

# OF COUNSEL

A quarterly report  
to clients  
and attorneys.

VOLUME 02  
NUMBER 4

## *Holiday Medicine and Unqualified Doctor Dooms Baby's Brain*

**B**rianna Butler, age 5, was born on Christmas Day in 1996. Unfortunately Brianna and her family found themselves the victims of inattentiveness and a series of medical blunders, all of which caused Brianna's severe and permanent brain damage.

On two occasions during the week before Christmas, Mary Butler, Brianna's mother, went into labor prematurely. Each time she presented to the hospital for care and each time her labor was halted with the use of medications. Unfortunately, neither her doctor nor the nurses particularly noticed the low-grade fever or pinkish discharge she was experiencing. Instead, the doctor diagnosed a urinary tract infection and prescribed medication. Subsequently, while at home, Mrs. Butler started having chills and a fever, and she noticed a second discharge. She called her obstetrician's office, but was assured that she would be fine if she continued to take her prescribed medication.

Early on Christmas morning, Mrs. Butler awoke feeling poorly and realized that she was unable to feel her baby move inside her. She and her husband, Bill, rushed to the hospital where an emergency cesarean section was performed. Baby Brianna had become infected in utero, but her Apgar scores were good and it was therefore expected that she would be fine.

After Brianna's birth, she was treated by a hospital doctor who was purportedly a neonatologist, which is a



***l. to r. Brianna, Mary, Brittany, and Bill Butler.***

doctor specializing in the care of newborn babies. It was later learned, however, that the doctor had never taken the board certification exam in neonatology. In order to become a board certified neonatologist, a doctor must first pass his board exam as a pediatrician. According to his sworn deposition testimony, Brianna's doctor had failed his board certification exam in pediatrics as many as ten times. Adding insult to injury, the doctor admitted he had never been accepted to any American medical schools. Instead, he had earned his degree from a medical school in Bologna, Italy, where the curriculum was taught in Italian, a language he did not speak. ***Continued on page eight.***

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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.

# Attorneys Selected as Best Lawyers In America

Four attorneys from the law firm of **Searcy Denney Scarola Barnhart & Shipley** have been selected for inclusion in the 2003-2004 edition of *The Best Lawyers in America*. They are **Chris Searcy, Jack Scarola, Greg Barnhart, and Chris Speed**.

*The list  
was based  
solely upon  
the abilities  
of the  
lawyers  
considered.*

The *Best Lawyers in America* was first published in 1983. Mr. Searcy is one of 1,880 lawyers in the nation who have been listed in all 20 editions of *The Best Lawyers in America*. Mr. Speed has been listed each year since 1987, Mr. Barnhart has been listed since 1995, and this edition marks the first time that Mr. Scarola has been honored. More than 15,000 leading attorneys throughout the country participated in a peer-review survey. They casted their nominations for those among them who deserve recognition as the best in specific areas of law. The compiled list was based solely upon the abilities of the lawyers considered. Attorneys listed in *The Best Lawyers in America* do not pay for the privilege of being included in the publication. ■



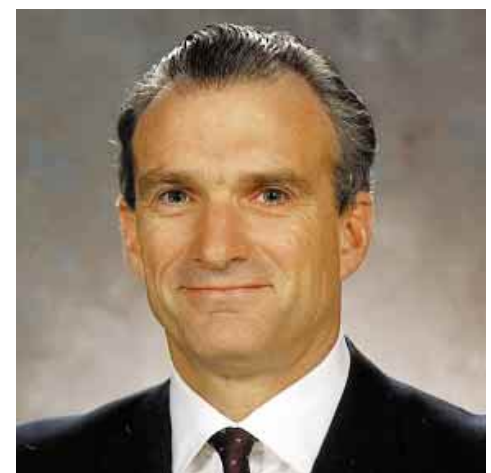
**Chris Searcy**



**Jack Scarola**



**Greg Barnhart**



**Chris Speed**

# *Repeated Errors by Doctors in Viewing CT Scan Result in Man's Death*

The summer of 1996 found Jessie Schatz in the prime of his life. Mr. Schatz retired from the United States Army in 1991 as a successful, decorated, noncommissioned officer in the intelligence service stationed in East Berlin. Married in 1996 to his second wife, Donna, Mr. Schatz operated a successful wholesale business, called Pace Wholesale. Mr. Schatz maintained an extremely close relationship with his four daughters from his first marriage.

On Aug. 3, 1996, Mr. Schatz was taken to Hospital X via ambulance with complaints of upper back pain and neck pain. On their run sheet, paramedics noted that Mr. Schatz was scheduled for an MRI the next day to rule out an aortic aneurysm, but this information was never included in any other part of the record.

When Mr. Schatz arrived at the hospital, the emergency room physician Dr. X noted that he was in severe pain and was short of breath. Blood work, x-rays, an EKG, and a CT scan without contrast were ordered. Mr. Schatz was moaning loudly in pain in spite of significant amounts of strong narcotic medication.

Dr. A came to examine Mr. Schatz while he was still in the emergency room. Dr. A noted that the CT scan was negative, but assumed that the scan was performed with contrast. A CT scan without contrast is useless in some medical situations and, unless the patient is allergic to the dye, a CT scan with contrast is considered standard medical care. Dr. A ruled out a diagnosis of aortic dissection based upon the useless CT scan. This was a mistake repeated by a number of other physicians who attended to Mr. Schatz over the next few days.

Dr. A ordered consults with an orthopedist and a cardiologist in an effort to locate the source of Mr. Schatz's pain. The orthopedist was unable to locate the source

of the pain, but was sure that it was not orthopedic in nature. On Aug. 4, 1996, Mr. Schatz was examined by cardiologist, Dr. B, who relied on handwritten notes in the file that indicated that the CT scan was negative. Dr. B did not review the scan itself or make any effort to determine whether contrast was used. Dr. B assumed that the scan was done with contrast and used that information to rule out aortic dissection. Inexplicably, Dr. B diagnosed Mr. Schatz with possible early ischemic bowel, a life threatening condition, but offered no opinion as to further testing or treatment.

On Aug. 5, Mr. Schatz was examined by another doctor, Dr. C. The doctor found that Mr. Schatz had a new complaint of lower right quadrant pain, but, again relying on the non-diagnostic CT, cleared him for discharge. The nurses' notes reflect that after being examined by Dr. C, Mr. Schatz was in excruciating pain. The nurse on duty administered a suppository and subsequently discharged Mr. Schatz in spite of the fact that he was screaming in pain.

On Aug. 6, Mr. Schatz returned to his regular treating physician and was almost immediately diagnosed with an abdominal aortic dissection. He was emergently admitted to Baptist Hospital and then immediately transferred to Sacred Heart Hospital for emergency surgery. Unfortunately, the delay in treatment caused irreparable damage to Mr. Schatz's aorta. Mr. Schatz passed away on Aug. 9, six days after his first visit to the hospital.

The Schatz family retained attorneys Jennifer Byrom and Dan Stewart in Milton, Fla., to investigate Mr. Schatz's treatment in the initial hospital.

*Continued on page eight.*

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*Had Mr. Schatz been diagnosed correctly and on a timely basis, surgery would have saved his life.*

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# Auto Crash Case Yields Seven Figure Verdict

On Sept. 20, 1999, at 1:45 p.m., Doric Lee was traveling on Pembroke Road in Broward County in his 1982 Toyota. It was daylight, but after two days of rain, the roads were very wet. As Mr. Lee traveled straight, an oncoming car driven by Cresswell Scott spun directly into his path. The two vehicles collided violently, and Mr. Lee lost consciousness on impact.

Mr. Lee was rushed by ambulance to Memorial Regional Hospital in Hollywood. Despite having worn his seat belt, Mr. Lee struck his face and head on the steering wheel of his car. He sustained bleeding in the frontal lobes of his brain, a fracture of his left orbital floor, upper and lower jaw fractures, several damaged teeth, and numerous facial lacerations. In addition, he suffered from a collection of fluid in his abdomen, likely caused by the seat belt, and a displaced fracture of one of his kneecaps.

Within hours of his hospital admission, Mr. Lee underwent two surgeries. He underwent an emergency exploratory abdominal surgery, during which a rupture in his lower intestine was identified and repaired. A nasogastric feeding tube was also installed. Simultaneously, he had lacerations to his left lip and chin repaired, and hardware was surgically installed to stabilize fractures of his jaw and teeth.

Over the next several days, Mr. Lee underwent additional surgical procedures. His left eye socket fracture was repaired with the installation of titanium mesh and three screws. His left upper jawbone was also repaired with the utilization of hardware, and the shattered portion of his right kneecap was removed. Soft tissues surrounding his kneecap were also repaired and reattached. Mr. Lee was eventually discharged from the hospital 12 days after his admission.

After being discharged from the hospital, Mr. Lee followed up with a number of physicians in a variety of specialties. He underwent care specifically for his neck and back, his knee, and pain in his jaw and teeth. He also began experiencing changes in his short-term memory and he developed problems with

his behavior, for which he sought treatment from both a neurologist and a neuropsychologist. In fact, neuropsychological testing revealed that Mr. Lee was suffering from moderate organic brain damage.

Despite receiving extensive medical care, Mr. Lee was left with permanent disabilities for his cognition, as well as his neck, back, and knee injuries.

**Continued on page five.**



**The Lees l. to r. (front row)  
Celecia, Dorique, and Danielle;  
l. to r. (back row) Doric and Jennifer**

## Auto Crash Case Yields Seven Figure Verdict

*Continued from page four.*

He remains scarred across his face, abdomen, and knee, and he has cognitive and physical impairments. He is also unable to resume his life as a truck driver, a vocation he enjoyed for many years prior to this crash.

Not long after the crash, Mr. Lee and his wife, Jennifer, hired attorney Steven Lubell of Ft. Lauderdale to investigate their case. Mr. Lubell made a demand upon the insurance company representing Mr. Scott, but the terms of the demand were not met. A lawsuit against Mr. Scott was then filed, after which Mr. Lubell referred Mr. Lee to the SDSBS firm.

Numerous experts were retained throughout the litigation of this case, which spanned almost three years. Accident reconstructionists, vocational rehabilitation experts, economists, neurologists, and neuropsychology and neuropsychiatry experts were called by both sides to testify. The defendant not only disputed the extent of Mr. and Mrs. Lees' damages, but he also denied fault for the crash.

After three years of litigation, attorneys Karen Terry and Harry Shevin tried the Lees' case in Broward County before Judge Robert Carney. The jury, which consisted of three men and three women, found Mr. Scott 100% at fault for the crash. Mr. and Mrs. Lee were awarded a total of \$1.038 million in compensatory damages. ■



*Deanna Bache's car after the accident on May 23, 1999.*

## *Hit by Drunk Driver, Woman Suffers Effects*

**O**n May 23, 1999, Deanna Bache, 34, was on her way home to Jupiter Farms after picking up pizza. At approximately 8:40 p.m., Mrs. Bache was traveling westbound in her 1992 Mitsubishi on Indiantown Road approaching the intersection of I-95. At the same time, a drunk driver, operating a 1996 Chevrolet owned by a major telecommunications company, was traveling eastbound on Indiantown Road. In an attempt to turn left onto the I-95 on-ramp, the drunk driver turned directly into Mrs. Bache's vehicle. The impact was so severe that the Jaws of Life had to be utilized to extract Mrs. Bache from her car. Mrs. Bache was transported to Jupiter Medical Center, where she was treated for severe injuries to her head, bruising on her chest, and a deep laceration on her left knee.

Subsequent to the crash, Mrs. Bache underwent extensive medical treatment for her neck, back, and knee problems. Her care eventually culminated in a three-hour back surgery in 2001, aimed at relieving the pain she had been suffering since the crash.

Prior to being injured, Mrs. Bache was employed in the Security Department of AT&T, working approximately 50 hours per week. Due to her convalescence following the crash, she was unable to work for roughly three months. She then returned, but was only able to work 20 hours per week due to her limitations and her pain. Mrs. Bache lost significant income and incurred major medical expenses in seeking care for her injuries. She also continues to suffer from chronic depression, for which she must take prescribed antidepressants.

Attorney Earl Denney represented Mrs. Bache and her husband, James. Throughout the prosecution of the case, the attorneys representing the drunk driver disputed fault in the crash. In August 2002, as Mr. Denney prepared for the trial of the case, a settlement was reached for the Baches in the amount of \$550,000. ■





**Chris Searcy**



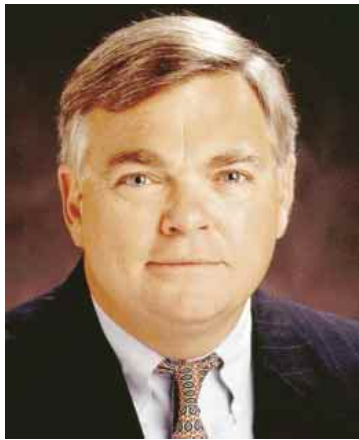
**Jack Scarola**



**Greg Barnhart**



**John Shipley**



**Bill Norton**



**David Sales**



**Chris Speed**



**Cal Warriner**

## *Law Firm/Attorneys Garner the Most Honors from Legal Guide*

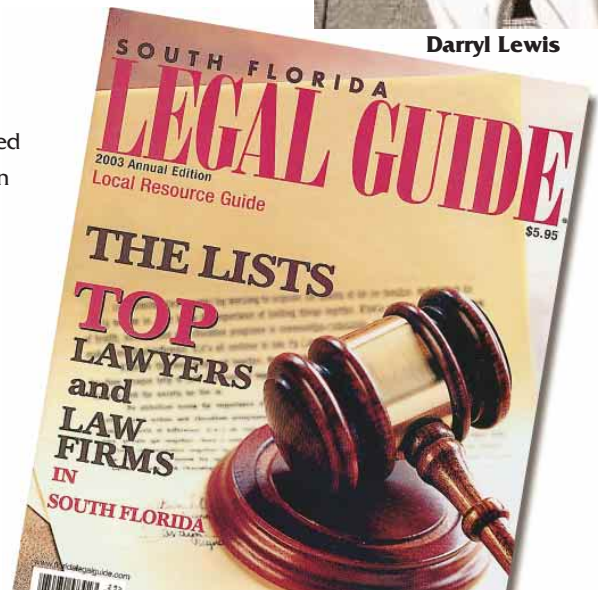
**T**he law firm of **Searcy Denney Scarola Barnhart & Shipley** was selected in October by the *South Florida Legal Guide* as one of the top law firms in the area. In addition, eight of the firm's attorneys were selected as top lawyers: **Chris Searcy, Jack Scarola, Greg Barnhart, John Shipley, Bill Norton, David Sales, Chris Speed, and Cal Warriner.** In addition, attorney **Darryl Lewis** was selected for the *Guide's* "Up & Comer" category.

No other law firm practicing primarily in the area of personal injury/medical malpractice garnered as many honors.

Ballots were sent to South Florida lawyers asking them to identify who they would recommend if a family member or loved one needed legal counsel. Only the lawyers and law firms mentioned most often qualified as candidates for the honors. An independent group of lawyers then reviewed the list and made the final selections. In this year's edition, 250 lawyers, 100 law firms, and 86 "up and comers" were selected. Lawyers listed in the *South Florida Legal Guide* do not pay a fee to be included in the edition. ■



**Darryl Lewis**





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## *Botched Surgery Results In Temporary Blindness*

David and Nancy Rogers were married for more than 20 years. They enjoyed a life filled with visits with their two children and three grandchildren, and vacations in North Carolina with friends. Mr. Rogers, who was a licensed pilot, also enjoyed flying planes.

For more than 15 years, Mr. Rogers worked as an electrician for his own company called Advanced Electric, Inc. Mr. Rogers was a hands-on electrician, working with his father as an apprentice.

In 1998, Mr. Rogers had been experiencing sinusitis, resulting in pain, irritation, and difficulty sleeping. After several months, he sought the guidance of a local otolaryngologist, Dr. X. The doctor suggested that Mr. Rogers undergo endoscopic sinus surgery, which is performed with a drill-like device called a hummer. The procedure entails clearing the sinuses with the hummer, and it requires skill and precision so that the eyes and nasal cavity are not damaged. Dr. X assured Mr. Rogers and his wife that the procedure would be “routine.” Dr. X said he had knowledge of other doctors having complications, but would proceed with caution to prevent contact with the eyes.

Dr. X performed the procedure at Hospital Y, and the result was disastrous. Dr. X penetrated the orbits of Mr. Rogers’ left and right eyes, resulting in severe artery damage and extensive bleeding. As a result of the damage to Mr. Rogers’ eyes, he was nearly blind for several months. Mr. Rogers was unable to work, drive, or fly.

Mr. and Mrs. Rogers sought the assistance of attorney Jack Scarola, who in turn sought the assistance of attorneys Darryl Lewis and Rosalyn Sia Baker. Soon after a lawsuit was filed, Mr. Lewis and Ms. Baker learned that Dr. X was concealing his whereabouts and refusing to answer the lawsuit. As a result, Dr. X’s insurance company took the position that it had no obligation to defend Dr. X, due to his failure to participate in the defense of the lawsuit. After years of litigation and diligent efforts to locate Dr. X, Mr. Lewis and Ms. Baker successfully settled the case at mediation with both the insurer of Dr. X and Hospital Y for a confidential amount. ■



*David and Nancy Rogers*



## Repeated Errors by Doctors in Viewing CT Scan Results in Man's Death

*Continued from page three.*

Ms. Byrom and Mr. Stewart contacted attorneys Chris Searcy and Bill Norton, who immediately began their investigation of the case. Expert testimony confirmed that Mr. Schatz's condition would have been easily detectable with the administration of a CT scan with contrast. Had Mr. Schatz been diagnosed correctly and on a timely basis, plaintiffs' experts opined that surgery would have saved Mr. Schatz's life.

In 2002, after a long and vigorously contested litigation, Mr. Searcy and Mr. Norton were able to reach a settlement with the defendant doctors and the hospital. Mr. Schatz's widow accepted a very small percentage of the total settlement in an effort to maximize the funds available to her stepchildren. The total settlement will be paid over the children's lifetimes to provide for college and financial security. ■

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## Holiday Medicine and Unqualified Doctor Dooms Baby's Brain

*Continued from page one.*

Brianna should never have suffered the infection in the first place. Mrs. Butler's obstetrician was negligent for failing to hospitalize Mrs. Butler when she initially felt symptoms, and the hospital staff was also at fault for failing to instruct Mrs. Butler to return if she developed signs of infection. Even still, the effective use of antibiotics would have cured Brianna had she received such essential care.

Once Brianna was in his care, the so-called neonatologist applied a cookie cutter regimen to this child who needed much more. He allowed Brianna's blood platelet count to fall precipitously low without any type of therapy. Her blood sodium levels were allowed to rapidly shift up and down, a problem that can be directly linked with brain injury. The doctor also failed to appropriately regulate Brianna's blood sugar levels, which is also a critical factor for a baby fighting off an infection. Ultimately, the drastic shifts in Brianna's blood sodium levels caused her to suffer a brain hemorrhage. By the end of the week, Brianna had suffered a needless and tragic brain injury.

The Butlers retained attorneys Chris Searcy and Greg Barnhart to investigate their daughter's care. An extensive investigation ensued, revealing that Brianna's problems were indeed a consequence of medical malpractice.

After discovery took place and expert depositions were taken all across the country, the Butlers' case settled shortly before trial. The settlement amounts paid by each guilty party are confidential. Brianna has a host of needs that will last her lifetime, including therapy, one-on-one intervention, and a variety of medical equipment. The settlement procured for her by Mr. Searcy and Mr. Barnhart has been placed in a guardianship that will manage her affairs and satisfy her medical needs for the remainder of her life. Unfortunately, while the funds made available by this lawsuit will provide for Brianna's care, nothing can be done to restore the rich and happy life she would have lived. ■



# Accolades



**Earl Denney**

## Earl Denney Elected to the Board of the Leukemia & Lymphoma Society

Attorney Earl Denney has been elected to the board of the Leukemia & Lymphoma Society. Mr. Denney will join 17 other board members and serve a two-year term. In that capacity, he is a committee member for "A Tribute to Rhythm & Blues," a fundraiser to be held Dec. 9 at the Mar-a-Lago Club in Palm Beach.

Throughout the year, the SDSBS firm supports various programs of the Leukemia & Lymphoma Society. The law firm was a major sponsor of this year's Light the Night Walk (please see *Time to Care*). More than 25 firm employees also raised more than \$2,400 for the event. The firm is also the grand sponsor of The Gary Carter Sweet-N-Low Golf Classic, to be held in February 2003.

The Leukemia & Lymphoma Society seeks to find a cure for leukemia, lymphoma, Hodgkin's disease, and myeloma. The Society, through various programs, also helps to improve the quality of life of those who have been afflicted with cancer. ■



**Emilio Diamantis**

## Emilio Diamantis Selected as Chairman of the Board of Holy Cross

Paralegal Emilio Diamantis will serve as the Chairman of the Board of the Holy Cross Preschool and Center in West Palm Beach. As chairman, Mr. Diamantis will help and direct other board members and staff in their mission to provide quality education and care for children and adults living in Palm Beach County. Mr. Diamantis will also help to raise funds for a new facility scheduled to open in August 2003.

The Holy Cross Preschool and Center is a non-profit organization. The Center serves migrants, immigrants, and refugee children and their families. The Center offers before- and after-school care and childhood education, as well as adult education classes in areas such as computers, literacy, job training, and citizenship. The Center strives to help families integrate into their new culture, while retaining and cherishing their own cultural values and traditions. ■



**Debra Block**

## Debra Block Elected as Secretary of Girl Scouts of Palm Glades Council

Research Associate Debra Block was elected as the Secretary of the Board of Directors of the Girl Scouts of Palm Glades Council in Jupiter. Ms. Block will serve a two-year term. She is one of eight board members selected for the 2002-2004 term. Board members meet bi-monthly to provide guidance and direction for the Girl Scouts of Palm Glades Council. They also help to allocate funds derived from the annual Girl Scout cookie sales.

Established in 1956, The Girl Scouts of Palm Glades Council assists girls ages five through seventeen. The Council offers informal education programs designed to instill leadership skills and self-confidence in young girls. The Council serves young girls in Palm Beach, Martin, St. Lucie, Indian River, Okeechobee, Glades, and Hendry Counties. ■

# Taking... Time to Care



***L. to r. Public Relations Assistant Robin Kriberney receives plaque from KOOL FM disc jockey Skip Kelly.***

## Great Chefs' Tasting Party

On Sunday, Oct. 6, SDSBS was a sponsor of United Cerebral Palsy's (UCP) 14<sup>th</sup> Annual Great Chefs' Tasting Party. Fifteen chefs from around Palm Beach County shared their culinary cuisine in hopes of being voted best in the categories of Appetizer, Seafood, Non-Seafood, Dessert, and Presentation. Guests of the event, which was held at the Sheraton in West Palm Beach, could also select their "People's Choice." All proceeds from the event will help UCP serve more than 1,200 individuals throughout South Florida. ■

## Harvest Hoedown

On Saturday, Oct. 19, SDSBS was a sponsor of the Arc's (Association of Retarded Citizens) 6<sup>th</sup> Annual Harvest Hoedown. Held at St. Catherine Greek Orthodox Church in West Palm Beach, guests enjoyed a barbeque dinner, participated in silent and live auctions, and danced to a country band. All proceeds from the event will help the Arc provide services, advocacy, and education for children and adults with developmental and mental disabilities. ■



***L. to r. Linda Miller and her daughter, Kimberly (not shown), Lori Vallario, Pam Crosby, Kathie Simon, Randy Kriberney, and Marilyn and Brad Hoffman.***





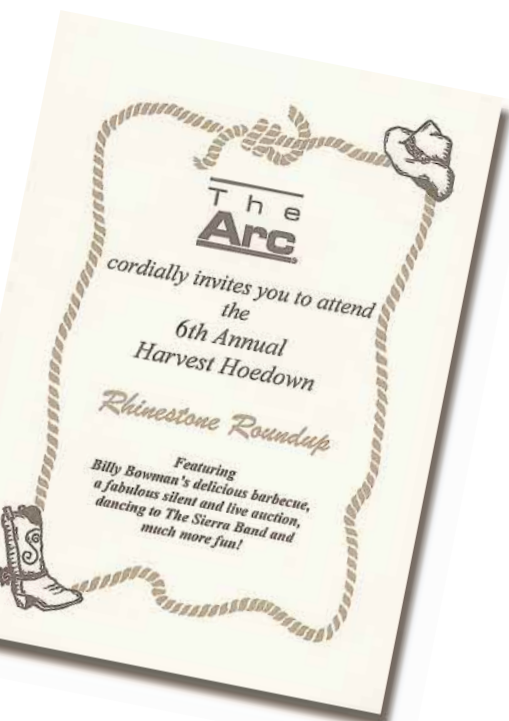
## Light the Night Walk

On Friday, Sept. 20, SDSBS employees and their family members participated in The Leukemia & Lymphoma Society's "Light The Night Walk." The firm was a "Shining Star Sponsor" of the event. The SDSBS team raised more than \$2,400 in pledges prior to completing the three-mile walk along Flagler Drive in West Palm Beach. All of the proceeds raised during the event will help to fund research for the Leukemia & Lymphoma Society. ■

*(l. to r. front row): Drew Sisko, Christian and Jordan Dulcie, Melvin Scurnick, Isabel Block, Marian Scurnick, Carly Block, Ashleigh Manke, Jonathan Speed;*

*(l. to r. second row): Steve, Debbie and Molly Block, Jennifer Manke, Donna Miller, Anita Scarola, Andrew and Diane Dulcie;*

*(l. to r. third row): Jackie Pitts, Alicia Lewis, Bill Seabold, Jack and David Scarola, Jan Speed, Joan Williams, and Cory Rubal.*



*l. to r. Harry Shevin, Janet Hernandez, and Kevin Walsh.*

## Great Grown-Up Spelling Bee

On Saturday, Sept. 28, attorney Harry Shevin, paralegal Kevin Walsh, and legal assistant Janet Hernandez participated in the Palm Beach County Literacy Coalition's "Great Grown-Up Spelling Bee." Held at the Boynton Beach Mall, the SDSBS team competed against 24 other teams to raise awareness and nearly \$35,000 for the Palm Beach County Literacy Coalition. The SDSBS team was eliminated on the word "sarsaparilla." ■



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the happiest of holidays  
and a  
wonderful new year!*

**SEARCY  
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& SHIPLEY PA**  
*Attorneys  
at Law*

**Take...** *Time to Care*