

# OF COUNSEL

A quarterly report  
to clients  
and attorneys.

VOLUME 01  
NUMBER 3

## *\$256 Million Verdict Rendered*

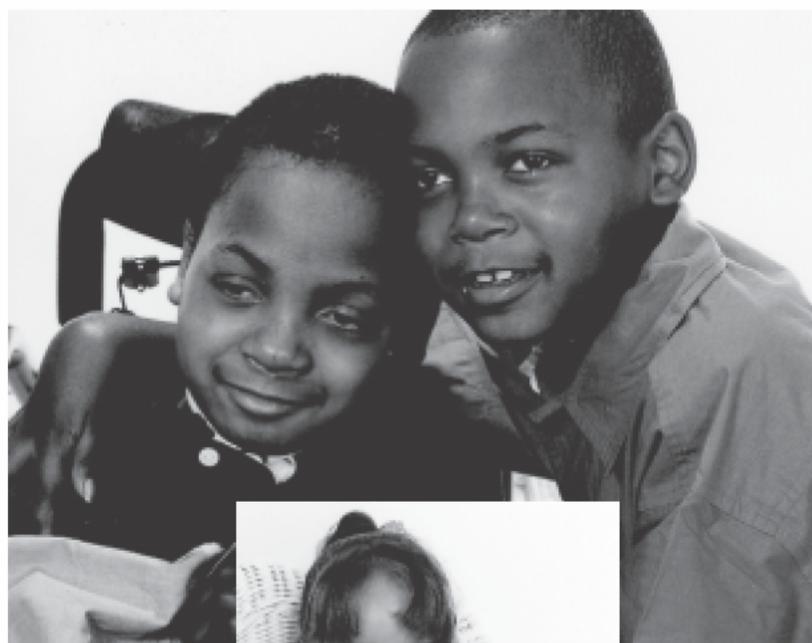
**O**n July 11, a Palm Beach County jury rendered a \$256 million verdict on behalf of Kathy and Torrey Jenkins, who lost a daughter and whose two sons were paralyzed in a tragic car crash in 1997.

We previously reported the tragic story of the Jenkins family. Kathy Jenkins was driving home with her children in May 1997 when Andrew Cohan, a uniformed but off-duty Riviera Beach Police Officer, slammed into her car at an intersection. Jasmine Jenkins, age six, was killed. Landon, age three, was paralyzed from the bottom of the skull down, and his twin brother Jordan suffered a brain injury and paralysis to one side of his body.

Suit was filed on behalf of the Jenkins family against Ranger Construction, which was designing and reconstructing the intersection where the crash occurred. Palm Beach County was also sued for its control and participation in the construction project. Finally, Mr. Cohan was sued for speeding through the construction zone, as was the police department for which he worked.

On Jan. 24, 2001, a Palm Beach County jury, following a trial on liability only, apportioned 50% fault to Ranger Construction, which was designing the roadway at the time. Palm Beach County was found 43% at fault, and Mr. Cohan was found 7% at fault. Prior to trial, the Riviera Beach Police Department was excused from the proceedings.

Soon after the liability trial was concluded, a second trial was set to determine the damages suffered by the Jenkins family. Days before that trial began, Ranger Con-



**L. to r.  
Landon and  
Jordan Jenkins  
in June 2001.**



**Jasmine Jenkins  
three weeks before  
the accident in  
April 1997.**

struction and Palm Beach County settled for \$57 million. Andrew Cohan did not participate in those negotiations. Consequently, trial commenced against all parties to determine Mr. Cohan's responsibility to the Jenkins family. On July 11, a Palm Beach County jury rendered a \$256 million verdict for the plaintiffs. A judgment was then entered against Mr. Cohan for his proportionate share of that award. ■

## *Builder and Developer Liable For Worker's Death*

**O**n August 10, 2001, a Broward County jury rendered a verdict on behalf of Samantha Calves, who tragically lost her husband while he worked at a construction site. The defendants in the case included Lennar Homes and Triple S Associates, South Florida builders and developers. **Continued on page four.**



**Baby Sabrina, Samantha and John Calves on Sept. 18, 1992.**

## The Meeting Corner:



### *Vivian Ayan-Tejeda*

Searcy Denney Scarola Barnhart & Shipley is pleased to announce the hiring of Vivian Ayan-Tejeda as a paralegal. Mrs. Ayan-Tejeda, who is fluent in Spanish, will be working with attorney Sean Domnick, assisting him with medical malpractice, product liability, and personal injury cases.

Mrs. Ayan-Tejeda was born in Oriente, Cuba and immigrated to Miami in 1962. She attended the University of Miami and received a bachelor's degree in business administration, with a major in accounting. In 1980, she began her professional career as a Claims Representative with Allstate Insurance Company in Miami. She remained employed with Allstate for 21 years.

Mrs. Ayan-Tejeda currently holds a 620 (Adjuster) License. In 2000, she also received a Senior Claim Law Associate degree from the American Education Institute in West Palm Beach.

Mrs. Ayan-Tejeda and her husband, Jesus, reside in West Palm Beach. Mrs. Ayan-Tejeda's hobbies include photography, snow skiing, and walks on the beach. ■

### **Builder and Developer Liable For Workers' Death**

Continued from page three.

On July 22, 1998, John Calves was operating a front-end loader, removing debris and preparing some land for the construction of new homes. Much of the property at the time was covered by standing water from recent rainfalls. While operating the front-end loader, Mr. Calves fell into a concealed depression on the property, and the machine fell on top of him. A fellow worker struggled to rescue Mr. Calves from the depression, but too much time passed. Mr. Calves died six days later at a Hollywood, Fla., hospital.

Attorneys Jack Scarola, Darryl Lewis, and Rosalyn Sia Baker represented Mrs. Calves. The complaint, filed on January 20, 1999, alleged negligence on the defendants for failing to render the property safe and for failing to warn Mr. Calves about the dangerous and hidden depressions.

After three weeks in trial, the jury, comprised of four women and two men, held the builder and developer liable for \$2.04 million. Compelling testimony was given by Mrs. Calves regarding her loss. She shared with the jury that she still had the exact coins recovered from her husband's pocket and that his photograph and ashes have remained on her nightstand since his death.

Mrs. Calves, who resides in Ft. Lauderdale, will use the proceeds from the verdict to care for her family. ■

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## *Doctor Dies After Tooth Infection Ignored*

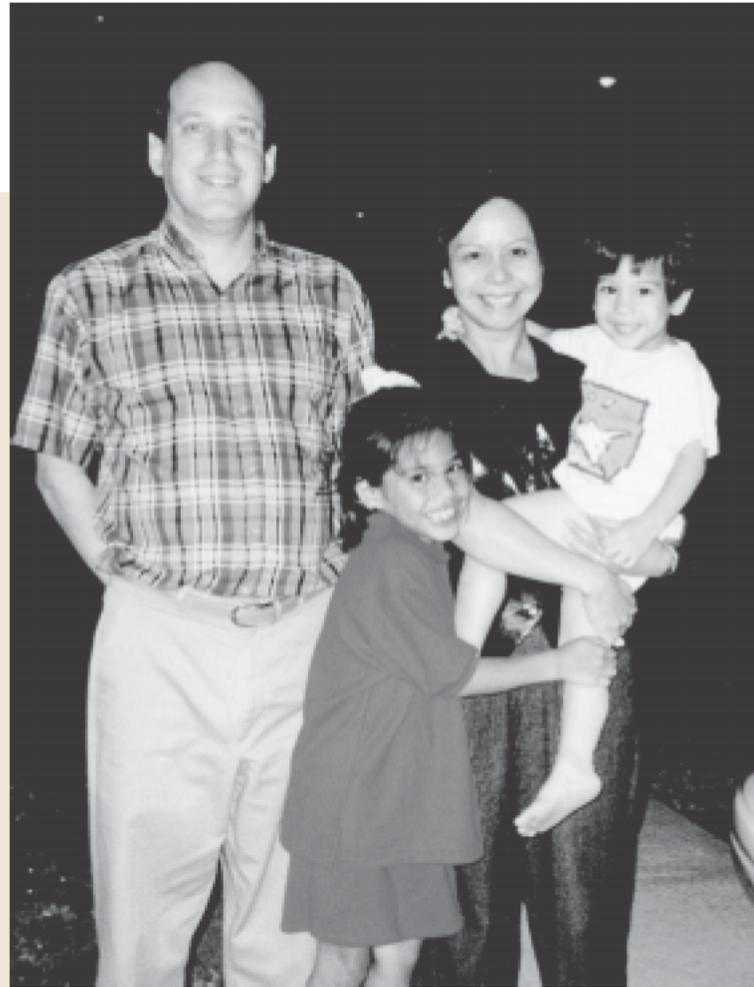
**O**n March 4, 1997, Dr. Steven Falk, an internal medicine specialist, went to see his dentist, Dr. Easter, after developing some tooth pain. Dr. Easter took a wait-and-see attitude, despite having never identified the source of the pain. Unfortunately, Dr. Easter failed to recognize that the dental x-ray he took indicated that there was a periapical infection developing in Dr. Steven Falk's lower jaw.

For the next five days, Dr. Falk's pain continued to worsen. On Sunday, March 9, he contacted an endodontist, Dr. Craig Broome, who performed an emergency root canal. Dr. Broome performed the procedure without his normal office staff and without reviewing Dr. Falk's prior x-ray. Unbeknownst to Dr. Broome, the root canal caused Dr. Falk's infection to spread. Over the next several days, Dr. Falk suffered increased swelling and pain. Though Dr. Falk was clearly suffering from a severe infection, neither Dr. Easter nor Dr. Broome took appropriate measures to diagnose or treat it.

On March 13, four days after his root canal surgery, Dr. Falk's wife came home from work to find her husband dead on the bedroom floor. An autopsy performed by the Pinellas County Medical Examiner's Office determined that Dr. Falk died of a basilar artery aneurysm, which was not related to the dental infection. However, Dr. Falk's wife Antoinette, a board-certified medical doctor in psychiatry, felt strongly that her husband's aneurysm must have resulted from the dental treatment.

Dr. Antoinette Falk retained the services of St. Petersburg attorney Jeffrey Chambers, who referred the case to attorneys Chris Searcy and Bill Norton. In working with experts in the fields of neurology, physiology, biophysics, dentistry, oral surgery, and otolaryngology, Mr. Searcy and Mr. Norton were able to develop a theory that Dr. Falk died as a result of his tooth and jaw infection. The attorneys representing Dr. Broome and Dr. Easter vehemently argued that in the annals of medical literature, no case with similar facts had ever been reported. However, the plaintiffs developed evidence that such a scenario was not only possible, but was in fact the probable cause of Dr. Steven Falk's death.

After arduous litigation and settlement discussions, the case was settled. Dr. Broome paid his insurance limit of \$1 million and Dr. Easter paid slightly less than his \$2 million insurance policy. Dr. Antoinette Falk elected to place the money in a structured settlement, which will provide benefits for her and her three children, Ann, age 18, Sarah, age 13 and Ben, age 7. ■



**L. to r. Dr. Steven, Sarah, Dr. Antionette,  
and Ben Falk in 1996.**

## Man Loses Job After False Claims

On April 13, 1999, Emerson “Chuck” Lehner sued the Boca Raton Polo Club Property Owners Association and several of its Board of Governors’ members for defamation. The action followed Mr. Lehner’s termination from the club following very serious and damaging accusations.

Mr. Lehner began his career in the private club industry as a chef in New York. He eventually became more interested in the managing aspects of the industry. In 1991, he applied for the position of General Manager for the Polo Club, which was then one of the largest private clubs in the country. Obviously impressed with his credentials, Mr. Lehner was hired over many other well-qualified candidates.

*Despite his impeccable credentials, he was unable to find new employment for almost a year.*

For the next five years, Mr. Lehner proved just how capable he was at managing a large staff and maintaining a substantial budget. He was well liked and well respected by his co-workers and club members. He improved the club significantly in the areas of food service and dining during his tenure there.

Despite Mr. Lehner’s successes, in 1997 a small faction of members began a campaign to remove him from his position. Some new board members in 1998, made claims that Mr. Lehner was stealing money and receiving kickbacks from the club’s contractors. The effort seriously divided club members and caused daily problems for Mr. Lehner in performing his duties. Incredibly, the campaign elevated into what many members later described, in deposition testimony and letters addressed to various Board members, as a “witch hunt.” Three months later, the board voted 5-4 to terminate Mr. Lehner’s contract.

Despite his impeccable credentials, Mr. Lehner was unable to find new employment for almost a year. Reliable professionals in the industry advised him that the rumors about his alleged criminal activities at the Polo Club were hurting him professionally.

Mr. Lehner is a quiet, gentle, disciplined man, devoted to his family and his profession. He has been happily married to his wife MaryLou for more than 30 years, and together they had raised two very successful sons. Mr. Lehner’s talents and abilities allowed him to be a good provider for his family. Though he felt terribly wronged by the Polo Club and its board of directors, the decision to take legal action was an extremely difficult one.

Attorneys Jack Scarola and Ellen Brandt represented Mr. Lehner. The case was referred to them from Richard Goldman of Grossman & Goldman in Boca Raton. After two mediations, the case was settled for \$90,000. Shortly thereafter, Mr. Lehner was offered a General Manager position at another private club in Boca. ■



*Decisions...Decisions...Decisions...*

## Hysterectomy Leads to Incontinence and Multiple Surgeries

In June of 1998, Mrs. C was experiencing heavy menstrual bleeding as a result of fibroid tumors. On the advice of Doctor B, Mrs. C consented to undergo a total abdominal hysterectomy and bilateral salpingo-oophorectomy. Doctor B and Doctor T performed the procedure on June 24, 1998, at Palm Beach Gardens Community Hospital.

Approximately a week after her discharge from the hospital, Mrs. C began having difficulty controlling her urine flow. She contacted her urologist, Doctor J on July 9. He prescribed additional medications in an attempt to assist with the bladder control problem. Unfortunately, by July 13, Mrs. C had lost all bladder control. Though she had no urge to urinate, urine was literally pouring out of her. She returned to see Doctor B, and learned for the first time that a suture placed during her hysterectomy may have penetrated her bladder and a vesicovaginal fistula (tear) had formed.

*A suture may have penetrated her bladder and a fistula had formed.*

The following day, Mrs. C returned to the hospital for more testing. She met with Doctor J to discuss how they would treat the perforated bladder. In an attempt to avoid a follow-up surgery, Doctor J ordered Mrs. C to utilize a Foley catheter for ten days in hopes that the perforation in her bladder would close

spontaneously. During the ten day period, Mrs. C was restricted to her home, utilizing the catheter and wearing diapers.

By July 24, it was clear to Doctor J that the hole in Mrs. C's bladder was not closing. Doctor J scheduled another follow-up surgery. During the five hour procedure, Doctor J surgically repaired the perforated bladder, and Mrs. C was discharged on Aug. 6.

Sometime thereafter, Mrs. C began leaking urine again, and she immediately returned to Doctor J. The doctor found yet another fistula. Given the extent of difficulty Mrs. C had experienced already, Doctor J referred Mrs. C to a specialist in bladder repair at Duke University.

On April 29, 1999, almost a full year after her hysterectomy, the Duke University physician successfully repaired Mrs. C's bladder and finally brought her incontinence to an end.

After enduring a year of seemingly avoidable medical care, Mr. and Mrs. C retained the services of attorneys Chris Searcy and Karen Terry. Suit was filed against Doctor B and Doctor T. An expert in obstetrics/gynecology hired by the plaintiffs opined that Doctor B and Doctor T should have verified the integrity of Mrs. C's bladder before completing her hysterectomy. Furthermore, Doctor J gave deposition testimony confirming that Doctor B and Doctor T put stitches in two different places, perforating Mrs. C's bladder. Though Doctor B and Doctor T contested liability throughout litigation, Mr. and Mrs. C's case was settled for a confidential sum. ■

## Man Dies While Vacationing In Florida

In February of 1998, James Keenan and Jim Matthews had arrived in Vero Beach, Fla. with their wives for a winter vacation. They were close friends in Arlington, Va.

On the afternoon of Feb. 28, Mr. Matthews and Mr. Keenan had played golf earlier in the day. They were driving home to meet their wives. Mr. Matthews was the driver and Mr. Keenan was the passenger. Mr. Matthews approached Old Dixie Highway from a side street and stopped before crossing the railroad tracks. He then proceeded to cross, but failed to stop at a stop sign on the other side of the tracks. For an unexplained reason, Mr. Matthews traveled through the stop sign and right into the path of a northbound vehicle traveling at approximately 45 mph.

The force of the impact sent the Matthew's vehicle spinning across the intersection and ending up off the side of the road, more than 100 feet away. As a result of this brief moment of inattention, both Mr. Keenan and Mr. Matthews died.

Mr. Keenan was age 73 and Mr. Matthews was 79. Mr. Keenan was survived by his wife of almost forty years, Mary Keenan.

It was found that there was adequate insurance on Mr. Matthews' vehicle. When Virginia counsel was unable to reach a satisfactory settlement on behalf of Mrs. Keenan, attorney Chris Speed was retained to file a lawsuit in Indian River County. The lawsuit progressed through the initial discovery phases. Two weeks before trial, Mr. Speed was able to effect a settlement on behalf of Mrs. Keenan in the amount of \$550,000. ■

# *Delay in Care Renders Man a Paraplegic*

**A**t age 25, Terry Doe was physically active and in extremely good health. An impressive athlete, Mr. Doe, though only 5'8" tall, could dunk a basketball at regulation height.

Despite his general state of good health, Mr. Doe began experiencing lower back pain in early 1993, and complained of these symptoms to his primary care physician, Doctor A. He also sought the care and treatment of Doctor K, a chiropractor. For two years, he continued to advise his doctors of the pain, as well as of other symptoms, including shaking hands and pain in his left leg. Doctor K eventually suggested that Mr. Doe undergo diagnostic testing, but Doctor A refused to authorize it.

In May 1995, Mr. Doe's neurological deficits had become so significant that an MRI was finally authorized, along with a comprehensive orthopedic consultation. Mr. Doe was discovered to have an extensive intradural-extramedullary neuroma of adipose tissue throughout his thoracic spine. In essence, a fatty tumor had wrapped itself around his spinal cord. This type of tumor, at this advanced stage, is crippling.

In June 1995, Mr. Doe underwent surgery to remove the tumor, rendering him a virtual paraplegic. Having very limited ability to ambulate, he now predominantly uses a wheelchair to get around. Mr. Doe's physical limitations have had a profound effect on his ability to interact with his son and to assist with day-to-day child care responsibilities. Mr. Doe, who was once so physically fit, can now only

watch from his chair as his son rides his bicycle or plays basketball.

Mr. Doe was referred by attorney Michael Reda in Titusville, Fla., to attorneys Chris Searcy, Earl Denney and David Sales. Suit was filed against Doctor A, Doctor K, and Mr. Doe's HMO insurance company. Pursuing claims against HMO's can be extremely difficult, if not impossible, due to protection afforded under a federal law called ERISA (Employee Retirement Income Security Act). Nevertheless, it was demonstrated that Doctor A was acting as an agent, servant, and employee of the HMO, thereby making the HMO responsible for Doctor A's negligence.

*They testified that the tumor could have been surgically treated, without paralysis, if doctors had acted promptly.*

Experts for the defendants claimed that the earlier removal of Mr. Doe's tumor would not have changed his outcome. Experts hired by the plaintiff strongly disagreed, opining that the two year delay was inexcusable. They testified that the tumor could have been surgically treated, without paralysis, if Doctors A and K had acted promptly in response to Mr. Doe's symptoms and conducted necessary testing.

Mr. Doe's case settled for \$1.725 million. ■

# Anniversaries

Searcy Denney Scarola Barnhart & Shipley would like to recognize our employees each quarter for their hard work and dedication. **Congratulations to all.**

## July

7/05	<b>Debbie M. Knapp</b>	25 years
7/30	<b>J. Peter Love</b>	11 years
7/26	<b>Angela B. Brafford</b>	8 years
7/11	<b>Yvonne R. Volcy</b>	6 years
7/17	<b>Karen E. Terry</b>	6 years
7/06	<b>John C. Hopkins</b>	3 years
7/06	<b>Darryl L. Lewis</b>	2 years
7/21	<b>Carrie L. Schwab</b>	1 year

## August

8/03	<b>Jodi L. Clark</b>	18 years
8/07	<b>Roland R. Guay</b>	12 years
8/21	<b>Sally A. VanderWende</b>	12 years
8/19	<b>Judson Whitehorn</b>	10 years
8/03	<b>Patricia A. Greendale</b>	9 years
8/31	<b>Donna M. Miller</b>	9 years
8/16	<b>Susan D. Hanlon</b>	8 years
8/09	<b>Georgia A. Wetherington</b>	7 years
8/29	<b>Henry F. Searcy</b>	6 years
8/10	<b>Marylynn R. Connelly</b>	3 years

## September

9/03	<b>Mary K. Roberts</b>	21 years
9/08	<b>Rhonda A. Myers</b>	15 years
9/01	<b>Cheryl A. Phillips</b>	14 years
9/01	<b>Linda F. Gordon</b>	14 years
9/14	<b>Jacqueline L. Condray</b>	13 years
9/01	<b>Ann O'Keefe</b>	10 years
9/09	<b>Sylvia Z. Simon</b>	10 years
9/13	<b>Edie T. Dick</b>	9 years
9/12	<b>Debi S. Valle</b>	9 years
9/12	<b>Kevin J. Walsh</b>	5 years
9/23	<b>Jennifer L. Manke</b>	5 years
9/01	<b>Cathy A. Doll</b>	2 years
9/20	<b>Nancy M. Bullard</b>	2 years
9/27	<b>Theresa A. Ekiert</b>	2 years
9/29	<b>Victoria M. Bosso</b>	2 years
9/05	<b>Rosalyn Sia Baker</b>	1 year
9/07	<b>Rosell C. Novelliere</b>	1 year

# Accolades

## Lance Block Concludes Term as President of Academy

Attorney Lance Block concluded his term as the 40th President of the Academy of Florida Trial Lawyers on Friday, June 29. The event took place during the Academy's annual convention at the Breakers Hotel in Palm Beach.

During his term, Mr. Block led the 4,000 member statewide organization through an historic election cycle, highlighted by the 2000 presidential election and nearly 70 legislative races created by term limits. He was at the forefront of a tumultuous legislative session where the rights of nursing home residents and injured workers were under attack by special interests. Under his leadership, the Academy successfully defended the rights of nursing home residents to compensatory damages without unfair and arbitrary caps. He also helped to prevent any further attempts to erode the rights of injured workers in worker's compensation cases. Mr. Block helped to establish a statewide network of law firms and clients, encouraging Floridians to exercise their right to vote through organized, direct voter contact programs. Mr. Block also established a television airtime donation program, where member firms donated television airtime to Academy related causes.

Lance Block will resume his practice at Searcy Denney Scarola Barnhart & Shipley. ■

## Emilio Diamantis Appointed to American Lung Association Board

On Wednesday, Aug. 1, paralegal Emilio Diamantis was appointed to the board of The American Lung Association of Southeast Florida (ALASF), for his third term. He will serve as Secretary for the 2001-2002 year. The ALASF serves Palm Beach, Martin, Indian River, St. Lucie, and Okeechobee Counties, providing support to children and adults with lung related diseases. It also educates these communities in supporting lung health. Mr. Diamantis will assist ALASF in all its community-based efforts in hopes of eradicating lung diseases.

Mr. Diamantis has been with the firm since 1987. He works primarily with attorney Jack Scarola on personal injury, wrongful death, and medical malpractice cases. ■



# Taking... *Time to Care*



**L. to r. Congressman Mark Foley, attorney Jack Scarola, The Lord's Place's Alex Stevens, and board member Vince Bonvento.**

## **The Lord's Place Family Shelter Complex**

On Monday, April 30, The Lord's Place hosted a ribbon cutting ceremony to mark the grand opening of its new Family Shelter Complex. The Complex, located in West Palm Beach, will provide long-term shelter for homeless families who are affected by substance abuse, HIV, and other serious conditions. There are 38 apartments, a community center, and a community garden. Families must qualify in order to receive housing at the Family Shelter Complex.

Attorney Jack Scarola is a Board Member of The Lord's Place. He, along with Board President Joyce McLendon, successfully helped raised \$2.3 million to complete the project. ■

## **Community Back to School Bash**

On Saturday, Aug. 11, Searcy Denney Scarola Barnhart & Shipley's employees and family members volunteered during the Community Back to School Bash in West Palm Beach. During the event, SDSBS employees and their family members assisted school-age children with selecting backpacks, notebooks, pens, pencils, and other supplies for the 2001-2002 academic year. Approximately 4,000 underprivileged children in Palm Beach County were served.

The event was hosted by 11 agencies: Adopt-A-Family, AVDA, Center for Family Services, Children's Hope, Girls and Boys Town, Guatemalan-Maya Center, Legal Aid Society, People Without Walls Church, The Department of Children and Families, The Lord's Place, and the YWCA of Palm Beach County. ■

**Front row l. to r. April Kriberney and Samantha McGee; back row l. to r. Robin Kriberney, Dawn Pitts, Vi Ware, and Joan Williams.**





Front row l. to r. Joan Williams, Robin Kriberney, and Phoebe Harris; back row l. to r. Doug Harris, David Gilmore, and guest bartender Jud Whitehorn.

## **The Leukemia and Lymphoma Society**

On Thursday, Aug. 16, paralegal Jud Whitehorn volunteered as a guest bartender to help raise money for the Leukemia & Lymphoma Society. The event took place at John Bull English Pub in West Palm Beach. Eight guest bartenders served up drinks, with a portion of the proceeds earmarked for the Leukemia & Lymphoma Society. During the three hour event, approximately \$800 was raised and more than 100 people came out in support of the cause. ■



## **Great Grown Up Spelling Bee**

On Saturday, Sept. 22, Searcy Denney Scarola Barnhart & Shipley's employees participated in the Great Grown Up Spelling Bee at the Boynton Beach Mall. Legal assistant Kris Leal, paralegal Kevin Walsh and attorney David Sales made up this year's spelling bee team. Out of 25 teams, SDSBS came in an impressive eighth place. Other area businesses that participated in the Great Grown Up Spelling Bee included Florida Power & Light and the Palm Beach County Library System.

The Palm Beach County Literacy Coalition hosted the spelling competition. The Bee raised more than \$30,000 and will be used to promote writing, reading, English and mathematics among adults, families and children. ■

**L. to r. Kris Leal, Kevin Walsh, and David Sales.**



# OF COUNSEL

Volume 01, No. 3

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