

# OF COUNSEL

A quarterly report  
to clients  
and attorneys.

VOLUME 06  
NUMBER 1

## *Jury Renders \$30.6 Million Verdict Against Broward Sheriff's Office*

A Broward County jury rendered a \$30,609,298 verdict against the Broward Sheriff's Office and in favor of the guardianship of 25-year-old Eric Brody, and his parents, Charles and Sharon Brody, of Sunrise, Florida. SDSBS partners Lance Block and Sean Domnick tried the case before Chief Administrative Judge Thomas Lynch IV, of the 17th Judicial Circuit in Fort Lauderdale. The verdict was reached on December 1, 2005, after a two-month trial.

The case was brought after then 18-year-old Eric Brody was brain injured because of a side impact automobile collision with a speeding police cruiser driven by Deputy Christopher Thieman on the evening of March 3, 1998. Eric Brody, a graduating senior attending Piper High School, was returning home from his part-time job at the Sawgrass Mills Sports Authority, driving his 1982 AMC Concord eastbound on Oakland Park Blvd. In the meantime, Deputy Thieman, who had minutes earlier left his girlfriend's house, was driving his 1996 Ford Crown Victoria police cruiser in excess of the posted speed limit of 45 mph, without a siren or lights, westbound on Oakland Park Blvd. The Brodys argued that Deputy Thieman had less than fifteen minutes to travel eleven miles and was running late for roll call, although Thieman denied he was late.



***Above, Eric Brody's AMC Concord with its severely smashed side showing the impact from the cruiser.***

When Eric attempted to make a left hand turn onto N.W. 117th Avenue into his neighborhood, he cleared two of the three westbound lanes on Oakland Park Blvd. But Deputy Thieman, who had been traveling in the inside westbound lane closest to the median, steered his vehicle to the right, across the center lane and into the far side, outside lane, where the front end of his car struck the passenger side of Eric's car near the passenger door. At trial, Deputy Thieman testified he could not recall how fast he was traveling. However, experts for both sides opined that the BSO cruiser was traveling between 60 mph and 70 mph before impacting Eric Brody's car. Eric was found six minutes later by paramedics, unconscious, his head and upper torso leaning upright and toward the passenger side door, and out of his seatbelt.

Eric Brody was flown from the scene by emergency helicopter to Broward General Hospital where he was placed on a ventilator for breathing and underwent an emergency craniotomy to reduce brain swelling.

***(Continued on page three.)***



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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.

## *Failure to Diagnose and Treat Infection Causes Father's Untimely Death*

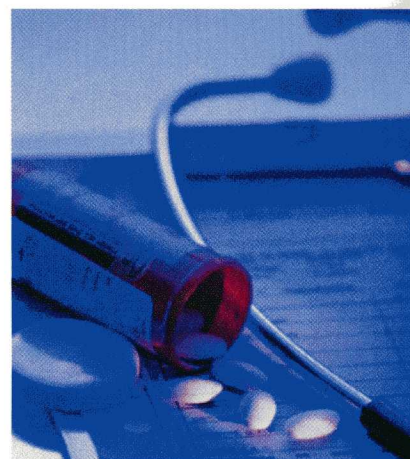
In December 2005, an Okeechobee jury awarded \$1.75 million to the estate of Gregory McCann, a 39-year-old father of two, who died as a result of medical malpractice and negligence on the part of Gateway Medical Group and one of its physicians, Richard A. James, M.D. This is believed to be the only medical malpractice verdict recorded in Okeechobee County, Florida. The award was later reduced to \$875,000, due to comparative negligence.

Early in September 1998, Greg McCann fell down concrete stairs in the home that he was building. He broke six ribs in the fall. He was taken to Raulerson Hospital in Okeechobee and attended by Dr. James, General Surgeon. Despite the fact that Greg was in deep pain that could not be controlled by medication, Dr. James discharged him from the hospital approximately three days later. The early discharge, and additional complications from the rib fractures, caused Greg to have difficulty in breathing and he continued to be in severe pain. Greg and his father, Michael McCann, who was caring for him, called Gateway Medical Group several times in the next few days regarding the difficult breathing and pain. In a follow-up visit about one week later, the doctor noted that his patient was suffering from "rapid shallow breathing" and remained in severe pain, but he failed to record any vital signs or order a chest x-ray. Greg was told that his condition was to be expected. He was given another prescription for pain medication and sent back home with his father. A week later, Greg was dead. An autopsy confirmed that the lining of Greg's lung was full of infection, a condition known as empyema.

Greg's father, Michael, asked SDSBS attorneys Bill Norton and Harry Shevin to file a medical malpractice lawsuit against Gateway and Dr. James, on behalf of Greg's two daughters, Vickie, age 4, and Hannah, age 9, at the time of their father's death. The Okeechobee jury determined that Dr. James was negligent for failing to properly diagnose and treat the infection in Greg's chest, and that this negligence caused Greg's untimely death. The net proceeds of the award will be placed in a guardianship for each of Mr. McCann's daughters, to further their education and to provide a head start in life once their education has been completed. ■

**\$1.75 Million  
Verdict:**  
**MEDICAL MALPRACTICE  
AGAINST HOSPITAL  
AND DOCTOR**

*In spite  
of symptoms  
indicating infection,  
Greg was given  
a prescription for  
pain medicine and  
sent home...  
a week later  
he was dead.*



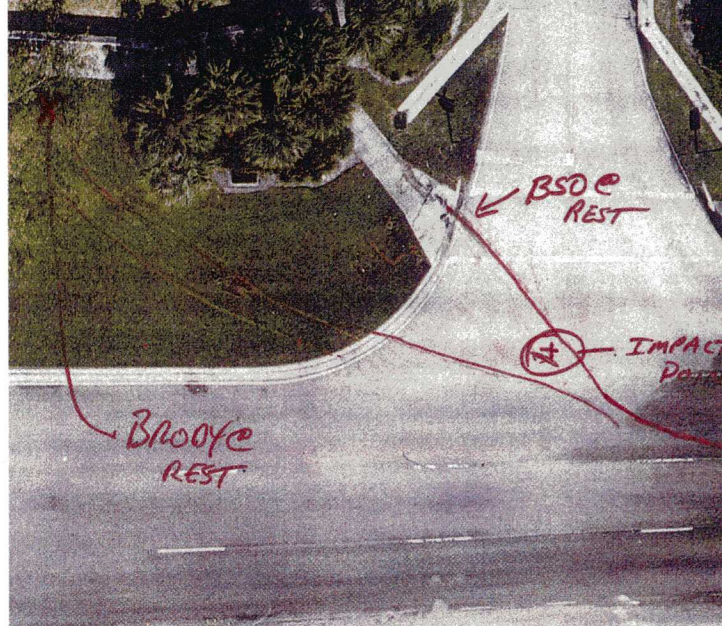


## Speeding to work, Broward Sheriff's deputy causes crash resulting in permanent injuries to young man

*(Continued from page one.)* Radiology studies confirmed that Eric had suffered a fractured skull and subdural bleeding. Eric remained in a coma for six months followed by extensive rehabilitation that included re-learning to walk and talk. Today, Eric lives at home with his parents. He suffers from diffuse axonal injury, which means that his brain was injured due to traumatic acceleration-deceleration sheering. His speech is difficult to understand, and he has memory loss and some cognitive dysfunction. Eric also has impaired fine and gross motor skills. He is able to use a walker only for short distances, but mostly uses a wheelchair to get around. Eric needs assistance with many of his daily functions, and is permanently and totally disabled.

In their lawsuit, the Brodys alleged that Deputy Thieman was negligent in the operation of his vehicle by driving too fast and by steering his vehicle two lanes to the right where the impact occurred. In reconstructing the accident, the Brodys' experts determined that had Deputy Thieman simply remained in the inside lane instead of steering to the right, there would have been no collision. The BSO alleged that Eric was at fault because he failed to yield the right of way and was not wearing his seatbelt. The BSO argued that had Eric been wearing his seatbelt, he would not have suffered a brain injury.

The Brodys' experts countered that Thieman's excessive speed caused Eric to misjudge the time and distance he had to clear the intersection. As to the seatbelt defense, the Brodys' experts pointed to evidence that Eric was wearing his seatbelt, and said that the belt probably unlatched due to the force of the impact. Also, the Brodys' experts conducted an expensive and sophisticated car-to-car crash test. They used vehicles that were identical to the actual crash, with an instrumented Hybrid III dummy and high speed cameras placed in the 1982 AMC exemplar. The crash test demonstrated that given the severity of the real crash and the significant amount of intrusion into the occupant compartment, Eric would have suffered a serious head injury regardless of whether he was wearing a seatbelt.



**Above, aerial of crash site shows paths of both Eric's car and Sheriff's cruiser after impact.**

The Broward County jury, made up of three men and three women, found that Deputy Thieman and the Broward Sheriff's Office were 100% responsible for Eric's injury, and determined that Eric Brody was not comparatively negligent.

During the trial, Deputy Thieman was under indictment for allegedly falsifying police reports and was suspended from the force. The jury was never informed of the charges or the suspension. The jury was also not allowed to hear evidence that Deputy Thieman had caused a prior serious accident with injuries while operating a BSO vehicle, and that the Department had never taken corrective action. Consequently, the Brodys' negligent supervision and negligent entrustment counts were stricken before trial. Additionally, the BSO conducted the official traffic accident investigation, despite the obvious conflict of interest. In the official Florida crash report, which was not admitted into evidence even though it was not filed for nearly a year after the accident, the BSO investigator incredibly concluded that had Deputy Thieman been traveling the speed limit, Eric Brody would have been even "more seriously injured." That opinion, among others, was so ridiculous that the BSO attorneys didn't even call their own traffic investigator to testify at the trial.

On February 21, 2006, the trial court denied the BSO's post-trial motions for judgment notwithstanding the verdict, new trial, and/or remittitur. ■

**\$30.6 Million  
Verdict:**

**SPEEDING SHERIFF'S  
CRUISER PERMANENTLY  
INJURES 25-YEAR-OLD**



# *Firm Settles Case for Nearly 20 Times the Policy Limits*

## **Talented, straight-living teen killed in accident caused by irresponsible young driver with poor driving history**

Tommy Lacayo was only 17 years old when he was killed in June of 2002 in a car accident just blocks from his home in Port St. Lucie. He was the only son of Tom and Betty Lacayo, longtime residents of Port St. Lucie, and the younger brother to his sister, Carrie Lacayo. Tommy would have graduated with honors at Port St. Lucie High School the following year. Tommylacayo.org, a website established in his honor, describes Tommy as follows:

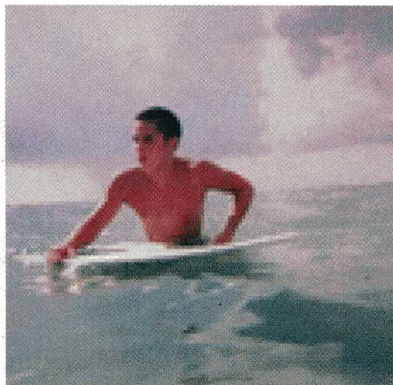
"Tommy was known by family and friends to live each day to the absolute fullest with great compassion and love. Without being judgmental of others, Tommy was Straight Edge, which means he chose a drug and alcohol free lifestyle. He had a deep passion for surfing and is remembered in the surfing community as a "soul surfer". He often commented how surfing made him feel connected to the world and God. Tommy also had a passion for writing music, particularly love songs, and enjoyed playing in his emo/punk band, "Any Day Now." He also loved running cross-country and track and would have served as Captain for both teams during his senior year at Port St. Lucie High. Tommy loved to hunt and fish with his dad. Along with local offshore fishing, Tommy and his dad took several trips together to Canada and Alaska. According to Tommy, he always caught more fish than his dad on these trips. Starting his study of the martial arts at the age of six, Tommy was a student of Uechi Ryu Karate. He earned his black belt at the young age of 15, a feat rarely accomplished in this style of karate. Tommy's

best times were undoubtedly spent in laughter and love with his family and friends and he was truly the best son, brother, cousin and friend a person could ask for."

It all came to a sudden, tragic end on June 20, 2002, when Tommy, while riding as a front seat passenger, was killed because of foolish, irresponsible driving by a teenaged driver with a poor driving history. That evening, Tommy worked at his part-time job at PetSmart, in nearby Jensen Beach, and then went to the home of another teenaged boy to give guitar lessons to some friends. Tommy had to be home by midnight, and needed a ride home. So the 18-year-old host, whose driving record was unbeknownst to Tommy, offered to give Tommy a ride home. Tommy rode in the front passenger seat, wearing his seatbelt and shoulder harness. Two other teenaged boys were seated directly behind Tommy in the backseat. Three other boys were in a second vehicle.

It had been raining that evening, and Port St. Lucie Blvd, the road on which the boys were traveling westbound, was wet. The speed limit was 45 mph. A police officer traveling in the opposite direction estimated the vehicle Tommy was riding in was traveling approximately 60 mph shortly before the crash. Although the boys denied that they were drag racing, evidence indicated otherwise. The traffic homicide investigation by the Port St. Lucie Police Department revealed that, after hitting a large puddle at the base of the south fork of the St. Lucie River bridge, the car Tommy was in crossed the median and crashed into a 1999 Toyota van. The vehicle was completely overturned on the inside lane. Tommy Lacayo was pronounced dead at the scene due to head trauma, and the rear seat passenger seated directly behind Tommy suffered minor injuries.

Insurance coverage was limited. The driver of the car in which Tommy was a passenger only had \$100,000 in liability coverage, and the other vehicle had even less insurance coverage, with only a \$25,000 policy limit. However, after demanding the policy limits, the first carrier failed to tender its limits within the demand period. So a lawsuit was promptly filed by SDSBS attorneys Lance Block and Jimmy Gustafson, both of the Tallahassee office. After Lance Block deposed the defendant driver, the case settled for a total amount of more than \$2 million, including amounts recovered from the Lacayo's underinsured motorist coverage.



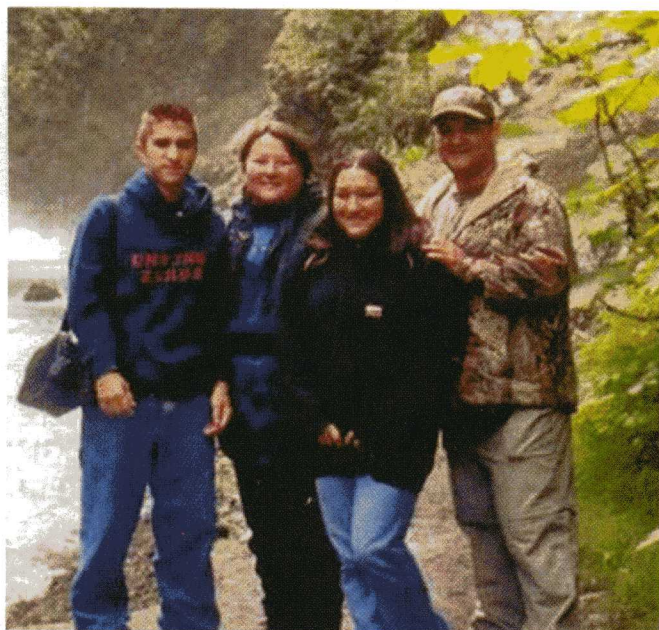


**Over  
\$2 Million  
Settlement:  
AUTO ACCIDENT;  
UNDERINSURED  
MOTORIST**

*(Continued from previous page.)*

The Lacayo family wasn't alone in grieving Tommy's tragic death. The entire community rallied around the family. Hundreds of friends attended Tommy's funeral in a church that was packed with an overflow crowd. In the meantime, a roadside memorial consisting of hundreds of cards, letters, posters and flowers remained for nearly a year along the roadside and sidewalk where Tommy died. As a result of Tommy's death, his sister, Carrie, who was attending the University of Florida when her brother was killed, decided to study psychology and mental health. She is now a mental health counselor, and specializes in treating families who suffer from intense grief and bereavement.

The family and the community also established the Tommy Lacayo Memorial Scholarship Fund, a nonprofit organization funded by private donations and funds raised from various events, including an annual 5K run held every year near the date of Tommy's birthday. The Fund awards scholarships to members of the high school cross-country and track teams in St. Lucie County, and also is an advocacy group for safe driving. Over 500 runners and walkers of all ages have participated each year. This past year's event, held on December 17, 2005, raised over \$20,000. SDSBS was a proud sponsor of the event. To learn more about the foundation, go to the web at [tommylacayo.org](http://tommylacayo.org). ■



SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, PA

## Speaking Opportunities:



### Chris Searcy

**Chris Searcy** spoke at the Colorado Bar Association's 2006 National CLE Conference in Snowmass, Colorado in January 2006. His topic was "Vehicular Accidents on Roadways Under Construction." ■



### Greg Barnhart

**Greg Barnhart** spoke at the 2005 Civil Law Certification Exam by The Florida Bar held at the Tampa Marriott in February 2006. His topic was "Opening Statements and Closing Arguments." ■  
Mr. Barnhart also spoke at the Academy of Florida Trial Lawyers Workhorse Seminar held at the Renaissance Orlando Resort in February 2006. He spoke on "Persuasive Points, Positions and Arguments to Debunk and Combat the Defense Arguments on Non-Economic Damages in the Plaintiff Attorney's Rebuttal Summation." ■



### Earl Denney & Jack Scarola

**Earl Denney and Jack Scarola** participated as judges in the Association of Trial Lawyers of America's Trial Litigation Moot Court Competition held in November 2005 at the Palm Beach County Courthouse. Law students were graded on their knowledge of the facts and the law, and the way they handled themselves during their presentations. Following the competition, the judges gave the students their critiques and the benefit of their trial experience. ■



### David Sales

**David Sales** spoke at the Attorneys Information Exchange Group Auto Focus Seminar held in Napa Valley, California, in October 2005. His topic was "Airbag Defect Trial." ■



### Darryl Lewis

**Darryl Lewis** spoke at the Association of Trial Lawyers of America's "New Approaches to Damages" seminar held at the InterContinental Chicago in Chicago, Illinois, in October 2005. He provided a demonstration for "Damages in Opening Statements." ■



### Harry Shevin

**Harry Shevin** was the moderator for the Palm Beach County Trial Lawyers Association seminar "Technology for the Law Office" which took place in February 2006 in West Palm Beach, Florida. Mr. Shevin serves as the Treasurer for the Palm Beach County Trial Lawyers Association, and served as the Chairman of the Seminar Committee. ■



# Man's Estate Wins Suit Against Kentucky Hospital

In March of 1999, James Milford Gray was 39 years of age. He was a paraplegic as a result of a shooting at the age of sixteen. On March 9, 1999, Mr. Gray appeared at the emergency room of St. Joseph Hospital in Lexington, Kentucky, complaining of abdominal pain. The emergency room doctor ran several tests, including an x-ray, but did not come to a conclusive diagnosis and Mr. Gray was discharged. He returned to St. Joseph again on the evening of April 8, 1999, complaining of severe abdominal pain and vomiting for the past four days. Again, he was examined by an emergency room doctor but no diagnosis was made. Despite the fact that Mr. Gray described his abdominal pain as a 10 on a 1-10 scale, hospital personnel gave him a very powerful pain medication and discharged him from the hospital. The hospital arranged for an ambulance to transport Mr. Gray from the hospital to his residence where he resided with his niece.

According to Mr. Gray's niece, when the ambulance arrived at the residence, she went to the rear of the ambulance and looked inside. She thought her uncle looked very ill. The niece said that she directed the ambulance personnel to transport Mr. Gray back to the emergency room because he looked sick.

The ambulance personnel returned Mr. Gray to the hospital emergency room. Upon his arrival, hospital personnel determined that Mr. Gray would not be seen by the emergency room doctor, but they did not tell the emergency room doctor that Mr. Gray had returned. Arrangements were made for Mr. Gray to be taken to a hotel across the street from the hospital. He was placed in a wheelchair and wheeled across the street by a hospital security guard and a nurse's assistant.

At approximately 5:00 a.m. on April 9, 1999, a hotel employee called 911 requesting emergency assistance for Mr. Gray. When emergency personnel arrived, they found Mr. Gray lying in bed complaining of severe abdominal pain. They also found vomit the color of coffee grounds all over Mr. Gray's clothing and bed sheets.

Mr. Gray was taken back to the same emergency room with these additional symptoms. He was initially seen

by the same emergency room physician that saw him on the evening of April 8, 1999. Mr. Gray was also seen by a second emergency room doctor, after the first emergency room doctor's shift ended. Shortly after the second emergency room physician came on duty, Mr. Gray was again discharged from the hospital, but remained in the hospital emergency room where

a social worker was called to assist him. According to family members, the social worker made several phone calls to them, telling them that nothing was wrong with Mr. Gray and that if he continued to show up at the hospital, police intervention would be requested. The social worker denied that she told any family members police intervention would be requested.

Mr. Gray was given a taxi voucher and left the emergency room in the early afternoon of April 9, 1999.

Mr. Gray died approximately four hours after leaving the emergency room. The cause of Mr. Gray's death was a ruptured duodenal ulcer.

Darryl L. Lewis of Searcy Denney Scarola Barnhart & Shipley, P.A., originally from Lexington, Kentucky, was contacted by the family of Mr. Gray to represent them in a potential claim against the hospital and the agents and employees of the hospital. Mr. Lewis agreed to represent the family and requested Shirley A. Cunningham, Jr., William Gallion, and Elizabeth Seif, of William Gallion and Associates, Lexington, Kentucky, to act as local counsel. Mr. Lewis filed a lawsuit on behalf of the estate of Mr. Gray and targeted several defendants. Mr. Lewis filed a negligence claim against the emergency room physicians that treated Mr. Gray during his hospital visits, and filed a negligence claim against St. Joseph Hospital for the negligence of its nurses and other personnel who came into contact with Mr. Gray during the visits. In addition, Mr. Lewis also alleged that St. Joseph Hospital violated the federal Emergency Medical Treatment and Active Labor Act (EMTALA) statute, also known as the "anti-dumping statute," because Mr. Gray was discharged despite having an emergency *(Continued on page seven.)*

*"Mr. Gray was repeatedly discharged from the hospital despite having an emergency medical condition that was readily apparent."*



**\$1.5 Million  
Verdict:**  
ESTATE WINS  
PUNITIVE DAMAGES

**The hospital violated the federal Emergency Medical Treatment and Active Labor Act (EMTALA) statute, also known as the 'anti-dumping statute.'**

*(Continued from page six.)*

medical condition that was readily apparent during Mr. Gray's visits to St. Joseph.

The case first came to trial in Lexington, Kentucky in October 2005. After two weeks, a mistrial was declared. Following that mistrial, Mr. Lewis was able to reach a confidential settlement with all defendants except St. Joseph Hospital. Thus, by the time the second trial started on November 7, 2005, the emergency room physicians were no longer parties to the action.

St. Joseph Hospital defended the negligence case, arguing that Mr. Gray was properly treated and evaluated. The hospital argued that at every instance when he was discharged, his condition was stable and improving. It also flatly denied "dumping" Mr. Gray in violation of EMTALA.

The case was submitted to the jury on November 23, 2005. The jury decided that St. Joseph Hospital was negligent, and that it had violated the EMTALA. In addition, the jury decided that the hospital "acted with reckless disregard for the life and safety" of James Milford Gray. The jury awarded \$1.5 million in punitive damages to Mr. Gray's estate. ■

## *SDSBS Employees Create Group for Basic Acts of Community Kindness*

For years, the **employees of Searcy Denney Scarola Barnhart & Shipley** have actively and generously participated in various community programs and charities. Their individual contributions have been very impressive and frequently recognized. Last year, the employees of SDSBS decided to form their own 501(c)(3) charity, and they created "**SDSBS Giving BACK**", an organization run and completely funded by SDSBS employees to give Basic Acts of Community Kindness. SDSBS Giving BACK continues the long-time practice of employees donating time, goods, services and cash to charities and individuals in need in the community. The charity is currently run by directors Laurie J. Briggs, Dawn Pitts and Janet Hernandez. Nearly one hundred percent of all donations come from employees and their families.

In the latter part of 2005, SDSBS employees donated chainsaws, food, clothing, water, home furnishings, furniture, and money to families in Louisiana, Mississippi, and Florida affected or displaced by Hurricane Katrina. SDSBS employees also provided donations to several charities in the Gulf Coast that supplied medication, bedding, clothing, personal hygiene items, baby formula, and diapers, as well as support for a charity that cared for displaced animals. At Thanksgiving, SDSBS employees donated dozens of turkeys to local families, and provided prepared meals to homeless and underprivileged individuals and families on Thanksgiving Day. SDSBS Giving BACK collected toys, gifts, clothing, musical instruments, and food for the annual holiday gift and toy drive, and donated those items to several local charities, including Adopt-A-Family, Esereh Youth and Family Center, Operation Hope, Child Outreach and the Edward Healey Rehabilitation Center.

With the help of SDSBS Giving BACK, our employees will continue their long tradition of community service, and provide even greater contributions to our community. ■



**Right: (l-r) Laurie Briggs, Amy Poole, Janet Hernandez and Dawn Pitts get ready to deliver gifts and food. Above: wrapped holiday gifts and toys gathered by SDSBS employees.**







**AREAS OF PRACTICE:**

PERSONAL INJURY/ WRONGFUL DEATH  
 MEDICAL MALPRACTICE  
 COMMERCIAL LITIGATION  
 AUTO ACCIDENTS  
 AIRLINE/RAILROAD DISASTERS  
 PRODUCTS LIABILITY  
 SECURITIES LITIGATION  
 GOVERNMENTAL TORTS  
 MASS TORTS  
 CLAIMS BILL REPRESENTATION



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## Young Teen Killed by Driver With Multiple Violation History

On November 15, 2005, a West Palm Beach jury awarded \$8.75 million to the parents of a high school student killed by a driver with a suspended license and a record of 22 traffic violations in the previous ten years. Erin Fernandez, 16 years of age and the only child of Darlene and Ramon Fernandez, was killed on June 9, 2003, in a late evening automobile accident caused by Robert McCreery. McCreery ran a red light at Forest Hill Boulevard and Military Trail in West Palm Beach, broad-siding the car in which Erin was a passenger. Erin was killed instantly, and the driver, Joshua Dichkewich, and another passenger, Catherine McGlinchy, were seriously injured. McCreery, 54 years old, was driving an SUV owned jointly by him and McCreery's furniture business, Wilhelm's Rattan, Inc. He was originally charged with driving under the influence but pled guilty to vehicular homicide and two counts of reckless driving. He received a sentence of five years in prison to be followed by five years of probation.

Erin and her two friends had attended Mass on the evening of June 8th, honoring Joshua's father who had died of cancer several months earlier. Because Father's Day was the next week, Erin and Catherine were accompanying Joshua to console him about his loss. They were headed to Joshua's home, a little before 1:00 a.m. the next morning, when the accident occurred.

Erin's parents sued McCreery and his furniture business for the loss of their daughter. McCreery admitted liability and the case went forward to determine damages. In an article by the Palm Beach Post after the verdict, Erin's mother, fighting back tears, said, "It's hard to put a price on a child's death. It helps get some justice, but the bottom line is, we lost our child who we loved." Earl Denney and John Shipley, of Searcy Denney Scarola Barnhart & Shipley, represented Mr. and Mrs. Fernandez. Mr. Denney commented, "This child was probably the most perfect child I've had the privilege to know about. It was difficult making it through. My partner and I constantly had to fight back our emotions – a very moving case." ■

*"It's hard to put a price on a child's death...it helps to get some justice, but the bottom line is we lost our child who we loved."*

- - Erin's mother



**\$8.75 Million Verdict:**  
**VEHICULAR HOMICIDE AND RECKLESS DRIVING RESULTS IN DEATH OF CHILD.**



# Substantial Changes in Neurological Conditions Are Ignored, Resulting in Severe Brain Damage

**The brain injury could have been avoided with proper observation and timely medical care by the hospital.**

In the early morning hours of June 2, 2000, Mr. M, a 27-year-old college student at a Florida university, suffered a severe head injury in an attack by an unknown assailant. Mr. M was brought to the emergency room of a local hospital. A CT scan revealed a small bleed in Mr. M's brain, but he appeared to be neurologically intact. He was admitted to the hospital for observation.

At 7:00 a.m., another examination revealed that Mr. M's right side had become flaccid and that he had difficulty speaking. This was a very substantial change in Mr. M's neurological condition, one that required an immediate medical consult by a physician. Instead, Mr. M lay in the hospital for over two and one-half hours with blood pouring from his brain. His condition worsened, and at 9:30 a.m. Mr. M went into respiratory arrest. Another CT scan at 9:52 a.m. revealed a large hematoma covering an area from the left front parietal lobe down to the left ventricle. Emergency surgery was performed and the bleeding was stopped. Unfortunately, the delay in treatment left Mr. M with a significant and permanent brain injury. The injury to Mr. M could have been avoided if the hospital had properly conducted the observation for which he had been admitted and administered timely medical care.

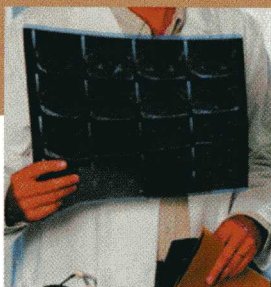
At the time of his injury, Mr. M had just returned to college to complete his studies for degrees in a double major. Earlier attendance at college had resulted in successful completion of several semesters, interrupted numerous times by Mr. M's need to return home to care for his ailing mother who

died in May 1997 after a lengthy battle with cancer. His high SAT test scores and earlier successes at high school studies gave every indication of a bright and successful future.

All expectations for Mr. M's future changed when the hospital failed to provide proper care. Following his release from the hospital, Mr. M spent two years in a nursing home trying to regain some level of physical and mental capability. He then was moved into a neurological rehabilitation center for brain-injured patients. Through hard work, determination, and with the help of others, Mr. M has made great strides toward recovery.

However, that recovery will never be complete. He will need supervision in all activities of daily living and will be unable to live alone. Mr. M's cognitive impairment will always require a living environment that protects him, with devices such as safety rails in bathrooms and at stairways, restrictions on water temperature settings to prevent scalding, and limitations on the use of regular cooking appliances to prevent injury. Mr. M is no longer capable of any gainful employment, and no longer has the capacity to make informed decisions with regard to his financial, health, educational, or personal matters. The hospital's inexcusable neglect took away Mr. M's future.

*The hospital's inexcusable neglect took away Mr. M's future...his recovery from the brain injury will never be fully complete.*



Mr. M's father, as parent and guardian, asked attorneys Sean Domnick and Mark Avera to represent them in this matter. A medical negligence suit was filed against the hospital. In June 2005, the parties reached a settlement agreement. Due to the confidentiality of this settlement, specific terms and figures cannot be disclosed. However, the case was resolved with an agreed settlement of seven figures. ■

**Confidential Settlement:**  
**BRAIN INJURY CAUSED BY MEDICAL NEGLIGENCE**



# Auto Insurance Surcharges

**Did your auto insurance carrier raise your premium after an accident that wasn't your fault?**

**Written by SDSBS Paralegal Vince Leonard.**

Many times consumers are perplexed as to why their auto insurance rates increased after an accident that was not their fault. In Florida, consumers should be aware that there are statutory guidelines for insurance "surcharges." These guidelines fall under the domain of Florida Statute 626.9541.

First, let's understand the difference between a general global insurance rate increase and an increase that is a surcharge to an individual policy holder. Typically, insurance rates are governed by the Florida Department of Financial Services.

When increasing rates on a global basis for an entire class of policy holders, insurance carriers have specific processes and procedures they must follow. What we are discussing here is not a global increase in premiums, but the incidences when an insurance carrier specifically surcharges a policy holder due to an accident.

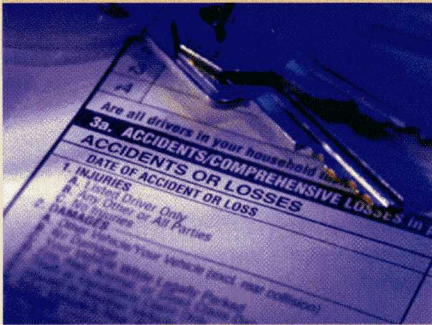
A surcharge is an extra charge applied by the insurer. For automobile insurance, a surcharge is usually for accidents or moving violations. Florida Statute 626.9541 indicates that it is, in general, an unfair act or practice to surcharge a policy holder solely because the insured was in an accident unless the insurer, in good faith, believes the insured was substantially at fault in the accident. Insurance carriers fault-code each accident for underwriting purposes. Hence, if an adjuster wrongly indicates an insured is 51% or greater at fault, an improper surcharge may occur. Sometimes insurers, without any evidence of substantial fault by their policy holder, choose to pay a liability claim just to avoid a complaint or an expensive legal battle. Doing so is, indeed, the insurer's prerogative. However, the insurer should not surcharge the policyholder. Note that the insurer, at the time of notice of any surcharge, must advise the insured that he/she is entitled to reimbursement of the surcharge amount if the named

insured can demonstrate that the operator involved in the accident was, in fact, not substantially at fault. The insured may challenge the surcharge if it can be demonstrated that the operator involved in the accident was:

- (I) Lawfully parked;
- (II) Reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such person;
- (III) Struck in the rear by another vehicle headed in the same direction and was not convicted of a moving traffic violation in connection with the accident;
- (IV) Hit by a "hit-and-run" driver, if the accident was reported to the proper authorities within 24 hours after discovering the accident;
- (V) Not convicted of a moving traffic violation in connection with the accident, but the operator of the other automobile involved in such accident was convicted of a moving traffic violation;
- (VI) Finally adjudicated not to be liable by a court of competent jurisdiction;
- (VII) In receipt of a traffic citation which was dismissed or nolle prossed; or
- (VIII) Not at fault as evidenced by a written statement from the insured establishing facts demonstrating lack of fault which are not rebutted by information in the insurer's file from which the insurer in good faith determines that the insured was substantially at fault.

These are clear circumstances that, if applicable, are relatively easy to prove. As you can see, even if none of the first seven conditions apply, the insured still has the ability to provide a written statement to their insurance carrier outlining why they were not substantially at fault in the accident.

Here are some key things to remember. The way the law is written places a substantial onus on the consumer to carefully review any premium increase and to determine if he/she has in fact been surcharged wrongly. Insurance companies can make mistakes when they determine at-fault percentages for underwriting purposes. Sadly, many insureds may not have the knowledge to know when they have been surcharged or, even if they realize it, may not be savvy enough to understand how to challenge a wrongful surcharge. Don't be afraid to ask questions of your auto insurance carrier, and challenge any surcharge that you think is incorrect. Last, when an informed insured knows how to approach their carrier with the facts, they can successfully prevail in these disputes! ■





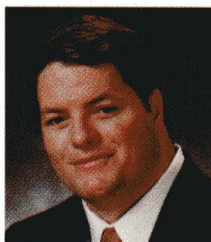
## Accolades:



**At the awards luncheon were SDSBS attorneys (l-r) Jack Hill, David Sales, Sia Baker-Barnes, honoree Jack Scarola, Chris Speed and William King.**

### Jack Scarola

Jack Scarola has been named the 2005 Most Effective Lawyer Civil Litigation by the *Daily Business Review*. The newspaper honored Mr. Scarola for his \$1.45 billion jury verdict against New York-based Morgan Stanley. The case was the biggest civil lawsuit ever heard in Palm Beach County Circuit Court, and the award was the largest in the nation's history in non-class action suits, according to the *Daily Business Review*. ■



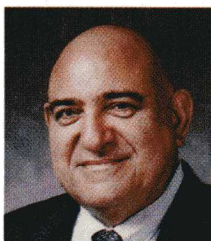
### Jack P. Hill

Jack Hill was elected to the Palm Beach County Trial Lawyers Association Board of Directors. ■



### Harry A. Shevin

Harry Shevin was elected Treasurer of the Palm Beach County Trial Lawyers Association. He served on the organization's Board of Directors from 2002 through 2004, and was Secretary in 2005. ■



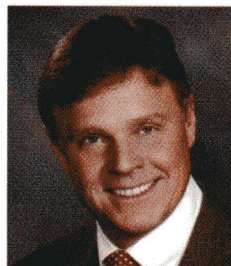
### Emilio Diamantis

Emilio Diamantis will serve a second year as Paralegal Representative for the Palm Beach County Trial Lawyers Association. ■

## Five SDSBS Attorneys Selected For 2006 "Best Lawyers in America"

Chris Searcy, Jack Scarola, Greg Barnhart, Chris Speed, and Sean Domnick, attorneys with Searcy Denney Scarola Barnhart & Shipley, have been selected for inclusion in the 2006 edition of *The Best Lawyers in America*.

More than 18,500 leading attorneys throughout the country participated in the peer-review survey. Survey respondents nominated attorneys who deserve recognition as the best in a specific area of law. The nominations are based solely upon the ability of each attorney considered. Attorneys listed in *The Best Lawyers in America* do not pay for the privilege of being included in the publication. ■



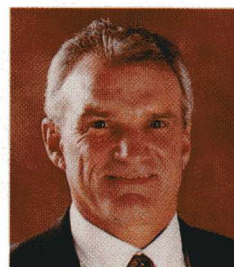
**Chris Searcy**



**Jack Scarola**



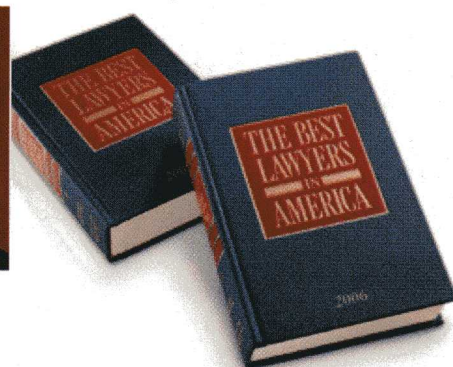
**Greg Barnhart**



**Chris Speed**



**Sean Domnick**





# Despite Catastrophic Injuries, Man's Indomitable Spirit Inspires All

**Confidential  
Settlement:**  
**PRODUCTS  
LIABILITY**

On Monday evening, January 20, 2003, around 8:00 p.m., Robert Smith and several friends were playing their regular game of basketball in the gym of a local church. Mr. Smith, 41 years of age, was in excellent physical shape. He had graduated in 1999 from a college in Texas with a Bachelors Degree in Physical Education, and had been working two part-time teacher assistant jobs in south Florida. He had worked as a physical education instructor in a school in Washington, DC and in other schools in south Florida. He was fit, muscular and athletic, and stayed that way by working out regularly and participating in sports such as his Monday evening and Saturday morning basketball games. Robert's sister had remarked how extremely athletic Robert was. "He found the love of basketball and he used to practice more than Michael Jordan ... I used to tell him Michael Jordan doesn't practice as much as you do." The church gym is a full-length basketball court with linoleum tile flooring and padding covering parts of the walls at each end of the court. The padding on the wall begins nearly 13 inches above the floor. On this particular evening, the game had been going for over an hour. Mr. Smith saw the ball heading out of bounds at the west end of the court and leaped to catch it. While throwing the ball back into play, the momentum of his leap caused him to fall and slide toward the wall. His head struck either the concrete wall or the bottom of the padding on the wall. Depositions from witnesses at the scene of the accident varied in stating exactly where Mr. Smith's head struck the wall. Regardless, the impact shattered Mr. Smith's cervical spine with a burst fracture at the C-5 level. In one quick moment, Mr. Smith was rendered a quadriplegic.

Two and one-half months later, Mr. Smith was discharged from the Florida hospital and airlifted to Texas, where he was admitted to a nursing home. He was now suffering from severe bedsores, malnutrition, feeding difficulties, urinary dysfunction, chronic nausea, anxiety, depression and neuropathy. He devel-

oped pneumonia and, on April 10, 2003, he stopped breathing and was rushed to a local hospital. Mr. Smith remained at the hospital for a little over two weeks, under treatment for respiratory failure and the persistent bedsores. His condition was listed as serious and the prognosis was poor. He was transferred to another nursing center in Texas that specializes in care for individuals with respiratory problems. As his respiratory condition deteriorated, and his spinal wounds worsened, with bedsores forming on his heels and hip, Mr. Smith was transferred to the hospital again and, when he briefly improved, he was returned to the nursing center. His care and medical treatment would be intensive for the remainder of his life. Mr. Smith's will to live was at its lowest ebb for weeks after the accident. However, his deep faith and loving family allowed him to believe that tomorrow would be a better day. His spirit became strong and he had a positive outlook. Robert defied the odds and willed his way off his ventilator. He truly believed that someday he would walk and play basketball again.



Robert's case was referred to Chris Searcy and Lance Block of Searcy Denney Scarola Barnhart & Shipley

by Jeff Walker, a former Fort Lauderdale attorney who now practices in North Carolina. A legal team was assembled which included Chris Searcy, Darryl Lewis, William King and Jeff Walker, to prosecute claims on behalf of Robert and his children.

Suit was filed against Company A, the manufacturer of the wall padding, and Company B, the Florida distributor of the wall padding, for products liability including claims of strict liability and negligence. Suit was also filed against the general contractor and the architect for negligence, and claims were filed against the church for negligence and premises liability. A claim for negligence was also instituted against Company C, a wall pad installer who had later installed padding adjacent to the padding struck by Robert.

During the investigation of the case, it was determined that the wall padding itself **(Continued on next page.)**



*(Continued from previous page.)* was not safe for its intended use. The padding did not provide protection from catastrophic injury upon impact. It was determined that the manufacturer had not performed any testing on the padding to ensure that it would provide safety for those who might run into the padding during basketball games or other activities. Rather, the evidence demonstrated that the padding could "bottom out" by simply pushing one's hand into the padding so that one could feel the wall behind it. The evidence also showed that the padding was installed at a height of about 13 inches above the floor, well above the manufacturer's recommended installation height of 3 to 4 inches above the floor. The manufacturer had adopted the recommended installation height as a result of an incident which occurred in 1989, when a young New York high school basketball player was paralyzed when he slid into a portion of the gymnasium wall below the level of the padding which had been manufactured by Company A. The evidence revealed that the manufacturer did not change its recommendations concerning a minimum installation height until December 1993, after the padding had been installed at the defendant church. No one, including the defendants, took any action to lower the height of the padding after the manufacturer became aware of the danger of installing the padding at too high a level. At one point, padding was installed by Company C adjacent to the padding which would ultimately be struck by Robert Smith. The installer observed that the earlier padding was installed too high, but still, no remedial action was taken to lower the padding.

Damages suffered by Robert as a result of his catastrophic injury were enormous. He sustained signifi-

cant past medical costs and would face an enormous burden for future medical costs and costs required to allow him to live on his own outside an institutional setting. His intangible losses, his pain and suffering and the loss of his enjoyment of life, were incalculable. His children also sustained significant losses as a result of Robert's inability to provide them with his care and companionship as a result of this catastrophic injury. His daughter, who was 15 years of age at the time of Robert's injury, reflected upon how close her father was to her. "Throughout the weekdays he would pick me up after school from my grandmother's house and take me to his basketball games. Other than that, we just hung out together like we were the best of friends."

*"In spite of knowledge of the danger, no action was taken to lower the padding to a safer height."*

After intensive discovery, a confidential settlement was reached in the case. Robert ultimately would leave the critical care facility in Texas and move back to Florida to be close to his family. He was living on his own, attended by family members and medical personnel. Plans were made for his family from throughout the country to visit him over Christmas. Robert and members of his legal team were looking forward to attending a Miami Heat game together. Robert was a true Miami Heat fan. Robert's spirits were soaring. Tragically, Robert succumbed to his injuries and passed away just before Christmas. His death was a devastating blow to all of his friends and family. Robert's smile and indomitable spirit will be remembered by all those who had come to know him and who had joined with him in his valiant fight. ■



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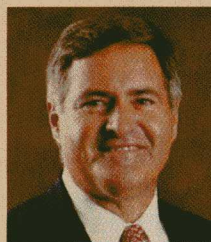


# “South Florida Legal Guide”: SDSBS Top Law Firm, Top Lawyers

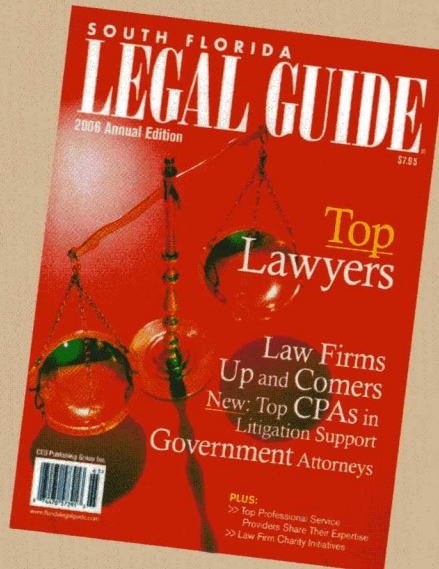
The law firm of Searcy Denney Scarola Barnhart & Shipley was selected by the *South Florida Legal Guide* as one of the top law firms in the area. Eight of the firm’s attorneys - **Chris Searcy, Jack Scarola, Greg Barnhart, John Shipley, Bill Norton, David Sales, Chris Speed, and Cal Warriner** - were selected as top lawyers. In addition, attorneys Darryl Lewis, Karen Terry, and Harry Shevin were selected for the *Guide*’s “Up & Comer” category. The *South Florida Legal Guide* chooses the honorees by asking highly-regarded attorneys to nominate attorneys whom they most respect and to whom they would refer a friend or family member. Lawyers listed in the *South Florida Legal Guide* do not pay a fee to be included in the edition. ■



**Chris Searcy**



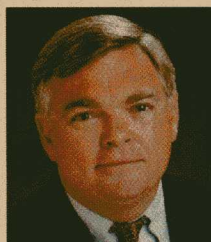
**Jack Scarola**



**Greg Barnhart**



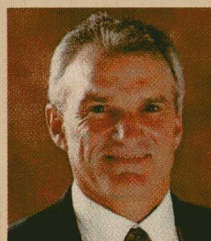
**John Shipley**



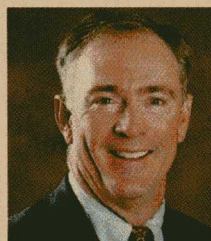
**Bill Norton**



**David Sales**



**Chris Speed**



**Cal Warriner**



## ‘Wild Things’ Public Art Event Benefits Boys & Girls Clubs

“Wild Things” is a public art event occurring from January through April, 2006, in the Palm Beach County area. One hundred painted fiberglass dolphins, pelicans, sea turtles, and horses will be placed in strategic areas of high traffic and prestige throughout the county. The Boys & Girls Clubs of Palm Beach County are the driving force behind this event. Founded in 1971, the organization is dedicated to promoting the educational, vocational, health, leadership, and character of boys and girls in a safe, nurturing environment. SDSBS is a proud sponsor of this event. ■



**Above, participants start the 4th Annual Tommy Lacayo Memorial 5K Run/Walk. Right: Tommy’s father with one of the winners.**





**(l-r) Links President Sia Baker-Barnes, Members Marlene W. Shaw and Judge Sheree Davis Cunningham, and Keynote Speaker Dr. Talbert O. Shaw, Ph.D.**

## The Links White Rose Luncheon Benefits Scholarships For Students

The West Palm Beach Chapter of The Links, Inc., held its 28th Annual White Rose Luncheon in December. Proceeds from the luncheon go toward scholarships for needy students in our community. Over the past 35 years, the chapter has donated thousands of dollars to deserving students. The keynote speaker was Dr. Talbert O. Shaw, Ph.D., President Emeritus of Shaw University in Raleigh, NC. Dr. Shaw spoke on this year's theme, "Preserving Our Historically Black Colleges and Universities." Attorney **Sia Baker-Barnes** is President of the organization and Searcy Denney Scarola Barnhart & Shipley was a Platinum Sponsor for the event. ■

## SDSBS Sponsors 4th Annual Tommy Lacayo Memorial 5K Run/Walk

The Tommy Lacayo Memorial Scholarship Fund was established in June 2002 in memory of Tommy Lacayo, who was tragically killed in an auto accident at the age of 17. The key fund-raising event is a 5K race held each year near Tommy's birthday. Over 500 runners and walkers of all ages have participated each year. This year's event, raising over \$20,000, was held on December 17th in Port St. Lucie. The Fund awards scholarships to members of high school cross-country and track teams in St. Lucie County, Florida. SDSBS was a proud sponsor of the event. ■



## SDSBS in 'Dumpster Days' Fund-raising for The Lord's Place

"Dumpster Days," a fund-raising event for The Lord's Place, was held January 12-14 to bring attention to the plight of the homeless. Dumpsters were located at three sites in Palm Beach County — West Palm Beach (in front of SDSBS office), Wellington and Jupiter. Local celebrities from the media, political arena, government, law and the community participated as "dumpster sitters" for the event. The Lord's Place was created by a man with a vision, "Brother" Joe Ranieri. In 1983, he sat in a dumpster for 30 days to raise the funds to open the first homeless shelter in Palm Beach County. Over the past 23 years, The Lord's Place has grown to become a leading voice in the fight against homelessness. This year's event raised over \$70,000.

On any given day, there are 4,000 homeless people in Palm Beach County. Thirty-five percent of these homeless are children; the average age of the homeless in this county is nine years. Nearly half of the homeless persons in Palm Beach County have had at least one full day in the past 30 days with nothing to eat because they cannot afford to buy food. Nearly half of these homeless people have jobs, but the jobs do not pay enough to keep a roof over their heads. ■



**(l-r) Mayor Lois Frankel, Jack Scarola and Emily Minor.**



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Volume 06, No. 1

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Against Broward Sheriff's Office*

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20 Times the Policy Limits*

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*Five SDSBS Attorneys Selected  
for 2006 "Best Lawyers in America"*

Page eleven.



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**What  
justice really is.**

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