

# OF COUNSEL

A REPORT TO CLIENTS & ATTORNEYS  
VOLUME 12 - NUMBER 3

## Failure to Monitor Mother and Baby During Labor Results in Severe Damage

**Settlement just under eight figures provides care for child's lifetime.**

In the summer of 1999, a young couple was looking forward to the birth of their second child, a little girl. Their first-born daughter was especially excited about having a baby sister. The pregnant mother established prenatal care with a local obstetrician. The 31-year-old woman was in excellent health, experiencing a normal, healthy pregnancy. Prenatal screening tests, including several tests designed to determine whether the baby had any genetic disorder, all reported normal. Neither the mother nor father had any family history of genetic problems. There was no indication that the obstetrician should be concerned about any genetic abnormality.

By August 1999, the obstetrician noted that the baby was measuring larger in size than expected for a baby at her gestational age, and she decided to induce labor. The mother was admitted to a local



hospital and placed under the care of the hospital's labor and delivery nurses. The assigned nurse was expected to closely monitor and report the progress of the mother's labor to ensure that the baby responded appropriately.

Unfortunately, communications between the nurse and the obstetrician failed tragically during the most critical time in the labor process. Despite the fact that the woman was already experiencing labor contractions, the nurse began administering Cytotec (misoprostol), a prostaglandin used to induce labor. This powerful drug can cause hyper-stimulation and severe uterine contractions that may result in injury to the baby; it should not have been given to a patient already in labor. The nurse never advised the doctor about the contractions before administering the drug shortly before 10:00 p.m. *(Continued on page ten.)*

## Misfilled Methadone Prescription Causes Woman's Death

**Patient received ten times intended dose of medication.**

As Florida's population continues to increase in average age, we note a related increase in prescription misfill cases. Since elderly people typically take more medications than younger people, the risk for the older population is greater. SDSBS attorneys **Karen Terry** and **Jack Scarola** recently represented two adult children regarding the wrongful death of their 87-year-old mother, Mrs. A, who died of methadone toxicity due to a misfilled prescription.

Mrs. A had been given ten times the intended dose of the medication.

The horrific chain of events leading to Mrs. A's death began on March 14, 2007. She was residing in an assisted-living facility and under the care of a physician. Mrs. A had never before taken methadone, a potent narcotic. An order was written by her physician for 2.5 mg of methadone to be given to her three times each day. The pharmacy misfilled the order, delivering the drug in doses of 25 mg. The pharmacy later explained that the misfill occurred because they had failed to see the decimal point between the "2" and the "5" and blamed the physician for not writing the order more clearly. Mrs. A's caregivers administered a total of 75 mg of methadone on the first day. That excessive dosage continued *(Continued on page seven.)*

## Jack Scarola: Outstanding Attorney in 2012 Super Lawyers Business Edition



SDSBS attorney **Jack Scarola** was named in the 2012 Super Lawyers Business Edition. The publication lists attorneys who are outstanding in their areas of business practice. Selection for the list follows a rigorous process of identifying lawyers who have attained a high level of peer recognition, meet ethical standards, and have demonstrated professional achievement in their field. Mr. Scarola was recognized for his accomplishments in the practice area of business litigation. ♦

## Chris Searcy Speaks: "How Do Clients Win When Medical Records Are Against Them?"



On June 8, 2012, **Chris Searcy** spoke at the 2012 Annual Conference of the American Board of Professional Liability Attorneys, held at the Hilton San Diego Bayfront, San Diego, California. His topic was "Priceless: How Do Our Clients Win When the Medical Records Are Against Them?" The topic was based upon *Korzeniewski v. Bethesda Memorial Hospital*, a case involving birth injury. Defendants offered \$1,000 each for baby, mother, and father. The verdict was \$63 million. ♦



**SDSBS attorney Darryl Lewis, Florida Supreme Court Justice Peggy A. Quince, and SDSBS attorney Sia Baker-Barnes at the National Bar Association Convention.**

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## OF COUNSEL

NEWSLETTER  
VOLUME 12 NUMBER 3

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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.

# Lack of Guidance on Operation and Safe Use Of Rental Equipment Results in Serious Injury

Everything was going very well for Tom Johnson (not his real name), a very active, healthy, 70-year-old, retired U. S. Army command sergeant major living in Tallahassee, Florida. Though he was retired from the Army, he remained very active remodeling houses and volunteering as handyman at his church and as a volunteer bus driver for its youth group. He was the rock of his family.

In August 2009, Tom decided to help his daughter and son-in-law remove some pine trees in the backyard of their home. He called ABC Rentals (not its real name) and asked if they had equipment that would help in the project. ABC's representative said yes and recommended an aerial basket crane also known in the industry as a boom lift. Tom was quite experienced in removing trees, but not very experienced in using aerial lift equipment. He talked to ABC's rental clerk about a towable boom lift, one that was manufactured by XYZ Industries (not its real name). The lift looked like just the right kind of equipment for the project, so Tom rented it for the weekend. Unfortunately, when Tom rented the boom lift, ABC's clerk failed to provide Tom some very specific safety bulletins and familiarization training on what type of fall-protection (safety harness) was needed and how to correctly attach it to the boom. This failure to provide the necessary safety guidance was in direct violation of ABC's own rental policy and contrary to guidance issued by the American National Standards Institute, the organization that sets industry guidelines for the safety and health of consumers using various devices like boom lifts.

The next day, Tom arrived at his daughter's home and set up for the project. He climbed into the basket of the lift and raised the boom to the top portion of a tall pine tree. He tied ropes to the upper part of the tree to help guide the cut portion of the tree down to the ground in the right direction. Below the ropes, he used his chain saw to cut a pie wedge into the tree trunk that would cause the top section to fall in the direction Tom intended. Then he maneuvered the boom and basket to the opposite side of the tree trunk and, using his chain saw, proceeded to cut the tree in half. When the upper portion of the tree fell, the "cut" end kicked back and down onto the rail of the basket of the lift. The basket broke apart and detached from the boom's telescopic arm. Tom fell 20 feet to the ground, landing flat on his chest.

Tom suffered a lacerated right kidney and spleen, as well as a collapsed lung. Several of his teeth were shattered from the impact. Tom was rushed into surgery to stop internal bleeding from his lacerated kidney. The surgeons saved Tom's life, but the damage to his kidney was too severe. As a result, Tom lost his right kidney. He spent several days in an intensive care unit, followed by a week in a rehabilitation hospital.

Tom and his family sought representation from SDSBS attorneys **James Gustafson** and **Cameron Kennedy** in an effort to hold ABC and XYZ accountable for their negligence and the defective product. Mr. Kennedy advanced negligence claims on the part of ABC in not providing mandatory guidance on operation and safe use of the equipment, and in improperly and incorrectly directing the user on the safety features regarding the safety harness. Mr. Kennedy also advanced a defective product claim against XYZ's manufacture of the equipment by establishing design flaws inherent in the lift's platform and basket. Discovery revealed that XYZ had no pre-manufacturing testing data to review the failure rate of the metal alloys used in the construction of the light-weight platform and basket. On the eve of trial, both the rental corporation and the manufacturer settled for a confidential amount under a non-disclosure agreement. ♦

When Tom rented the boom lift, ABC's clerk failed to provide specific safety bulletins and familiarization training.

**This failure was in direct violation of ABC's own rental policy, and contrary to industry standards.**





## SDSBS Attorneys Receive Recognition at the Florida Justice Association's Annual Convention

SDSBS attorneys received considerable recognition at the annual convention of the Florida Justice Association held in June 2012 at the Marriott Beach Resort, Marco Island, Florida.

**Brenda Fulmer** received FJA's "Shoe Leather Award," a recognition given to FJA members who "wear the leather off the bottom of their shoes" by going to Tallahassee repeatedly and walking the halls of the Capitol lobbying on behalf of their clients and various issues. Ms. Fulmer also received FJA's bronze EAGLE award, joining an association of attorneys dedicated to the culture of commitment necessary to sustain justice. **Jim Gustafson** was elected to FJA's Executive Committee. He also received a gold EAGLE award recognizing his leadership and commitment to protecting Florida's civil justice system. **Cameron Kennedy** was re-elected to the FJA Board of Directors. **Brenda Fulmer, Jim Gustafson,** and **Laurie Briggs** are also members of the Board. Laurie Briggs was appointed chair of the FJA's Women's Caucus. **Matt Schwencke, Adam Hecht,** and **D.J. Ward** were each elected to the Young Lawyers Section Board of Directors. ♦



Brenda Fulmer



Jim Gustafson



Cameron Kennedy



Laurie Briggs



Matt Schwencke



Adam Hecht



D. J. Ward



*(left) SDSBS attorney Sia Baker-Barnes (third from right) and members of the Palm Beach County Bar Board of Directors at the installation dinner. Ms. Baker-Barnes is serving the second year of her term on the Board; (below) Judge Moses Baker with Chris Searcy.*



# Insurance Company Tries to Avoid Obvious Liability for Severe Auto Accident

On March 21, 2010, Sean Simon, a 35-year-old high school teacher, was driving east on Donald Ross Road in Palm Beach Gardens, Florida. He moved into the left lane, preparing to turn onto Central Boulevard. As he was coming to a stop at a red light for the turn lane, a vehicle operated by Albano Seri slammed into the back of Mr. Simon's car. Palm Beach Gardens Fire and Rescue personnel responded to the scene and immediately transported Mr. Simon to the Jupiter Medical Center.

Mr. Simon suffered severe pain and discomfort. The hospital referred him to an orthopedic surgeon, Dr. Charles S. Theofolis, for consultation. An MRI of the cervical and lumbar areas of the spine revealed severe and permanent injuries. The doctor stated that Mr. Simon would be a surgical candidate in the future and that he had suffered a permanent impairment. Before the accident, Mr. Simon had been a high school coach and had played rugby. He had no history of accidents or any injuries to his back or neck. He prided himself on being physically fit and staying active, even after the crash.

The police cited Mr. Seri for following too closely and causing the crash. He was clearly liable. Nonetheless, Mr. Seri's insurance company, State Farm, insisted on arguing damages and liability. Mr. Simon asked SDSBS attorneys **Karen Terry** and **Mariano Garcia** to represent him. As plaintiff, Mr. Simon gave the insur-

ance company several opportunities to tender its policy limits to pay for the damages caused by their policyholder, but it failed to do so. Eventually, Mr. Simon chose to go to trial and let a jury decide the case.

In an attempt to discredit Mr. Simon's claims of injury, the defense hired a private investigator to follow Mr. Simon around for days. They secretly videotaped his daily activities. The videotape demonstrated that Mr. Simon was still active as a rugby coach, going boating, and doing other physically-demanding activities. Mr. Simon had never disputed that he was still active despite his pain and the permanent injuries he had suffered. The defense hired doctors in an attempt to discredit the nature and extent of Mr. Simon's injuries.

On March 22, 2012, following a four-day trial, the jury rendered a verdict in favor of Mr. Simon, finding the defendant to be 100% at fault in causing the crash, and rejecting its argument that Mr. Simon was not significantly injured. The jury awarded Mr. Simon \$93,882 for the medical bills he had already incurred and for medical expenses he will incur in the future as a direct result of the crash. The plaintiff was also awarded taxable costs against the defendants. The total award far exceeded the insurance company's earlier offers in this case. ♦

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Mr. Simon and SDSBS attorneys gave the insurance company several opportunities to tender policy limits for the damages caused by their policyholder, but it failed to do so.

**The jury rendered a verdict in favor of Mr. Simon. The total award far exceeded the insurance company's earlier offers."**

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## Speaking Opportunities



**Darryl Lewis** spoke on "Personal Injury Basics" at the Law Review CLE seminar held June 21, 2012, in Orlando, Florida. On July 30, 2012, Mr. Lewis gave a presentation on "How to Use Juror Attitudes and Beliefs to Remove Jurors for Cause" at the annual convention of the American Association for Justice, held in Chicago, Illinois. And on September 19, he spoke to the Kentucky Justice Association's Annual Convention and Seminar held in Lexington, Kentucky. His topic was "Winning in the Beginning – How to Give an Effective Opening Statement." ♦



**Brenda Fulmer** and **Cal Warriner** participated extensively at the Annual Convention of the American Association for Justice, held the last week of July 2012 in Chicago, Illinois. Ms. Fulmer spoke to AAJ's Workers' Compensation and Workplace Injury Section on the topic of "Leveraging Your Workers' Compensation Practice into Mass Torts." She was also co-moderator of the education program for



AAJ's Section on Toxic, Environmental, and Pharmaceutical Torts (STEP). The program covered environmental topics such as sewage sludge, fracking, tort cases against the federal government, drug claims (Propecia, Pradaxa, Chantix, SSRI-induced birth defects), and issues relating to scientific evidence and preemption. Ms. Fulmer is co-chair of AAJ's Pradaxa Litigation Group. Mr. Warriner spoke to AAJ's Orthopedic Implant Litigation Group on the recalled Stryker Rejuvenate modular hip implant. He was appointed chair of the newly-formed Stryker Rejuvenate Litigation Group, and gave a presentation to the Group on the history of the device, its failure mode, medical literature on galvanization of modular hip implants, and litigation strategies. ♦



SDSBS was well represented in presentations at the Florida Justice Association's Annual Convention held in June 2012 at Marco Island, Florida. Attorney **Jack Scarola**



spoke at the seminar on "Perfecting Your Competitive Edge: Advanced Trial Skills for Top Litigators." His topic was "Commercial Consultants, LLC v. BA US Holdings, Inc.: A Case Study in Fee-Shifting Issues." Paralegal **John Hopkins**



was co-chair and moderator for FJA's Paralegal and Legal Assistants Seminar on "Personal Injury Updates for Paralegals and Legal Assistants – Maximizing Your Impact on Personal Injury Cases." Addressing the seminar, attorney **Jack Hill**



spoke on "Automobile Accident Claim Updates," and attorney **Matt Schwencke** spoke on "Medical Malpractice Updates." ♦



**Mariano Garcia** participated as a panelist at a seminar hosted by the Palm Beach County Bar Association's Committee for Diversity and Inclusion held July 9, 2012, in West Palm Beach, Florida. The subject of the seminar was "Internship Tips, Tools, and Marketing." **Sia Baker Barnes**, co-chair of the Committee, participated as a moderator for the program. The Association's Diversity Internship Program was formed in 2010 to provide students of diverse backgrounds an opportunity to gain valuable work experience in legal environments. ♦



**Sia Baker-Barnes** spoke at the 2012 Annual Convention of the American Association for Justice, held the last week in July 2012 in Chicago, Illinois. The topic of her presentation was "Representing the Minority Plaintiff." ♦



## Misfilled Methadone Prescription Causes Woman's Death

*(Continued from page one.)*

until a toxic reaction caused her to be rushed to the hospital. It was, however, too late to save her.

A prescription for a controlled substance such as methadone, in this quantity, should have set off a red flag for any pharmacy or assisted-living facility. It is particularly true in this case which involved an elderly woman with no prior history of receiving this medication. The standard of care for pharmacies requires them to develop, establish, and maintain protocols for receiving prescriptions in a form that is both clear and legible, and therefore readily confirmable. Tolerance of anything less invites catastrophic error. It is well established that a vigilant pharmacist is the last line of defense in patient protection. The pharmacist must carefully review each prescription and the prescription history of the patient, with particular diligence and care toward the dangers posed by prescriptions for such powerful controlled substances. No pharmacist should allow a prescription to be dispensed if there is any indication of an error, or if the prescription is illegible.

Compounding the pharmacy's negligence in this case, the assisted-living facility's staff transcribed the order into their records as "25 mg," but never

questioned the order for such a high dosage of the medication for this patient. They simply administered the incorrect dosage of the medication, charging the patient extra fees for each time the medication was given. Mrs. A's family later learned that someone had gone back into the files and darkened the decimal point between the two numbers in an effort to make it clear that the order was meant to read "2.5 mg" and not "25 mg." Mrs. A's physician denied that he was the person who had altered the order.

Losing their mother suddenly and unexpectedly because of negligent and improper medical care was devastating for Mrs. A's children. They had placed their mother in the hands of carefully selected medical professionals, at great expense, only to have that trust betrayed. As if that was not horrible enough, the defense tried to describe Mrs. A as an elderly and feeble woman with limited life expectancy, admitted to a Hospice program in the last months of her life. Both children testified to their mother's general physical fitness and, despite her advanced age and some physical limitations, her well-intact mental capacity.

After litigating the case for many years, including the successful defense of a pre-trial appeal, the case against the physician, the pharmacy, and the assisted-living facility was very favorably resolved for confidential sums totaling in excess of seven figures. ♦



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Mrs. A had never before taken methadone, a potent narcotic. An order was written by her physician for 2.5 mg of methadone to be given three times each day. The pharmacy misfilled the order, delivering the drug in doses of 25 mg.

**Mrs. A was given ten times the intended dose of methadone. She died from a toxic reaction.**

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# VOTE YES TO RE



**JUSTICE  
R. FRED LEWIS**

**YES**



**JUSTICE  
BARBARA J. PARIENTE**

**YES**



**JUSTICE  
PEGGY A. QUINCE**

**YES**

On Tuesday, November 6, Americans will go to the polls to determine who sits in the White House for the next four years. But in Florida, much more is at stake. Unless fair-minded Floridians vote to retain our Supreme Court Justices, the justice system as we know it could disappear right before our eyes!

### **Why We Must Vote YES**

Florida's merit retention system for keeping good Justices on the bench is under attack from well-funded power mongers who want to take over the Florida Supreme Court. Why? Because their Court decisions protect the rights of citizens instead of advancing the agenda of powerful industries such as tobacco, oil, insurance, and pharmaceuticals.

Supreme Court Justices Fred Lewis, Barbara Pariente, and Peggy Quince have never been afraid to render their decisions regardless of the wealth or influence of either side and regardless of the influence of special interests or special interest groups. All three Justices have a solid record of their decisions based on our constitution and the rule of law.

### **Here are three reasons we need to vote YES November 6**

- 1. Opposition to these Justices is a power grab by political extremists** that want revenge for Court decisions that have not gone their way. Their campaign is funded by huge industries and national SuperPACs that see Florida as the first step toward taking over America's judicial system.
- 2. Governor Rick Scott would get to appoint the three Justices' replacements** on the Supreme Court if Justices Lewis, Pariente, and Quince are not retained. That means that he would have unprecedented influence over all three branches of government – and it would be his way or the highway.
- 3. Justices Lewis, Pariente, and Quince have a record of impartiality.** Florida's merit retention system was passed so voters would have the power to keep good judges and remove incompetent or corrupt judges – not to make the Supreme Court a prize for wealthy political extremists.



# RETAIN JUSTICES

## How to Make Your Vote Count

No matter how passionately you believe that Justices Lewis, Pariente, and Quince should be retained on the Supreme Court, your support means nothing unless you go to the polls and vote. Here's how you can make sure your **YES** vote counts.

- ◆ **Cast an absentee ballot** if you will be unable to vote in person November 6. Request an absentee ballot from your county Supervisor of Elections. For a list of county elections offices and websites, go to [www.myfloridaelections.org/?id=18](http://www.myfloridaelections.org/?id=18).
- ◆ **Vote early.** If you want to cast your vote before November 6, consult your county Supervisor of Elections website for the dates, locations, and hours that early voting will be open.
- ◆ **Find out where you vote.** You will receive a Sample Ballot telling you where your polling place is. Or, click on "VOTER Information Look-up" on the home page of the Florida Division of Elections website, [election.dos.state.fl.us/](http://election.dos.state.fl.us/).
- ◆ **Polls are open 7 a.m. to 7 p.m.** Vote early, then volunteer to help get your friends and neighbors to the polls throughout the day. This could be a close battle, and every **YES** vote needs to be cast and counted.
- ◆ **Know how to mark your ballot.** All Florida counties use paper-based optical scanning systems, but they differ in how ballots are marked. Check your Sample Ballot to make sure you understand exactly how to mark your ballot at the polls.
- ◆ **Scroll down your ballot to find the Supreme Court questions.** Merit retention of Supreme Court Justices and other judicial races in your county are grouped under the heading NONPARTISAN, somewhere between the Presidential race at the

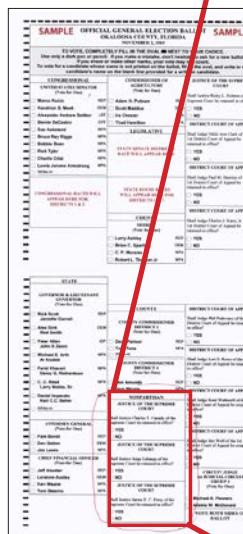
*"If the three Justices lose their retention battle . . . it would send a message of intimidation undermining judicial independence and impartiality – a price no Florida voter should be willing to pay."*

New York Times editorial, July 30, 2012

top and statewide ballot initiatives at the bottom. **The exact location depends on how the ballot is configured in your county, so consult your Sample Ballot before you go to the polls.**

- ◆ **Vote YES for all three Justices.** Here is an **example of the Sample Ballot** you will receive and the language for the merit retention questions. There are three separate questions: One to retain Justice Lewis, one to retain Justice Pariente, and one to retain Justice Quince. For all three, the answer is

**YES!**



### NONPARTISAN

#### JUSTICE OF THE SUPREME COURT

Shall Justice

**R. FRED LEWIS**

of the Supreme Court be retained in office?

**YES**

#### JUSTICE OF THE SUPREME COURT

Shall Justice

**BARBARA J. PARIENTE**

of the Supreme Court be retained in office?

**YES**

#### JUSTICE OF THE SUPREME COURT

Shall Justice

**PEGGY A. QUINCE**

of the Supreme Court be retained in office?

**YES**

To learn more, go to:

[www.DefendJusticeFl.com](http://www.DefendJusticeFl.com)

**Our right to "equal justice for all" depends on your vote Nov. 6**

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## Failure to Monitor Mother and Baby During Labor Results in Severe Damage

*(Continued from page one.)*

The baby's baseline heart rate had been normal and steady, as noted in reports earlier in the evening. Just minutes after the administration of Cytotec, the baby began to show signs of fetal tachycardia – an increased heart rate. The nurse did not advise the doctor of the abrupt change. She also failed to document that the patient's contractions had increased in frequency and severity, a clear sign of excessive uterine activity. The nurse failed to recognize that these changes in both mother and baby were of serious concern.

At 1:00 a.m. the next morning, the baby's heart rate began decelerating, well below normal. The nurse called the doctor an hour later. The doctor inserted an internal fetal monitor in the mother to more closely trace the baby's heart rate. The doctor then left, expecting the nurse to continue monitoring the situation and keep her advised of the baby's status. The heart rate monitor continued to show a variable and persistent deceleration of the baby's heart rate over the next several hours. The baby was clearly in distress. Despite the continued deterioration of the baby's heart rate, the nurse remained silent, failing to contact the doctor. The doctor later testified that the monitor reports were indicative of a serious problem, and that had she been informed of the situation earlier, she would have delivered the baby right away. The nurse, however, never notified the doctor of the heart rate changes and, instead, wrote in her nursing chart, "mild variables." This notation clearly underscored the condition of the baby.

By 6:00 a.m., contractions had pushed the baby into the birth canal where the head became wedged. The doctor ordered a cesarean section and the baby was delivered. Despite earlier concerns about the baby's heart rate problems and the severe and extensive contractions experienced by the mother, the hospital did not perform any extraordinary evaluation of the baby's condition. The hospital recorded the newborn infant as normal, with Apgar scores (which evaluate the baby's color, heart rate, response to stimuli, muscle tone, and respiration) nearly perfect. The baby was transferred to the hospital's regular nursery. Not long after, the baby experienced dif-



The mother was watching a news program featuring SDSBS attorneys Darryl Lewis and Sia Baker-Barnes concerning a case involving the drug Cytotec. She wondered if she had been given the same drug.

**The attorneys obtained the medical records and discovered that she had been given the drug. They also uncovered the fetal heart rate monitor reports disclosing reckless and negligent care of mother and baby.**

ficulty breathing and was transferred to the hospital's neonatal intensive care unit. Over the next several months, the parents noticed that their child was experiencing serious developmental difficulties. A brain scan was performed at six months of age and the radiologist interpreted it as normal. Doctors began testing the baby for numerous genetic disorders. Eventually, it was discovered that the child had a permanent brain injury. She could not walk, talk, or feed herself. She suffered seizures continually. She would require medical care for the rest of her life. The parents were devastated and bewildered by their child's condition. For several years, doctors continued to focus on a possible *(Continued on next page.)*

genetic disorder to explain the child's inability to develop properly. None of the medical personnel informed the parents of the documented indications of the infant's distress during labor, or of the nurse's failures to report the condition of mother and baby to the doctor in a timely manner.

When the child was five years old, a new doctor suggested that she may have had a birth-related brain injury. About the same time, the mother was watching a television news program featuring SDSBS attorneys **Darryl Lewis** and **Sia Baker-Barnes** in an interview concerning a case involving the drug Cytotec. She wondered if she had been given the same drug and if that could explain her child's problems. She contacted the attorneys and asked them to help her. Mr. Lewis and Ms. Baker-Barnes obtained the woman's medical records and discovered that the woman had been given the drug. They also uncovered the fetal heart rate monitor reports that disclosed the medical personnel's reckless and negligent care of mother and baby. Defendants argued that the child's condition was caused by a genetic disorder of some kind, not by events during childbirth.

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*... the defendants switched their arguments to claim that the lawsuit was barred by a statute of limitation. Mr. Lewis and Ms. Baker-Barnes identified exemptions from the limitation which permitted the case to be filed.*

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In deposition, doctor and nurse eventually admitted that they should have been more attentive to the mother and baby during labor. After plaintiffs' attorneys obtained several depositions demonstrating that doctors never investigated the true cause of the baby's injury, the defendants switched their arguments to claim that the lawsuit was barred by a statute of limitation. Mr. Lewis and Ms. Baker-Barnes identified exemptions from the limitation which permitted the case to be filed.

Facing an impending trial date, the defendants relented and agreed to a settlement in an amount just under eight figures. The family was grateful to have the ability to provide their child the optimal medical care she will need for the rest of her life. And they were grateful for the peace of mind that came from finally understanding how their baby was injured. ♦

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Ritchie Poncy  
Hatfield**

Please welcome SDSBS's newest associate attorney, **Mara Ritchie Poncy Hatfield**. Ms. Hatfield holds dual degrees from Vermont Law School, attaining both a Juris Doctor and Masters in the Studies of Environmental Law in December 2005. She has consulted with the firm since 2006, most particularly on issues related to environmental and entertainment law. As such, she assisted in the investigation and litigation resulting from the current Acreage Cancer Cluster Investigation, as well as on a number of consumer-based, class-action lawsuits and cases involving the valuation of certain "soft intellectual property" concerns such as celebrity goodwill, misappropriation of identity, and the discernment of interests in film production. As a law clerk, she assisted in complicated trials including the following cases: *Schein et al v. Ernst & Young LLP*, tried in 2009 by Jack Scarola and Patrick Quinlan in the complex litigation division in the 17th Judicial Circuit Court; *Neumann v. Morse Geriatric Center* tried by Jack Scarola and Marlie Poncy in 2007 in the 15th Judicial Circuit Court in and for Palm Beach County; *Keil v. Keller*, tried by Chris Searcy, Jack Scarola, and Brian Denney. Prior to law school, she received a Bachelor of Arts in English and a Master of Arts in English Literature with a drama concentration. She grew up in south Florida, the daughter of Mark and Marlie Poncy. Eager to help safeguard the community and the environment of her hometown, she returned to Palm Beach County after law school. Mara and her husband, Jay, have three "true" Floridians of their own: Willow, Lily, and Atticus. In her rare spare time, she enjoys writing fiction, poetry, screenplays, and lyrics. ♦



*Above: SDSBS employees and their guests for the day;  
right: Greg Barnhart greets the children.*

## SDSBS proudly hosts 24 children for "Take Our Daughters and Sons to Work Day"



On April 26, 2012, SDSBS was proud to host 24 children at its West Palm Beach, Florida, offices for the national "Take Our Daughters and Sons to Work Day." The program was established to educate and broaden children's career aspirations. The day began with greetings from **Greg Barnhart**, followed by presentations from employees in several different departments. **Jack Scarola** shared a children's story he wrote for his grandchildren. **Brenda Fulmer** talked about how she became an attorney and what it is like to be one. **Chris Deckert** and **Travis Gallagher** discussed the high-tech aspects of courtroom litigation support and how evidence can be presented. **Laurie Briggs** and her team presented a popular workshop on the subject of tobacco litigation. The students enjoyed a lunch with their parents outdoors in the firm's Meditation Garden. An officer from the Florida Highway Patrol visited with the students and introduced them to his new K-9 partner-in-training. The day wrapped up with the award of medals of achievement. ♦

## SDSBS Attorneys Listed as 'Florida Legal Elite' by Florida Trend Magazine

In July 2012, *Florida Trend* magazine published its ninth annual edition of "Florida Legal Elite," a list of prestigious lawyers nominated by their peers as attorneys who are held in the highest regard or who would be recommended to others. A panel of previous "Legal Elite" winners, representing different practice areas in cities across the state, reviewed the selection process and the list of finalists. The resulting lists represent approximately 2% of the more than 67,000 active Florida Bar members. SDSBS attorneys **Chris Searcy** and **Jim Gustafson** were recognized for their work in the practice area of Civil Trial. **Jack Scarola** was recognized for his work in the practice area of Commercial Litigation. **Brian Denney** was listed in "Legal Elite's" list of Up and Comers – attorneys 40 years of age and younger who have exhibited leadership in their practice of law. ♦



**Chris Searcy**



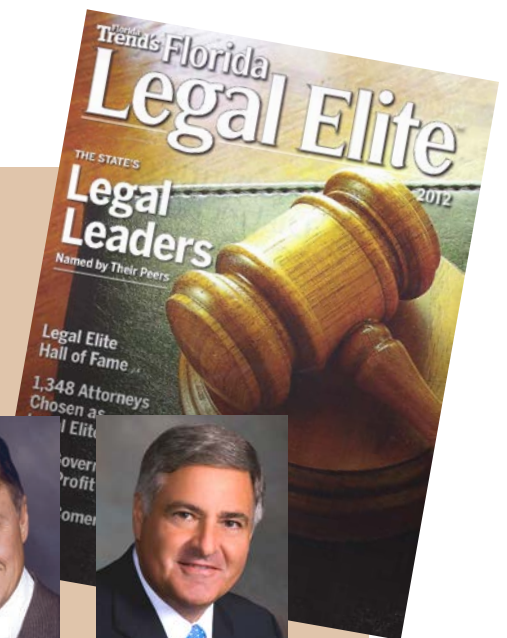
**Jack Scarola**



**Jim Gustafson**



**Brian Denney**



## Brenda Fulmer elected by the American Association for Justice's Board of Governors to the AAJ Political Action Committee Board of Trustees



**Brenda Fulmer** was recently elected by the American Association for Justice's Board of Governors to the AAJ Political Action Committee Board of Trustees. AAJ PAC helps fund the political races of federal pro-civil justice candidates and incumbents. It is

the only federal PAC dedicated to preserving the civil justice system. AAJ PAC supports candidates on both sides of the political aisle. It ranks as one of the top contributors to both House and Senate candidates every election cycle. Congratulations to Ms. Fulmer on her election which recognizes her persistent efforts to ensure that every person has access to justice – even when up against the most powerful interests. ♦

## Just when you thought it was safe to go back in the water!



SDSBS attorney **Greg Barnhart** participated in the Summer Ocean Mile Swim held July 7, 2012, at Carlin Park, Jupiter, Florida. The Palm Beach County Parks and Recreation Department, Aquatics Division, hosted the event promoting both competitive and recreational swimming. Mr. Barnhart won the gold medal for his age group. ♦

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**Searcy Denney**







## ACTOS

**USE:** Lowers blood sugar levels and helps diabetics use insulin more efficiently.

**HARM:** Failure to warn of risks of bladder cancer.



## Pradaxa

**USE:** Treatment for atrial fibrillation.

**HARM:** Failure to warn of inability to reverse impairment of blood clotting, which causes uncontrollable bleeding and death.



## Stryker Rejuvenate Hip Implant

**USE:** Modular, non-metal on metal hip implant

**HARM:** Modular components corrode leading to metallosis, premature device failure, elevated cobalt levels, pseudotumor formation, and osteolysis.



## Yaz, Yasmin, Beyaz, Gianvi and Ocella

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

**HARM:** Failure to warn of increased risks due to unique progestin leading to blood clots, DVT, strokes, heart attacks, pulmonary emboli, gallbladder disease, and sudden cardiac death.



## Metal-On-Metal Hip and Knee Implants

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

**HARM:** Failure to warn of breakdown of metallic surfaces and abnormal wear, premature device failure, and elevated cobalt and chromium in blood causing metallosis and pseudotumor formation.



## Osteoporosis Drugs

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

**HARM:** Failure to warn of impairment of body's ability to repair damage to bones, leading to femur fractures, jaw osteonecrosis, and possible link to esophageal cancer.



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## Mass Tort Projects of Interest

### **Accutane**

Inflammatory Bowel Disease

### **ACTOS, ACTOplus met, ACTOplus metXR, and Duetact**

Bladder Cancer

### **Avandia**

Heart Attack  
Congestive Heart Failure  
Ischemic Stroke  
Sudden Cardiac Death

### **Avastin**

Bacterial Contamination

### **Bard Composix Kugel Hernia Mesh**

Bowel Injury  
Fistulae Formation

### **Bard IVC Filter**

Heart and Lung Perforation  
Hemorrhagic Pericardial Effusion

### **Bard XenMatrix Hernia Mesh**

Endotoxin Contamination

### **Bisphosphonates (Actonel, Boniva, Fosamax, Zometa, Aredia, and others)**

Jaw Osteonecrosis  
Long Bone Fractures  
Esophageal Cancer

### **Chantix**

Suicide  
Abnormal Behavior

### **Crestor**

Cardiomyopathy  
Diabetes

### **Gadolinium-Based MRI Contrast Agents**

Nephrogenic Systemic Fibrosis

### **Januvia and Byetta**

Pancreatic Cancer  
Thyroid Cancer

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

Device Failure and Loosening  
Inflammatory Response  
Metallosis

### **Multaq**

Heart Attack  
Liver Failure  
Stroke  
Systemic Embolism

### **NuvaRing Contraceptive Device**

Deep Vein Thrombosis  
Pulmonary Emboli  
Stroke

### **Plavix**

Heart Attack

### **Post-Operative Disposable Pain Pumps**

Chondrolysis  
Cartilage Destruction

### **Pradaxa**

Uncontrollable Bleeding

### **Propecia**

Sexual Dysfunction  
Male Breast Cancer

### **Propofol**

Heart Failure  
Respiratory Failure  
Death

### **Raptiva and Rituxan**

Neurological Disease

### **Spiriva**

Atrial Fibrillation  
Cardiac-Related Death  
Stroke and TIA

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

Birth Defects  
Pulmonary Hypertension

### **Stryker Rejuvenate Hip Implant**

Recalled Device Failure  
Metallosis  
Inflammatory Response  
Revision Surgery

### **Topamax**

Birth Defects  
Oral Clefts

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

Tissue Erosion  
Device Failure

### **Tylenol**

Liver Failure

### **Yaz, Yasmin, Beyaz, Gianvi and Ocella**

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

### **Zimmer Knee Implants**

Device Failure and Loosening

If you have been harmed by a drug or medical device, please call our Mass Tort Unit.

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