

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.)*



Chris Searcy was again ranked number one Florida Super Lawyer

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SDSBS attorneys reconstruct car/semi-trailer accident details, resulting in immediate settlement of \$1.5 million

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21 SDSBS attorneys selected for Florida Super Lawyers 2013

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**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY PA**

ATTORNEYS AT LAW

SUV abruptly turns across bicyclist's path causing collision, serious injury

On December 2, 2011, John Smith (not his real name) was riding his bicycle in Florida northbound on the shoulder of North County Road in Palm Beach. An SUV driven by Mary Jones (not her real name) abruptly turned into a driveway in front of his path, causing John to collide with Mary's SUV. The collision left him bruised and battered, with injuries to his neck. Medical examinations and treatment eventually determined that John would need cervical discectomy (surgical removal of an intervertebral disk) and fusion surgery for his neck. After recuperating from the surgery, John was able to return to work but continued to have intermittent neck pain and stiffness.

John contacted SDSBS attorney **Brian Denney** and asked if he would represent him in an effort to hold the driver responsible for his injuries. The vehicle driven by Mary Jones was owned by a construction company. Mr. Denney filed suit in Palm Beach County against both the driver and the vehicle's owner. The construction company immediately began a vigorous defense, presenting a bicycle expert and two accident reconstructionists who testified that John Smith should have been able to avoid the crash, given the amount of time between the SUV's turn and the collision with the bicycle. Mr. Denney responded with experts who testified that the driver had created an emergent situation, leaving John Smith insufficient time to avoid the SUV. Following mediation just prior to trial, the case was settled for \$750,000 due John for the damages he suffered. ♦

Defense used accident reconstructionists to try to prove that bicyclist could have avoided collision but did not succeed.

Case was settled by mediation with \$750,000 due plaintiff.



Chris Searcy selected one of '500 Leading Lawyers in America' by Lawdragon

The Lawdragon 500 Leading Lawyers in America, 2012 edition, selected SDSBS attorney **Chris Searcy** as one of its Lawdragon 500. The guide for the legal profession stated that Mr. Searcy is the major force in Florida plaintiff claims. The Lawdragon 500 are selected from a combination of editorial research by Lawdragon staff, submissions from law firms, and online balloting. ♦

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A REPORT TO CLIENTS & ATTORNEYS **VOLUME 13, NUMBER 2**

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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.

SDSBS attorneys reconstruct accident details to prove how it happened, resulting in \$1.5 million settlement

After proving where responsibilities lay, SDSBS reached settlement before trial.

In September 2009, Maynard Clark and his cousin, Carl Clark, decided to drive from their homes on the west coast of Florida to Pennsylvania to visit family. Carl, in his late 50's, was driving Maynard's Lexus 470 SUV, and Maynard, an active golfer in his late 70's, was in the front passenger seat. The weather was great – clear and sunny. Both men were wearing their seatbelts and shoulder harnesses. Driving north on I-75, they decided to stop in Ocala at a restaurant alongside the highway. After getting a bite to eat, they returned to their car and headed back onto the interstate to resume their trip. Carl drove up the entrance ramp and onto the right lane of northbound traffic of I-75.

On the same day that Maynard and Carl were driving north on I-75, Jerry Bomar, an employee of Mohawk Carpet Transportation of Georgia, LLC, was driving a tractor trailer rig north on I-75. Mohawk Transportation is a subsidiary of Mohawk Industries, Inc., a company that is a leading supplier of various types of flooring for commercial and residential use. Mohawk Transportation leases tractor units from Penske Truck Leasing Corporation to use for hauling Mohawk's trailers and products to customers throughout the southeast United States, including Florida. Jerry Bomar was driving one of Penske's tractors.

As Maynard and Carl reentered I-75 from the entrance ramp, Jerry Bomar approached the same area, also driving his tractor trailer in the right-hand lane. Several eyewitnesses traveling I-75 in that area saw the accident. These witnesses were interviewed by the Florida Highway Patrol following the accident. As is often the case, witnesses gave investigators conflicting accounts of how the accident occurred. Several witnesses stated that the Clark SUV

had abruptly stopped in the right-hand lane and that the tractor trailer crashed into the rear of the Clark SUV. Another witness, traveling behind the tractor trailer, stated he never saw brake lights appear on the trailer before the crash. Everyone agreed that the tractor trailer slammed into the rear of the Clark SUV with enough force to cause it to roll over and down an embankment, striking several trees before it came to rest.

Carl suffered some facial injuries in the crash. Maynard was seriously injured. He was transported to Shands Hospital in Gainesville, Florida, for trauma and emergency care. The enormous impact of the crash had caused a subdural hematoma, or brain bleed, and a lumbar spine region hematoma. The resulting spinal cord compression required emergency surgery. After recovering from surgery, Maynard was discharged from the hospital to an inpatient rehabilitation and treatment facility close to his home. Although he has done fairly well since the crash, Maynard's doctors diagnosed a traumatic brain injury (TBI). He continues to suffer from cognitive deficits and physical limitations. Fortunately, the medical community has made many great improvements in the treatment of TBIs, due, in part, to our brave veterans coming home from the wars in Iraq and Afghanistan after suffering battle-related injuries. Because the medical community is gaining more awareness of the signs and symptoms of TBI, diagnoses and treatments are improving.

Maynard's son, Don Clark, is an attorney who had, years ago, litigated a case against SDSBS attorney **Chris Searcy**. Reviewing the preliminary information concerning his father's injuries and the vehicle collision that caused them, Don asked Mr. Searcy to represent his father in a personal injury action against the negligent parties. SDSBS attorney **Cameron Kennedy** prepared and presented the case for Maynard. The

complaint was filed against numerous defendants. It charged that Jerry Bomar negligently failed to drive his tractor trailer at a safe speed, failed to maintain control of the vehicle he was driving, failed to reduce speed and exercise reasonable care in approaching another vehicle from the rear, and failed to take appropriate and timely evasive action to avoid the collision. The complaint also charged that Mohawk Industries and Mohawk Transportation were liable for the negligence of their employee, Jerry Bomar.

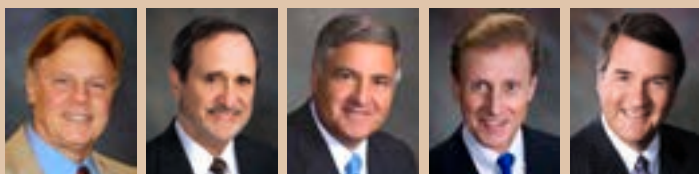
The personal injury action filed by Maynard Clark's attorneys also included the charge that Carl Clark was liable for negligently driving the *(Continued on page sixteen.)*

During litigation, Mr. Kennedy and engineering experts secured important evidence proving how the accident occurred.

The Clarks' car was not stopped prior to impact . . . and the truck was traveling at full speed under cruise control.



Accolades



Chris Searcy, Earl Denney, Jack Scarola, and Greg Barnhart have maintained Florida Bar certification for 30 years. **John Shipley** will reach his 30th year of Florida Bar certification in 2014. Congratulations to Chris, Earl, Jack, Greg, and John! We look forward to their continued accomplishments in Florida's legal community and beyond. ♦



Brenda Fulmer was selected to attend the American Association for Justice's 2013 Leadership Academy. The Academy selects 14 to 16 trial lawyers representing various backgrounds and practice areas to attend three sessions held in conjunction with AAJ meetings. An initiative of AAJ's Diversity Committee, the Academy provides AAJ members the skills and techniques needed to make them effective leaders in their professions, in AAJ, and in their communities. ♦



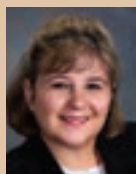
Jack Hill recently joined the board of directors of the Legal Aid Society of Palm Beach County. The mission of the Legal Aid Society is to provide equal access to the judicial system for disadvantaged persons living in Palm Beach County. ♦



In April 2013, **Sia Baker-Barnes** was elected to a second term as a member of Palm Beach County Bar Association's 2013/2014 board of directors. The installation of the new board members was held June 1 in Palm Beach, Florida. She was also re-elected to the board of directors of the Palm Beach County Chapter of the Florida Association for Women Lawyers. Ms. Baker-Barnes will also serve as Programming Co-Director, developing programs of interest to the Chapter's membership. ♦



Ed Ricci was selected to serve as a Foundation Liaison for the 2013/2014 board of trustees of the Craig S. Barnard American Inn of Court. ♦



SDSBS' Mass Tort Unit announced that Case Manager **Olga Patterson** recently became a Florida Certified Paralegal. Ms. Patterson had previously attained certification as a Florida Registered Paralegal and as an Advanced Certified Paralegal. ♦



The Florida Bar recently announced that SDSBS attorney **Mariano Garcia** has met its standards of certification and is now a Board Certified Specialist in Civil Trial Law. Board Certified Specialists have met The Florida Bar's highest standards for special knowledge, skills, and proficiency, and have a reputation for the highest levels of professionalism and ethics. ♦

Sia Baker-Barnes and **Mariano Garcia** were appointed to The Florida Bar's new Leadership Academy Committee. The Committee will be responsible for the ultimate design, programming, and implementation of the Academy for its inaugural class of Fellows. Fifty-nine individual applicants are expected to participate in the inaugural class. The Committee is an initiative of incoming Florida Bar president, Eugene Pettis, whose administration will be geared toward improving diversity in the practice of law by, among other things, increasing the participation of "diverse" lawyers. ♦



The Florida Justice Association's website recently published an article about SDSBS attorney **Mara Hatfield**. The organization had asked members to visit Tallahassee, Florida, and participate in FJA's Lobby Days. Finding some time on her calendar to attend, she met with the FJA lobby team and then attended a public discussion on "brownfields" held by the Florida Senate's Community Affairs Committee. A brownfield site is one of historical contamination that may be revitalized through remediation. However, with negligent remediation, the site may become even more hazardous, and the bill being considered by the Committee protected a brownfield developer from liability, incentivizing the developer to take increased risks. Experienced in litigating environmental torts, the issue was of interest to Mara. However, by the time Mara arrived, the bill had already passed through the Committee and was heading toward one more committee prior to going to the floor. An FJA lobbyist worked with Mara to draft a position paper addressing property rights and access to courts. The paper was offered to the sponsoring senator for consideration, and his chief of staff reported that an amendment would be issued to address Mara's concerns. Unfortunately, the changes were not made. Determined to make a difference, Mara went back to Tallahassee and testified at the next Senate hearing. The lobbying effort killed the bill. As FJA reported in the original article, it is never too late to make an effort and to make a difference. ♦



Chris Searcy: 40-year member of Florida Bar

On May 1, 1973 – 40 years ago – **Chris Searcy** was sworn in as a member of The Florida Bar. Few attorneys have accomplished so much, for so many, during their professional careers. Mr. Searcy has litigated cases primarily involving catastrophic injury and death in venues throughout Florida as well as other states. He is an active and well-respected member and officer of numerous state and national legal organizations. His personal philosophy of advocacy for those in need has left its mark on South Florida. He supports a number of non-profit organizations committed to helping the disabled, improving education, and advancing community causes. Thanks, Chris, for your 40 years of dedication and meaningful advocacy. ♦

Brian Denney invited to join the American Board of Trial Advocates

Brian Denney was invited to join the American Board of Trial Advocates. The general purpose of ABOTA is to foster improvement in the ethical and technical standards of practice in the field of advocacy so that individual litigants receive effective representation and the general public benefits by a more efficient administration of justice. ♦



(Photo, l-r,) **Brian Denney, Greg Barnhart, Karen Terry, Hardee Bass and Mariano Garcia,** at the ABOTA event.

2013 edition of *South Florida Legal Guide* selects SDSBS as a Top Law Firm and nine SDSBS attorneys as Top Lawyers

The 2013 edition of the *South Florida Legal Guide* selected **SDSBS** as one of their “Top Law Firms.” The publication also recognized eight SDSBS attorneys as “Top Lawyers” – **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, Chris Speed, Karen Terry, and Cal Warriner.** The 2013 Guide also named **Brian Denney** as a “Top Up and Comer.” SDSBS and the attorneys noted above were also recognized in the 2012 Guide. “Top Lawyers” nominate “Top Law Firms” by annual ballots submitted to the Guide. Nominations are then reviewed and the top 150 law firms are selected for the honor. “Top Lawyers” are selected in a peer nomination process. “Top Up and Comers” are nominated by “Top Lawyers” as the next generation of leaders in the south Florida legal community. ♦



Chris Searcy



Earl Denney



Jack Scarola



Greg Barnhart



John Shipley



Chris Speed



Karen Terry



Cal Warriner



Brian Denney



Brian Denney saves choking woman by using Heimlich maneuver

What would you do if a person seated near you in a restaurant suddenly leaped up and grabbed her throat, wide-eyed and unable to speak? Well, you had better hope that someone near you knows what to do if you are the one choking. Recently, SDSBS attorney **Brian Denney** was having dinner with his daughter, Juliana, when a woman at a nearby table began choking. He jumped up, grabbed the woman around the waist, and applied the Heimlich maneuver to dislodge the food caught in her throat. After a moment, the woman regained her ability to breathe and to speak. If you do not know the universal signal for choking (both hands at one's throat), or the life-saving Heimlich maneuver used to save a choking person, then you might want to find out more about this. Take a first aid course or even just read about it on websites. Your knowledge could save a life someday. ♦

To learn more about this life-saving maneuver, go to:

www.redcross.org



Photos from Palm Beach County Bar Judicial Reception.

SDSBS Websites:



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www.SearcyLaw.com or
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for the latest news and information on
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Log on to...

www.SearcyMassTort.com

for the latest news and information
on Mass Torts (such torts involve many
people who have been harmed in a
similar way, usually by a drug,
medical device or a product).



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



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**SDSBS ranks high in
Daily Business Review
'Top Florida Verdicts &
Settlements of 2012'**

The *Daily Business Review* published its "Top Florida Verdicts and Settlements of 2012" magazine in June 2013. The list of verdicts that ranked among the most outstanding for the year included nine SDSBS cases. Two cases ranked in the top 25:

- ◆ *Estate of Wilson v. Goodman*,
plaintiff represented by **Chris Searcy**;
- ◆ *Estate of Modica v. Wright*,
plaintiff represented by
Chris Searcy and **John Shipley**.

The other seven "Top Florida Verdicts and Settlements of 2012" for SDSBS attorneys are:

- ◆ *Estate of Buchanan v. Philip Morris USA*,
plaintiff represented by
Jim Gustafson and **Bill Norton**;
- ◆ *Estate of Hallgren v. Philip Morris USA*,
plaintiff represented by
Brian Denney and **Hardee Bass**;
- ◆ *Olvera-Casas v. T. C. Crum Roofing & General Contracting*,
plaintiff represented by
Mariano Garcia and **Matt Schwencke**;
- ◆ *Estate of Ward v. R. J. Reynolds Tobacco Company*,
plaintiff represented by **Jim Gustafson**;
- ◆ *Collier v. JC Penney Corp.*,
plaintiff represented by
Greg Barnhart and **D. J. Ward**;
- ◆ *Allison v. Rick's Rods & Custom Fabrications Inc.*,
plaintiff represented by **Jack Scarola** and **Jack Hill**;
- ◆ *Neumeyer v. Winn Dixie Stores Inc.*,
plaintiff represented by **Ed Ricci**.

Property management companies and homeowners associations are held responsible for compliance with local traffic and other safety regulations

The case reported on page one of this newsletter has set a new and sobering level of accountability for property management companies and homeowners' associations. The verdict, delivered in February 2013 by a Palm Beach County jury, found a property management company (MMI of the Palm Beaches, Inc.), a homeowners' association (The Villas on the Green Condominium Association), and the driver of the car involved in a fatal accident (Helen Bygel) – 60%, 30%, and 10% respectively – responsible for the death of a nine-year-old boy riding his bicycle past the entrance to a condominium community. (The Villas on the Green Townhouse Association, part of that complex, reached a confidential settlement with the boy's parents prior to trial.)

SDSBS attorneys **Greg Barnhart**, **Karen Terry**, and **Matt Schwencke**, representing plaintiffs Andre Kovacs and Tracy Curtis, parents of nine-year-old Andrew Connor Curtis, established through testimony from accident reconstruction and traffic safety experts that a tall hedge and a short stop sign at the exit from the Villas on the Green complex had obstructed the vision of both the driver of the car and young Andrew. The car struck and killed the boy. Defense attorneys for the property management company and the Condominium Association tried to place the blame on the driver, and on Andrew's father for not reacting quickly enough to protect his son.

Homeowners' associations (HOAs) are typical in common-interest developments, including condominiums and single-family home developments. Membership in an HOA is usually a condition of purchase. Most HOAs are incorporated, and subject to state statutes that govern such associations and other non-profit corporations. Oversight is minimal and rules are inconsistent from state to state. Officers of the HOA may be elected directly by the membership (residential owners). HOAs provide services, regulate activities, levy assessments, and may impose fines. The HOA board of directors may create various committees to provide advice on such issues as finance, neighborhood watch, pool access, gardening, architectural controls, and other activities. The board of directors is authorized by the HOA to evaluate and decide on community issues and its rules, within the community's governing by-laws.

Typically, the HOA board of directors contracts with a property management company to provide the day-to-day professional advice, guidance, and management of the entire facility. That contract may require property managers performing the HOA's contract to be trained and certified by industry associations. Regardless, the property management contractor is

obligated to provide knowledgeable and proper advice and guidance to the HOA on issues involving the community and to properly contract (at the direction of the board) for services, repairs, renovations, security, and any other requirement for oversight and management of the community.

In the court's ruling in this case, the property management company and the HOA were found negligent in their respective failures to monitor and maintain the property's surrounding hedge height in compliance with local town codes, and in their failure to ensure compliance with community traffic sign height ordinances. Their failures caused the death of a nine-year-old boy riding his bicycle past their community.

Reporting of this verdict has prompted incredible feedback, with reports coming in from common-interest communities across the United States. The verdict is not just about hedge-height, or sign-height, or HOA board member knowledge, or even driver/biker awareness – it is about responsibility and accountability. ♦

The property management company and the HOA were found negligent and their failures caused the death of a nine-year-old boy.

The verdict is not just about hedge-height, or sign-height, or HOA board member knowledge, or even driver/bike awareness - it is about responsibility and accountability.



Unlit tractor towing a feeder causes horrific accident

Victim's father began to receive phone calls from an 'insurance adjuster' claiming that Jimmy didn't need a lawyer.

At 6:00 a.m. on a dark, foggy, September morning, 28-year-old Jimmy Smith (not his real name) left his home in rural north-west Florida to go to work. The last thing he remembers about that morning is seeing a faint orange triangle in the middle of the road. His car, traveling 50 miles per hour, struck the orange triangle and came to an abrupt stop. Jimmy woke up five days later in the intensive care unit of Shands Hospital in Gainesville, Florida. The object his car had hit was a two-ton "cattle feeding unit" that was being towed down the roadway by a tractor driven by an employee of a local dairy farm. Neither the tractor nor the cattle feeding unit was equipped with headlights or any other illuminating device as required by Florida statute.

The Florida Highway Patrol responded to the scene of the collision and found Jimmy's car demolished. Emergency medical technicians also responded. Jimmy's injuries were so severe that he was immediately air-lifted to the hospital. The FHP notified Jimmy's parents who rushed to the hospital, frantic about their son. He had seven broken ribs, a fractured femur, fractured pelvis, and as yet undetermined internal injuries. Because of the severity of his injuries, doctors placed the young man into a chemically-induced coma. His condition was guarded, at best.

On the same day that Jimmy's parents were at the hospital worrying about their son's dire medical condition, Jimmy's father began receiving telephone calls from a person who identified himself as "an independent insurance adjuster." The caller told him, "I can help – you don't have to hire a lawyer." The "insurance adjuster" began questioning Mr. Smith about his son's activities on the morning of the collision. Mr. Smith knew he needed help, and recalled that a friend had been represented by SDSBS in the past. Mr. Smith called the firm and spoke with the intake paralegal concerning the accident, who referred Mr.



Smith to SDSBS attorney **Brian Sullivan**. Not surprisingly, calls made to the "insurance adjuster" were never returned.

Mr. Sullivan immediately drove to Gainesville to meet the family. He then traveled to the scene of the collision to begin investigating the circumstances surrounding the incident, which had occurred in a small, closely-knit rural community. Both witnesses and public officials were reluctant to cooperate fully with the attorney's investigation. Evidence emerged that Jimmy had not been wearing his seatbelt at the time of the collision, and that this had contributed to his significant injuries. Oddly, signs reading "Beware of Farm Vehicles" now appeared on the roadway. The dairy and its employee retained legal counsel and both were now hotly contesting any claim of liability. They alleged that Jimmy had been responsible for driving into their vehicle while not wearing a seatbelt.

With the assistance of the SDSBS investigative staff, Mr. Sullivan filed a lawsuit against the defendants in the rural county where they lived. Experts reconstructed the accident and examined the damage to both vehicles. In the meantime, Jimmy's physical condition improved and he was discharged from the hospital. After a regimen of physical therapy, he was able to return to work on a limited basis.

Mr. Sullivan continued extensive investigation while negotiating with the defendants' insurers and counsel. Eventually, the parties came to a settlement of \$500,000 – the full and complete limits on the defendants' policies. The proceeds will help Jimmy continue his treatment and recovery. He plans to be married in the near future. SDSBS takes pride in its ability to respond quickly to this family in need, and to accomplish a significant benefit for their client. ♦





Mass Tort Projects of Interest

Accutane

Inflammatory Bowel Disease

ACTOS, ACTOplus met, ACTOplus metXR, and Duetact

Bladder Cancer

Bard IVC Filter

Heart and Lung Perforation
Hemorrhagic Pericardial Effusion

Bisphosphonates (Actonel, Boniva, Fosamax, Zometa, Aredia, and others)

Jaw Osteonecrosis
Long Bone Fractures
Esophageal Cancer

Chantix

Suicide
Abnormal Behavior

Crestor

Cardiomyopathy
Diabetes

Gadolinium-Based MRI Contrast Agents

Nephrogenic Systemic Fibrosis

GranuFlo and NaturalLyte Dialysis Products

Cardiac Arrest
Death
Cardiac Arrhythmia
Metabolic Alkalosis
Stroke
Sudden Cardiac Death

Januvia, Janumet and Byetta

Pancreatic Cancer
Thyroid Cancer

Medtronic INFUSE Bone Graft

Ectopic Bone Growth
Respiratory Failure
Nerve Damage
Death

Metal-on-Metal Hip Implants (DePuy, Zimmer, Biomet, Wright Medical, and others)

Device Failure and Loosening
Inflammatory Response
Metallosis

Mirena IUD

Device Migration
Organ Obstruction
Organ Perforation
Peritonitis
Device Erosion

NuvaRing Contraceptive Device

Deep Vein Thrombosis
Pulmonary Emboli
Stroke

Post-Operative Disposable Pain Pumps

Chondrolysis
Cartilage Destruction

Pradaxa

Uncontrollable Bleeding
Death

Propecia and Proscar

Sexual Dysfunction
Male Breast Cancer

Raptiva and Rituxan

Neurological Disease

Spiriva

Atrial Fibrillation
Cardiac-Related Death
Stroke and TIA

SSRI Antidepressants (Paxil, Celexa, Effexor, Lexapro, Pristiq, Prozac, and Zoloft)

Birth Defects
Pulmonary Hypertension

Stryker Rejuvenate & ABG II Hip Implants

Premature Device Failure
Metallosis
Inflammatory Response

Transvaginal Mesh, Bladder Slings and TVT Tape (Bard, Johnson and Johnson, Mentor, Boston Scientific, AMS, and others)

Tissue Erosion
Device Failure

Yaz, Yasmin, Beyaz, Gianvi and Ocella

Heart Attack
Deep Vein Thrombosis
Pulmonary Emboli
Stroke
Sudden Cardiac Death

Zimmer, NexGen Knee Implants

Device Failure and Loosening

If you have been harmed by a drug or medical device, please call our Mass Tort Unit.

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ACTOS

USE: Lowers blood sugar levels and helps diabetics use insulin more efficiently.

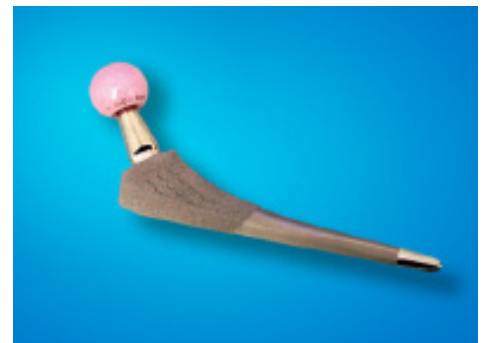
HARM: Failure to warn of risks of bladder cancer.



Pradaxa

USE: Treatment for atrial fibrillation.

HARM: Failure to warn of inability to reverse impairment of blood clotting, which causes uncontrollable GI bleeding, intracranial hemorrhaging, and death.



Stryker Rejuvenate & ABG II Hip Implants

USE: Modular, non-metal on metal hip implant

HARM: Modular components corrode leading to metallosis, premature device failure, elevated cobalt levels, pseudotumor formation, and osteolysis.



Yaz, Yasmin, Beyaz, Gianvi and Ocella

USE: Birth control pills for contraception and PMDD (premenstrual dysphoric disorder).

HARM: Failure to warn of increased risks due to unique progestin leading to blood clots, DVT, strokes, heart attacks, pulmonary emboli, and sudden cardiac death.



Metal-On-Metal Hip and Knee Implants

USE: Hip and knee implant devices used in joint reconstruction and manufactured by DePuy, Zimmer, Biomet, Wright Medical, and others.

HARM: Failure to warn of breakdown of metallic surfaces and abnormal wear, premature device failure, and elevated cobalt and chromium in blood causing metallosis and pseudotumor formation.



Osteoporosis Drugs

USE: Strengthen bones that are weakened due to osteoporosis, osteopenia, Paget's disease, or bone metastases.

HARM: Failure to warn of impairment of body's ability to repair damage to bones, leading to femur fractures, jaw osteonecrosis, and possible link to esophageal cancer.

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DNR - A victim of form over substance

There are few areas in medicine today more fraught with contention and high emotion than the issuance of a DNR – do not resuscitate – order on a patient. The purpose of this article is to review the inauguration and history of DNRs, to state the current law in Florida regarding DNRs, and to offer some suggestions for a more medically reasonable approach to the issuance of DNRs.

In Florida, a physician is the only person licensed by law to issue a DNR. While a patient may refuse cardiopulmonary resuscitation (CPR) treatment, the patient's refusal is not a medical order, whereas a DNR is. Addressed to medical providers in the event a patient suffers either cardiac or respiratory arrest, the DNR is narrow and specific: no attempt is to be made to reestablish cardiac and/or respiratory function.

DNRs and CPR

CPR is a procedure whose efficacy has assumed almost mythic proportions. Accompanied by lights and sirens, it is often portrayed to the public as a spectacular and usually successful effort to avoid death, returning the victim to as good, or perhaps better, health than before the arrest. Such a glamorous outcome is far from typical. This myth is perpetuated when physicians are loath to address the reality of resuscitation with their patients – their silence enables patients to buy into the Hollywood stereotype.

The ability to perform CPR began in the mid-1960s when patients, usually middle-aged men, were undergoing open chest surgery. In cases where the heart failed, direct palpable stimulation was applied to the exposed organ and rhythm could be restored. These patients, adequately oxygenated with a patent airway, usually responded well. In the ensuing decades, that operatic success created a niche health caregiver – the advanced life support team. Its purpose and specialized training is to provide ubiquitous CPR and to transport anyone to hospitals regardless of circumstance or location.

Historically, there have been two kinds of DNR orders (DNROs): in-hospital and out-of-hospital. In-hospital DNROs were placed on the appropriate patient's chart for the withholding of CPR in the event of an arrest. Out-of-hospital DNROs were initially written as discharge instructions for the same patients. Although unable to recover and with a short-term prognosis, some patients were stable enough to be discharged to their

home, perhaps even able to engage in social activities such as going out for dinner. The purpose of the out-of-hospital DNRO was to allow the patient a natural death should an arrest occur. Absent such a plan, he or she would undergo resuscitation when paramedics responded.

DNROs and the Law

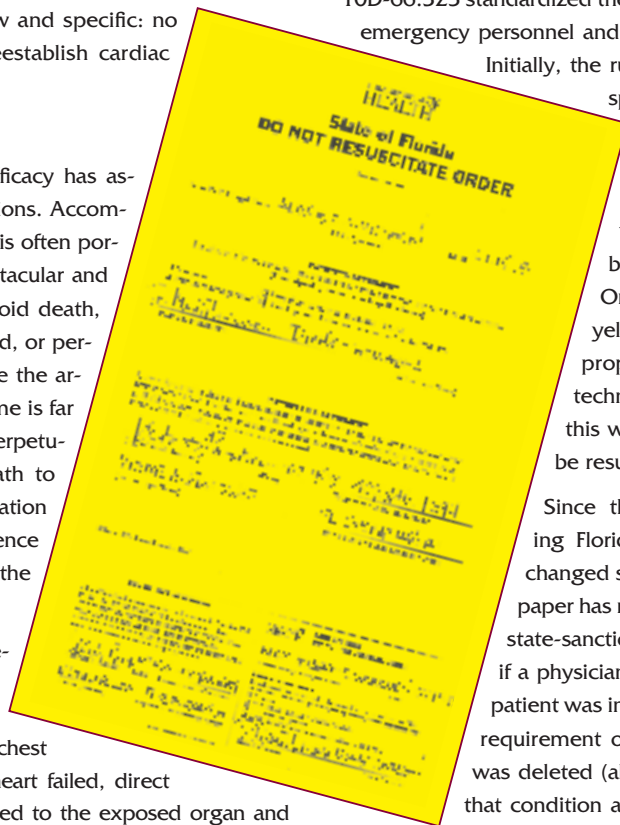
Throughout the 1980s, out-of-hospital DNROs were written and signed by doctors for presentation to paramedics. Patients either carried them on their person or had them posted in their homes. In 1993, the Florida Administrative Code Rule 10D-66.325 standardized the DNRO to facilitate recognition by emergency personnel and to address issues of compliance.

Initially, the rule enabled the patient to wear a special bracelet as a DNRO itself, or

to proffer a Florida Department of Health and Rehabilitative Services' HRS Form 1896. In 1995, the rule no longer recognized the bracelet as a stand-alone DNRO. Only the HRS Form 1896, printed on yellow paper, was recognized. When properly executed, it authorized EMS technicians to withhold CPR. Absent this written directive, the victim was to be resuscitated.

Since the creation of the rule governing Florida's HRS Form 1896, policy has changed several times (only the color of the paper has remained unchanged). Initially, the state-sanctioned DNRO could be written only if a physician made a medical finding that the patient was in a terminal condition. In 2000, the requirement of a diagnosed terminal condition was deleted (although the older forms requiring that condition are still recognized), and the form was totally changed so that the physician merely needed to obtain the patient's informed consent, or that of the patient's designee, in order to validate it.

In a bizarre Alice-in-Wonderland turn of events, the out-of-hospital DNRO is now the preferred in-hospital document, often with disastrous results. In many hospitals, risk management departments have adopted the HRS Form 1896 and, fearing liability, are refusing to allow physicians to make a medical determination to withhold resuscitation based solely on the patient's condition. Instead, the sole burden of decision has been transferred to the patient, or to the patient's family (because the patient is too sick by the time the issue is addressed). Such a policy fails to take into account **(Continued on next page.)**



DNR: A victim of form over substance

(Continued from page twelve.)

whether CPR is medically appropriate. Hospitals would do well to realize that any treatment modality (including CPR) ought to be medically appropriate before it is even placed for consideration of an informed consent. Medical appropriateness is the cornerstone in any considered or proffered therapy.

When there is no one to sign on behalf of an un-befriended, incapacitated patient, the patient must be resuscitated and maintained on a ventilator. This is true even when the “treatment” is contrary to the medical judgment of the patient’s physician. Why? Because there was no one to sign the HRS Form 1896 giving informed consent to withhold that treatment. It is absurd that the misapplication of an inappropriate form controls the situation. This would be the stuff of high comedy were it not so tragic. It is not just poor medical care, it is unethical and illegal.

In fact, the law does provide for the withholding or withdrawal of CPR in the absence of an executed DNR should the physician believe that such treatment would not provide any medical benefit. The Florida legislature, recognizing the necessity of allowing a physician to make that medical decision, specifically provided that “the absence of an order (pursuant to Form 1896) not to resuscitate does not preclude a physician from withholding or withdrawing cardiopulmonary resuscitation as otherwise permitted by law” in the following out-of-hospital settings: hospital emergency rooms (FS 395.1041(3)(l)); nursing homes (FS 400.142(3)); assisted living facilities (FS 400.4255(3)); and hospices (FS 400.6095(8)). Although Florida statutes have empowered the physician outside the hospital, many local hospital administrative policies have tied his/her hands inside.

Suggestions for a Medically Reasonable Approach

In determining end-of-life policy, the patient’s best interests, rather than administrative fear of liability, should be controlling.

- 1)** Recognize the difference between a patient-driven DNR based on informed consent in cases where a real medical choice exists, and a physician-driven DNR where no reasonable medical choice is to be made.
- 2)** Maintain or re-invigorate the two-physician DNR order when the patient is incapacitated and no designee is available. This is similar to the requirement for emergency surgery.
- 3)** Include a discussion of the realistic expectations for CPR during the preparation of the advance directive with the patient, and conduct such discussions when the patient is capable. Explain that there may come a time when CPR is no longer medically reasonable.

*Marnie R. Poncy RN, Esquire
Bio-Ethics Law/ Health Law Advocacy*

Fall on unsafe stairs causes injuries to elderly man

On a beautiful spring day in March 2011, 85-year-old Mr. Abel and a friend decided to share lunch on the outside patio of the Banana Boat Restaurant in Boynton Beach, Florida. The two gentlemen walked through the inside dining room to a stairway leading down to the patio area. At the top of the stairs, Mr. Abel grabbed the handrail and proceeded cautiously down the steps. The handrail, however, did not reach to the bottom of the stairway. Part-way down, Mr. Abel lost his balance and began to fall. When he began to fall, there was nothing for him to grab to regain his balance. He fell hard onto the floor.

Emergency medical service was called and Mr. Abel was quickly transported to Delray Beach Medical Center for treatment. He had fractured his right hip and endured open reduction internal fixation surgery in an effort to repair it. He remained hospitalized for nine days, and was then moved to a physical therapy facility to relearn how to walk. After several weeks, he was discharged and returned home, but he continued to need care around the clock. At present, he cannot walk without the use of a walker, and he suffers pain when laying on his right side due to the rods inserted in his hip. He is no longer able to drive his car and must rely on others to help him. The loss of his personal freedom has had a debilitating effect on his mental and physical health.

Seeking to hold the restaurant responsible for its negligence, Mr. Abel contacted SDSBS attorney **Karen Terry** to ask for representation. Ms. Terry argued on Mr. Abel’s behalf that Banana Boat was negligent because the stairs were unsafe. The condition of the stairs violated safety codes because the handrails did not go all the way to the bottom of the stairs. The defendant argued that the stairs met the code because they were constructed in the 1970’s and had been grandfathered in when the code was changed.

Suit was filed against the restaurant and a trial date was set. Shortly after, the parties engaged in mediation. The case was resolved for \$450,000. ♦

Speaking Opportunities



Chris Searcy spoke at the Brain Injury Association of California's 13th Annual Neuroscience of Brain Injury Conference: Research Informing Medical Treatment and Legal Practice, held in Napa, California, November 9-10, 2012. His subject was "Proof

and Argument of Damages in Catastrophic Brain Injury Cases." On January 29, 2013, Mr. Searcy spoke at the National Trial Lawyers' 2013 Trial Lawyers Summit, held in Miami Beach, Florida. His presentation was "Closing Argument: When You Sit Down, They Say 'Yes.'" On February 21, 2013, Mr. Searcy participated in a special joint presentation with Tommy Malone, James Bartimus, and Charla Aldous, titled "Annual Compassionate Gladiator Address." The presentation was held in conjunction with Florida Justice Association's 2013 Workhorse Seminar held in Orlando, Florida. The panel's subject was "Putting Together the Total Package with Intensity, Tenacity, Persistence, and Drive, While Simultaneously Seeing and Feeling the Compassion and Heart of the Case – What Does It Mean to 'Effectively Communicate' With a Juror and How Is That Accomplished?" ♦



Jack Scarola was the keynote speaker at the Palm Beach County Justice Association's 25th Anniversary Gala, held April 27, 2013, in Palm Beach Gardens, Florida. Mr. Scarola was honored as the organization's first president. On May 10, 2013, Mr. Scarola participated as

a team member at the Palm Beach County Bar Association's "Legal Legends vs. Younger Guns" seminar sponsored by PBCBA's Business Litigation CLE Committee. He was (of course) a member of the "Legal Legends Team." The event was held in West Palm Beach, Florida. On May 31, 2013, Mr. Scarola participated in "Best Practices in Civil Litigation and Trials – An Open Forum" presented by the Circuit Civil Practice Committee of the Palm Beach County Bar Association and held at the PBC Bar offices in West Palm Beach, Florida. ♦



In January 2013, **Greg Barnhart** presented a lecture at The Florida Bar's 2013 Annual Board Certification and Case Law Review held in Orlando, Florida. His topic was "Trial Skills: Opening and Closing." In April 2013, Mr. Barnhart presented a lecture at Cornell Law

School in Ithaca, New York. His topic was "What It Takes to Succeed as a Trial Lawyer." Mr. Barnhart also served as a judge at Cornell Law School's Jury Trial Moot Court Competition. Mr. Barnhart was also asked to speak at the Palm Beach County Justice Association's dinner meeting held May 23, 2013, in West Palm Beach, Florida. His topic was "Anatomy of a \$12 Million Wrongful Death Verdict." ♦



John Shipley spoke at the Association of Plaintiff Interstate Trucking Lawyers of America's "National Interstate Trucking Conference Super Summit II – Top Guns." The event was held April 25-27, 2013, in St. Louis, Missouri. The topic of his presentation was "Modica v. Tree of Life and Penske: 'Reading Between the Lines.'" The presentation was subtitled "Penske's On-Board Computer Data Leads to Allowance of Punitive Damage Claim and Mid-Trial Settlement of \$17.5 Million in 2012 (What We Learned and How It Can Work for You)." ♦



Cal Warriner spoke at the American Association for Justice's seminar held in January 2013 at the Sheraton Downtown, Orlando, Florida. The seminar was "Plaintiff-Only Pharmaceuticals and Medical Device Litigation Update." Mr. Warriner's topic was "Metal on Metal Hip Implants – DePuy, Biomet, and Stryker." ♦



Both **Cal Warriner** and **Brenda Fulmer** spoke at the American Association for Justice's Winter Conference held in February 2013 at the Fontainebleau in Miami Beach, Florida. The CLE program's subject was "Specialized Track: Labels and Warnings and Recalls – the Latest in Drugs and Devices." Mr. Warriner's topic was "Hip Implant Litigation – DePuy, Stryker, and Wright." Ms. Fulmer's topic was "Pradaxa." ♦



Sia Baker-Barnes and **Brenda Fulmer** shared a presentation for the National Trial Lawyers Summit 2013 conference held in January 2013 at the Loews Hotel in South Beach Miami, Florida. Their topic was "Witness Preparation: Old School No Longer Works with Both Fact and Expert Witnesses." Ms. Fulmer also moderated presentations held on the second day of the conference. ♦



On March 5, 2013, **Ed Ricci** moderated a panel discussion for the Palm Beach County Bar Association's Judicial Relations Committee held at the West Palm Beach, Florida, courthouse. The subject of the discussion was "Non-Jury Trial Practice Tips." ♦



In April 2013, SDSBS paralegal **Vince Leonard** participated as a panelist at a seminar on "Personal Injury/Wrongful Death – Before the Case is Filed: A Perspective from Adjusters and Case Managers." The seminar was sponsored by the Palm Beach County Bar Association's PI Wrongful Death CLE Committee. ♦

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

(Continued from page one.)

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, taekwon 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. ♦

SDSBS attorneys reconstruct accident details to prove how it happened, resulting in \$1.5 million settlement

(Continued from page three.)

Lexus SUV onto an interstate highway at a speed far slower than appropriate for approaching traffic.

During litigation, Mr. Kennedy and the engineering experts hired by SDSBS secured important evidence proving how the accident occurred. By downloading the “black box” computer data from the tractor and the Lexus SUV, Mr. Kennedy was able to reconstruct the accident knowing the relative speeds of the vehicles and the change in velocity after impact. Comparing the “black box” data to the physical evidence at the accident scene was critical and proved how the accident occurred. This evidence showed that the Clark SUV was not stopped prior to the impact, and that the tractor was traveling at maximum acceleration with the cruise control engaged before it crashed into the rear of the Clark SUV.

The plaintiff requested a trial by jury on all issues. Prior to trial, the parties reached a settlement for \$1.5 million. Maynard Clark is still working toward his recovery and making every effort to regain his active life and good spirit. ♦

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SDSBS receives award for commitment to diversity at all levels in the firm

The Palm Beach County Bar Association has presented **Searcy Denney Scarola Barnhart & Shipley** the Honorable Edward Rodgers Diversity Award. The award recognizes individuals and law firms that demonstrate a consistent pattern of commitment to diversity at all levels of the firm; foster an inclusive and equitable work environment; and promote and facilitate education, community outreach, and social engagement with and between people of various ethnic or religious backgrounds, gender, socioeconomic status, sexual orientation, and/or physical and mental capabilities. Law firms and individuals that attain this level of commitment ensure that persons of diverse backgrounds can enter and prosper in the legal field. Over 1,000 lawyers and judges were in attendance. ♦

Misfilled prescription causes serious damage to newborn baby

The medication was designated ‘high alert,’ requiring extreme caution

In April 2011, twins were born at a local hospital. Their mom and dad were thrilled with their beautiful, newborn girls. An examination shortly after birth revealed that one of the twins had been born with a congenital heart condition. The doctor prescribed a medication to help her heart function properly. The local pharmacy, however, misfilled the prescription, giving the newborn baby more than ten times the prescribed dosage. The incorrect medication was administered for a week, causing the baby to become violently ill. When the baby stopped breathing, the mother rushed her to the hospital where she was diagnosed with toxicity at a lethal level, a direct result of the misfilled prescription. The baby’s intestines had become twisted and it was necessary to surgically remove 75% of her small intestines. She was in the hospital’s intensive care unit for almost two weeks.

The medication prescribed for the baby was designated a “high alert medication,” meaning that pharmacies must use extreme caution when filling a prescription because of its potential to cause serious and deadly problems, especially for newborn infants. As a result of the misfilled prescription, the baby suffers a short bowel syndrome and is very weak in her legs, neck, and torso. The damage caused by the error has resulted in the decline of the baby’s physical and mental development, substantially below the growth and development of her twin sister.

The parents sought representation by SDSBS attorneys **Chris Searcy, Karen Terry, and Matt Schwencke** to hold the pharmacy accountable for the grievous injury suffered by their daughter because of its failure to properly and safely provide the medication. Prior to filing a lawsuit, the attorneys resolved the case for a substantial amount of money. The settlement will provide care for the child for the rest of her life. ♦



Ignored or disabled ventilator alarm results in death

(Continued from page one.)

allowed to go home. Requiring around-the-clock nursing care, home ventilators, and monitors, the babies' discharge dates were staggered to prevent overwhelming the parents.

The hospital provided the Crandalls with references to several home health-care agencies. The couple eventually selected XYZ Pediatric Care, Inc. (not its real name) to provide round-the-clock home nursing for the three children. The parents were assured that the company would provide top quality infant care to meet each baby's needs. The agreement worked well for the first several weeks. Then Betty began finding some of the night nurses sleeping on the job. Betty reported this to the company and refused to allow those nurses back into her home.

The last baby to be discharged from the hospital was Faith, mostly because her condition was more complicated than those of her siblings. Faith had been diagnosed with periventricular leukomalacia (a type of brain injury that affects infants), although the extent of any disability caused by that condition had yet to be determined. Ellie and Faith were in separate cribs, in the same room, with the nurse's station between the two cribs. Baby David was off the ventilator and sleeping in his parents' room. For more than a week after arriving home, Faith thrived, responding to family attention and smiling. On the evening of February 25, 2010, Jane Doe (not her real name), a licensed practical nurse assigned by XYZ Pediatric Care to work the night shift (7:00 pm to 7:00 am) was on duty. Checking on her two baby girls before bedtime, Betty noticed that Faith's pulse oximeter (a device used to continuously monitor pulse and blood oxygenation)

had been turned off. The nurse admitted to turning the monitor off, and Betty directed her to turn it back on. The oximeter was attached to Faith's toe and secured with a Velcro fastener and a sock. Both the oximeter and the baby's ventilator were equipped with alarms so that if the baby stopped breathing, the alarm would sound. In addition to this protection, the nurse was required by contract to monitor the children throughout the night and keep a close eye on each of them.

At some point that night, Faith stopped breathing. Either the nurse turned the alarm off again, or she ignored it. She failed to recognize that the baby was in crisis until it was too late – the baby was cold, blue, and unresponsive. The nurse panicked and started screaming and trying ineffectively to administer cardiopulmonary resuscitation, but she

At some point that night, Faith stopped breathing. Either the nurse turned the alarm off again, or she ignored it.

She failed to recognize that the baby was in crisis until it was too late - the baby was cold, blue and unresponsive.



was confused and inept. Betty told the nurse to use the AMBU bag to resuscitate the baby, but the nurse could not work the equipment properly and, eventually, in frustration, threw it across the room against the wall. Betty began to administer CPR to Faith until the emergency paramedics arrived. The baby was transported to the hospital. Her body temperature had dropped to 80 degrees. The hospital doctors told Adam and Betty that their baby girl was dead.

The police investigation eventually found that the ventilator's alarm had been disabled. All other functions of the ventilator and pulse oximeter were working fine. The nurse had claimed in statements to the police that the ventilator and pulse oximeter were "faulty," yet she had never filed a complaint about the equipment to anyone prior to the baby's death. They also disclosed that the nurse had been on duty at another residence, several years before, when a baby had stopped breathing and died while in her care. XYZ Pediatrics had not informed the Crandalls of this incident. Faith's autopsy revealed no evidence of a seizure, heart attack, or other cause related to her underlying health condition.

The parents sought representation by SDSBS attorneys **Chris Searcy** and **Sla Baker-Barnes** in an effort to hold the nurse and her employer responsible for their reckless disregard of the life and safety of their baby, Faith. Despite a vigorous defense raised by the defendants, including their reliance on nursing notes indicating that baby Faith was checked on an hour before the incident, arguments that the machines were faulty, and that baby Faith was so severely premature that she would not have survived anyway, attorneys Searcy and Barnes were able to prove that the circumstantial evidence demonstrated that the baby was neglected and that her death could have, and should have, been avoided. The parties engaged in mediation and eventually reached a confidential settlement. ♦



Taking... *Time to Care*

SDSBS employees and families participate in 'Walk Now for Autism Speaks'

SDSBS employees and their families joined hundreds of other participants in the "Walk Now for Autism Speaks" held March 3, 2013, at the Meyer Amphitheatre in West Palm Beach, Florida. The Walk and 5-K Run are major events for Autism Speaks, raising funds for vital research to combat the fastest-growing serious developmental disorder in the United States. For more information, or to donate, visit www.autismspeaks.org. ♦



Ten SDSBS attorneys and staff participate in 'Career Day' at Hope-Centennial Elementary School

Ten SDSBS attorneys and staff participated in "Career Day" at Hope-Centennial Elementary School on May 17, 2013, in West Palm Beach, Florida. Paralegal John Hopkins' wife, Julie, is principal at the school. Children from grades three through five attended the presentations on careers and occupations they can attain if they apply themselves in school now and in the future. ♦



SDSBS Tallahassee office in 'Red Shoe Run' and 'Bowl for Kids' Sake' fundraisers

SDSBS staff at the Tallahassee office found plenty of time to care for others on April 27, 2013. An SDSBS Team participated in the Second Annual Red Shoe Run to raise funds for the Tallahassee Ronald McDonald House. They were part of the 855 runners supporting the program which provides pediatric patients and their families a place to stay while the child is receiving medical treatment at hospitals in Tallahassee. Another SDSBS Team from the Tallahassee office participated in the 29th Annual Bowl for Kids' Sake fundraiser hosted by the Big Brothers Big Sisters of the Big Bend. The event raised over \$34,000 to help at-risk children in the Big Bend area. ♦



Attorney Jack Scarola volunteers for 'Reading is Fundamental' program

On May 21, 2013, Jack Scarola served as a volunteer for "Reading is Fundamental," a program sponsored by the Palm Beach County Bar Association's Young Lawyers Section. Jack read to a number of young children at the Washington Elementary School in Riviera Beach, Florida. ♦

The Lord's Place 'SleepOut' raised funds for the homeless with SDSBS' help

In April 2013, more than 100 people camped out overnight at the Meyer Amphitheater Park in West Palm Beach, Florida, in order to bring awareness about people who are homeless. This was the sixth annual "SleepOut" event sponsored by the non-profit organization, The Lord's Place. The event raised about \$200,000 to benefit programs that help people get back on their feet. SDSBS attorney Jack Scarola is a past chairman of the board, and has been very active with the organization from the beginning. ♦

SDSBS staff participated in 'Feeding Children Everywhere' food assembly line

In February 2013, hundreds of volunteers turned out to help package lentil meals destined to feed hungry children throughout the United States and in other countries. The volunteers worked the assembly lines formed under a tent at Palm Beach Atlantic University in West Palm Beach, Florida. The event was organized by "Feeding Children Everywhere" in partnership with Bethesda-by-the-Sea Episcopal Church in Palm Beach. More than 900 volunteers arrived in three shifts and, within hours, had packaged 150,000 meals. SDSBS attorneys Jack Scarola and Pat Quinlan participated in the event. ♦



SDSBS hosts 22 for 'Take Our Daughters and Sons to Work Day'

April 25, 2013, was the 20th anniversary of the national "Take Our Daughters and Sons to Work Day." SDSBS hosted 22 daughters and sons, ranging in ages from 4 to 13 years of age. Originally, the event was held to expose young girls to various occupations in the hope of broadening their career aspirations. The program spread across the country and expanded to include boys. The children were provided t-shirts with the theme, "Small People Mean Big Business." John Shipley greeted everyone participating in the day, and provided an open discussion about the legal profession. The kids learned about the three main marketing efforts – internet, television commercials, and charity/community outreach programs. They participated in creating commercials for Twizzler Twists, "Our School," Swingline Staplers, and Girl and Boy Scouts. The kids also assisted in a fundraising luncheon to benefit a veteran-based charity. John Hopkins provided a program on internet marketing and Green Screening. And Hardee Bass talked to the group about the dangers of tobacco use. And everyone was entertained by Travis Gallagher and Lindsey Radziwon, especially their version of the "Harlem Shake." ♦



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21 SDSBS attorneys selected for *Florida Super Lawyers 2013*



**Chris Searcy was again
ranked number one by the
Florida Super Lawyers
magazine in its 2013 selection.**

Selected as "Florida Super Lawyers 2013" were **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, Sia Baker-Barnes, Brian Denney, Brenda Fulmer, Jack Hill, Darryl Lewis, Karen Terry, Cal Warriner, and Mariano Garcia** in the West Palm Beach office of SDSBS, and **Jim Gustafson and Bill Norton** in the Tallahassee office. **Jack Scarola** was also included as a "Florida Super Lawyer 2013" in *Super Lawyers Business Edition*. *Florida Super Lawyers* also listed **Karen Terry** in "Florida's Top 50 Women Lawyers 2013." **Hardee Bass, Ed Ricci, Matt Schwencke, Brian Sullivan, D. J. Ward** (all in the West Palm Beach office), and **Cameron Kennedy** (in the Tallahassee office) were selected by *Super Lawyers* as "2013 Florida Rising Stars."

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have each attained a high degree of peer recognition and professional achievement. The comprehensive selection process utilized by *Super Lawyers* has recently been patented, and is one of the few lawyer rating services in the country to be granted this distinction. The multiphase process involves three steps: creation of a candidate pool; evaluation of candidates by a research department; and peer evaluation within the candidate's practice area on 12 indicators of peer recognition and professional achievement. Candidates cannot nominate themselves, nor can they pay to be on a *Super Lawyers* list. The patented selection process ensures a credible, comprehensive, and diverse listing of exceptional attorneys, such as these noted SDSBS attorneys. ♦



Earl Denney



Jack Scarola



Greg Barnhart



John Shipley



Sia Baker-Barnes



Brian Denney



Brenda Fulmer



Jack Hill



Darryl Lewis



Karen Terry



Cal Warriner



Mariano Garcia



Jim Gustafson



Bill Norton



Hardee Bass



Ed Ricci



Matt Schwencke



Brian Sullivan



D. J. Ward



Cameron Kennedy