

# OF COUNSEL

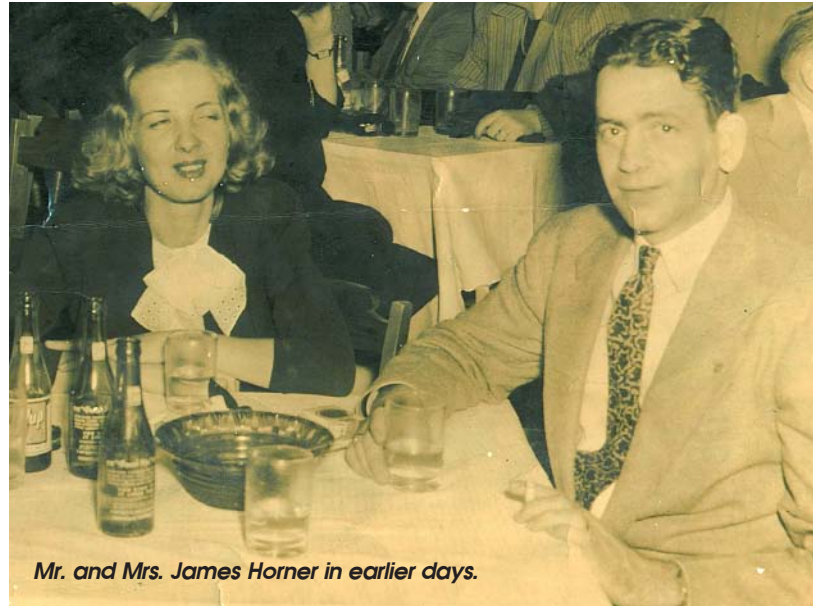
A REPORT TO CLIENTS & ATTORNEYS  
VOLUME 11 - NUMBER 1

## \$80 Million Verdict Over Big Tobacco - 4th SDSBS Victory In Smoking Battle

In November 2010, a Florida jury awarded \$80 million to the daughter of an *Engle* class member who died from lung cancer after a 60-year addiction to the nicotine in cigarettes produced by R. J. Reynolds Tobacco Company.

James Cayce Horner died in 1996 at the age of 78 after a long battle against lung cancer. He began smoking as a teenager in the 1930's, when R. J. Reynolds and other cigarette manufacturers openly marketed cigarettes to teenagers. Despite repeated efforts to quit smoking, even despite his wife's death from lung cancer in 1993, Mr. Horner was unable to overcome his two-pack a day addiction to Reynolds' Lucky Strikes, Pall Malls, Kools, Camels, or Winstons. He smoked until his death.

With both parents lost to lung cancer, it fell to Mr. Horner's daughter, Dianne Webb, to pursue her



Mr. and Mrs. James Horner in earlier days.

father's rights as a member of the landmark *Engle* class action suit. Mrs. Webb asked SDSBS attorneys **Jim Gustafson** and **David Sales** to represent her in a suit against R. J. Reynolds. In July 2006, the Florida Supreme Court's decision in *Engle v Leggett* 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 would have to show that the smoker developed their smoking-related illness prior to November 1996. There are now over 8,000 such suits pending in the courts of Florida.

The Horner suit was the fourth *Engle* trial by SDSBS, and the firm's fourth victory, *(Continued on page eleven.)*

## Community's Failure to Honor Contract Results in \$4 Million Settlement for Developer

The story ends with a \$4 million settlement in 2011, but it begins 18 years earlier. In 1993, BallenIsles, a planned community of more than 1,575 high-end homes in Palm Beach Gardens, Florida, was struggling. With the residential real estate market in decline and the community's previous developer facing bankruptcy, Dexter Development, Inc., agreed to take over the development of BallenIsles with approximately 1,400 homes still left to build and sell. As a result of Dexter Development's steadfast determination and forward thinking, the BallenIsles development was soon put back on the right track. The results were nothing short of spectacular from a significant increase in the home values within BallenIsles to capital

improvements of the community's facilities, including the country club and its golf, tennis, fitness, swimming, and social facilities. The development of BallenIsles was a resounding success for all of its residents and the City of Palm Beach Gardens.

Like most planned communities, there came a time when Dexter Development, as the master developer, turned over control of BallenIsles to its residents. Additionally, as the owner of the country club, Dexter Development also had to make arrangements to either sell the country club to a third party investor or turn it into an equity club and sell it to the residents of BallenIsles who desired to become equity members. Realizing that residents of *(Continued on page five.)*

## Insurance Company Tries to Avoid Good Faith Claim

In April 2009, Miguel Garcia (not his real name) was driving home along Hypoluxo Road in Boynton Beach, Florida. As Mr. Garcia approached the intersection of Hypoluxo Road and I-95, Roberto Aguilar (not his real name) was driving his pick-up truck on I-95 and exited the interstate highway using an exit ramp that intersected with Hypoluxo Road. Instead of yielding to the right-of-way traffic on Hypoluxo Road, Mr. Aguilar drove straight onto the road, crashing violently into the passenger side of the vehicle driven by Mr. Garcia. The impact of the collision was so severe that Mr. Garcia's vehicle was flipped onto its side and into the traffic median where it struck a tree. Mr. Garcia suffered tears in two major ligaments in his shoulder which required surgery and extensive physical rehabilitation. In addition to his physical injuries and pain, he suffered damages that included medical expenses, diminished earning capacity, aggravation of a preexisting physical condition, and the possibility that some of his injuries had caused permanent damage.

The automobile insurance company for the at-fault, reckless driver of the truck failed to tender the low limits of insurance despite numerous good faith attempts to reach settlement. Mr. Garcia asked SDSBS attorneys **Darryl Lewis** and **Ed Ricci** to represent him in a civil action against the insurance company. Ultimately, the insurance company paid Mr. Garcia three times the limits of insurance due to the efforts of the attorneys to present the full extent of Mr. Garcia's damages and to disclose the questionable claims-handling practices of the insurance company. ♦



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*A Passion for Justice*



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

# Talented Young Driver with Racing Future Killed in Road Crash Caused by Wanton Recklessness

There is nothing quite so exciting for a family than to share in the new adventures and new accomplishments of their children. On November 8, 2006, it was that same exciting time for the Ray family in Middleburg, Florida. Late in the afternoon, parents Pat and Leah Ray closed up their family-owned All Pro Automotive Shop and prepared to drive about 50 miles south to Gainesville so that their oldest daughter, 16-year-old Katie, could drive in her first-ever drag race. Pat, an avid racer, had taught his daughter how to race. She would be starting her own racing career that night in a car Pat had restored for her.

Katie's younger sister, Taylor, then age nine, would also be part of Katie's family team. In addition, Katie's friend, Jonathan Adams, was invited to come along with the family and watch the race.

Edward Abruscato, who had been employed as a mechanic at All Pro Automotive for about two weeks, also wanted to attend the races in Gainesville that evening. Mr. Abruscato planned to drive his pickup truck to his home, load a motor scooter into the back of the truck, and take it to Gainesville so he could ride around at the race grounds. He needed help lifting and loading the scooter, so Mr. Abruscato's daughter, Kristin, along with Katie and Jonathan went with him. On the way back to All Pro Automotive, Kristin sat in the front seat with her father, and Jonathan and Katie sat in the back seat. No one in the truck was wearing a seatbelt.

On the return trip to the shop, Mr. Abruscato drove recklessly. Leaving his driveway, he spun his truck in a circle. At some stop signs, he peeled off from a full stop, spinning his tires. He sped through their neigh-



*16-year-old Katie Ray.*

borhood at over 50 mph, moving so fast that he was unable to stop at the intersection with County Road 215. He ran the stop sign and drove into the middle of the intersection just as other cars were approaching. The impact was tremendous. Katie suffered fatal injuries from the trauma and died at the scene of the crash. The other three occupants of the truck, including Mr. Abruscato, survived.

The Ray family was devastated. There is simply no greater loss than the loss of a child. This loss was magnified by the fact that Katie's death was caused by the reckless and pointless conduct of Mr. Abruscato.

Seeking relief for the reckless actions that caused their daughter's death, the Rays made a claim against the insurance company that represented Mr. Abruscato. The insurance company unreasonably rejected the Rays' demands for Mr. Abruscato's policy limit of \$50,000. The Rays asked SDSBS attorney **Jim Gustafson** to represent them in their wrongful death case. The Ray case went to trial with Jim Gustafson and **John Shipley** trying the case, along with attorney Tommy Demas. On December 8, 2010, the jury returned a verdict against Mr. Abruscato and awarded the Ray family \$5 million. The award was reduced by 20% comparative negligence for Katie's failure to wear her seatbelt. While their grief will never go away, the Rays are slowly finding a way to move forward as a family. ♦

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He sped through their neighborhood at over 50 mph, moving so fast that he was unable to stop ... and drove into the middle of the intersection just as other cars were approaching.

**Kate suffered fatal injuries and died at the scene of the crash.**

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*Rosalyn Sia Baker-Barnes*

**CANDIDATE FOR  
PALM BEACH COUNTY BAR ASSOCIATION  
BOARD OF DIRECTORS**

“As lawyers and community leaders, we have an obligation to give back. We give voice to those who otherwise would not be heard, and with that comes responsibility. We must do more than protect citizen’s rights through the civil justice system: We must nurture justice in the hearts of our neighborhoods and community organizations.

I ask for your vote because I believe that I can increase the Bar’s community partnerships so that we have a greater presence, enhancing public perception of lawyers and our role in our society. I am confident, as well, that I can advance the Bar’s efforts to increase diversity in our organization . . . so that it is a true reflection of our community and our shared mission of justice for all.”

*Sia Baker-Barnes*

**COMMITMENT TO LEADERSHIP & SERVICE**

**Palm Beach County Bar Association**

Member, 2000–Present  
Current Chairperson, Personal Injury/  
Wrongful Death CLE Committee  
Current Marketing Sub-Committee Co-Chair,  
Committee for Diversity & Inclusion  
Co-Chairperson, Personal Injury/  
Wrongful Death CLE Committee – 2009-2010  
Member, Diversity Committee – 2006-2007

**Florida Justice Association**

Member, 2001–Present  
Current Member, Board of Directors  
Past Chairperson, Young Lawyers Section  
Past Secretary, Young Lawyers Section  
Past Board of Directors, Young Lawyers Section  
Past Board of Directors, Women’s Caucus Section

**F. Malcolm Cunningham, Sr. Bar Association**

Member, 2000–Present  
Secretary, 2004–2005  
Past Chairperson, William M. Holland  
Scholarship Luncheon  
Past Chairperson, Scholarship Section Committee  
Past Chairperson, Holiday Affair Social

**The Links, Inc.**

Member, 2002–Present  
President, 2005–2007  
Chairperson, National Trends & Services Facet  
Chairperson, Area Ethics & Standards Committee  
Chairperson, Technology Committee  
Chapter Reporter/Publicist  
Past Chairperson, Annual White Rose Luncheon

**Inlet Grove Community High School, Inc.**

Board of Directors, 2004–Present  
Current Chairman of the Board  
Past Vice Chairman and Director

**Florida State University College of Law  
Alumni Association (2006 – present)**

Current Member, Board of Directors

**Featured in *Florida Super Lawyers*  
as a “Rising Star”**

in the area of  
Plaintiffs Medical Malpractice Litigation,  
June 2010 and June 2009

**“Presidential Award” Recipient,  
National Bar Association, August 2007.**

Awarded for outstanding service and  
dedication to the organization

## Community's failure to honor contract results in \$4 million settlement for developer

*(Continued from page one.)*

BallenIsles would make the most logical buyers of the country club, Dexter Development engaged in an 18-month negotiation process with multiple resident organizations to reach an agreement about the terms of the equity conversion. There were multiple drafts and concessions by both sides that culminated in nearly universal support for the equity conversion contracts. When presented with the opportunity to control the future of their country club, 83% of the residents elected to become equity members.

Contained in the equity conversion documents were two separate contracts whereby the country club members and BallenIsles Country Club, Inc., provided unequivocal consent to the rezoning and permanent permitting of Dexter's Sales Center located just outside the gate at BallenIsles. From the Sales Center, Dexter operated a highly successful realty operation devoted to selling and reselling homes within BallenIsles. Because the Sales Center land was originally only temporarily zoned and permitted, Dexter needed to obtain permanent permitting and rezoning from the City of Palm Beach Gardens if its profitable business was to continue after turnover of the community from Dexter to the residents. Dexter planned for this need by negotiating for the inclusion of the consent provisions into the equity conversion documents. In exchange, Dexter gave up valuable contractual rights regarding alternative locations within BallenIsles from which it could conduct its real estate business, and even deeded over the Dexter corporate building within BallenIsles to BallenIsles County Club at no additional cost to the Club.

As with the Sales Center, the Dexter corporate building that was deeded over to the Club required rezoning and permanent permitting. With the full support of BallenIsles Community Association and BallenIsles County Club, the Club's recently acquired property sailed through rezoning by the City of Palm Beach Gardens. When it came time for Dexter to petition the City for rezoning for its Sales Center, however, a small but vocal minority within BallenIsles set out to sabotage Dexter's rezoning efforts in direct violation of their contractual obligation. Despite protracted negotiations with the rezoning opponents, Dexter was

never able to convince them to honor their contractual obligations to support the Sales Center rezoning. This minority group took every opportunity to make known its desire that Dexter not be able to continue operating the Sales Center, while the group was simultaneously exploring opportunities to enter the real estate business themselves. As a result of this persistent opposition, Dexter was not able to secure permanent permitting and rezoning from the City of Palm Beach Gardens for the Sales Center. Without permanent permitting, the City forced Dexter to shut down its profitable real estate brokerage business in 2006 and demolish its 7,000 square foot Sales Center building.

To address the loss of its valuable business, Dexter sought legal representation from SDSBS attorneys **Jack Scarola** and **Jack Hill**. Mr. Scarola and Mr. Hill filed suit on behalf of Dexter in Palm Beach County for breach of contract and tortious interference against BallenIsles Community Association, Inc., BallenIsles County Club, Inc., and several individual defendants who spearheaded the vocal opposition to Dexter's petition for permanent permitting and rezoning of the Sales Center. The case was heavily litigated for over two years, including an appeal to the Fourth DCA. On the eve of the start of a three week arbitration, Jack Scarola and Jack Hill were able to settle Dexter's case against all defendants. Included in the settlement terms is a payment of \$4 million from the defendants. With the case concluded, Dexter is looking forward to again working with BallenIsles for their mutual benefit. ♦



## Speaking Opportunities



**Chris Searcy** spoke at the Fred Weisman Advanced Litigation Seminar held in February 2011 at the Embassy Suites, Palm Beach Gardens, Florida. His topic was "Wrongful Death of a Child." ♦



**Greg Barnhart** spoke at the Florida Bar Civil Trial Certification Seminar held in January 2011 at the Omni Orlando at ChampionsGate. His topic was "Opening Statements and Closing Arguments." The seminar is held for Board Certification Exams. ♦



**Darryl Lewis** spoke at the American Association for Justice's Winter Convention held February 9, 2011, at Loew's Miami Beach, Florida. His topic was "Lecture and Demonstration: Opening." On February 11, 2011, Mr. Lewis spoke at the Palm Beach

County Bar Association's PI Wrongful Death CLE Seminar on "Back to the Basics: The Nuts and Bolts of Litigation, Auto Negligence, and Premises Liability Cases." Mr. Lewis's topic was "Trying Your Case." ♦



**Brian Denney** served as a presiding judge in November 2010, at the Florida Justice Association's annual Mock Trial Competition, hosted in Tampa, Florida, by FJA's Young Lawyers Section. Future attorneys from universities around the state

competed for a scholarship and the honor of winning the prestigious event. In December 2010, Mr. Denney spoke at the Palm Beach County Justice Association's Seminar, "SCOPE: Strategies on Cross-Examining the Opposing Professional Examiners." Also in December, he spoke at a meeting of the Florida Alliance for Retired Americans held in West Palm Beach, Florida. His topic was "Protecting Your Health: The Doctor's Visit, Hospitalization, and Auto Insurance Basics." In February 2011, Mr. Denney participated in the Florida Justice Association's Workhorse Seminar held in Orlando, Florida. He spoke on "Case Strategies to Avoid 'Gotcha' Moments and Other Pitfalls at Trial." ♦



**Brenda Fulmer** spoke at a meeting of the United Retired Carpenters and UAW of Central Florida, held in December 2010 in Wildwood, Florida. The subject of her program was "Protecting Yourself from Dangerous Drugs," a presentation that she has

given to more than a dozen consumer groups over the past several months. She also spoke on February 24, 2011, at the Florida Justice Association's 2011 Workhorse Seminar in Orlando, Florida. Her presentation was entitled "Mass Torts of Mention," covering recent developments in pharmaceutical and medical device litigation. ♦



**Sia Baker-Barnes** chaired a program held by the Palm Beach County Bar Association's Personal Injury/Wrongful Death Continuing Legal Education Committee, held in December 2010 at Ruth's Chris Steakhouse in West Palm Beach, Florida.



**John Hopkins** spoke at the event on "Using the Web to Locate Social Information." The PI/Wrongful Death CLE Committee presented another program in February 2011 at the Bar Association offices. The subject was "Back to the Basics: The Nuts and Bolts of Litigating Auto Negligence and Premises Liability Cases." Ms. Baker-Barnes provided the welcome and opening remarks. ♦



**Vince Leonard**, Paralegal Representative of the Board of Directors, Palm Beach County Justice Association, hosted a seminar titled "So You Got a New Personal Injury File – Now What?" The event was held October 2010 at The President's Club in

West Palm Beach, Florida. With the help of PBCJA co-members Wali Sanchez and Yvonne Leaser, Mr. Leonard conducted a two-hour presentation for CLE credit to over 75 paralegals, legal assistants, and attorneys. The course was designed to teach members how to get their new personal injury cases started off on the right foot. ♦



# DePuy Hip Implants: Another Johnson & Johnson Recall

DePuy Orthopaedics, a subsidiary of Johnson & Johnson, has voluntarily recalled two of its hip replacement systems after a staggering number of patients were forced to undergo revision surgeries as a result of device failure and premature deterioration of the devices. This recall comes on the heels of several others recently issued by the healthcare products conglomerate (eleven total recalls since September 2009), leading to some serious questions about their quality control.

A spokesperson for the company has advised that any patient who has an ASR XL Acetabular System or the ASR Hip Resurfacing System should consult with their surgeon for immediate evaluation of the device's performance and for enhanced monitoring. The recall may affect up to 93,000 patients worldwide who have been implanted with one of the 29 various models of these defective hip devices. The ASR XL Acetabular System, released in 2004, was available worldwide, while the ASR Hip Resurfacing System, launched in 2003, had only been approved for use outside the United States. Approximately one in eight patients implanted with ASR products have required corrective surgery within the first five years after the initial implant. According to the National Joint Registry of England and Wales, the failure rates of 13% and 12% respectively are about twice the industry average for similar devices.

On July 17, 2010, the FDA categorized DePuy's actions with regard to these hip implants as a Class II medical device recall due to the new revision rate data transmitted to physicians, which contradicts the manufacturer's initial statements that the ASR products were being discontinued due to low sales figures and declining demand rather than safety and performance issues. Class II recalls are issued when a product has a lower probability of causing serious injuries or death than Class I recalls (the most serious level of a product recall), but where there is still,

nevertheless, the possibility of severe enough adverse events to cause irreversible damages.

The hip systems consist of metal ball and socket components - the socket portion is at the outer edge of the pelvis and the ball portion atop of the femur, which fits into the socket. These components wear over time as they move against each other, causing microscopic metallic particles to break away from the devices. Some patients have experienced inflam-

matory reactions to these metallic shavings. Those who reported adverse events and underwent surgical intervention reported symptoms such as pain, swelling, and difficulty walking. While these symptoms are considered normal for patients who have recently received a hip replacement, they can also signal a problem when the symptoms persist or worsen over time. According to DePuy's website, prolonged complaints of these symptoms may be a sign of loosening of the

hardware (when the implant does not stay attached to the bone in the correct position), fracture (where the bone around the implant may have broken), or dislocation (where the two parts of the implant that move against each other are no longer aligned).

In recent months, a number of lawsuits have been filed over faulty DePuy hip implants. The mass torts lawyers at **Searcy Denney Scarola Barnhart & Shipley, P.A.** are proud to represent clients who have suffered injuries as a result of defective DePuy hip implants as well as other defective medical devices, drugs, and consumer products. ♦



This recall comes on the heels of several others recently issued by the healthcare products conglomerate (eleven since September 2009).

**“That leads to serious questions about their quality control.”**

# Couple Battles Insurance Company for Uninsured/Underinsured Motorist Protection

In the fall of 2008, Hilda and Gunter Bloy were enjoying their golden years in Palm Beach Gardens, Florida. Hilda, 70 years of age, was employed as a locker-room attendant at the Turtle Creek Country Club in Tequesta, Florida. She regularly worked a full-time schedule, adding extra hours during the busy season in south Florida. Gunter, 85 years old, was a retired professional chef. Both were very active, enjoying daily walks, hosting dinners at home, and spending time with family and friends.



**Hilda and Gunter Bloy**

On Wednesday, September 24, 2008, everything changed. The couple had spent several days at home enjoying a visit from Hilda's niece, Debbie. After dropping Debbie off at the airport, Gunter and Hilda drove north on Military Trail toward home. Gunter was driving with Hilda sitting in the backseat directly behind him. It was a rainy day and the roads were wet. A mid-size SUV driven by Angela Parrilla was heading south on the same highway, traveling at a speed far too great for the weather conditions. Suddenly, the SUV swerved across the highway's median and into the northbound lane of traffic. The large vehicle smashed into the driver's side of the Bloy's car. The impact was so severe that Hilda had to be extracted from the vehicle by emergency personnel using the "jaws of life". Taken by ambulance to the emergency

department of the Jupiter Medical Center, Hilda was diagnosed with a left shoulder contusion, acute cervical strain, and blunt-force head trauma. Further examination revealed that she had also suffered a coracoid, or scapula, fracture and a full-thickness tear in her left shoulder rotator cuff. The injuries required surgery which was performed on October 10, 2008. Her condition did not improve and a second surgery was performed in June 2010 to repair the rotator cuff.

Gunter was also injured in the crash, suffering a torn tendon in his left thumb and a rotator cuff injury to his left shoulder. In October 2008, doctors performed surgery on the ulnar collateral ligament in his left thumb. This surgery repaired the tears, but he is now left with limited strength and range of motion in his hand.

Because of her injuries, Hilda was unable to work for a long period of time. She has since returned to her job, but suffers a great deal of pain performing her regular duties. Gunter's limitations prevent him from participating in many of the activities he enjoyed before the crash, including cooking for Hilda, and their family and friends. The financial impact of the crash has threatened their ability to provide financial support for their son who suffers from a terminal illness.

*(Continued on page ten.)*



## Is the Driver Speed Adequately

### Should you 'insure defensively

*The two cases described on these pages are the result of purchasing uninsured and underinsured motorist protection.*  
*See more information on*



# Verdict Against Insurer is Nine Times the Settlement Offer for Uninsured Motorist Claim

In January 2006, John Smith (not his real name) was driving westbound on a residential road in south Florida. John was wearing his seatbelt and driving in the right-hand lane at the posted speed limit. Heading east toward John on the same road was a pick-up truck driven at a high rate of speed by 22-year-old Sam Jones (not his real name). A parked car was on the side of the eastbound lane, and the speeding pick-up truck suddenly swerved around the parked car and into John's lane. Realizing almost immediately that he could not avoid the oncoming truck, John slammed on the brakes and brought his car to a complete stop. The truck, leaving long skid marks on the surface of the road, slammed head-on into John's car. The front-end of John's car was nearly destroyed. Property damages were later estimated in excess of \$13,000.

The steering wheel and steering column crushed into John's head, chest, and abdomen, breaking six teeth and causing immediate pain in his back and abdomen. Police were called to the scene of the accident, and an ambulance rushed John to a nearby hospital for emergency examination. The examination report recorded symptoms including headaches; pain in his neck, lower back, left arm and hand; difficulty grasping objects; and numbness in his limbs.

John Smith, 56 years of age, is a well-known hair stylist who owns a successful salon in south Florida. He worked long days to make his business thrive. When he was not at work, he enjoyed a very active life at home with his wife, Jane, and their two young children. Following the accident, John was referred to several doctors in an effort to find some relief from his pain, and improvement in his condition. In April 2006, an extensive examination by a neurologist revealed a herniated disk at C6-7 and herniated vs. bulging



discs at C3-4 and C5-6 in his spine, and damage to his optic nerve. Doctors repeatedly recommended surgery on his back. John's work at the salon was now limited, performed only with the help of pain medication. He began worrying about his ability to maintain his business and the work he loved. At home, he was having difficulty reaching for items above his head, or bending down to pick up his children. The future for John appeared to be full of extensive medical expenses and reduced ability to earn a living.

Sam, the owner/driver of the pick-up truck that struck John head-on, was uninsured. There was no insurance coverage, and few, if any, assets to be claimed against the damage and destruction caused by the careless driver. Fortunately, John had purchased uninsured/underinsured motorist (UIM) coverage in his own policy with The Insurance Company (TIC – not its real name). Within a few months, John filed a claim against his own policy. TIC reviewed the claim and eventually offered far less than the policy's limit for UIM claims. John rejected the offer, and TIC began months of efforts to minimize their obligation under the policy to pay John for the damages he had suffered. The insurer tried to argue that John's back condition was the result of a preexisting degenerative condition and that he was not as debilitated as he claimed. **(Continued on page ten.)**

## ding Toward You y Insured?

' as well as 'drive defensively'?

pages highlight the importance of  
motorist coverage in your insurance policy.  
about this on page ten.



## Is the Driver Speeding Toward You Adequately Insured?

### Should you 'insure defensively' as well as 'drive defensively'?

The two cases described on the previous two pages and this page highlight the importance of purchasing uninsured and underinsured motorist coverage in your insurance policy. A study conducted by the Insurance Research Council and published by the Insurance Information Institute (III) revealed that nearly one in four Florida drivers may be driving without insurance, and that these numbers will likely rise. (Florida had the fifth highest number of uninsured drivers in the 2007 study of all states.) The study found a strong correlation between the number of uninsured motorists and the unemployment rate. Florida law requires drivers to carry automobile insurance, and the driver may be fined or lose their license, vehicle registration, and vehicle tag if caught driving without the insurance. However, the economics of unemployment (or underemployment) lead drivers to take the risk and violate the law. This creates a risk not only for themselves, but for other drivers.

Responsible drivers comply with the various state laws requiring automobile insurance, and they protect themselves from uninsured drivers by adding insurance to protect them from drivers who do not comply with the law. ♦

**Visit Florida Insurance Council's website for information on the study, and talk to your insurance provider about the need for coverage.**

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

## Couple battles insurance company for uninsured/underinsured motorist protection

*(Continued from page eight.)*

Neither the driver responsible for the crash, nor the owner of the vehicle, had sufficient insurance coverage to compensate Hilda and Gunter for the extensive injuries they suffered. Fortunately, the couple had purchased uninsured/underinsured motorist (UIM) coverage in their policy with The Hartford Insurance Company. The Bloys filed a claim under their policy with The Hartford. While The Hartford admitted that the driver of the SUV was negligent, they offered the Bloys very limited compensation, arguing the severity of Hilda's and Gunter's injuries. The couple asked SDSBS attorney **Sia Baker-Barnes** to represent them in an action against The Hartford Insurance Company. After a thorough investigation of the Bloys' situation, which included expert medical testimony, Ms. Baker-Barnes demonstrated the severity of the injuries suffered by Hilda and Gunter Bloy. The Hartford Insurance Company was compelled to admit that those severe injuries were caused by the collision. Just days before trial, The Hartford Insurance Company agreed to pay the Bloys \$460,000 for their injuries. Hilda and Gunter Bloy take comfort in knowing that they will not lose their home, and that they will be able to continue to provide support for their son. ♦

## Verdict against insurer is nine times the settlement offer for uninsured motorist claim

*(Continued from page nine.)*

TIC demanded numerous additional medical examinations, and even conducted surveillance of John, filming him at work in his salon and getting in and out of his car. TIC attempted to malign John's credibility by pointing at inconsistencies in his medical records. The delaying tactics went on for months.

Eventually, John sought representation by SDSBS attorneys **Darryl Lewis** and **Ed Ricci**. After repeated attempts to reach a settlement with the insurance company, the attorneys filed a civil action against TIC charging that the company was acting in bad faith and was obligated to provide a reasonable response to John's claims under his policy. On November 10, 2010, a jury returned a verdict in John's favor for an amount four times greater than the policy's limits, and nine times greater than the settlement offer that had been rejected. ♦

# A Story of Betrayal Without a Happy Ending

Harold Murphy and Jim Morton had been the closest of friends for over 30 years. When Jim called Harold and told Harold that he, Jim, was in serious trouble, Harold immediately agreed to a meeting. Jim arrived in tears. He told Harold that he had embezzled over \$350,000 from the local law firm where Jim was employed as a paralegal and had just been caught. If he did not replace the stolen funds immediately, Jim was facing 15 years in prison.

Harold told Jim that as much as he wanted to help him, he did not have that kind of money. Jim went on to explain that he had a contract to sell some land. The contract was set to close and he would be able to pay the money back within a few weeks. Believing his trusted friend, Harold went to the bank the next day, borrowed \$350,000 on an existing line of credit and delivered the money to Jim. Two weeks later Jim asked for and was given an additional \$100,000 which Harold also borrowed on the same credit line. This loan was made on the strength of Jim's assurance that a second mortgage on his Wellington home had been approved that would enable Jim to repay the second loan, again within a few weeks.

Harold was now out almost half a million dollars in borrowed funds. As weeks passed with no repayment and with interest on the bank loan eating up Harold's savings, Harold began to question Jim about what was happening. Jim had many explanations about the delays and even gave Harold a copy of the written contract for the land sale. When Jim stopped answering Harold's phone calls, Harold knew it was time to seek the help of another friend, **Jack Scarola**.

Jack got in touch with Jim Morton and demanded that Morton appear in Jack's office the following day. At that meeting, Morton admitted what by then had become fairly obvious—except for the confession of his embezzlement, the rest of his statements to Harold had been lies, and even the amount of the embezzled funds was grossly understated. There never was a contract to sell the land, the document Jim gave Harold was a forgery, and he had no bank commitment for refinancing.

Though he has managed to find the money to pay multiple lawyers to defend him against both civil and criminal charges, Jim Morton did not repay a single penny back to Harold. Nevertheless, Harold has now fully repaid the bank by selling a motor home, two cars, and wiping out the savings that had been intended to help finance the college education of his grandchildren. At 71 years old, the comfortable retirement that Harold should have been able to enjoy has been dramatically altered.

Jack Scarola vigorously prosecuted fraud and civil theft claims against Jim Morton on Harold's behalf and after trial obtained a treble damage judgment of over \$1.6 million. Of course, the quest to avenge the betrayal that Harold suffered will not end until every available asset that Jim Morton has is seized to satisfy that judgment. ♦

## \$80 million verdict over Big Tobacco - 4th SDSBS victory in smoking battle

*(Continued from page one.)*

against Big Tobacco. At the time this case went to trial in November 2010, Big Tobacco had won eight straight *Engle* progeny cases.

The Horner verdict snapped plaintiffs' losing streak in a big way. The jury awarded Mrs. Webb \$8 million for the wrongful death of her father, and then imposed punitive damages in the amount of \$72 million against the tobacco company. They found Mr. Horner was ten percent responsible for his death, and that R. J. Reynolds was 90 percent responsible.

Reynolds' defense focused on Mr. Horner's "choices," including his "decision" to continue to smoke and his failure to stop smoking. This defense position was the same in previous suits brought against the several tobacco companies. In opening statements, Jim Gustafson told the jury, "We're going to prove that Jim Horner didn't smoke two packs of cigarettes per day for 60 years because he liked or enjoyed smoking, the way you and I like or enjoy eating a slice of pie or watching a football game. He smoked two packs a day because he was addicted. The novelty of sucking in smoke and blowing it out, sucking it in and blowing it out – that novelty wore off pretty quickly. He didn't smoke 40 cigarettes a day for 60 years because it was so much fun to do . . . he did it because he was addicted to the nicotine in cigarettes. He smoked to avoid withdrawal."

"The truth about this industry remains an eye-opening tale of arrogance and disdain for public health," said David Sales. "People need to be reminded, again and again, of the true costs – in precious human life – that R. J. Reynolds has imposed and continues to impose on our society." ♦



## Nine SDSBS Attorneys recognized by peers as 'Best in Their Field' in *Best Lawyers in America 2011*



Chris Searcy



Jack Scarola



Greg Barnhart



John Shipley



Darryl Lewis



David Sales



Chris Speed



Karen Terry



Cal Warriner

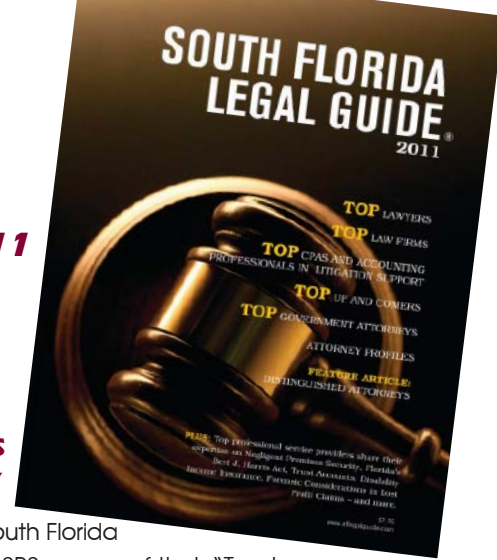
Nine **SDSBS** attorneys have been recognized by their peers as the best in their various fields of practice in the 17th edition of the *Best Lawyers in America (2011)*. **Chris Searcy, Jack Scarola, Greg Barnhart, John Shipley, Darryl Lewis, David Sales, Chris Speed, Karen Terry, and Cal Warriner** were listed as outstanding attorneys following exhaustive peer-review surveys involving over three million detailed evaluations of lawyers by other lawyers. *Best Lawyers* is the oldest and most respected peer-review publication in the legal profession. ♦

## Vince Leonard elected to second term as Paralegal Representative on Board of Directors of PBCJA



The Palm Beach County Justice Association held its annual election and installation of new officers in January 2011. **Vince Leonard** was elected by his peers to his second two-year term as the Paralegal Representative on the Board of Directors. His duties will include liaison to the Board and the PBCJA membership, assisting with training and development programs, and supporting the organization's mission to uphold the honor of the legal profession in the community. ♦

## South Florida Legal Guide 2011 edition selects SDSBS as one of their 'Top Law Firms' and nine SDSBS attorneys as 'Top Lawyers'



The 2011 edition of the South Florida Legal Guide selected SDSBS as one of their "Top Law Firms." In addition, nine SDSBS attorneys were named by the Guide as "Top Lawyers" – **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, David Sales, Chris Speed, Karen Terry, and Cal Warriner**. The Guide also named **Brian Denney** as a 2011 "Top Up and Comer." "Top Law Firms" are initially nominated on an annual ballot submitted by "Top Lawyers." The nominations are then reviewed and the



Chris Searcy

top 150 law firms are selected. "Top Lawyers" are selected in a peer nomination procedure. And "Top Up and Comers" are nominated by "Top Lawyers" as the next generation of leaders in the south Florida legal community. ♦



Earl Denney



Jack Scarola



Greg Barnhart



John Shipley



David Sales



Chris Speed



Karen Terry



Cal Warriner



Brian Denney



## Mass Torts Projects of Interest

### CONSUMER PRODUCTS

**Product**  
Injury

**Yamaha Rhino ATV**  
Crush Injuries Due to Rollover  
**Denture Cream**  
Neurological Disease

### PRESCRIPTION AND OVER-THE-COUNTER DRUGS

**Drug Name**  
Injury

**Accutane**  
Inflammatory Bowel Disease

**Avandia**  
Heart Attack  
Congestive Heart Failure  
Ischemic Stroke  
Sudden Cardiac Death

**Bisphosphonates  
(Fosamax, Zometa, Aredia)**  
Jaw Osteonecrosis  
Long Bone Fractures  
Esophageal Cancer

**Chantix**  
Suicide

**Darvon & Darvocet**  
Sudden Cardiac Death  
Arrhythmia

**Hydroxycut**  
Liver Failure

**Gadolinium-Based  
MRI Contrast Agents**  
Nephrogenic Systemic Fibrosis

**Meridia**  
Heart attack  
Stroke

**Propylthiouracil (PTU)**  
Liver Failure

**Raptiva & Rituxan**  
Neurological disease

**Reglan**  
Tardive Dyskinesia

**Seroquel and Zyprexa**  
Hyperglycemia

**Trasylol (Aprotinin)**  
Kidney Failure

**Visicol, OsmoPrep, and  
C.B. Fleet Phospho-Soda  
Bowel Prep Solutions**  
Acute Phosphate Nephropathy  
Kidney Failure

**Yaz, Yasmin and Ocella**  
Blood Clots  
Stroke  
Gallbladder Disease  
Sudden Cardiac Death  
Deep Vein Thromboses  
Pulmonary Emboli

### MEDICAL EQUIPMENT AND IMPLANTED DEVICES

**Medical Device**  
Injury

**Bard Avaulta Vaginal Mesh**  
Tissue Erosion

**Bard Composix Kugel  
Hernia Mesh**

Bowel Injury and Fistulae  
Formation

**Johnson & Johnson / DePuy  
ASR Hip Implants**  
Device Failure  
Inflammatory Response

**Mentor OB Tape Vaginal  
Sling**  
Tissue Erosion

**NuvaRing Contraceptive  
Device**

Blood Clots  
Deep Vein Thromboses  
Pulmonary Emboli  
Stroke  
Sudden Cardiac Death

**Post-Operative  
Disposable Pain Pumps**  
Chondrolysis (Cartilage  
Destruction)

**Zimmer Durom Cup  
Hip Implants**  
Device Failure  
Inflammatory Response

**Zimmer NexGen Knee  
Implant**  
Device Failure  
Inflammatory Response

Please call our Mass Torts Unit if you have been harmed by a drug or medical device

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### **Santa and elf Jack Scarola at benefit for Make-A-Wish Foundation**

**Jack Scarola** appeared as one of Santa's elves at the 2010 Christmas party held at Baby Alexandra, Palm Beach Gardens. The event was held to benefit the Make-A-Wish Foundation. Approximately 60 children were in attendance, accompanied by their parents. Mr. Scarola read *"The Elf on the Shelf"* to the children. ♦

Visit their website at [www.sflawish.org](http://www.sflawish.org)

### **'Daddy Boot Camp' workshop prepares new fathers for their new role**

**Brian Denney** served as a volunteer coach for the Boot Camp for New Dads program held in December 2010 at Good Samaritan Hospital, West Palm Beach. Daddy Boot Camp is a unique father-to-father, community-based workshop that inspires and equips men of different economic levels, ages, and cultures to become confidently engaged in their child's life from the very beginning, and to provide support for their parenting partner. Brian participated in a workshop when he was a new dad, and was so impressed with its program that he returned as a volunteer coach. ♦ Visit their website at [www.bootcampfornewdads.org](http://www.bootcampfornewdads.org)

### **SDSBS hosts staff luncheon for presentation by National Alliance on Mental Illness for Palm Beach County**

In October 2010, **SDSBS** hosted a staff luncheon at which the National Alliance on Mental Illness for Palm Beach County was invited to give a presentation. NAMI is dedicated to improving the quality of life for persons affected by mental illness through outreach, support, education, and advocacy programs. ♦

Visit their websites at [www.nami.org](http://www.nami.org) and [www.namipbc.org](http://www.namipbc.org)

## **Brian Sullivan** **A Warrant has been issued**



**Taking...**

*Time to Care*



*Brian Denney with his daughter, Juliana.*



## On left: Brian Sullivan 'arrested and jailed' at the Muscular Dystrophy Association's 'Lock-up' fundraiser

**Brian Sullivan** made the Muscular Dystrophy Association's "Most Wanted" list last November. On November 4, 2010, Mr. Sullivan was arrested and thrown into the "MDA Lock-Up" in West Palm Beach. Following his incarceration, Mr. Sullivan had to ask friends, family, and associates to post bail for him in contributions to MDA. He raised over \$3,500 to support MDA's programs and "Jerry's Kids." The "MDA Lock-Up" provides funding to continue MDA's research and support for people in Palm Beach County who suffer from neuromuscular diseases. ♦

For more information, visit [www.mda.org](http://www.mda.org)



## Brian Denney and friends perform Hendrix classic at Lawyer Variety Show for Legal Aid

The Palm Beach County Bar Association held its Lawyer Variety Show in January 2011. **Brian Denney** and friends performed the song "Fire" by Jimi Hendrix. Proceeds from the event were used to support the new Armed Services Advocacy Project of the Legal Aid Society of Palm Beach County. ♦ Visit [www.legalaidpbc.org](http://www.legalaidpbc.org)



*SDSBS employees, friends and family team up to raise funds for the Leukemia & Lymphoma Society "Light the Night Walk."*

## SDSBS joins in Leukemia & Lymphoma Society's 2010 'Light the Night Walk'

SDSBS employees joined over 3,500 participants in the Leukemia & Lymphoma Society's 2010 "Light the Night Walk" held on November 12, 2010, in downtown West Palm Beach. The event raised a total of \$178,000. SDSBS and its employees raised over \$1,900 for the LLS. ♦ For more information, visit [www.lls.org](http://www.lls.org)



## SDSBS employees participate in 5K race to benefit The Refuge House and The Shelter for victims of violence

SDSBS employees participated in the 30th Annual Turkey Trot 5K Race held Thanksgiving morning in 2010 to benefit The Refuge House and The Shelter located in Tallahassee. Each of the "Turkey Trot Heroes" provided a \$35 donation to benefit the center, as well as donations of canned food and toiletry items. The Refuge House and The Shelter provide support and emergency shelter for north Florida's victims of domestic and sexual violence. ♦

Visit their websites at [www.refugehouse.com](http://www.refugehouse.com) and [www.tallahasseeonshelter.com](http://www.tallahasseeonshelter.com).



## 'Top Ten Jury Verdicts' Awarded to SDSBS Attorneys for \$80 Million Victory in Class Action Tobacco Case



*Lawyers USA*, an online legal resource service, compiles a list each year of the "Top Ten Jury Verdicts" awarded in individual injury claims. A verdict obtained by **SDSBS** attorneys **Jim Gustafson** and **David J. Sales** made the 2010 list, \$80 million for the daughter of a smoker who died from lung cancer after sixty years

of smoking cigarettes manufactured by R. J. Reynolds Tobacco Company. (See the article on *Dianne Webb v. R. J. Reynolds* in this issue, page one.) Dianne Webb's father, James Horner, was a member of the landmark *Engle* class action, which paved the way for thousands of Florida smokers and their families to seek damages for the ravages of cigarettes. *Lawyers USA* compiles the "Top Ten Jury Verdicts" each year for awards made to individuals injured in a single incident and whose claims were tried in one case before the same jury. Obtaining one of the top ten jury verdicts in the year is a singular recognition, and *Of Counsel* congratulates Mr. Gustafson and Mr. Sales for their accomplishment. The firm has tried and won five *Engle* cases, for a cumulative total of nearly \$120 million in verdicts. ♦



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and information on  
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Barnhart & Shipley**