

Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 13, NUMBER 1

\$5.5 million awarded to family of smoker with 40-year addiction

Jury found in favor of the plaintiff on every liability issue presented.

In December 2012, a Tallahassee jury awarded \$5.5 million to the widow of a man who died of lung cancer after more than 40 years of nicotine addiction. SDSBS attorneys **Jim Gustafson** and **Bill Norton**, and former SDSBS attorney David Sales, tried the case against Philip Morris USA, Inc. and Liggett Group, LLC, on behalf of Nan Buchanan, whose husband, Mitchell "Ike" Buchanan, died of small cell lung cancer in 1995. Ike began smoking as a teenager in the 1940's - a time when about 80% of people his age smoked. Ike had been addicted to the nicotine in cigarettes for nearly 20 years before the tobacco industry began placing caution labels on cigarette packs.

Testimony by family members, friends, and experts, and damning internal documents authored by the defendants themselves provided unassailable evidence that the tobacco companies had endeavored not only to increase the addictiveness of their products, but to conceal that effort from the public. The tobacco



Ike Buchanan with his wife and two sons in early years.

companies had, in fact, engineered cigarettes to be addictive, to entrap the products' users in a way that ensured future sales, and then spent years lying about it and preventing public knowledge of the truth.

The jury awarded \$5.5 million in compensatory damages, and found in favor of the plaintiff on every liability issue presented to them, a scathing indictment of an industry whose monstrous conduct killed more good Americans than any other phenomenon – natural or man-made – in the history of our nation.

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Brain-injured child makes strides against all odds

Doctors treated cold symptoms, missing bacterial meningitis.

In May 2004, a young couple welcomed the arrival of their beautiful, healthy baby boy named Brandon (not his real name). At three months old, Brandon was thriving, meeting all developmental milestones, and in good health. He was described as a happy, smiling baby. In August, Brandon developed cold-like symptoms and his mother took him to see his pediatrician. Although Brandon's mother followed the pediatrician's instructions in the use of medications and a nebulizer, Brandon's symptoms did not improve. By September, Brandon was running a fe-

ver and his mother became alarmed. They returned to the pediatrician who, despite Brandon's worsening condition, did not order any blood tests. He merely instructed the mother to give the baby Tylenol.

Early on October 7, Brandon's mother noticed that the baby felt very hot. She checked Brandon's temperature and found that it was over 103 degrees. She dressed immediately and rushed the baby to the emergency room of a nearby hospital. She told the hospital staff that Brandon was only five months old, and that for the past several weeks he had been wheezing and coughing, suffering from a runny nose, vomiting, and diarrhea, *(Continued on page three.)*

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

Doctors treated cold symptoms, missing bacterial meningitis

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and now had a high fever. Brandon had been continually irritable, cranky, and tired, and he was not eating normally. At the pediatrician's instruction, she had been treating him with albuterol, Pedia-Care, and a home nebulizer – none of which relieved his symptoms.

The hospital's doctor spent less than 15 minutes evaluating Brandon's condition. The doctor inaccurately recorded the baby's recent medical history, brushing off the information provided by the mother. No laboratory tests were ordered. The doctor did not properly diagnose Brandon's condition and he failed to provide appropriate intervention to treat the critically-ill child. Instead, the doctor simply sent Brandon and his mother back home with a prescription for a mild oral antibiotic. Later that morning, Brandon's mother called the pediatrician to report Brandon's condition, and again the pediatrician failed to appreciate the significance of the baby's symptoms and did not order any tests to further evaluate his condition.

Over the next three days, the baby's condition remained about the same. On October 10, Brandon's mother noticed that his lip was twitching. A vigilant parent, she rushed the baby to an after-hours treatment center. There, he suffered three seizures and was immediately transported to a hospital where he was diagnosed with bacterial meningitis.

Upon admission, Brandon had severe, uncontrollable seizures. An MRI revealed severe brain damage from the ravaging infection. Further evaluation revealed the baby was suffering from hydrocephalus and would require surgery to place a shunt in his head to prevent further brain damage or death. Due to the severity of his injuries, it was necessary to surgically place a G-tube in Brandon in order to feed him.

He was on the verge of death for weeks. Brandon's mother and father were at his bedside during his several months in the hospital, continually praying for a miracle.

Brandon survived the ordeal, but was left with devastating disabilities. And Brandon's parents were left wondering how their healthy, happy baby boy could have been so horribly injured while under the care of doctors. The parents asked SDSBS attorneys **Sia Baker-Barnes** and **Darryl Lewis** to help them find answers to their questions. The attorneys undertook an extensive investigation to review the medical records, and included consultation with the leading experts on meningitis. Their efforts revealed that the hospital, doctors, and nurses involved with Brandon's care had all failed terribly.

healthcare professionals run these tests, discovered the bacteria, and immediately treated Brandon with intravenous antibiotics, meningitis would have been avoided and Brandon would have continued life as a healthy, normal child.

The doctors, nurses, and hospital vehemently defended their actions arguing that the baby looked fine while he was in the hospital and at the pediatrician's office. He was happy and smiling, they said, and therefore could not have had a serious infection. They argued that the mother was not clear about the baby's symptoms leading up to the visit. The defendants also hired multiple experts to defend the medical care.

After years of litigating the case, including a month-long trial that had resulted



Extensive investigation revealed that timely, routine blood tests would have discovered the bacterial infection, and with immediate treatment,

serious damage could have been avoided and Brandon would have continued life as a healthy, normal child.

Because of Brandon's very young age, his high fever, and a host of other symptoms, doctors were obligated to rule out something more serious than a simple virus. The medical experts testified that timely, routine blood tests such as a complete blood count and a blood culture would have revealed that Brandon had bacteria in his blood – a potentially deadly condition that could lead to meningitis. Had the

in a hung jury, plaintiffs' attorneys were able to reach a confidential, multi-million dollar settlement with all defendants. With the proceeds from the settlement, Brandon is receiving nursing care and intensive therapy. He is reaching milestones that doctors thought he could never reach. Just last year Brandon started walking, and the family is now hopeful that one day he will be able to talk. ♦