

## Community's failure to heed warnings about boardwalk guardrails results in \$9.4 million settlement for injuries

**Woman falls six feet from unprotected boardwalk, suffering permanent injury**

Our clients, Lisa and Dan Smith (names changed for confidentiality) asked SDSBS attorneys **Chris Searcy**, **Cameron Kennedy**, and **Carter Scott**, along with Dana Matthews of the law firm Matthews and Jones, to represent them after Lisa was paralyzed from the waist down when she fell from an elevated boardwalk along a beach community in Florida.

In October 2014, Lisa was visiting friends who owned a home in an upscale, gated beach community. Because the community was situated on a parcel of land that abutted one of Florida's many environmentally protected beaches, the developer constructed a boardwalk system which traversed miles of beach dunes and provided owners and guests access to and from the beach, pool, and common areas. As the

## Over \$3.2 million in settlement for drunk driver's damaging crash

**After two years of investigating, SDSBS obtained a settlement for the injured plaintiff just before the trial began**

On New Year's Eve 2014, John Elliott (not his real name) was driving his car to pick up takeout food for him and his girlfriend. They had planned on spending a quiet evening at home and off the streets. Unfortunately, John did not make it to the restaurant that evening. He had stopped at a red light when, all of a sudden, he heard the roar of a Lamborghini racing down the street at a high rate of speed. The Lamborghini slammed into the back of John's car with such force that his car was



only means of accessing the protected areas of the community, the boardwalk was open to foot traffic, bicycles, and golf carts. Bicycling along the elevated boardwalk, Lisa suddenly lost her balance and fell to the ground six feet below. The fall caused a burst fracture of a thoracic vertebra, damaging her spinal cord and causing paralysis. Lisa now faced a lifetime of expensive medical care caused by the injury. The parties who created the circumstances that caused her injuries needed to be held responsible. Her attorneys filed a lawsuit against the developer of the community and the homeowner association charged with maintaining the property.

The facts uncovered during the case told a familiar story of cost-cutting and safety violations in an effort to save money and maximize profits. Construction plans for the boardwalk *(Continued on page two.)*

propelled into the air. Despite being properly secured in his seatbelt, John hit his head on the roof of the car, injuring his neck, back, and shoulder.

John was whisked away in an ambulance to a local hospital where tests were done to evaluate his injuries. The tests revealed that his injuries were severe and would require a three-level lumbar fusion. Suffering from daily pain after the crash, John would never be able to live a normal life.

The police determined that the defendant who caused the crash had a blood alcohol level of .33 – more than four times the legal limit. Although the defendant had two prior convictions for driving under the influence, the court only sentenced the defendant to a few months of house arrest, three years of probation, and alcohol treatment. *(Continued on page two.)*

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originally specified guardrails in areas where the height of the boardwalk exceeded 30 inches above the ground to prevent serious injury caused by falls from greater heights. The developer, however, cut corners and cut costs by building the boardwalk system without the necessary safety guardrails. Several years later, the community began transitioning from developer-control to homeowner-control under the Florida laws that govern these communities. As part of this transition, an engineering firm was hired to inspect the boardwalk and identify issues that would require repairs or maintenance on the system. The engineers reported back to the developer and to the board of directors of the homeowner association that the boardwalk was unsafe because it lacked guardrails to protect users and that the lack of guardrails constituted a violation of the Florida Building Code. Instead of accepting the report from the engineering firm, the developer and the association elected to ignore the warnings. The parties continued to allow homeowners and guests to freely use the boardwalk despite the dangers posed by having no guardrails. A few short years later, Lisa fell from the boardwalk and suffered catastrophic injuries.

After several years of litigation and on the eve of trial, the attorneys obtained a settlement of \$9.4 million for their clients. Mr. Kennedy said, "Our clients are amazing people who love each other dearly. Lisa suffered a devastating injury that could have and should have been prevented. They would give anything to have Lisa walk again instead of being confined to a wheelchair. But that isn't going to happen. Nevertheless, they take comfort knowing that because of their lawsuit no one will be injured on the boardwalk again because the guardrails were added after her fall." SDSBS is honored and grateful for the privilege of representing these remarkable individuals. ♦

## Over \$3.2 million in settlement for drunk driver's damaging crash

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The defendant was prohibited from drinking while on probation.



John asked SDSBS to help him prosecute the civil case. Attorneys **Chris Searcy**, **Karen Terry**, and **Andrea Lewis** filed suit in Palm Beach County, Florida. The case was particularly challenging considering that John Elliott had significant preexisting back problems.

While the case was pending, the SDSBS attorneys hired a private investigator to follow the defendant to ensure that he was abiding by the conditions of his probation. Not surprisingly, the investigator captured video footage of the defendant drinking alcohol almost immediately. The evidence was provided to the county prosecutor and the defendant was charged with violating his probation.

SDSBS attorneys worked on the case for over two years. During jury selection, the insurance carrier covering the Lamborghini finally paid a settlement of \$3,250,000. It was a long road, but justice was finally served. ♦



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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.