

Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 13, NUMBER 3

\$5.8 million awarded in the tenth SDSBS Engle case win against Big Tobacco

Frank smoked for nearly 20 years before tobacco industry was forced to put a 'caution' label on packs.

In September 2013, a Palm Beach County jury rendered a verdict in favor of the widow of a man who died of lung cancer as a result of being addicted to cigarettes containing nicotine and smoking for 45 years, beginning when he was just 14 years old. The jury awarded \$5.8 million to Kathleen Gafney, who lost the love of her life, her high school sweetheart and husband of 36 years, Frank Gafney, who was just 59 years old when he died. SDSBS attorneys **Jim Gustafson** and **Darryl Lewis**, and former SDSBS partner David Sales, tried the case for four weeks against Lorillard Tobacco Company and R.J. Reynolds Tobacco Company. It was the tenth trial victory for SDSBS against Big Tobacco.

Kathleen Gafney's husband, Frank, died of lung cancer in 1995. Frank began smoking as a fourteen-year-old high school freshman in 1950, when 70%



Frank and Kathleen Gafney

of males smoked. Frank smoked for nearly 20 years before the tobacco industry was forced to put a "caution" label on packs of cigarettes, while the industry continued to lie to the American people, saying that nothing about cigarettes was proven to be harmful and that the Surgeon General of the United States was "dead wrong" about requiring warnings on cigarette packs. Despite the tobacco companies' testimony that they do not and have not marketed cigarettes to children, previously secret internal company documents showed Lorillard Tobacco Company not only marketed cigarettes to children, but considered the high school student "the base of our business," and that R.J. Reynolds Tobacco Company considered 14-year-old children to be vital to the future of the company because those children serve as "replacement smokers." Such was the environment *(Continued on page seven.)*

Be your own advocate

Joseph did not know this surgery had never been performed at the hospital.

When discussing surgery with your doctor, ask questions up front. It is important to know how many times the surgeon has performed this type of surgery and the rate of complications and death. Without question, Joseph trusted his doctors to do what was in his best interest. His doctors had recommended surgery for an aortic valve repair. Because of his young age, they said, surgery would be easy and involve only a short hospital stay. Joseph agreed to the surgery. What Joseph did not know

was that this surgery had not been performed at the hospital, and he did not know the risk of complications and death for this type of surgery.

Joseph was admitted to the hospital and surgery was performed. Shortly after, Joseph began vomiting and had difficulty breathing. Post-operative tests showed ominous signs of cardiac ischemia – an insufficient blood flow which could cause severe damage to the heart. Cardiac ischemia routinely requires an emergent response by medical professionals. Instead, a cardiologist ordered another test for Joseph – a transthoracic echocardiogram (TTE), or scan of the heart. The cardiologist ordered the test "stat," meaning that it must be done right away. After ordering the *(Continued on page six.)*



Chris Searcy and Karen Terry in 'Elite' top attorney list by Florida Trend magazine

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SDSBS members receive special awards at FJA's Annual Masters of Justice Convention

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\$1.2 million settlement for painful injuries to couple caused by mall's failure to maintain escalator

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**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY PA**

ATTORNEYS AT LAW

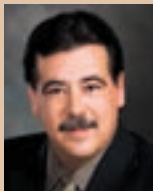
Speaking opportunities



James Gustafson spoke at the June 30, 2013, seminar, “Damages: Go Big or Go Home,” sponsored by 360 Advocacy Institute, Colorado Springs, Colorado. The seminar was held at the Encore at Wynn, Las Vegas, Nevada. Mr. Gustafson’s topic was “Developing the Economic Loss Picture: The Obvious and Not-So-Obvious Elements to Make the Aggressive Damages Argument.” ♦



Brian Denney spoke at the A.I. Cone Trial Advocacy Institute seminar held in Orlando, Florida, in August 2013. Mr. Denney’s topic was “Direct Examination of an Expert Witness.” ♦



Paralegal **John Hopkins** spoke at the Florida Justice Association’s Masters of Justice seminar held in September 2013 at The Biltmore, Coral Gables, Florida. Mr. Hopkins was chair for the program, “Paralegals Wear Many Hats at the Firm – Tips for Paralegals.” His topic was “Firm Leadership, Marketing, and Counseling – The Ultimate Hat for All Occasions.” ♦



Paralegal **Vince Leonard** (SDSBS Litigation Coordinator) was a guest lecturer at the Florida Association of Insurance Agents convention held at the Orlando World Center Marriott, Orlando, Florida, in June 2013. The title of his presentation was “Errors and Omissions – Just the Facts.” The course focused on agents’ duties associated with procuring appropriate insurance coverage for consumers, with an emphasis on uninsured motorist coverage. ♦



Be your own advocate

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test, however, the cardiologist left the hospital and never returned to read it. The hospital policy and procedures require “stat” tests to be read immediately by the physician who ordered the test.

The TTE was performed and was then read by the echo technician and the surgeon – two people who had no expertise in analyzing the test. The TTE clearly showed severe aortic insufficiency. However, the interpretation by the technician and surgeon reported only minor aortic insufficiency. It was now a medical emergency.

That evening, the hospital called the surgeon and reported that Joseph’s condition had deteriorated. The surgeon initiated calls to assemble her operating room team for a second surgery. The surgeon had to call her cardiac anesthesiologist five times in an effort to get the team together. The anesthesiologist did not answer because he was out to dinner. The surgical team finally gathered, but it was too late. Joseph was too sick to endure a second surgery. He died shortly thereafter.

Joseph’s family sought accountability for their loss and contacted SDSBS attorneys **Chris Searcy**, **Karen Terry**, and **Matt Schwencke**. Medical records told very little about what had really happened at the hospital and why a young man had died in a hospital that was supposed to treat and protect him. The attorneys believed that the cell phone records of all defendants would tell Joseph’s story. Evidence indicated a reckless and conscious disregard for Joseph’s life and safety. Prior to the motion to assert punitive damages against the hospital and other codefendants, the case settled for an amount just short of statutory caps on such damages.

In 2004, the Florida legislature passed a bill capping pain and suffering damages to \$1 million total for a doctor, and \$1.5 million for a hospital, in a wrongful death case. Under these caps, the most that Joseph’s parents could seek for the loss of their son would be \$2.5 million. SDSBS continues to fight damage caps and is hoping that the Florida Supreme Court finds these caps to be unconstitutional. Victims should be able to seek a full measure of justice when someone they love is taken from their lives because of medical negligence and reckless disregard for life and safety. ♦