

A REPORT TO CLIENTS & ATTORNEYS  
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# OF COUNSEL

## Super Bowl Weekend Ends in Tragedy

In February 2008, 42-year-old Amy Brown (not her real name), a successful insurance attorney from Hartford, Connecticut, traveled to Wellington, Florida, to visit with her friends, Carol and Dan Green (not their real names). The Greens, like Amy, were equestrian enthusiasts. Their home was located in a residential development at the Palm Beach International Polo Club in Wellington. On Super Bowl Sunday, the Greens invited Amy to join them for a Super Bowl party at Tavern on the Green, a restaurant in the community. Food and alcoholic beverages were served, and each of the three party-goers had consumed alcoholic beverages during the evening. At approximately 10:30 p.m., the Greens and Amy left the Tavern to return to the Greens' residence. Many Polo Club residents travel around the community by golf cart. In Florida, a golf cart is considered to be a "dangerous instrumentality," and the owner of such a vehicle is held responsible for the negligent operation of that vehicle if that negligence results in injury or death.

Upon leaving the Tavern, Carol Green noticed that the windshield and the seats of the golf cart were



wet with dew. Carol and Amy used a towel to dry the windshield and seats. Carol then drove the golf cart out onto Equestrian Club Road for the ride back to the Greens' residence. Her husband, Dan, sat on the back of the cart and Amy sat in the right front seat. Carol, as "captain of the ship," had a non-delegable duty to ensure that the windshield was clear and her view unobstructed. Additionally, she had a duty and responsibility, at all times, *(Continued on page five.)*

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## \$3.4 Million Awarded in the Fifth SDSBS Engle Case Filed Against Tobacco Industry

In February 2011, a jury in Alachua County, Florida, awarded almost \$3.4 million to the widow of a man who died of lung cancer after smoking more than 40 years. SDSBS attorneys **David Sales** and **Jim Gustafson** filed the action against R.J. Reynolds Tobacco Company and Phillip Morris USA, Inc., on behalf of Anna Louise Huish, whose husband, John, died of small cell lung cancer in 1993. John began smoking as a teenager in the 1940's, when about 80% of people John's age smoked. John smoked for nearly 20 years before the tobacco industry began placing warning labels on packs of cigarettes. Mr. Gustafson established, through testimony by family members and medical experts, and documentation on the history of the tobacco industry's marketing campaign, that the tobacco companies had conspired not only to increase the

addictiveness of their product, but to conceal that effort from their product users. They had, in fact, engineered cigarettes to be addictive, to entrap the products' users in a way that ensured future sales, and then they spent years lying about it and evading the truth. The jury originally awarded \$750,000 but then apportioned 50 percent of the fault to John, reducing the award to \$375,000 but finding that punitive damages were warranted against R.J. Reynolds and Phillip Morris U.S.A., Inc. Following another day and a half of evidence on punitive damages, during which the defendants called their employees as witnesses, the jury returned a punitive damages verdict of \$3 million (\$1.5 million assessed against R.J. Reynolds, and \$1.5 million assessed against Phillip Morris USA). *(Continued on page six.)*

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to operate the vehicle in a safe manner and to protect her passengers from injury.

As the golf cart came to a curve in the road, Amy stood up to wipe more moisture from the windshield. At the same time, Carol jerked the cart's steering wheel to the left, throwing Amy out of the cart and onto the paved road where she forcefully struck her head. The Palm Beach County Sheriff's Office responded to the accident. Amy's head injuries were so severe that the authorities called for the Trauma Hawk medical evacuation helicopter to transport her to Delray Medical Center for emergency treatment. Despite heroic efforts at the hospital, Amy died of her injuries days later.

Because of the fatality, the Palm Beach County Traffic Homicide Unit was assigned to conduct an investigation. Officers who had reported to the scene that night observed that Carol Green had "blood-shot, glassy eyes," "flushed skin," and "smelled of the strong odor of alcoholic beverages." Physical evidence reported by officers at the scene of the accident indicated that the golf cart had skidded a full 30 feet before coming to a stop. During an interview with an officer, Carol stated that she had not attempted to slow her speed, and she did not attempt to make her passenger sit safely inside her vehicle. She told the officer that "it was not her responsibility to tell passengers how to behave . . . ."

When authorities asked Carol for a consensual blood sample, at first she refused. She was then informed that, pursuant to Florida law, a blood test would now be mandatory. The officer reported that Carol "remained evasive." She contacted her mother by telephone and was told that a lawyer was on the way. Carol finally agreed to the mandatory blood test, and her blood was drawn at the scene. Laboratory analysis of her blood sample revealed a blood alcohol level of 0.154% ethyl alcohol, almost twice the legal limit in Florida. Sheriff's deputies charged Carol with driving under the influence of alcohol.

As an insurance company attorney, Amy had been asked to identify the law firm that had the largest verdicts against the insurance company that employed her. Upon completing her research of

law firms throughout the nation, she thus identified SDSBS as the law firm with the biggest impact on her employer. She mentioned this research to her family. When she died months later, her parents, Sandra and Robert Brown (not their real names) of Ohio, were devastated by the loss of their beautiful daughter. Recalling their daughter's conversation, they contacted SDSBS and asked them to represent the family in a wrongful death action. Attorneys **Chris Searcy, Karen Terry, and Brian Sullivan** began an intense investigation that culminated with the filing of a wrongful death lawsuit against the Greens and the owners of the golf cart for their negligent acts. Throughout the contentious and complex lawsuit, the defendants' interests were represented by six law firms. Incredibly, from their first answer to the filing of the Browns' complaint, the defendants took the stance that Amy was responsible for her own death by negligently standing while the golf cart was in motion. They claimed that Carol's intoxication had nothing to do with Amy's death.

At mediation, the defendants again stood firm on their assertion that Amy was responsible for her own death and that Carol had no culpability, whatsoever. Finally, on the eve of trial, the defendants agreed to settle the matter for \$4 million. The defendants' assertion that Amy was responsible for her own death was finally refuted. Sandra and Robert Brown will always grieve the loss of their daughter. Justice, however, has ensured that those who shared in the negligence that caused Amy's death have acknowledged their responsibility. ♦



Under the influence of alcohol, Carol had not attempted to slow her speed nor make her passenger sit safely. Coming to a curve, she jerked the wheel sharply, throwing Amy out of the cart. **Amy struck her head forcefully and died days later.**