

OF COUNSEL

A REPORT TO CLIENTS & ATTORNEYS
VOLUME 12 - NUMBER 2

Big Tobacco Finally Compelled to Pay After Lengthy Appeals

Defendants to pay \$7.8 Million for causing death of man's wife.

After three long years of appeals, Big Tobacco was ordered to pay the August 2009 verdict issued by an Escambia County, Florida, jury in the amount of \$7.8 million in compensatory damages due to Franklin D. Campbell, Sr., for its responsibility in the death of his wife, Betty. Mrs. Campbell died of chronic obstructive pulmonary disease in 2006, at 64 years of age. She had been a long-time smoker, succumbing to an addiction to nicotine despite years of numerous, unsuccessful efforts to quit smoking. Mr. Campbell asked SDSBS attorneys **Bill Norton** and **Laurie Briggs**, and former SDSBS attorney David Sales, to represent him in a suit brought against RJ Reynolds Tobacco Company, Phillip Morris USA, and Liggett Group, to hold these companies responsible in his wife's death.

"Big Tobacco's tactics have always been delay, delay, deny, deny," said Mr. Norton. "They realize how stressful



Bill Norton, Franklin Campbell, and Laurie Briggs.

it is for our client to sit in the courtroom and hear the lies they have been perpetrating for over 50 years."

The Campbell case was one of thousands that remained pending in Florida courts following a Florida Supreme Court decision in 2006. The *Engle* class action decision paved the way for individual suits to be filed by Florida smokers who developed smoking-related diseases prior to November 1996 and had been part of the original class action. "The Campbell case was the firm's first *Engle* progeny trial and both sides and the court were confronting new legal issues and new theories," Norton said. SDSBS has won seven other *Engle* progeny tobacco cases. The Campbell case was particularly difficult in that a mistrial was declared after the first jury had been seated and over 600 potential jurors were questioned before a second jury could be selected. *(Continued on page four.)*

Uncleaned Floor Causes Woman to Slip and Fall

One Sunday afternoon Martha Collier and her husband, Kevin, went shopping for their son's birthday at the J.C. Penney store in Wellington, Florida. Martha Collier was in her 40's and very fit. She was an exceptional athlete, earning letters in four different sports in high school and accepting a golf scholarship to college. She remained active up until the time she was hurt. She was an avid runner, and as her husband describes, the most coordinated person he had ever met.

However, as Martha turned a corner on the marble tile floor around the jewelry section, this coordinated and fit woman was about to suffer a life-changing injury. Unbeknownst to Martha and Kevin, a person who was never identified, possibly a child or a baby, had gotten sick, and the employees of J.C. Penney had allowed vomit to remain on the floor. A beige-oatmeal

type color, the vomit blended in with the light-colored tile floor. There were no warning cones, no warning flags and, even more significantly, no employee stationed by the vomit to warn oncoming customers.

Just as Martha was about to step in the vomit, an employee from about twenty feet away yelled, "Watch Out!" *(Continued on page seven.)*





(l-r:) Jack Scarola, Greg Barnhart, Chris Searcy, Earl Denney, and John Shipley.

SDSBS Attorneys Board Certified for Over 25 Years

The Florida Bar Association's Board of Legal Specialization & Education hosted a reception to recognize lawyers who have been board certified for 25+ years. Included in BLSE's recognition for outstanding achievement and ability to "lead by example" were SDSBS attorneys **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, and John Shipley**. The reception was held June 21, 2012, during The Bar's annual convention at the Gaylord Palms Resort in Orlando, Florida. ♦

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

A Passion for Justice™



2139 PALM BEACH LAKES BLVD.
WEST PALM BEACH, FLORIDA 33409
TOLL FREE: 800-780-8607
LOCAL: 561-686-6300
FAX: 561-478-0754



THE TOWLE HOUSE
517 NORTH CALHOUN STREET
TALLAHASSEE, FLORIDA 32301
TOLL FREE: 888-549-7011
LOCAL: 850-224-7600
FAX: 850-224-7602

ATTORNEYS AT LAW:

ROSALYN SIA BAKER-BARNES
F. GREGORY BARNHART
T. HARDEE BASS III
LAURIE J. BRIGGS
BRIAN R. DENNEY
EARL L. DENNEY, JR.
BRENDA S. FULMER
MARIANO GARCIA
JAMES W. GUSTAFSON, JR.
ADAM HECHT
JACK P. HILL
DAVID K. KELLEY, JR.
CAMERON M. KENNEDY
WILLIAM B. KING
DARRYL L. LEWIS
WILLIAM A. NORTON
PATRICK E. QUINLAN
EDWARD V. RICCI
JACK SCAROLA
MATTHEW SCHWENCKE
CHRISTIAN D. SEARCY
JOHN A. SHIPLEY
CHRISTOPHER K. SPEED
BRIAN P. SULLIVAN
KAREN E. TERRY
DONALD J. WARD III
C. CALVIN WARRINER III

PARALEGALS:

VIVIAN AYAN-TEJEDA
RANDY M. DUFRESNE
DAVID W. GILMORE
JOHN C. HOPKINS
DEBORAH M. KNAPP
VINCENT LEONARD
J. PETER LOVE
PABLO PERHACS
ROBERT W. PITCHER
KATHLEEN SIMON
STEVE M. SMITH
BONNIE STARK
WALTER STEIN

WEBSITES:

WWW.SEARCYLAW.COM
WWW.SEARCYLAWTALLAHASSEE.COM
WWW.ABOGADOSPARASUFAMILIA.COM
WWW.SEARCYMASTORT.COM

OF COUNSEL

NEWSLETTER
VOLUME 12 NUMBER 2

MANAGER: JOAN WILLIAMS
MANAGING EDITOR: ROBIN KRIBERNEY
EDITORS: DIANE TRUMAN & PAULINE MUELLER
HEADSHOT PHOTOS: MOYA PHOTOGRAPHY
CREATIVE DIRECTOR: DE CARTERBROWN

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.

Man's Death Results from Nurse Ignoring Clear Signs of Curable But Life-Threatening Condition

On May 1, 2012, a Broward County, Florida, jury returned a verdict for the family of Paul Mendelson, a career prosecutor and deputy chief of the Legal Division at the Miami-Dade State Attorney's office. Paul was 49 years of age when he died in January 2002 as a result of a negligent nurse who did not consult with Paul's doctor when he called the doctor's office with obvious signs of a life-threatening, but curable, condition.

On December 5, 2001, Paul Mendelson went to his doctor complaining of weakness in his left arm, chest pressure, and discomfort in his jaw. He was admitted to a local hospital. The next morning, a thallium stress test showed Paul had previously suffered a myocardial infarction (heart attack) and a small area of damage to a portion of his heart. The test also showed ischemia (loss of blood flow) to that portion of his heart. Paul was transferred to another hospital where he underwent a cardiac catheterization, an angioplasty, and a stent procedure on the left anterior descending coronary artery. Paul had only one coronary artery with blockage that required treatment, unlike

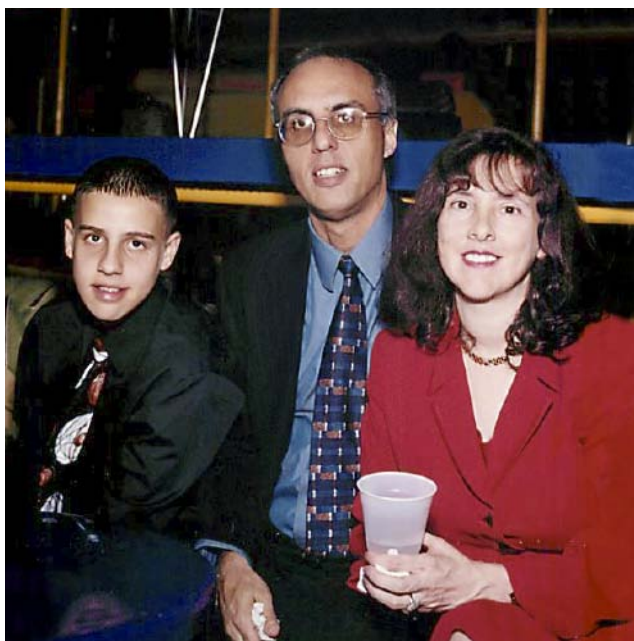
many people who suffer coronary artery disease with severe blockage in multiple coronary arteries. The stent opened the blocked artery and restored blood flow to the damaged portion of the heart. The procedures were successful, and Paul was sent home the next day with prescriptions for blood thinning medications.

About one week later, Paul and his wife Debra returned to his doctor's office for a routine follow-up examination. Records indicated he was doing well, and the doctor ordered some routine blood work and another stress test in six weeks. In mid-January, however, Paul complained again of chest pain, and the couple placed a call to the doctor's office. A nurse returned their call and asked a series of questions about Paul's condition.

The nurse did not call Paul's doctor to notify him of Paul's troubling complaint, nor did she tell Paul to go

to the hospital emergency room immediately. Instead, the nurse told the Mendelsons that the doctor would address his condition at the upcoming office appointment. Relieved, Paul and Debra went about their daily lives.

A coronary artery stent often works well to keep blood flowing through an artery as intended. It is akin to a small straw, or tube, that props open the artery. It is, however, a foreign body inserted into a person's



The nurse did not call Paul's doctor...nor did she tell Paul to go to the emergency room immediately.

She ignored the tell-tale signs of a thrombosis reported to her by Paul a little over a week before.

coronary artery. As such, it is known to have a small risk of thrombosis – essentially a blood clot in the stent that blocks blood flow through the artery. Because of the blockage in the coronary artery, a symptom of thrombosis is chest pain. Symptoms of chest pain in any patient that had recently received a stent is considered a medical emergency because a thrombosis can result in death just as rapidly as a classic myocardial infarction.

On Saturday, January 26, 2002, Paul left for his office to do a little work before attending his son Daniel's afternoon basketball game. Daniel was 14 years old; his older sister, Rachel, was 18. Daniel was driving to the game with a teammate and his teammate's mother. On the way to the game, they saw Paul's car on the side of the road in their neighborhood, partially on the swale, surrounded by *(Continued on page six.)*

Big Tobacco Finally Compelled to Pay After Lengthy Appeals

(Continued from page one.)

The SDSBS attorneys called a total of 14 witnesses to educate the jury about the tobacco industry's 50-year cover-up of the health risks for smokers and its intentional efforts to keep smokers addicted to nicotine. "Showing the jury what is now known and generally accepted about the health risks of smoking was, in fact, not known in 1957 when Betty Campbell began smoking and that the facts were deliberately hidden by a well-orchestrated, multi-billion dollar advertising effort by Big Tobacco was our biggest challenge," Norton said. The six-week trial finally concluded with a judgment for Mr. Campbell in the amount of \$7.8 million.

Then, Big Tobacco began its delay tactics. It filed appeals alleging that the use of findings from the *Engle* decision violated the defendants' right to due process, and it challenged scientific documentation on the health risks and addictive nature of nicotine. Its appeals eventually reached the United States Supreme Court, which declined to hear the case. The lower court ruling stood, and the defendants had to comply with the Escambia County jury's judgment.

At a recent reunion of the SDSBS legal team and their client, Franklin Campbell, Mr. Campbell expressed satisfaction and gratitude for the jury system and the fact that the jury understood the power that nicotine held over his wife, Betty. Mr. Campbell remembered Betty as a fine mother and wife, a person who had struggled and successfully overcome a tough childhood – bouncing from relative to relative, her mother

SDSBS wanted to reiterate that nicotine continues to claim the lives of over 440,000 Americans each year and thousands of *Engle* cases are waiting for their day in court to show Big Tobacco that they will be held accountable.

The six-week trial finally concluded with a judgment for Mr. Campbell in the amount of \$7.8 Million.

in and out of mental hospitals. All of her energies were focused on making a loving home for her husband and three sons. "She had little energy left to fight against the deliberately addictive effects of nicotine and the jury clearly understood the addictive nature of cigarettes, the reason for Betty's inability to break that addiction, and that Big Tobacco had consistently and deliberately withheld the truth from the American public," Norton said. In describing his relationship with his wife Betty, Franklin Campbell told the jury "I didn't know why she would pick me for a husband, but I sure appreciated the fact that she did." The jury understood and appreciated Mr. Campbell's loss.

SDSBS wanted to reiterate that nicotine continues to claim the lives of over 440,000 Americans each year and thousands of *Engle* cases are waiting their day in court to show Big Tobacco that they will be held accountable. ♦



Candidate for Re-Election Ron Alvarez and attorney Jack Scarola attend the Palm Beach County Bar's North County Section Reception with the Palm Beach County Justice Association in March at the Yard House.

Big Tobacco's Glass House of Deceit Continues to Crumble As Two More *Engle* Progeny Judgments Are Affirmed

Two years after a Pensacola jury returned a verdict requiring R. J. Reynolds Tobacco Company and Liggett Group LLC to pay over \$20 million in compensatory and punitive damages to the family of Janie Mae Clay, the First District Court of Appeal in Tallahassee, Florida, affirmed the Clay family's April 2010 judgment. In 2003, Janie Mae Clay, the matriarch and centerpiece of a close and loving family, died of chronic obstructive pulmonary disease at the age of 58. She had smoked cigarettes heavily for 40 years. The Clay family was represented by SDSBS attorneys **Bill Norton, Brian Denney, and Hardee Bass.**

In March 2012, the same First District Court of Appeal delivered a *per curiam* affirmance of a February 2011 verdict and judgment on behalf of Anna Huish against R. J. Reynolds Tobacco Company 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 at age 62 after 46 years of smoking Lucky Strike, Camel, and Marlboro cigarettes. Mrs. Huish was represented by SDSBS attorney **Jim Gustafson** and former SDSBS attorney, David Sales. Mr. Sales also served as Mrs. Huish's appellate lawyer.

"True to its decades-old conspiracy to delay and deny and lie, Big Tobacco trotted out the same arguments on appeal that were rejected repeatedly by the courts.

When good people are confronted with the truth, Big Tobacco's glass house of deceit crumbles under the weight of their dishonesty."



In both cases, Big Tobacco recycled all the same old arguments that had been rejected time and again, and which the United States Supreme Court refused to hear in March 2012 on cases including Florida plaintiffs Martin, Gray, Hall, and Campbell. The Clay and Huish cases, along with these others, are part of the thousands of cases filed as a result of the landmark *Engle* class action suit. Under the standards set by *Engle*, plaintiffs had to show that Clay and Huish were addicted to nicotine, and that the nicotine addiction caused their deaths. The juries found that Big Tobacco not only ignored the dangers of smoking, but made every effort to hide the risk from smokers. "True to its decades-old conspiracy to delay and deny and lie, Big Tobacco trotted out the same arguments on appeal that were rejected repeatedly by the courts," said Mr. Gustafson. "When good people are confronted with the truth, Big Tobacco's glass house of deceit crumbles under the weight of their dishonesty." ♦

Speaking Opportunities



On December 3, 2011, **Chris Searcy** spoke to the Kansas Association for Justice at its 39th Annual Crown Center Seminar and Annual Meeting, and 60th Anniversary Celebration, held in Kansas City, Missouri. His topic was "The Site Where You Cannot See." ♦



The American Association for Justice recently certified a new Litigation Group to address issues involving Pradaxa. **Brenda Fulmer** was appointed interim co-chair for the Group. The Group held a plaintiff-only AAJ Education Seminar, "Handling the Pradaxa Claim," on April 11, 2012, in Baltimore, Maryland.

Ms. Fulmer spoke at the seminar on the subject of "Screening the Case and Representing the Elderly." In January 2012, Ms. Fulmer spoke at a meeting of the Martin County Bar Association's Trial Committee CLE Seminar held in Stuart, Florida. Her topic was "What is a Mass Tort?" ♦



On May 7, 2012, **Mariano Garcia** was guest speaker at the monthly luncheon of the Palm Beach County Hispanic Bar Association. Mr. Garcia provided an extensive presentation on merit retention in the State of Florida, including the history of and the need for judicial merit retention in order to keep politics out of the

courthouse. The presentation was interactive and attendees, including several judges, provided many comments and feedback on the need to educate the public on the importance of an independent judiciary. ♦



Paralegal **Vince Leonard** conducted a seminar on "Getting the Most Out of Mediations" at the Spring Paralegal Breakfast hosted by the Palm Beach County Justice Association. The event was held on March 23, 2012, at Bear Lakes Country Club in West Palm Beach, Florida. ♦

Man's Death Results from Nurse Ignoring Clear Signs of Curable But Life-Threatening Condition

(Continued from page three.)

police and medical personnel. Paul had been found inside the car, unresponsive. The authorities had rushed him to a nearby hospital. Daniel called his mother and the two of them raced to the hospital. After waiting several hours, they were told that Paul had died. An autopsy performed by the Broward County Medical Examiner revealed that Paul had died as a result of a thrombosis in the recently-stented coronary artery. The nurse had ignored the tell-tale signs of a thrombosis reported to her by Paul in his phone call a little over a week before. An obvious, treatable condition went tragically unchecked until it killed him.

Paul Mendelson was a giant in the legal community. He was the consummate 'lawyer's lawyer,' an ethical man whose motto was "always do right." Paul was respected by his opponents and peers, and many on the opposing side of his cases listened to him because he truly lived that motto to "do right." His funeral was a standing-room-only event. Legal and political luminaries attended, alongside heartbroken neighbors and friends, many of whom spoke about how Paul had touched their lives. Debra, Daniel, and Rachel had suffered an unimaginable loss.

The Mendelson family sought representation to hold the parties responsible for the terrible negligence that had caused Paul's untimely death. SDSBS attorneys **Bill Norton** and **Jim Gustafson** were privileged to try the case to a Broward County jury. In May 2012, the jury returned a verdict of \$940,000 for the family. ♦

Uncleaned Floor Causes Woman to Slip and Fall

(Continued from page one.)



Attorney Greg Barnhart making a point during the trial.

This distracted Martha, and she stepped directly in the middle of the puddle of vomit. So slick was the vomit on the floor that both of Martha's feet went out from underneath her and she fell violently onto her right side.

Helped to her feet by her husband, Martha was humiliated and embarrassed and experiencing pain primarily in her neck and head. She applied ice packs at the store, then at home, and several days later went to orthopedic surgeon Robert Lins. Dr. Lins ordered a series of MRIs which were read by neuroradiologist Brian Young. These MRIs disclosed that Martha had suffered herniations of two of her thoracic discs, T9-10 and T11-12, and one of her lumbar discs, L4-5.

It was soon determined that Martha was not a surgical candidate, so she was referred to physiatrist Gary DiBlasio by Dr. Lins. She became a regular patient of Dr. DiBlasio and remains one to this day.

Seeking to determine responsibility for what happened, the Colliers asked senior partner, **Greg Barnhart** to represent them and protect their family. A reasonable offer was made by the Collier family to settle the case but J.C. Penney would have none of it. The company maintained that they were not at fault, that the vomit had not been on the floor for any sufficient length of time, and therefore they had no reasonable opportunity to clean it up. Further, they felt that unoperated herniated discs were not significant injuries. The case proceeded to trial, and Greg Barnhart asked SDSBS attorney **D.J. Ward** to co-try the case with him. It was Mr. Ward's first jury trial, and it would become a noteworthy way to start a trial career.

During the discovery phase, the attorneys obtained a copy of *J.C. Penney's Safety Manual*. Because J.C. Penney is a corporation that has been in existence over 100 years, they have come to realize what situations may be dangerous for customers and have incorporated some of that knowledge into their *Safety Manual*. When it comes to foreign substances on the floor of their stores, the manual is clear: employees must "never leave a spill unattended." The defense agreed that the manual contained that language but argued that they did not have the information soon enough to even get someone to the location of the spill. The Colliers, through Greg Barnhart and D.J. Ward, argued that store employees must have known of the spill or else one of them would not have yelled, "Watch Out."

On the issue of damages, the defense hired an orthopedic surgeon from Ft. Lauderdale who makes a significant living testifying for defendants on a weekly basis. He stated that there is nothing wrong with Martha Collier and that her treating physicians had misread the MRIs that showed herniated discs. He argued that, in fact, there were no herniated discs, that she was fine and needed nothing more in her life. This defense doctor did not fare well on cross examination; court observers reported that he was "cut to pieces" when cross-examined by Mr. Barnhart.

On damages, it was Mr. Barnhart's and Mr. Ward's position that Martha Collier was going to live a life of pain, would require future surgery on her lumbar spine, and would be forced out of the work place five to ten years earlier than she otherwise would have. Martha and Kevin work together in their own insurance agency and through the testimony of Dr. DiBlasio, Greg Barnhart explained to the jury that Martha would indeed be forced from the work place early because her herniated discs would continue to degenerate to the point where her pain would become disabling.

After a week-long trial, the jury returned a verdict for the Colliers in the amount of \$824,200. The defense never raised their offer of \$60,000, and they clearly paid for this hard line attitude. ♦

J. C. Penney's Safety Manual is clear: 'employees must never leave a spill unattended.' They must have known of the hazard or else one of them would not have yelled, 'Watch out!'

The jury returned a verdict for Martha and Kevin Collier for \$840,000.

SDSBS Websites:



Log on to...

www.SearcyLaw.com or
www.SearcyLawTallahassee.com

for the latest news and information on
our firm, attorneys, articles, cases, etc.



Log on to...

www.SearcyMassTort.com
for the latest news and information on
Mass Torts (where many people are
harmed in a similar way, usually by a
drug, medical device or a product).



Log on to...

www.AbogadosParaSuFamilia.com
for the latest news and information
about our firm in Spanish.

Yes Vote to Keep Justices Is Cr

On November 6, 2012, Floridians will make a choice that charts the future course of democracy and constitutional government in the state. Voters must decide whether to retain three Supreme Court Justices with a record of impartial decisions based on the law . . . or to open the door to a power grab by politicians who want the Court to reflect their own ideological agenda.

Yet, because this issue is overshadowed by the Presidential and Congressional races, and the question is buried deep in the general election ballot, many Floridians may not understand what is at stake. Worse, millions may not even vote.

What is at stake is what is called "merit retention" of Supreme Court Justices, a system approved by Florida voters in 1976. After a rigorous vetting process, the names of potential Justices are submitted to the Governor by a nonpartisan Judicial Nominating Commission. Once appointed, Justices stand for merit retention on the statewide ballot, in rotation, in general election years. Voters are asked to vote "yes" or "no" on whether each Justice on the ballot should remain on the bench.

Three Justices on Ballot for Retention

Justices Fred Lewis, Barbara Pariente, and Peggy Quince are up for merit retention on the November 6 ballot. All three have been retained several times before by a majority of voters who understand their unbiased role in protecting the rights of individual Floridians against power-hungry politicians and special interests.



R. FRED LEWIS was appointed by Governor Lawton Chiles in December, 1998. While serving as Chief Justice, he formed Justice Teaching, which recruits volunteer lawyers and judges to provide civics and law-related education in Florida public schools.



BARBARA J. PARIENTE, who was appointed in December, 1997, has served as Chief Justice of the Supreme Court and previously was a judge on the Fourth District Court of Appeal. In 2008, she was inducted into the Florida Women's Hall of Fame.



PEGGY A. QUINCE was appointed jointly by Governors Chiles and Bush in December, 1998. She was the first African American woman to serve on a District Court of Appeal, appointed to a judgeship on the Second District Court of Appeal in 1994.

For more information about these three Justices, go to
www.floridasupremecourt.org

itical to Preserve Democracy.

Why Voters Should Vote Yes

Here are just some of the compelling reasons why Floridians should vote “yes” to retain all three of these Justices on the Supreme Court:

- ◆ Justices Lewis, Pariente, and Quince are a diverse group of Justices who have interpreted the Florida State Constitution in an unbiased and non-political manner. Examination of their records demonstrates that they are not influenced by ideology or popular opinion.
- ◆ Floridians have demonstrated overwhelmingly that they want to protect their rights under a judicial system that is fair and impartial. Merit retention was approved by voters, and Justices Lewis, Pariente, and Quince all have been retained in previous retention elections.
- ◆ Knocking out three Justices would give the Governor three new appointments to the Supreme Court, injecting partisan politics and destroying the balance of government power that was initiated by our Founding Fathers.
- ◆ The campaign for a “no” vote is orchestrated and funded by political extremists, including out-of-state groups, who see this as an opportunity to stack the Florida Supreme Court with Justices who will rule their way.
- ◆ A takeover by politically-driven special interests – no matter what their ideology or party affiliation – would mean judicial decisions based on popular trends and personal opinions instead of our Constitution and the rule of law.

Why we must
retain fairness
and impartiality
on Florida
Supreme Court.

What Fair-Minded Floridians Can Do

Under the rules for judicial campaigns, Florida Supreme Court Justices are limited in what they can do to campaign for their retention. So, much of the burden for educating voters and getting out the “yes” vote falls on community leaders and grassroots efforts by Floridians who understand the urgency of retaining a fair and impartial Court.

Here are some things that fair-minded citizens can do in the next few months before the November 6 election:

- ◆ **Get informed.** Educate yourself on the question of merit retention.
- ◆ **Reach out.** Tell your friends, neighbors, and colleagues how critical it is to keep Justices Lewis, Pariente, and Quince on the Florida Supreme Court.
- ◆ **Speak up.** Write Letters to the Editor of your local newspaper in support of a “yes” vote to retain Justices Lewis, Pariente, and Quince.
- ◆ **Get out the vote.** Urge merit retention supporters to be sure to scroll down the ballot and vote “yes” for EACH of the Justices.



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

AVIATION & RAILROAD DISASTERS
BOATING & WATERCRAFT INJURIES
CATASTROPHIC VEHICLE ACCIDENTS
COMMERCIAL DISPUTES
CONSTRUCTION DEFECTS
DEFECTIVE DESIGN
INTELLECTUAL PROPERTIES
MASS TORTS
MEDICAL MALPRACTICE
PREMISES LIABILITY
PROFESSIONAL LIABILITY
TRUCKING ACCIDENTS
UNSAFE PRODUCTS
WILL AND TRUST DISPUTES

WEST PALM BEACH
TALLAHASSEE

800.780.8607

WWW.SEARCHYLAW.COM



Meeting Corner:

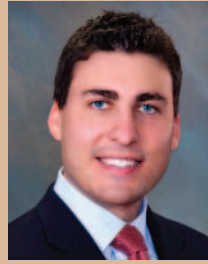


Adam Hecht began his legal career as a felony prosecutor and chief county court prosecutor with the Palm Beach County State Attorney's office. Before joining the firm, Mr. Hecht prosecuted a range of crimes from drug trafficking to murder. He tried more than 75 felony and misdemeanor jury trials.

Additionally, Mr. Hecht has worked closely with a United States senator and a Florida Supreme Court justice. As an intern in Washington, DC, Mr. Hecht attended committee meetings and assisted Senator Bill Nelson of Florida in his investigation of the Shuttle Columbia explosion. He worked in Tallahassee for Chief Justice Barbara Pariente of the Florida Supreme Court, and was a judicial extern at the Eighth Judicial Circuit, providing legal counsel to indigent clients.

A native of Palm Beach County, Mr. Hecht graduated from the Alexander W. Dreyfoos, Jr., School of the Arts where he majored in communications and was a nationally-ranked debater. He received his undergraduate and law degrees from the University of Florida, earning high honors and a 3.97 grade point average as an undergraduate. He was a member of Florida Blue Key, the University Scholars Program, and an active member of the Law School Mentoring Project.

Mr. Hecht is licensed to practice law in all jurisdictions in the state of Florida. ♦

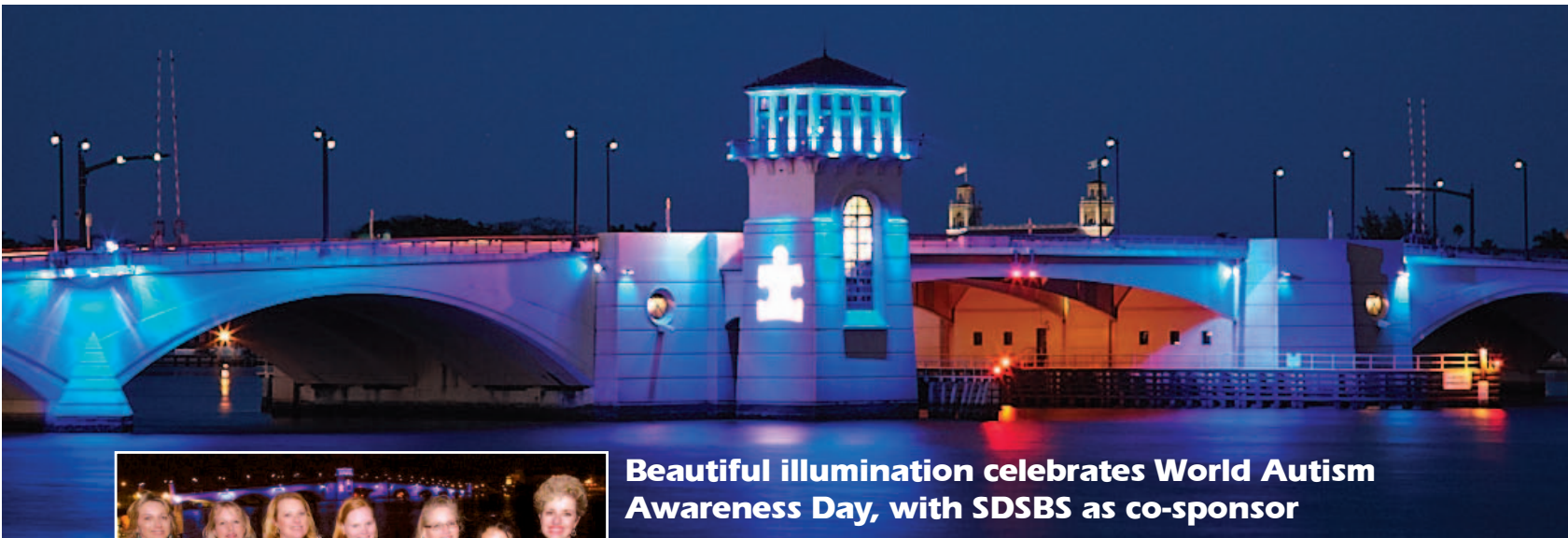


Matthew Schwencke began his legal practice as a defense attorney where he gained experience in all facets of civil litigation. Defending hospitals and healthcare providers against multi-million dollar claims has given him insight into defense strategies and tactics, especially in medical malpractice litigation.

Mr. Schwencke earned his law degree from Stetson University College of Law where he was a member of Stetson's award-winning Moot Court Board. While in law school, he served as intern to a federal magistrate judge. He also served as a certified legal intern for the Pinellas County State Attorney's office where he prosecuted misdemeanor criminal offenses. As an undergraduate, Mr. Schwencke attended the University of Florida on a Bright Futures Scholarship and graduated with honors.

A Palm Beach County native, Mr. Schwencke is admitted to practice in all jurisdictions in the state of Florida and has been admitted to the United States District Court for the Southern District of Florida. He is a member of the Florida Bar, the Florida Justice Association, the Palm Beach County Bar Association, and the Palm Beach County Justice Association.

As an attorney with Searcy Denney, Mr. Schwencke represents victims of catastrophic personal injury involving medical malpractice; motor vehicle accidents; and premises, professional, and product liability. ♦



Beautiful illumination celebrates World Autism Awareness Day, with SDSBS as co-sponsor

On the evening of March 29, 2012, the Royal Park Bridge, one of three bridges joining Palm Beach and West Palm Beach, Florida, was illuminated with special blue lights to help kick off the Third Annual *Light It Up Blue* campaign to celebrate World Autism Awareness Day. **SDSBS** co-sponsored the event which was attended by Autism Speaks' co-founders, Suzanne and Bob Wright. Other buildings and landmarks throughout the United States and across the world participated in the month-long series of events honoring individuals, families, and friends affected by autism. ♦


Robert Nelson Photography

Rotted Tree Falls During Storm, Injuring Woman

On Monday, January 25, 2011, a massive band of thunderstorms was approaching Palm Beach County, Florida. The National Weather Service issued a storm advisory indicating that the rapidly approaching weather front was capable of producing tornadoes. A special Public Information Statement was issued at 6:00 that evening.

Upon hearing the weather advisories, Ms. Smith (not her real name) checked her property for potential problems. She noted that her patio umbrella, in its open position in her backyard, could become a missile in such severe windstorms, creating a danger to herself, her home, and her neighbors. The winds were already blowing hard as she began lowering the umbrella. Suddenly a dead pine tree, located outside her fenced yard in a preserve area maintained by her community's Homeowners Association, toppled over the fence and into her yard, striking Ms. Smith on her back and left arm. She was nearly killed. The tree missed her head by inches, but she did suffer a severe compound fracture of her left upper arm with radial nerve injury and complete displacement of the left distal humerus.

The incident was frightening and Ms. Smith's injuries extremely painful. She was admitted to a local hospital for five days. Treatment included orthopedic surgery to reduce and align the fractured bones. An incision was made from the shoulder to the elbow and a plate was inserted with eight screws to help align the bones. The orthopedic hardware would have to remain in place for a full twelve months. Following removal of the hardware, Ms. Smith would require surgery to revise the scar in hopes of lessening tenderness in the arm and to improve its appearance.

Seeking legal recourse for this out-of-the-ordinary, tragic event, Ms. Smith asked SDSBS attorney **Greg Barnhart** to investigate further. His investigation revealed that the Association had failed to properly in-

spect and mitigate the dangerous condition presented by the many dead trees within the preserve area, specifically the trees near Ms. Smith's western property line. The declaration of covenants and restrictions for the community established that the preserve must be perpetually maintained in good condition. The community's planned unit development survey requires monthly inspections of the preserve. Section VIII of the approved management plan requires

quarterly inspections of the preserve be conducted in perpetuity. The duties owed to the community by the Association are stated within its own documents, and these were clearly not met, as evidenced by abundant photographs.

The tree that fell on Ms. Smith had extensive rot and insect damage. It had been dead for an extended amount of time prior to falling into her yard. The Association knew or should have known of the danger posed by the dead pine tree standing just outside Ms. Smith's property line.

The Association defended Ms. Smith's claim of negligence by introducing a conservation

easement which they said prevented it from doing anything in the preserve area, including removing trees other than nuisance and exotic species. It also asserted that Ms. Smith knew that the tree had been dead for some time, but had failed to report it. This, the Association said, established comparative negligence for her own injuries.

Mr. Barnhart and his team were able to complete their investigation of the scene, medical records, and documents. Despite a vigorous defense asserted by the Association, the defendant eventually agreed to pre-suit mediation. After hearing the evidence that would be presented at trial, the Association agreed to resolve the matter to Ms. Smith's complete satisfaction. The parties were able to reach settlement in the amount of \$250,000 within 18 months of the tragic incident. ♦



Accolades

Jack Hill Selected for Membership in the National Trial Lawyers Association's 'Top 40 Under 40'



In December 2011, **Jack Hill** was selected for membership in the National Trial Lawyers Association's "Top 40 Under 40." Mr. Hill was one of only 40 trial lawyers from Florida to be selected. Membership in the Association is by invitation only,

extended exclusively to those individuals who exemplify superior qualifications of leadership, reputation, influence, stature, and profile as civil plaintiff or criminal defense trial lawyers. Membership in NTLA's "Top 40 Under 40" is also by invitation only, extended to qualified young trial lawyers. ♦

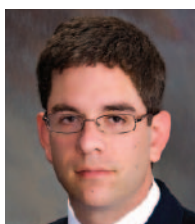
Brian Denney Board Certified Specialist in Civil Trial Law



The Florida Bar Association recently announced that SDSBS attorney **Brian Denney** has met its standards of certification and is now a Board Certified Specialist in Civil Trial Law. Certification is The Florida Bar's highest level of evaluation for

competency and experience within an area of law, and in professionalism and ethics in practice. ♦

Ed Ricci Appointed to Lead Pupilage Team for Inns of Court



Ed Ricci was appointed to lead a pupilage team for the Craig S. Barnard American Inn of Court in 2013. The American Inns of Court was designed to foster excellence in professionalism, ethics, civility, and legal skills. Its membership

includes judges, lawyers, law professors, and law students. Each pupilage team consists of a few members from each category, with differing levels of experience. The team members work together on AIC programs so that lawyers can become more effective advocates and counselors by learning from more experienced attorneys and judges. Each team will conduct one program for the Inn each year. ♦



Sia Baker-Barnes on Board of Association of Women Lawyers

Sia Baker-Barnes was elected to the board of directors of the Palm Beach County Chapter of the Florida Association of Women Lawyers. The Chapter's new board members were installed at a luncheon held in May. ♦



Attorney Sia Baker-Barnes with Judge Edward Rodgers.

Sia Baker-Barnes Co-Chair of PBC Bar Association's Committee for Diversity and Inclusion

Ms. Baker-Barnes was also reappointed co-chair of the Palm Beach County Bar Association's Committee for Diversity and Inclusion for the 2012-2013 year. In March 2012, she presented the Judge Rodgers Diversity Award at PBCBA's Bench Bar Conference. ♦

Brenda Fulmer Vice Chair of AAJ Membership Oversight Committee



The American Association for Justice recently appointed **Brenda Fulmer** as vice chair of its Membership Oversight Committee. Her appointment will run through the end of July 2013. Ms. Fulmer also serves as a member of AAJ's Marketing and Client Service Committee. ♦

**Chris Searcy
Ranked
Number One
by
Florida
Super
Lawyers
2012**

SDSBS Attorneys Recognized by *Florida Super Lawyers*

SDSBS attorney **Chris Searcy** was ranked number one by *Florida Super Lawyers* magazine in their selection of "Top 10 Florida Super Lawyers 2012." **Jack Scarola** was selected by the magazine as one of the "Top 100 Florida Super Lawyers 2012." Included as "Florida Super Lawyers 2012" are **Earl Denney, Greg Barnhart, John Shipley, Brenda Fulmer, Mariano Garcia, Jim Gustafson, Darryl Lewis, Bill Norton, Chris Speed, and Karen Terry.** Super Lawyers list of "Florida Rising Stars 2012" included SDSBS attorneys **Sia Baker-Barnes, Hardee Bass, Jack Hill, Cameron Kennedy, and Ed Ricci.** *Super Lawyers'* selection process is a comprehensive effort to list lawyers that have attained high peer recognition, meet ethical standards, and have demonstrated some degree of achievement in their field. Candidates are generally nominated by a peer and evaluated by the publication's research team. Final selection is made by a blue-ribbon panel of attorneys within each practice area. ♦



Chris Searcy



Earl Denney



Jack Scarola



Greg Barnhart



John Shipley



Brenda Fulmer



Mariano Garcia



Jim Gustafson



Darryl Lewis



Bill Norton



Chris Speed



Karen Terry



Sia Baker-Barnes



Hardee Bass



Jack Hill



Cameron Kennedy



Ed Ricci



Pat Quinlan Receives 'Non-Profit Award' by Palm Beach County Legal Aid Society

The Legal Aid Society of Palm Beach County, Florida, held its 24th Annual Pro Bono Recognition Evening & Auction on May 19, 2012. SDSBS was a sponsor of the event. **Patrick Quinlan** received the organization's "Non-Profit Award" in recognition for his advocacy on behalf of those in need within his community and his long-standing dedication to pro bono service. He was nominated for the award by the Morikami Museum and Japanese Gardens, Delray Beach, Florida, for his representation in defending a lawsuit against the non-profit organization. ♦



SDSBS staff active in walk to benefit 'Seagull Industries for the Disabled'

SDSBS staff participated in the Honda Classic 5K Run and Walk, held at PGA National, Palm Beach Gardens, Florida. All proceeds from the event supported Seagull Industries for the Disabled, Inc. Its mission is to facilitate improvement in the quality of life for developmentally challenged adolescents and adults. ♦

www.seagull.org

SDSBS local sponsor in walk to support 'Juvenile Diabetes Research Foundation'

SDSBS participated as a local sponsor for the 2-mile "Walk to Cure Diabetes" in support of the Juvenile Diabetes Research Foundation. The event was held on March 3, 2012, at the Meyer Amphitheatre in West Palm Beach, Florida. JDRF funds diabetes research and education to find a cure for Type 1 diabetes. ♦

www.jdrf.org

SDSBS a Sponsor of 'Walk Now for Autism Speaks' Fund-Raising Event

SDSBS was a sponsor of the "2012 Palm Beach Walk Now for Autism Speaks" event held in March. Thousands of people participated in the many activities surrounding the walk, including SDSBS staff, individuals with autism, and their families and friends. The event raised over \$390,000 to support Autism Speaks' work locally and nationally. ♦

www.autismspeaks.org



'SleepOut 2012' event for 'The Lord's Place' actively supported and sponsored by SDSBS staff

SDSBS participated as a sponsor in "SleepOut 2012," an event held to raise funds to support The Lord's Place in West Palm Beach, Florida. The Lord's Place is a non-profit, non-sectarian organization dedicated to breaking the cycle of homelessness by providing innovative, compassionate, and effective services to individuals and families in Palm Beach County. The fifth annual event was held on April 20, 2012, at the Meyer Amphitheatre in West Palm Beach. Donations exceeded the organization's goal of \$150,000 with most of the money coming not from event sponsors but from over 650 individual participants and donors. Despite rain and lightning, a number of participants spent the night at the Amphitheatre. SDSBS' **Jack Scarola**, board chairman and long-time supporter of The Lord's Place, the Scarola family, and SDSBS employees participated in the event. ♦

www.thelordsplace.org

Taking...

Time to Care

Brenda Fulmer explains the importance of scholastics in 'Career Day' at Hope Centennial Elementary School

Brenda Fulmer took part in "Career Day" at Hope Centennial Elementary School in West Palm Beach, Florida. Ms. Fulmer spoke with the children about the importance of remaining in school, working hard, and getting good grades. The event, held May 11, 2012, encouraged students to make the most of their opportunities in school. ♦



'Walk for the Animals' event includes SDSBS staff and pets helping animals

In March, SDSBS supported the 11th Annual Walk for the Animals to benefit the Peggy Adams Animal Rescue League in West Palm Beach. The event raised over \$117,000 for homeless dogs and cats, and the League's adoption and spay/neuter programs. Low-cost micro-chipping and vaccine packages were offered on site. ♦ www.hspb.org

First Place for 'Team SDSBS' in Corporate Run benefiting the American Red Cross

"Team SDSBS" took first place in the Men's Legal Category of the 2012 Mercedes Benz Corporate Run held April 18, 2012, at the Meyer Amphitheater in West Palm Beach, Florida. The event supported the American Red Cross, South Florida Region. The SDSBS participants included **Ed Ricci, Matthew Schwencke, Curtis Reynolds, Richard Alvarado, and Logan Wiggins.** ♦



Attorney Brenda Fulmer's dog, Chica, enjoying the walk.



Sia Baker-Barnes on host committee for 'Raise the Bar' fundraiser to send 100 girls to the Girl's Leadership Institute

In March 2012, **Sia Baker-Barnes** served on the host committee for the 2012 Raise the Bar event hosted by the Women's Foundation of Palm Beach County. The event, held at the historic Palm Beach County Courthouse in West Palm Beach, Florida, raised funds to send over 100 young girls to the 2012 Girl's Leadership Institute. The Foundation sponsored the fourth annual GLI in May 2012 with the goal of developing the leadership skills of girls from middle and high schools in the county. The girls attended workshops on public speaking, conflict resolution, and other skills critical to successful leadership. ♦



In this issue . . .

Big Tobacco Finally Compelled to Pay After Lengthy Appeals

Page one

Man's Death Results from Nurse Ignoring Clear Signs of Curable But Life-Threatening Condition

Page three

SDSBS Attorneys Board Certified for Over 25 Years

Page two

Florida Super Lawyers Magazine Honors SDSBS Attorneys

Chris Searcy Ranked Number One by *Florida Super Lawyers*

Page thirteen



Receive our regularly
published articles -
Friend us on Facebook at
Searcy Denney



We can't let
power-grabbing
politicians
hijack our
Supreme Court.
Floridians must vote

YES

November 6
to retain Justices,
keep scales of justice
balanced!



See pages 8-9
for how Merit Retention works
and how you can help educate your
friends and colleagues.

Learn more:

www.voteYesJusticeLewis.com
www.voteYesJusticePariente.com
www.voteYesJusticeQuince.com