

# OF COUNSEL

A REPORT TO CLIENTS & ATTORNEYS  
VOLUME 11 - NUMBER 3

## Florida Jury Finds Aviation Services Giant Liable for \$4.3 Million

Commercial Consultants, LLC, was awarded \$3.5 million in a complex commercial case against BBA U.S. Holdings, Inc. and its subsidiary, Signature Flight Support Corporation. Despite the legal complexity of the case, the jury in Orlando Circuit Court took only 90 minutes to rule in favor of the plaintiff on all of its claims.

In 2005, Signature entered into a contract with Commercial Consultants to provide consulting services to assist Signature in acquiring Executive Beechcraft, a group of four Kansas City Fixed Base Operations (FBOs) providing fuel and storage facilities for private aircraft. Commercial Consultants had successfully provided similar services to Signature since 2003.

According to the contract, Commercial Consultants was to receive 3% of the purchase price if Signature was successful in the acquisition. The law suit contended that Signature's parent company, BBA U.S., acquired Executive Beechcraft, rather than Signature, in an attempt to avoid Signature's fee obligation. The purchase price was \$72.5 million.

This case is of significant interest to the aviation industry. BBA U.S. and Signature are part of BBA Aviation plc,



a British conglomerate of aviation-related operations. Signature is the largest owner of FBOs in the world.

"The fact that our client succeeded as an aviation consultant in the face of a disabling, degenerative disease makes this a particularly satisfying victory," said **Jack Scarola**, who, with **William King**, represented Commercial Consultants. "That said, we hope and trust that anyone with so strong and important a case would have obtained the same swift justice this jury provided," Scarola said.

"Executive Beechcraft was a family-owned operation that, like many closely-held businesses, does not readily trust acquisition overtures from corporate conglomerates," added Mr. Scarola. "It's ironic that Signature and BBA U.S. trusted Commercial Consultants enough to overcome those suspicions while ultimately deciding to deny the company its rightful claim." Post-judgment interest and an award of over \$500,000 in attorneys' fees increased the defendants' liability to approximately \$4.3 million. ♦

## An Advertised 'Stroke Hospital' Proves To Be No Such Thing

Strokes can be as deadly as heart attacks, and they need to be treated like the emergencies they are. They often occur after major surgery, and particularly after orthopedic surgery. It is critically important for hospital personnel, particularly nurses, to recognize the signs of a stroke and immediately contact a doctor if they suspect a stroke is underway. Unfortunately for 79-year-old Cathy Crawford (name changed to protect confidentiality) the hospital she chose for hip replacement surgery – a hospital which advertised itself as a "designated primary stroke center" – completely

failed to recognize the post-surgical stroke that eventually caused her death.

Cathy was a loving wife, mother and grandmother. She was in great shape physically, except for a hip which had simply worn out. Like thousands of people her age, she decided to have a hip replacement. Surgery went smoothly and she awoke about as comfortable as could be expected. The following morning, she was alert and cheerful, joking with her surgeon's physician's assistant. Several hours later, however, her condition began to deteriorate. Her physical therapist noticed the change and alerted the hospital nurses, who ignored him and did nothing. As the day progressed, another therapist came to visit Cathy and could not arouse her. He became alarmed and, he too, notified the hospital nurses, and, again, no action was taken. *(Continued on page four.)*



Jack Scarola



Brian Denney



Ed Ricci

## Three SDSBS Attorneys selected for Membership in the Prestigious American Inns of Court

Three SDSBS attorneys were selected for membership in the American Inns of Court, a prestigious organization of judges, lawyers, and legal scholars who focus on enhancing the skills, professionalism, and ethics of their profession. **Jack Scarola, Brian Denney, and Ed Ricci** were all named to the Court in September 2011. The Court is adapted from the traditional English model of legal apprenticeship and involves more than 25,000 state, federal, and administrative law judges, attorneys, law professors, and law students. Members within each Inn meet monthly for programs that advance advocacy skills and promote ethical awareness in the practice of civil and criminal law. ♦



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NEWSLETTER  
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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.

# Inadequate Pedestrian Barriers Create Dangerous Fall Situation at Retail Store

In October 2006, 67-year-old Michael Kelly (not his real name) decided to visit a new Staples Superstore that had recently opened in his home town of Tamarac, Florida. Upon arriving at the store, no warnings alerted him that the contiguous sidewalks and curbing were still under modification and construction. Mr. Kelly stopped at a store adjacent to Staples, and then walked along the sidewalk to the only entrance to Staples store. As he entered Staples, he noticed traffic barriers along the sidewalk and assumed they were there to prevent cars from parking directly in front of the newly-opened store.

Mr. Kelly completed his shopping at Staples and left the store. Outside, he stepped off the curb into the parking lot and abruptly fell down onto the parking lot pavement. The height of the curbing was unusually high and, not anticipating the precipitous drop-off, he fell hard to the ground. Dazed and embarrassed, he struggled to his feet and made his way to his car and returned home. Throughout the afternoon, Mr. Kelly experienced increasingly severe pain in his left arm and shoulder. Eventually, he went to the emergency room of a local hospital where an MRI was ordered, revealing a full-thickness tear of the supraspinatus muscle in his rotator cuff and tears in attached tendons. Mr. Kelly

was told that he would need immediate surgical consultation for repair of his injured shoulder.

Compounding Mr. Kelly's medical condition was a preexisting mitochondrial myopathy, a metabolic form of muscular dystrophy. Any type of surgical procedure performed on a person suffering from this condition typically requires extensive hospital and recovery care. Surgery was performed in late October. He continued to experience pain and discomfort.

While convalescing at home, Mr. Kelly became concerned about the conditions that had caused his fall. He could not understand why Staples would choose to open a store in the midst of conditions that could cause substantial injury to their customers. Using online research, he found a "prestigious" law firm that he hoped would assist him in filing a civil action against Staples. The law firm promised to obtain pertinent records and to conduct an investigation. Over the next three years, he was assured by the firm that his case was "progressing." Unfortunately, he continued to suffer increased pain and was losing range of motion in his arm and shoulder. He endured two more surgical procedures, including a painful ulnar nerve transplant, in attempts to relieve his pain and restore function.

With the statute of limitations running out for filing such a case, Mr. Kelly's "prestigious" law firm informed him that they would not pursue his case because it had "become too complex." Desperate with medical and out-of-pocket expenses piling up, Mr. Kelly contacted **SDSBS** attorneys **Karen Terry** and **Brian Sullivan**. They agreed to take on the challenge despite the short time left within which to file.

*(Continued on page eleven.)*





## An Advertised 'Stroke Hospital' Proves To Be No Such Thing

*(Continued from page one.)*

Medical authorities refer to a "golden window" for strokes – that period of time, six hours following the onset, in which treatment of the damage caused by the stroke may be successful. In Cathy's situation, it was not until the "golden window" had opened and closed that the hospital's nurses contacted anybody. At this point, however, the stroke had caused such severe brain damage that Cathy was essentially untreatable. She went into organ failure and died a short time thereafter.

The Crawford family was furious that a "designated stroke hospital" would allow this to happen. The family sought a law firm and an attorney with trial muscle who could bring some justice into their lives to help relieve their loss. The Crawford family asked senior partner **Greg Barnhart** to bring a case against the hospital.

The hospital fought back, arguing that the stroke was so severe there was nothing that could have been done. They contended that any procedures that involved entering blocked veins or arteries were considered unreliable and Cathy would have died anyway. Finally, the hospital argued, the caps on the damage statute limiting damages for grief, bereavement, pain, and suffering in malpractice cases would apply, severely limiting the amount that could be recovered by the Crawfords.

Both Mr. Barnhart and his client independently filed complaints against the hospital with the Florida Agency for Health Care Administration. The Agency found the hospital to be negligent. Specifically, it found that the nurse did not follow the hospital's Physician Notification Policy, that she failed to notify the doctor immediately when a change in the patient's condition was observed, and that she failed to perform a neurological assessment when told by the physical therapist that there was a change in the patient's condition. So fundamentally wrong was this nurse's behavior that the reviewing doctor for the Agency wrote, "definite changes in patient's status were not acted upon. This was an egregious error in clinical assessment."

The hospital's attorneys continued to assert that whatever the nurse did or did not do, nothing would have changed the outcome because the stroke was so severe. According to the defense, Mr. Barnhart and the Crawford family would have to show that, had the stroke been properly recognized, it could have been treated.

In response to the defendant's arguments regarding the cap on damages, Mr. Barnhart maintained throughout the case that the cap on human damages in medical malpractice wrongful death cases was unconstitutional because it denied due process of law to senior citizens and non-working women and children, thus denying these persons full equal protection under the Florida constitution.

Shortly before trial, the parties reached a settlement of \$800,000 for the Crawford family. ♦

Review of the facility's Policy on Provision of Patient Care revealed that the patient must be assessed when there is a significant change in condition. The facility's Director of Nursing Practice and Clinical Excellence stated that the RN assumed the MSO4 caused the patient to become lethargic;

... she did not follow the facility's Physician Notification Policy, and failed to notify the physician immediately when a change was observed...  
**did not notify the charge nurse until 4 p.m. ...and did not perform a neurological assessment.**

- - excerpt from an interview with the Florida Agency for Health Care Administration



# Unrestrained Dog Creates Mayhem Causing Injury to Neighbor and Liability on Owner

In early 2009, 73-year-old Jerry Flaherty (not his real name) was heartbroken at the thought of “putting down” his beloved black lab, Major Boone. Rather than allow the dog to suffer, he did what needed to be done. Jerry, a widower, lived alone in a small, single-family home in Lake Worth, Florida. He truly missed the joy and companionship of having a dog. In spring of 2010, he visited a local animal shelter and found a black lab puppy who was the spitting image of Major Boone. Needless to say, Jerry had to bring the dog home. He named the puppy Colonel Boone.

One beautiful spring evening, Jerry walked Colonel Boone along South Palm Way, a dog-friendly street divided by a grassy median, replete with signs reminding dog owners to keep their dogs leashed. He noticed Brenda Smith (not her real name) walking two Schnauzers along the opposite side of the street. Jerry saw that Ms. Smith was trying to restrain her Schnauzers, who were trying to pull her across the grassy median toward him.

At first, the Schnauzers seemed friendly. Suddenly, the two Schnauzers began barking. One of them turned, backed out of his collar, and ran barking and snarling toward Colonel Boone.

Ms. Smith apologized and quickly grabbed the aggressive Schnauzer and replaced the collar around the dog’s neck. As she tried to pull the dog away, the Schnauzer suddenly turned and spun out of its collar a second time. This time, it attacked Colonel Boone, who, unlike his namesake of French and Indian War fame, quickly retreated, running behind Jerry with the snarling Schnauzer following him.

The frightened Colonel Boone ran circles around Jerry, whose legs became tangled in the dog’s leash. Jerry was abruptly thrown onto the pavement, landing on his right hip. He immediately felt severe pain and could not stand up or move his legs. Ms. Smith struggled to control her dogs who, by this time, were barking incessantly.



**Colonel Boone:**  
**target of unrestrained dog.**

Hearing the commotion, neighbors ran out to aid Jerry. Upon learning that Jerry was in severe pain and unable to stand or walk, the neighbors called an ambulance. He was taken to the emergency room of a local hospital. X-rays disclosed a complete transverse acute right femoral fracture with displacement. The following day, Jerry was taken to surgery for a total hip replacement. He remained in the hospital as an in-

patient for five days, and then went through painful in-patient physical rehabilitation for the next thirty days. Jerry was obviously unable to care for Colonel Boone. Fortunately, friends contacted him and took Colonel Boone into their home for care while Jerry was rehabilitating.

The bills for the retiree’s medical treatment and care exceeded \$90,000. Jerry called Ms. Smith to report his injuries and outstanding bills. Rather than offer to help, she claimed Jerry’s dog was responsible for his injuries, not her Schnauzers. Ms. Smith then said, “Call my

insurer...” Jerry did so and was surprised when the insurance adjuster told him that he and his dog were responsible for his injuries.

Outraged, he contacted **SDSBS** attorneys **Karen Terry** and **Brian Sullivan** who knew that owners of dogs are liable for any damage done by their dogs to a person, or to any other animal. The Florida statute imposes strict liability on the owner of an aggressive dog which injures anyone. Florida courts are quite fond of pointing out that the statute virtually makes the owner an insurer of the dog’s conduct. This statute is distinguished from the so-called “dog bite” statute in that the latter applies to injuries caused

*(Continued on page ten.)*

The Florida statute imposes strict liability on the owner of an aggressive dog which injures another...the statute virtually makes the owner an insurer of the dog’s conduct.

**Ms. Smith, as the owner of the dog, had a strict duty to properly control and restrain it. In this instance, she failed to do so.**

## Speaking Opportunities



*Above: (l-r) Philip Hutchinson, John Howe, Supreme Court Justice James Perry, Sia Baker-Barnes, and Laurie Cohen. Below: Sia and her father, Honorable Moses Baker.*



**Sia Baker-Barnes** spoke at the Mentoring Roundtable held by the Florida Association for Women Lawyers on August 25, 2011. The topic for the Roundtable was "Women Making Rain," with presentations on bringing in business. On October 14, 2011, Ms. Baker-Barnes co-chaired the Palm Beach County Bar Association's Second Biennial Diversity Summit. A member of PBCBA's board of directors, and co-chair of the Committee for Diversity and Inclusion, she introduced the keynote speaker, Florida Supreme Court Justice James E. C. Perry. Ms. Baker-Barnes also spoke at the Florida Justice Association's Auto Negligence Seminar held November 16, 2011, in Fort Lauderdale, Florida. Her topic was "Motions in Limine" in automobile negligence cases. ♦



**Chris Searcy**

**Chris Searcy** spoke September 16, 2011, at the National Interstate Trucking Super Summit for Plaintiff Lawyers, a CLE event hosted by the Association of Plaintiff Interstate Trucking Lawyers of America (APITLA). The conference was held at the St. Louis Union Station Marriott in St. Louis, Missouri. APITLA is a national association of committed lawyers who have joined together to help eliminate unsafe and illegal interstate trucking practices. The subject of the conference was "Learn How to Bullet-Proof Your Interstate Trucking Case for Trial." Mr. Searcy spoke on "Hours of Service Violations: Proof/Conscious Disregard for Life and Safety." ♦



**Brenda Fulmer**

**Brenda Fulmer** provided two presentations for the Mass Torts Made Perfect Seminar held in Las Vegas, Nevada. On October 18, 2011, her topic was "Competing with the High-Rollers on a Penny-Slot Budget." On October 21, 2011, Ms. Fulmer presented the topic "Leveraging Client Databases, Marketing, Resources and Intake to Identify Mass Tort Cases." MTMP hosts seminars that are designed to help plaintiff attorneys succeed in all aspects of their practices. ♦



**Karen Terry**

**Karen Terry** participated in a panel presentation for the American Board of Trial Advocates' Professionalism Seminar held August 26, 2011, in West Palm Beach, Florida. The subject of the presentation was "A View From the Trial Bar: Professionalism and Ethics in the Courtroom." Ms. Terry also spoke at a Mass Torts Made Perfect seminar held October 14, 2011, in Las Vegas, Nevada. Ms. Terry provided presentations for three separate panels: "Voir Dire;" "Putting Your Best Foot Forward – the Persuasive and Winning Opening Statement;" and "Managing, Handling, and Trying the Plaintiff's Case in Chief." ♦



## Meeting Corner:

*We welcome the newest members of the Searcy Denney law firm.*



**Mariano Garcia** has practiced law in West Palm Beach, Florida, since 1994, representing people in personal injury and commercial litigation cases. He joined SDSBS in July 2011 as a bilingual lawyer with extensive experience and long-standing commitment to representing the Latino community.

Mr. Garcia's parents moved the family from Argentina to New York City when he was eight, and then to Florida in the late 1970s. It was his parents' belief in America as the land of opportunity, and their emphasis on education and hard work, that inspired Mr. Garcia to earn his bachelor's degree from the University of Florida and his law degree from St. Thomas University School of Law.

Passionate in his belief that everyone should have a voice in our justice system, Mr. Garcia gives his time to causes that are devoted to this principle. He is the immediate past-president of the Legal Aid Society of Palm Beach County which provides free legal services to the disadvantaged in the community. He is a member of the American Board of Trial Advocates and has served as president of the Hispanic Bar Association of Palm Beach County. In September 2010, he was appointed to serve a four-year term on the 15th Circuit Judicial Nominating Commission, screening judicial applicants to the Palm Beach County court system. ♦



### **Cameron M. Kennedy**

joined SDSBS in 2011. His practice is focused on cases involving catastrophic injury and death. He was recognized by Florida Super Lawyers 2011 as a "Rising Star" in the area of personal injury law.

Mr. Kennedy was admitted to The Florida Bar in 2006, and is admitted to practice before the Florida Supreme Court; the First District Court of Appeals; and the United States District Court, Northern District of Florida. He is an EAGLE member of the Florida Justice Association, serving on its board of directors. He is also a member of the American Association for Justice, the American Bar Association, the American Inns of Court, The Florida Bar Association, and the Tallahassee Bar Association.

A third-generation Tallahassee native and a fourth-generation Floridian, Mr. Kennedy earned both his undergraduate and law degrees from Florida State University. Mr. Kennedy volunteers with North Florida Legal Services and the Guardian Ad Litem Program providing pro bono legal services. ♦



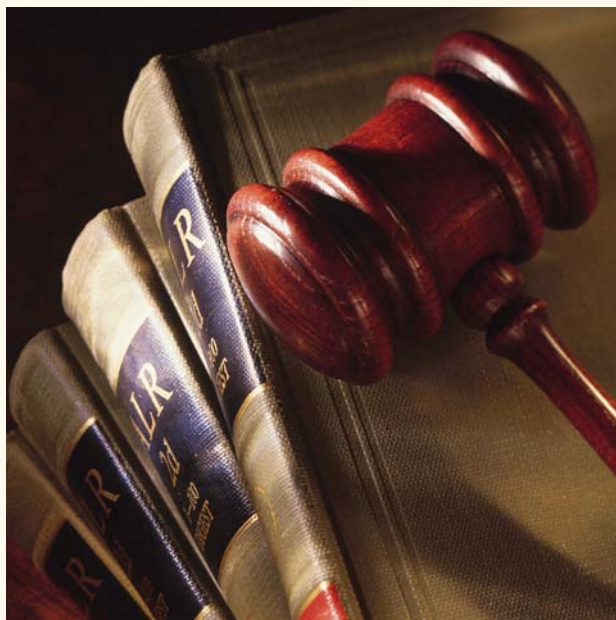
### **Donald J. Ward III**

grew up in Virginia Beach, Virginia, graduating from the University of Virginia with a bachelor's degree in history and religious studies. As an undergraduate, he studied at the University of Oxford in England,

researching healthcare systems. He graduated cum laude from the University of Notre Dame Law School in May 2011. While attending Notre Dame, Mr. Ward was vice-president of the Student Bar Association, president of Phi Alpha Delta Legal Fraternity, and a mediator with the University's Legal Aid Clinic.

Mr. Ward clerked at SDSBS for two summers during law school. Shortly after graduation, he joined the firm. He works closely with Chris Searcy on wrongful death and catastrophic injury cases.

Mr. Ward is admitted to practice in the United States District Courts of the Northern and Middle Districts of Florida. He is a member of The Florida Bar, Palm Beach County Bar Association, Florida Justice Association, American Bar Association, and American Association for Justice. ♦





## Mass Tort Projects of Interest

### PRESCRIPTION AND OVER-THE-COUNTER DRUGS

#### Drug Name

Injury

#### Accutane

Inflammatory Bowel Disease

#### ACTOS, ACTOplus met, ACTOplus metXR, Duetact

Bladder Cancer

#### Avandia

Heart Attack  
Congestive Heart Failure  
Ischemic Stroke  
Sudden Cardiac Death

#### Bisphosphonates (Fosamax, Zometa, Aredia, and others)

Jaw Osteonecrosis  
Long Bone Fractures  
Esophageal Cancer

#### Crestor

Rhabdomyolysis  
Kidney Failure  
Congestive Heart Failure  
Necrotizing Myopathy  
Cardiomyopathy  
Sudden Cardiac Death

#### Darvon & Darvocet

Sudden Cardiac Death  
Arrhythmia

#### Diflucan

Birth Defects

### Gadolinium-Based MRI Contrast Agents

Nephrogenic Systemic Fibrosis

#### Propecia

Sexual Dysfunction  
Male Breast Cancer

#### Propofol

Heart Failure  
Respiratory Failure  
Death

#### Raptiva & Rituxan

Neurological disease

#### Seroquel & Zyprexa

Hyperglycemia

#### SSRI Antidepressants (Paxil, Celexa, Effexor, Lexapro, Pristiq, Prozac, Zoloft)

Birth Defects  
Pulmonary Hypertension

#### Topamax

Birth Defects  
Cleft Palate

#### Trasylol (Aprotinin)

Kidney Failure

#### Yaz, Yasmin & Ocella

Blood Clots  
Deep Vein Thrombosis  
Gallbladder Disease  
Pulmonary Emboli  
Stroke  
Sudden Cardiac Death

#### Zocor

Rhabdomyolysis  
Kidney Failure

### MEDICAL EQUIPMENT AND IMPLANTED DEVICES

#### Medical Device

Injury

#### Bard Composix Kugel Hernia Mesh

Bowel Injury and Fistula Formation

#### Knee Implants (DePuy, Stryker, Zimmer, and others)

Device Failure  
Inflammatory Response

#### Metal-on-Metal Hip Implants (DePuy, Zimmer, Stryker, and others)

Device Failure and Loosening  
Inflammatory Response  
Metallosis

#### NuvaRing Contraceptive Device

Blood Clots  
Deep Vein Thrombosis  
Pulmonary Emboli  
Stroke  
Sudden Cardiac Death

#### Post-Operative Disposable Pain Pumps

Chondrolysis (Cartilage Destruction)

#### Transvaginal Mesh Bladder Slings & TVT Tape (Bard, Johnson & Johnson, Mentor, Boston Scientific, AMS, and others)

Tissue Erosion  
Device Failure

Please call our Mass Tort Unit if you have been harmed by a drug or medical device

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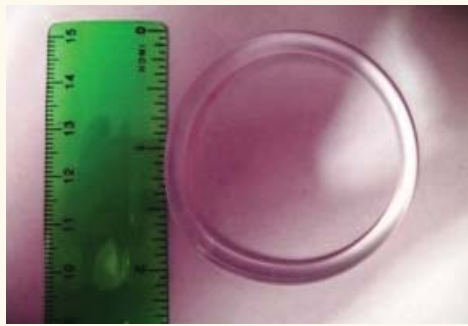


## Yaz, Yasmin & Ocella

**USE:** Birth control pills for contraception and PMDD (premenstrual dysphoric disorder)

**DEFECT:** Failure to warn of increased risks due to unique progestin

**HARM:** Blood clots, DVT, strokes, heart attacks, pulmonary emboli, gallbladder disease, and sudden cardiac death



## NuvaRing Contraceptive Device

**USE:** Contraceptive ring inserted vaginally and left in place for three weeks at a time

**DEFECT:** Fails to deliver uniform levels of hormones

**HARM:** Blood clots, DVT, strokes, heart attacks, pulmonary emboli, and sudden cardiac death



## SSRI Antidepressants

**USE:** Taken by pregnant women for depression

**DEFECT:** Failure to warn of risks to fetus during first trimester

**HARM:** Numerous birth defects and developmental disorders



## ACTOS, ACTOplus met, ACTOplus met XR, Duetact

**USE:** Lowers blood sugar levels and helps patients with diabetes use insulin more efficiently

**DEFECT:** Provides limited benefits and substantial risks to patients

**HARM:** Bladder cancer



## Metal-On-Metal Hip & Knee Implants

**USE:** Hip and knee implant devices used in joint reconstruction and manufactured by DePuy, Zimmer, Stryker, and others

**DEFECT:** Breakdown of metallic surfaces and abnormal wear

**HARM:** Premature device failure; elevated cobalt and chromium in blood causing metallosis and pseudo-tumor formation



## Osteoporosis Drugs

**USE:** Strengthen bones that are weakened due to osteoporosis, osteopenia, Paget's disease, or bone metastases

**DEFECT:** Impairs body's ability to repair damage to bones, especially leg and jaw bones

**HARM:** Femur fractures, jaw osteonecrosis, and possibly esophageal cancer

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## Ten SDSBS Attorneys Selected for Inclusion in 'The Best Lawyers in America 2012'

Since its inception in 1983, *Best Lawyers* has become universally regarded as the definitive guide to legal excellence. Selection is based on an exhaustive peer-review survey in which more than 41,000 leading attorneys cast almost 3.9 million votes on the legal abilities of other lawyers in their practice areas. The survey includes the selection of the practice areas in which lawyers are recognized by their peers. Lawyers are not required or allowed to pay a fee to be listed. Inclusion in *Best Lawyers* is considered a singular honor.

*U. S. News & Best Lawyers* also announced the selection of **SDSBS** in its 2011-2012 listing of *Best Law Firms*. SDSBS was listed in the West Palm Beach Tier 1 for the following areas of practice: Mass Tort Litigation/Class Actions – Plaintiffs; Medical Malpractice Law – Plaintiffs; Personal Injury Litigation – Plaintiffs; Product Liability Litigation – Plaintiffs. SDSBS was also listed in Tier 2 for areas of practice including Commercial Litigation and Litigation – Eminent Domain and Condemnation Litigation. ♦

## Unrestrained Dog Creates Mayhem Causing Injury to Neighbor and Liability on Owner

*(Continued from page 5.)*

by the bite of a dog, while the former encompasses any other injury caused by a dog. Based upon Florida law, Ms. Smith, as the owner of the dog, had a strict duty to properly control and restrain it. In this instance, she had failed to do so. A settlement demand for Ms. Smith's homeowner's policy limits was made, but the assigned adjuster continued to deny liability and took the position that where there was no contact between Ms. Smith's Schnauzers and Colonel Boone, Ms. Smith had no liability for Jerry's injuries.

Initial settlement negotiations were met with painfully small offers. A lawsuit was filed on Jerry's behalf against Ms. Smith. It included claims for Jerry's medical bills, pain, and suffering. Attorneys Terry and Sullivan began discovery, setting a date for depositions of Ms. Smith and other witnesses to the incident. This was followed by a proposal for settlement for just under policy limits.

During Ms. Smith's deposition, she admitted that had she properly secured and restrained her Schnauzers this unfortunate incident would not have happened. Following the deposition of Ms. Smith, the insurance company finally tendered limits which resulted in a \$295,000 recovery for Jerry.

Because of the injury to his hip, Jerry asked the kind family who took care of Colonel Boone during his rehabilitation if they would be able to continue to care for his dog. By then, Colonel Boone had become a member of his new family, and they gladly agreed to keep him. Jerry continues to visit Colonel Boone on a regular basis and is hopeful, should his physical condition continue to strengthen and improve, that he may get another dog in the future. ♦

## SDSBS Websites:



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for the latest news and information on  
our firm, attorneys, articles, cases, etc.



Log on to...

**www.SearcyMassTort.com**  
for the latest news and information on  
Mass Torts (where many people are  
harmed in a similar way, usually by a  
drug, medical device or a product.)



Log on to...

**www.VozParaLaJusticia.com**  
for the latest news and information  
about our firm in Spanish.

## Inadequate Pedestrian Barriers Create Dangerous Fall Situation at Retail Store

*(Continued from page three.)*

Ms. Terry and Mr. Sullivan found that the previous attorneys had done very little investigation of the case. The SDSBS attorneys asked an architectural engineer to inspect the Staples premises and he confirmed that the precipitous drop in curbing was in violation of both state and local building codes. This curb defect was the cause of Mr. Kelly's fall and his severe injuries. They immediately filed suit, naming as defendants the Staples Office Superstore, the owner of the mall, and the companies that were performing construction at the time of the accident.

Not unexpectedly, the defendants' insurers took a defiant position, blaming Mr. Kelly for his failure to "look where he was going." They insisted that he failed to take reasonable notice of traffic barriers present in the area. Depositions from Mr. Kelly and the defendant contractor lasted for hours. Discovery revealed that there had been another fall at the curbing prior to Mr. Kelly's.

Ms. Terry and Mr. Sullivan decided on early mediation, hoping to contain litigation costs and allow presentation of the code violations. At mediation, evidence was presented showing that the defendants had used traffic barriers rather than pedestrian barriers, which would have made it impossible for a pedestrian to walk between the barriers to enter or exit the premises. Staples admitted that they had failed to provide patrons an adequate warning of the ongoing construction. Evidence was also presented showing that Staples could have simply postponed the grand opening until the premises were safe for patrons.

Mediation was contentious. The parties finally agreed to a substantial six-figure settlement for Mr. Kelly's permanent injuries. ♦





## Accolades

### **Jack Scarola recognized in the inaugural publication of Super Lawyers Business Edition 2011**



**Jack Scarola** was named in the inaugural publication of Super Lawyers Business Edition 2011 listing attorneys who are outstanding in their areas of business practice. Mr. Scarola's recognition was noted under the area of business litigation.

The selection follows a rigorous process which produces a list of lawyers who have attained high peer recognition, meet ethical standards, and have demonstrated achievement in their field. ♦

### **Brenda Fulmer appointed to boards of governors of FJA and AAJ; she also received recognition at AAJ convention for providing free legal representation to families suffering losses in 9/11**



**Brenda Fulmer** was recently appointed to the board of governors of the Florida Justice Association. She is active in FJA's lobbying activities in Tallahassee, especially on behalf of foster children, and serves as secretary of the FJA Women's

Caucus. She has also been appointed to the board of governors of the American Association for Justice (AAJ) and works actively on AAJ's Marketing and Client Services Committee, Membership Oversight Committee, and the AAJ Women's Caucus. She serves on the board of directors of the Civil Justice Foundation on behalf of the Women's Caucus. Ms. Fulmer has lobbied Congress for several years on issues concerning medical device and prescription drug safety. She was recently appointed by AAJ leadership to the Lawyers Giving Back Task Force.

Ms. Fulmer is one of a number of lawyers who received recognition at the AAJ convention in New York City at an event noting the tenth-anniversary of 9/11. Working through AAJ's Trial Lawyers Care Program, volunteer lawyers provided free legal representation to families who suffered losses in connection with 9/11. ♦

### **Cal Warriner one of three attorneys appointed to lead multi-district proceedings in class action lawsuit**



**Cal Warriner** is one of three attorneys appointed to lead the multi-district litigation proceedings in lawsuits filed against Mentor Corporation, producer of the OBTape Transobturator Sling product. The device was produced by Mentor in

2003 for use in certain kinds of surgical procedures to treat stress incontinence, a medical condition common in women. A vaginal sling reinforces muscles weakened by childbirth and other causes, helping to control urinary function. Almost immediately after its introduction, design and manufacturing defects were reported to the Food and Drug Administration. Complications are severe and often permanent, including the breakdown of vaginal tissue, chronic discharge, serious infection, and similar conditions. ♦

### **Mariano Garcia general counsel for Historical Society of Palm Beach County; also member of board of directors of Palm Beach Chapter, American Board of Trial Advocates**



In July 2011, **Mariano Garcia** was asked to serve as general counsel for the Historical Society of Palm Beach County, Florida. This role will be in addition to his responsibilities as a member of the Society's board of governors. The Historical Society operates the county's history museum located at the restored 1916 Palm Beach County Courthouse in downtown West Palm Beach. ♦

**For more information: [www.historicalsocietypbc.org](http://www.historicalsocietypbc.org)**

In November 2011, Mr. Garcia was sworn in as a member of the 2012 board of directors of the American Board of Trial Advocates, Palm Beach Chapter. Mr. Garcia was also named membership chair. ABOTA's mission is to preserve our constitutional right to trial by jury and to foster the highest ethical and technical standards in legal advocacy. ABOTA is also committed to preserving the independence of our judiciary. ♦

**For more information: [www.abota.org](http://www.abota.org)**

# Diabetes Drug, Approved by FDA, Has Very Serious Undisclosed Side Effects

Believe it or not, a drug can be approved by the Food and Drug Administration (FDA) and still have undisclosed side effects. A recent example is the popular diabetes drug ACTOS. In a one-two punch to millions of Type 2 diabetes patients, the FDA has announced that ACTOS may be associated with an increased risk of bladder cancer, and the American Diabetes Association presented a study linking ACTOS with an eye disease that can lead to blindness. These findings are in addition to older safety concerns about the drug's link to heart attacks, strokes, liver failure, and other serious harm.

ACTOS is one of a class of drugs called thiazolidinediones that are used to treat patients with Type 2 diabetes mellitus. ACTOS works by decreasing the body's resistance to insulin, thus helping to control blood sugar levels. The drug is taken by mouth, in pill form, usually once a day, with or without food. ACTOS is not used for Type 1 diabetes – where the body does not produce any insulin of its own – or for a related condition called diabetes ketoacidosis. But ACTOS has become a critical part of the health maintenance regimen of millions of people with Type 2 diabetes. So you can imagine their shock when they learned that a Northern California study of 193,000 diabetic patients with Type 2 diabetes found that diabetics who took ACTOS had a 40% higher risk of developing bladder cancer than a control group. ACTOS was approved by the FDA in July 1999. Prior to the public release of this study in 2011, there was no disclosed cancer warning in the ACTOS labeling information or the Patient Medication Guide.

## Here is a summary of recent safety alerts for ACTOS:

- ◆ On September 17, 2010, the FDA issued a Drug Safety Communication associating ACTOS with an increased risk of bladder cancer among patients exposed to the highest cumulative dose of ACTOS and the longest exposure to ACTOS. However, the FDA concluded that “findings from studies in animals and humans suggest this is a potential safety risk that needs further study.” Healthcare professionals and patients were advised to continue to follow recommendations in the ACTOS drug warning label.



- ◆ In June 2011, a study by Dr. Carlo Piccinni and others with the University of Bologna was published in *Diabetes Care*. This article, “Assessing the Association of Pioglitazone Use and Bladder Cancer through Drug Adverse Event Reporting,” reflected Dr. Piccinni's finding that of 93 bladder cancer cases reported between 2004 and 2009 by patients with diabetes, one-third of these patients were being treated with pioglitazone (ACTOS).
- ◆ On June 15, 2011, the FDA issued a Drug Safety Communication based on the agency's review of data from a planned five-year interim analysis of an ongoing, ten-year observational cohort study, as well as a nested case-control study, among patients with diabetes mellitus (Type 2) who are members of the Kaiser Permanente Northern California health plan. The study involved review of data collected from January 1, 1997, through April 20, 2008. Analysis indicated that among those taking ACTOS for more than a year (30,173 patients), the risk of bladder cancer increased 40% over the risk of bladder cancer in patients who had never taken ACTOS.

The FDA also noted its awareness of a retrospective cohort study of data collected between 2006 and 2009 from the French National Health Insurance Plan, which included 1.5 million patients with diabetes. This study showed a statistically significant increase in the risk of bladder cancer in patients exposed to ACTOS, compared to patients who used other anti-diabetic drugs. Similar to findings of the Kaiser Permanente study, the French study found that increases were related to higher doses and longer use of ACTOS. France and Germany immediately suspended the use of ACTOS on the basis of the French study results. ACTOS is scheduled to be recalled in New Zealand, as well.

The lawyers at Searcy Denney are pursuing lawsuits on behalf of patients who have developed bladder cancer or suffered other significant injuries as a result of taking ACTOS, Avandia, and other defective and dangerous drugs. ◆

Visit our new website for more information:  
**[www.SearcyMassTort.com](http://www.SearcyMassTort.com)**



### **'Second Harvest Food Bank of Big Bend' aided by staff of SDSBS Tallahassee office**

Volunteers from SDSBS's Tallahassee office participated in the October 1, 2011, Neighbors Helping Neighbors, a community effort to prepare packages of nutritious, non-perishable high-energy meals that were donated to the Second Harvest Food Bank of the Big Bend. The event was held at Godby High School in Tallahassee, Florida, drawing over 400 volunteers to work on the meal packages. "One in four children in the Big Bend is hungry," Stephanie Kilham, Second Harvest's food resource manager reported in the Tallahassee Democrat. "These meals will ensure that they are fed." ♦

For information: [www.fightinghunger.org](http://www.fightinghunger.org)



### **Assisted by SDSBS employees, 'School Uniform Initiative' gave out new and recycled school uniforms to needy students**

In August 2011, SDSBS employees participated for the third year in the annual "School Uniform Initiative," distributing new and recycled uniforms to students from needy families. The event was part of the Back-to-School Bash held at the Convention Center in West Palm Beach, Florida. Volunteers stocked and distributed the uniforms, as well as provided "personal shopper" assistance to help families select colors, styles, and sizes. ♦

**Taking...**

*Time to Care*



### **SDSBS a sponsor for 'Big Bash 2011' Champagne Party in Tallahassee in support of Big Brothers Big Sisters of the Big Bend**

SDSBS staffers attended the Big Bash 2011 Champagne Party held August 26, 2011, at the Hotel Duval in Tallahassee, Florida. SDSBS was a sponsor of the event. Proceeds support the Big Brothers Big Sisters of the Big Bend to nurture children and strengthen communities while helping children realize their potential and build a future. ♦

For more information: [www.bigbendmentoring.org](http://www.bigbendmentoring.org)





*Board members of Jack the Bike Man.*

### **Mariano Garcia and SDSBS contribute aid to 'Jack the Bike Man', with lots of gifts of bikes for children during the holiday season**

"Jack the Bike Man" is an organization devoted to collecting used bikes, refurbishing them, and giving them away to needy kids during the holidays. Last year, Jack (a.k.a., Jack Hairston) and his organization gave away 700 bikes, putting smiles on the faces of many kids and their families in West Palm Beach, Florida. SDSBS plays a major role in supporting Jack the Bike Man through numerous efforts including donating new bikes as well as cash to buy parts for repairs; providing pick-up and delivery of bikes; advertising to raise public awareness of Jack's programs; and providing volunteers, snacks, t-shirts and other support on the day of the bike giveaway. Attorney **Mariano Garcia** serves on the board of directors for Jack the Bike Man and is very active with the program. This holiday season, join SDSBS in contributing to Jack the Bike Man. Gather your old bikes and bike pieces, or buy a new bike, and deliver them to Jack. Give yourself and some child a happier holiday. ♦

**For more information:** [www.jackthebikeman.org](http://www.jackthebikeman.org)



### **SDSBS employees participate in banquet and auction to benefit North Palm Beach Chapter of the Coastal Conservation Association**

SDSBS employees participated in the 26th Annual Banquet & Auction held by the North Palm Beach Chapter of the Coastal Conservation Association. The banquet was held October 22, 2011, at the Jupiter Beach Resort in Jupiter, Florida. SDSBS was a sponsor for the event. CCA is a non-profit marine conservation organization working in an advocacy role to protect marine resources. ♦

**For information:** [www.CCAFlorida.org](http://www.CCAFlorida.org)



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*Season's Greetings...*



*...and Best Wishes  
for the Coming Year*