

# Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 13, NUMBER 2

## Negligence by property management company results in \$12 million award to boy's family

### Nine-year-old bicyclist killed by driver whose vision was blocked by overgrown hedge.

The *Daily Business Review*, May 2, 2013, edition, published a lead article for its "Verdicts & Settlements" report on an automobile negligence and premises liability case tried by SDSBS attorneys **Greg Barnhart**, **Karen Terry**, and **Matt Schwencke**. In January 2011, nine-year-old Andrew Connor Curtis was spending the weekend with his father, Andre Kovacs, in Jupiter, Florida. The two went for a bike ride along U. S. Highway One, with Andrew following his father. At the intersection of U. S. Highway One and the Villas on the Green complex, a minivan driven by Helen Bygel made a lawful stop at a stop sign, and proceeded to pull out into traffic to make a right hand turn. The vehicle missed Mr. Kovacs but struck and killed Andrew. Mr. Kovacs and Andrew's mother, Tracy Curtis, filed civil actions against the driver, Helen Bygel, Villas on the Green Townhouse Association, Villas on the Green Condominium Association, and the property management

SDSBS attorneys (l-r),  
**Matthew Schwencke**,  
**Karen Terry**, and  
**Greg Barnhart**.

company for the complex – MMI of the Palm Beaches, Inc. The case proceeded to trial in February 2013 against Helen Bygel, Villas on the Green Condominium Association, and MMI of the Palm Beaches, Inc. The Villas on the Green Townhouse Association had reached a confidential settlement with the parents prior to trial.

At trial, the SDSBS attorneys called a traffic safety engineering expert to the stand to testify that visual obstructions were present at the exit of the facility that violated the law. These obstructions consisted of a hedge bordering the property that was twice the height allowed by the Code (*Continued on page fifteen.*)

## Ignored or disabled ventilator alarm results in death

### Nurse was incapable of performing CPR in effort to revive infant.

In 2009, Adam and Betty Crandall (not their real names) were newlyweds, looking forward to an active, exciting life together. The couple settled in Florida and began planning for a family. Unfortunately, Betty had a blocked fallopian tube that required surgical repair which prevented her from becoming pregnant naturally. The couple elected to do in vitro fertilization. Shortly after starting the procedure, they learned that they were pregnant with triplets. Topping that news, they learned soon after that they were having quadruplets. They were overjoyed.

In Betty's second trimester, she began to show signs of early labor. She was admitted to a hospital and told that the babies' births were pending and that the babies would not survive. Betty was advised to accelerate labor to prevent infection. Determined to save her babies, Betty refused advanced labor. She was on complete bed rest for months. Although one child was stillborn at 23 weeks, the other three babies were born at 25 weeks and survived. Because they were very premature, the babies – a boy named David, and sisters Ellie and Faith (not their real names) – were ventilator-dependent and required extensive care in a neonatal intensive care unit. At nine months of age, the three babies were (*Continued on page seventeen.*)



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**SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA**  
ATTORNEYS AT LAW

## **Negligence by property management company results in \$12 million award to boy's family**

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of the Town of Jupiter, and the stop sign mounted at a height of approximately three feet instead of the required seven feet. Then, using an accident reconstruction specialist and a human factors expert, the SDSBS attorneys established that the driver and the boy could not see each other due to these visual obstructions that existed for them both.

The overwhelming evidence offered at trial showed that the primary responsibility for little Andrew's death rested with the professional property management company and the condominium association that were responsible for maintenance of the roadway, stop sign, and height of the hedges. Nonetheless, those corporations attempted to blame the driver for failing to enter the intersection more cautiously, and attempted to put blame on the father for not reacting to the driver's actions quickly enough to protect his son.

The jury was not fooled. In March 2013, justice prevailed when the jury found the driver 10% liable, the condominium association 30% liable, and the property management company 60% liable. The jury determined that damages totaled \$12 million for the combined acts of negligence that caused Andrew's death. But the best was yet to come after the verdict was read. After a four-week trial, the jury had just one request for the judge, "Can we hug the parents?" The request was granted and, one by one, five of the jurors came down to the well of the courtroom and embraced the parents. There was not a dry eye in the house. ♦



***SDSBS attorney Greg Barnhart makes a point during the trial.***



# **Brenda Fulmer and Laurie Briggs are veterans at lobbying**

The spring 2013 issue of the American Association for Justice's Women Trial Lawyers Caucus newsletter published an interesting article written by SDSBS attorney **Brenda Fulmer** and her daughter, Molly Fulmer, on participation in the AAJ's Women's Caucus Lobby Days in Washington, DC. In her first lobbying experience in 2009, Brenda, with support from the AAJ staff and lobbying team, focused on recruiting support for the Medical Device Safety Act which would have fixed issues relating to medical device preemption. On Brenda's second lobbying trip, in 2011, she and her Florida team met with numerous members of both the House and Senate regarding the SMART Act, which greatly simplifies the process of reimbursing Medicare liens out of personal injury settlements. This act was signed into law in early 2013.

On both trips, Brenda was joined by her daughter, Molly, who participated in lobbying efforts with her mother. Having completed a school civil justice project on federal preemption in 2009, Molly was able to expand that learning experience by presenting explanations on complex issues and obtaining bipartisan sponsorship for the Medical Device Safety Act. After experiencing the art of lobbying, and meeting with members of Congress, Molly stated, "I have acquired a sense of duty to be active politically and to continue to lobby for causes in which I believe. If I can make a difference in bettering people's lives, I should." Molly is now a senior and honors student at Dwyer High School in Palm Beach Gardens, Florida. She has received extensive recognition for her skills in the martial arts – judo, jujitsu, tae kwon do, and American kickboxing.

Brenda, along with SDSBS attorney **Laurie Briggs**, attended the Women's Caucus Lobby Day this year, on May 23, 2013, in Washington, DC. They lobbied on two new bills – one that would simplify lawsuits against foreign manufacturers for defective products, and one that would eliminate mandatory arbitration. Brenda and Laurie also met with Senator Bill Nelson's staff concerning the backlog of pending appointments for federal judges. While Molly did not attend the lobbying session this spring, it does appear that Molly, following her mother's example, may be on a direct path to changing the world around her. ♦