

A REPORT TO CLIENTS & ATTORNEYS
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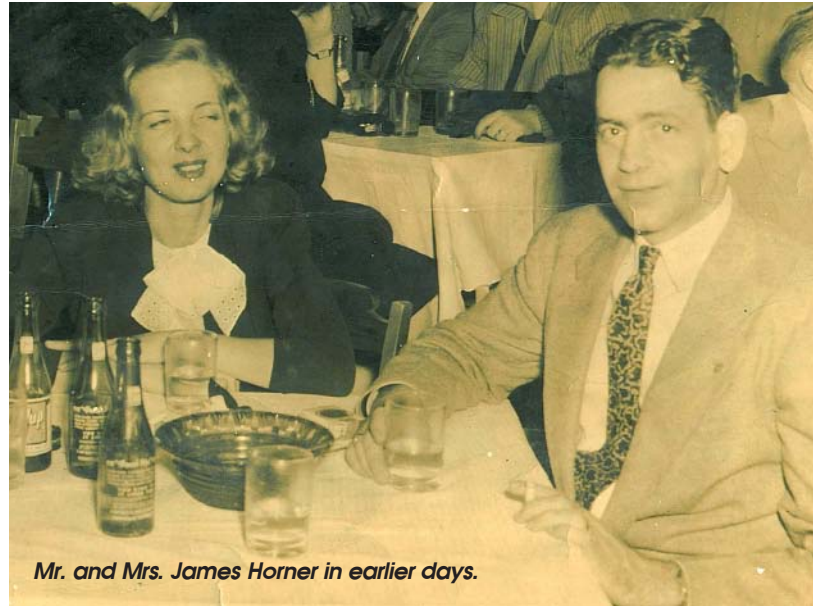
OF COUNSEL

\$80 Million Verdict Over Big Tobacco - 4th SDSBS Victory In Smoking Battle

In November 2010, a Florida jury awarded \$80 million to the daughter of an *Engle* class member who died from lung cancer after a 60-year addiction to the nicotine in cigarettes produced by R. J. Reynolds Tobacco Company.

James Cayce Horner died in 1996 at the age of 78 after a long battle against lung cancer. He began smoking as a teenager in the 1930's, when R. J. Reynolds and other cigarette manufacturers openly marketed cigarettes to teenagers. Despite repeated efforts to quit smoking, even despite his wife's death from lung cancer in 1993, Mr. Horner was unable to overcome his two-pack a day addiction to Reynolds' Lucky Strikes, Pall Malls, Kools, Camels, or Winstons. He smoked until his death.

With both parents lost to lung cancer, it fell to Mr. Horner's daughter, Dianne Webb, to pursue her



Mr. and Mrs. James Horner in earlier days.

father's rights as a member of the landmark *Engle* class action suit. Mrs. Webb asked SDSBS attorneys **Jim Gustafson** and **David Sales** to represent her in a suit against R. J. Reynolds. In July 2006, the Florida Supreme Court's decision in *Engle v Leggett* permitted individual litigation by a defined group of smokers, or their surviving family members, who had been part of the original class action to file suit. The individual suits would have to show that the smoker developed their smoking-related illness prior to November 1996. There are now over 8,000 such suits pending in the courts of Florida.

The Horner suit was the fourth *Engle* trial by SDSBS, and the firm's fourth victory, *(Continued on page eleven.)*

Community's Failure to Honor Contract Results in \$4 Million Settlement for Developer

The story ends with a \$4 million settlement in 2011, but it begins 18 years earlier. In 1993, Ballensles, a planned community of more than 1,575 high-end homes in Palm Beach Gardens, Florida, was struggling. With the residential real estate market in decline and the community's previous developer facing bankruptcy, Dexter Development, Inc., agreed to take over the development of Ballensles with approximately 1,400 homes still left to build and sell. As a result of Dexter Development's steadfast determination and forward thinking, the Ballensles development was soon put back on the right track. The results were nothing short of spectacular from a significant increase in the home values within Ballensles to capital

improvements of the community's facilities, including the country club and its golf, tennis, fitness, swimming, and social facilities. The development of Ballensles was a resounding success for all of its residents and the City of Palm Beach Gardens.

Like most planned communities, there came a time when Dexter Development, as the master developer, turned over control of Ballensles to its residents. Additionally, as the owner of the country club, Dexter Development also had to make arrangements to either sell the country club to a third party investor or turn it into an equity club and sell it to the residents of Ballensles who desired to become equity members. Realizing that residents of *(Continued on page five.)*

A Story of Betrayal Without a Happy Ending

Harold Murphy and Jim Morton had been the closest of friends for over 30 years. When Jim called Harold and told Harold that he, Jim, was in serious trouble, Harold immediately agreed to a meeting. Jim arrived in tears. He told Harold that he had embezzled over \$350,000 from the local law firm where Jim was employed as a paralegal and had just been caught. If he did not replace the stolen funds immediately, Jim was facing 15 years in prison.

Harold told Jim that as much as he wanted to help him, he did not have that kind of money. Jim went on to explain that he had a contract to sell some land. The contract was set to close and he would be able to pay the money back within a few weeks. Believing his trusted friend, Harold went to the bank the next day, borrowed \$350,000 on an existing line of credit and delivered the money to Jim. Two weeks later Jim asked for and was given an additional \$100,000 which Harold also borrowed on the same credit line. This loan was made on the strength of Jim's assurance that a second mortgage on his Wellington home had been approved that would enable Jim to repay the second loan, again within a few weeks.

Harold was now out almost half a million dollars in borrowed funds. As weeks passed with no repayment and with interest on the bank loan eating up Harold's savings, Harold began to question Jim about what was happening. Jim had many explanations about the delays and even gave Harold a copy of the written contract for the land sale. When Jim stopped answering Harold's phone calls, Harold knew it was time to seek the help of another friend, **Jack Scarola**.

Jack got in touch with Jim Morton and demanded that Morton appear in Jack's office the following day. At that meeting, Morton admitted what by then had become fairly obvious—except for the confession of his embezzlement, the rest of his statements to Harold had been lies, and even the amount of the embezzled funds was grossly understated. There never was a contract to sell the land, the document Jim gave Harold was a forgery, and he had no bank commitment for refinancing.

Though he has managed to find the money to pay multiple lawyers to defend him against both civil and criminal charges, Jim Morton did not repay a single penny back to Harold. Nevertheless, Harold has now fully repaid the bank by selling a motor home, two cars, and wiping out the savings that had been intended to help finance the college education of his grandchildren. At 71 years old, the comfortable retirement that Harold should have been able to enjoy has been dramatically altered.

Jack Scarola vigorously prosecuted fraud and civil theft claims against Jim Morton on Harold's behalf and after trial obtained a treble damage judgment of over \$1.6 million. Of course, the quest to avenge the betrayal that Harold suffered will not end until every available asset that Jim Morton has is seized to satisfy that judgment. ♦

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against Big Tobacco. At the time this case went to trial in November 2010, Big Tobacco had won eight straight *Engle* progeny cases.

The Horner verdict snapped plaintiffs' losing streak in a big way. The jury awarded Mrs. Webb \$8 million for the wrongful death of her father, and then imposed punitive damages in the amount of \$72 million against the tobacco company. They found Mr. Horner was ten percent responsible for his death, and that R. J. Reynolds was 90 percent responsible.

Reynolds' defense focused on Mr. Horner's "choices," including his "decision" to continue to smoke and his failure to stop smoking. This defense position was the same in previous suits brought against the several tobacco companies. In opening statements, Jim Gustafson told the jury, "We're going to prove that Jim Horner didn't smoke two packs of cigarettes per day for 60 years because he liked or enjoyed smoking, the way you and I like or enjoy eating a slice of pie or watching a football game. He smoked two packs a day because he was addicted. The novelty of sucking in smoke and blowing it out, sucking it in and blowing it out – that novelty wore off pretty quickly. He didn't smoke 40 cigarettes a day for 60 years because it was so much fun to do . . . he did it because he was addicted to the nicotine in cigarettes. He smoked to avoid withdrawal."

"The truth about this industry remains an eye-opening tale of arrogance and disdain for public health," said David Sales. "People need to be reminded, again and again, of the true costs – in precious human life – that R. J. Reynolds has imposed and continues to impose on our society." ♦