

# Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 13, NUMBER 1

## \$5.5 million awarded to family of smoker with 40-year addiction

**Jury found in favor of the plaintiff on every liability issue presented.**

In December 2012, a Tallahassee jury awarded \$5.5 million to the widow of a man who died of lung cancer after more than 40 years of nicotine addiction. SDSBS attorneys **Jim Gustafson** and **Bill Norton**, and former SDSBS attorney David Sales, tried the case against Philip Morris USA, Inc. and Liggett Group, LLC, on behalf of Nan Buchanan, whose husband, Mitchell "Ike" Buchanan, died of small cell lung cancer in 1995. Ike began smoking as a teenager in the 1940's - a time when about 80% of people his age smoked. Ike had been addicted to the nicotine in cigarettes for nearly 20 years before the tobacco industry began placing caution labels on cigarette packs.

Testimony by family members, friends, and experts, and damning internal documents authored by the defendants themselves provided unassailable evidence that the tobacco companies had endeavored not only to increase the addictiveness of their products, but to conceal that effort from the public. The tobacco



**Ike Buchanan with his wife and two sons in early years.**

companies had, in fact, engineered cigarettes to be addictive, to entrap the products' users in a way that ensured future sales, and then spent years lying about it and preventing public knowledge of the truth.

The jury awarded \$5.5 million in compensatory damages, and found in favor of the plaintiff on every liability issue presented to them, a scathing indictment of an industry whose monstrous conduct killed more good Americans than any other phenomenon – natural or man-made – in the history of our nation.

*(Continued on page two.)*

## Brain-injured child makes strides against all odds

**Doctors treated cold symptoms, missing bacterial meningitis.**

In May 2004, a young couple welcomed the arrival of their beautiful, healthy baby boy named Brandon (not his real name). At three months old, Brandon was thriving, meeting all developmental milestones, and in good health. He was described as a happy, smiling baby. In August, Brandon developed cold-like symptoms and his mother took him to see his pediatrician. Although Brandon's mother followed the pediatrician's instructions in the use of medications and a nebulizer, Brandon's symptoms did not improve. By September, Brandon was running a fe-

ver and his mother became alarmed. They returned to the pediatrician who, despite Brandon's worsening condition, did not order any blood tests. He merely instructed the mother to give the baby Tylenol.

Early on October 7, Brandon's mother noticed that the baby felt very hot. She checked Brandon's temperature and found that it was over 103 degrees. She dressed immediately and rushed the baby to the emergency room of a nearby hospital. She told the hospital staff that Brandon was only five months old, and that for the past several weeks he had been wheezing and coughing, suffering from a runny nose, vomiting, and diarrhea, *(Continued on page three.)*

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DENNEY  
SCAROLA  
BARNHART  
& SHIPLEY PA  
ATTORNEYS AT LAW**

## \$5.5 million awarded family of smoker with 40-year addiction

(Continued from page one.)

The Buchanan case is the first *Engle* progeny case to be tried in Tallahassee, Florida. Nan Buchanan's case is one of approximately 8,000 cases filed statewide as a result of a landmark class action suit filed in 1994 by a Miami pediatrician, Dr. Howard Engle, who, like the other class members, began smoking long before the dangers were publicly known, became addicted to nicotine, and suffered from a smoking-related disease. The jury in the original *Engle* case ruled against the tobacco companies in 2000, holding that smoking was addictive and caused a variety of diseases, including lung cancer. However, the Florida Supreme Court reversed the award in 2006, ruling that each person in the class action must prove his/her damages individually. SDSBS has thus far taken ten cases against the tobacco industry to verdict, and is undefeated in those cases.

In the Buchanan case, the defense offered typical tobacco industry double-talk. The defendants attempted to establish that Mr. Buchanan did not smoke their cigarettes and that he did not have lung cancer, even though an oncologist diagnosed and treated Ike for lung cancer, and had certified that the cause of his death was lung cancer. Even though the defendants' own documents showed how successful



their fifty-year campaign of deceit was in keeping addicted smokers smoking, the defendants told the jury that nothing they had done or said had affected Mr. Buchanan. Mr. Gustafson stated, "In 1963, when Philip Morris sent a letter to the United States Surgeon General identifying the contents of cigarette smoke but withholding internal company knowledge and conclusions they knew to be true about the deadly nature of their products, they withheld information that would affect other human beings. They knew people would die and they didn't care. They still don't care. They are unapologetic about what they did, and by the way they defend the cases, it appears they'd do it all over again if they could."

Ike Buchanan was 64 years old when he died. Had he not succumbed to a lifetime of addiction to nicotine, Ike would have been expected to live to the age of 80. He and Nan were together for 45 years. Ike was Nan's best friend, a loving husband, father, and grandfather, and a tremendous member of the Tallahassee community. Ike Buchanan's death was a devastating loss to his wife, his family, and the community. This is one loss, one *Engle* progeny case. We must not forget that it happened to millions of Americans. That is the legacy of the American tobacco industry, and SDSBS will continue to make sure there is a reckoning. ♦

The tobacco companies engineered cigarettes to be addictive, to entrap the products' users in a way that ensured future sales, and then spent years lying about it.

**SDSBS will continue to make sure there is a reckoning.**

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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.

## Doctors treated cold symptoms, missing bacterial meningitis

*(Continued from page one.)*

and now had a high fever. Brandon had been continually irritable, cranky, and tired, and he was not eating normally. At the pediatrician's instruction, she had been treating him with albuterol, Pedia-Care, and a home nebulizer – none of which relieved his symptoms.

The hospital's doctor spent less than 15 minutes evaluating Brandon's condition. The doctor inaccurately recorded the baby's recent medical history, brushing off the information provided by the mother. No laboratory tests were ordered. The doctor did not properly diagnose Brandon's condition and he failed to provide appropriate intervention to treat the critically-ill child. Instead, the doctor simply sent Brandon and his mother back home with a prescription for a mild oral antibiotic. Later that morning, Brandon's mother called the pediatrician to report Brandon's condition, and again the pediatrician failed to appreciate the significance of the baby's symptoms and did not order any tests to further evaluate his condition.

Over the next three days, the baby's condition remained about the same. On October 10, Brandon's mother noticed that his lip was twitching. A vigilant parent, she rushed the baby to an after-hours treatment center. There, he suffered three seizures and was immediately transported to a hospital where he was diagnosed with bacterial meningitis.

Upon admission, Brandon had severe, uncontrollable seizures. An MRI revealed severe brain damage from the ravaging infection. Further evaluation revealed the baby was suffering from hydrocephalus and would require surgery to place a shunt in his head to prevent further brain damage or death. Due to the severity of his injuries, it was necessary to surgically place a G-tube in Brandon in order to feed him.

He was on the verge of death for weeks. Brandon's mother and father were at his bedside during his several months in the hospital, continually praying for a miracle.

Brandon survived the ordeal, but was left with devastating disabilities. And Brandon's parents were left wondering how their healthy, happy baby boy could have been so horribly injured while under the care of doctors. The parents asked SDSBS attorneys **Sia Baker-Barnes** and **Darryl Lewis** to help them find answers to their questions. The attorneys undertook an extensive investigation to review the medical records, and included consultation with the leading experts on meningitis. Their efforts revealed that the hospital, doctors, and nurses involved with Brandon's care had all failed terribly.

healthcare professionals run these tests, discovered the bacteria, and immediately treated Brandon with intravenous antibiotics, meningitis would have been avoided and Brandon would have continued life as a healthy, normal child.

The doctors, nurses, and hospital vehemently defended their actions arguing that the baby looked fine while he was in the hospital and at the pediatrician's office. He was happy and smiling, they said, and therefore could not have had a serious infection. They argued that the mother was not clear about the baby's symptoms leading up to the visit. The defendants also hired multiple experts to defend the medical care.

After years of litigating the case, including a month-long trial that had resulted



Extensive investigation revealed that timely, routine blood tests would have discovered the bacterial infection, and with immediate treatment,

**serious damage could have been avoided and Brandon would have continued life as a healthy, normal child.**

Because of Brandon's very young age, his high fever, and a host of other symptoms, doctors were obligated to rule out something more serious than a simple virus. The medical experts testified that timely, routine blood tests such as a complete blood count and a blood culture would have revealed that Brandon had bacteria in his blood – a potentially deadly condition that could lead to meningitis. Had the

in a hung jury, plaintiffs' attorneys were able to reach a confidential, multi-million dollar settlement with all defendants. With the proceeds from the settlement, Brandon is receiving nursing care and intensive therapy. He is reaching milestones that doctors thought he could never reach. Just last year Brandon started walking, and the family is now hopeful that one day he will be able to talk . ♦





## Meeting corner: **Kelly Hyman**

Please welcome our newest associate attorney, **Kelly Hyman**, who joined SDSBS in 2012. Ms. Hyman previously served as law clerk for Judge Brian Sandoval in the U. S. District Court for the District of Nevada, for Judge Robert Mark in the U. S. Bankruptcy Court, Southern District of Florida, and for Judge Wendell Graham in the Eleventh Judicial Circuit Court for the State of Florida. A native Floridian, Ms. Hyman was raised in New York City and southern California. She earned her bachelor's degree in communications from UCLA and worked as an actress, appearing in numerous television shows and commercials. While studying for her undergraduate degree, she served as a White House intern in the Office of Presidential Inquiries. Ms. Hyman earned a master's degree in communications from Barry University before going on to law school. In 2003, she was awarded a juris doctor with honors from the University of Florida College of Law. She is a member of The Florida Bar, The Federal Bar for the Southern District of Florida, and the Palm Beach County Bar Association. ♦

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## Accolades



### **Brenda Fulmer Co-chair for AAJ Marketing, Client Service Committee**

In December 2012, Mary Alice McLarty, president of the American Association for Justice, appointed **Brenda Fulmer** co-chair of the organization's Marketing and Client Service Committee. ♦



### **Sia Baker-Barnes appointed to Black History Month Committee**

**Sia Baker-Barnes** has been appointed to the Southern District Court of Florida's Black History Month Committee. The Committee will oversee events commemorating Black History Month. ♦



### **Mariano Garcia joins board of directors of West Palm Beach YMCA**

In December 2012, **Mariano Garcia** joined the board of directors of the YMCA in West Palm Beach, Florida. Besides the usual YMCA programs that have served the community since 1917, the West Palm Beach facility provides day-care services and evening programs for children and adults. It also operates Camp McConnell, a 200-acre summer camp located in Micanopy, Florida. ♦



### **Laurie Briggs receives Fla. Justice Association's 'Rising Star' Award**

**Laurie Briggs** received the Florida Justice Association's Rising Star Award in October 2012 at the Founders Award Dinner held at the Boca Raton Resort & Club in Boca Raton, Florida. The newly-created Rising Star Award recognizes members who demonstrate a commitment to developing legal, legislative, and civic responsibility, and whose work reflects a strong emphasis on defending the civil justice system. Awardees show exemplary promise as future leaders of FJA. ♦



### **Kelly Hyman co-chair of Federal Law Section of Palm Beach County Bar**

At the 2013 Bench Bar Conference **Kelly Hyman** was recently appointed co-chair of the Federal Law Section for the Palm Beach County Bar. ♦

## 'Most Effective Lawyers 2012'



**Chris Searcy**



**John Shipley**

SDSBS attorneys **Chris Searcy** and **John Shipley** were chosen by the *Daily Business Review* as its "Most Effective Lawyers 2012" in the category of personal injury. *DBR* is an information source and communication forum for south Florida lawyers and business professionals. In its December 2012 edition, *DBR* noted the attorneys' efforts on behalf of plaintiffs in a truck crash that resulted in the death of two people in November 2006. (See archived SDSBS newsletter, *Of Counsel*, Vol. 12 – No. 1.) Vince and Judy Modica were heading south on I-95 near Jacksonville, Florida, when they came to a stop due to a traffic backup caused by an accident. A tractor-trailer truck owned by the Tree of Life, a health-food distributor, and driven by employee Michael Wright, slammed into the back of the Modicas' car, crushing the car and causing a fire. The Modicas suffered a horrific death. The couple's adult sons engaged Mr. Searcy and Mr. Shipley to represent them in a wrongful death case. The attorneys hired a trucking industry expert and an accident reconstructionist to establish that the driver had fallen asleep at the wheel after driving well beyond maximum weekly hours, and that his employer, Tree of Life, had provided incentives for its drivers to dangerously exceed the federal limitations on driving hours. By the end of the testimony for the plaintiffs, the defense's "shadow jury" all had tearful eyes. The defense's insurance company agreed to a settlement of \$17.5 million. This settlement was noteworthy because of the difficulty in obtaining large pain and suffering awards for survivors who are adults, well-established in the world, and no longer dependent upon their parents. "They just wanted somebody to take notice," said Mr. Shipley. "They just wanted somebody to care." ♦

## U. S. Supreme Court denies Big Tobacco's request to reverse SDSBS wrongful death case

On November 26, 2012, the United States Supreme Court denied *certiorari* on *R. J. Reynolds Tobacco Co. et al. v. Clay*, rejecting Big Tobacco's request that it reverse a Pensacola, Florida, jury's 2010 award of over \$21 million to the survivors for the wrongful death of a lifelong cigarette smoker. SDSBS attorneys **Bill Norton**, **Brian Denney**, and **Hardee Bass** tried the case on behalf of the family of Janie Mae Clay who began smoking at the age of 14, and continued to smoke until quitting four years before her death in 2003 from chronic obstructive pulmonary disease.

The Clay case against R. J. Reynolds Tobacco and Liggett Group LLC was one of thousands of cases resulting from the landmark *Engle* state-wide class action suit filed against major cigarette manufacturers in the United States. Under the standards set by *Engle*, plaintiffs have to show that victims were addicted to nicotine, and that the nicotine addiction caused their deaths. Juries found that Big Tobacco not only knew of and ignored the dangers of nicotine, but that the companies made every effort to hide the risk from smokers.

Earlier in the year, the First District Court of Appeal in Tallahassee, Florida, had affirmed the jury's judgment on behalf of Mrs. Clay's family. The same Court also delivered a *per curiam* affirmance of a 2011 verdict and judgment on behalf of Anna Huish against R. J. Reynolds Tobacco and Philip Morris-USA, Inc., for \$3.4 million in compensatory and punitive damages for the wrongful death of her husband, John Huish, who died of lung cancer after 45 years of smoking Lucky Strike, Camel, and Marlboro cigarettes. Mrs. Huish was represented by SDSBS attorney **Jim Gustafson**.

Also in 2012, Big Tobacco suffered yet another loss after lengthy appeals and delays. SDSBS attorneys **Bill Norton** and **Laurie Briggs** represented Franklin D. Campbell, Sr., in a suit brought against R. J. Reynolds Tobacco, Phillip Morris-USA, and Liggett Group to hold these companies responsible for the death of his wife, Betty, from COPD. After three years of appeals, Big Tobacco was ordered to pay the original \$7.8 million judgment issued in 2009 by a Pensacola jury. SDSBS has won several other *Engle* progeny cases as well.

SDSBS attorneys noted, again, that while thousands of *Engle* cases wind their way through the courts, nicotine continues to claim the lives of over 400,000 Americans each year. ♦



**Nicotine continues to claim the lives of over 400,000 Americans each year.**

# Roofing company's failure to provide jobsite safety and supervision results in severe injuries to worker

## **Jury returns verdict for \$3.2 million, finding TC Crum Roofing responsible despite its efforts to blame others.**

From 2006 to 2008, the construction industry in central and southern Florida experienced a substantial boom in business because of the widespread devastation caused by record-setting hurricane seasons. TC Crum Roofing & General Contractors LLC, a licensed roofing company in Wellington, Florida, could barely keep pace with the large volume of calls to repair or replace roofs on homes and businesses in the area. In January 2008, Comcast Cable invited proposals to re-roof a small, single-story building in Port St. Lucie.

TC Crum submitted a proposal and in April 2008 was awarded the contract for \$5,500. The old roofing materials had to be removed from the sloping roof, and a base layer of tar paper installed on the first day. New asphalt shingles were to be installed on the second day. Comcast agreed to pay 50% of the contract price up front and the balance when the job was completed. Comcast paid TC Crum \$2,750 and waited for construction to start. Weeks later, when Comcast inquired about the delay in starting the job, TC Crum told them that they were tied up on a larger job, but would get to the Comcast job soon. In November 2008, Comcast told TC Crum to get the job done or refund its money. Rather than refund the money, TC Crum changed the deal and demanded the balance of the contract price before starting the work. TC Crum needed the rest of the money to buy roofing materials, assuring Comcast that the job would be done soon thereafter. In December 2008, Comcast paid TC Crum for the job in full.

And yet, at the end of April 2009, TC Crum still had not started the work. It had now been a year since the contract was awarded, and a full four months since the contractor had received payment in full for the work. By this time, Comcast had had enough. It wanted the job done or its money back. TC Crum did not want to abandon the contract, but was now under pressure to do the job quickly and cheaply.

The reality was that business was slow and TC Crum did not have employees on its payroll. It didn't have enough work to justify the added charges by TC Crum's payroll company. So TC Crum called a former employee, Roberto Gonzalez, for leads on people who could help do the work.

Mr. Gonzalez put TC Crum in touch with Manuel Casas, a carpenter who had worked at TC Crum jobs in the past. Mr. Casas was promised \$100 cash by TC Crum to work one day to help install shingles on the Comcast building. Mr. Casas agreed to the deal.

On April 30, 2009, Mr. Casas arrived at the jobsite in Port St. Lucie. The old roofing materials had already been removed from the building, there was tar paper on the roof, and new shingles and boxes of nails were stacked on top of the roof, ready to be installed. No one from TC Crum was present at the jobsite, so Mr. Casas and two other workers got to work.

Federal regulations issued by the U. S. Department of Labor, Occupational Safety and Health Administration (OSHA), require contractors such as TC Crum to provide workers with fall protection systems (e.g., scaffolding, guardrails, safety nets, or personal fall-arrest equipment) when they are working at heights greater than six feet above ground. The regulations also require that the contractor provide jobsite supervision when work is performed above that height. On April 30, 2009, TC Crum provided no fall protection system nor did it provide any jobsite supervision.

Mr. Casas was on the Comcast roof when he stepped on a shingle lying on fresh tar. The shingle slid and Mr. Casas fell from the roof, landing 12 feet below onto concrete, fracturing his skull, sternum, and ribs. Emergency response teams were called and he was transported via helicopter to St. Mary's Medical Center in West Palm Beach, Florida. He was in critical condition and near death. Examination showed his ear canal filling with blood – an indication that he was bleeding inside his skull. His eyes were somewhat reactive upon arrival, but as moments went by his right eye was becoming fixed and dilated – another indication of severe brain injury. CT scans confirmed the bleeding and bruised brain.

Medical personnel drilled a hole through Mr. Casas' skull to relieve the pressure on the swelling brain. He remained in a coma for weeks. By the time he was released from the hospital in mid-June 2009, he had endured the intracranial procedure to

## **TC Crum provided no fall protection system and no jobsite supervision.**

Manuel Casas will endure epileptic seizures, physical pain, and clinical depression for the rest of his life. In addition, he will require nursing care and constant medication.





*(l-r:) Attorney Mariano Garcia, client Manuel Casas, and attorney Matthew Schwencke.*

relieve pressure, a craniotomy, a splenectomy, and a tracheostomy. A feeding tube had been installed through his abdomen and a catheter for urination.

Following his release from the hospital, Mr. Casas continued to suffer from weakness on his left side, much like a stroke victim. He could move about only with the use of a wheelchair. He had to wear a rubberized helmet to protect the area where skull tissue had been removed. Mr. Casas' wife was at his side every step of the way, helping him through his surgeries, therapy, and limited recovery. Typical of brain injuries, Mr. Casas will endure epileptic seizures, physical pain, and clinical depression for the rest of his life. In addition, he will require nursing care and constant medications.

Mr. Casas, whose first language is Spanish, was represented by SDSBS attorneys **Mariano Garcia**, who is bilingual, and **Matthew Schwencke**. At trial, TC Crum acknowledged that it had a duty to protect its employees, but argued that Mr. Casas was not Crum's employee because he was not on its payroll. TC Crum attempted to blame Roberto Gonzalez for the accident, arguing that Mr. Casas was Mr. Gonzalez' employee or the employee of another roofing company allegedly affiliated with Mr. Gonzalez. Both Gonzalez and a representative of the roofing company implicated by TC Crum testified at trial that they had nothing to do with TC Crum's job. TC Crum even argued that since the job was so small, use of fall protection devices such as a safety rope and lanyard were an unsafe "tripping hazard" and actually more dangerous than using the legally required safety equipment.

Despite TC Crum's attempts to blame others, evidence and testimony at trial showed that TC Crum was solely responsible to ensure safety and supervision of the jobsite. Importantly, the jury clearly understood that Mr. Casas was to be paid \$100 by TC Crum for his work that day, money he was never paid. After a six-day trial, a Palm Beach County jury found in favor of Mr. Casas and returned a verdict for him in the amount of \$3.2 million. ♦

## Frayed cable breaks, dumping two tons of cement blocks on worker

**Due to negligent repair of cable, worker suffers serious injuries.**

Everyone is familiar with the old saying, "It hit me like a ton of bricks." What is usually only a figure of speech turned into an on-the-job, life-altering injury for William Jackson when two tons of cement construction blocks crashed onto him as he was off-loading them from the back of his employer's boom-truck. Although bones in his neck were fractured, and his back, shoulder, hand, and ankle were injured, Mr. Jackson was able to crawl away from the debris. As he did so, he saw that the cable holding the blocks on the truck, which had been "re-paired" the previous day, had snapped, dumping the blocks onto him. Mr. Jackson had surgeries to fuse vertebrae in his neck and to reconstruct his shoulder. He is now forced to walk with a cane, he can no longer work, and he will continue to live with pain and permanent injuries.

Mr. Jackson received some benefits through the workers' compensation system, but was left with substantial medical bills and workers' compensation liens. After the workers' compensation case was settled, the SDSBS team of **Jack Scarola** and **Patrick Quinlan** took on Mr. Jackson's case and sued the company chosen by Mr. Jackson's employer to repair the frayed cable. Unfortunately, the case was substantially complicated by the fact that the broken cable had long since disappeared and, apart from Mr. Jackson himself, there were no eyewitnesses.

Despite these obstacles, the SDSBS team filed a civil suit on Mr. Jackson's behalf, proceeding on the theory of "negligent repair." The lawsuit settled shortly before trial for \$575,000. By successfully negotiating the medical bills and workers' compensation liens, SDSBS was able to greatly reduce Mr. Jackson's financial obligations and deliver a significantly higher portion of the settlement to Mr. Jackson than he would otherwise have received. ♦





## “Just between you and me...” ...and the rest of the Social Media world!

Twitter, Facebook, and other modern social media are incredible communication tools used in the most casual way by millions of people every day, nearly every moment. What used to be said to your family or closest friends during a telephone call, or chatted about when you ran into them shopping, or whispered over coffee or cocktails when you met them after work, are now being said – even to hundreds of people at a time – on digital devices as you stroll down the street or sit by yourself in a park. Your conversation sounds the same, but the difference is that while you think you are giggling, whispering, or talking with select family and friends, the whole world may be reading your conversation. People forget how public their comments are.

To appreciate how vulnerable you are to public revelation of your most intimate confidences, or a misinterpretation of your most casual chatter, you have only to talk to corporate human resource professionals (who view these websites to obtain data beyond your employment application and past experience reports), or bank loan officers (seeking more detailed information on your financial reliability), or potential social contacts (looking for personal descriptions beyond their opening line at a cocktail party). Most recently (and not unexpectedly), social media communications have found their way into civil trial testimony.

A case in point involved a June 2011 automobile accident. A young woman was a passenger in a vehicle driving down a highway in Georgia. A work van, driving the same highway in the opposite direction, abruptly turned across her path and the vehicles collided. The young woman suffered a broken arm, a concussion, and a six-to-eight inch laceration on her forehead. Her medical expenses totaled \$58,000. The work van driver was cited for failure to yield. The passenger filed a lawsuit against the work van's owner alleging negligence on the part of that company for hiring a driver with a record of speed-

ing tickets and DUI violations. The plaintiff asked for almost \$1.3 million, including \$800,000 for pain and suffering, about \$300,000 for diminished earning capacity, and medical expenses. The plaintiff, a hair stylist, expressed great difficulty in performing her work. Because of the complexity of the styles she offered, she was unable to perform her work and had to ask co-workers to assist her.

In response to the plaintiff's demand for damages, the defendant's attorneys obtained posts from the plaintiff's Twitter account, and used her "tweets" to show the jury that the plaintiff had, in fact, recovered and was living a full life. She had tweeted to her friends about an "epic weekend" in New Orleans and had posted pictures of herself with friends at a beach on spring break. In one post, she wrote, "I'm starting to love my scar." She explained in another post how she could carry her handbag with her injured arm. Despite cautions from her own attorney, the plaintiff tweeted away, including one posting paraphrasing lyrics to a song, "It's my birthday and I'll get drunk if I want to."

Accurate or not, the Twitter posts left the jury with the impression that the plaintiff was doing quite well and living an active life. The jury returned a verdict for \$237,000. It was apportioned down to \$142,000 (60 percent fault to the defendant; 40 percent to the plaintiff's driver).

Attorneys handling cases or presenting legal seminars that involve media issues recommend looking at a prospective client's social postings as part of considering representation, and urge continual monitoring of a client's public comments during representation. Complete abstinence from social media is probably not realistic. But because of the commonly-held myth that postings are private communications, both plaintiff and defense attorneys should caution clients to exercise restraint in order to avoid any unfair and adverse impact their public comments might have on legal actions in which they are, or may become, engaged. ♦

## Speaking Opportunities



In September 2012, **Chris Searcy** was invited to be a panelist at the "Trial Masters: Multi-Million Dollar Verdicts Seminar," held in conjunction with the quarterly meeting of the Virgil Hawkins Florida Chapter of the National Bar Association. Mr. Searcy spoke on "How to Pick a Jury." ♦



On October 5, 2012, **Cal Warriner** spoke at the Plaintiff Forum on Pharmaceutical Litigation held by HB Litigation Conferences in Philadelphia, Pennsylvania. His subject was "Case Theories, Challenges, and Case Selection Considerations for Your Actos Inventory." On November 28, 2012, Mr. Warriner spoke at the HarrisMartin MDL Conference in Dallas, Texas, on "Fungal Meningitis, Stryker Hip, Mirena IUD, and More." He participated in a discussion on multi-district litigation involving Biomet/Stryker devices. ♦



In December 2012, **Brenda Fulmer** spoke at the American Association for Justice's Hip Implant Seminar on the subject of the Stryker Rejuvenate litigation. The seminar was held in New York City, New York. ♦



**Ed Ricci** participated at the Palm Beach County Bar Association's Judicial Relations Committee luncheon held in the Palm Beach County Courthouse, West Palm Beach. He served as moderator for a panel presentation on "Voir Dire." Panel members included Circuit Judges Joseph Marx, Lucy Chernow Brown, and Glenn Kelley. ♦



# Re-Elect Rosalyn Sia Baker-Barnes

**TO THE BOARD OF DIRECTORS,  
PALM BEACH COUNTY BAR ASSOCIATION**



We have made substantial strides in the Palm Beach County Bar Association over the last two years, and I am confident that we can continue our great success.

Our award-winning Committee for Diversity & Inclusion has:

- Developed a sustained mentorship program for lawyers at every level through the Diversity Internship Program, Road to the Bench Mentorship Program, and our service as mentors to minority law students.
- Established and presented the Honorable Edward Rodgers Diversity Award, which recognizes individuals and law firms with an ongoing commitment to diversity and inclusion.
- Created a proven method to Keep Diversity on the Forefront through our Diversity Summit, Diversity Luncheon and Diversity Corner section of the PBC Bar Bulletin.
- Earned consecutive monetary grants from The Florida Bar to support the committee's efforts.

I would be honored to continue to serve as a Director, and would be grateful for your support of my re-election.

- Director, Palm Beach County Bar Association, 2011-present
- Co-Chair, Palm Beach Bar Committee for Diversity & Inclusion, 2011-present
- Co-Chair, Palm Beach Bar Personal Injury/Wrongful Death CLE Committee, 2009-2011
- Member, Palm Beach Bar Judicial Relations/Bench Bar Committee, 2012-present
- Shareholder, Searcy Denney Scarola Barnhart & Shipley
- Board member, PB Chapter, Florida Association for Women Lawyers, 2012 - present
- Board member, Florida Justice Association, 2009-2011
- Listed in *The Best Lawyers in America*
- "Rising Star" in *Florida Super Lawyers* since 2009
- National Bar Association 2011 "Nation's Best Advocates: 40 Under 40"
- Business Leader Media 2011 "South Florida Woman Extraordinaire"
- National, state, and local leadership roles, The Links
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# ATTORNEY AT LAW

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MAGAZINE®

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Christian D. Searcy

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— **Boutique Law Firm**  
Michael C. Grieco

— **Concierge Criminal Attorney**





# Christian “Chris” D. Searcy

Searcy Denney Scarola Barnhart & Shipley, P.A.

Life is full of a series of individual moments that have the capacity to define you and set the course for your future. Sometimes, singular events are either so euphoric or tragic that they help form an intrinsic part of your being. Citing a quote from Charles Dickens’ literary masterpiece, “A Tale of Two Cities,” as a description of those moments in his own life, Chris Searcy, president and CEO of Searcy Denney Scarola Barnhart & Shipley, P.A., said, “It was the best of times, it was the worst of times....”

“I’m frequently asked why I became an attorney, particularly one who specializes in representing clients who have suffered catastrophic injuries and tragedy,” said Searcy. “The simple answer is: I understand because I have been there and I want to help. Very little good can come out of a tragedy, but the insight I have to help others when they are suffering is invaluable.”

It was the worst of times...On June 1, 1960, Chris’ mom was driving a 12-year-old Chris and Henry, Searcy’s 6-year-old brother, home. As they approached an unmarked intersection that was under construction, a car sped through it and broadsided their vehicle. Henry’s head was crushed in the accident and he was killed instantly. In the wake of this tragedy, Chris was sent to stay at a relative’s house while his parents tried to put back together the pieces of their lives. It was the best of times...The day after his move, he met Priscilla, his soul mate, future wife and mother of his four children: Henry, Will, Christian and Angela. Though he is grateful to be where he is today, Chris still feels the crushing sadness of the accident as if it happened yesterday.

It was the best of times...Fourteen years later, on March 21, 1974, Chris was poised to become a first-time father. In the delivery room, he felt the joy of witnessing the birth of his first



Left to Right: Jack Scarola, Greg Barnhart, Chris Searcy, Earl Denney and John Shipley

son, whom he and his wife had agreed to name Henry in honor of Chris’ little brother. It was the worst of times...After hours of labor, it became clear that the delivery was not progressing as quickly as it should be. The doctors decided to speed it up with a high forceps delivery, a practice that was outlawed in the 1960s due to the sheer number of complications associated with it. As a result of this procedure, Henry received a severe brain injury which caused a baby, who otherwise would have been born perfectly healthy, to become autistic.

“Over the course of the years that followed each of those devastating events, I felt overwhelmed; helpless,” explained Searcy. “In both situations, I was supposed to protect my loved ones. Although I know intellectually that there was nothing I could have done differently, emotionally, I still felt like I had failed in the most important job of my life. But due to my experiences, I am unwavering in my determination to represent clients who have suffered personal injury or death due to the negligence of others.”



## Delayed Retribution

In 2001, Searcy represented a client whose vehicular collision case drew eerie similarities to that in which Searcy was involved 41 years prior. A mother who was driving her child home from school was broadsided by a speeding car, resulting in the instant death of her 6-year-old child. In this instance, as was the case in Searcy's experience, construction crews had failed to mark the intersection. Because Searcy had lived through a similar tragedy in his own life, he was able to offer comfort and advice from experience. He guided his client through a grueling trial which resulted in a \$50 million award, the largest single verdict for wrongful death at the time in Florida.

"Throughout the course of the trial, everything about the case fell right into place perfectly," said Searcy. "It was an extraordinary feeling to think that, in a way, I was finally able to represent my own family for what had happened so many years ago."

In a similar turn of events, Searcy was approached by a family in 2004 to represent them in a case involving medical malpractice against a doctor who performed a high forceps delivery which resulted in a severe brain injury to their child. As is the case with Searcy's own son, this family's son was able to walk and talk, but in an impaired fashion. Although the doctor's records fail to mention anything about the delivery being high forceps, the family was initially offered \$1000 for pain and suffering. Searcy, however, recognized the signs of this outlawed practice and was able to prove the point in court resulting in a medical malpractice award of \$63 million for his client.

"After 45 years of harboring the misplaced guilt and sadness, being able to win these cases on behalf of my clients brought about a small sense of closure for me," stated Searcy. "Feeling that I could finally represent my little brother and my son after all these years...priceless."

## Notable Cases

"I have been incredibly blessed to have been involved in many cases that I would term 'cases of a lifetime,'" noted Searcy. "Although gaining a modicum of closure from the verdicts we received from the vehicular collision and high forceps delivery cases in 2001 and 2004 respectively, several other cases also stand out as career highlights."

- By the age of 30, Searcy had already made a name for himself in Florida as a successful trial attorney by earning three settlements for his clients in excess of \$1 million. In 1977, at 29,

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*"It was the best of times, it was the worst of times..."*

*- Charles Dickens, A Tale of Two Cities*

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Searcy had the distinction of being the youngest lawyer in the United States to achieve a verdict of \$1 million dollars for a single personal injury lawsuit. In this case, Searcy represented a client in Palm Beach County Federal Court, whose legs were cut off at the knee while he was lying on a railroad track. He tried this case against James Payne - his last case before he became a federal judge. In 1978, Searcy represented a client in Ft. Pierce who was hit by a train which resulted in a \$2.5 million verdict. In 1979, in Sanford, Florida, Searcy represented the 75 year-old-father of his secretary at the time, who was broadsided in a vehicular collision, resulting in a verdict of \$1.925 million.

- In 1984, Searcy represented a family whose 15-month-old baby was incorrectly diagnosed and treated by a well-respected pediatrician in Palm Beach County. The pediatrician thought that the baby had a febrile seizure when instead she was seizing because she had become hypovolemic from vomiting and diarrhea, causing dehydration. After treating her incorrectly for an hour to an hour and a half, she was sent to the hospital where a young doctor recognized that she was having seizures and started treating her correctly for that diagnosis. However, when the young doctor went home that night, nobody at the hospital knew how to treat her. The little girl suffered status epilepticus throughout the night causing further brain injury. It was very tough to try the case in the area because the community loved this doctor and there were many horrible editorials written during the course of the trial; however, Searcy secured a \$10.5 million verdict for his clients.

- Searcy also vividly remembers a case in which a 40-year-old mom was driving an Astro van with her two sons-10 and 12-years-old. When a pick-up truck rolled through a stop sign, it forced the van off the roadway at 25 miles per hour. While the two boys escaped with minor injuries, the mom's face and skull were crushed by the steering wheel. Although the mom survived, she now has fluent aphasia, a brain-injury that results in a person being able to pronounce words correctly, but in a virtually meaningless order. It was proven that GM, due to lost market share, wanted to offer more interior space as a result of loss of the crumple zone. After two months of trial against GM, Searcy

*"I don't believe that you have to show professional detachment to be a good attorney, especially in my practice areas. Because of my background, I sympathize and empathize with my clients while helping them work through the sadness and sense of loss and helping others understand the profound nature of their loss."*

*-Chris Searcy*



Chris Searcy playing with child at the Easter Seals Child Development Center.

recovered a \$25.5 million verdict for the father plus punitive damages against GM. As a result, GM has reinstated the crumple zone in the front of the vehicle.

- Recently, Searcy represented William and Lili Wilson, the parents of Scott Wilson, who was killed when polo magnate John Goodman sped through a stop sign while under the influence, in a civil trial. Because there are no set guidelines for awards for the wrongful death of an adult child, the settlement could have been all over the board. Searcy settled this case for \$46 million.

Throughout the years, Searcy has advocated on behalf of his clients, solidifying positive verdicts in the courtroom and instigating change in the marketplace through the identification of product safety issues. Outside of the courtroom, Searcy's immense accomplishments are recognized by his peers and professional associations.

### **Professional Recognition**

Throughout his career, Chris Searcy has consistently been recognized for his work both in and out of the courtroom. In 2005, the Florida Justice Association honored him with the Perry Nichols Award in recognition of a lifetime of outstanding service to the cause of justice. Searcy was one of only two

lawyers in the country to receive the "War Horse Award" from the Southern Trials Lawyers Association in 2006, honoring his skill as a trial advocate and his extraordinary contributions to the cause of justice.

A past president of the International Academy of Trial Lawyers, a prestigious worldwide organization limited to 500 attorneys by invitation-only, and named in The Best Lawyers in America, Searcy has also been selected as one of Lawdragon's 500 Leading Lawyers in America. Additionally, Searcy is both a member of the International Society of Barristers, an invitation-only society with only 500 international lawyers and The Inner Circle of Advocates, an invitation-only membership limited to 100 trial lawyers in the United States.

"I am touched that people would care enough to show love, affection and support," said Searcy in regard to his numerous professional accolades.

### **Charitable Support**

Exhibiting admirable compassion in every aspect of his life, his dedication to charitable causes is also noteworthy. Closest to his heart is support of Autism Speaks due to his experiences with his son, Henry. Searcy also supports The Lord's Place (programs to end homelessness), Easter Seals, and MADD, especially in light of his recent involvement with the Goodman case.

Being a survivor of a tragedy can either break you or make you a stronger person with a purpose. For Chris Searcy, the defining moments in his life set him on a path to become a compassionate, successful litigator who has been praised by peers, acknowledged with large verdicts from juries, elected by professional associations and recognized with prestigious awards.

Christian D. Searcy is the president and CEO of Searcy Denney Scarola Barnhart & Shipley, P.A., and can be reached at (561) 686-6300 (<http://www.searcylaw.com/>)

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## Taking... *Time to Care*

### **SDSBS employees' teamwork provided collections of money, toys, food and gifts to many charities during holidays.**

In November 2012, SDSBS staff collected \$2,300 in donations to fund Thanksgiving dinners for families in need of assistance. Attorney Laurie Briggs reported that the funds were used to purchase 105 turkeys and hams for families in Children's Outreach, Bridges, and Legal Aid programs. The donations included typical side dishes for Thanksgiving – stuffing, potatoes and other vegetables, gravy, cranberry sauce, rolls and butter, and pie. A \$350 cash donation was given to Helping Hands, Inc., for its holiday food give-away. In December, the SDSBS staff again exercised their well-known generosity by providing donations, toys, and other Christmas gifts for children and adults involved in programs sponsored by the following Palm Beach County organizations: Foster and Adoptive Parent Association; The Lord's Place; Legal Aid; Bridges; Edward Healey Rehabilitation Center; Guatemalan Mayan Center; Westgate Tabernacle; and Esereh Youth Center. Thanks to the SDSBS staff members who donated money, time, and effort to meet the call to help other members of their community. ♦



### **SDSBS was a sponsor for Love Doctors Charities, and participated in providing toys for more than 7,500 children.**

On December 15, 2012, the Love Doctors Charities held their 19th Annual Toy Drive Distribution in West Palm Beach, Florida. The Charities provide support to groups and individuals in need. Sponsors included SDSBS with attorney Brenda Fulmer and other employees and their families pulled duty as part of Santa's hundreds of elves unloading trucks, setting up, helping families select gifts, and dismantling at the end of the day. More than 7,500 children received new toys at the event. ♦







*(l-r) Jack Scarola, Sara Bloomfield, Dr. Ann Millin, and Chris Searcy.*

## **SDSBS Sponsors Holocaust Memorial Museum Traveling Exhibition “Banned and Burned: Literary Censorship and the Loss of Freedom”**

In November, SDSBS helped sponsor a traveling exhibition from the U. S. Holocaust Memorial Museum titled “Fighting the Fires of Hate: America and the Nazi Book Burnings.” The exhibition was hosted by the West Palm Beach Library Foundation at the Mandel Public Library. Its feature event, “Banned and Burned: Literary Censorship and the Loss of Freedom,” included presentations from a Holocaust survivor, the executive director of the Holocaust Museum, and a museum historian. In conjunction with the exhibit, the Foundation will host a series of events designed to explore the impact of censoring and banning books. Included will be a film series on tolerance, a live theater, and various children’s programs. ♦



## **SDSBS Tallahassee office participates in largest Annual Turkey Trot benefitting The Refuge House, The Shelter, and Boys & Girls Clubs**

SDSBS Tallahassee office staff members participated in the 37th Annual Turkey Trot race held in Tallahassee, Florida. Almost 6,000 runners and walkers participated in the charity event, making this the largest Tallahassee Turkey Trot ever. Turkey Trot Heroes Program raised over \$11,000 for the three main non-profit organizations supported by the participants – The Refuge House, The Shelter, and the Boys & Girls Clubs of the Big Bend. The race itself raised a lot more contributions. SDSBS has been a participant in this event for several years. ♦



*Above: Mom and children safely at home afterwards; upper right: rescuer going into storm drain; right: EMT hero with rescued baby.*

## **WPB Fire Rescue Station #5 plays vital part in rescue of SDSBS neighbor in trouble.**

In September 2012, SDSBS staff got a chance to see some of the everyday heroes of the West Palm Beach Fire Rescue Department in action. For some time, a mother duck and a number of little ducklings had homesteaded in the vicinity of SDSBS offices. Everyone enjoyed the company of the little family. One day, someone noticed that the mother duck was anxiously clucking around a nearby storm drain. Upon investigation, staff members found that one of the ducklings had fallen into the drain and could not get out. It was clucking for its mother. For a couple days, SDSBS staff tried every trick they could think of to rescue the duckling. Despite many impressive successes with its other clients, SDSBS was unable to free the trapped duckling. Finally a security officer called the West Palm Beach Fire Rescue Department for advice. The inquiry was referred to Fire Station #5. On their way back from lunch, and with permission of a supervisor, three firefighters ran over to the scene to offer help. In very quick order, one firefighter took a small net down a drain pipe while another firefighter, using a small hose, gave the duckling its first whitewater rafting trip, down the pipe and into the net. With the generous help of the everyday heroes in Fire Station #5, SDSBS was, yet again, successful in helping its clients. ♦

## Thirteen SDSBS attorneys selected for *Best Lawyers In America 2013*

Thirteen **SDSBS** attorneys were selected by their peers for inclusion in *The Best Lawyers of America 2013*. **Chris Searcy, Jack Scarola, Greg Barnhart, John Shipley, Sia Baker-Barnes, Brenda Fulmer, Jim Gustafson, Jack Hill, Bill Norton, Ed Ricci, Chris Speed, Karen Terry, and Cal Warriner** were named by the publication. *Best Lawyers*, first published in 1983, has become universally regarded as the definitive guide to legal excellence. Selections are based on an exhaustive peer-review survey by over 36,000 leading attorneys submitting almost 4.4 million votes on the legal abilities of other lawyers in their areas of practice. Because lawyers are not required or allowed to pay a fee to be listed, inclusion in *Best Lawyers* is considered a singular honor.

**Chris Searcy and Chris Speed** have been selected for this honor by *Best Lawyers* for each of the past 25 years. ♦



Chris Searcy



Jack Scarola



Greg Barnhart



John Shipley



Sia Baker-Barnes



Brenda Fulmer



Jim Gustafson



Jack Hill



Bill Norton



Ed Ricci



Chris Speed



Karen Terry



Cal Warriner



**SEARCY  
DENNEY  
SCAROLA  
BARNHART  
& SHIPLEY PA**  
*Attorneys at Law*

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