a newly-constructed home. Sam was installing a dryer vent on an interior wall of the home's laundry room when he felt a shock. His employer flipped the circuit breaker for the electrical line that brought power into the laundry room, thinking this would prevent any further problems. Shortly after, the employer heard Sam scream. He ran back into the laundry room and found Sam standing with his left hand on the dryer and his right hand on the dryer's metal vent hose. The hose was connected to the exhaust hood which was attached to the back wall. Sam was trembling and screaming as electrical current coursed through his body. Sam's employer ran for help. The employer and some of his crew returned to the room and found Sam collapsed on the floor. They applied CPR in an attempt to revive him as they waited for an ambulance. He was taken to a local hospital, but it was too late. Sam was pronounced dead at the hospital.

What neither Sam nor his employer knew when they started the installation was that the project's electrical contractor had failed to properly secure an electrical line to the home's metal framing. Building codes and sound electrical contracting practices require all electrical lines to be firmly secured to the center of metal studs forming the framing of the home. The purpose of this requirement is to prevent the electrical line from being compromised by the screws used to install drywall on the front and back faces of the metal studs. If the wire is not firmly secured to the middle of the stud, a drywall screw could penetrate the wire. This is precisely what happened in this case.

An inspection of the home conducted shortly after the incident revealed the cause of Sam's death. When the interior wall was opened up, it was clear that an electrical wire had never been properly restrained. The drywall contractor failed to see that one of the electrical wires was not properly secured and, during drywall installation, the wire was punctured by two drywall screws. One of the screws penetrated

the wire's protective sheath, making contact with the wire itself. The result was that a portion of the home's metal framework was electrified, including the section of the wall where Sam was installing the dryer vent. The electrical line that was switched off by Sam's employer was a different line than the one damaged by the drywall screw. Turning off power to the laundry room did not stop the flow of electricity to the rest of the house. Sam was completely unaware of the hidden, latent danger that had been created by substandard electrical work.

Sam's widow, Sally Smith (not her real name), contacted SDSBS attorneys **Chris Searcy** and **Jack Hill** and asked them to represent the Smith family. The first task was to determine which entities were legally responsible for Sam's death. The circumstances were complicated, both factually and legally. The drywall contractor's insurer was convinced fairly soon about the enormity of the damages, and their insured's liability for failing to see the unrestrained wire. The insurer accepted SDSBS's demand for the full policy limit of \$1 million.

Because Sam's death occurred while performing work in the course and scope of his employment, recovery against all the culpable parties was made more challenging by Florida's workers' compensation laws. All defendants, to one extent or another, argued that their responsibility for Sam's death was shielded by workers' compensation. The prosecution of the Smith case involved two separate appeals to Florida's Fifth District Court of Appeals on the issue of work-

ers' compensation. Mr. Hill successfully argued that the electrical contractor should not enjoy horizontal immunity pursuant to Florida's workers' compensation laws. The electrical contractor's appeal was rejected by the appellate court. Shortly after receiving the appellate court's ruling affirming the trial court's decision, the case against the electrical contractor was settled for \$2.5 million. During the course of litigation, there were additional settlements with other defendants for confidential amounts. Although the money recovered for the wrongful death of Sam will never be enough to compensate Sally and their daughters for their loss, it will go a long way towards providing for their future. ♦

Mr. Hill successfully argued that the electrical contractor should not enjoy horizontal immunity pursuant to Florida's workers' compensation laws.

The defendant's appeal was rejected by the appellate court's ruling. The case was settled for \$2.5 Million.

Speaking Opportunities



Chris Searcy participated in the "Masters in Trial" seminar presented by the Palm Beach County Chapter of the American Board of Trial Advocates (ABOTA), held January 27, 2012, at the Marriott Palm Beach Gardens, Palm Beach

Gardens, Florida. The seminar presented a mock trial demonstration from opening statements to jury deliberations, complete with judge, jury, witnesses, experts, and courtroom visuals. As a member of the Plaintiff's Team, Mr. Searcy provided the opening statement. A primary goal of ABOTA is educating lawyers in the art of trial advocacy. ♦



Greg Barnhart spoke at the Florida Justice Association's seminar, "Advocacy in the State Legislature – Lobbying Techniques to Protect Your Practice and Effectively Represent Your Clients in Tallahassee," held January 10,

2012, at the Riverside Hotel in Fort Lauderdale, Florida. His topic was "Lobbying 101 for Fun and Profit." On January 12, 2012, Mr. Barnhart spoke at a combined meeting of The Palm Beach County Bar Association and the Broward County Bar Association, on the topic of "Effective Techniques of Lobbying the Legislature on Civil Justice Issues." Mr. Barnhart also spoke at the Florida Bar's Annual Civil Trial Certification Review 2012 Seminar, held at the end of January 2012 in Orlando, Florida. The topic of this presentation was "Trial Skills: Opening and Closing Arguments." ♦



Brenda Fulmer spoke to the Trial Lawyer Section of the Martin County Bar Association at a meeting held in January 2012 in Stuart, Florida. Her topic, "Mass Tort Litigation Basics," covered how mass tort cases are litigated

and provided an overview of several cases involving drug and medical devices. ♦

(Continued on page eleven.)

Hallgren v. Reynolds and Philip Morris: Eighth SDSBS Victory in Engle Progeny Trials

In January 2012, SDSBS attorneys **Brian Denney** and **Hardee Bass** tried the first Engle tobacco trial held in the Tenth Judicial Circuit Court in Highlands County, Florida. After a hotly contested three week trial, the jury awarded 92-year-old Theodore Hallgren \$3.5 million against Philip Morris USA Inc. and R. J. Reynolds Tobacco Company for the wrongful death of his wife, Claire. She had died of lung cancer after nearly 60 years of smoking cigarettes made by the two companies. The verdict included \$1.5 million in punitive damages. This was the eighth victory in Engle progeny cases tried to verdict by SDSBS.

Claire Hallgren started smoking as a teenager nearly 30 years before the first warning labels appeared on cigarette packs. Under the standard required by the Florida Supreme Court's "Engle" decision, plaintiffs had to prove an addiction to nicotine, and that the addiction was the cause of death. The jury was asked numerous questions on the verdict form concerning whether Claire Hallgren relied on statements or omissions of the defendants. The jury answered all of the questions on the verdict form in favor of Mr. Hallgren.

Theodore and Claire Hallgren met at Chicago's Hurst High School in 1938. They were married four years later, shortly before the U. S. Army deployed Theodore to Europe to fight in the war. After the war was over, the Hallgrens settled in the Chicago area. They moved to Florida in 1975. Claire continued to smoke throughout her adult life despite numerous efforts to quit. Her addiction to nicotine was powerful, a direct result of the tobacco companies' intentional marketing efforts. Claire was eventually diagnosed with lung cancer, and she later died. Theodore Hallgren's lawsuit was part of the original 2006 Engle class-action case.

"The jury in this case was presented with a lot of evidence of tobacco industry conduct and practices, covering a large span of time," Denney said. ***"The jury's verdict is not only an indication that they understood the addictive power of nicotine, it is also recognition that these defendants deserved punishment for their intentional misconduct."*** ♦

Ward v. R. J. Reynolds and Liggett:

Ninth SDSBS Victory in Engle Progeny Trials

In January 2012, a Pensacola, Florida, jury awarded \$2.7 million to the husband of an Engle class member who died from chronic obstructive pulmonary disease after nearly 50 years of smoking cigarettes produced by R. J. Reynolds Tobacco Company and Liggett Group, L.L.C. It was the ninth trial victory in as many Engle progeny cases tried to verdict by SDSBS.

Mattie Emma Ward started smoking as a 13-year-old girl in 1949. At that time, it seemed like everyone smoked – even world-class athletes, physicians, actors, broadcast journalists on radio and, later, on TV. People smoked in schools, movie theaters, their workplace, and even hospitals. Cigarette advertising was directed at young people, and physicians were used in those advertisements to make unsubstantiated health claims. By age 22, Mattie Ward was a daily smoker; by age 25, she was smoking a carton of cigarettes a week. Despite repeated efforts to quit smoking, Mrs. Ward was unable to overcome her one- or two-pack-a-day addiction to cigarettes. In 2000, she was hospitalized with double pneumonia. In January 2005, at the age of 68, Mattie died from advanced chronic obstructive pulmonary disease.



Following Mattie's death, Erskin Donal ("Don") Ward, Mattie's husband, brought a wrongful death claim against the tobacco industry to pursue his wife's rights as a member of the landmark Engle class action case. In July 2006, the Florida Supreme Court's decision in Engle v. Liggett permitted individual litigation by a defined group of smokers, or their surviving family members, who had been part of the original class action to file suit. The individual suits



(l-r.) SDSBS partner, Jim Gustafson; Don Ward, surviving spouse of smoker, Mattie Ward; and co-counsel, Matt Schultz, with Levin Papantonio Thomas Mitchell Rafferty & Proctor.

would have to show that certain smoking-related illnesses manifested in the smoker between May 1990 and November 1996. Mr. Ward retained SDSBS attorney **Jim Gustafson** to represent him. Shortly before trial, Matt Schultz of Levin Papantonio Thomas Mitchell Rafferty & Proctor, P.A., who had successfully tried three Engle cases to verdict including the landmark Martin case, joined Mr. Ward's trial team. It was the first joint effort in an Engle case between SDSBS and Levin Papantonio, and it proved to be successful.

The jury unanimously found that Mattie Ward's addiction to the nicotine in cigarettes was the legal cause of her death. The jury also unanimously found that Reynolds and Liggett had intentionally concealed, or agreed to conceal, the health effects or addictiveness of cigarettes from Mrs. Ward, a legal cause of her death as well. The jury awarded Mr. Ward \$1 million for the wrongful death of his wife, and imposed punitive damages in the amount of \$1.7 million against Reynolds. The defense had focused on Mrs. Ward's "choice" to continue smoking, and had defended the industry's lies over the past 50 years. The jury also found Mrs. Ward 50% responsible for her own death.

In opening statements, Jim Gustafson asked the jury if Mrs. Ward's addiction had substantially contributed to her daily use of cigarettes for 40 to 50 years. Added Mr. Gustafson, ". . . **the evidence will be what we all know to be true, and that is: what else does nicotine addiction do than to cause you to keep smoking and exposing yourself to that stuff day after day after day? That's why these companies celebrated it. The truth about what this industry does is an eye-opening tale of arrogance and disdain for the health and lives of Americans.**" ♦

Your Right to Know About Adverse Medical Incidents

If you were a patient under the care of a doctor, or in a hospital or other health care facility, would you want to know whether anything bad happened to you while you were being treated?

For years, health care providers in Florida could withhold from a patient records created as a direct result of an adverse medical incident that occurred during the patient's care. In 2004, Floridians amended the state constitution to end this practice, and to give patients the right of access to all records made or received as a result of an adverse medical incident. Amendment 7 of the Florida constitution reads in part:



"(a) In addition to any other similar rights provided herein or by general law, patients have a right to have access to any records made or received in the course of business by a health care facility or provider relating to any adverse medical incident.

(b) In providing such access, the identity of patients involved in the incidents shall not be disclosed, and any privacy restrictions imposed by federal law shall be maintained."

Records involving an "adverse medical incident" are any records pertaining to medical negligence, intentional misconduct, and any other act, neglect, or default of a health care facility or health care provider that caused or could have caused injury to or death of a patient.

Since the passage of Amendment 7, health care providers have filed numerous objections in attempts to prevent patient access to their records. Circuit

and appellate court decisions throughout the state were inconsistent in deciding on these objections. In January 2012, the Florida Supreme Court ruled in the case of *West Florida Regional Medical Center, Inc., et al., v. Lynda S. See, et al* (No. SC09-1997) and rejected all the objections and arguments presented by the hospital. The Court reaffirmed the unambiguous language and intent of Amendment 7.

Despite the ruling from the Supreme Court, health care facilities and providers will likely continue to withhold records from patients concerned with adverse medical incidents. If you or a loved one have been injured as a result of medical malpractice, it is important to contact an attorney who specializes in this field, and who will pursue your rights to have access to your records. ♦



(l-r:) Pamela McIver, Jack Scarola and Lord's Place CEO Diana Stanley.

Jack Scarola recognized for his 30-year fight to help the homeless

Jack Scarola was recognized for his nearly 30-year fight against homelessness when he was honored with the annual Ending Homelessness Award presented by The Lord's Place, an organization that provides support for the most vulnerable and neglected homeless men, women, and children in Palm Beach County, Florida. The presentation was made during the 2011 Ending Homelessness Breakfast held at the Kravis Center in West Palm Beach. The Lord's Place CEO, Diana Stanley, described Mr. Scarola's early activism in 1983 when they were collecting coins to help the organization get started. Almost thirty years later, The Lord's Place is a large, nonprofit organization that just in 2010 alone supported nearly 500 homeless individuals. ♦

For more information on The Lord's Place, visit www.thelordsplace.org.



Failure to Monitor Antibiotic Therapy at Nursing Facility Results in Death

On September 12, 2007, 66-year-old Holly DeRosa heard the landscapers start their lawnmowers and she rushed outside, knowing that her domesticated pet raccoon, Patches, would be frightened. For years, Holly and her husband, Michael, a quartermaster at the North Palm Beach Police Department, kept a number of exotic pets and were properly licensed to do so. Patches had been at their home for over eight years. When Holly reached down to pick up the animal, it was startled and scratched her on the leg. She brought Patches in the house, then cleaned and bandaged her leg.

The following day, her leg started to swell and she began to feel ill. Holly called Michael at work and told him that she was not feeling well. When Michael came home, he immediately took his wife to a clinic where she was given a tetanus booster and some antibiotics. When she awakened the next morning, she noticed her leg was very swollen and patchy red in places. Again, she phoned her husband at work. Recognizing the severity of her condition, he told her to call for an ambulance and get to the hospital.

When Holly arrived at Palms West Hospital in Loxahatchee, Florida, she was admitted with a preliminary diagnosis of cellulitis, a very serious infection. She was placed on a broad-spectrum antibiotic via a PICC line – a peripherally-inserted central catheter typically used to administer treatments such as antibiotics to patients in acute care. Holly remained an inpatient at Palms West for ten days. Throughout her care there, she received antibiotics through the PICC line, carefully monitored by her treating physicians. On September 24, 2007, Holly was discharged to the Manor Care/Heartland nursing facility in Palm Beach Gardens for continued antibiotic therapy and rehabilitation. Palms West medical records indicated that, at the time of her discharge, Holly had an excellent prognosis and was responding well



Michael and Holly DeRosa.

to the antibiotics. On the day of discharge, her physician personally checked and flushed Holly's PICC line to make sure it was functioning properly. He confirmed his order that Holly was to receive the antibiotics throughout her stay at Manor Care.

Admission records at Manor Care indicated that no physician documented Holly's arrival, nor confirmed her treatment plan. Four doctors were assigned to Holly's care and not one of them ever came to the facility to monitor her condition. Each day Michael visited Holly at the nursing facility, and each day he noticed his wife's condition deteriorating. He asked Holly how she felt, and Holly said she had complained to Manor Care staff of problems with the PICC line. She believed that she was not receiving the antibiotics. Michael tried to follow up

on Holly's complaint, but not one of the doctors was available to talk with him. Holly pleaded with Michael, "Please get me out of here."

On the third day of her stay at Manor Care, the nursing staff finally examined the PICC line and found it had malfunctioned. Holly had not been receiving the antibiotics. An outside healthcare provider confirmed the PICC line malfunction and advised that Holly be transferred to a hospital to have the PICC line reinserted. Holly was finally transferred to the Palm Beach Gardens Medical Center the next day. *(Continued on page twelve.)*

No physician documented Holly's arrival at Manor Care, nor confirmed her treatment plan.

Four doctors were assigned to Holly's care and not one ever came to the facility to monitor her.



Mass Tort Projects of Interest

Accutane

Inflammatory Bowel Disease

ACTOS, ACTOplus met, ACTOplus metXR, and Duetact

Bladder Cancer

Avandia

Heart Attack
Congestive Heart Failure
Ischemic Stroke
Sudden Cardiac Death

Avastin

Bacterial Contamination

Bisphosphonates (Actonel, Boniva, Fosamax, Zometa, Aredia, and others)

Jaw Osteonecrosis
Long Bone Fractures
Esophageal Cancer

Chantix

Suicide
Abnormal Behavior

Darvon & Darvocet

Sudden Cardiac Death
Arrhythmia

Gadolinium-Based MRI Contrast Agents

Nephrogenic Systemic Fibrosis

Multaq

Liver Failure

Plavix

Heart Attack

Pradaxa

Uncontrollable Bleeding

Propecia

Sexual Dysfunction
Male Breast Cancer

Propofol

Heart Failure
Respiratory Failure
Death

Raptiva & Rituxan

Neurological Disease

SSRI Antidepressants (Paxil, Celexa, Effexor, Lexapro, Pristiq, Prozac, and Zoloft)

Birth Defects
Pulmonary Hypertension

Topamax

Birth Defects
Cleft Palate

Trasylol (Aprotinin)

Kidney Failure

Yaz, Yasmin, Beyaz, Gianvi & Ocella

Blood Clots
Deep Vein Thrombosis
Gallbladder Disease
Pulmonary Emboli
Stroke
Sudden Cardiac Death

Zocor & Crestor

Rhabdomyolysis
Diabetes

Bard Composix Kugel Hernia Mesh

Bowel Injury
Fistulae Formation

Bard IVC Filter

Heart and Lung Perforation
Hemorrhagic Pericardial Effusion

Bard XenMatrix Hernia Mesh

Endotoxin Contamination

Metal-on-Metal Hip Implants (DePuy, Zimmer, Stryker, and others)

Device Failure and Loosening
Inflammatory Response
Metallosis

NuvaRing Contraceptive Device

Deep Vein Thrombosis
Pulmonary Emboli
Stroke

Post-Operative Disposable Pain Pumps

Chondrolysis
Cartilage Destruction

Transvaginal Mesh, Bladder Slings & TVT Tape (Bard, Johnson & Johnson, Mentor, Boston Scientific, AMS, and others)

Tissue Erosion
Device Failure

Zimmer Knee Implants

Device Failure and Loosening

If you have been harmed by a drug or medical device please call our Mass Tort Unit.

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ACTOS

USE: Lowers blood sugar levels and helps diabetics use insulin more efficiently.

HARM: Failure to warn of risks of bladder cancer.



Pradaxa

USE: Treatment for atrial fibrillation

HARM: Failure to warn of inability to reverse impairment of blood clotting, which causes uncontrollable bleeding and death.



SSRI Antidepressants

USE: Taken by pregnant women for depression.

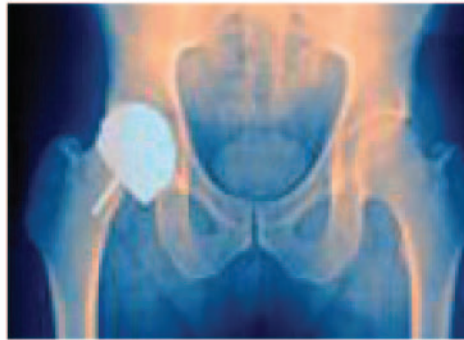
HARM: Failure to warn of drug's risks to fetus during pregnancy and links to numerous birth defects and developmental disorders.



Yaz, Yasmin & Ocella

USE: Birth control pills for contraception and PMDD (premenstrual dysphoric disorder).

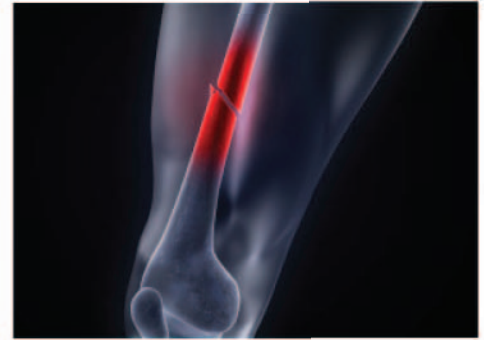
HARM: Failure to warn of increased risks due to unique progestin leading to blood clots, DVT, strokes, heart attacks, pulmonary emboli, gallbladder disease, and sudden cardiac death.



Metal-On-Metal Hip & Knee Implants

USE: Hip and knee implant devices used in joint reconstruction and manufactured by DePuy, Zimmer, Stryker, and others.

HARM: Failure to warn of breakdown of metallic surfaces and abnormal wear, premature device failure, and elevated cobalt and chromium in blood causing metallosis and pseudo-tumor formation.



Osteoporosis Drugs

USE: Strengthen bones that are weakened due to osteoporosis, osteopenia, Paget's disease, or bone metastases.

HARM: Failure to warn of impairment of body's ability to repair damage to bones, leading to femur fractures, jaw osteonecrosis, and possible link to esophageal cancer.



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Distracted Driving . . . A Few Deadly Dangerous Seconds

Newspapers and broadcast news are full of stories these days about ghastly accidents caused by distracted drivers. Every day, people climb into motor vehicles and proceed to text, make and receive calls on a cell phone, check emails on a smart phone or laptop, eat and drink, apply make-up or shave, read maps and newspapers, use a digital navigation system, watch a video, or adjust the car's radio, CD player, or other equipment.

These drivers are behind you, in front of you, and on each side of you, and may even be you. These people are under the impression that they are "multitasking" – getting the most of each moment in their day by successfully doing two, three, even four tasks at one time – one of which is propelling a vehicle weighing anywhere from 2,500 lbs to well over 80,000 lbs down a highway at speeds from very slow to very, very fast. It is no wonder that the U. S. Department of Transportation's National Highway Traffic Safety Administration reports that in 2009, 5,474 people

were killed in crashes involving driver distraction. A full 20% of injury crashes in 2009 involved reports of distracted drivers, with 448,000 people injured.

Multitasking is a myth. Human brains do not "multitask" – they "select." Your brain is constantly engaged in the process of picking and choosing what it needs to focus its attention on at any given second. For every piece of information placed in front of your brain, it must select the information it wants to process, process that information by sending instructions and additional information to the body, encode the information to memory and store it, retrieve the information and related data, and execute the

body's actions in response to that information. Eating a drippy hamburger, sipping coffee, checking the highway signs, confirming the route on your map, answering the cell phone and responding with a text message, watching all of the traffic around you, and checking to see if your hairstyle has been mussed by the wind – all of these tasks are firing information at your brain at the same time. Periodically, the brain goes into overload and the brain's owner slips into a condition known as inattention blindness. In January 2004, a 20-year-old woman drove through a red light while talking on her cell phone. Witnesses reported that she was looking straight ahead through her windshield at the red light and right-of-way vehicles crossing her path. One of those vehicles held a 12-year-old boy who was killed when she crashed into it.

Nearly all of NHTSB's reports show that texting is the worst culprit in distracted driving. Drivers take their eyes off the road an average of 4.6 seconds out of every 6. This is the equivalent, at 55 miles per hour, of driving the length of an entire football field with your eyes shut. Texting drivers are 23 times more likely than non-texters to be involved in a crash or near-accident. And, to scare you even more, in June 2011, more than 196 billion text messages were sent or received in the U. S., up nearly 50% from June 2009. It is clearly time to "stp txtg." Use hands-free cell phones. Preferably, stop using any phone at all while driving. ♦



Young Woman Dies in Auto-Truck Collision

On the evening of March 29, 2011, Liz Mariaca suffered a parent's worst nightmare: she was told that her 18-year-old daughter, Jahmila Bertie-Mariaca, and Jahmila's best friend, Mazelle Demeraski, had both been killed in a horrific car crash. Ms. Demeraski was driving on a south Florida highway when a tractor-trailer turned onto the roadway right in front of the car. Nothing could be done to avoid the crash. Both young girls were killed and a rear-seat passenger was injured.

Seeking legal recourse for this tragic accident, Ms. Mariaca retained SDSBS attorneys **Jack Scarola** and **Patrick Quinlan**. The attorneys successfully orchestrated a comprehensive, multi-party settlement. The case was complex, involving multiple law firms, limited insurance coverage on the truck, and a separate underinsured motorist claim. Within 90 days of the incident, a settlement was reached for Jahmila's family. While no amount of money can compensate Ms. Mariaca for the loss of her daughter, the firm was pleased to assist in bringing this matter to a speedy and successful resolution. ♦

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(Speaking Opportunities, continued from page four.)



Mariano Garcia, a member of the Fifteenth Circuit Judicial Nominating Commission, was a panelist at the "Road to the Bench/Road to the JNC" seminar organized by the Florida Association for Women Lawyers, and sponsored

by the F. Malcolm Cunningham Bar Association, the Palm Beach County Hispanic Bar Association and The Palm Beach County Bar Association's Diversity Committee. The seminar was held January 19, 2012, in West Palm Beach, Florida. On February 17, 2012, Mr. Garcia was a guest speaker at a Naturalization Ceremony held in the Federal Courthouse, West Palm Beach, Florida. Judge Kenneth Marra presided over the ceremony. Mr. Garcia gave the "Welcome to New Citizens" address to 49 immigrants from 29 countries, after they took the oath of citizenship. ♦



Phyllis Neumeyer with granddaughter Phyllis Stewart.

Active Senior Injured by Grocery Store Carts

In May 2011, Frederic and Phyllis Neumeyer drove to the Winn Dixie store in Jensen Beach, Florida, for some grocery shopping. After shopping was completed, Mrs. Neumeyer exited through the store's west entrance, and was abruptly knocked onto the concrete floor by an employee running a string of shopping carts from the parking area into the store. Mrs. Neumeyer suffered an intertrochanteric fracture of her right hip which would require major surgery and screws to secure the fractured bones.

Prior to the incident, Mrs. Neumeyer was a spry 85-year-old who was devoted to her husband, children, and grandchildren. She was the owner and curator of her own antique collection which she had maintained since 1970. She was actively involved with the St. Lucie Chapter of the Questers, a group devoted to restoring historical buildings on Florida's Treasure Coast. Following the injury, Mrs. Neumeyer required substantial physical therapy. The quality of her life, and that of her family, suffered greatly.

According to documents, the Winn Dixie employee responsible for Mrs. Neumeyer's injuries had approached the store's exit doors with a line of carts in a manner clearly in violation of the store's policies and procedures. The Neumeyers asked SDSBS attorney **Ed Ricci** to represent them in an action holding Winn Dixie liable for their employee's actions. In December 2011, the Neumeyers reached a settlement for \$250,000. In response to this incident, Winn Dixie provided the employee who knocked Mrs. Neumeyer down with additional training on how to properly return shopping carts from the parking lot to the store. Unfortunately, Mrs. Neumeyer passed away in February 2012. She is survived by her husband, Frederic, son, daughter and son-in-law, and three grandchildren. ♦

SDSBS Websites:



Log on to...

www.SearcyLaw.com or
www.SearcyLawTallahassee.com

for the latest news and information on our firm, attorneys, articles, cases, etc.



Log on to...

www.SearcyMassTort.com

for the latest news and information on Mass Torts (where many people are harmed in a similar way, usually by a drug, medical device or a product.)



Log on to...

www.AbogadosParaSuFamilia.com

for the latest news and information about our firm in Spanish.

Failure to Monitor Antibiotic Therapy at Nursing Facility Results in Death

(Continued from page seven.)

Medical records at Palm Beach Gardens Medical Center indicated that Holly's condition had substantially worsened from the date of her discharge from Palms West. The infection in her leg had spread to her ankle and foot. She had developed open sores and signs of necrosis. Palm Beach Gardens Medical Center began emergent antibiotic care for Holly. However, the spread of the infection worsened and she now required debridement surgery to remove necrotic tissue. Despite massive efforts to control her infection, Holly went into septic shock and suffered multi-system organ failure. She died on October 3, 2007. Her family was devastated.

Michael contacted SDSBS attorneys **Karen Terry** and **Brian Sullivan** and asked them to represent him in an action challenging Manor Care's lack of care for Holly. An aggressive investigation of medical records, along with depositions from defendant physicians and nurses, revealed that Manor Care staff had ignored the directive for Holly's antibiotic therapy. Their failure to monitor her PICC line function and physical condition had resulted in her untimely death.

On the eve of the summary jury trial, defendants jointly settled the case for \$1.56 million.

Michael DeRosa mourns the loss of his wife and soul mate. He continues his work for the local police department. He still finds time to volunteer at his church and provide care for the animals Holly loved so much. ♦

Horrific Crash Caused by Tired Truck Driver Results in \$17.5 Million Settlement for Family

(Continued from page one.)

The defendants were willing to take partial responsibility for the accident, but they denied any responsibility for punitive damages. The driver, Mr. Wright, gave differing statements as to how the accident occurred. His basic story was that he was looking in his mirrors and towards the on ramp to see if there were any vehicles getting ready to enter the highway. SDSBS hired an accident reconstructionist, Dr. Brian Pfeifer, to determine the view that Mr. Wright would have had immediately before the accident, and to prepare an animation to show what happened. The animation showed that Mr. Wright would have had a view of the truck in front of the Modicas' vehicle 14 seconds prior to impact. The animation also showed that Mr. Wright would have had a complete view of the Modicas' vehicle, stopped or slowing to a stop, 10 seconds before impact. In the distance of over 1,000 feet, the driver could have brought his truck to a complete stop before hitting the car in front of him. What was the truck driver doing?

After an extensive investigation, the attorneys were able to demonstrate that the driver had been consistently working more hours than allowed under federal regulations. The driver and the company were covering the excessive hours by not logging all of the driver's hours on duty. They specifically failed to record the driver's pre- and post-trip inspections. There was also a question as to whether the company was involved in tampering with the XATA system used on the truck to track driving times and locations.

On the day before the accident, Mr. Wright had worked from approximately 3:30 a.m. until at least 8:15 p.m. This would have been two hours in violation of the hours of service regulations. The driver had testified that he did not leave the Tree of Life facility until 6:30 a.m., the day of the crash. However, attorneys for the Modicas' estate were able to show that he could not have completed all of his deliveries on the day of the accident unless he had gone on duty much earlier than 6:30 a.m. Additionally, Mr. Wright lived almost an hour's drive from work. He had almost no time to sleep in the short time he was off-duty. Hours of service regulations require 10 continuous off-duty hours after a day of driving. Therefore, it was illegal for the Tree of Life to dispatch Mr. Wright as a driver on the day of the accident.

After two and one-half weeks in trial, the defendants finally grasped the magnitude of their negligence. The case was settled for \$17.5 million. Although no amount of money could make up for Kevin and Brian's loss, they feel some justice has been gained in being able to describe to the judge and jury the tremendous grief they experienced in losing both parents in a horrible and senseless tragedy.

Every day our highways are crowded with commercial drivers hauling goods across America. Kevin and Brian Modica hope that these drivers and their employers take notice of this tragic case, and that they accept their responsibility to comply with the federal and state laws that restrict work hours in order to maximize safety for everyone. ♦

Accolades



(l-r) Pat Quinlan, Chris Searcy, Mariano Garcia, Jack Scarola and Greg Barnhart.

SDSBS attorneys attend Palm Beach County Bar Association's Membership Luncheon in West Palm Beach

In November 2011, SDSBS attorneys attended the Palm Beach County Bar Association's Membership Luncheon held at the Marriott Hotel, West Palm Beach, Florida. ♦

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Jack Hill re-elected member of the board of directors of Palm Beach County Justice Association for another two-year term



Jack Hill was elected to another two-year term as a member of the board of directors of the Palm Beach County Justice Association. Elections took place during the annual dinner held in January 2012 at the Marriott City Place, West Palm Beach, Florida. ♦

Brian Denney selected for membership in National Trial Lawyers Association 'Top 40 Under 40'



In December 2011, **Brian Denney** was selected for membership in the National Trial Lawyers Association "Top 40 Under 40." Mr. Denney was one of only 40 trial lawyers from Florida to be selected. Membership in the association is by invitation only, extended exclusively to those individuals who exemplify superior qualifications, trial results, and leadership as young trial lawyers. ♦

Taking... Time to Care



The Bike Team of SDSBS helped out 'Jack the Bike Man' with unpacking, adjusting and helping kids get their bikes

For years, Jack Hairston (a.k.a. "Jack the Bike man"), gathered old bikes, new bikes, pieces and parts of bikes to make repairs, and then gave them to children in need. There are, nearly always, more children in need than bikes. In December 2011, SDSBS pitched in to help "Jack the Bike Man." They helped give away almost 800 bicycles to needy kids in Palm Beach

County, Florida. The **SDSBS Bike Team** gathered at Jack's warehouse to unpack bike helmets and get the bikes ready to distribute to an overwhelming number of kids waiting outside the warehouse.

Team members fitted each child with a bike helmet, took them inside the warehouse to pick out a bike, then helped adjust the bike to the child's size and need. Helmets were checked a second time and each family received a bilingual handout on helmet safety. Many of the kids got their first bike that day, and the wonderful freedom that comes with it. Smiles were flying from bike riders to the Team members, and back. ♦



Brian Denney keeping time for the Third Annual Lawyer's Variety Show

The Palm Beach County Bar Association's Third Annual Lawyer Variety Show was held in January 2012 at the Eissey Theatre in Palm Beach Gardens, Florida. **Brian Denney** played drums with three different bands comprised of members of the Bar Association. ♦

Gold Coast Down Syndrome organization supported by SDSBS Employees with their Buddy Walk and Casual Day events

In October 2011, **SDSBS employees** participated in the 17th Annual Buddy Walk to promote awareness, acceptance, and inclusion of individuals with Down Syndrome. The event was hosted by the Gold Coast Down Syndrome Organization in John Prince Park, West Palm Beach, Florida. The Walk was attended by 2,500 people and generated \$125,000 in funds that will be used to support local programs. The Walk is a heart-warming event that celebrates the many accomplishments of individuals with Down Syndrome, and creates a positive awareness in the community. In March 2012, SDSBS employees participated in a "Casual Day" to support World Down Syndrome Day. For a \$1 donation, employees got to "Dress Down for Down Syndrome" while raising funds to support this organization. ♦





SDSBS Team joins in 'Lawyers for Literacy' event supporting Literacy Coalition of Palm Beach County

Attorneys **Earl Denney**, **Jack Scarola**, and **Brenda Fulmer** participated in the Palm Beach County Bar Association's "Lawyers for Literacy" program held in November 2011 at the Adult Education Center in West Palm Beach, Florida. This annual event, held in partnership with the Literacy Coalition of Palm Beach County, provided an opportunity for adult students to hear local attorneys describe how reading enriched their careers in law, and how important it is to continue their education in order to achieve their dreams and goals. ♦



Employees in SDSBS Tallahassee office participate in Turkey Trot Race to support The Refuge House, The Shelter, and Boys and Girls Clubs

SDSBS employees participated in the 36th Annual Tallahassee Turkey Trot 5K Race held on Thanksgiving Day 2011 to raise funds to support The Refuge House, The Shelter, and Boys and Girls Clubs of the Big Bend. The Refuge House and The Shelter provide support and emergency shelter for north Florida's victims of domestic and sexual violence. The Boys and Girls Clubs offer after-school and summer programs for several hundred kids at four Club locations in Gadsden and Leon Counties. ♦

Kelsey Burke elected paralegal representative to Palm Beach County Hispanic Bar Association board

Kelsey Burke was recently elected paralegal representative to the board of directors of the Palm Beach County Hispanic Bar Association. The paralegal representative attends PBCHBA's executive board meetings to assist with issues affecting paralegal members. Her duties will also include assisting in planning and implementing PBCHBA events and in recruiting new members. ♦

SDSBS Tallahassee office donate printers and ink cartridges to 'The Sharing Tree', a reusable resource center for community organizations

The staff of the **SDSBS Tallahassee office** recently donated seven laser jet printers and five laser jet cartridges to The Sharing Tree in Tallahassee, Florida. The Sharing Tree is a public/non-profit partnership founded by Leon County Schools, Goodwill Industries – Big Bend, Inc., Sustainable Tallahassee, Inc., and the Leon County government. The organization's mission is to establish a reusable resource center for donated new and gently used materials which are collected and redistributed to educators, artists, and the broader learning community in Leon County. Working together, the partnership inspires the entire community to reuse and recycle. ♦



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SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
Attorneys at Law

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BOATING & WATERCRAFT INJURIES
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