

OF COUNSEL

A report to clients and attorneys.
VOLUME 09 - NUMBER 3

Hospital Ignored Teen's Hypertension, Causing Permanent Eye Damage and Loss of Both Kidneys

\$5.5 million settlement will provide long-term medical care

Hypertension, or high blood pressure as it is more commonly known, can be a killer. While hypertension is not uncommon with adults, it is relatively rare in children and teenagers. This is changing as the population of children and teenagers is becoming more and more obese. For children of normal weight, hypertension is still uncommon; but when it exists, it can be a killer.

An elevated blood pressure, left untreated in a child, can cause serious and permanent damage to a child's internal organs, such as the kidneys and heart, and permanent damage to the child's eyes. This happens when the high blood pressure causes small blood vessels to rupture and bleed, and causes other blood vessels to expand to the point where the supply of oxygen is cut off to parts of the organ. Fortunately, pediatric high blood pressure is easily and painlessly diagnosed. The use of a blood pressure monitor, which we have all seen, repeated over time, gives accurate blood pressure readings. By far, most cases of elevated pediatric blood pressure are treatable. The cause of the elevation may be from an underlying kidney disease or some other disorder. In the vast majority of cases, early detection can lead to prompt and effective treatment. The key is early detection.

Unfortunately for 15-year-old Jane Brown (name changed to protect confidentiality), this did not occur. Jane had been a patient of an internist and family practitioner. She had seen him for a number of childhood ailments including, most recently, a persistent rash. During this time, Jane's blood pressure ranged from 120/80 to 140/80, which is normal to near-normal in adults. But for children, including children of 15 years of age, even 120/80 is in the 95th percentile for a girl that age (meaning 95% of all girls that age and size have lower blood pressure reading).

The blood pressure of 140/80 in such a young girl is considered to be, by definition, advanced Stage III hypertension, meaning that the child is in danger and needs immediate assessment and treatment. In other words, a blood pressure reading of 140 in a 15-year-old is above the 99th percentile for blood pressures in children of that age and that weight. Unfortunately, the significance of Jane's blood pressures was completely missed by the family practitioner. All the while, there was slow damage being done to Jane's internal organs. It was probably not permanent damage, but it was damage nonetheless.

Then, on March 8, 2005 Jane was taken to the emergency room of Local Hospital of Florida (name changed to protect confidentiality), for a persistent rash that continued to spread over her torso. Jane's mother felt that the family doctor was not doing enough and took her daughter to the emergency room for a second opinion and for treatment. When she got to the emergency room of Local Hospital, she was seen by a triage nurse which is a nurse who screens patients entering the emergency room. At that point, the triage nurse took her vital signs and discovered a blood pressure of 159/102. By any measure, that is a high blood pressure for an adult, and for a 15-year-old girl it is an absolute emergency. The triage nurse was so concerned that she circled the blood pressure in red ink so the emergency *(Continued on page six.)*

In numerous examinations by a family doctor and hospital staff, the severely high blood pressure of a 15-year-old girl was repeatedly ignored by medical personnel. After months of continued abnormal BP levels and no proper medical response, the hypertension was finally diagnosed and treated, but not before the girl suffered permanent eye damage and loss of both kidneys.



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\$7.8 Million Verdict Against Big Tobacco

Another Florida victory over tobacco - Pensacola man wins verdict in wife's death

In August 2009, an Escambia County, Florida, jury awarded \$7.8 million in compensatory damages to the husband of a woman who died as a result of her addiction to nicotine. Plaintiff Franklin D. Campbell, Sr., sued RJ Reynolds Tobacco Company, Philip Morris USA, and Liggett Group on behalf of his late wife, Betty Campbell, who died in 2006 of chronic obstructive pulmonary disease at the age of 64. Mr. Campbell was represented by SDSBS attorneys **Bill Norton, David Sales, and Laurie Briggs.**

The case is one of thousands that remain pending in Florida courts following a Florida Supreme Court landmark decision in 2006. The Engle class action decision paved the way for individual suits by Florida smokers who developed smoking-related diseases prior to November 1996 and who had been part of the original class action. Following a month-long trial, the Escambia County jury found that the cigarette companies were legally responsible for Mrs. Campbell's death. The jury, however, concluded that Mrs. Campbell was partially at fault, which will reduce the total verdict by approximately one-half. This is the seventh plaintiff's victory in the Engle tobacco litigation. The other awards ranged from \$1.2 million to \$30 million, with similarly apportioned percentages of fault. As with every plaintiff win in these cases, the defense has indicated it will appeal.

Bill Norton said educating the jury about the tobacco industry's 50-year cover-up of the health risks and the intentional efforts to keep smokers addicted were the biggest hurdles in the case. SDSBS attorneys called a total of 14 witnesses,



including experts on addiction, advertising and marketing, and introduced internal tobacco industry documents highlighting industry efforts to conceal the health risks. Mrs. Campbell's family and her treating physician also testified.

Attorneys Norton, Sales, and Briggs addressed the issue of fault from the beginning, admitting that Mrs. Campbell shared fault in failing to quit and explaining her failure in the context of her life story.

The SDSBS attorneys told the jury that Mrs. Campbell, had a very tough upbringing, being bounced around relatives' and siblings' homes because her mother was in and out of mental hospitals for much of her life. As a result, she suffered from depression. Norton said she spent all of her energy making a home for her husband and three sons and she just didn't have enough strength left to beat her addiction. The jury clearly understood the addictive nature of cigarettes and understood the reasons for her inability to break that addiction.

"Mr. Campbell expressed satisfaction and gratitude that the jury understood the power that nicotine had over his wife," said David Sales. Mrs. Campbell began smoking in 1957 at the age of 15, and was unable to quit smoking despite repeated attempts. Mr. Sales said that while this verdict is important, "people should not forget that nicotine and cigarettes still claim the lives of 440,000 in this country annually, and thousands of other Engle class members are waiting for their day in court." ■

OF
COUNSEL

NEWSLETTER
VOLUME 09 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.

Bank's Auditor, Ernst & Young, Ordered to Pay \$17.2 Million for Accounting Malpractice

For over a decade, Ernst & Young was the independent auditor of Superior Bank, a federal savings bank operating throughout the continental United States. In each of those years, through 2000, E&Y issued to Superior Bank a "clean" or "unqualified" audit opinion – essentially a clean bill of financial health. The audited financial statements showed Superior Bank to be the most profitable private bank in the United States.

In reliance upon the audited financial statements, Alan Schein and Results Technologies, Inc., a corporation based in Dania, Florida, entered into a business relationship with Superior Bank. Schein and Results Technologies had created the Results Mortgage System, a revolutionary way to market high-quality mortgage loans over the telephone, using state-of-the-art interactive computer scripts and systems.

Through agreements executed in 1996 and 1998, Results Technologies' mortgage marketing business became a separate division of Superior Bank, the Universal Lending Division, with Schein as its president. Schein and Results Technologies retained an option to "unwind" and to operate or sell the business as a stand-alone entity with the right to half the profits. Rather than exercise their option before the business had established a track record of maximum profitability, Schein and Results Technologies chose to remain with Superior Bank, in direct reliance upon the financial statements audited by E&Y, which portrayed Superior Bank as a rock-solid financial institution.

After six years of litigation, and a three-week jury trial, Alan Schein and Results Technologies were vindicated. Jurors in the Complex Litigation Division in Broward County found Ernst & Young negligent in their erroneous certification of the bank's financial health. They awarded Schein and Results \$10.2 million in actual damages. Pre-judgment interest brought the final judgment to \$17,263,709.

In early 2000, federal regulators from the Office of Thrift Supervision and the Federal Deposit Insurance Corporation began to question key accounting issues in the financial statements. Rather than admit its mistakes, E&Y dug in its heels, telling Superior Bank that it was right and the federal regulators were wrong.

After debating the matter for a year, and on the eve of a key "showdown" meeting with the regulators, E&Y reversed itself on key accounting issues, admitting that it had been wrong all along in its valuation methodology. E&Y quickly

After years of producing audits for Superior Bank that showed a clean bill of financial health, Ernst & Young finally admitted it erred in evaluating the bank's assets. The most profitable private bank in America was immediately rated insolvent and eventually closed. The bank's investors, having relied on the improper audits, suffered substantial losses for which Ernst & Young was found responsible.

determined that applying the proper accounting to Superior Bank's assets reduced its value by \$420 million, which immediately changed Superior Bank from the most profitable private bank in America to an insolvent bank. Within months, the FDIC formally closed the bank.

Unfortunately, Schein and Results Technologies were trapped in the sinking ship that Superior Bank had become. Had they known that E&Y's accounting work was flawed, they could have unwound their business and sold it for millions of dollars. But when E&Y suddenly and belatedly admitted its mistake, the federal regulators assumed control of Superior Bank and all of the assets in which it held an interest – including the Universal Lending Division.

Schein and Results Technologies retained SDSBS attorneys **Jack Scarola** and **Patrick Quinlan**, and co-counsel Robert Mayer, to recover losses they sustained as a result of E&Y's utter failure as accountants for Superior Bank. While E&Y had admitted its mistake in a private meeting with regulators, it took the position in the lawsuit that it had done nothing wrong. Instead, E&Y blamed bank personnel, the regulators, and even Schein and Results Technologies for any financial problems at Superior Bank. E&Y also contended that the Results Mortgage System had no monetary value. Consistent with this "scorched earth" defense mentality, E&Y made no reasonable offer to settle.

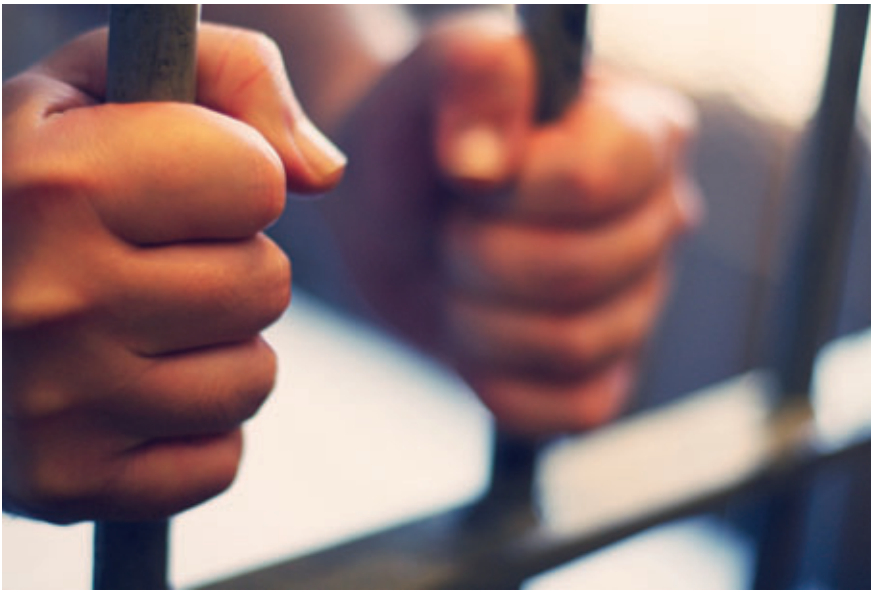
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"The E&Y legal team included as many as eight lawyers in the courtroom at one time," said Alan Schein. "We took everything they could possibly throw at us and still came out on top." ■

Mentally Disabled Young Man Sent to Jail By Hospital Staff With Tragic Results

Hospital staff conspired to get rid of patient sent to them for medical aid

John Smith (not his real name) had a very hard life. As a young child, he suffered a head injury that permanently damaged his brain, causing severe developmental retardation and epileptic seizures. Seizures are sudden surges of electrical activity in the brain that usually affect how a person thinks or feels for a short time. Sufferers may become unaware of what is going on around them, or may have convulsions and loss of body control. Typically, they are disoriented and have little control over emotions or behavior. One of John's regular medications was Klonopin, used to minimize seizures and relieve anxiety. With medication and family support, John was able to perform the basic functions of daily life, such as brushing his teeth, preparing lunch, writing simplistic words and sentences in both English and Spanish, and playing chess. He had an interest in life around him. Overall, he managed, along with his family, to get through each day.



Following a family disturbance, a 20-year-old mentally disabled man was taken by police to a nearby hospital for care and restraint under Florida's Baker Act. Instead of providing care, the hospital staff conspired to have him removed from their facility because of repeated past difficulties with him. He was then sent to jail, without his medication or medical records, where he was brutally beaten and suffered further brain damage.

John's father, James Smith, stood by his son, caring for him and loving him, using the patience, understanding, and affection required of parents of special needs children. Caring for a special needs child can be exhausting and draining, as well as rewarding. On occasion, John would lose control of his behavior and act out, sometimes violently. The situations were not driven by malice or spite, but by John's inability to control his emotions. When John turned 18 years of age, James, knowing that John would never be able to live a normal life on his own, asked authorities to find John mentally incompetent and to name James as John's legal guardian. In 2003, James, John, John's sister Betty, and the children's grandfather Edward, were living together in south Florida. At the end of that year, John's difficult life took a decided and tragic turn for the worse.

On December 17, 2003, 20-year-old John had a violent outburst directed toward his family. John's father, James, recognizing the need to protect the family, called the local police. John was delusional, combative, demanding, hyperactive, and uncooperative. He was experiencing auditory hallucinations. The police recognized immediately that John was incompetent and unable to deal with authority. Instead of taking John to jail, the police decided to take John to the nearest "Baker Act" receiving facility, a nearby local medical center.

The purpose of Florida's Baker Act, passed to recognize and meet the needs of the mentally handicapped people in our society, is to provide a safe haven for people at risk for harming themselves or others. Dignity and human rights are guaranteed for people admitted to mental health facilities under the Act. A receiving facility under the Baker Act is designated by the State and is required to receive and hold involuntary patients under emergency conditions or for psychiatric evaluation and short-term treatment. Jail is not an approved Baker Act receiving facility.

Supreme Court Justice William J. Brennan, Jr. once said, "Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment." Society's myths and fears can be just as damaging, or more so, as any physical, mental, or emotional handicap suffered by the patient.

Dr. Jones (not his real name) was the administrative head of psychiatric services at the medical center. Nurse Adams (not her real name) was employed by the medical center and on duty December 18, the morning after the police brought John into the facility. That morning, Dr. Jones conducted a face-to-face evaluation and found that John was incapable of making his own decisions, in need of care and treatment, and should

be admitted as a Baker Act patient. Dr. Jones estimated that John would be admitted for one week. John was also placed under suicide watch.

Behind the scenes, however, personnel in the medical center were already orchestrating rejection of John in an effort to avoid the medical center's obligations under the Baker Act. This was, in fact, not the first time the hospital had tried to reject him from its care. John had been to the same hospital several times before and, like many mentally handicapped persons, he was not an easy patient. A week earlier, on December 9, John was admitted to the same medical center experiencing seizures. During that visit, he allegedly struck a nurse. Following that incident, on December 11 the medical facility tried to get John transferred to a larger hospital in the community. That hospital would not have accepted John if he was already admitted as a patient of the medical center. To make the transfer work, medical center staff prepared a report intentionally omitting the fact that John's transfer was being made by the medical center. In addition, the medical center staff told the police to delete that fact from their own reports of the transfer.

On the morning after John's next visit to the medical center, December 18, Nurse Adams recognized John and told Dr. Jones, "He's here." Medical center personnel renewed their earlier efforts to remove John from their facility, and Sgt. Charles, an off-duty police officer working for the medical center, suggested the medical center charge John with battery for striking Nurse Adams during the encounter one week earlier. The center's staff decided to press charges. John was then discharged into the custody of the police and taken to jail. The medical center records noted, "Discharged to jail."

John was not allowed to take his medications with him. The jail report did not include John's medical records, nor was there any mention of his mental limitations. During his short incarceration, mentally challenged John Smith was so severely beaten by other inmates that he suffered head trauma and fractures of the bones around his left eye. He was found in the corner of his cell having an epileptic seizure. John now suffers even greater brain damage than he had before the incident, and can no longer perform the basic functions he had been able to master earlier. He is no longer a candidate for supervised work programs and will, instead, need 24-hour care.

James Smith, John's father and legal guardian, contacted local attorney Ted Fournaris. Mr. Fournaris prepared the entire case and filed an action in court to hold the medical center and its agents responsible for wrongfully denying John Smith the rights and protections he was entitled to under Florida law, and for forcing him, defenseless, into a savage environment where he was then severely injured. Mr. Fournaris asked SDSBS attorneys **Chris Searcy** and **Brian Denney** to assist in trial.

In an effort to support the medical center's allegation that John assaulted center personnel on December 9, Nurse Adams stated that John jumped on top of her, knocked her to the ground, and struck her several times in the face. John then turned and struck an attending physician, Dr. Michaels (not her real name), several times in the face. The medical center personnel also alleged that a "Code Gray" alert was called. Code Gray is a procedure used by such medical centers when there is an incident such as an assault. A Code Gray Team rushes to the scene, assesses the situation, and determines a proper response. They are accompanied by security personnel.

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During discovery, the medical center was asked to provide copies of the Code Gray Team's report and the security report, to provide copies of surveillance camera film for the day of the incident, and to provide the identification of Code Gray and security team members involved in the incident. The medical center did not provide the information. The medical center's risk management department had not even investigated the allegations of assault on Dr. Michaels and Nurse Adams. In fact, Dr. Michaels later testified that although John had hit her, she had sustained no injuries and had continued working. The security report for December 9 (filed two days later on December 11 by Sgt. Charles, who was not on duty on the 9) stated "no injuries reported." Dr. Jones' report for December 10 stated that John was well-behaved.

The medical center had a responsibility as a Baker Act receiving facility to care for John Smith and to ensure that he was protected. The center had alternatives that could have been used in responding to a belligerent and agitated patient, including physical restraints and medications. Instead, medical center personnel recklessly and deliberately discharged the patient into police custody knowing full well that he would be jailed without necessary medications and without care and treatment. Mr. Fournaris filed an action on behalf of John Smith and his family, charging negligent and wrongful care by the medical center and the personnel involved in the incident. The case went to trial. Shortly after trial began, a confidential settlement was reached. ■

Hospital ignored teen's hypertension, causing permanent eye damage and loss of both kidneys

(Continued from page one.)

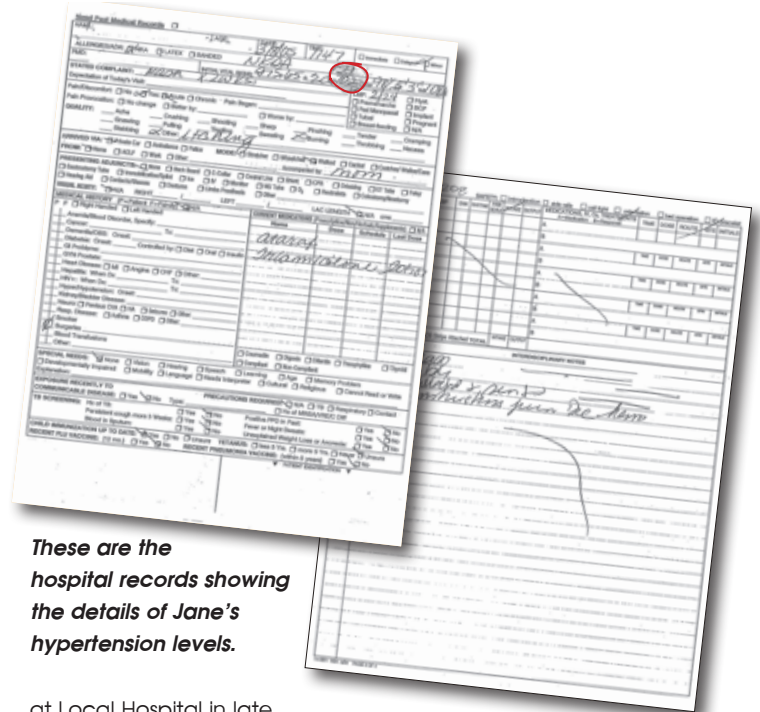
department physician would follow up on it. During the hour and a half or so that Jane and her mother were in the emergency room, the emergency room physician, his assistant, and a nurse testified that they all retook Jane's blood pressure, and said that it was "roughly the same." However, when the records were examined, there was no indication, no written record, of any further blood pressure being taken.

The emergency room physician and the nurses testified that, while they "normally" record blood pressures and "probably should" have recorded Jane's blood pressures, they did not because they were "roughly" the same.

The failure to record something as important as a markedly elevated blood pressure in a young girl is a serious breach of standard of care. But the far more serious breach, a breach that constituted reckless disregard of Jane's rights as a patient, was the failure to follow up on blood pressures that were "roughly" the same as her entering blood pressure of 159/102. Even the defense experts admitted that this was an emergent situation which required action.

Instead of immediate action, the emergency room physician simply discharged Jane with the diagnosis of "contact dermatitis", because of her rash, and sent her on her way. There was no warning given to Jane or her mother about the dangers of pediatric hypertension, and no instruction to follow up on her dangerous blood pressure. The hospital personnel gave Jane a prescription for prednisone, a steroid, which is known to cause elevations in blood pressure and is completely and dangerously inappropriate for someone who already has severe hypertension.

For the next two months Jane began to feel badly. She felt achy at times and had headaches. By May 2005, she began to have bouts of blurred vision. Even though Jane had been cleared by her family doctor and by Local Hospital's emergency department, her mother continued to worry and took her to an ophthalmologist. The ophthalmologist began an eye examination and then abruptly stopped and told Jane's mother that there was a problem with her vision and that there was bleeding from hemorrhages on the inside of Jane's eyes. He promptly took Jane's blood pressure and discovered that it was over 200. He called for an ambulance for her to be taken directly to Local Hospital. Ironically, when she arrived back



These are the hospital records showing the details of Jane's hypertension levels.

at Local Hospital in late May 2005, she encountered the same emergency room physician and some of the same nurses. This time the emergency was recognized and Jane was flown by a special medical flight to a specialized children's hospital where she was hospitalized for several weeks.

But the damage was done. By this time, Jane had suffered permanent eye damage and severe kidney damage. So severe was her kidney damage that both of her kidneys required removal, leaving Jane, a 15-year-old girl, with a lifetime of permanent kidney dialysis and a hope and prayer for successful kidney transplantation. Even with a successful kidney transplantation, her future medical expenses would be nearly a million dollars.

This case was prosecuted by SDSBS senior partner **Greg Barnhart**. After several years of hard-fought litigation, the case finally settled against all the confidential defendants for the sum of \$5.5 million. The money will be put into several annuities which will provide for Jane and her costly medical expenses for the remainder of her life.

The defense argued in the case that periodic rises in blood pressure can occur when people are scared or anxious, and that, in the case of the hospital staff in particular, they saw Jane for such a brief time that it was not their responsibility. Most importantly, the legal battle involved issues of causation, which meant that the defense contended that there was some underlying kidney condition which caused Jane's hypertension and which was irreversible in any case, regardless of what they did. Because her kidneys were so scarred, the kidney tissue examination after removal could not really disclose a cause. Greg Barnhart, on behalf of Jane and her family, retained experts who strongly contended that had the cause of Jane's high blood pressure been discovered when it should have been discovered, more likely than not Jane's condition would have been treatable and she would not have lost her kidneys. ■

Chris Searcy and Greg Barnhart Named 'Lawyers of the Year 2010'

Eight SDSBS attorneys selected for 'Best Lawyers in America 2010'

Chris Searcy was named Lawyer of the Year for the 2010 edition of *The Best Lawyers in America*, the oldest and most respected peer-review publication in the legal profession. Mr. Searcy, one of only eight attorneys selected for this honor in West Palm Beach, Florida, was recognized for his work in medical malpractice law. Mr. Searcy previously received recognition as a Lawyer of the Year in the 2009 edition.

Greg Barnhart was also recognized as Lawyer of the Year 2010 in the West Palm Beach region for his work in personal injury litigation.

Jack Scarola, John Shipley, David Sales, Chris Speed, Darryl Lewis, and Karen Terry were selected for recognition in the 2010 edition of *The Best Lawyers in America*. The current edition is based on more than 2.8 million detailed evaluations of lawyers by other lawyers. The guide includes 39,766 attorneys in 80 specialties. *Best Lawyers* ranked SDSBS No. 1 in the state of Florida in medical malpractice law. SDSBS topped the list in West Palm Beach in medical malpractice law as well as mass tort litigation and legal malpractice law. ■



Chris Searcy



Greg Barnhart



Jack Scarola



John Shipley



David Sales



Chris Speed



Darryl Lewis



Karen Terry



Karen Terry

Attorney Karen Terry elected to American Board of Trial Advocates

Attorney **Karen Terry** was elected to the American Board of Trial Advocates (ABOTA) at the organization's October 28, 2009, meeting. Membership is by nomination and election. An applicant must display skill, civility, and integrity, and establish their experience by being lead counsel in a minimum of ten civil jury trials brought to verdict. ABOTA's primary mission is the preservation of civil jury trial rights guaranteed by the Seventh Amendment to the U. S. Constitution. This is accomplished by fostering improvement in the ethical and technical standards of practice in the field of advocacy. Membership includes numerous judges and more than 6,300 trial lawyers representing equally the plaintiff and defense bars. ABOTA has over 90 chapters throughout the United States. ■

SDSBS Attorneys Pursue Justice for Victims of Defective Drugs and Medical Devices

These are some of the current projects being handled by SDSBS 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 attacks 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.

Fentanyl Pain Patches

Manufactured by Johnson & Johnson, Janssen Pharmaceutica, Sandoz, Actavis, Corium, Abrika, Alza Corp., Cephalon, and Watson Pharmaceuticals

Fentanyl pain patches are widely used to provide narcotic pain relief. The drug is 60 to 80 times more powerful than morphine. The patches utilize a reservoir design to contain powerful painkillers with the intention that the patches slowly deliver the drugs through a patient's skin over a 72-hour time period. Manufacturing and design defects in the patches, however, have resulted in leakage of the pain medication. Patients who receive an overdose of fentanyl experience respiratory distress, loss of consciousness, confusion, and death. A patient wearing a leaking fentanyl patch can also transfer the drug to others who come into close contact.

Pain Pumps

Manufactured by Stryker Corp., 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), which is a medical term 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. Consequently, 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.



Yaz, Yasmin, and Ocella Birth Control Pills

Manufactured by Bayer

The top-selling oral contraceptives Yaz, Yasmin, and Ocella (which combine ethinyl estradiol and drospirenone) have been the subject of much controversy since their launch several years ago. Yaz, Yasmin, and Ocella are approved for treatment of the very significant psychiatric condition of Premenstrual Dysphoric Disorder (PMDD), but improper marketing has falsely suggested that the drugs are approved by the FDA for the treatment of common PMS symptoms. Yaz, Yasmin, and Ocella have been linked to a number of serious and potentially life-threatening conditions: blood clots, strokes, heart attacks, deep vein thrombosis (DVT), pulmonary emboli, and gallbladder disease, and recent studies have shown that they are more dangerous than other birth control pills that have been on the market for years.

Reglan (metoclopramide)

Manufactured by A.H. Robbins, ESI Lederle Generics, Wyeth, Teva, IVAX, Rugby, Pliva, URL, Qualitest, and Invamed

Reglan (also known as metoclopramide) is a drug routinely prescribed for post-operative nausea and vomiting and gastroparesis. The FDA approval of the drug was solely for short-term use (less than 12 weeks) due to the significant incidence of tardive dyskinesia (a devastating condition which is essentially untreatable and incurable) and other neurological and neuromuscular movement disorders associated with long-term use of the drugs. Despite the manufacturers' knowledge of the substantial percentage of patients who will develop tardive dyskinesia, the drug companies aggressively marketed Reglan and metoclopramide for long-term use for treatment of chronic conditions such as gastroesophageal reflux without proper warnings to physicians and patients.

Gadolinium MRI Contrast Material

Manufactured by General Electric, Bayer, Tyco, Mallinckrodt, Berlex, and Bracco Diagnostics

Gadolinium-based contrast materials were widely used over the past several years in connection with MRI and CT scans. The enhanced image quality achieved when using a Gadolinium-based contrast material, however, is far outweighed by the devastating toxic effects suffered by a number of patients with pre-existing renal impairment whose bodies were unable to quickly excrete the injected contrast material. Gadolinium-induced Nephrogenic Systemic Fibrosis (NSF) is a newly-discovered disease that is caused solely by exposure to Gadolinium in susceptible patients with impaired renal function. When patients with kidney disease are unable to quickly clear Gadolinium from their system, the toxin becomes unstable and is distributed throughout the body where it causes fibrosis of the skin and vital organs, which ultimately leads to contractures, disability and death.

Kugel Hernia Mesh

Manufactured by Davol/Bard

Composix brand and dual mesh technology designs

These products are synthetic mesh patches that are used during hernia surgeries to close the hernia and help the tissue heal. Many of the patches include 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 2005, 2006, and 2007 because the products have a tendency to break, causing bowel perforations, abdominal wall punctures and tears, and adhesions. What's more, 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.

CONSUMER PRODUCTS

AMO Contact Lens Solution
Goodyear Dunlop D402 Tires
Yamaha Rhino ATV
Suzuki GSX-R1000 Motorcycles

PRESCRIPTION & OVER-THE-COUNTER DRUGS

Accutane
Avandia
Bisphosphonates (Fosamax, Boniva, Actonel, Zometa, Aredia, Didronel, Bonefos, Skelid, Reclast)
Chantix
Digitek and Digoxin
Duragesic or Fentanyl Pain Patches
Hydroxycut
Gadolinium-Based MRI Contrast Agents
Ketek
Levaquin
Ortho-Evra Contraceptive Patch
Raptiva
Reglan
Seroquel and Zyprexa
Tequin
Trasylol (Aprotinin)
Visicol, OsmoPrep, and C.B. Fleet
Phospho-Soda Bowel Prep Solutions
Yaz, Yasmin and Ocella
Zicam

MEDICAL EQUIPMENT & IMPLANTED DEVICES

Bard Composix Kugel Hernia Mesh
Medtronic Paradigm Quick-set Insulin Pumps
Medtronic Sprint Fidelis Leads
Medtronic Synchromed Intrathecal Permanent Pain Pumps
Mentor OB Tape Vaginal Sling
NuvaRing Contraceptive Device
Post-Operative Disposable Pain Pumps
Zimmer Durom Cup Hip Implants

Please contact our firm if you have any questions about a potential case or referral:

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www.SearcyLaw.com

For more mass tort information: www.SearcyLaw.com/blog

Speaking Opportunities



Chris Searcy speaks at FJA Annual Convention in June 2009

Chris Searcy spoke at the Florida Justice Association's seminar on *"Perfecting Your Competitive Edge: Advanced Trial Skills for Top Litigators."* The seminar was part of FJA's Annual Convention – the premier member event of the year – held in June 2009 at the Fairmont Turnberry Isle Resort and Club in Aventura, Florida. Mr. Searcy's subject was *"Getting Their Minds Right – Opening Statements."* ■



David Sales and Laurie Briggs speak at seminar for project to help victims of domestic violence

On September 17, 2009, **David Sales** and **Laurie Briggs** spoke at a seminar hosted by the Florida Coalition Against Domestic Violence on behalf of the Coalition's Clearinghouse Project. The Project provides legal representation, advice, and consultation to victims of domestic violence. The Project began in 1997 as a pilot program, the first in the country. The legal seminars provide training for attorneys and advocates dealing with the victims and their legal needs. Mr. Sales spoke about utilizing the evidence code to successfully admit evidence. Ms. Briggs spoke on preparing witnesses for trial testimony. ■



While attending an International Academy of Trial Lawyers seminar in Istanbul, Chris Searcy visited with former President Bill Clinton and Terry McAuliffe.



Jack Scarola Appointed Chairman of the Board of The Lord's Place

Jack Scarola was appointed chairman of the board of directors of The Lord's Place, a leading advocate for changing the lives of the homeless in West Palm Beach, Florida, through providing innovative, compassionate, and effective services to men, women, and children in need. What began as a simple soup kitchen has evolved into a program offering a wide array of programs and services to families. Mr. Scarola was one of the community leaders who helped in the creation of The Lord's Place in 1979, and has served on the board since its inception. His service to this organization was the basis of his selection as recipient of the Florida Bar President's Pro Bono Service Award and the Legal Aid Society's Community Service Award. Mr. Scarola's vision for The Lord's Place includes "promoting an increased awareness of how much the quality of life for each of us depends on the quantity of our compassion for the less fortunate members of our community." Significant concerns and commitments for these economic times. ■

Mr. Scarola was one of the community leaders who helped in the creation of The Lord's Place in 1979 and has served on the board since its inception.

Accolades



Chris Searcy

The Florida Justice Association recently unveiled a program, "Fellows of the Academy of Florida Trial Lawyers," to recognize those attorneys who, through their service to FJA, have devoted their lives to protecting Florida's civil justice system and the rights of Floridians. In June 2009, the first organizational meeting of the Fellowship took place at the FJA Annual Convention, and **Chris Searcy** was elected to the Fellowship's Board of Governors. The Board of Governors also serves as the Board of Trustees of the FJA Research and Education Foundation, and as the FJA Advisory Council. ■



Karen Terry

The sixth annual edition of Florida Trend's "Legal Elite 2009" named **Karen Terry** as one of the top Florida attorneys who have achieved recognition by earning the trust, confidence, and respect of their peers. The 918 Florida attorneys who are listed in "Legal Elite 2009" represent less than 2% of approximately 63,000 active Florida Bar members. Members were asked to name attorneys whom they hold in highest regard, those with whom they have worked, or would recommend to others. Top vote-getters are then further examined by a panel of previous Legal Elite winners, and finalists are selected. ■

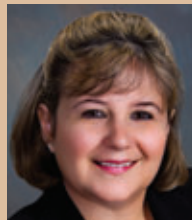


Ed Ricci

Ed Ricci was recently appointed to the Palm Beach County Bar Association's Client Relations Committee. The committee handles complaints from clients, and informally mediates minor disputes between clients and their attorneys in an effort to promote better public relations and to avoid the filing of formal grievances. Mr. Ricci's appointment will be for one year. ■



Randy DuFresne



Olga Patterson



Mary Susil

Three SDSBS employees – **Randy DuFresne**, **Olga Patterson**, and **Mary Susil** – recently obtained paralegal certification and are now members of the Florida Registered Paralegal Program. The FRP Program, established within The Florida Bar, sets forth the standards that must be met in order to use the title paralegal. There are currently over 3,300 FRP members. ■



*"You can only
protect your
liberties
in this world
by protecting
the other man's
freedom."*

- - Clarence Darrow

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BARNHART
& SHIPLEY PA**
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In Our Opinion...

**SDSBS speaking out,
previously published on our blog:
www.SearcyLaw.com/blog**

Pfizer Bigger and More Profitable - Victims Wait for Justice

By SDSBS Attorney Brenda Fulmer

Pfizer's \$68 billion merger with Wyeth should be completed on October 15, 2009, following recent approval by the Federal Trade Commission. The merger was approved by the European Union in July of 2009.

Wyeth and Pfizer have been embroiled as co-defendants in litigation over hormone replacement therapy products for many years now. It is unknown how the merger may affect the upcoming trials that need to be scheduled for nearly 13,000 women who developed breast and ovarian cancer after long-term use of the artificial hormones.

Wyeth, who touts itself as a leader in women's health, manufactured both Premarin and Prempro. Pfizer was the manufacturer of Provera, a drug that was taken in combination with Premarin to avoid the risks of endometrial cancer that was first noted with regard to Premarin more than 30 years ago.

Premarin, Provera, and Prempro were the hormone replacement therapy drugs ingested by most of the 13,000 plaintiffs whose cases are pending in state and federal courts in Arkansas, Pennsylvania, New Jersey, Minnesota and elsewhere. Many of these lawsuits have been pending for more than five years, with less than fifteen trials completed so far and only a handful of cases confidentially settled. Several thousand of these women recently prevailed in an appeal to the highest court in Minnesota, after the drug manufacturers sought to dismiss their lawsuits as being barred by various states' statutes of limitations periods. Depositions and other discovery have been taken in a number of cases (known collectively as PPO #9 cases), which should be included in the first wave of remands from the multi-district litigation proceedings pending in Little Rock, Arkansas. An appeal of the Plaintiff's verdict in the Scroggins trial is currently pending, and remands of federal cases are anticipated once that appeal is resolved. More than a dozen women who developed breast cancer after taking Premarin in combination with Provera or Prempro will present their cases to jurors in Philadelphia in the coming months, with the first verdict

expected before the end of October. These cases are part of the state court coordinated mass torts proceedings pending in Philadelphia before Judge Moss.

Following completion of the merger, Pfizer will be the largest pharmaceutical company in the world. Pfizer posted earnings of \$48.3 billion in 2008, while Wyeth reaped \$23 billion in revenue. The irony that this merger would be completed during Breast Cancer Awareness Month is not lost on many of us. One can only hope that as Wyeth and Pfizer begin this new chapter, the companies will take responsibility for the lives of so many breast cancer victims and survivors who have suffered as a result of their drugs, and work towards a quicker resolution of the HRT litigation.

For more information in connection with how you can be a part of the solution to help victims of breast cancer, visit the Susan G. Komen site: www.komen.com

***We encourage you to take time to care
and make a difference in someone's life. ■***

Great Moments in Hypocrisy: The Tort Reform Edition

By SDSBS Attorney Patrick Quinlan

There is certainly no shortage of tort reform crusaders who have, in their private lives, sought the assistance of trial lawyers to bring exactly the type of lawsuits that they decry in public: then-Gov. George W. Bush filing suit over a minor fender-bender involving one of his daughters in which no one was hurt; Sen. Rick Santorum and his wife recovering \$350,000 in "pain and suffering" damages in a medical malpractice lawsuit; Senator Trent Lott enlisting a well-known trial lawyer to sue his insurance company over Hurricane Katrina damages; Judge Robert Bork asking for punitive damages (!) after tripping on some steps at the Yale Club. But no group has more forcefully championed tort reform over the years than the U.S. Chamber of Commerce. One of their mottos is "Jobs, Not Lawsuits." But, in recent months, filing lawsuits seems to have become one of its jobs.

When, in August of this year, the Chamber threatened to sue the Environmental Protection Agency over regulation of greenhouse gas emissions, I just added that to the list of tort reform hypocrisies. But the Chamber jumped straight from the ridiculous to the sublime with its lawsuit, filed this week in federal district court, against

the Yes Men. The Yes Men have made quite a name for themselves pretending to be spokespersons for prominent organizations, making false announcements that generate publicity and, they hope, pressure the organizations to make real changes. On October 19, they held a fake press conference announcing that the Chamber of Commerce had reversed its position on climate change policy, and promised to immediately cease lobbying against the Kerry-Boxer pollution reduction bill. They even had cable news organizations fooled for about an hour. The only "damage" that the Chamber of Commerce suffered was having public attention focused on its views about climate change. Yet the Chamber responded by filing a multi-count federal lawsuit. Or maybe the lawsuit itself is another hoax??? If not, this may rank as the Greatest Moment in Tort Reform Hypocrisy...for now. ■

Vehicle Crashes and Product Defect

By John Hopkins

A single vehicle automobile accident is not always what it appears to be on the surface. Typically, when an automobile crash happens involving a single car, even the police attribute it to driver error, environmental causes, or similar combination of contributing factors.

Not always as simple as it seems on the surface. In-depth investigation of single vehicle, including tractor trailer, accidents can often disclose more interesting information.

The actual cause of single vehicle crashes (auto, truck, ATV, etc) may be the result of product defects or product failure. If any of the following factors are involved in a single vehicle crash, they may warrant additional investigation by competent attorneys skilled in this area of law:

- Roof crush
- Low speed rollover
- Faulty seat belts
- Ejection through the back or side windows
- Fifteen passenger vans
- Tire blow outs or similar tire failure
- Reclining seat backs
- Front seat occupants wearing seatbelts, but found in the rear seats after the crash
- Defective door latch
- Evidence of sudden or unexplained acceleration
- Sudden loss of steering
- Difficulty controlling the vehicle at high speeds

It is essential that the evidence be carefully preserved. The vehicle involved must be protected from spoliation and an in-depth evaluation for the suspected defects should be made timely. Time can be an enemy in these cases. ■

Simple Cosmetic Eyelid Surgery Burns Cornea and Leaves Woman Essentially Blind in One Eye

Mrs. Smith (not her real name) wanted to fix a simple eyelid problem called ptosis. Ptosis is the medical name for drooping eyelids, a condition that can partially obstruct a person's vision as the upper eyelids descend. Mrs. Smith's local plastic surgeon, Dr. S, assured her that a safe and simple outpatient procedure called a blepharoplasty would cure the problem. Unfortunately, nothing about this surgery turned out to be simple or safe.

During the surgery, the laser used to cut the eyelid burned through the eyelid tissue, permanently burning Mrs. Smith's left cornea. This tragic error could have easily been avoided by the use of properly trained medical personnel and precautionary measures during surgery. However,



Dr. S's insurance company did not agree and refused to pay the doctor's insurance policy limit, in spite of the fact that Mrs. Smith never regained sight in her left eye. During the next several years, she courageously endured two corneal transplant surgeries performed by a well-respected physician at the Bascom Palmer Eye Institute. Despite these exhaustive efforts, there was very little improvement in Mrs. Smith's vision.

Mrs. Smith contacted SDSBS attorney **Karen Terry** and requested representation in an action to hold the parties responsible for their mistakes. The results of Ms. Terry's investigative and discovery efforts showed even more clearly that the damage to Mrs. Smith's eye would never have happened had proper training, proper safeguards, and effective background checks been in place for Dr. S and the facility where this procedure was performed. Depositions revealed that, unbeknownst to Mrs. Smith and the medical facility used for this delicate procedure, Dr. S had a chronic medical condition for which he was taking a very strong anti-seizure medicine. He was on this medication even during the procedure conducted on Mrs. Smith.

Ultimately, Dr. S admitted in his deposition that this was, indeed, an inadvertent injury. After much prodding by Ms. Terry, the doctor's insurance carrier finally did the right thing and paid his policy limits to settle the case with Mrs. Smith. This case is yet another example where persistence and good discovery techniques make a big difference when seeking truth in the pursuit of justice. ■

Taking... *Time to Care*

SDSBS employees raise contributions to the American Heart Association's 'Start! Heart Walks'

On September 26, 2009, a team of SDSBS employees provided support for the American Heart Association's 2009 Start! Heart Walks to help raise funds and honor the memory of Art Coia, husband of SDSBS employee, Cathy Coia. The team raised \$1,435 in contributions, and a number of SDSBS participants walked over three miles during the event. The walks, held at the Meyer Amphitheatre in West Palm Beach, Florida, and at Florida Atlantic University in Boca Raton, Florida, brought in over \$580,000 in funds which will be used to support heart and stroke research and education programs. ■

www.americanheart.org



Pictured in photo above: (l-r) Molly Fulmer, Laurie Briggs, Jessica Covey, Lindsey Radziwon, Cathy Coia, Britni Smith, Brian Denney, Randy Kriberney, April Kriberney, Josh Endres, and the little one in the front is Britni's niece Haley.

Participants not pictured: Bob Fulmer, Pat Quinlan, Diane Dulcie, Robin Kriberney, Marilyn Hoffman, Justin Ferencz, Mandi Kriberney, Roger Katz, Cathy Christman, Sonia Cordero, Chrissy Whitehead, Suzanne Mabie, Adriana Viteri and Curtis Reynolds.

Right: runner Linda Miller



SDSBS one of the sponsors of 'Buddy Walk' for Gulf Coast Down Syndrome Organization

Down Syndrome strikes one in every 800 babies. At one time, children with Down Syndrome and their families had little hope. Now, thanks to a number of support groups, these children have doors opening to a brighter future. The Gold Coast Down Syndrome Organization held its 15th Annual Buddy Walk in October 2009 to raise funds to increase awareness and acceptance of individuals who have Down Syndrome. SDSBS was one of the many sponsors of the event, with a team of its employees participating in the Walk. With 2000 attendees, GCDSO raised over \$110,000 during the event. The organization provides programs that include newborn care, family outreach, therapeutic playgroups, the Learning Program, school-aged social and recreational activities, educational advocacy and training, parent-teacher education, healthcare, information resources, and community service liaison. ■

www.goldcoastdownsyndrome.org



*The Arrest,
handcuffs
and all !!*



Brenda Fulmer thrown in 'MDA Lock-Up', earns her release by raising funds to benefit Muscular Dystrophy Association

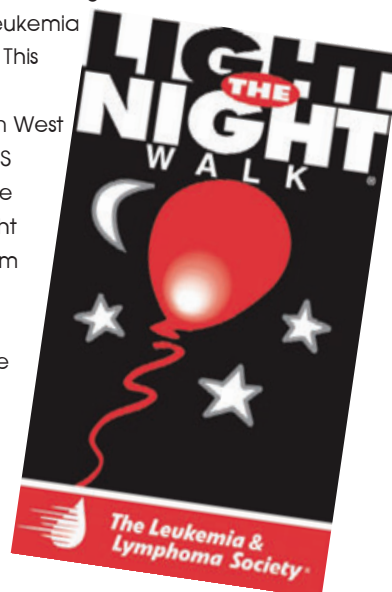
In a shocking announcement issued October 28, 2009, the Muscular Dystrophy Association named SDSBS attorney **Brenda Fulmer** as "MDA's Most Wanted Citizen." She was then arrested and thrown into the "MDA Lock-Up" in West Palm Beach, Florida. In order to be released on good behavior, she had to ask friends, family, and associates to post bail for her. Brenda's "incarceration" raised \$3,838 in contributions to support MDA's programs and "Jerry's Kids." The "Lock-Up" fundraiser, sponsored by the Palm Beach County chapter of MDA, raised almost \$100,000 in funds to help continue MDA's research and support for people in the community who suffer from neuromuscular diseases. ■

www.mda.org

SDSBS proudly celebrates fifth year of participating in Light the Night Walk to benefit The Leukemia & Lymphoma Society

For the fifth year, SDSBS and its employees participated in the Light the Night Walk on October 9, 2009, to benefit The Leukemia & Lymphoma Society. This event was held at the Meyer Amphitheatre in West Palm Beach. The SDSBS team raised \$1,256. The Society's Light the Night Walks held in West Palm Beach, Boca Raton, and Stuart raised over \$443,000 to support the Society's programs. ■

www.lls.org



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VOLUME 09
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and Best Wishes for the Coming Year*



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