

A report to clients and attorneys.
VOLUME 09 - NUMBER 1

OF COUNSEL



Defective Product Case in New Jersey - Partial Settlement In Excess of Eight Figures

Sometimes tragedy appears to happen in a horribly abrupt way. But when surviving victims try to piece

together their disrupted lives, one can often see that, in fact, the tragedy was not an accident and instead was the direct result of a series of failures in design, production, and care by corporations which failed miserably in their duty to the public. A number of these catastrophic failures converged all on one day for the Smith family from New Jersey.

As the Smiths drove through Florida on a family vacation, the driveshaft of the Smiths' new van fractured suddenly, pierced the fuel tank and caused a fuel-fed fire which killed Johnny, the youngest son, and horribly burned several other members of the family. A lawsuit was filed against a total of five defendants, each of whom had a part in the tragic failures that led to Johnny's death and the injuries of the other family members. Shortly before an April 2009 trial date, some of the parties reached a settlement in excess of eight figures for the family. But not all. The case continues and will be tried against the remaining defendants in Newark, New Jersey, in April 2009.

In September 2003, the Smith family began an effort to find an easier and better way to care for their son, Johnny, who had been born with cerebral palsy. At nine years of age, Johnny's motor skills were limited and he was wheelchair bound. Despite his disability, he was a bright, funny, warm little boy and an avid sports fan. His father and mother, Michael and Mary Smith, began shopping for *(Continued on page six.)*

In 2004, a family traveling through Florida was suddenly faced with horror as their new van, modified with handicap-accessible equipment for their youngest child, became engulfed in flames. Five members of the family escaped with severe burns. The youngest child, confined to a wheelchair, was trapped in the burning van and died. SDSBS attorneys Chris Searcy and Greg Barnhart filed product liability and negligence actions against the van dealer, the handicap equipment and drive shaft installer, the equipment supplier, and the drive shaft manufacturer. Partial settlement has been reached. The remainder of the case will go to trial April 2009.

Negligence by Hotel and Contractor Causes Deadly Carbon Monoxide Poisoning

In December 2006, John Doe and his son, Tim (not their real names), checked into a hotel in Florida. They were in town for a father and son weekend. They were assigned a room located on the fourth floor. After checking in, they left the hotel and toured the downtown area. Upon returning to the hotel, they set the alarm for 9:00 a.m. and went to bed.

When the alarm went off the next morning, Mr. Doe and his son woke up and began getting ready for their day. Mr. Doe went into the shower and closed the door. His son Tim was on the bed reading a book. Approximately three minutes later, John Doe suddenly became weak

and disoriented and collapsed in the shower. He heard his son yell, "Dad, are you okay?" He then passed out and woke up about 10 hours later in a Florida hospital. He then learned that he and his son had been overcome by deadly carbon monoxide gas that had filled their hotel room. Tragically, John Doe was then given news which no parent ever should hear: his only son, Tim, did not survive.

Suspecting negligence, the Doe family contacted SDSBS attorneys Chris Searcy and Greg Barnhart and asked that they investigate the cause of this tragedy, and represent them in an action against the hotel. *(Continued on page three.)*

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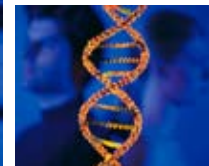
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Cases of widespread death, injury, damage, or loss that stem from negligence often fall into the category of the legal term mass torts. Mass tort claims arise when unscrupulous individuals or corporations disregard public health or safety and the consequences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

Call or email with any questions you may have about a potential case or referral:

www.SearcyLaw.com
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OF
COUNSEL

NEWSLETTER
VOLUME 09 NUMBER 1

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

Negligence by Hotel and Contractor Causes Deadly Carbon Monoxide Poisoning

(Continued from page one.)

Immediately following the incident, the local fire marshal shut down the hotel and a comprehensive investigation involving several government agencies was begun. The results of that investigation were shocking. Tests conducted by the fire marshal and SDSBS experts revealed that quantities of carbon monoxide were being produced by a liquid propane boiler in a room adjacent to their room. The elevated levels of carbon monoxide were created by incomplete combustion due to improper ventilation of the boiler exhaust located on the roof. The carbon monoxide then made its way into the room through a heating, ventilation, and air conditioning (HVAC) closet that had been improperly constructed. The investigation further revealed that the original exhaust had blown off during the 2005 hurricane season and had been replaced with a 90° elbow-exhaust that pointed into prevailing winds, forcing the fumes back down into the boiler. Incredibly, the hotel had failed to pull any permits, call any experts, or take any measures to ensure that the 90° elbow-exhaust was appropriate.

The attorneys also discovered that the hotel had been faced with previous incidents involving the same room. Just six days earlier, another family staying in that same room had been overcome with carbon monoxide poisoning. They sought medical attention and were treated in hyperbaric chambers. The family went back to the hotel the following day and told the hotel's general manager that they had been diagnosed with carbon monoxide poisoning which they felt certain had been leaking into their room.

Investigations conducted by the fire marshal and by SDSBS attorneys **Chris Searcy**, **Greg Barnhart**, and **Brian Denney** revealed that the wall separating their room from the boiler room allowed the build-up of toxic carbon monoxide gas which then seeped into their room through the HVAC system. Following these investigations, a lawsuit was filed in Florida against the hotel entities and the contractors responsible for constructing the defective wall.

The attorneys also discovered that the hotel had been faced with previous incidents involving the same room. Just six days earlier, another family staying in that room had been overcome with carbon monoxide poisoning. They sought medical attention and were treated in hyperbaric chambers. The family went back to the hotel

In 2006, a father and son arrived in Florida, checking into a local hotel. They were unaware that a deadly carbon monoxide gas was being produced in a nearby boiler room, venting directly into an improperly-constructed air handling system. By the next morning, the son was dead and his father was suffering brain damage. As a result of this tragedy, and others like it, Florida passed a law requiring public lodging establishments to install carbon monoxide detectors.

the following day and told the hotel's general manager that they had been diagnosed with carbon monoxide poisoning which they felt certain had been leaking into their room. The family pleaded with the manager to shut down the room until the problem was fixed. Instead of closing down the room so a full investigation could be completed, the hotel sent untrained handymen to a local hardware store to purchase an over-the-counter carbon monoxide alarm. The hotel personnel proceeded to test for deadly carbon monoxide in the room while the room was being rented out to unsuspecting customers. The hotel personnel would knock on the door, make sure no one was in the room, and then walk through it with the carbon monoxide alarm. Because of this reckless conduct, SDSBS attorneys were able to successfully amend the complaint to include a claim for punitive damages.

Due to the catastrophic damages suffered by Tim's parents, John and Mary, for the loss of their only son, as well as the brain damage suffered by John as a result of his prolonged exposure to poisonous carbon monoxide gas, the parties participated in mediation and reached a confidential settlement.

The parents honored the memory of their son by advocating for legislation that would require the installation of carbon monoxide detectors in public lodging establishments. Their efforts were very successful, and in 2007 Florida Governor Charlie Crist signed this bill into law. ■





Accolades

Eight SDSBS Attorneys Named "Best Lawyers in America 2009"

Chris Searcy named "Best Lawyers Personal Injury Litigator of the Year," one of five named "Lawyers of the Year" in West Palm Beach.



Chris Searcy



Jack Scarola



Greg Barnhart



John Shipley



David Sales



Chris Speed



Darryl Lewis



Karen Terry

Chris Searcy was named 2009 "Best Lawyers Personal Injury Litigator of the Year," one of five named "Lawyers of the Year" in West Palm Beach, Florida. *Best Lawyers*, the oldest and most respected peer-review publication in the legal profession, recently decided for the first time to honor as "Lawyers of the Year" those attorneys who have a particularly high level of recognition from fellow attorneys for work in certain high-profile legal specialties. *Best Lawyers* compiles its database of outstanding attorneys by conducting exhaustive peer-review surveys of thousands of leading lawyers throughout the United States and Canada. Included in *Best Lawyers'* annual publication of "Best Lawyers in America for 2009" were SDSBS attorneys **Chris Searcy, Jack Scarola, Greg Barnhart, John Shipley, David Sales, Chris Speed, Darryl Lewis, and Karen Terry.** ■



Jim Gustafson Becomes Shareholder

In January 2009, SDSBS announced that attorney Jim Gustafson became a shareholder in the firm. Mr. Gustafson has achieved excellent jury verdicts and settlements for clients throughout Florida and the southeast United States in cases involving medical malpractice, automobile crashworthiness, insurance bad faith, and general liability. He is AV-rated by Martindale-Hubbell. Mr. Gustafson is an EAGLE member and past chair of the Young Lawyers Section of the Florida Justice Association. He is a sustaining member of the American Association for Justice and a member of the Million Dollar Advocates Forum. He recently served as chair of the Professional Negligence Section of the American Association for Justice. Committed to teaching and writing, Mr. Gustafson has moderated and lectured at numerous continuing legal education seminars. He has authored continuing legal education materials for The Florida Bar, the Journal of the Florida Justice Association, and the American Association for Justice's *Trial* magazine. Mr. Gustafson served with the U. S. Army's 82nd Airborne Division. His undergraduate degree was earned at Florida State University, and he received his juris doctorate in 1994 from the Florida State University College of Law. He also studied at St. Edmund Hall at Oxford University in England. ■



Jim and Josie Gustafson at the shareholder dinner.

Over \$13 Million Awarded for Death Caused by Fuel Truck Collision

Close-knit family devastated over loss of wife/mother in tragic crash inferno

On February 11, 2005, Gloria Halpern was in Fort Lauderdale, Florida, to assist her mother in caring for her elderly father who was in poor health. Gloria and her aunt went to the airport to pick up Gloria's brother and sister-in-law, who had come into town to help out as well. On the way back from the airport to her parents' home, the vehicle turned onto a ramp leading to the Florida Turnpike. At that same time, Flavio Santisteban, a driver employed by Floval Oil Corporation, drove a tanker truck loaded with approximately 9,000 gallons of fuel into the turn heading onto the ramp. As Mr. Santisteban entered the turn, his rate of speed was too great for the road conditions and he lost control of the truck. The truck crushed Gloria's vehicle against the highway guard rail and a huge fire erupted, engulfing both vehicles. Only one of the occupants was able to escape the inferno (but died from his injuries) and Gloria was burned to death. In a fire so intense that only ashes remained, identification of the victims was difficult.

This horrible, tragic accident brought unbearable grief to a family whose members had, for many years, enjoyed considerable love, attention, and support from each other, and the shared joy of extraordinary individual accomplishments. Gloria's husband, Mel, was devastated. He and Gloria had met at a relatively young age and immediately fell in love. They were married for 36 years. Mel is a lawyer, working as a senior technical assistant for the United States Court of Appeals. After graduating from Brooklyn College, City University of New York, with a bachelor of arts degree, Gloria went on to George Washington University, Washington, DC, to earn her masters degree in education. In 1981, she became a certified public accountant. She began work as a teacher in the Department of Business and Economics at Montgomery College in Maryland, and ran her own accounting business involving tax return preparation.

Mel and Gloria devoted their lives to each other, and to their two children, Jeff and Jennifer. Jeff had a passion for hockey and the Halpern family's early life revolved around sports and traveling. After graduating from Princeton University, Jeff signed a contract to play professionally for the Washington Capitals. His parents were thrilled



Approaching a turnpike on-ramp at a high speed, the driver of a tanker truck loaded with fuel lost control of the vehicle and crushed a car into the guardrail. A huge fire erupted and all occupants in the car were killed. Gloria Halpern, who was in Florida to help care for her ailing and elderly father, was killed in the accident. In a brief and terrible moment, Gloria's husband and two children lost the central person in their family life, and lost their dreams of sharing with her a wonderful and loving life with a soon-to-be-born first grandchild.

because he would be playing a sport he loved and would remain in the Maryland area near them.

Jennifer also graduated from Princeton University, and then went on to Vanderbilt Medical School, graduating in 1999. Following her residency, she began work as an orthopedic surgeon. Months before Gloria's tragic and unexpected death, Jennifer found out that she was pregnant. The whole family was thrilled about the pregnancy and even happier when they found that the first grandchild would be a baby girl. Gloria planned on being with her daughter for the birth, and staying for several months afterwards to help Jennifer and her husband with the new baby.

Prior to that tragic day in 2005, the Halpern family had enjoyed a wonderful and loving life, together and individually. Mel and Gloria had always preferred being with each other and with their children rather than pursuing outside interests. The couple had just begun to think about retirement and the pleasures of spending day after day with each other for the rest of their lives. Now Mel is trying to figure out how he is going to continue on without Gloria by his side. When Jennifer's baby was born, the exciting, happy moment was muted by the family's grief and sadness that Gloria was not there to spend time with her new granddaughter.

Mel Halpern asked SDSBS attorneys **Chris Searcy** and **John Shipley** to represent him in an action against Floval Oil Corporation. The case was arbitrated in December 2008, resulting in an award of \$13 million for Gloria's husband, Mel, and \$500,000 each for their two adult children. ■

Defective Product Case in New Jersey - Partial Settlement In Excess of Eight Figures

(Continued from page one.)

a wheelchair-accessible van to make trips to therapy, school, and sporting events easier for Johnny. Johnny's older brother, Nicholas, was 11 years old, loved his brother and parents, and was a gifted athlete. Their father, Michael, worked for a wholesale company filling orders and delivering goods, and Mary did office work.

After doing research on the internet, Michael located a company not far from their home in New Jersey that modified vans to make the vehicles accessible for wheelchair-bound passengers. Michael called Drive-Master Company and then paid them a visit to look at vans. The company showed the couple the equipment that they installed which included a lift mechanism and power cargo doors. The Smiths were impressed with the possibilities. Although there were two vans on the lot at that time, they were both more expensive than the Smiths could afford. Drive-Master often used Ford vans for their modifications, and routinely got these vans from a local Ford dealer. In fact, Drive-Master and the Ford dealer had collaborated 20 to 30 times in providing handicap-accessible vans for buyers. In a short while, a new van was delivered to Drive-Master so that they could install the Braun under-vehicle lift, a form of elevator that would lift a wheelchair up and down so it could be moved in and out of the van, as well as Braun power doors. The power door system was an option, a dangerous option it turned out, that disabled the Ford door handles and opened the side doors of the van hydraulically. The power doors were operated with controls that look like a TV remote control.

There had been no vibrations or other indication of any problem, and the driving up to that moment had been normal. Michael and Mary later said that it sounded as if the lift had fallen. The van lost power, and Michael immediately pulled over to the emergency lane by the highway median. Michael opened his door and ran out. To his horror, he saw flames and smoke starting to come up from the floor of the van. The van's driveshaft had fractured completely and the rotating remnant gashed a hole in the fuel tank. As gasoline vapor was released, it was ignited.

The Braun under-vehicle power lift would slide in and out under the floor of the van, and lower itself to the ground and then back up to the floor of the van to provide accessibility for a person in a wheelchair. The van's original Ford drive shaft had to be replaced with a narrower

driveshaft to make room for the lift. The power cargo doors were installed on the passenger side of the van, and swung outward in a saloon-door fashion. Both the lift and the cargo doors were operated by electronic controls. Inside the van was a control mechanism wired directly to the motor assembly operating the equipment. Passengers and operators could use this control to operate the doors and the lift or, alternatively, they could use an extra feature: a remote control device that allowed users outside the van to open the side doors of the van and operate the equipment.

The Ford van door handles were left in place on the inside and outside of the cargo doors, but had been disabled because the door opening mechanism was now part of the new power door system. These original handles were left for cosmetic appearance. The van also was equipped with two black knobs, one on each of the side cargo doors. The Braun Corporation referred to these knobs as emergency release mechanisms in the manual. When the knobs were turned in a certain sequence, and only when turned in that sequence, the cargo doors would open. The knobs were not labeled "emergency" or "open," nor did they have any instructions indicating which way to turn or what sequence to use. The video provided by the Braun Corporation for demonstrating use of the equipment in the van did not even include a display of the operation of these knobs. In fact, the only reference to the operation of the emergency escape system was a footnote on the use of the knobs in the combined installation and owner's manual.

In the summer of 2004, the Smith family decided to take the van on their first long trip. They headed south to Miami, Florida, to visit relatives and then planned to fly out of the country. Because their van was large and roomy, the Smiths invited Mary's mother, Beth, and brother, Reggie, along on the trip. Beth was an active 59-year-old lady working full-time for the maintenance department in the Newark airport. Reggie, 39 years old, worked at a printing company and attended college at night, working on a degree in electrical engineering.

On the second day of the trip, the family made a stop at a McDonald's just off I-95 near Titusville, Florida. Shortly after they got back on the road, they heard a loud noise. There had been no vibrations or other indication of any problem, and the driving up to that moment had been normal. Michael and Mary later said that it sounded as if the lift had fallen. The van lost power, and Michael immediately pulled over to the emergency lane by the highway median. Michael opened his door and ran out. To his horror, he saw flames and smoke starting to come up from the floor of

the van. The van's driveshaft had fractured completely and the rotating remnant gashed a hole in the fuel tank. As gasoline vapor was released, it was ignited. Later, witnesses reported seeing flames from under the van.

Michael ran to the back of the van and tried to open the back doors. At the same time, Mary opened her passenger door and ran to the side cargo doors to try opening them with the door handle. With both front doors open, and the gasoline now pooling under the van, the fire intensified and entered the interior of the van through its floor and the open front doors. Inside the van, Nicholas and Reggie were trying to get the side doors open. Beth put her arms around Michael, who was crying with fear. As time went by, Nicholas used the wired control and tried it repeatedly, but the fire had damaged the wiring so the doors would not open. Reggie tried kicking the doors in the rear and the side cargo doors, but was not able to budge them.

With the fire spreading inside, and frantic to make something work, Mary raced back to the front passenger door and heroically reached into the burning van for the remote control device. After she was able to find it, she ran back to the side cargo doors, operated the remote and the doors finally opened. Nicholas jumped out through the flames, then Reggie who had Beth in his arms. Mary and Michael tried to reach inside to pull Johnny to safety, but by this time the van was burning heavily, and the whole family watched in unimaginable horror as Johnny burned to death.

Reggie, the uncle, suffered burns on 49% of his body's surface. He spent six months in a Florida hospital. He had serious, almost daily, life-threatening complications including a cardiac arrest and significant pulmonary damage. He has endured, and will continue to endure, multiple skin grafts and other surgeries. He is unable to use his hands properly because of scar tissue and suffers some memory loss. His mother, Beth, received burns on 39% of her body, but suffers even greater damage. Her face was burned away. During hospitalization, her system suffered so greatly that she had a stroke. She is covered with skin grafts, and must take morphine medication daily to endure the constant pain. Her scarring is so disfiguring that she rarely leaves the house.

Nicholas, the first one to get out of the rear compartment, had fewer burns than his uncle or grandmother, but still endured burns over 29% of his body. After care in a children's hospital in Florida, he was sent to a children's burn specialty hospital in Ohio for further surgical procedures. His scarring has developed into keloid scarring which



means that it is upraised and discolored. Mary, the mother, suffered burns to her face, neck, feet and arms. She has significant scarring. Michael has burn scars on his face and arms, though not as many external scars as the rest of the family. The entire family suffers from post-traumatic stress disorder and lives daily with the horror of knowing that their youngest son burned alive in front of them.

Following their physical, emotional, and mental efforts to heal, the family sought legal representation. They finally chose **Chris Searcy** and **Greg Barnhart** to help them. Because the family lived in New Jersey and many of the defendants were New Jersey corporations, Mr. Barnhart decided that the case should be brought in New Jersey and selected Alan Medvin, of Medvin and Elberg, Newark, New Jersey, to be local co-counsel. Product liability and negligence actions were filed against five defendants: the dealer that sold the van, Drive-Master, the handicap equipment installer that modified the van and the drive shaft, the Braun Corporation that designed and supplied the handicap equipment and the company that manufactured and supplied the drive shaft. After several years of intense litigation, Greg Barnhart and Alan Medvin partially settled the case for a figure in excess of eight figures with the Ford Dealer and the manufacturer of the driveshaft. The modifier of the van offered its full policy of insurance and tendered that money into the registry of the court when it was not accepted.

In April 2009, the case will proceed to trial in Newark, New Jersey, against the manufacturer of the power door system and its modifier on the basis that the manufacturer of the lift equipment, Braun Corporation, and its installer created a death trap by their failure to properly label and provide a practical way to manually override the power doors and escape in an emergency. ■

Searcy Denney Attorneys Tackle Defective Products That Cause Serious Injury or Death

Florida Bar recognizes four SDSBS attorneys for being Board Certified Civil Trial Lawyers for 25 years



Chris Searcy

Earl Denney



Greg Barnhart

Jack Scarola

Chris Searcy, Earl Denney, Greg Barnhart, and Jack Scarola have been recognized by The Florida Bar's Legal Board Certification program for earning and maintaining the status of Florida board certified civil trial attorney for 25 years. "Florida's board certification program is predicated on experience and integrity, the foundations that are inseparable from our work as lawyers to advance the administration of justice," said Florida Bar president John G. "Jay" White, III. Board certification is the highest level of evaluation by The Florida Bar for competency, experience, professionalism, and ethics in practice within a specific area of law. ■

SERIOUS DEFECTS IN SUZUKI GSX R1000 MOTORCYCLE FRAME CAUSE DEATHS AND INJURIES IN CATASTROPHIC CRASHES

On January 9, 2009, American Suzuki Motor Corporation advised the National Highway Traffic Safety Administration of a serious safety defect in their 2005 and 2006 GSX-R1000 sport bikes: the frames are susceptible to cracking and breakage behind and below the steering neck.

A frame fracture can destabilize and compromise the handling characteristics of the bike, resulting in serious injury or death to even the most experienced riders. In fact, the frame defect has caused front steering assemblies to completely separate from the body of the bike during operation.

Where does Suzuki assign blame? Instead of taking responsibility for manufacturing and selling a defective and deadly sport bike, Suzuki blames the riders who purchase their product.

Nonetheless, the company initiated a recall campaign beginning January 21, 2009, in order to retrofit affected bikes with a brace to minimize the potential for frame cracking or breakage, or to replace broken frames.

If you own or ride one of these Suzuki models, you should have received a notification letter from Suzuki explaining the possible defects and asking you to return your motorcycle to a Suzuki dealership. You should trailer your GSX-R1000 motorcycle to a Suzuki retailer as soon as possible. Suzuki's Service Bulletin authorizes dealerships to inspect the relevant area of the frame, and to retrofit a brace or replace the frame as warranted.

If you or a loved one has been injured as a result of this product defect, contact our office and speak with our mass tort unit. For additional information, go to our dedicated website at: www.suzukimotorcycleattorney.com. ■



If a loved one has died, or you or a family member has been injured, in an accident involving a Suzuki Motorcycle or a Rhino® All-Terrain Vehicle, please contact our mass tort unit or go to our dedicated site for more information at:
<http://www.suzukimotorcycleattorney.com/>
 or
<http://www.rhinoinjuryattorney.com/>

ROLLOVERS BY RHINO® ALL-TERRAIN VEHICLES CAUSE DEATHS, SERIOUS INJURIES

Warnings and Retrofits Too Late For Victims

The image of all-terrain vehicles is one of freedom and adventure: off-road exploration through muddy ruts, over rough and rocky hills, up and down steep terrain. What could be more exciting, especially to teenagers and even younger children whose parents assume these vehicles are safe? As it turns out, instead of the adventure of a lifetime, many drivers and passengers in Yamaha's Rhino® Utility Terrain Vehicles have suffered severe injuries or even death.

In a sleight-of-hand maneuver, Yamaha classified the Rhino® as a "utility terrain vehicle" and, therefore, it was not subject to the same safety standards as other ATVs. Although Rhino® has a history of rollover and handling problems because of its poor design, Yamaha managed to work around federal regulations.

When the Rhino® was first introduced to the market in 2003, it was widely reported that ATV deaths and injuries had risen steadily since the mid-1980s. Statistics at that time indicated that 30% of the injuries and deaths were to children under the age of 16, of which 19% involved children under the age of 12.

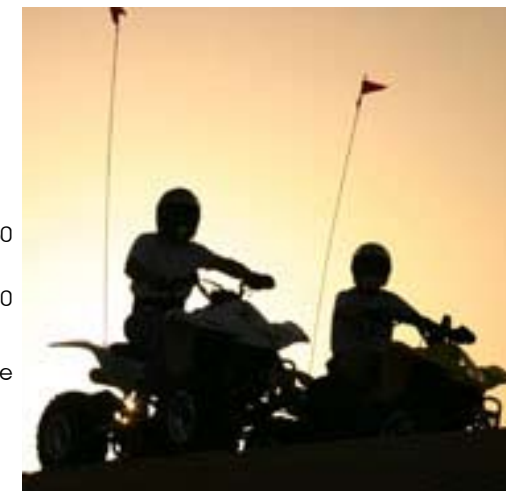
Perhaps recognizing the black marks on the safety record of what competitors called "all-terrain vehicles," Yamaha decided to give the Rhino® a different characterization: "utility terrain vehicle." In effect, the manufacturer "re-labeled" the Rhino and may have camouflaged the potential hazards, which included:

- High profile design
- Narrow wheel base
- Too-narrow tires
- High center of gravity
- Absence of doors or side guards
- Too much steering range

The models affected included:

- All 2004 YXR660
- All 2005 YXR660 without doors
- All 2006 YXR660
- All 2007 YXR660
- All 2006 YXR450 without doors
- All 2007 YXR450

Federal statistics now indicate that the unregulated Rhino® is responsible for more than 30 deaths and hundreds of serious injuries. ■

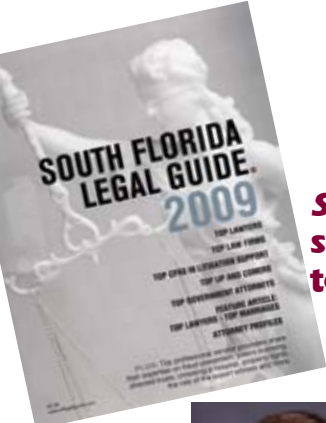


Meeting Corner



Mark P. Poncy

Mark Poncy recently joined SDSBS as a paralegal to work with Jack Scarola's team. After completing graduate degrees in physiology and neurophysiology, Mr. Poncy founded Steridyne Corporation, a medical device firm which he ran for 22 years. An avid student and contributor to the field of intellectual property, Mr. Poncy holds 13 United States and foreign patents, over a dozen trademarks, and ten copyrights. His original scientific research on mechanisms of pain was published in the *Journal of Neuropharmacology*, and he also developed the original curriculum, "Understanding and Participating in the Creative Process," which he introduced for accreditation at a local preparatory school. He remains active in the fields of creative writing and musical composition, having composed three novels, a humor column, the publication of the humor work "Menopause," two musical plays, and numerous songs. ■



South Florida Legal Guide selects SDSBS as one of top law firms, and nine SDSBS attorneys as top lawyers



Chris Searcy



Earl Denney



Jack Scarola



Greg Barnhart



John Shipley



Bill Norton



David Sales



Chris Speed



Cal Warriner

The *South Florida Legal Guide's* Annual Edition for 2009 has selected SDSBS as one of the top law firms in south Florida. The Guide also named nine SDSBS attorneys as top lawyers in south Florida – **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, Bill Norton, David Sales, Chris Speed, and Cal Warriner.** The firm and

these nine attorneys were also selected for this honor in the Guide's 2008 edition. The Guide selects the honorees by asking Florida's most highly-regarded attorneys to nominate attorneys whom they most respect and to whom they would refer a friend or family member. SDSBS attorneys **Darryl Lewis, Karen Terry, Brian Denney, and Jack Hill** were named by the Guide as "Top Up & Comers." ■



Darryl Lewis



Karen Terry



Brian Denney



Jack Hill

Accolades



Chris Searcy recognized by American Board of Professional Liability Attorneys as diplomate with special competence

Chris Searcy was welcomed to the American Board of Professional Liability Attorneys as a diplomate with special competence in the area of medical professional liability. The ABPLA certifies attorneys who specialize in either medical or legal professional liability, and assists consumers and other attorneys in identifying attorneys with superior knowledge and expertise in these areas of highly technical litigation. Organized in 1972, the ABPLA is a national organization comprised of leading trial advocates in the area of professional negligence law and is the only organization accredited by the American Bar Association to board certify attorneys in these areas of practice. ■



Paralegal Vince Leonard elected to board of Palm Beach County Justice Association as paralegal representative

On January 6, 2009, SDSBS paralegal **Vince Leonard** was elected to the board of the Palm Beach County Justice Association as Paralegal Representative. PBCJA has over 450 trial attorney and paralegal members dedicated to inspiring excellence in legal advocacy and upholding the ethics, honor, and dignity of the legal profession. In his newly-elected position, Vince will serve as liaison to the board on behalf of the paralegal members and will continue to assist in the professional development and networking of PBCJA members to ensure they remain the absolute best in the legal profession. ■

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Man's Death in Airline Crash Is Huge Loss for Family, Charities and Community



On August 27, 2006, Delta Comair Flight #5191 crashed during takeoff from Blue Grass Airport in Lexington, Kentucky. The pilot, another crew member, and all 47 passengers were killed. Only the co-pilot survived. The investigation conducted by the National Transportation Safety Board clearly determined that the cause of the accident was pilot error. In the early morning hours the crew had mistakenly turned onto the wrong runway, one that was too short to accommodate the Bombardier CRJ-100 aircraft. Unable to gain sufficient speed and altitude to clear the end of the runway, the plane crashed at the end of the runway and burst into flames.

When dramatic, violent tragedies like this occur, the public seldom gets a chance to learn the more intimate, personal details of the people victimized by the incident. Public attention moves on rapidly past the total number of people killed and injured, the circumstances and cause of the accident, and the promises to take steps to avoid another such tragedy. Each individual victim in this terrible acci-

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dent represented a painful loss to ever-widening circles of people that they touched, or would have touched, in their lives – family, friends, work associates, and fellow church and civic group members. In pursuing any wrongful death action against those whose errors, mistakes, or negligence cause such incidents, it is important to describe the value of each life lost and the impact each loss has on those left behind. John Doe, one of the passengers who died on this flight, is a clear example of the loss that continues to be experienced far beyond family and close friends.

At the time of his death, Mr. Doe served as the senior vice president and chief operating officer for a prominent charitable foundation in Florida. He had attended a foundation board meeting in another state and was heading home to Florida. In his work at the foundation, Mr. Doe oversaw substance abuse and mental illness treatment programs located in several states. He was a recognized leader in his field for his abilities, achievements, and dedication. He had devoted his life to serving his community and achieved a level of success that very few people reach.

Mr. Doe was a healthy, active gentleman in his mid-60's, fully intent on continuing his work and community support. His work at the foundation was not merely employment, but an integral part of his personal and spiritual mission to help others. As with the loss felt by the many other survivors of the victims of this crash, John Doe's abrupt and horrific death was a devastating loss for his own children, and a substantial loss to his local community and the larger community that he touched with his dedication and support, well beyond the United States.

John Doe's estate asked SDSBS attorneys **Chris Searcy** and **Bill Norton** to represent them in a wrongful death suit. The issue of liability was clear, and mediation focused on damages resulting from the tragic loss of this gentleman. Eventually, the parties reached a confidential settlement. ■

On August 27, 2006, Delta Comair Flight #5191 crashed during takeoff from an airport in Lexington, Kentucky. Only one person survived. The sudden, violent death of 49 people within an instant is a tragedy in itself. But each individual within that terrible tragedy is a very personal and painful loss to a wide circle of family, friends, co-workers, and civic and church group members – each of whom was touched in their life by the person they lost.

Speaking Opportunities



Chris Searcy

Chris Searcy spoke at the Florida Trial Practices Seminar XIII held in December 2008 at the Embassy Suites, Palm Beach Gardens, Florida. His topic was "Prescription Errors and Pharmacy Litigation – Hippely v. Walgreens, an Exemplar Case." ■

Also in December 2008, Mr. Searcy moderated the Palm Beach County Bar Association Judicial Luncheon held at the main courthouse. The topic for the luncheon was "Jury Selection in Catastrophic Injury Cases." The panel discussed jury selection, evidentiary issues, and opening and closing statements. ■

Mr. Searcy spoke at the Law Education Institute's National Continuing Legal Education Ski Seminar in January 2009, held in Vail, Colorado. His topic for this seminar was "Misfilled Prescription Cost Walgreens \$25 Million." ■



Greg Barnhart

Greg Barnhart spoke at the Civil Trial Certification Review Course held in February 2009 in Tampa. The program was hosted by The Florida Bar Continuing Legal Education Committee and the Trial Lawyers Section. Mr. Barnhart's topic was "Trial Skills: Use of Experts, Frye Motions, and Trial Motions." ■



John Hopkins

SDSBS paralegal John Hopkins spoke at the Florida Justice Association's Masters of Justice: Advanced Civil Litigation Seminar for Paralegals and Legal Assistants. The event was held in December 2008 in St. Petersburg, Florida. Mr. Hopkins' topic was "The Document Fire Drill: Burn Prevention Techniques." ■



Emilio and Sharon Diamantis

Photo by Scott Kelly, Island Images www.islandimagesprophoto.com

Emilio Diamantis Retires After 21 Years with Firm

In December 2008, SDSBS bid a fond farewell to Emilio Diamantis as he retired after 21 years with the firm. At the retirement celebration, Chris Searcy spoke about Emilio's numerous contributions to SDSBS and his work as a senior paralegal on Jack Scarola's team. Mr. Scarola presented "The Ballad of D's Departure," a humorous poem extolling Mr. Diamantis' talents and personality.

Emilio Diamantis was born in New York, and moved to Florida in 1957. He began his first career working for the Palm Beach County Sheriff's Department. During his 16-year career there, he advanced through the ranks, retiring in 1983 as Lieutenant Deputy Chief of Detectives. While working for the Sheriff's Department, Mr. Diamantis met then-chief felony prosecutor, Jack Scarola. Mr. Diamantis' many accomplishments while working at the Sheriff's Department prompted the Police Academy to invite him to teach Homicide Investigative Techniques. After teaching for several years, he returned to class as a student and graduated from Barry University in 1990 with a bachelor's degree in Professional Studies. Mr. Diamantis had joined SDSBS in 1986, working on cases involving personal injury, medical negligence, wrongful death, product liability, and police-oriented issues. Being fluent in Spanish facilitated his work as an advocate for migrant farm workers, as well as the Hispanic community. He was active in numerous volunteer and non-profit organizations, and he served as the Paralegal Representative for the Palm Beach County Trial Lawyers Association. Mr. Diamantis has begun his next career as president of Latin American Plaintiffs' Services, LLC, providing plaintiff support, consulting, and liaison services for legal actions that involve clients located in Central and South America and in the United States. ■

Failure to Record Vital Signs Masks Clues to Deadly Infection Costing Toddler's Life

On Saturday evening, February 8, 2003, LJ, a 13-month-old Florida toddler, began running a fever. He was also coughing and very congested. The next day, Sunday, his fever continued and his mother noticed that his heart rate had increased and he was breathing rapidly. Alarmed that something was seriously wrong with LJ, his mother made the decision to take him to the nearest hospital emergency room rather than wait another day or so to see the family pediatrician. LJ was fussy and obviously not feeling well, but was able to be consoled by his mother. The hospital's diagnosis at that time was an upper respiratory infection.

LJ continued to suffer from the fever, coughing, and congestion for several days. Noting that he was constantly sleepy and beginning to have difficulty bearing weight on his right leg, LJ's mother took him to the family pediatrician for another examination on the morning of February 12th. Incredibly, the pediatrician failed to record LJ's basic vital signs during the examination, including heart and respiratory rates. Late that evening, with LJ still suffering lethargy and high fever, the family raced the toddler back to the hospital emergency room seeking further medical help. At the emergency room, medical staff began reducing LJ's fever, but failed, as had the pediatrician, to take repeat vital signs after the fever decreased. In the early morning hours of February 13th, the family returned home again.

Medical records and experts later determined that LJ had been suffering from viral myocarditis, an inflammation of the heart muscle which can be caused by a variety of infections and conditions. The virus invades the heart muscle causing a local inflammation. After the initial infection subsides, the body's immune system continues to

Due to the failure of medical personnel to take and record the basic vital signs of a sick toddler brought to them repeatedly for examination, viral myocarditis was not diagnosed and treated. The child died as a result of this failure.



Toddler LJ held by his sister.

Key elements required to make the appropriate diagnosis of this condition are detailed vital signs including heart and respiratory rates. A clue to the presence of myocarditis is an elevated heart and respiratory rate when the fever is no longer present.

Due to the failure of medical personnel to take and record the most basic vital signs of the child, myocarditis had remained undiagnosed and untreated until it took LJ's life.

inflict damage to the heart muscle. Key elements required to make the appropriate diagnosis of this condition are detailed vital signs including heart and respiratory rates. A clue to the presence of myocarditis is an elevated heart and respiratory rate when the fever is no longer present.

On February 16, 2003, LJ was taken to the emergency room again, still suffering and considerably weaker. After waiting several hours to be treated by emergency room personnel, LJ was finally taken in for an examination. It was, by then, too late. Before examination or treatment could be performed, LJ died in his mother's arms.

Due to the failure of medical personnel to take and record the most basic vital signs of the child, myocarditis had remained undiagnosed and untreated until it took LJ's life. In the aftermath of this tragedy, LJ's family asked SDSBS attorney Darryl Lewis to represent them in an action against the medical providers involved in LJ's care. After considerable time and effort, including a summary jury trial process, a confidential settlement was reached on behalf of LJ's family. ■



Bob Burton and Chris Searcy.

Coastal Conservation Association awards Chris Searcy for his decade-long dedication to conserving and protecting marine fishery resources

In November 2008, the Coastal Conservation Association awarded Chris Searcy its Ironman Award for his decade-long support of CCA's programs. CCA is dedicated to conserving and protecting marine fishery resources. ■

Taking... *Time to Care*



SDSBS hosted luncheon celebrating Barack Obama's inauguration

On January 20th, 2009, SDSBS hosted a luncheon for its staff members at the Palm Beach Ale House, West Palm Beach, Florida, to celebrate President Barack Obama's inauguration. ■



Brenda Fulmer and daughter Molly volunteer with Big Heart Brigade helping to assemble 40,000 meals on Thanksgiving 2008

SDSBS attorney Brenda Fulmer and daughter Molly joined volunteers to assemble Thanksgiving Day meals for the Big Heart Brigade of the Treasure Coast. Since 1992, the Big Heart Brigade has reached out to make a positive difference in many communities along Florida's Treasure Coast. Throughout the counties of St. Lucie, Indian River, Martin, and northern Palm Beach County, Big Heart Brigade has contributed to the community through their commitment to offer hands-on service for those in need. Every dollar raised by the organization goes directly back to the community. With 100% volunteer support, Big Heart Brigade was able to provide 40,000 meals on Thanksgiving Day 2008. For more information on the organization, visit their website at www.bigheartbrigade.org. ■



SDSBS raises \$3,558 in contributions for the Leukemia & Lymphoma Society during 2008 Light the Night Walk

SDSBS staff participated in the 2008 Light the Night Walk held at the Meyer Amphitheater in West Palm Beach, Florida, by the Leukemia & Lymphoma Society. The Society is the largest organization dedicated to finding cures for blood cancers, and is regarded as one of the top-rated voluntary health organizations in the country. Its annual, nationwide Light the Night Walk raises awareness and funds to support research and provide support for patients and their families. SDSBS raised \$3,558 in contributions during the Walk. The West Palm Beach event raised \$190,000, part of the total \$420,000 raised by the Society's Palm Beach Area Chapter. ■



Chris Searcy



Laurie Briggs

Community Service Awards presented to Chris Searcy and Laurie Briggs by Operation Hope at its Tenth Annual Awards Banquet

Chris Searcy and Laurie Briggs were presented Community Service Awards by Operation Hope during its Tenth Annual Awards Banquet held in December 2008 at the Double Tree Hotel in Palm Beach Gardens, Florida. Operation Hope, founded by Ken and Rene Bowers, is dedicated to addressing the concerns of the homeless in the community. ■



(l-r) Ryan Witkoswski, David Kelley and Lou Cera receiving award for second place.



SDSBS employees participate/volunteer in golf classic.

SDSBS participates in Palm Beach County Sports Commission Golf Classic benefiting Sam Budnyk \$20,000 Scholarship Fund for student athlete

The Palm Beach County Sports Commission Golf Classic was held in October 2008 at the Palm Beach Polo Golf & Country Club, Wellington, Florida. SDSBS is a sponsor of the Commission and attorney David Kelley is chairperson of the Commission's Golf Tournament Committee. Funds raised by the tournament support the Sam Budnyk Scholarship Fund which annually awards a \$20,000 scholarship to an outstanding student athlete in Palm Beach County. The funds also help sustain the activities of the Commission in supporting and developing youth sports in the county. ■

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Federal Preemption: Complete Corporate Immunity

Instead of protecting you and your rights, some federal regulations take them away

In the past few years, a handful of federal government agencies have inserted into their regulations language that takes away your right to sue corporate wrongdoers for their negligence or product defects. As a result, we are now seeing cases where innocent victims are victimized twice: first, killed or injured by defective products such as unsafe automobiles, medical devices or pharmaceuticals; and, second, rejected because of so-called "federal preemption" when they go to court to seek justice.

In maintaining the delicate constitutional balance between federal and state government, federal agencies generally set minimal consumer safety standards. States have the right to impose, and enforce, stricter protections. However, the Bush administration orchestrated a campaign to have the weaker federal standards prevail. They used the Food and Drug Administration, for example, to undermine the rights of victims of defective medical devices and pharmaceuticals. In a recent U.S. Supreme Court decision, manufacturers of defective defibrillator connectors (Medtronic Sprint Fidelis leads) argued successfully that they are immune from lawsuits filed by injured heart patients because of preemptive language in FDA regulations related to product approval.

We can't let big corporations put their profits before our safety, and then get away scot-free.

Fortunately, President Barack Obama, fair-minded members of Congress, and consumer rights organizations are fighting to halt the federal preemption movement. You can help right now by asking members of your congressional delegation to support the 2009 Medical Device Safety Act.

**FOR MORE INFORMATION ABOUT FEDERAL PREEMPTION
AND WHAT YOU CAN DO TO STOP IT, GO TO:
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