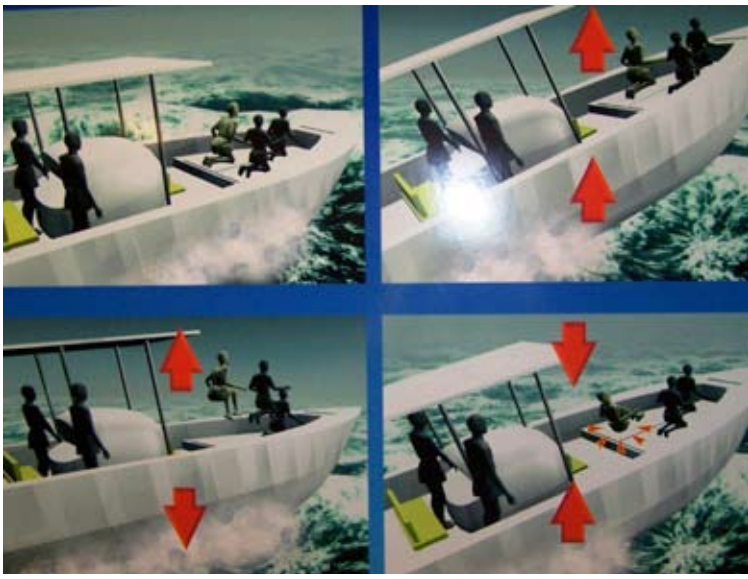
SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA

A report to clients and attorneys.
VOLUME 08 - NUMBER 2
OF COUNSEL



$6.4 Million Verdict: Negligence Resulting in Permanent Spine Damage During Boating Accident

A homecoming weekend boating party left a teenager with severe damage to his spine and a future of pain, medication therapy, and rehabilitation. The owners of a 34-foot boat allowed their teenage son and his friends to spend the day partying on the water which included a run out the inlet into the ocean despite a small craft advisory warning. As the boat slammed over the waves, one teenager was severely injured. After the boaters returned home, the injured boy was driven to an emergency room, and then underwent the first of several surgeries for repair. The boat owners were found to be negligent in permitting the teenagers to operate the boat without a skilled operator or adult supervision. The parties eventually reached settlement for almost $4 million.

Homecoming weekend is always a special time for

high school students. John Doe and his friends, Sam Brown and Bill Smith (not their real names), were no exception at homecoming weekend in October 2003. They were seniors at a high school in West Palm Beach, preparing for graduation in the spring of 2004. As part of homecoming weekend activities, John had spent the night at Sam's house. The boys planned to take the Brown family boat out for a cruise the next morning. Unknown to John, Sam had invited seven teenaged boys and two teenaged girls to go along. The boat was a 34-foot offshore fishing boat, a Venture 34, which is a fast, powerful ocean-going vessel. A Venture 34, and really any boat, does not have brakes and is subject to winds, tides, current and, of course, waves and swells. While the owner's son had boating skills, what he did not have was the judgment and maturity to handle a powerful boat such as a Venture 34 without adult supervision. And, he certainly did not have the judgment to stop one of his friends from bringing two six packs of beer on board. By the time the boys got the boat underway, there were a total of 11 occupants on board, none older than 18 years of age. A huge difference between being in charge of a boat and driving a car is the responsibility the captain has for the safety of the people on board.

After cruising south, down the Intracoastal, Sam anchored the boat at Peanut Island and the occupants swam, sunbathed and, unfortunately, drank the beer. As the day began to wane, Sam decided to take the Venture out of the Palm Beach Inlet into the Atlantic Ocean. The boat was sturdy and could certainly handle most weather conditions. However, a small craft advisory had been issued for the area because of high winds. As the boat entered the inlet, three of the boat's occupants, including John Doe, were riding in the bow of the boat. The owner's son decided to get the Venture up on a plane, which meant that he had to push the throttles on both engines all the way down. The boat was being operated by both the owner's son and a friend. As the bow of the boat encountered the incoming swells, the boat rode up on a wave, and then dropped into the trough between the waves. The occupants in the bow of the boat were not informed of the danger in sitting at the bow when the boat started through the inlet, nor were they instructed to move aft in the boat to avoid the danger. As the boat approached a wave, John was lifted with the deck of the boat as it rose over the wave, and as the boat plunged down the other side, the bow dropped out from beneath him. *(Continued on page twelve.)*

Also in this issue:

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Go online to see this issue of *'Of Counsel'*, and past issues, on many topics concerning our firm. Our attorneys, paralegals and professional staff are listed, with case history information and valuable links.

OF COUNSEL NEWSLETTER
VOLUME 08 NUMBER 2

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.

Undue Influence To Disabled Woman In Her Estate Trust Decisions Results In $3.75 Million Settlement

Mr. and Mrs. Smith had executed Last Wills and Testaments to direct the distribution of their considerable assets at death. The entire estate was to go to the surviving spouse. At the death of the surviving spouse, the estate would be distributed in equal shares to the Smith's three adult children. When Mr. Smith died, Mrs. Smith, then 80 years old, was legally blind and her ability to comprehend was impaired. Shortly after Mr. Smith's death, Mrs. Smith signed a new will and revocable trust agreement that appointed one son and a granddaughter as co-trustees and substantially reduced the shares to be distributed to the other two children. After Mrs. Smith's death, the new will was challenged by SDSBS attorneys who successfully argued that Mrs. Smith lacked capacity when she signed the new documents. After mediation, a settlement was reached; the two petitioners will receive a total of $3.75 million from their parents' estate.

Sam and Susan Smith, (not their real names) were husband and wife.

They had three children, Tom, Betsy, and Sam, Jr. Sam Smith, Sr., bought substantial pieces of real estate in Arkansas and Florida. He farmed his property in Florida and operated a mobile home park in Arkansas.

In January 1988, Sam Smith, Sr. and Susan Smith executed reciprocal Last Wills and Testaments leaving all their personal and real property to the surviving spouse. At the death of the surviving spouse, all of the personal and real property would be distributed in equal shares to Tom, Betsy, and Sam, Jr.

In 1993, Susan Smith, then eighty years old and legally blind, had already suffered from three light strokes and several heart attacks. After another stroke in 1994, Susan Smith underwent a CT scan of her brain which showed severe damage which impaired her ability to understand both verbal and written communication.

In April 1997, Sam Smith, Sr. died.

In July 1997, Susan Smith signed a new Last Will and Testament and Revocable Trust Agreement. Tom and his daughter, Terri, were appointed co-trustees of the Trust. The Last Will devised all of Susan Smith's property to Tom Smith and Terri Smith as co-trustees of the Revocable Trust. After some specific distributions were made, the Revocable Trust created two separate shares: (a) grandchildren's shares; and (b) children's shares. Of the children's shares, Tom received 44.75%, Betsy received 44.75%, Sam, Jr. received 10.10%, and 0.40% was received by Bruce Jones, a former hairdresser and now caretaker of Susan Smith. The Revocable Trust also gave Tom the mobile home park in Arkansas and substantial real property in Florida.

In January 1998, Susan Smith signed the First Amendment to the Revocable Trust Agreement. Of the children's shares, Tom received 44.75%, Betsy received 14.75%, Sam, Jr. received 10.10%, and Bruce Jones received 30.40%.

Susan Smith died on September 30, 2005.

Greg Barnhart and **David J. White** filed a Petition to Revoke the Last Will, Revocable Trust, and First Amendment to Trust based upon the following: Susan Smith lacked testamentary capacity when she signed these documents; and Tom Smith, Terri Smith, Bruce Jones, et al, procured the execution of these documents by undue influence.

Trial was scheduled to begin in June 2007.

Mediation occurred on February 19, 2007. Settlement negotiations continued and a settlement was reached on February 21, 2007. The judge approved the settlement on March 23, 2007. Betsy Smith and Sam Smith, Jr. will be paid a total of $3.75 million. The settlement payment will be made free of federal estate taxes. ■

Speaking events

William O. Whitehurst, Jr., President, left, presents an award to Christian D. Searcy, Vice President, at the meeting.

Chris Searcy gives the Dean's Address at Annual Meeting of the International Academy of Trial Lawyers in Miami, Florida

On March 29, 2008, Chris Searcy gave the Dean's Address at the 2008 Annual Meeting of the International Academy of Trial Lawyers held at the Key Biscayne Ritz Carlton, Miami, Florida. Chris is currently vice-president of the Academy. ■

Chris Searcy spoke at the Colorado Bar Association's 2008 National CLE Conference, January 7, 2008, at the Vail Cascade Resort Spa in Vail, Colorado. His topic was *"Hyperstimulation of Uterine Contractibility: Incompetent/Reckless Use of Oxytocin Resulting in Brain Injured Babies* – Reference Edwards v. Lee Memorial Health Systems (Offer $200,000; Jury Verdict $30.6 million)." ■

Chris Searcy also did a presentation on *"Opening Statement – Plaintiff"* for the Fort Lauderdale Chapter of the American Board of Trial Advocates at a trial demonstration sponsored by the Foundation of ABOTA as part of their "Masters in Trial" series. The subject of the demonstration, held May 2, 2008, at the Hyatt Regency Pier Sixty-Six in Fort Lauderdale, Florida, was *"Personal Injury Case Involving an 18-Wheeler – from Opening Statements to Jury Deliberations."* ■

Recent studies on roof crush injuries show that proposed industry standards are still inadequate for public safety

According to a recent report, about 35% of all passenger vehicle occupant deaths occurred in crashes in which the vehicles roll over. The threat of severe injury or fatality in rollover crashes varies considerably with the type of vehicle involved – a whopping 59% of occupant deaths involving sport utility vehicles occurred in rollover crashes; 25% of occupant deaths in cars occurred in rollover crashes. It is, therefore, not surprising that a new study published by the Insurance Institute for Highway Safety in March 2008 concluded that the risk of injury and death decreases when vehicle roof strength is increased. What is surprising, however, is that the National Highway Traffic Safety Administration is only just now completing a review of public comments on its proposed rule to change the almost 35-year-old roof strength standard. Congress had instructed NHTSA in its 2005 funding bill to reduce rollover deaths by issuing new performance standards that would improve vehicle stability, reduce passenger ejections, and increase roof strength.

Each year in the United States, approximately 120,000 passenger cars and 134,000 light trucks, SUVs, and vans are involved in rollover crashes, resulting in an estimated 10,000 fatalities. Automobile manufacturers have substantially improved the crashworthiness of the front, sides, and rear of their vehicles over the past years. Other improvements, including better design and expanded use of seatbelts, the lowering of a vehicle's center of gravity, and the use of devices such as electronic stability controls, have helped vehicle occupants avoid or survive a crash. But the roof strength standard issued by NHTSA remains virtually the same as it was when issued in the early 1970s, when passenger cars outnumbered light trucks 5-to-1, and SUVs were uncommon.

Current rules require that vehicles weighing 6,000 pounds or less have roof designs that can withstand a force equivalent to 1.5 times the vehicles weight – the "strength to weight ratio" – without crushing into the occupant's compartment more than five inches. NHTSA currently assesses roof strength with a test that involves pushing a metal plate

down on one side of the test vehicle's roof. Vehicles heavier than 6,000 pounds were exempt from the standard. The rule was expanded in 1994 to cover other passenger vehicles, but still exempts larger, heavier trucks and SUVs which, overall, have a greater tendency to roll over in a crash.

NHTSA's proposed new standard increases the strength to weight ratio to at least 2.5 times the vehicle's weight. The proposed rule would also provide for a more rigorous roof crush test that will apply a crushing force to both sides of the roof instead of one. It would continue to exclude some vehicles such as convertibles and small open-body trucks such as Jeep Wranglers. Safety groups argue that the only valid measure of vehicle roof strength is a "dynamic" test – actually putting a test vehicle through a rollover to simulate a real crash – rather than a quasi-static test involving pressing on the car with the windshield intact. The real issue, they say, is the ratio. They noted that in rollover crashes involving vehicles with strength to weight ratios greater than the proposed 2.5, there are far less roof crush incidents. The IIHS report, in fact, noted in its study of nearly 23,000 rollover crashes in 2006 that a strength to weight ratio of 3.16 would have saved 212 lives of the total 668 fatalities that were related to the rollover crashes in that study.

Over the last ten years, SDSBS has handled numerous cases involving roof crush injuries and deaths and has obtained awards that total $107.3 million. Many of the cases were resolved by settlement, simply because the cases were indefensible. The automobile industry has argued for years that occupant injury and death were not due to roof crush, but due, instead, to the occupants being hurled against the vehicle roof. It is absurd to blame these tragedies on the force of moving bodies when basic engineering analyses of rollovers indicate that it is not true.

A vehicle slides sideways before it rolls over. The side of the vehicle that is at the front of the slide is the "leading side." The opposite side is the "trailing side." In analyzing rollover crashes, it was noted that occupants on the leading side of a rollover rarely sustained serious injury, while occupants on the trailing side of the vehicle more often suffered serious injury or death. The reason is that the leading side occupant is somewhat protected because on first impact of the leading edge, the strength of the windshield helps to keep the roof from collapsing. Impact and friction forces are shared among the windshield header, the "A- and B-" pillars at the sides of the roof, and the roof rail. After the initial impact on the leading side roof edge, the vehicle's windshield shatters. As the vehicle continues its roll onto the trailing side of the roof, there is no longer a windshield to help support the roof, and the roof crushes into the occupant compartment. As Chris Searcy stated in 2005 after the proposed rule changes were first published, "Knowing that the windshield will shatter in a rollover and yet relying on it for the majority of the minimally-required roof strength makes no sense to objective engineers or juries. It's like providing bullet-proof armor that shatters after the first bullet strikes it."

The effects of the automobile industry's compliance with the proposed rule change (to be effective Sept. 1, three years following issuance of the final rule) will probably preempt some lawsuits. However, the proposed rule is still considered inadequate as a public safety measure. Public Citizen, a national, non-profit consumer advocacy organization based in Washington, DC, stated in a press release that the new rule is "so grossly inadequate that 70% of existing vehicles already meet it." Joan Claybrook, former NHTSA Administrator from 1977-1981, now president of Public Citizen, states that "NHTSA has chosen to fiddle around at the margins instead of overhauling its outdated safety standard to reflect the best protection possible for the public."

What is at stake for the automobile industry is no small amount of cost. Adequate A-pillars that could add substantial roof support would cost approximately $9 to $15 per vehicle (estimates vary considerably). Additional equipment on any vehicle would also add weight and the commensurate cost in fuel efficiency, critical in terms of the current cost of gasoline. With the vast number of vehicles manufactured each year in the United States, and the very close margin for the bottom line, manufacturers are reluctant to balance their cost benefit analyses against the value of someone's life. Further, any acknowledgement by manufacturers that vehicles have, in past years, been manufactured and sold under inadequate roof strength could result in a recall or liability of considerable magnitude. The lesson is both economic and moral. It is, also, time to do what is right. ■

Chiquita Brands, an American Corporation, Admits Financial Support of Colombian Terrorist Groups

When an American corporation admits to wrongdoing and pays a fine for its role in funneling large amounts of monies to a known terrorist organization which was involved in widespread acts of assault, murder, rape, and intimidation, it is time to step in and battle such a corporation to pursue justice for those victims and families who were deprived of their human rights.

Last year, Chiquita Brands International, Inc., admitted paying Colombian terrorist groups for protection in farming regions viciously fought over by leftist rebels and far-right paramilitary organizations. Chiquita also agreed to pay a $25 million fine in settlement of a lengthy U. S. Department of Justice investigation of the matter. The protection money was paid by Chiquita to the violent right-wing terrorist organization, United Self-Defense Forces of Colombia ("Autodefensas Unidas de Colombia," or AUC), and to other terrorist organizations, including the left-wing Revolutionary Armed Forces of Colombia (FARC). AUC has been reported to be responsible for some of Colombia's most gruesome crimes and for a significant part of the country's cocaine exports. The U. S. Department of State officially declared AUC a "foreign terrorist organization" beginning October 2001, and the charges against Chiquita began at that time. Prior to this time, however, payments to these organizations had been made by the company for years.

Chiquita, based in Cincinnati, Ohio, said that the motive behind the payments was to protect their workers. Reports show, however, that during the period of time that Chiquita was providing substantial funding for the terrorist organizations, thousands of Colombian workers were being killed, raped, and intimidated by these same paramilitary groups. The Christian Science Monitor reported in April 2007 that Colombia's chief prosecutor, Mario Iguaran, said, "This was not payment of extortion money. It was support for an illegal armed group whose methods included murder." The Monitor also reported that in the same year that AUC was declared a terrorist organization, the Organization of American States had reported that thousands of rifles and millions of rounds of ammunition were unloaded at a Colombian port by Banadex, a subsidiary of Chiquita.

SDSBS is well aware of what happens when corporations put profits before safety. These are not just numbers. Each story involves a person – a father, mother, brother, child, husband or wife – savagely slaughtered, mercilessly tortured, or violently raped by mercenaries who were supported by millions of dollars in funding from this corporation. Through the American justice system, we have served notice to these corporations that their exploitation and reckless endangerment of workers will not be tolerated. Thanks to a well-established legal precedent, this protection extends to everyone, Americans and non-Americans alike, whose lives have been devastated by an American corporation doing wrong. **Jack Scarola** has put together a team of investigators and attorneys who are meeting with victims and their families on a monthly basis and will continue to do so until we can, together, put a stop to the support that American corporations provide to terrorist organizations. ■

To learn more, please visit our website at
www.searcylaw.com
or
www.chiquitalawsuit.com

Mother and Unborn Child Die in Crash with Commercial Vehicle Resulting in Multi-Million Dollar Settlement

In May 2006, a motor vehicle collision in Port Richey, Florida, took the life of Jane Smith (not her real name). The accident also claimed the life of the unborn baby boy that Jane and her husband, John, had been expecting. All the excitement of the long-awaited birth of the couple's first child, and the love and devotion of a couple enjoying a happy and very successful marriage, came to a stop that morning when a commercial vehicle, owned by a local company and driven by one of its employees, smashed into Jane Smith's car.

Jane was born in Gainesville, Florida, and attended both high school and college there. She left Florida to obtain her master's degree in human nutrition and interned for a year at a veterans' medical center. After her internship, she returned to Florida to be closer to her family. In 2003, she began work with a health care center as a registered dietician, fulfilling her desire to work at a facility that enabled her to have one-on-one interactions with her patients. Jane was very well regarded by her employer, co-workers, and clients. Her supervisor found Jane to be very competent, hard-working, and supportive. They fully expected her to return to work with the care center after her maternity leave.

Jane was always extraordinarily close to her mother, more like best friends than mother and daughter. They talked every day by phone. When Jane first met John in 2001, they each knew that they had met the right person. They were married in July 2003, and the whole world came together for them. A pregnancy early in their marriage ended with a miscarriage, and they sadly thought that they might never have children together. Jane and John eventually decided to try again, and after some difficulties in conceiving, they learned that she was pregnant again. They were overjoyed at the news. Life was now moving along very well for the Smiths. They purchased a new home, closer to Jane's parents, and began preparing for a new life with their expected child.

The fatal accident ended all of the family's hopes and expectations. The family sought representation by Gary Moody and Anthony Salzman and later associated SDSBS attorneys **Jack Scarola** and **Jack Hill.** Working closely together, the two law firms negotiated a confidential multi-million dollar settlement. ■

In the spring of 2006, John Smith's world came crashing down around him. His beloved wife, Jane, and their unborn son were killed when the car Jane was driving was struck by a commercial vehicle driven by one of the company's employees. After some difficulties conceiving, this pregnancy was a bright hope for their future. They had purchased a new home, closer to Jane's parents, and had begun preparing for a new life as a family. Working with the law firm of Moody, Salzman & Lash, SDSBS attorneys Jack Scarola and Jack Hill negotiated a confidential multi-million dollar settlement.

Uninsured Driver Hits and Kills Intoxicated Pedestrian; Jury Awards Estate Over $1.75 Million in Damages

In the early morning hours of June 4, 2000, Tim Waterbury and a number of his college friends left a local bar in Tallahassee, Florida. Tim and his friends had partied for hours until the bar's closing time, and Tim was clearly drunk as he headed home. As Tim and a friend walked across the street in front of the bar, a car sped down the inside lane of the street and struck Tim. The impact fractured his skull and caused other severe injuries. He was rushed to Tallahassee Memorial Hospital where he lingered for six days, barely alive. His mother sat at his bedside for those six days, and finally had to make the difficult decision to disconnect Tim's life support system.

Tim was 23 years old, handsome, athletic, popular, smart, and ambitious. He had been a champion wrestler in high school. His graduation from Florida State University was only weeks away. He and his mother, Sandy Crowell, had a close, loving relationship. She was devastated at the loss of her son. Tim's father, Steven Waterbury, and his mother had divorced some years before, and the relationship between father and son had become distant. Steven had just reinitiated contact with his son after a five-year period during which Steven had not seen Tim, and now all hope was gone for a chance to reunite and reestablish the bond they had when Tim was much younger. The entire extended family of siblings and step-parents was suffering from their loss. SBSBS attorneys **Jack Scarola** and **Bill King** prosecuted the liability claim on behalf of the estate of Tim Waterbury. Because of the nature of the claims of the survivors, attorney William Bone of Larmoyeux & Bone, and attorney Barry Balmuth were retained by the estate's personal representative, Robert Sorgini, to advance the damage claims on behalf of Sandy Crowell and Steven Waterbury, respectively.

The driver of the car that struck Tim was Alexander Crum, a 19-year-old Tallahassee resident and part-time community college student. The car he was driving was owned by Henrietta Cameron, a resident of Fort Lauderdale, Florida. Neither the owner nor the driver was insured for personal liability. Cameron received a discharge in bankruptcy and was no longer a defendant when the case went to trial. Tim was insured under an automobile policy issued by State Farm Insurance Company to his mother and step-father, Dr. David Crowell. The State Farm policy provided uninsured motorist coverage and State Farm paid the $100,000 in benefits due under that policy. State Farm had also issued a personal liability policy that contained an umbrella provision for uninsured/underinsured motorist coverage in the amount of $1 million.

The initial task was to determine the applicability of a 1999 Florida statute that barred a plaintiff's ability to recover damages in a civil action if he or she was injured while under the influence of alcohol or drugs. State Farm included the statute as an affirmative defense against the plaintiff's claims. Florida Statute Section 768.36 specifically states in part that in any civil action, a plaintiff may not recover any damages for loss or injury to his or her person or property if, at the time the plaintiff was injured, the plaintiff was under the influence of alcohol or drugs to the extent that the plaintiff's normal faculties were impaired or the plaintiff had a blood or breath alcohol level of 0.08 or higher, and as a result of the condition, the plaintiff was more than 50% at fault for his or her own injury. ***(Continued on next page.)***

Tim Waterbury

Jack Scarola asked the court to strike the affirmative defense referenced in Statute 768.36. He argued that the prohibition against recovery under the statute clearly only applies for "loss or injury to his or her person or property," and that the wording of the statute fails to include "death." The statute therefore does not apply in the context of a wrongful death action. The court found Scarola's argument persuasive, noting that it was clear that if the legislature had intended the statute to apply to actions by the estate of one who has suffered a fatal injury, it would have included the word "death" in the statute, as it had done in similar statutes concerning liability. The court granted Scarola's motion to strike the affirmative defense, and the case moved on to address the issue of negligence.

On the night of the accident, there were dozens of young adults milling around the popular entertainment area in Tallahassee. The speed limit on the street in front of the bar where Tim had partied was 30 miles per hour. Alexander Crum told the police later that he had been driving between 30 and 40 miles per hour. Crum tested negative for alcohol or drugs. Tim was wearing a white shirt and light blue jeans, and lighting on the street was not an issue. There was nothing obstructing Crum's view of the road. Tim had already crossed one entire lane of the street when he was struck by Crum's car. There were no skid marks, and nothing to indicate any effort on the part of the driver to avoid the accident.

Scarola argued that, under these circumstances, the law would require a driver to approach an incapacitated pedestrian in the same manner as the driver would approach a child in the road.

Crum had traveled that route before, at the same time of night. He knew that hundreds of students, many of whom had been drinking, would be pouring out into the street when the bars closed in the early morning hours. He admitted that he saw a long line of people standing around, waiting to cross the street. In fact, Crum said that he was driving in the inside lane because he was concerned about people stepping off the curb into the street. At trial, Bill King argued that had Crum been driving the speed limit and paying attention to the road ahead of him, he would have seen Tim crossing the road in time to initiate an action to avoid the accident. Scarola argued that Tim, intoxicated with a blood alcohol level three times the maximum legal capacity, was obviously incapacitated that morning. Scarola said that, under these circumstances, the law would require a driver to approach an incapacitated pedestrian in the same manner as the driver would approach a child in the road. Drivers are required to reduce speed and exercise greater defensive actions and vigilance when special hazards exist with respect to nearby pedestrians.

In June 2000, Tim Waterbury was having the time of his young life. He was 23 years old, handsome, athletic, and ready to graduate from Florida State University in just a few weeks. He spent an evening partying with his friends at a popular nightspot in Tallahassee. In the early morning hours Tim, intoxicated, staggered outside and walked across the street. He made it only to the inside lane of the street when a car ran into him. Severely injured, he died six days later. His family was devastated. Neither the driver nor the owner of the car had insurance. SDSBS attorneys filed a liability claim on behalf of Tim's estate. Their first major obstacle was a 1999 Florida statute that bars a plaintiff's ability to recover damages in a civil action if the plaintiff was injured while under the influence of alcohol and was more than 50% at fault for the injury. The attorneys argued that the statute does not apply in the context of a wrongful death action, and the court supported the argument and struck the claim that the statute provided an affirmative defense. The claim was prosecuted and, although Tim was found partially at fault, the jury awarded damages in excess of $1.75 million.

Scarola and King acknowledged that Tim was negligent and asked the jury to assess his comparative negligence at not more than 20% at fault for the accident. While Tim was too impaired by alcohol to make a conscious and reasoned decision that morning, Crum had the ability and responsibility to make the right decision, to proceed in a safe and careful manner to avoid an accident. Crum had defaulted and was not present at the trial. The court directed a verdict on his liability. In March 2008, after a two-week trial, the jury found there was negligence on the part of both young men – Tim Waterbury was 38% at fault, and Alexander Crum was 62% at fault. The jury assessed the damages for Tim's mother, Sandy Crowell, at $1.5 million, and for his father, Steven Waterbury, at $170,000, for the mental pain and suffering as a result of their son's death. The jury also assessed the estate's damages at $128,529 for medical and funeral bills. ■

Florida Legislature Passes Senate Bill 1360, 'The Pharmacy Technician Act'

This Act brings a bit of justice to the Hippely family for the loss of their wife and mother Beth.

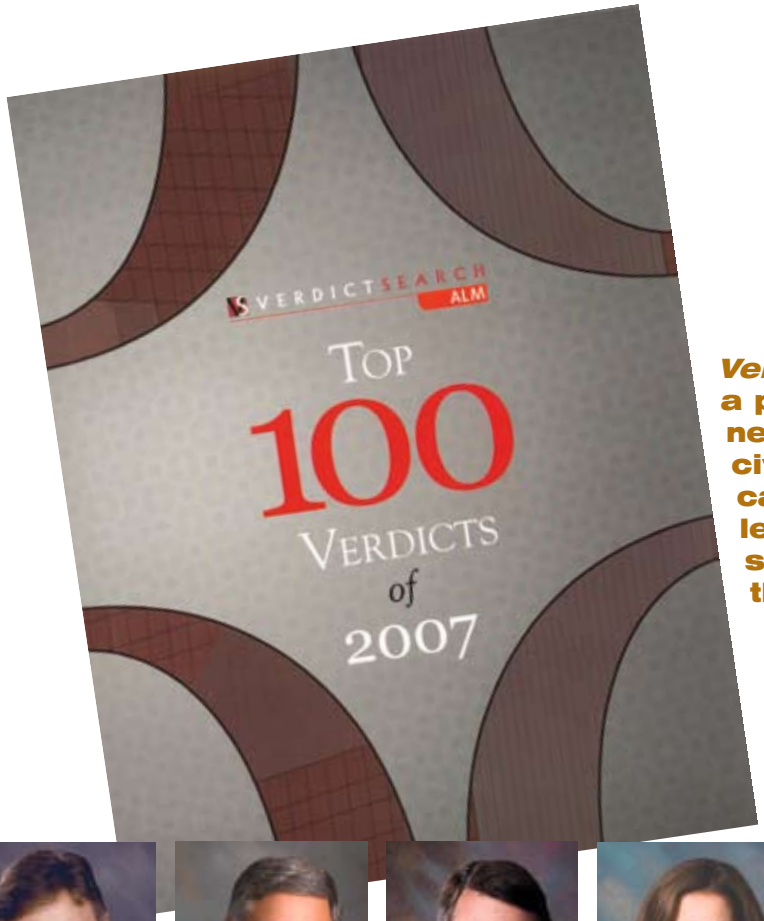
In May 2008, the Florida Legislature passed Senate Bill 1360, The Pharmacy Technician Act, which will provide regulations governing the employment of pharmacy technicians. The act will require pharmacy technicians to register with the Florida Board of Pharmacy, to work under the direct supervision of a pharmacist, and to be at least 17 years of age. Further, registered pharmacy technicians will be required to complete 20 hours of continuing education in pharmaceutical procedures prior to their biennial renewal of their registration. It will also be unlawful for any person not registered as a pharmacy technician to perform the functions of a pharmacy technician. On June 13, 2008, the bill was sent to Governor Charlie Crist for signature. The bill was expected to be signed into law shortly thereafter.

The bill was enacted following the death of Lakeland, Florida, resident Beth Hippely. In the summer of 2002, Beth was enduring treatment for breast cancer that included chemotherapy and the drug, Warfarin, a blood thinner. Unbeknownst to Beth, the pharmacy technician at Walgreens entered her prescription refill order at 10 times the prescribed dose of Warfarin. After three weeks of taking the medication, Beth suffered a massive cerebral hemorrhage. After a period of time in a coma and then a "locked-in state", her family prepared to make the hard decisions regarding the life support measures being used. Beth improved little by little and was able to endure months of painful therapy only to gain a very limited ability to function. She spent most of her remaining life in nursing homes with extensive care. Unable to continue her cancer treatment because of the brain injury caused by the overdose of medication, Beth's cancer returned and spread throughout her body. She died in January 2007 from cancer.

Beth's death was attributed to the prescription error made by a Walgreens pharmacy technician. This was not the first death in Florida, or in the nation, attributable to untrained and unsupervised pharmacy technicians. In 2003, SDSBS attorneys **Chris Searcy** and **Karen Terry** filed a suit in the Tenth Judicial Circuit Court in Polk County on behalf of Beth Hippely's family against Walgreens for negligence and wrongful death. In August 2007, a jury delivered a verdict in favor of the Hippely family, awarding $25.8 million in damages. "This was a case of profits over safety, where a company's aggressive growth strategy resulted in a preventable prescription error," said Karen Terry. ■

"The passage of this bill will help put an end to preventable deaths caused by pharmaceutical errors," said Chris Searcy. "This legislation will serve to protect the safety of Florida's citizens and countless others."

For more information, see our article in Of Counsel, Volume 07, Number 3, archived at www.searcylaw.com



***VerdictSearch*, a publication for legal news and research on civil and criminal court cases, jury verdicts, legal judgments, and settlements throughout the United States.**


Chris Searcy


Jack Scarola


John Shipley


Karen Terry


William King


Jack Hill

VerdictSearch publication Lists Four SDSBS Cases in 'Top 100 Verdicts of 2007'

VerdictSearch, a publication for legal news and research on civil and criminal court cases, jury verdicts, legal judgments, and settlements throughout the United States, listed four SDSBS cases in its "Top 100 Verdicts of 2007." The publication's database includes almost 200,000 reports. It receives as many as 8,000 reports each year, ranking them by gross award to identify the top 100.

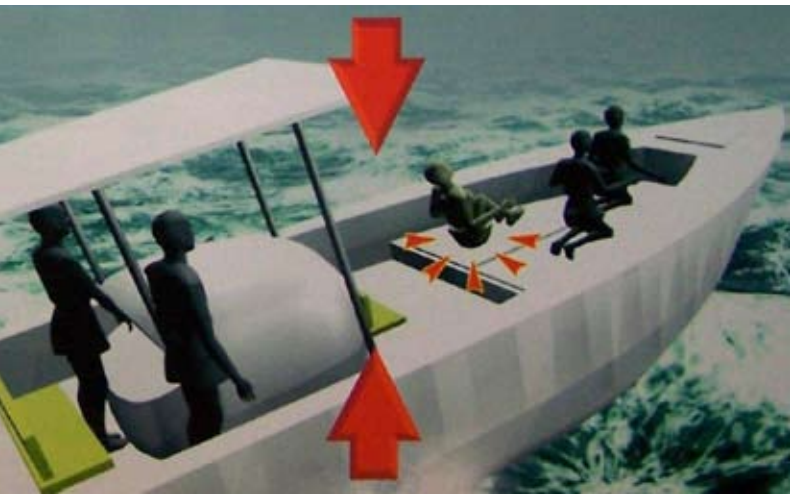
In Edwards v. Lee Memorial Health System, presented by **Chris Searcy** and **Jack Hill,** a jury awarded $30.8 million to the family of a child born with dystonic cerebral palsy caused by the hospital's failure to properly administer Pitocin, a drug used to induce labor. Hippely v. Walgreen Company, presented by **Chris Searcy** and **Karen Terry**, made the list with a verdict for the plaintiff of $25.8 million. The jury found negligence on the part of Walgreen's pharmacy in incorrectly refilling Beth Hippely's prescription for a blood-thinning medication at ten times the proper dosage. The case became the basis for new legislation which will enhance the regulations and professional requirements applicable to pharmacists operating in Florida. The list also included Estrada v. University of South Florida, presented by **Chris Searcy** and **John Shipley**. A jury awarded the plaintiffs $23.5 million for damages resulting from the failure of doctors to diagnose a severe genetic disorder in the family's first-born child. A simple test could have revealed the disorder and permitted the family to avoid the pregnancy which resulted in the birth of a second child who suffers from the same disorder and will require care for the rest of his life. The fourth case included in the listing is Beers v. Hulick presented by **Chris Searcy, Jack Scarola,** and **William King**. A jury awarded the plaintiff $21.6 million. Mrs. Beers was killed when her car was rear-ended by a driver talking on a cell-phone. ■

$6.4 Million Verdict: Negligence Resulting in Permanent Spine Damage During Boating Accident

(Continued from page one.)

The boat then slammed back upward with the next wave and John crashed hard back onto the deck. Almost immediately, he felt severe back pain.

The boys at the helm of the boat did not notify the Coast Guard, nor did they call 911 for urgent assistance. Instead, they turned the boat around and headed back toward the Intracoastal Waterway and eventually back to the dock at the Browns' home. As they arrived, Sam's parents were informed that John had been injured and was suffering serious back pain. Mr. Brown went to the dock and walked John off the boat, up the dock and into their home. After a half hour inside the home, they decided that John needed medical care. Rather than call for an ambulance, John was walked to the family SUV and was then driven to Palm Beach Gardens Medical Center.



Upon arrival at the emergency room, x-rays were taken of the lumbar area of John's spine and he was immediately immobilized. The findings revealed a severe burst fracture at L-2 with retropulsion of bone into the spinal cord. He was transported by ambulance from Palm Beach Gardens Medical Center directly to St. Mary's Medical Center where an orthopedic surgeon was standing by. Surgery was performed shortly thereafter involving the removal of fragmented bone from the spinal cord, a diskectomy, and a fusion of the spine from L-1 through L-3.

The surgery was successful in preventing paralysis. However, John was left with severe and intractable pain. Additional surgeries included the removal of surgical hardware put in place to help healing, implantation and testing of a morphine pump, removal of the morphine pump, and installation of a dorsal column stimulator. All told, John has endured a total of five surgical procedures and has incurred over $300,000 in medical expenses. He was forced to miss virtually all of his remaining senior year in high school, although he was able to graduate. John tried attending college on a full-time schedule but his efforts were thwarted by the unrelenting pain he continued to suffer. He depends upon a continuing narcotic medication therapy in order to maintain functionality.

The case was brought against the owners of the boat for permitting a teenager to operate such a powerful boat without supervision, their son who operated the boat, and the other young man who was involved in operating the boat. Each was met with a strong defense. The defense team asserted time and time again that John Doe was responsible for his own injuries because he was engaged in horse play when he was hurt. The defense's argument failed to take into account the very clear responsibility that the operator – the captain – of a boat owes to the passengers on his vessel. The captain has a duty to operate the boat in a safe manner and to consider the conditions of the sea and weather at all times. In operating a powerboat, the captain must be in complete control, determining the vessel's proper and safe heading (direction), its acceleration rate, and overall speed, in relation to weather and sea conditions. The operator of any vessel has the responsibility to ensure that the crew and passengers on his vessel are placed in a safe position on the vessel and that they are acting in a safe manner.

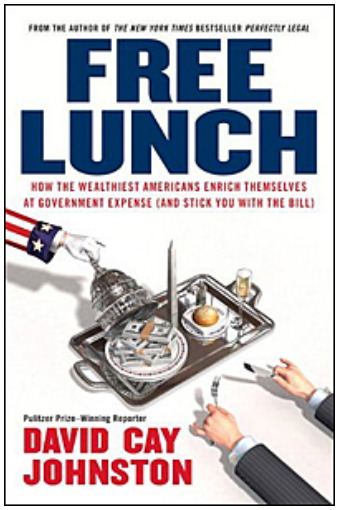
Needless to say, the operators of the Venture 34, loaded with 17- and 18-year-old girls and boys and a party atmosphere, powering through an inlet with a small craft advisory, showed a serious lack of judgment. Their responsibility was further increased by the failure of the boat operators and the boat's owners to seek immediate medical care for the injured teenager, or to request safe transportation of the boy to a medical facility by trained and qualified medical personnel.

John and his family sought representation by SDSBS attorney **Greg Barnhart**. After two mediation efforts failed to reach an agreement in this case, a summary jury trial was ordered. The facts of this case, the resulting medical catastrophe, and the prognosis for John's future were presented to a Palm Beach County jury. After hearing the case, the jury returned a $6.4 million verdict, determining that there was a considerable degree of negligence on the part of the two operators of the vehicle and on the parents and owners of the boat. The parents and owners of the boat were found to be at fault for making the boat available to the teenagers without adult supervision. Although John was found to be comparitively at fault himself, the percentage of fault the jury ascribed to him was not large – 10%. Shortly thereafter, the case was settled for a hair under the full insurance policy limits of $4 million dollars. ■

Author Uses SDSBS Case to Show Impact of 'Morally Hazardous' Government Policies That Reward Reckless Corporate Behavior

In Palank v. CSX, the fatal train wreck was caused by deliberate failure to maintain the tracks.

A wrongful death case filed by **Chris Searcy** and **Greg Barnhart** against CSX Transportation, Inc., has been featured in a book titled *Free Lunch* by David Cay Johnston. Johnston, a Pulitzer Prize-winning reporter for the New York Times, detailed the case in Chapter 3, "Trust and Consequences." Johnston discusses how "today's government policies and spending reach deep into the wallets of the many for the benefit of the few," often under the guise of deregulation. After years of appeals, the case collected $71.3 million in damages for the plaintiffs.



Eight people, including Paul Palank, a Miami Police sergeant traveling to a family reunion in Washington, DC, were killed in Lugoff, South Carolina, when an Amtrak train traveling from Miami to New York on tracks owned and maintained by CSX hit a faulty mainline switch causing the last six passenger cars to derail and slam into nine parked freight cars. Paul's widow, Angel Palank, asked Searcy and Barnhart to represent her in an action against CSX. "When Angel first came to meet me, she was overwhelmed with grief," said Searcy. "She told me that this case must make her husband's death meaningful. She was clear that she needed someone who would not get cold feet and settle. She wanted to go all the way to the Supreme Court – no matter what." The legal team's investigation revealed that CSX had minimized track maintenance for years in a cost-savings program, and that it had known of the faulty switch in South Carolina for over seven months but had failed to make the necessary repairs. Discovery also revealed that other tracks maintained by CSX were at risk of failing as well, due to the cutbacks and poor maintenance. By cutting track maintenance and repair spending in half over the 10 years prior to the accident, CSX had saved about $250 million per year. At trial, CSX had urged the jurors not to believe former employees who had testified as to the cutbacks in track maintenance. Barnhart countered with the argument, "CSX said, 'Why would we do that (not maintain the tracks)?' We said it was to save $2.4 billion."

The Broward County Circuit Court eventually found CSX liable for the accident and awarded Angel Palank and her two small children compensatory damages. A second trial was scheduled for determination of punitive damages. After several delays, the jury returned an award of $50 million in punitive damages. CSX filed an appeal to the Florida Supreme Court which was denied. The company then filed an appeal to the U. S. Supreme Court which was also denied.

Although CSX was found at fault for the crash, the company had an agreement with Amtrak that Amtrak would pay for any damages resulting from an accident. Since Amtrak is owned by the federal government, the cost of the judgments will be paid by the taxpayers. "Those who occupy the executive suite and gamble millions of dollars on the lives of others are rarely seen as engaged in morally hazardous conduct," continues Johnston. "Yet reward without risk is a form of moral hazard that blinds us to the consequences of our acts."

Author Johnston points out the final irony in Chapter 3 of his book. "Economists have a term for situations in which someone gets rewards but has little or no incentive to avoid risk: a moral hazard. The term is usually applied in insurance cases. A policy that covers every cent with no deductible may cause people to be less vigilant about husbanding their lives or property." Johnston further states, ". . . this case examines the moral hazard in a government policy that rewards reckless corporate behavior." Although CSX was found at fault for the crash, the company had an agreement with Amtrak that Amtrak would pay for any damages resulting from an accident. Since Amtrak is owned by the federal government, the cost of the judgments will be paid by the taxpayers. "Those who occupy the executive suite and gamble millions of dollars on the lives of others are rarely seen as engaged in morally hazardous conduct," continues Johnston. "Yet reward without risk is a form of moral hazard that blinds us to the consequences of our acts." ■

Accolades

Paralegal Brian Sullivan graduates law school with honors and awards

Congratulations to SDSBS paralegal/investigator **Brian Sullivan** who graduated cum laude from Nova Southeastern University's Shepard Broad Law Center. In addition to graduating with honors, Brian maintained a cumulative average for the Dean's List, and was recipient of three prestigious CALI "Excellence for the Future" Awards for attaining the highest examination grades in Aviation Law, Sports Law, and Animal Law. This was an impressive achievement considering that Brian worked full-time at SDSBS while attending law school. Brian will sit for the Florida Bar examination in July 2008. ■

Dean of Law School, Joseph Harbaugh, left, presents honors graduate Brian Sullivan with his degree.

Vivian Ayan-Tejeda

Emilio Diamantis

Alyssa A. DiEdwardo

Vincent L. Leonard

Christopher J. Pilato

Robert W. Pitcher

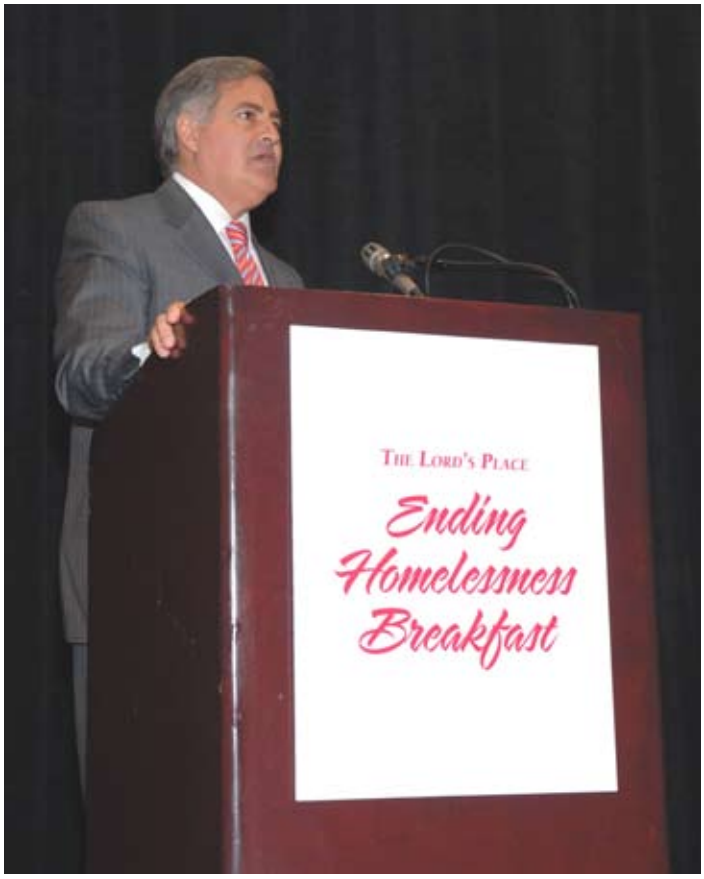
Walter A. Stein

Linda T. Wells

Eight SDSBS Paralegals become registered through Florida Bar requirements for specific legal work

Eight SDSBS paralegals have become Florida Registered Paralegals through The Florida Bar. **Vivian Ayan-Tejeda, Emilio Diamantis, Alyssa A. DiEdwardo, Vincent L. Leonard, Christopher J. Pilato, Robert W. Pitcher, Walter A Stein,** and **Linda T. Wells** are registered. A Florida Registered Paralegal is a person with education, training, or work experience, who works under the direction and supervision of a member of The Florida Bar, has met the requirements of registration, and performs specifically delegated substantive legal work for which a member of The Florida Bar is responsible. There are currently 1,565 Florida Registered Paralegal members. ■

Taking... *Time to Care*



Jack Scarola speaks at the 'Ending Homelessness Breakfast' to benefit The Lord's Place

Jack Scarola spoke at the Ending Homelessness Breakfast held by The Lord's Place at the West Palm Beach Marriott Hotel on April 16, 2008. Jack, a board member of the organization, has been involved with their programs for over 25 years. In his presentation, "Ending Homelessness Together," Jack recalled volunteering in the soup kitchen years ago at The Lord's Place. He served soup to a young man who came in wearing clothes that Jack had donated the previous week. "I sat down with him at the table and found out that he came from my hometown. I heard his life story and found how closely it paralleled my own, but for a single point of departure where our paths diverted and I wound up on one side of the counter and he wound up on the other, wearing my clothes but homeless. And there, but for the grace of God, was I. And there, but for the grace of God, are all of us." ■

7th Annual Barry Crown Walk for the Animals
Peggy Adams Animal Rescue League

Thanks to pets, walkers and supporters (l-r) Max, Mcgee, Skylla, Nikki, Bella, Roxy, Abby, Dulce, Wyked, Soda, Casper and Thor.

SDSBS employees and pets participate in 'Walk for the Animals' fundraiser

A team of SDSBS employees participated in the 7th Annual Walk for the Animals held March 29, 2008 at Okeeheelee Park in West Palm Beach, Florida. Sponsored by the Humane Society of the Palm Beaches along with the Peggy Adams Animal Rescue League, the pledge walk raised funds to support the low-cost spay and neuter programs and care for lost, injured, and abandoned animals. The SDSBS team raised $430 in donations, along with $275 in registration fees collected for the team's participation. ■

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Warning: Toxic Herbal Supplements Can Poison the Health-Conscious Consumer

SDSBS leads the pursuit for justice against health food supplement manufacturers and suppliers who put profit before your health or safety.

What could be more natural and healthy than consuming natural herbs to boost your energy, relax, obtain more restful sleep, lose weight, or counter the effects of menopause or aging? The real question is: what could be more dangerous? In one case after another, SDSBS attorneys have successfully represented clients who have suffered life-threatening organ failure and other acute illness caused by consuming dangerous or contaminated herbal supplements that had been touted by manufacturers and suppliers to be safe, healthy, and beneficial. With the U. S Food and Drug Administration still lagging behind with limited efforts to require greater standards for testing, labeling, and quality control, consumers need to exercise even greater care in using these and other herbal supplement products that have been reported to have serious side effects.

For more information,
visit our website at:
www.herbal-lawsuit.com
or call:
800-780-8607

- **L-tryptophan, touted for relief of pain, insomnia, premenstrual syndrome, and obesity, may cause respiratory and cardiac failure; linked to deaths from autoimmune disorders**
- **Kava, used for reducing stress and anxiety, proven to cause liver failure**
- **Spirulina Blue-Green Algae and Yerba Mate have alleged curative powers, risky side-effects, and possible contaminants that multiply the risks**