

# OF COUNSEL

A report  
to clients  
and attorneys.

VOLUME 07  
NUMBER 1

## FAMILY AWARDED \$30.6 MILLION FOR CRIPPLING BIRTH INJURIES

**Hospital violated its own  
rules and procedures.**

On February 23, 2007, after a six week trial in Lee County, 9½-year-old Aaron Edwards recovered a record-breaking sum of \$30,650,554 for a crippling brain injury he suffered at birth. This catastrophic injury was caused by Lee Memorial Health System's failure to follow hospital rules and regulations during the delivery of Aaron. The medical malpractice case was tried against Lee Memorial by SDSBS attorneys Chris Searcy and Jack Hill on behalf of Aaron and his parents and natural guardians, Mark Edwards and Mitzi Roden. The legal battle has been long and difficult. "This case has been crying out for justice for 9½ years," said Mr. Searcy.

In September 1997, Mitzi Edwards (now Roden) was expecting the birth of her son Aaron and had been admitted to Health Park Hospital, owned and operated by Lee Memorial Health System, for care and treatment by its obstetricians, mid-wives, and labor and delivery nurses. During the course of her labor, and despite Mark and Mitzi's expressed objections, Mitzi was administered the drug Pitocin which is used on occasion to induce or augment labor contractions. The hospital and its medical professionals failed to properly monitor the amount of Pitocin given to Mitzi and her response to the drug. The drug caused Mitzi's uterus to contract so severely and rapidly, and for such an extended period of time, that it robbed Aaron's brain of vital blood flow and oxygen. Following birth, Aaron was diag-



**9½-year-old Aaron Edwards**

nosed with severe dystonic cerebral palsy, a condition he will have for his entire life. "He has a brilliant mind trapped in a crippled body and with a mouth that won't work," Mr. Searcy said of Aaron.

By Florida state law, the judgment in this case will have to be approved by the Florida State Legislature because Lee Memorial Hospital System is a healthcare conglomerate designated as a special taxing district in Florida. Since the corporation has sovereign immunity protection, judgments for medical malpractice are limited to \$200,000 unless the Legislature approves an award in excess of that amount. Aaron's family faces substantial, life-long expenses caring for a child with permanent brain injury. "We're very confident our lawmakers will conclude that this result is a just one for Aaron and his family, and a beneficial result for the community as well," said Mr. Searcy. *(Continued on page eight.)*

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## LITIGATION UPDATES:



### Bausch & Lomb ReNu with MoistureLoc

The firm's litigation with Bausch and Lomb, spearheaded by partner-in-charge Cal Warriner, is in the midst of extensive discovery efforts. SDSBS filed two cases against Bausch – one in Palm Beach County Circuit Court and the other in Highlands County – concerning its ReNu with MoistureLoc contact lens solution. Bausch is attempting to thwart our efforts to move the litigation along at a rapid pace, but Mr. Warriner and his team are doing all they can to prevail in the discovery battle. We anticipate obtaining a trial date by early fall of 2007. ■



### Tobacco Litigation and Recent Florida Supreme Court Decision

The SDSBS team involved in litigation against tobacco companies is headed by partners-in-charge David Sales and Cal Warriner. The Florida Supreme Court's July 2006 decision in *Engle v Leggett* opened the door to individual litigation by a defined group of smokers or their surviving family members. Those *Engle* class members have only until January 10, 2008, to file suit. For more information, please visit our websites at [www.searicylaw.com](http://www.searicylaw.com) and [www.floridatobaccoattorney.com](http://www.floridatobaccoattorney.com). ■

***Our smoking litigation toll free number is 866-365-8535.***

**Correction:** *Of Counsel*, Volume 06 Number 3, included an article concerning the action filed by Bishop Anthony L. Williams and his wife. *Of Counsel* incorrectly reported that a confidential settlement was reached on the final day of the trial. In fact, the settlement was reached on the opening day of the trial.

### USEFUL INFORMATION

Looking for answers on consumer issues and actions, education, employment, family, health, housing, federal services and benefits, and a whole lot more?

Federal Citizen Information Center, at

[www.pueblo.gsa.gov](http://www.pueblo.gsa.gov)

or **1-888-8 PUEBLO**

A valuable tool for everyone wanting information on every subject - includes links to:

[www.USA.gov](http://www.USA.gov)

[www.kids.gov](http://www.kids.gov)

[www.consumeraction.gov](http://www.consumeraction.gov)

and numerous other websites and publications



## OF COUNSEL

NEWSLETTER  
VOLUME 07 NUMBER 1

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.

# VETERAN'S RETIREMENT DREAMS PERMANENTLY SMASHED BY NEGLIGENT TANK TRUCK DRIVER

**Defendants used denial and delay in an effort to avoid justice for crash victim.**

**B**R is a decorated Vietnam War veteran having served with distinction in the 101st Airborne Division. He survived some of the heaviest fighting during the war, including battles during the Tet Offensive, and was awarded both a Purple Heart and Bronze Star for his valor. After his service, he became a professional truck driver and worked for many years driving rigs for trucking companies. His dream was to save enough money to purchase his own rig so that he and his wife could travel together and generate income for themselves well past the usual age of retirement. On an early summer morning, BR's plans and dreams were shattered in an instant when another truck smashed into his vehicle.

That morning, BR was driving his employer's tractor-trailer rig southbound on a road in Kissimmee, Florida. As he scanned the roadway ahead of him, he noted that his lane was partially blocked by the rear of a vehicle which

*The resolution of the case restored BR's faith in what he had risked his life to defend - America and its system of justice.*

had stopped by the side of the road in an area being used by a school bus for loading and unloading children. Recognizing the potentially hazardous situation

ahead of him, BR brought his rig to a full stop with adequate safe distance separating him from the parked vehicle. As BR sat waiting for the parked vehicle and bus to leave the area, a 40-ton tractor-trailer slammed into the rear of BR's rig. The rig that rear-ended BR was a tractor driven by its owner, JG, pulling a tank trailer filled with sludge water. The tank trailer was owned by AWS.

Immediately after the collision, BR called his employer to notify them of the accident. The employer sent a representative to the scene of the accident to assess damages and to provide BR transportation back to the office. As they drove away from the accident scene, the employer's representative became increasingly concerned about BR's physical condition and he drove BR to a local emergency room for evaluation. BR was released to the care of his personal physician for further evaluation.

BR's condition required three surgical procedures, two of which were massive and complex. He underwent an anterior cervical fusion and spinal surgery in the lumbar area. His left shoulder also required surgery. BR's physician stated that BR will need additional fusions in the cervical and lumbar areas. In the physician's opinion, BR will remain under orthopedic and neuro-surgical care for the remainder of his life. BR will always require prescription medications including narcotic pain killers and anti-inflammatory medication.

The liability for damages in this case appeared to be clear from the outset. However, JG, the defendant driver, claimed that the brakes on the tank trailer had failed. JG asserted that other drivers had experienced problems with the particular tank trailer he had been towing. AWS, owner of the tank trailer, argued that there was no specific record of the defects alleged by JG, and noted that JG had been driving for a fair distance before the brakes allegedly failed. Further, both defendants denied that BR had incurred any significant injury as a result of this collision, as evidenced by photographs of the physical damages to the trailer of BR's rig. BR sought representation by SDSBS attorney Greg Barnhart. Mr. Barnhart promptly filed suit against JG, the driver/owner of the tractor that hit BR, as well as AWS, owner of the tank trailer being towed.

BR had filed a disability claim with the Social Security Administration (SSA). That agency quickly determined that BR was permanently and totally disabled from the date of the accident. Despite this determination, the defendants continued to avoid their responsibility for BR's medical condition. They ignored the opinions of doctors assigned by SSA to examine BR. Those doctors not only confirmed the disability, but reported that the patient was in almost constant, at times intractable, pain. The defendants asserted that these findings were unrelated to the collision and were long-standing degenerative problems. Extensive discovery into BR's past medical and employment history was launched by the defense. Experts in accident reconstruction and human factors were retained by the defense to explain how this collision between two massive motor vehicles could not be the cause of BR's injuries. **(Continued on page eight.)**

**Confidential Settlement**

**VEHICLE NEGLIGENCE RESULTS IN SIGNIFICANT AND PERMANENT DAMAGES**

## WORN TIRES ON RENTAL VEHICLE CAUSE SEVERE INJURY TO VACATIONER

On August 3, 2001, 11 members of two related families flew from a country in South America to a large metropolis in south Florida for a month-long vacation. Among them was a mother of three young children. She was also a college graduate and planned to study in Spain and become a Ph.D. in human genetics.

Shortly after arrival in south Florida, this group rented a 15-passenger van from a well-known car rental dealership. The plan for this family vacation was to see as much of the United States as possible.

After driving north to upstate New York, the group headed west and eventually arrived in Los Angeles, California. After spending some time at Cal Tech, dropping off one of the passengers, the group headed back east on August 26, traveling on I-10 with south Florida as the ultimate destination. The plan was to return the rental van in south Florida and fly back to South America. On August 26, the 15-passenger van was passing a slower vehicle and the driver of the van lost control on the wet pavement (it was raining at the time), hydroplaned sideways, and slid off the roadway into a grassy swale.

As the van began to hydroplane, the mother of three children became alarmed and released her belt latch and reached over to protect her infant son. When the van spun and rolled onto its left side, the mother's left arm became pinned under the vehicle. She suffered a traumatic degloving/partial amputation of her left upper arm. She was airlifted from the accident scene to a major hospital where the

arm was surgically amputated. She remained in the hospital for a period of two months. She then was flown back to South America where she received follow-up care as well as extensive plastic surgery.

Later inspection of the rear tires revealed extensive tread wear which would have enhanced the hydroplaning and the known inherent instability of this type of vehicle.

Chris Searcy and David White were prepared to try this case beginning on January 8, 2007. Shortly before trial, the case settled for a substantial amount of money. ■

### Confidential Settlement

HYDROPLANING VAN ROLLS OVER CAUSING AMPUTATION

## SOUTH FLORIDA LEGAL GUIDE HONORS SDSBS AND 12 OF ITS ATTORNEYS



The *South Florida Legal Guide* (2007 Annual Edition) selected SDSBS as one of the top law firms in south Florida. Nine SDSBS attorneys were named by the publication as top lawyers – **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, Bill Norton, Cal Warriner, David Sales, and Chris Speed.** The *Guide* selects the honorees by asking Florida's most highly-regarded attorneys to nominate attorneys whom they most respect, and to whom they would refer a friend or family member. ■



**Chris Searcy**



**Earl Denney**



**Jack Scarola**



**Greg Barnhart**



**John Shipley**



**Bill Norton**



**Cal Warriner**



**David Sales**



**Chris Speed**

In addition, attorneys **Darryl Lewis, Karen Terry, and Harry Shevin** were selected for the *Guide's* "Up & Comer" category.



**Darryl Lewis**



**Karen Terry**



**Harry Shevin**

# HOLY COW! BULL ATTACKS MAN

**Intense research uncovers over 70 prior incidents of defendant's failure to control livestock.**

In February 2005, Star Morris was relaxing at home. As she walked through her kitchen, she glanced out her window and saw what appeared to be a cow wandering around the road in front of her home. She ran outside, and sure enough, there was this huge animal. Concerned about the animal's safety, and the motorists traveling on the nearby road, she and one of the motorists that had stopped nearby guided the animal into her yard and she closed the gate behind it. She went inside and called 911 and the local Animal Control, asking them to come remove the animal. Star stayed inside her house waiting for Animal Control to arrive.

In the meantime, Star's husband, Moe, came home from his job as a postal deliveryman. Entering his yard, Moe suddenly came upon the animal. This was not a big cow – it was a very mean and ornery bull. The animal charged at Moe, butting him with its head and launching Moe into the air. Star was looking out of her window, stunned by what was happening to her husband. Moe lay dazed on the ground, gasping for breath. His lung had been punctured and his shoulder, leg, and ribs were broken. He was fighting for his life.

Moe spent the next three weeks in the hospital, most of the time in an intensive care unit. He endured numerous surgeries to repair the damages to his body, but even after months of rehabilitative therapy, Moe could not return to work for the pain he continued to suffer. The bull's vicious attack had changed the Morrisses' lives abruptly.

After the attack, the Morrisises called SDSBS attorney Karen Terry for help in determining responsibility for the damages suffered. Ms. Terry and her team found these cases to be very complex, muddled by laws written many years ago that were crafted more to protect the livestock industry than to protect people harmed by such animals running loose. The injured party bears the burden of proving that the livestock owner failed to construct proper fencing or failed to confine the animal within a fence or gate. It was a daunting task. Many ranchers lease or own numerous parcels of land that require miles and miles of fencing, making the task of inspection arduous and difficult for any enforcement en-



*Photo at left:  
bovine bully.*

*Attorney Karen Terry  
and her team were not  
'city slickers'  
or 'tenderfoots'...  
they knew  
how to corral a  
reluctant insurance  
company!*

tity. Livestock owners often insulate themselves from liability under the law by arguing that the animal jumped over a properly maintained fence that was built to code.

The owner of the bull that attacked Moe Morris had already used that same argument to convince Animal Control to dismiss a ticket issued for failure to confine animals. Pursuing a liability case for the injuries caused by the defendant's uncontrolled bull would require the team to conduct a thorough "hands-on and boots-on" investigation. Witnesses were located and interviewed by paralegal/investigator Vince Leonard and Ms. Terry. Public records were searched in detail, and used to show a chronic history of over 70 other incidents of the defendant's failure to control his animals. By the time the case went before a court in southwest Florida, the data garnered from the intense investigation, combined with a powerful presentation that argued for the relevance of the other incidents in terms of time and similarity, successfully led to a ruling by the judge against the defense's motion for summary judgment.

The judge stated that if the case moved to trial, he would allow plaintiff to present to the jury the prior loose animal incidents. Up to this point, the defendant's insurance carrier had been confident that the case would be dropped on summary judgment, as had occurred so often in the past. The defendant and his insurer had not even offered to pay Mr. Morris' medical bills. The defense learned shortly that Ms. Terry and her team were not "city slickers" or "tenderfoots." In fact, they knew quite well how to corral a reluctant insurance company. On the eve of the trial, the defendant and the insurance company ponied up the total available insurance proceeds of \$1 million for Moe and Star Morris. ■

**\$1 Million  
Settlement  
FOR INSURANCE  
POLICY LIMIT**

# EXPERT MEDICAL TESTIMONY RESULTS IN \$1 MILLION SETTLEMENT

**88-year-old drove car through office window, pinning victim.**

On the afternoon of September 17, 2001, Chandra Hemraj, accompanied by her 4½-year-old grandson, Anil Barran, drove to the Sand and Sea Travel Agency in Boynton Beach, Florida. Mrs. Hemraj was planning to book a fall cruise for herself and her husband, Nerahoo. The travel agency is located in a shopping plaza that includes a large parking lot for the customers of the plaza's stores and offices. It was a busy afternoon at the travel agency, and it was necessary for Mrs. Hemraj to wait for the next available sales associate. She and Anil took seats just inside the entrance. Suddenly there was a loud crash and Mrs. Hemraj was violently thrown to the floor. The crash was the last thing she heard until she regained consciousness at the Delray Medical Center. Miraculously, Anil was not injured in the accident, and was treated and released from the hospital. Mrs. Hemraj was not as fortunate.

The driver of the car that had crashed into the travel agency was 88-year-old Eleonora Koski. Mrs. Koski had driven to the same shopping plaza for a dental appointment. As she drove through the parking lot searching for a parking space near her dentist's office, she approached a clearly displayed stop sign. According to an eyewitness, instead of slowing to a stop, Mrs. Koski suddenly accelerated her vehicle and crashed through the wall and glass window, into the travel agency. Mrs. Hemraj and Anil were struck from behind, knocked to the floor and pinned underneath Mrs. Koski's vehicle. Alan Rosen, president of Sand and Sea Travel, had been seated at his desk when the accident happened. "The sound of the crash was so loud and severe that I thought it was a bombing similar to the 9-11 attack in New York," he commented. Mr. Rosen ran to the front of his office and saw Mrs. Koski's vehicle completely inside their offices, with its engine still running. He then saw Mrs. Hemraj and Anil pinned underneath the vehicle, surrounded by broken glass, twisted metal, and shattered concrete. He thought they had been killed. Travel agency employees immediately called the Palm Beach County Police and Fire Rescue for help. Fire Rescue crews had to raise the vehicle onto blocks in order to remove the victims.



***Nerahoo and Chandra Hemraj***

Mrs. Hemraj and Anil were taken to the medical center where she was admitted and Anil was released after examination. The initial diagnosis on Mrs. Hemraj revealed a crush injury and a severe burn to her lower left leg. Because of her severe pain and discomfort with even the slightest movement, she remained in the hospital for four days.

Upon release from the hospital, Mrs. Hemraj and her husband sought representation by SDSBS attorneys Chris Searcy and Rosalyn Sia Baker-Barnes. Liability for the crash was clear. Nonetheless, Mrs. Koski's insurer, relying on Mrs. Hemraj's initial medical records, insisted that her injuries were superficial. For almost three years, Mrs. Hemraj consulted with numerous physicians in the area, each of whom had difficulty in diagnosing the exact nature and extent of her injuries. Mr. Searcy and Ms. Baker-Barnes worked closely with Mrs. Hemraj's treating physicians. Finally, a consulting orthopedic physician ordered MRI studies of Mrs. Hemraj's shoulders. These studies revealed that she had suffered extensive rotator cuff tears in both shoulders, and the injuries were directly related to the accident. It was necessary for Mrs. Hemraj to undergo bilateral surgical procedures in order to obtain relief from her pain. The studies also revealed that she had suffered a nerve injury ***(Continued on next page.)***

(Continued from previous page.)

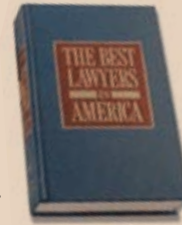
to her leg, where the weight of the vehicle had caused a crush injury. Her physicians believe this injury will require a third surgical procedure in order to obtain relief for Mrs. Hemraj. Mr. Searcy and Ms. Baker-Barnes filed suit against Mrs. Koski to recover damages caused by the accident. However, because three years had passed before doctors discovered the nature and severity of her injuries, Mrs. Koski's insurer challenged the causation of Mrs. Hemraj's injuries. With the help of expert medical testimony, her attorneys were able to establish that the severe and permanent injuries suffered by Mrs. Hemraj were indeed a result of the crash. Finally, during mediation on the eve of trial, the matter was settled for \$1,050,000. The settlement will provide Mr. and Mrs. Hemraj the much needed funds for her continued medical treatment and care. ■



**Over \$1 Million Settlement**  
**CAUSE OF CRASH INJURIES PROVED AFTER THREE YEARS**

## EIGHT SDSBS ATTORNEYS SELECTED FOR 2007 "BEST LAWYERS IN AMERICA"

**Chris Searcy, Jack Scarola, Greg Barnhart, John Shipley, Chris Speed, David White, Darryl Lewis and Sean Domnick** were selected for the 2007 edition of *The Best Lawyers in America*. This edition marks the 20th year that Chris Searcy and Chris Speed have been listed in the publication. Greg Barnhart has been listed for the past 10 years. Attorneys were selected based on an exhaustive and rigorous peer-review survey that was developed and refined over the past 25 years. The 2007 edition is based on 1.8 million confidential evaluations by the top attorneys in the United States. Because attorneys are not required or allowed to pay a fee for a basic listing, Best Lawyers has gained the respect of the legal profession, the media, and clients as the most reliable, unbiased source of legal referrals in America. ■



**Chris Searcy**



**Jack Scarola**



**Greg Barnhart**



**John Shipley**



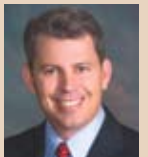
**Chris Speed**



**David White**



**Darryl Lewis**



**Sean Domnick**

## INTERNATIONAL ACADEMY OF TRIAL LAWYERS INVITES SCAROLA TO JOIN



**Jack Scarola** has been invited to become a Fellow of the International Academy of Trial Lawyers (IATL). Trial attorneys are admitted to the Academy only if they possess, to an exceptional degree, superior skill and recognized ability in trial and appellate practice, service in promoting the legal profession, the highest standards of advocacy, excellent character, and absolute integrity.

Active membership in the Academy is limited to 500 Fellows from the United States. Membership includes Fellows from over 30 countries throughout the world. IATL was chartered in 1954 for the purpose of cultivating the science of jurisprudence, promoting law reforms, facilitating justice, promoting the Rule of Law internationally, and elevating the standards of integrity, honor, and courtesy in the legal profession. ■

## ACCOLADES



**Chris Searcy** has been appointed Co-Chair of the Florida Supreme Court Historical Society's Evolution of Justice Committee. ■



**Harry Shevin** was named president-elect of the Palm Beach County Justice Association. He previously served as treasurer, and has been on the Board. ■



**Jack Hill** is serving his second year of a two-year term as a member of the Board of the Palm Beach County Justice Association. ■



**Emilio Diamantis** was reelected for a two-year term as Paralegal Representative of the Palm Beach County Justice Association. ■

## Family Awarded \$30.6 Million For Crippling Birth Injury.

*(Continued from page one)*

“Our healthcare system cannot tolerate the kind of egregious malpractice that occurred at Health Park Hospital in September 1997,” continued Mr. Searcy.

Despite irrefutable evidence that Lee Memorial’s rules and regulations were violated, no healthcare provider involved in Mitzi’s labor and delivery has been subsequently punished or even reprimanded.

*“Our justice system is not an ideal - it is a living reality.”*

- - Gregory Peck as character Atticus Finch, in “To Kill a Mockingbird.”

“Here we have a healthcare institution that claims to have never been successfully sued for malpractice in its history, then refuses to acknowledge such an obvious lapse in care that destroyed a child’s brain and the life of a family,” Mr. Searcy said. “The lack of disciplinary action and reckless disregard for the dangers to mother and baby from over-stimulation with Pitocin, combined with a sense of itself as perfect, created a culture of no accountability to the patient for the past 9½ years. They remained intransigent to any resolution. We refused to let it be buried. Through our justice system, Lee Memorial Health System will finally be held accountable to the patient and the public.” ■



## Veteran’s Retirement Dreams Permanently Smashed by Negligent Tank Truck Driver.

*(Continued from page three.)*

Despite the best efforts by the defense to deny, delay, and then defend the claims being made against them by BR, a trial date was secured and mediation was ordered by the court.

At mediation, Mr. Barnhart demonstrated the strength of his case and the appeal that the case would have on a jury in Orange County, Florida. He also demonstrated the psychological impact the accident had made on BR’s life, and the impact made on BR’s family. This proud, independent man was now sidelined, his wife forced to obtain employment outside of their home, and their dreams of traveling together in ruins. Mr. Barnhart argued the lack of support for the theory of defense, and illustrated the credibility that BR and his treating physicians would exhibit before a jury. Mediation took over eight hours. Eventually, the parties reached a confidential settlement in BR’s favor. The settlement will provide him with the certainty of future income and access to medical care for the remainder of his life. The resolution of the case also restored BR’s faith in what he had risked his life to defend - America and its system of justice. ■

## SPEAKING OPPORTUNITIES



**Chris Searcy**



**Greg Barnhart**



**Sean Domnick**



**Karen Terry**



**John Hopkins**



**Pat Quinlan**

**Chris Searcy** spoke on “Opening Statements” at the Law Education Institute’s 24th Annual National CLE Conference held in January 2007 at Snowmass Village, Colorado. ■

**Greg Barnhart** spoke on “Trial Skills: Opening, Closing, and Trial Motions” at the Florida Bar Civil Trial Certification Review Course Seminar in February 2007 in Tampa, Florida. ■

**Greg Barnhart** and **Sean Domnick** participated in the Academy of Florida Trial Lawyers’ Mediation Techniques and Strategies Seminar held in December 2006 at the Omni Orlando Resort, Champions Gate, Florida. Mr. Barnhart’s topic was “Bringing the Weight of the Plaintiff’s Case to Mediation.” Mr. Domnick provided the welcome and introductory remarks. ■

**Karen Terry** and **John Hopkins** spoke on “Tobacco Litigation” at the Florida Alliance for Retired Americans’ Board of Directors meeting in December 2006 at the Doubletree Hotel in Palm Beach Gardens, Florida. ■

**Pat Quinlan** and **John Hopkins** spoke to area high school students on pursuing careers in the legal field during “Career Day” held in November 2006 at the Palm Beach County Convention Center. ■



## STILL WAITING FOR THE U.S. COURT OF APPEALS TO RULE ON THE PETITION FILED FEB. 2006 SEE THE PRESS RELEASE BELOW TO UNDERSTAND THIS VERY CRITICAL TRUCK SAFETY ISSUE

**Advocates for Highway and Auto Safety**

**Public Citizen**

**Citizens for Reliable & Safe Highways (CRASH)**

**Parents Against Tired Truckers**

February 27, 2006

### **TRUCKERS HOURS-OF-SERVICE RULE CREATES HAZARD, ALLOWS DRIVERS ON ROAD FOR TOO MANY HOURS, SAFETY GROUPS AND TEAMSTERS TELL COURT**

#### ***Groups Go to Court a Second Time Over Flawed Rule***

WASHINGTON, D.C. The federal government's rule detailing how many hours truckers may drive before taking a break is flawed and should be changed to help reduce fatigue-related crashes, five organizations told a court today.

In a petition filed today in the U.S. Court of Appeals for the District of Columbia Circuit, the five groups asked the court to review the final hours-of-service rule issued August 25, 2005, by the Federal Motor Carrier Safety Administration (FMCSA). The two-page petition is the first step in legally challenging the rule. Three of the groups – Public Citizen, Citizens for Reliable and Safe Highways (CRASH) and Parents Against Tired Truckers (PATT) – successfully sued the government over the rule in 2003 and this time are joined by Advocates for Highway and Auto Safety, which filed a critical amicus brief in the previous case, and the International Brotherhood of Teamsters.

Like the nearly identical rule issued by FMCSA in April 2003, which the court struck down in 2004, the 2005 rule dramatically increases both the number of hours that truckers may drive without a break and the number of hours truckers may drive per week. Before 2003, truckers were permitted to drive no more than 10 consecutive hours before taking a break. Now, truckers can drive for 11 hours straight. Before 2003, drivers were barred from driving after they had worked 60 hours in the previous seven days or 70 hours in the previous eight, depending on the company schedule. Under the new rule, truckers can now drive 77 hours in seven days or 88 hours in eight days – a more than 25 percent increase. On-duty hours during which truckers may drive have also climbed, so that a driver working 14-hour shifts under the new rules can now work as many as 84 hours in seven days or 98 hours in eight days – a 40 percent increase over the old limits.

Further, the 2005 rule, like the 2003 rule, fails to require electronic onboard recorders, which would provide reliable data on how many hours truckers drive and permit effective enforcement of the rule. Cheating on paper logbooks is rampant.

In the first lawsuit, the U.S. Court of Appeals for the District of Columbia Circuit said that FMCSA had failed to consider the effect of the new rules on the health of truck drivers as it was required to do under law. The court severely chastised the agency for permitting dramatic increases in driving time and for failing to make other important improvements to the rules that the agency initially proposed but later abandoned in the final regulation.

“More than 5,000 people are killed each year in large truck-related crashes and more than 110,000 are injured,” said Public Citizen President Joan Claybrook. “That FMCSA chose in both rules to expand driving hours is astounding given its statutory mandate to make safety its highest priority and Congress’s specific directive to the agency to reduce fatigue-related incidents. We fully expect the court to find once again that this rule violates the agency’s clear assignment to put safety first.”

“We refuse to wait any longer for the government to rule on our challenge. We are stepping up the fight against these regulations that put Teamster drivers at greater risk,” said Jim Hoffa, Teamsters general president.

In 2004, after the new rules were first adopted, the number of large trucks involved in fatal truck crashes climbed by 4 percent, from 4,669 to 4,862, with deaths mounting from 5,036 to 5,190, according to statistics compiled by the National Highway Traffic Safety Administration (NHTSA). In 2004, 761 truck occupants were killed, again up from 2003, according to NHTSA data. Trucking remains one of the nation’s most dangerous professions, according to the Bureau of Labor Statistics.

Despite the court’s harshly worded ruling, FMCSA issued a virtually identical rule in 2005. Public Citizen, PATT, CRASH, Advocates for Highway and Auto Safety, the Trauma Foundation, and the International Brotherhood of Teamsters jointly petitioned the agency last September to reconsider its rule. After waiting five months without an answer from FMCSA, the groups withdrew their petition for reconsideration and filed with the court. This case is being litigated by lawyers for Public Citizen.

“With the lives and safety of truck drivers and the driving public on the line, we could not afford to wait indefinitely for the agency to respond,” said Jackie Gillan, vice president of Advocates for Highway and Auto Safety. ■

[www.trucksafety.org](http://www.trucksafety.org)

[www.patt.org](http://www.patt.org)

[www.publiccitizen.org](http://www.publiccitizen.org)

# TAKING... *Time to Care*



**Sheriff Ric Bradshaw accepts the SDSBS contribution from Chris Searcy.**

## **“Shop with a Cop” program reaches its contribution goal with help from SDSBS.**

SDSBS was recognized as a Silver Sponsor for the “Shop With A Cop” program held by the Palm Beach County Sheriff’s Office in December 2006. The firm’s \$5,000 contribution helped the program reach its goal of \$25,000. The event is held during the winter holiday season to provide over 100 children with \$100 gift cards. The program also provides holiday meals for the families. Each child is escorted by a Sheriff’s Deputy on a shopping trip to buy a gift for each member of the child’s family. Without the assistance of this program, these children would not have the joy of sharing gifts during the holidays. ■



## **SDSBS Tallahassee office participates in 11th Annual Chili Cook-Off.**

SDSBS attorney Jim Gustafson participated in the 11th Annual Chili Cook-Off presented by the Tallahassee Bar Association and the Legal Aid Foundation. The competition was held on January 24, 2007, at the Capitol Retreat at Bradley’s Pond, in Tallahassee. ■



## **Kari Shipley honored by Bethesda Hospital Foundation.**

SDSBS congratulates Kari Shipley, John Shipley’s wife, as one of the five “2006 Women of Grace” honorees selected by the Bethesda Hospital Foundation. Each year, the Foundation’s Women of Grace Committee honors women whose efforts in the community exemplify the true spirit of caring and volunteerism. Kari has been an active community volunteer for almost thirty years. She is a board member of the Community Child Care Center and co-chairs their annual House Tour. She has been an active supporter of the Foundation and served on the Women of Grace Committee. The Foundation’s luncheon honoring the 2006 Women of Grace raised funds toward the purchase of an infant incubator and transport incubator for the hospital. ■



## **SDSBS historic Tallahassee office used as set for FSU Graduate Film Program movie.**

The Towle House, home to SDSBS’s branch office in Tallahassee, Florida, was recently the filming location for a movie produced by Sam Littenberg-Weisberg for the Florida State University Graduate Film Program. The film, titled “Ezmerelda: 1970-1986,” is a dark comedy written and directed by Julie Hotz. The Towle House, built in 1847 by attorney Simon Towle, one of Tallahassee’s first mayors, was transformed by the film crew into a 1980s funeral parlor for scenes in the movie. SDSBS staffers Joanne Cline, Ashley Cline, and Jessica Bivens at The Towle House worked closely with the film crew to set up the scenes. They and other SDSBS staff clearly enjoyed the historic home’s brush with stardom. ■



## SDSBS Staff and Families participate in 'Dumpster Days' to benefit The Lord's Place.

In January 2007, SDSBS participated in "Dumpster Days," an event to raise funds for The Lord's Place and to raise public awareness of the approximately 4,000 homeless people in Palm Beach County. From January 16 to 19, a dumpster was placed outside the offices of SDSBS. Volunteers, including SDSBS attorneys and staff, politicians, and local celebrities, took shifts sitting inside the dumpster collecting donations to help families and individuals in their journeys out of homelessness. The dumpster was moved to CityPlace for more fund-raising from January 19 to 21.

In 1983, Joe Ranieri sat in a trash bin for 30 days trying to raise awareness about homelessness. The funds he raised helped open the first shelter, The Lord's Place. During those 30 days, Jack Scarola volunteered to sit in the dumpster for Joe when he needed a break, and Jack has continued to contribute his support ever since. Jack currently serves on the Board of Directors for The Lord's Place.

Last year, inspired by her father's efforts, Cara Scarola, an eighth-grade teacher at the Benjamin School in North Palm Beach, participated in Dumpster Days as a special community service project for a group of 16 eighth-graders she advises at Benjamin. This year, Cara and co-advisor Kristin Ruest, another Benjamin teacher and chair of the science department, helped the students research homelessness and prepare a presentation for the rest of the school. The students began a fund-raising effort at school to raise funds for The Lord's Place. On January 17, the students visited Café Joshua, a program of The Lord's Place that provides meals for the homeless in Palm Beach County. Over lunch, the students met people who were homeless and are now rebuilding their lives. According to Cara and Kristin, the project substantially changed the students' perceptions of how people lose homes and the courage it takes to get their lives back. After lunch, the students took turns sitting in the dumpster at SDSBS cheering for drive-by contributions and collecting donations.

Members of the National Honor Society of Suncoast High School joined the Benjamin students in dumpster sitting. SDSBS employee Diane Dulcie, whose son is a member, had proposed Dumpster Days as an opportunity for Society members to participate in a community service. So far, over \$50,000 has been raised by "Dumpster Days," and contributions are still being received. ■

## Attorney Pat Quinlan runs in NYC Marathon, raising funds to benefit the Lance Armstrong Foundation.



In November 2006, SDSBS attorney Pat Quinlan ran the ING New York City Marathon on behalf of the Lance Armstrong Foundation, which raises funds to support cancer research. Pat raised over \$8,300, well in excess of his goal of \$7,500. Although Pat had run no more than 10 miles at one time before this marathon, he met his two race-day goals: to cross the finish line, and not walk any portion of the race. The legendary marathon is a grueling 26.2 miles through all five boroughs of New York City, ending in Central Park. Pat's family joined him at the finish line. Pat Quinlan's inspiration to endure the race and to finish came from his six-year-old son, Brian, who suffers from acute lymphoblastic leukemia and is being treated at St. Jude's Children's Research Hospital. Pat, his family, and the Lance Armstrong Foundation continue to race for a cure for leukemia and other cancers. ■



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VOLUME 07  
NUMBER 1

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