

A REPORT TO CLIENTS & ATTORNEYS  
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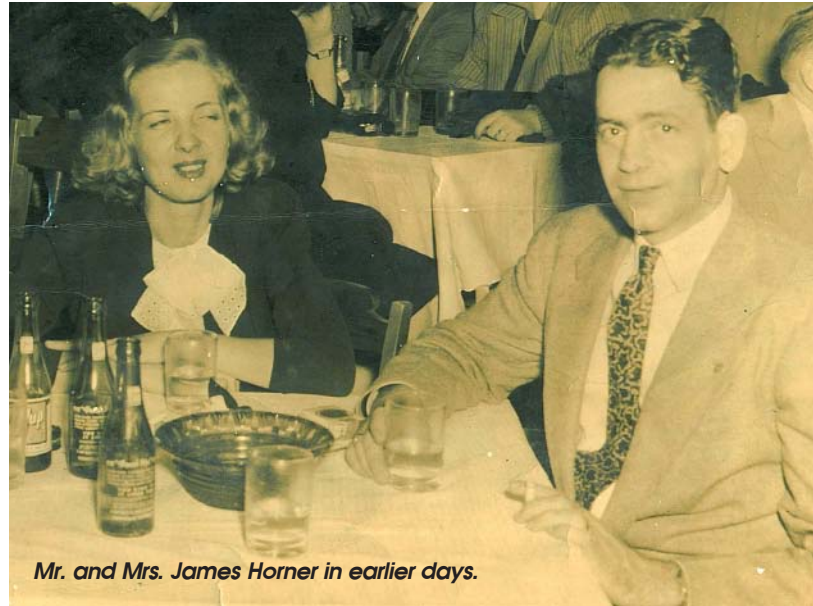
# OF COUNSEL

## \$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.)*

## Community's failure to honor contract results in \$4 million settlement for developer

*(Continued from page one.)*

BallenIsles would make the most logical buyers of the country club, Dexter Development engaged in an 18-month negotiation process with multiple resident organizations to reach an agreement about the terms of the equity conversion. There were multiple drafts and concessions by both sides that culminated in nearly universal support for the equity conversion contracts. When presented with the opportunity to control the future of their country club, 83% of the residents elected to become equity members.

Contained in the equity conversion documents were two separate contracts whereby the country club members and BallenIsles Country Club, Inc., provided unequivocal consent to the rezoning and permanent permitting of Dexter's Sales Center located just outside the gate at BallenIsles. From the Sales Center, Dexter operated a highly successful realty operation devoted to selling and reselling homes within BallenIsles. Because the Sales Center land was originally only temporarily zoned and permitted, Dexter needed to obtain permanent permitting and rezoning from the City of Palm Beach Gardens if its profitable business was to continue after turnover of the community from Dexter to the residents. Dexter planned for this need by negotiating for the inclusion of the consent provisions into the equity conversion documents. In exchange, Dexter gave up valuable contractual rights regarding alternative locations within BallenIsles from which it could conduct its real estate business, and even deeded over the Dexter corporate building within BallenIsles to BallenIsles County Club at no additional cost to the Club.

As with the Sales Center, the Dexter corporate building that was deeded over to the Club required rezoning and permanent permitting. With the full support of BallenIsles Community Association and BallenIsles County Club, the Club's recently acquired property sailed through rezoning by the City of Palm Beach Gardens. When it came time for Dexter to petition the City for rezoning for its Sales Center, however, a small but vocal minority within BallenIsles set out to sabotage Dexter's rezoning efforts in direct violation of their contractual obligation. Despite protracted negotiations with the rezoning opponents, Dexter was

never able to convince them to honor their contractual obligations to support the Sales Center rezoning. This minority group took every opportunity to make known its desire that Dexter not be able to continue operating the Sales Center, while the group was simultaneously exploring opportunities to enter the real estate business themselves. As a result of this persistent opposition, Dexter was not able to secure permanent permitting and rezoning from the City of Palm Beach Gardens for the Sales Center. Without permanent permitting, the City forced Dexter to shut down its profitable real estate brokerage business in 2006 and demolish its 7,000 square foot Sales Center building.

To address the loss of its valuable business, Dexter sought legal representation from SDSBS attorneys **Jack Scarola** and **Jack Hill**. Mr. Scarola and Mr. Hill filed suit on behalf of Dexter in Palm Beach County for breach of contract and tortious interference against BallenIsles Community Association, Inc., BallenIsles County Club, Inc., and several individual defendants who spearheaded the vocal opposition to Dexter's petition for permanent permitting and rezoning of the Sales Center. The case was heavily litigated for over two years, including an appeal to the Fourth DCA. On the eve of the start of a three week arbitration, Jack Scarola and Jack Hill were able to settle Dexter's case against all defendants. Included in the settlement terms is a payment of \$4 million from the defendants. With the case concluded, Dexter is looking forward to again working with BallenIsles for their mutual benefit. ♦

