

A report to clients and attorneys.
VOLUME 08 - NUMBER 3

OF COUNSEL

\$3.9 Million Settlement: School Bus Rams Into Van Causing Severe Spinal Injuries to Firefighter/Coach



On December 15, 2005, Vince Merriweather was sitting at a red light at the intersection of Forest Hill

Boulevard and Olympia Boulevard, in Palm Beach County, Florida. He was driving home Altavious Carter, a basketball player at Summit Christian School. Unknown to Vince, Dennis W. Grantham was driving a Palm Beach County School District school bus westbound on Forest Hill Boulevard, approaching Vince at a speed of 45 to 50 miles per hour. For some unknown reason, Mr. Grantham drove the 20,000-pound bus into the rear of Vince's Chevrolet conversion van.

Vince Merriweather was 41 years old, a firefighter and coach of boys basketball at Summit Christian School. His great passion in life was to help young men get a college education. Vince was single and athletic.

Following the accident, Vince was airlifted to Delray Medical Center with decreased sensation in all his extremities. MRIs performed on December 15 and 16 showed spinal cord contusions at C3 and C6-7, a disc disruption at C6-7 with bone injury at C6-7, encroachment of bone into the spinal canal at C6 and C7, disruption of the posterior longitudinal ligament and ligamentum nuchai at C6-7. Vince was transferred to St. Mary's Medical Center on December 19, 2005, where he was admitted to the intensive care unit and treated by Clay Baynham, M.D., a specialist in spinal injuries.

On December 24, 2005, Vince was transferred to St. Mary's Rehabilitation Institute. After a prolonged course of rigorous rehabilitation, Vince was discharged on April 6, 2006.



Trial was scheduled to begin on September 15, 2008. **Chris Searcy** and **David White** were prepared to try this case. Mediation occurred on August 5, 2008, and negotiations continued. A settlement was reached on August 25, 2008, and approved by the Palm Beach County School District on September 7, 2008. The settlement requires payment of \$100,000 in cash, and a Special Claims Bill to be submitted to the Florida Legislature in the amount of \$3.9 million. The School District will not contest the settlement. ■

A 20,000 pound school bus going 45 to 50 miles per hour rammed into the rear of a stopped vehicle. Severe spinal injuries were sustained by the driver of the van, a healthy, athletic 41-year-old firefighter and school coach. Vince Merriweather spent almost a year overcoming his injuries and undergoing rigorous rehabilitation. After mediation, a settlement was reached requiring payment of \$100,000 in cash and a Special Claims Bill to be submitted to the Florida Legislature for the remaining \$3.9 Million in damages.

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\$1.35 Million Settlement for Damage Resulting from Lack of Monitoring During Surgery

In March 2000, James Williams and his wife, Sandra, were vacationing in Florida when James began to suffer shortness of breath and other indications of a cardiac problem. He was taken to a local hospital where doctors examined him and determined that he had an arterial occlusion (blockage) that would require expeditious cardiac bypass surgery. To avoid any delay, the couple decided to have the surgery performed in Florida. Unfortunately, the team performing the surgical procedure failed to exercise reasonable care and proper procedures, and James suffered permanent damage to his eye.

During this type of surgery, a patient's normal cardiac output is maintained by a heart-lung machine. In using the machine, it is necessary to maintain a proper and sufficient volume and flow of blood to the body to keep the cells of the body functioning properly. During James' surgery, the doctors failed to prime the heart-lung machine with a sufficient volume of blood, and this led, in turn, to their inability to maintain a sufficient flow of oxygen-carrying hemoglobin to the cells of his body. This failure to keep the body properly perfused with oxygenated blood caused significant damage to James' optic nerve, leaving him with a permanent decrease in vision. The treating physicians should have been aware of the problem based on information reported by blood flow monitors in the operating room. Further, the physicians relied inordinately upon the use of vasoconstricting drugs which likely added to the problem of poor oxygenation.

James and Sandra asked SDSBS attorneys **Jack Scarola** and **Darryl Lewis** to represent them in an action against the physicians and the hospital for failure to exercise reasonable and proper care in performing the surgery. The medical team's failures were established for the plaintiffs with the help of experts in cardiothoracic surgery, neuro-ophthalmology and cardiac anesthesia. After the second day of jury selection, defendants agreed to a settlement of \$1.35 million. ■



While vacationing in Florida, James Williams was taken to a local hospital with symptoms of cardiac distress. Examination revealed an arterial blockage that required expeditious bypass surgery. James and his wife decided to have the surgery done right away. Unfortunately, during surgery the doctors failed to operate and maintain the heart-lung machine properly and the lack of sufficient oxygenated blood resulted in significant and permanent damage to James' optic nerve.

OF
COUNSEL

NEWSLETTER
VOLUME 08 NUMBER 3

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.

\$2 Million Settlement for Incompetent Surgeries, Missed Diagnoses, and Delays

Multiple failures to diagnose and treat Dr. Doe results in permanent, painful, and crippling damage.

In May 2001, John Doe, Ph.D., was suffering from persistent low back pain and sought treatment from Dr. A, an orthopedic surgeon in central Florida. An MRI performed on May 14th revealed a large herniated disc at L2-L3; narrowed thecal sack at L2-L3 and L3-L4; spinal stenosis; and other findings that indicated the source of the pain. From the very beginning of his effort to obtain treatment for his back, through several incompetently-performed surgeries, missed diagnoses, and repeated delays of urgently-needed medical and surgical intervention, Dr. Doe was denied appropriate and acceptable medical care. As a result of the numerous failures to provide proper medical treatment, Dr. Doe is now a paraplegic, in pain, suffering considerable economic loss, and unable to enjoy an active life.

Following the MRI in May, Dr. A began a conservative three-course treatment plan that included three epidural blocks, but there was no improvement. Eventually, surgery was decided as the course of action. On August 21, 2001, Dr. A, assisted by Dr. B, performed a bilateral hemilaminectomy and discectomy at L3-L4 at the local medical center. Dr. Doe remained in the hospital for two days. Two weeks later Dr. Doe visited Dr. A's office complaining of continued pain and clear symptoms that indicated a post-operative wound infection that had not been properly evaluated or treated. He returned to Dr. A's office again on September 13 with the same condition.

On September 24th, with no noticeable progress toward relief of his symptoms, Dr. Doe went to the emergency room of the medical center. Dr. A was notified, but despite evidence of his patient's advancing wound infection, he did not come to the hospital to examine his patient. Instead, Dr. C, an orthopedic resident, assumed Dr. Doe's care and simply admitted the patient. A lumbar spine x-ray revealed a new finding of retrolithesis. The findings in the report should have been reported directly and immediately to the attending physicians, but no record was made of the notifications, nor were further studies recommended. Waiting yet another day, Drs. A and C performed an incision and debridement procedure to clean the wound area. Ineffective medical and surgical management of Dr. Doe's post-operative condition continued, and on September 28, 2001, he was once again discharged from the hospital to return home.

Dr. Doe's symptoms continued with no relief. He visited Dr. A again on October 4th, and again the doctor failed to reach the appropriate diagnosis and intervention neces-

sary for Dr. Doe's proper care. Another MRI was performed on October 9th, and because the new radiology doctors failed to request the earlier images for comparison purposes, the doctors failed to recognize the emergent nature of Dr. Doe's condition. Dr. Doe was finally readmitted to the hospital on October 10th, and another incision and debridement was performed the next day. However, that procedure failed to remove the infection. Dr. A noted in his chart, "He is neurologically intact." As infection continued to damage Dr. Doe's back, a neurosurgical consult was ordered on October 19, and Dr. A was advised to perform corrective surgery immediately. Surgery was performed that day, but the infection had, by this time, advanced so much that Dr. Doe suffered permanent neurological injury and was rendered a paraplegic.

John Doe had accomplished a lot in his life prior to this rather short and very torturous effort to find proper and timely medical care for his back pain. He obtained his doctorate from a university in Florida and spent years as a college professor. Following that career, he built a successful real estate business in central Florida and continued teaching in the county public school system. With his professional life winding comfortably down, he and his wife, Jane, were looking forward to a very active retirement life together. There is no such active retirement now. He is confined to a wheelchair. He has no bowel or bladder functions and still suffers excruciating pain. He has exhausted virtually every option in standard pain management and now requires very high doses of narcotics such as Oxycontin to make it through each day. The couple has spent substantial savings to pay for modifying their home to accommodate his limitations and special needs.

In an effort to find redress and relief for the multiple, persistent, and inexcusable failures of presumably qualified medical personnel to diagnose, respond to, and treat him in a timely and appropriate manner, Dr. Doe asked SDSBS attorneys **Chris Searcy** and **Bill Norton** to represent him. An action was filed in Orange County, Florida, against the several physicians involved and the hospital. Shortly before the case was set for trial, the parties participated in mediation and reached settlement for a total of \$2 million. ■



Suffering from persistent back pain, John Doe, Ph.D., sought medical help. Following a series of missed diagnoses and delays by incompetent medical professionals, including their failure to treat an aggressive infection, Dr. Doe still suffers from pain and is now a paraplegic with permanent neurological injuries. SDSBS attorneys successfully brought an action against the doctors and the hospital.



Mother of Three Dies Needlessly From Undiagnosed Ectopic Pregnancy

Late in the evening before Thanksgiving Day, Mrs. X was busy preparing some of her family's favorite recipes for their holiday meal.

Suddenly, Mrs. X began feeling ill, suffering abdominal pain and nausea. As she collapsed to the floor, her husband became alarmed and called for an ambulance to take her to a hospital for urgent attention. In the course of that evening, the family realized that the hospital's response to their arrival included neither urgent nor competent care. The lack of attention was fatal for Mrs. X.

After arriving at the emergency room by ambulance, hospital personnel told Mrs. X that there were no hospital beds available for her, and asked her to get off the ambulance gurney and go sit in the hospital's waiting room. After her family complained about her condition, a room was found and assigned to Mrs. X. However, for the next four hours no further examination or monitoring was performed. Eventually, she was transferred to the Radiology Department for an examination. Mrs. X was in such pain that she could barely lay still for the examination. There was a complete breakdown in communications among the nurses, doctors, and radiology laboratory personnel tending to Mrs. X and, as a result, they failed to detect obvious internal bleeding caused by a ruptured ectopic pregnancy. Mrs. X died of internal bleeding.

Ectopic pregnancy is a leading cause of maternal mortality. Ultrasound examinations, surgery, and other medical procedures can be used to identify and treat ectopic pregnancy and potentially life-threatening ruptures and hemorrhaging. For Mrs. X, a wonderful wife, mother of three, and an active church member, the steps that could have been taken to save her life were denied to her by the hospital's delays and lack of communication. The family of Mrs. X asked SDSBS attorney **Karen Terry** to represent them in a medical malpractice action against the hospital. Prior to trial, the parties reached a substantial seven figure settlement. There will never be, however, a sum of money that would compensate the X family for the needless loss of their wife and mother. ■

Brenda S. Fulmer



Brenda Fulmer recently became a shareholder attorney at SDSBS.

Prior to joining SDSBS, Ms. Fulmer was a partner in Alley, Clark, Greiwe & Fulmer of Tampa, Florida. For the past 14 years, her practice has been focused on plaintiffs' pharmaceutical and medical device mass tort litigation. She represented thousands of claimants in both state and federal courts, and held leadership and committee appointments in various multi-district litigation efforts. She has been involved in a number of national pharmaceutical and medical device mass tort projects, including Digitek, Heparin, pain pumps, AMO Contact Lens Solution, ReNu Contact Lens Solution, Ortho-Evra, hormone replacement therapy, Vioxx, Bextra, Guidant and Medtronic heart devices, Medtronic Sprint Fidelis leads, diet drugs, Baycol, Propulsid, PPA, Sulzer hip and knee implants, Rezulin, and breast implants.

A native of Indiana, Ms. Fulmer graduated from the University of South Florida with a bachelor of science in finance, and received her Juris Doctor degree cum laude from Stetson University College of Law. She served as a Federal Judicial Intern and worked on pro bono projects as a Florida Bar Foundation Public Service Fellow and as an intern with Gulfcoast Legal Services. She has been active with Trial Lawyers Care in providing free legal services for victims of 9/11. She is an active volunteer with the Girl Scouts and with Buddy Break, an organization providing support to autistic and physically-challenged children. ■

For more mass tort information, see pages eight and nine, or go online to our website at
www.SearcyLaw.com

\$823,342 Verdict for Construction Worker Injured by Dumpster

The jury's verdict was over 50 times more than the amount offered prior to trial.

On February 3, 2004, 38-year-old Purnell Bhalai, a temporary construction laborer employed by Dixie Staffing Services, was assigned to an office building rehabilitation construction project in Coral Gables, Florida. One of the duties assigned him was to assist in the delivery of a construction dumpster to be used in removing debris from the building. Mr. Bhalai had years of experience on construction sites and had frequently been asked to assist drivers in directing the placement of construction dumpsters at construction sites and in disengaging the cable guides which allowed the dumpsters to be placed in the proper position.

Juan Amigo, a driver employed by Lopefra Corporation of Miami, Florida, arrived at the site with the dumpster. The dumpster was solid steel, and over 30 feet in length. The driver, Mr. Amigo, had to navigate through a narrow alley to place the dumpster near the building's loading dock. Mr. Bhalai began directing the driver through the passage for placement of the dumpster. According to Mr. Bhalai and another witness, Mr. Amigo's truck was not equipped with an audible back-up warning device.

When the dumpster had been maneuvered into the proper position, Mr. Bhalai reached between the truck and the dumpster to disconnect the guide cable. Driver Amigo failed to realize that Mr. Bhalai was behind his truck and, without any warning, he reversed the truck crushing Mr. Bhalai's right arm between the steel dumpster and the truck. Mr. Bhalai's screams alerted everyone that something terrible had happened.

Hearing the cry for help, fellow employees at the site came to Mr. Bhalai's assistance. It was obvious that their coworker had suffered a severe injury to his right arm. He was immediately taken to Parkway Regional Medical Center in Miami, Florida, where it was determined that he had suffered a compartment syndrome injury to his right arm. This very painful condition results from an expansion of enclosed tissue, producing pressure which can interfere with circulation, and which can be life-threatening if not properly treated in a timely manner. The condition required emergency surgery to save the arm. Mr. Bhalai eventually underwent three surgical procedures, including a fasciotomy, a carpal tunnel release, and a large skin graft, in attempts to restore full use of his arm and hand. He was in the hospital for eight days of treatment and care, and was unable to work for over one year.



Following the accident, driver Amigo telephoned his employer, Lopefra Corporation, and informed them of the accident. Amigo did not notify the local police department of the accident as required by Florida law. Lopefra sent their safety manager to the accident site to conduct an investigation – an action which was self-serving at best. The safety manager simply photographed the Lopefra vehicle and dumpster, and then instructed driver Amigo to leave the scene. Neither the driver nor the company's safety manager notified the police. The safety manager did not interview Mr. Bhalai or his fellow employees.

After six months of painful physical therapy, Mr. Bhalai retained a workers' compensation attorney who obtained a small settlement based on his past medical expenses and lost wages. The treating physicians informed Mr. Bhalai that, as a result of his injuries, it was doubtful he would ever again be able to work in the construction industry. Because of the accident and the doctors' prognoses, Mr. Bhalai would likely not be able to keep his job, or to get another one. He would be unable to provide for his children. The news was devastating for him, both financially and emotionally.

Believing that he had been the victim of an injustice and that something more should have been done to compensate for his injuries, Mr. Bhalai asked his workers' compensation attorney what could be done. He was advised to contact SDSBS attorney **Darryl Lewis**. Mr. Bhalai's case was assigned to attorneys **John Shipley** and **Brian Denney**, who initiated an extensive investigation of the accident. Upon learning that no police investigation had been conducted and that the truck did not have an audible backup warning, Mr. Bhalai's attorneys filed suit against the Lopefra Corporation and Mr. Amigo.

Discovery revealed that the Lopefra driver had violated the rules of the road for commercially-licensed drivers. Incredibly, Lopefra Corporation and its insurer argued that the incident and resulting injuries were entirely the fault of Mr. Bhalai. Defendants claimed that their truck was in perfect working order, and that Mr. Bhalai had been specifically instructed not to assist their driver in placing the dumpster. With liability hotly contested, the case proceeded to trial.

Following five days of trial, a Broward County jury awarded Mr. Bhalai \$823,342 for his pain and suffering, and for past and future medical treatment. Mr. Bhalai plans to use these funds for his continued medical care and rehabilitation, and to help take care of his children. The jury's verdict was over 50 times more than the amount offered prior to trial. ■

Meeting Corner:



Laurie J. Briggs

Laurie Briggs was recently selected as an associate attorney for SDSBS. Since 1994, she has worked as a paralegal for SDSBS on cases involving products liability, catastrophic automobile accidents, personal

injury, and commercial litigation. Raised in Afton, New York, Ms. Briggs received her Bachelor of Science degree in business education from the State University of New York at Albany, and her Masters of Science degree in education from State University of New York at Plattsburgh. She later graduated from Nova Southeastern University Shepard Broad Law Center with a Juris Doctor degree and was admitted to the Florida Bar in October 1993. Ms. Briggs currently works with SDSBS attorneys David Sales, Cal Warriner, and Brenda Fulmer on mass tort litigation. She is a member of the Florida Bar, Florida Justice Association, American Association for Justice, the American Bar Association, and the American Civil Liberties Union. Ms. Briggs is president of the firm's employee charity, SDSBS Giving B.A.C.K. (Basic Acts of Community Kindness), and serves as president of the board of directors for Friends of Abused Children, Inc., a local charity dedicated to assisting children in foster or protective care. ■



Edward V. Ricci

In May 2008, Edward Ricci joined SDSBS as an associate to assist in prosecuting auto negligence, crashworthiness, medical malpractice, and other significant tort claims. Mr. Ricci previously worked as an associate

at another prominent consumer justice firm. Prior to attending Georgetown Law Center, he worked as a policy analyst for Public Citizen, the nation's largest and oldest consumer advocacy group. He worked to implement safety regulations in the wake of the Ford-Firestone debacle of the 1990's. He was involved in the research that led to the issuance of tire pressure monitoring system standards that are now mandatory on all new motor vehicles. Also, he was one of the authors of the roll-over crashworthiness and minimum stability standards included in the Surface Transportation Reauthorization Act. Mr. Ricci is a member of the Florida Bar Association, Palm Beach County Bar Association, Palm Beach County Justice Association, Florida Justice Association, American Association for Justice, and Attorneys Information Exchange Group for Crashworthiness. He serves on the board of directors for Hearts and Hope, a group that provides grief counseling to children and families who have lost a loved one. Mr. Ricci was recently appointed as a director for the Young Lawyers Section of the Florida Justice Association. As FJA leaders of tomorrow, the Section provides networking opportunities for new lawyers and provides a support system as they enter practice. ■

Simple Gallbladder Surgery Turns Into A Battle for Life



For Mrs. Y, a young mother of two and a nurse, an outpatient gallbladder procedure turned into a battle for her life. Following an examination, Dr. X had told Mrs. Y that she needed the procedure, and that it would be simple. The procedure was, however, not simple for Dr. X. Mrs. Y was amazed to find out, following surgery, that Dr. X had cut the wrong duct. Instead of cutting the cystic duct, he had severed the common bile duct. The doctor was so confused following his error that he had to call another hospital for guidance on what to do next. Ultimately, even his attempted corrections were botched. Mrs. Y was later transported to another hospital for procedures to reverse the damage done by Dr. X. She has numerous scars from the multiple procedures, and faces potentially long-term complications in the future.

A doctor recommended a simple outpatient gallbladder procedure. However, during surgery, he mistakenly cut the wrong duct. The severity of the mistake was compounded by his inability to know what to do next and his failed attempts to correct his error. The patient had to be taken to another hospital for procedures to reverse the damage.

Mrs. Y and her family sought representation from SDSBS attorney **Karen Terry**. At the deposition of Dr. X, he testified that he had not had other complications in past surgical procedures. The attorney, however, had secured all of Dr. X's surgical reports from the hospital, and these reports showed that Dr. X had caused similar problems for other patients. Shortly after Ms. Terry's cross-examination, the parties reached a settlement for the doctor's full insurance limit, avoiding a lengthy and expensive trial. ■

\$700,000 Settlement; Traffic Signal Timing Errors Contribute to Pedestrian Fatality

High adventures will quite often put risk-takers in dramatic peril. And, on occasion, the most ordinary activities we perform every day can suddenly place us in similar danger. In the middle of the afternoon on December 31, 2004, Beverly Murphy simply walked across a highway and, unknowingly, into a fatal trap.

That day, Beverly left a shopping mall in Miramar Beach, Florida, and approached the nearby intersection of U. S. Highway 98 and State Road 30. Traffic in the intersection was regulated by traffic lights and walk/don't walk signs. Beverly dutifully waited for the light to direct her to enter the crosswalk. Following the direction of the pedestrian signals, she then began crossing the 112 feet of U. S. Highway 98. Beverly made it safely past the first four lanes and just past the median strip when she was struck by a pickup truck turning from the intersecting road into the pedestrian crosswalk on U. S. 98. The truck's driver, Patricia Perryman, had initiated her vehicle's turn in response to the traffic signal on her side of the intersection. The collision knocked Beverly to the ground, causing multiple rib fractures. She was taken to



While it is readily apparent that driver Perryman, and the vehicle's owner, Larry Perryman, are at fault and liable, an accident investigation revealed that they were not the only ones at fault for this fatal accident. In 2004, Griffin Traffic Signal, Inc. was contracted to regulate, operate, and maintain the phasing and timing of these traffic signals. The intended purpose of the traffic signals was to provide crosswalk and traffic guidance that was timed and phased to allow pedestrians safe passage across

the highway. The investigation revealed that a person walking at a normal pace could not have crossed this intersection in sufficient time to reach the safety of the opposite side of the highway before the traffic signals phased to lights that permitted vehicles to start turning into the pedestrian crosswalk.

Griffin, however, vigorously defended the case, arguing that the signal timing was not the cause of the accident as Beverly Murphy had been struck by the turning vehicle shortly after entering the crosswalk. With difficult

arguments looming in front of both parties, they began mediation and eventually reached settlement on the eve of trial for a total of \$700,000 in damages. The driver, Perryman, paid \$250,000, and Griffin paid \$450,000. ■

The investigation revealed that a person walking at a normal pace could not have crossed this intersection in sufficient time to reach the safety of the opposite side of the highway before the traffic signals phased to lights that permitted vehicles to start turning into the pedestrian crosswalk.

Sacred Heart Hospital where she died two days later from an embolism directly resulting from her fractures. Some months later, Beverly's husband, David Murphy, sought representation from SDSBS attorneys **Chris Searcy** and **Bill Norton**. A complaint was filed in Escambia County on behalf of Beverly's estate.

On December 31, 2004, Beverly Murphy attempted to cross an intersection on busy U. S. Highway 98 in Miramar Beach, Florida. Using traffic signals that were supposed to be timed and phased to ensure pedestrians safe passage across the highway, Beverly managed to make it safely across the first several lanes and past the median strip, but was struck and killed by a pickup truck that turned from the intersecting road into the crosswalk. While the driver of the truck was clearly at fault and liable, attorneys for Beverly's estate successfully argued that the traffic signal timing had contributed to the fatal accident.

Searcy Denney Attorneys Tackle Manufacturers of Life-Threatening Pharmaceuticals and Medical Devices That Cause Harm to Many

Cases of widespread death, injury, damage, or loss that stem from negligence often fall into the category of the legal term mass torts. Mass tort claims arise when unscrupulous individuals or corporations disregard public health or safety and the consequences affect large groups of innocent victims.

A case in point is when big manufacturers in the health care industry put their profits before safety, and hundreds of people - sometimes thousands - fall prey to dangerous drugs and medical devices.

Mass tort cases are sometimes confused with class actions, since both kinds of claims are brought on behalf of groups of people who have suffered similar harm. In mass tort cases, however, each victim or family has its own distinct claim, while benefiting from the time and cost savings of individual claims that have been grouped together by the courts.

Attorneys at Searcy Denney Scarola Barnhart & Shipley have been representing individual victims of defectively-designed medical devices and dangerous drugs that have injured or killed Americans for many years and have recently expanded this area of their practice. Some of these products have been recalled, while others continue to be used in surgical procedures or prescribed to unsuspecting consumers.

These are some of the current projects being handled by Searcy Denney shareholders Cal Warriner, Brenda Fulmer, and David Sales, all members of the firm's mass tort unit:

Medtronic Sprint Fidelis Leads

Model Nos. 6930, 6931, 6948, 6949

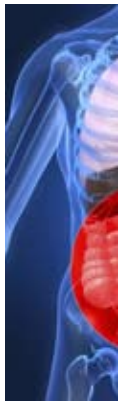
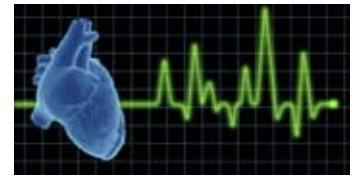
These leads are thin wires that connect an implanted defibrillator to the heart. When leads are defective, they may crack or fracture, sometimes without warning. Unwarranted shocks caused by a defective lead, as well as the failure to pace the heart as intended, can result in heart attack or death. The fractured leads can also puncture the heart, causing a patient's death. Surgery to remove and replace the defective leads is complicated and very risky.

Digitek (Digoxin)

Manufactured and distributed by Actavis Totowa, Bertek/Mylan, and UDL Laboratories

Digitek is the generic version of digoxin, a medication in pill form used to treat abnormal heart rhythm and heart failure. Some lots of Digitek were manufactured at twice the intended physical size, thus delivering an overdose. Symptoms of digitalis toxicity or an overdose include nausea, vomiting, low blood pressure, and cardiac instability, which can result in heart attack, stroke, or death.

Digitek has been recalled from the market, and most users were notified by their pharmacies to stop taking the drug. Heart patients who were switched to Digitek from digoxin or some other form of digitalis should be alert to symptoms of toxicity and follow up with their physicians to obtain blood tests to monitor the levels of the drug in their bodies.



Cases of widespread death, injury, and negligence often fall into the category of mass tort claims. Mass tort claims arise when unscrupulous individuals or corporations disregard public health or safety and the consequences affect large groups of innocent victims.

Call or email with any questions about a potential claim.

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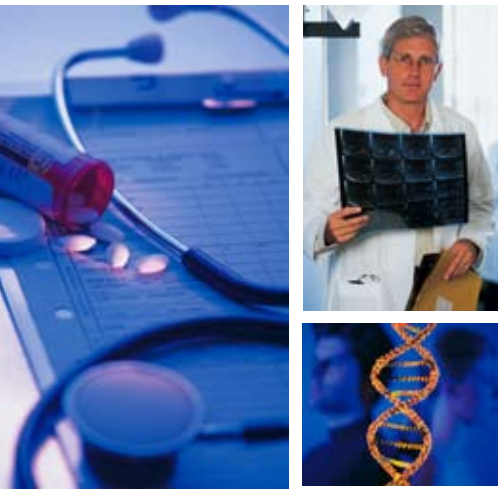
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FO



injury, damage, or loss that stem from
category of the legal term mass torts.
scrupulous individuals or corporations
safety and the consequences
of innocent victims.

questions you may have
initial case or referral:

www.SearcyLaw.com

800-780-8607

For more mass tort information:

www.searcyllaw.com

www.searcyllawblog.com

Kugel Hernia Mesh

Composix brand and dual mesh technology designs, manufactured by Davol/Bard

This product is a synthetic mesh patch that is used during hernia surgery to close the hernia and help the tissue heal. It includes what is called a "memory recoil ring," a small plastic ring embedded in the patch that permits it to be folded over and then deployed once inside the abdomen. Certain sizes of the Kugel Hernia Mesh were recalled by the FDA in 2007 because the products have a tendency to break, causing bowel perforations, abdominal wall punctures and tears, and adhesions. Further, the mesh patch itself has shown a tendency to migrate within the body and sometimes grow into vital organs due to the dual mesh design.

Symptoms of a defective Kugel Mesh Hernia Patch include persistent or unexplained abdominal pain, fever, and tenderness at the surgical incision site. The complications and resulting damage may require additional surgery for repairs and/or removal of the patch.

Ortho-Evra Birth Control Patch

Manufactured by Ortho-McNeil Pharmaceuticals, a division of Johnson & Johnson

The critical difference between the Ortho-McNeil birth control patch and oral contraceptives is indirect versus direct delivery of the hormones. Birth control pills are first processed by the body's digestive system, while similar drugs in a skin patch go directly into the blood stream. The high-dosage concentration delivered by the Ortho-Evra patch can cause blood clots which, in turn, can cause strokes and other life-threatening complications and death.

In January 2008, after thousands of complaints had been logged, the FDA strengthened its warning about the risk of serious blood clots among Ortho-Evra patch users. This product has not been recalled, however, and continues to be marketed as a "safe" option for birth control with the marketing being directed at the very youngest patients.

Vaginal Slings and OB Tape

Manufactured by Mentor Corporation

This device was produced by Mentor in 2003 for use in certain kinds of surgical procedures to treat stress incontinence, which is common among women. A vaginal sling reinforces muscles weakened by childbirth and other causes, and helps patients control urinary functions. Almost immediately after its introduction, design and manufacturing defects in the Mentor Ob Tape vaginal sling brand were causing severe complications such as breakdown of vaginal tissue, chronic discharge, serious infections, and other injuries that may be permanent.

When the *Journal of Urology* in 2006 documented widespread injuries caused by the Mentor Ob Tape vaginal sling, the device was pulled from the market. By that time, however, an estimated 35,000 women had been fitted with the sling.

Pain Pumps

Manufactured by Stryker Corporation, I-Flow Inc., DJO Inc., and BREG Inc.

External automatic pain pumps are used frequently in shoulder and other joint surgeries to deliver pain medication directly into the joint. Recently, this direct delivery method has been found to cause serious cartilage destruction – a condition called postarthroscopic glenohumeral chondrolysis (PAGCL), medical terminology for death of cartilage. PAGCL can result in permanent disability and require total joint replacement surgery.

Victims of PAGCL suffer from narrowing or destruction of joint space, which can be diagnosed by x-ray. Patients should seek medical advice if they experience symptoms such as joint weakness, stiffness, pain, decreased motion, or clicking, popping, or grinding when the joint is put in motion.

Accolades

Nine SDSBS Attorneys Named 'Florida Super Lawyers 2008'

With **Chris Searcy** in Florida's 'Top Ten' list and **Greg Barnhart** and **Jack Scarola** in 'Top 100' list.

Nine SDSBS attorneys – **Chris Searcy**, **Earl Denney**, **Jack Scarola**, **Greg Barnhart**, **John Shipley**, **Darryl Lewis**, **Chris Speed**, **David White** (all from the West Palm Beach office), and **Bill Norton** (from the Tallahassee office) – were named to the list of "Florida Super Lawyers 2008," the annual consumer guide published by *Law and Politics*. Chris Searcy was named to the "List of Top 10 Super Lawyers in Florida," and both Greg Barnhart and Jack Scarola made the state's "Top 100 List". The Super Lawyer selection process is based on peer nominations, blue-ribbon panel reviews, and independent research. Only five percent of the attorneys in Florida have been selected as Florida Super Lawyers. ■



Chris Searcy



Earl Denney



Jack Scarola



Greg Barnhart



John Shipley



Darryl Lewis



Chris Speed



David White



Bill Norton



Cal Warriner

Cal Warriner was elected to the Executive Council for the Trial Lawyers Section of the Florida Bar Association. He assumed office at the 2008 Florida Bar Annual Convention held in June 2008 at the Boca Raton Resort & Club, Boca Raton, Florida. The Trial Lawyers Section assists the courts in improving the administration of justice, promotes the art of advocacy, and preserves and protects the jury system. Its membership includes both plaintiff and defense attorneys, as well as prosecutors. ■



Karen Terry

Karen Terry was named in the fifth annual edition of *Florida Trend's* "Legal Elite 2008" as one of the top 1,170 Florida attorneys who have earned the trust and endorsement of their peers. This year's Legal Elite represents 1.9% of the approximately 61,500 active Florida Bar members. Attorneys were asked to name lawyers whom they hold in highest regard, those with whom they have worked or would recommend to others. Following balloting, a panel of the 2007 Legal Elite attorneys, representing different practice areas across the state, reviewed the list of finalists and made the selections. ■



Chris Searcy

Chris Searcy was appointed to the Board of Trustees of the Florida Supreme Court Historical Society at its 2008 Annual Dinner. His term will expire in 2010. The mission of the Historical Society is to educate the public about the work of the courts, and to preserve the rich history of Florida's judicial system. ■

The Florida Bar Association appointed **Chris Searcy** to the Florida Bar's Civil Procedure Rules Committee for a term that will expire June 2011. The Committee is tasked to study and make recommendations on new or revised civil court procedure rules. ■

Chris Searcy was also appointed to the Professionalism Committee of the Palm Beach County Bar Association. His term will run to 2009. The Committee addresses ways to instill professionalism in Bar members, reviews complaints, and conducts an annual CLE program on ethics and professionalism. ■

For archived issues of our newsletter, *Of Counsel*, go online to our website at

www.SearcyLaw.com

Dangerous Herbal Supplement Damages Liver of Healthy, Active Woman

Mary Smith (not her real name), age 49, has been a kindergarten teacher for over 25 years. She and her husband have one child, age 16. An extremely healthy individual, Mary was very active in outdoor sports that included snow skiing, roller skiing, kayaking, and biking. About two years ago, in an effort to enhance her health, Mary began taking an herbal supplement. The active ingredient in the supplement so completely damaged her liver that she eventually required a transplant. Her life expectancy is substantially decreased and her activities drastically limited in order to reduce risk of infection.

When Mary stopped by a local, well-known health-food store in her hometown, she asked the sales person about a natural herbal supplement that claimed to increase energy and vitality. The sales person recommended the product, boasting of the product's healthful properties. Ingredients in the product included yerba mate and blue-green algae, herbs that had been reported to be poisonous to the liver. Mary purchased the product and began taking the supplement on a regular basis, following the recommendation on the product's label. Despite reports submitted to the U. S. Food and Drug Administration and the U. S. Center for Disease Control on the potentially harmful effects of the ingredients, the supplement contained no warning label.

For information on this and other herbal supplement cases, visit our website at:

www.SearcyLaw.com

This was not the first time that a herbal supplement advertised as a health-inducing product contained ingredients that were harmful. In 2003, FDA banned ephedra due to documented deaths associated with certain herbal supplements that contained this active ingredient. After the ban, the distributor had to reformulate their product. The industry replaced ephedra with herbal supplements such as yerba mate and blue-green algae. These two ingredients have been found to cause great harm to the liver. Published medical reports document these two herbal supplements are responsible for hepatic failure and acute necrosis of the liver, often with fatal consequences. In addition, the FDA found that the supplement used by Mary Smith had been contaminated by pesticides in the manufacturing process and the product was recalled.

The health food industry selling these products continues to market and promote their products as totally safe. They claim the products are extensively researched. The manufacturers and distributors present themselves to the public as experts in natural food supplements and the benefits derived from taking such supplements. The public expects these companies to be truthful in their presentations and to disclose warnings of any potentially harmful side effects. Instead, the harmful side effects are hidden or minimized by these companies, the benefits of the products are lauded and consumers are harmed.

As a result of the liver transplant required due to the damage caused by the herbal supplement, Mary Smith's immune system has been compromised. She must limit contact with children, pets, and crowded public places due to a high risk of infection.



Mary Smith was a healthy, active, outdoor-sports enthusiast, concerned about maintaining her health. Responding to a local health-food store's claims about the energy and vitality found in herbal supplements sold by the store, she bought the supplement, followed the recommended dosage, and ended up with a poison that compromised her immune system and damaged her liver. A liver transplant was required to save her life. Despite FDA and USCDC cautions on the harmful effects of these supplements, there were no warning labels on the product.

Her life expectancy is now only five to ten years, well below the normal life expectancy of 25 or more years for a woman of her age. She is disabled and can no longer safely work. For the remainder of her life, she will require intensive medical monitoring of the immunosuppressant medications she must take because of the liver transplant. Economic analysis demonstrates she will incur over \$5 million in medical expenses, lost wages, and other damages. In November 2007, Mary asked SDSBS attorney **David Kelley** to represent her in an action filed against the distributors of the herbal supplements. A partial settlement was reached in May 2008 with one of the distributors, and action continues against other defendants. ■

Careless Anesthesia Plan and Negligent Resuscitation Result in Death of Newlywed

John and Susan Jones (not their real names) met each other while fishing from a party boat based here in South Florida. The couple fell in love instantly and within three short months began planning their wedding. This was John's second and Susan's first marriage. John also had a beautiful little girl from his previous marriage. The future was looking bright for the new couple.

Several months after their wedding, John began complaining of pain at the site of a prior abdominal surgery. John had developed a hernia at the incision site and his doctors now recommended that the hernia be repaired. The repair of the hernia was a non-emergency, elective surgery to be performed on an outpatient basis. In this type of setting the surgery is performed in the morning and the patient should return home that same day.

John had a history of being overweight and suffering from sleep apnea, a condition which makes it difficult to breathe when sleeping. He had also been prescribed and was taking a narcotic pain medication. In spite of these known risks, the anesthesiologist in charge of John's surgery failed to appropriately consider them when developing his anesthesia plan. These factors were red flags

which should have pointed to potential problems with maintaining the patient's airway during surgery.

The anesthesiologist assigned to John's case decided to use several different narcotics. The drugs chosen were each known to have the effect of depressing respiration and, when added together, multiply that suppressant effect. In addition to this cocktail of respiratory suppressants, a spinal anesthetic or nerve block was administered. The anesthesiologist allowed the spinal to rise well above the level needed for the hernia surgery. This would add yet another risk factor to John's ability to maintain his breathing during the procedure. In combination these actions put the patient at great risk of respiratory arrest.

Approximately 20 minutes into the procedure, John suffered respiratory arrest and a "Code Blue" alert was called. Incredibly, after setting up a risky anesthesia plan and failing to succeed at caring for their patient, the physicians' efforts at resuscitation were also negligent. The clear and unequivocal protocols established by the American Heart Association for cardiac resuscitation were not followed. John died as a result of the failures and negligence of his doctors.

John's family contacted SDSBS and asked attorneys **Jack Scarola, Darryl Lewis, and Sia Baker-Barnes** for help in holding the defendant physicians responsible for their failure to provide reasonable and proper care. Attorneys Scarola and Lewis carefully planned their trial strategy. After 10 days of trial, the defendants agreed to a settlement with John's widow, Susan. The terms and amount of the settlement are confidential. ■

In preparing the anesthesia plan for outpatient hernia surgery, doctors failed to consider the patient's history of being overweight, his problems with sleep apnea, and his intake of prescription pain medication. The patient suffered respiratory arrest and the doctors were negligent in following established protocols on cardiac resuscitation. Their resuscitation efforts failed, and the patient died.

Attorney Chris Searcy featured in Florida Trend Magazine's 50th Anniversary edition in 'Cover stories: Where are they now?' article

On September 1, 2008, *Florida Trend Magazine* published its 50th anniversary edition. In an article titled "Cover Stories: Where Are They Now?" writer Art Levy profiled eight people who appeared on the cover of the magazine over the past 50 years. In November 1999, *Florida Trend* showcased **Chris Searcy** on their cover under the heading, "Florida's Most Feared Lawyers." Apparently, some things never change. **And some things do: the anniversary edition also noted that in 1958, when the first issue was published, Florida's population was less than five million, the state sales tax was 3%, and Fulgencio Batista still ran Cuba.** ■



\$1 Million Settlement; High School Student Suffers Brain Injury in Truck-Auto Crash

September 12, 2006 started out to be just another school day for 15-year-old Elizabeth Elliott, a truly all-American girl. Healthy, active, an excellent student and cheerleader at Bishop Kennedy High School, and member of a wonderful and loving family, Elizabeth was indeed living a charmed young life. In an instant that morning, her life was abruptly changed to a nightmare of injuries caused by the careless inattention of two vehicle drivers.

Elizabeth had accepted a ride to school with a friend. In the early morning hours, prior to sunrise, she got into the backseat of her friend's car and fastened her seatbelt. As the friend drove out of the driveway, turning left onto County Road 210 in St. John's County, Florida, a tractor-trailer truck heading directly toward them crashed into the side of the car. Later there would be conflicting testimony as to whether or not the truck's headlights were on at the time of the crash. Elizabeth's young friend, the driver of the automobile, testified that she had seen no oncoming traffic as she prepared to turn. Unfortunately, she had already pulled out into the roadway before checking to ensure, a second time, that there was no traffic coming toward her from the left.

The truck was hauling a full load of sand that weighed over 50,000 pounds. The truck driver later testified that he did have his lights on, and that he had observed the teenage automobile driver coming down the driveway at a fast rate of speed. The site of the crash is in an area where it is common knowledge to local residents that heavily-loaded trucks routinely travel at fast speeds in close proximity to the schools, school buses, and other local traffic filling the area. Florida statutes require every driver to drive at an appropriately reduced speed when going around a curve, approaching an intersection, or meeting any special hazards with respect to other traffic or weather and highway conditions. Had the truck driver followed these rules and traveled at a more prudent speed through the area around the schools, he might have been able to minimize the impact or possibly avoid the crash altogether.

Elizabeth was severely injured by the collision, suffering a brain stem hemorrhage, left occipital fracture, T-1 fracture, fracture of her left femur, and spleen lacerations. The CT scan showed a massive hemorrhage within the brain. She was airlifted to Shands Hospital, Gainesville, Florida, for urgent care where she remained in a coma for weeks, unable to breathe on her own. Doctors conducted an external

Early one morning, a heavy truck plowed into the side of an automobile carrying a teenage driver and passenger to school. The young passenger suffered severe head and spinal injuries. After weeks in a coma, she began grueling rehabilitation to regain her physical, mental, and emotional capabilities. Explaining the nature of brain injuries was critical to the claim for damages. The case settled for over \$1 million.

ventricular drainage to reduce the pressure on her brain, and fashioned a halo brace to stabilize her neck fracture. She also endured an open reduction and internal fixation to repair the fractured femur. Elizabeth's brain pressure fluctuated considerably, leaving her perilously unstable. To her parents, sitting by her side in agony waiting for signs of improvement, the threat of loss was ever present. The local media published numerous stories about Elizabeth and her family's struggles to deal with the tragedy.

When Elizabeth finally rallied from her coma, her parents felt their prayers had been answered. Very shortly thereafter, however, they realized that there were more emotional and physical hills to climb. The brain damage had left Elizabeth unable to follow simple commands, and her thoughts were best described as "jumbled." The long journey of managing the life of a brain-injured child had now begun. Elizabeth struggled every day to comprehend ordinary life as she reconnected with her parents, siblings, and friends, and endured the grueling rehabilitation regimen.

Getting back to regular school life was a significant challenge. Initially, Elizabeth managed to keep up with school life by home schooling and on-line classes. Eventually, she was able to return to high school by utilizing special accommodations. She has done amazingly well, through persistence and hard work, and has even returned to cheerleading. The family asked SDSBS attorneys **Chris Searcy** and **Karen Terry** to represent them in a civil action against the trucking company and the driver for their failure to exercise proper care and attention to their responsibilities that morning. The action also included the obligations of the parents of the teenage automobile driver who were inadequately insured for such an accident.

Defendants in the case saw Elizabeth's recovery as nothing short of 100%. However, looks are deceiving. What was not apparent is all of the hard work and effort required to make life work out each day. Elizabeth works diligently at getting back to her pre-crash capabilities. She has difficulty concentrating. Information was gathered from studies on long-term impact of head injuries suffered by soldiers on the battlefield and athletes subjected to repetitive head damage. With this information, Chris Searcy and Karen Terry were able to explain the nature of brain injury to the defendants with sufficient clarity that they could finally appreciate the sheer determination that was required, and will continue to be required, for the teenager to successfully recover.

The parties conferred and eventually reached a settlement in excess of \$1 million. Elizabeth's next challenge is college. ■



(l-r) D. J. Ward, Chris Searcy, Barack Obama, Darryl Lewis and Chris Pilato

SDSBS members attend special reception honoring Barack Obama

On June 20, 2008, **Chris Searcy** attended a special reception honoring Senator Barack Obama. The reception was held at the Prime F. Osborn III Convention Center in Jacksonville, Florida as a fundraiser for Senator Obama's Victory Fund. Other SDSBS attendees included Darryl Lewis, Chris Pilato, and D. J. Ward. ■



(l-r) Charleen Szabo, VA Medical Director, Sia Baker-Barnes, and Kathy McGrath-Burger, Ph.D., Federal Women's Program Manager

Sia Baker-Barnes guest speaker at "Women's Equality Day" for the National Women's History Project

In August 2008, **Sia Baker-Barnes** was the guest speaker at "Women's Equality Day" held at the Veterans Affairs Medical Center in West Palm Beach, Florida. The event was held in conjunction with the National Women's History Project. Her subject was "The History of Women's Right to Vote." ■



Laurie Briggs



John Hopkins



Vince Leonard

Laurie Briggs, John Hopkins and Vince Leonard conduct seminar on litigation skills for support staff

On June 18, 2008, **Laurie Briggs, John Hopkins, and Vince Leonard** conducted a full-day seminar for Lorman Publications on "Litigation Skills for Legal Professionals." With over 70 years of combined experience to offer, the panel directed their presentation toward the responsibilities of support staff personnel. Topics included mediation preparation and strategy, electronic discovery, file organization, depositions, and witness and trial preparations. ■



John Hopkins



Debbie Knapp



Kathie Simon



Bonnie Stark

Four SDSBS Paralegals become registered through Florida Bar for specific legal work

John Hopkins, Debbie Knapp, Kathie Simon and Bonnie Stark have become Florida Registered Paralegals upon completion of The Florida Bar Association's Registered Paralegal program's educational, training, and work experience requirements. Under the direction and supervision of a member of the Florida Bar, they perform specifically-delegated, substantive legal work for which the Bar Association member is responsible. There are currently 2,469 Florida Registered Paralegals. ■



Nine SDSBS Attorneys Selected for 2009 "Best Lawyers in America"

Chris Searcy, Jack Scarola, Greg Barnhart, John Shipley, David Sales, Chris Speed, Darryl Lewis, Karen Terry, and David White were selected for the 2009 edition of *The Best Lawyers in America*, to be published in December 2008. *Best Lawyers* is regarded as the definitive guide to legal excellence. Attorneys are selected based on an exhaustive and rigorous peer-review survey. The annual referral guide includes 29,575 attorneys in 78 specialties covering all 50 states and the District of Columbia. Because lawyers are not required or permitted to pay a fee to be listed, inclusion in *Best Lawyers* is a singular honor. ■



Taking... *Time to Care*



Above: 'Friends' Board Members (l-r) Stan Klett Sr., Destinie Baker and Stan Klett, Jr.



Right: Celebrity Bartenders; (l-r) Michelle Visage from WEAT radio and columnist Emily Minor.

Photography Courtesy of Jeffrey Langlois/Palm Beach Daily News

SDSBS supports 'Friends of Abused Children'

On August 27, 2008, a Celebrity Bartending fundraiser was held at the Amici Ristorante and Bar in Palm Beach, Florida, on behalf of Friends of Abused Children, Inc. Emily Minor, long-time columnist for the Palm Beach Post, and Michelle Visage from radio station WEAT-FM Sunny 104.3, were the celebrity bartenders for the event. SDSBS attorney Laurie Briggs, president of Friends board of directors, said the event raised nearly \$1,500 for the support provided for Palm Beach County children who have been placed in dependent care because of abuse or neglect. Friends (www.friendspbcc.org) provides these children with financial assistance for safety patrol trips to Washington DC, summer camp, tutoring, clothing, athletics, dance and music lessons, scholarships, and eyeglasses. ■

OF COUNSEL

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