

Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 14, NUMBER 1

\$10 million verdict for injuries caused in multi-vehicle accident

Four-car pileup left plaintiff partially paralyzed in all four extremities

On July 9, 2012, 68-year-old Astley Simms was driving his pick-up truck westbound on West Broward Boulevard in Broward County, Florida. At the same time, Harry Kraft was driving a 2011 Nissan vehicle at a high rate of speed, also westbound on the same road, behind Mr. Simms and several other vehicles. Nearing the intersection of NW 69th Avenue, Mr. Kraft's vehicle rear-ended a Chevy Blazer just behind Mr. Simms, ramming the Chevy into the back of Mr. Simms' truck. The impact of that crash was so severe that it caused a four-vehicle pileup. Severely injured, disoriented, and unable to control his truck, Mr. Simms collided with another vehicle further down the road.

Mr. Simms later testified that upon initial impact, he felt pins and needles in his arms and legs, and found himself unable to lift his foot off the accelerator and unable to control the truck. When emergency personnel arrived at the scene, he was transported to Broward General Hospital where the doctors diagnosed a spinal cord injury. The injury

left him partially paralyzed in all four extremities. Due to the reckless and negligent driving by Mr. Kraft, Mr. Simms suffered severe injuries, aggravation of a pre-existing condition, pain and suffering, disability, medical expenses, and loss of earnings. Mr. Simms asked Todd Rosen of Todd Rosen Law, Miami, Florida, and SDSBS attorneys **Chris Searcy** and **Jack Scarola** to represent him.

In the personal liability action filed against Mr. Kraft, the defendant submitted a pre-trial offer of \$100,000. Defense argued that Mr. Simms' injuries were caused after he left the scene of the initial, low-impact collision, and that he negligently drove at 35 mph into a stopped van one-half mile down the road. The jury rejected the argument. Attorneys Rosen, Searcy, and Scarola pursued the case into court and in January 2014, after a two-week trial before Judge Carlos Rodriguez in the 17th Judicial Circuit in Broward County, the jury returned a compensatory award of \$10,096,567. ♦

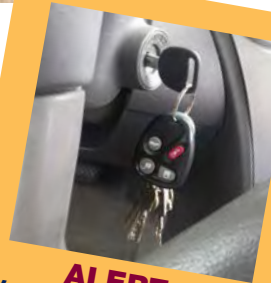
\$2.5 million awarded for death resulting from nicotine addiction

Award is the 11th verdict for SDSBS against Big Tobacco!

On March 28, 2013, a Broward County, Florida, jury returned a verdict in favor of John Sammarco, Sr., the widower of Theresa Sammarco, a lifelong Marlboro smoker who died of lung cancer as a result of being addicted to cigarettes. The jury returned a total compensatory damage award of \$2.5 million in favor of Mr. Sammarco, who lost his beloved wife of

41 years, Terry. She was just 61 years old when she died. SDSBS attorneys **Jack Scarola**, **Hardee Bass**, and **Patrick Quinlan** tried the three-week trial against Philip Morris. It marked the 11th plaintiff's verdict for SDSBS against Big Tobacco. The rejection by the defendant of a pretrial settlement offer meant that Mr. Sammarco will also be able to recover attorneys' fees and costs, expected to easily exceed \$1.5 million.

Consistent with the cigarette industry's goal of capturing young smokers in order to have "replacement smokers" lined up when smoking-related diseases killed other customers, Terry Sammarco began smoking cigarettes in 1952 when she was just 15 years old. *(Continued on page four.)*



ALERT:
We are now handling defective ignition crash cases from GM's 2.6 million car recall.

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**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY PA**

ATTORNEYS AT LAW

Doctor's lack of caution results in irreversible brain damage

Preliminary test clearly showed that the treatment procedure was unsafe

In April 2010, John Doe was experiencing a severe headache. Alarmed, he drove himself to the emergency room of a local hospital in Palm Beach County, Florida. Examinations revealed bleeding in his brain, and he was transferred to another hospital for further tests. Those tests revealed a ruptured arterial venous malformation (AVM) on John's brain. An AVM is an abnormal connection between arteries and veins, usually a congenital condition. John's AVM was located in close proximity to the thalamus, precariously close to the area that plays a vital role in sensory perception and regulation of motor functions. Following this examination, the hospital's neuroradiologist chose to perform an embolization procedure on the AVM, using catheterization. This involved injecting an embolic agent into the patient which would clog the AVM and prevent further bleeding. Tragically, the embolic agent traveled to John's thalamus and caused irreversible brain damage. John can no longer care for himself or function in any manner. He requires around-the-clock medical care.

Evidence showed that the dye test had stained John's thalamus . . .

... a clear sign that the embolic agent to be used for the catheterization would cause serious and permanent brain injury.

John's son, stunned by his father's condition, asked SDSBS attorneys **Chris Searcy** and **Brian Denney** to help him find out what had happened to his father. A thorough investigation by the attorneys revealed that the doctor should never have injected the embolic agent into John under the circumstances he presented. The attorneys filed a legal action against the hospital and the doctor on behalf of John and his family. Expert testimony determined that John's AVM was, in fact, stable, and that the doctor should have treated him conservatively, with observation and without

invasive treatment. Just prior to the embolic agent injection, and in accordance with established procedures, the doctor had injected a harmless dye into John in an effort to determine where the embolic agent might spread. The purpose of this procedure was to give the doctor an opportunity to test the safety of an embolic agent injection, and to back out of the procedure if there were adverse indications.

Evidence showed that the dye test had stained John's thalamus – a clear sign that the embolic agent would travel to the thalamus if injected, and that it would cause serious and permanent brain injury. When the neuroradiologist read the dye test report, he should have cancelled the embolic agent injection. Instead, he recklessly moved forward with the procedure, causing catastrophic injury to John. The attorneys were able to settle this case before trial, for a substantial sum that will ensure John receives around-the-clock medical care for the rest of his life. ♦

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A REPORT TO CLIENTS & ATTORNEYS VOLUME 14, NUMBER 1

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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.

Reckless indifference and failure to provide even basic mental health care result in patient's tragic suicide

Care center was unlicensed, unqualified, and not staffed to care for patients at risk for harm to themselves

Bob Green (not his real name) was a young, successful businessman living and working in South Florida. From a young age, Bob and his family recognized that Bob suffered from severe depression, anxiety, and obsessive compulsive disorder. In order to treat his illnesses, Bob met with psychiatrists, counselors, and took prescription medication for over half his life. When Bob was undergoing counseling and being properly treated, Bob flourished in both his professional and private life.

In early 2007, Bob and his wife, Carol (not her real name), had just welcomed the arrival of their newborn son, Bobby, Jr. However, in the months preceding their son's arrival, Bob's illness consumed him. His depression and anxieties became so severe that Bob resorted to using illicit substances to combat his illness. A few months after the birth of his son, Bob's depression and anxiety overcame him and he attempted suicide. He was rescued just in time and taken to a local hospital emergency room for treatment. The next day, he was transferred to a local psychiatric unit for further care. Just two days later, the psychiatric unit discharged Bob, allowing him to go home. The discharge was premature in the opinion of Bob's wife and other relatives.

Knowing that her husband was not of sound mind and that she could not take care of both her baby and seriously ill husband, Carol and her mother-in-law set about to find a protective alternative residence for Bob. Their research settled on XYZ Care Center (not its real name). XYZ convinced Carol that it was capable

and qualified to treat Bob's substance abuse and mental health issues. Bob was admitted to their care.

Upon admission, Bob was not properly screened, nor was he evaluated by a physician or seen by a psychiatrist. His antidepressant medication was changed over the phone without the doctor at XYZ having ever evaluated Bob. In fact, during his six days at XYZ, Bob was seen only once in a brief visit with a doctor that lasted approximately 10 to 15 minutes. Adding fuel to the fire, the staff even recognized that Bob was displaying signs of hopelessness and helplessness during his time at the facility, yet no one notified the doctor or asked for further evaluation. Bob was allowed to wander off the premises of XYZ, unattended, in a state of despair and abandonment. On July 5, 2007, Bob took his own life while a patient at XYZ.

Carol Green asked SDSBS attorneys **Chris Searcy, Darryl Lewis, and Adam Hecht** to represent her and investigate whether her husband received appropriate care and treatment. What was revealed during the investigation of this case was that Bob was a dual-diagnosed patient, in an active phase of withdrawal, with high risk factors for suicide. He had exhibited active suicidal ideation and was considered to be at significant risk of harm to himself and others and should never have been admitted to XYZ. It was not until after Bob's death that Carol learned that XYZ was not licensed, not qualified, and not staffed to accept and treat patients such as her husband.

Plaintiff's attorneys sought the assistance of experts in the field of psychiatry to determine whether Bob received standard care to protect his safety. It was revealed by experts in the field of psychiatry that basic rules and standards were not followed. It was pointed out that mental disorders

are one of the leading causes of death in the United States and patients with such illnesses need to be treated no differently than any other patient who has a serious injury or illness. It was further explained by experts in the field that the conduct by the doctor and staff at XYZ was so violative of the basic rules to protect Bob's safety that it rose to a reckless indifference.

In the investigation, plaintiff's attorneys also sought the expertise of a nationally revered toxicologist. They learned that changing Bob's antidepressants actually increased his depression and suicidal ideations which ultimately led to Bob taking his own life.

With substance abuse and mental health issues, Bob was a dual-diagnosed patient in an active phase of withdrawal, with high risk factors for suicide.

In addition, attorneys also asked a highly qualified psychiatric nurse to review all the policies and procedures that governed the XYZ facility to determine if appropriate nursing care was followed in this case. It was concluded that not only did XYZ violate their own internal policies and procedures when they accepted Bob as a patient, they also violated Florida nursing standards for failing to appropriately provide basic and standard treatment for a patient in Bob's condition.

After two weeks of trial, the parties reached a confidential settlement which will enable Carol and Bobby, Jr., to move on with their lives. ♦



\$2.5 million awarded for death resulting from nicotine addiction

(Continued from page one.)

Like a majority of American smokers in the 1950s, Terry switched to filtered cigarettes believing that filters would help protect her from any harmful effects of smoking. Starting at only about 3% of the cigarette market in the early 1950s, filtered cigarettes represented 80% of the market by 1970. Unfortunately for Terry and millions of other smokers, filtered cigarette smokers were, in most instances, exposing themselves to more harm than smokers of non-filtered cigarettes. They were unaware of this; Philip Morris and its co-conspirators knew of the danger, yet publicly maintained that filtered cigarettes could “keep out the bad stuff.” History would repeat itself in the 1970s, when “light” cigarettes were introduced in the marketplace, boasting less tar and nicotine. However, “light” cigarettes – like filtered cigarettes – did not do what the industry claimed they did. In fact, as proven at trial in this case, the changes in the design and composition of cigarettes since the 1950s resulted in a substantial increase in adenocarcinoma, the type of lung cancer from which Terry suffered and died. Thinking she was smoking a “safer” cigarette, Terry smoked Marlboro

Lights in the 1970s, 80s and 90s. In 2014, the evidence shows that design changes in cigarettes (promoted by the industry to counter health concerns) resulted in a product that is even more dangerous than the cigarettes Terry Sammarco first began smoking in the 1950s.

Starting at age 15, Terry smoked heavily for the next 45 years of her life, managing to quit for good only after starting chemotherapy and radiation for her lung cancer in 1997. The evidence of Terry’s addiction was so overwhelming that Philip Morris hardly challenged this point at trial. In fact, even defense witnesses agreed that Terry was addicted. Despite her addiction, Terry tried numerous times to quit smoking, including hypnosis, gum, the patch, and cold turkey. When Terry couldn’t quit, she would become so frustrated and upset that she would cry. Terry’s inability to quit smoking was no surprise to Philip Morris and its co-conspirators. As numerous, previously confidential, cigarette company documents revealed, at the same time the cigarette conspirators were publicly denying that nicotine is an addictive drug, they were internally acknowledging its powerfully addictive properties and calculating how best to take economic advantage of those properties by manipulating the nicotine levels in cigarettes to get smokers hooked and to keep them hooked.

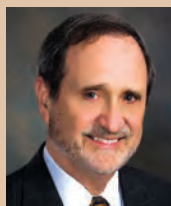
Sadly, Terry lost her battle with lung cancer in 1998, leaving behind a family to whom she had been extraordinarily devoted. Today, over 440,000 Americans are dying each year of smoking-related diseases. And the death projections for the upcoming century continue to grow. ♦

2014 Edition of *South Florida Legal Guide* selects SDSBS as a Top Law Firm, and ten SDSBS attorneys as Top Lawyers

The 2014 edition of the *South Florida Legal Guide* selected SDSBS as one of their “Top Law Firms.” The publication also recognized ten SDSBS attorneys as “Top Lawyers” – **Chris Searcy, Earl Denney, Jack Scarola, Greg Barnhart, John Shipley, Brian Denney, Mariano Garcia, Chris Speed, Karen Terry, and Cal Warriner**. These attorneys had also been recognized in the previous two editions of the Guide. “Top Lawyers” nominate “Top Law Firms” by annual ballots submitted to the Guide. “Top Lawyers” are selected in a peer nomination process. ♦



Chris Searcy



Earl Denney



Jack Scarola



Greg Barnhart



John Shipley



Brian Denney



Mariano Garcia



Chris Speed



Karen Terry



Cal Warriner

Gas station repeatedly ignored leaking pump despite numerous warnings of danger of explosion

Gas pump exploded causing severe injury to 53-year-old motorcyclist

Gasoline is an extremely dangerous product. Gas station personnel are required to exercise considerable caution and care in delivering their product to the public. In 2013, this responsibility was completely ignored at a gas station in south Florida. Station employees, caring more about selling cigarettes, beer, and lottery tickets than ensuring the safe dispensing of gasoline, ignored numerous warnings of a gas spill. As a result of their irresponsibility, a man was severely burned and nearly killed by an explosion and subsequent fire.

For more than a month prior to this catastrophe, at least 11 customers complained to station employees that there was something seriously wrong. A pump was leaking gas. They told the employees to turn the pump off, hang up an out-of-order sign, and get the pump repaired before it exploded. Station employees ignored the warnings and simply scattered cat litter over the spilled gasoline. On the day of the incident, an off-duty firefighter stopped at the station to fill her car. She noticed the odor, saw the spill on the ground, and told station employees to shut the pump down, warning of a potential explosion. Four more customers stopped at the station, each reporting concerns about the spill. It was clearly visible from inside the station's cashier counter and store. Still, nothing was done to shut the pump down or to clean up the spill. One employee went outside to look at the pump, but did not place red cones around the spill to keep customers from driving through it, nor did he tell the cashier inside to turn the pump off.

Later that day, 53-year-old off-duty police officer John Smith (not his real name) drove his motorcycle into the gas station and through the gas spill. A ball of flames burst up, engulfing John's body. John fell to the ground with his leg trapped under the motorcycle. Terrified that he was going to die, he got up and ran to a nearby grassy area to extinguish the flames by rolling on the ground. Emergency vehicles arrived. The burns were so severe that when John's glove was cut off, the skin on his right hand came off with the glove. Later, he awakened in the burn unit of a hospital, with pain so horrendous that he wished he was dead.

There is a reason that most of the religions of the world equate their versions of hell with fire and burning. It is the most excruciating, intolerable, and unrelenting of all pain and suffering. John suffers horrible scarring on his leg which

continues to cause him pain and cramping. He performs therapy every morning in order to walk normally. If he sits, stands, or lies in bed too long, his pain increases and he must get up, stretch, and do more therapy. He is plagued with disturbing nightmares, reliving the explosion and the pain. He has lost use and strength in his right hand and can no longer fire a gun or perform the defensive tactics required of police officers. He can no longer teach firearms or defensive driving. Because of his disability, John lost his police officer certification, a loss that deeply affects his pride. The son of a police officer, John's entire identity was wrapped around being a police officer.

The gas station's reckless, willful, and wanton behavior can only be explained by the fact that the corporation did not prioritize public safety. It was preoccupied with profit, to the point that its workers, untrained, unsupervised, and uncaring, ignored numerous warnings. John Smith asked SDSBS attorneys **Chris Searcy** and **Karen Terry** to represent him in a corporate liability action against the station. On the eve of trial, plaintiffs were granted the right to assert punitive damages against the gas station. Shortly thereafter, the case was settled for a substantial sum of money which will take care of John Smith for the rest of his life. ♦

... reckless, willful, and wanton behavior can only be explained by the fact that the corporation did not prioritize public safety ... workers were untrained, unsupervised, and uncaring ...



Florida Supreme Court rules caps on damages unconstitutional

Court's reasoning on medical malpractice wrongful death cases may eventually extend to personal injury cases

In 2003, the Florida legislature passed laws that severely restricted the rights of patients to bring medical malpractice lawsuits by placing a cap on wrongful death noneconomic damages. SDSBS has been handling medical malpractice cases for over 35 years. As a result of our extensive knowledge, expertise, and determination, we have achieved significant successful results for plaintiffs. After the state's restrictions went into effect, many other law firms avoided representing plaintiffs in such cases. However, our firm continued to pursue these cases on behalf of its clients, albeit under the new burden of the legislated caps. Since 2003, SDSBS has repeatedly sought, and obtained, justice for clients who were damaged by shoddy, uncaring, and incompetent medical practice.

On March 13, 2014, the situation changed significantly. The Florida Supreme Court issued a long-awaited opinion on the constitutionality of these medical malpractice caps. In *Estate of Michelle Evette McCall v. United States*, No. SC11-1148, the Court held "... the cap on wrongful death noneconomic damages provided in section 766.118, Florida Statutes, violates the Equal Protection Clause of the Florida Constitution." The case originated with a claim filed by the estate of Michelle McCall, her parents, and the father of her son. In June 2005, Ms. McCall was pregnant and under the care of a U. S. Air Force family practice department for primary prenatal care and delivery services. In February 2006, during the last trimester of her thus-far normal pregnancy, Ms. McCall suffered high blood pressure and severe preeclampsia. Her condition required that labor be induced immediately. The AF medical center was temporarily unavailable for obstetric and delivery services, so Ms. McCall was transferred to Fort Walton Beach Medical Center. There, the Fort Walton staff and the AF family practice staff continued Ms. McCall's care, but did so with numerous delays and failures to monitor her condition. Eventually, Ms. McCall succumbed to shock and cardiac arrest, and died on February 27, 2006. The petitioners filed an action against the United States under the Federal Tort Claims Act, but the district court limited recovery of wrongful death noneconomic damages to \$1 million. Although the Court's decision was limited to wrongful death cases, it is expected that some trial courts will apply this Court's reasoning to personal injury medical malpractice cases as well. SDSBS will continue its quest to find appropriate justice for each of these claimants. ♦

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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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about our firm in Spanish.

Families of seven Guatemalan workers killed in car accidents reach settlement after years of litigation

Through hard work and commitment, SDSBS obtained long-term support for the families of the workers

In the early part of 1980, there was a major civil war in Guatemala. The fighting between government troops and rebel forces resulted in a near-genocide of the indigenous population throughout the country, especially in the state of Huehuetenango located in northwest Guatemala, bordering on southern Mexico. In an effort to escape the ravages of war, many Guatemalans migrated to south Florida, attracted to the area because of its large agricultural base.

Over the next several years, SDSBS attorneys provided support to Father Frank O'Loughlin, a Catholic priest who worked closely on migrant worker issues with the Guatemalan population in Indiantown, Florida. In 1991, there were two major accidents that resulted in the death of seven Guatemalan workers. The first accident took the lives of six men who drowned when the station wagon in which they were traveling ran off the road and into a canal on a sugar plantation near Belle Glade, Florida. All six men were from the same village of Aguacatan. Each man had been working in south Florida and sending his wages to his large family back home. Just weeks after this accident, an intoxicated driver ran a red light at the intersection of 30th Street and Broadway in West Palm Beach. His car struck a van carrying four Guatemalan workers, killing one young man and seriously injuring another.

Upon learning of the accidents, SDSBS attorney **Jack Scarola** pledged the resources of the firm to assist in both cases. He assigned paralegal Emilio Diamantis to travel to Huehuetenango to meet with the six families in Aguacatan, and to meet with the other families in Cuilco, a small village in the same state. Mr. Diamantis is bilingual and was able to gather substantial information relating to the impact of the accidents. It was obvious that the loss of six men from the same village – sons, fathers, husbands to over 70 individuals – was a serious blow to the village as a whole. In Cuilco,

Mr. Diamantis found that the fatality in the second accident – Freddy Lopez – had left a widow, three children, and parents without the support they desperately needed.

Both cases were litigated and reached settlement after several long years. The numerous structured settlements provided annuities to all members of these families for the next 20 to 30 years. In the Lopez case, the settlement not only supported the family as a whole, but enabled all three of Lopez's children to attend elementary school, secondary school, and, ultimately, college.

To use a familiar phrase . . . “and now, the rest of the story:” In December 2013, the oldest Lopez child finished her medical education and began work as a pediatric physician, to the great delight of Father O'Loughlin, Jack Scarola, and Emilio Diamantis. Her brother is just now finishing his engineering degree. And the youngest Lopez child has just begun her college studies. These types of cases, and others like them, are clearly outside the norm for hard work, difficult travel, coordinated effort, and commitment to achieving success. The results, however, are also clearly outside the norm for satisfaction. ♦



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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

Lipitor

Diabetes

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

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 implants.

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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Reckless assumptions and miscommunications by medical personnel lead to patient's untimely death

Young mother dies of head injury while medical personnel ignore test reports and withhold timely and critical care

In September 2010, a young mother was at a gas station when she suddenly fell over. While no one witnessed her fall, she did have a bruise on her head.

An ambulance arrived and took the woman to a nearby hospital where an emergency room doctor examined her. The ER examination diagnosed 26-year-old Connie Black (not her real name) as having a "seizure." Records indicated that the patient was minimally cooperative and that she had an abnormal "neuro exam." Because of the trauma and seizure, the emergency room doctor ordered a CT scan of the head and spine. This young mother had tattoos so the hospital jumped to the conclusion that this was a drug overdose.

What followed was the beginning of a series of miscommunications, mistaken assumptions, reckless decisions, and failures to provide proper professional care for a patient in distress – actions and inactions that eventually led to Connie's untimely and preventable death.

The hospital's radiologist reviewed the CT scan and concluded that there was "no evidence of any acute intracranial pathology," meaning nothing was broken. An electrocardiogram (ECG) was performed as well, which indicated abnormal findings recorded as "long QT," or slowed heart beat. Connie was mildly confused and lethargic. The ER doctor noted that Connie's mental status did not improve over several hours in the ER, and that she remained uncooperative. She was not able to walk. While still in the ER, she suffered nausea and vomited three times. Additional tests included a urine screening which tested positive for opiates and benzodiazepines. Of significance in her medical history, Connie had been in a car accident a few years earlier and had suffered a back injury. She had also been diagnosed with migraine headaches. Her family doctors had prescribed medications for both of these problems, and this medical data was provided to the doctors at the hospital, but the doctors and hospital chose to disbelieve her family.

The ER doctor correctly believed that Connie needed to be admitted to the hospital for observation. She was released from the ER in "good condition" and admitted to the hospital under the care of the hospital's internist. Despite the various abnormal findings from the ER examinations, the



internist did not examine Connie until the following morning, over 24 hours later.

Following a review of the ER chart, which included the negative CT report and the ER clinical examination, the internist presumed that Connie's problems were not urgent and possibly psychiatric in nature. He asked for a psychiatric consult, a neurology consult, and an MRI. The neurologist visited Connie the next morning. The neurologist never viewed the brain CT scans himself, relying instead on the radiologist's negative interpretations of the CT. That was a serious mistake because the CT scans of the head showed a skull fracture and brain bleed. He presumed there was no urgency to Connie's problems. Nonetheless, her clinical condition continued to deteriorate and she continued to have clear symptoms of a severe head injury.

The internist's order for the MRI was cancelled allegedly because of her level of agitation. The neurologist agreed to delay an MRI "due to her level of agitation." Connie's records reflect that she was given medications to sedate her, but apparently no consideration was given to sedating her sufficiently to conduct an MRI and find the answers to her condition.

All of the doctors dismissed clear symptoms of a head injury and, instead, presumed she was suffering from a drug overdose. Neither the doctors nor the nursing staff considered the fact that prescriptions for her back pain and migraines would support a positive urine screen and prompt further inquiry. This assumption and lack of attention would prove fatal to this young mother. *(Continued on next page.)*

She continued to experience agitation and stress. About 4:00 pm, nurses put her in four-point restraints to control her. The internist, unbelievably, had approved the order without any further evaluation of the patient. Oddly, hospital records noted that at 7:00 pm – three hours after the nurses had recorded that Connie was put in restraints – records stated “pt trying to get out of bed, found naked.” She was medicated with Haldol, and her heart rate increased. She remained confused and disoriented, and was found out of bed, naked, again. She began to develop respiratory problems. The internist ordered a chest x-ray and had her transferred to ICU. Connie’s blood pressure and oxygen level dropped, but her heart rate continued to increase. Rather belatedly, the internist ordered a cardiac consult. That consult showed severe cardiac damage.

On the morning of the fourth day in the hospital, the neurologist ordered another CT head scan. This scan reported “. . . widespread cerebral, cerebella, and brainstem edema . . . a high density epidural hematoma . . . widespread brain edema . . . contusions . . .” This was in stark contrast to the initial CT scan report of the radiologist who misread the CT scan and missed an injury that could have been timely treated, which would have prevented Connie’s death. It was now, however, too late for catch-up actions. Connie was pronounced brain dead that afternoon.

Connie was a young, healthy, vibrant mother of a three-year-old son. Her untimely death left a family in tremendous grief and loss. SDSBS attorney **Greg Barnhart**, along with Michael Maher of Winter Park, represented the estate and her son in a wrongful death lawsuit. The case went to mediation and shortly thereafter, all parties except the internist reached a confidential settlement. His reluctance was short lived though. He later reached settlement with the plaintiffs for his full policy limits. ♦

Head injury was ignored, test reports were misread, and symptoms were dismissed . . .

... as medical personnel mistakenly jumped to the conclusion that the patient was either overdosed on drugs or in need of psychiatric care.

Speaking Opportunities



Chris Searcy participated in the Automobile Litigation Series webinar on November 15, 2013, hosted by the Florida Justice Association. His subject was “Closing Arguments.” ♦



Sia Baker-Barnes was a panelist at the Palm Beach County Bar Association’s Alternative Dispute Resolution Seminar held February 10, 2014. The panel’s topic was “The Litigator’s Perspective on Effective Mediators.” Ms. Baker-Barnes also spoke at the American Association for Justice’s annual convention held February 12, 2014, in New Orleans, Louisiana. Her topic was “Maximizing Damages in Personal Injury Cases.” ♦



Brenda Fulmer was a moderator at the American Association for Justice’s “Plaintiffs-Only Drug and Medical Device Conference” held December 2013 in Las Vegas, Nevada. Ms. Fulmer also participated in AAJ’s Winter Conference held February 2014 in New Orleans, Louisiana. She was moderator for the presentation titled “Holding Corporation and Insurance Industries Accountable.” ♦



Matt Schwencke spoke at the Florida Justice Association’s Workhorse Convention on the topic of “Mental Pain and Suffering Damages” in negligence cases. The conference was held February 20, 2014, in Orlando, Florida. ♦



Kelly Hyman participated in the “Trial Lawyer MMA – Combining the Disciplines Conference” hosted by 360 Advocacy Institute in March 2014 at Aspen, Colorado. Ms. Hyman’s subject was “Presentation – Setting the Stage: Isn’t a Trial Just a Play?” ♦



Brian Denney and **Laurie Briggs** spoke October 9, 2013, at the Workers’ Injury Law and Advocacy Group’s annual convention held at The Breakers Hotel, Palm Beach, Florida. The subject of their presentation was witness deposition and trial testimony. ♦





At the Florida Supreme Court Historical Society dinner: (l-r front) Bill Norton, Jack Scarola, Judge LaBarga, Darryl Lewis; (l-r back) Cam Kennedy, Joan Williams, Mariano Garcia.

Accolades



The *Lawdragon 500 Leading Lawyers in America* selected **Chris Searcy** as one of its 2013-2014 *Lawdragon 500*. The eighth annual 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. ♦



In March 2014, **Greg Barnhart** was appointed to serve on The Florida Bar's Code and Rules of Evidence Committee. His three-year term of appointment will start July 1, 2014. ♦



Karen Terry was recently selected for membership in the National Trial Lawyers Top 100. National Trial Lawyers is a professional, educational, and business organization composed of premier trial lawyers from across the country. Membership is by invitation only, extended to the top 100 civil plaintiff and criminal defense lawyers in each state. ♦



Brenda Fulmer was re-appointed to serve on the Plaintiffs' Steering Committee for prosecution of hundreds of individual product liability lawsuits filed against the manufacturers of the anticoagulant drug Pradaxa. The personal injury and wrongful death claims contend that Pradaxa failed to warn prescribing physicians and patients that the drug could cause potentially fatal bleeding episodes. The Committee is responsible for coordinating and conducting pre-trial proceedings and advocating on behalf of plaintiffs. Ms. Fulmer was appointed by Chief Judge David R. Herndon of the United District Court for the Southern District of Illinois, where the lawsuits are being coordinated. ♦



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Unprovoked dog bite in face results in \$295,000 settlement

Sarah Mitchell (not her real name), a local resident of Palm Beach County, Florida, asked her personal trainer, Mary Jones (not her real name), to come by her home for a training session. Upon arriving at Ms. Mitchell's home, Ms. Jones noticed Ms. Mitchell's dog lying on the couch. Without warning, the dog jumped from the couch and attacked Ms. Jones, biting her on the face. Ms. Jones suffered permanent facial scarring and considerable emotional distress from the unprovoked attack.

Ms. Jones asked SDSBS attorneys **Karen Terry** and **Matt Schwencke** to represent her in an action against Ms. Mitchell. Ms. Mitchell had an insurance policy that included \$300,000 liability coverage, but it was not tendered when requested during a pre-suit hearing. Ms. Jones' attorneys promptly filed suit, and the case was resolved for \$295,000 before any further discovery. ♦

Jack Scarola celebrates 40 years of membership in The Florida Bar Association



Forty years ago, **Jack Scarola** was sworn in as a member of The Florida Bar. An active and well-respected member of numerous professional organizations, Mr. Scarola is recognized as a leader in the legal profession. Thirty years ago, his passion for helping those in need of support took a giant leap forward when he helped start The Lord's Place, an organization dedicated to helping homeless families and individuals in Palm Beach County by providing an array of support services and assistance. Mr. Scarola currently serves as a member of the board of directors. He and his family continue to actively participate in The Lord's Place programs and fundraising events. Thanks, Jack, for 40 years of dedication and advocacy, and for helping to change the lives of those in need. ♦

Unstable barstool collapses, causing injury

Management tried unsuccessfully to repair the stool and then tried to cover up their efforts

Steve Johnson (not his real name) was a regular customer at a local sports bar in Palm Beach County, Florida. One evening after work, Steve went to the establishment to participate in a weekly trivia game. He sat at the bar and placed an order for a drink. Suddenly, without warning, the barstool he sat on collapsed and Steve landed on the hard cement floor, directly on his tailbone. As a result of the fall, Steve's coccyx was fractured.

The next day, Steve went back to the sports bar and asked to see the broken barstool. He was told that it had been discarded in a dumpster outside the bar. Steve went to the dumpster, located the barstool, and took it home. An inspection of the barstool revealed that someone had attached brackets to the barstool in an effort to stabilize the seat. Steve took the barstool to SDSBS attorneys **Karen Terry** and **Matt Schwencke** and asked them to represent him in a premises liability case against the sports bar.

During discovery, the manager of the sports bar revealed that the videotape of Steve's fall had intentionally not been preserved. The manager denied that there were any prior complaints or concerns about the barstools on the premises. Further discovery from bartenders and waitresses, however, revealed that the manager and the owner of the establishment had received numerous complaints about the integrity of the barstools. When the attorneys presented the barstool in question to the witnesses, they testified that the manager had directed the sports bar's dishwashers to put brackets on the barstools in an effort to stabilize them.

SDSBS attorneys then filed a proposal for settlement for \$350,000 and added a motion for leave to amend the action to add claims for punitive damages. The defendant sports bar promptly accepted the proposal and the case was settled. ♦

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Searcy Denney





SDSBS supports St. Jude Give Thanks Walk to help fight catastrophic diseases in children

In November, supporters of the St. Jude Give Thanks Walk participated to raise money for St. Jude Children's Research Hospital. The Hospital's mission is to advance cures and prevention of pediatric catastrophic diseases. No child is denied treatment based on race, religion, or a family's ability to pay. SDSBS participated in the Walk as a local sponsor. SDSBS attorney Pat Quinlan and his wife, Nancy, along with family and friends, participated as "Team Brian." Their son, Brian, now 14 years of age, was diagnosed with leukemia at the age of four. Brian endured three years of chemotherapy treatments that included visits to St. Jude Hospital. Brian has been cancer-free for several years. "We are so grateful for Brian's good health, and we want to make sure that the hospital has everything we can contribute to help other children and families in the future," said Pat and Nancy. ♦



Team SDSBS part of largest attendance of Buddy Walk to raise funds for Gold Coast Down Syndrome Organization

Team SDSBS participated in the 19th Annual Buddy Walk held in November 2013 to support the local Gold Coast Down Syndrome Organization in Palm Beach County, Florida. The event was attended by over 2,800 people – the largest attendance ever – and raised over \$175,000 for the organization's programs. ♦

Taking...

Time to Care



Mariano Garcia and family participated in 'Jack the Bike Man' Christmas bicycle give-away program

Mariano Garcia and his family participated in the annual Christmas "Jack the Bike Man" bicycle give-away in West Palm Beach, Florida, in December 2013. The charity was founded in 1999 by Samuel Henry "Jack the Bike Man" Hairston III to provide education, guidance, and training to at-risk children of migrant workers and their parents. Some bikes are new; some reconditioned. Each bike given to a child includes a helmet. ♦



SDSBS attorneys
Jim Gustafson,
Brenda Fulmer,
Cameron Kennedy,
and Laurie Briggs,
plus others, lobbying
in Washington, D.C.



SDSBS attorneys participate in 'Career Day' at Hope Centennial Elementary School

Jack Scarola, Mariano Garcia, and Kelly Hyman participated in "Career Day" held on December 6, 2013, at Hope Centennial Elementary School in West Palm Beach, Florida. ♦



SDSBS one of the sponsors of the Duck Fest Derby to benefit Kids in Distress organization

SDSBS was one of the sponsors of the eighth annual KID Duck Fest Derby held March 1, 2014, on the New River in Fort Lauderdale, Florida. Twenty thousand rubber ducks, owned or adopted by individual or team participants, floated down the New River in a race to raise funds for Kids in Distress (KID), an organization that works to prevent child abuse, preserve families, and care and treat abused or neglected children in Broward and Palm Beach Counties, Florida. The Duck Fest Derby raised over \$159,000 in donations for the organization. KID services helped more than 11,000 children and families in 2013 through programs focusing on prevention, intervention, foster care, education, and family counseling. ♦



Light the Night Walk raises over \$250,000 in funds for Leukemia & Lymphoma Society with help from SDSBS team members

The 15th Annual Light the Night Walk in West Palm Beach, Florida, was held on November 8, 2013, and SDSBS employees participated in the event as a team. The Walk raised over \$250,000 to support the Leukemia & Lymphoma Society. The funds raised by these events helps LLS provide lifesaving cancer research; patient support services including financial assistance to cover transportation, medications, and testing; educational materials; family support groups; and advocacy for better treatments and healthcare reforms. ♦

SDSBS employees attend the Empty Bowls Lunch to raise funds and benefit Palm Beach County Food Bank's effort to end hunger

The Episcopal Church of Bethesda by the Sea, Palm Beach, Florida, held its first Empty Bowls Lunch in February 2014. SDSBS employees participated in the event. Empty Bowls is an international program that raises funds to help organizations working to end hunger and food insecurity. One hundred percent of the proceeds from this event were donated to the Palm Beach County Food Bank. For a donation, participants receive a handcrafted ceramic bowl and a lunch of soup and bread. Participants keep the bowls to remind themselves of all the empty bowls in the world. During the 2012-2013 year, the County's Food Bank distributed more than four million pounds of food to more than 85 agencies in the county. ♦



SDSBS Team at the Palm Beach County Bar Association Trivia Night.

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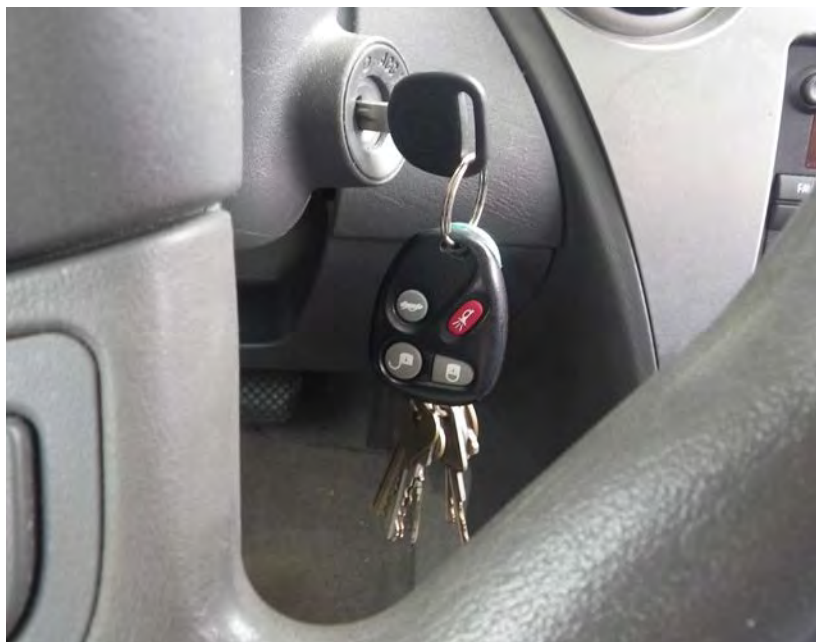
GM recalls 2.6 million cars with defective ignitions, which left drivers vulnerable to front airbag failure

Giant automaker General Motors has recalled 2.6 million of its cars because of deaths attributed to a faulty ignition switch – a problem the company has known about since 2002. GM says the defective switches have been linked to 13 deaths, but other evidence implicates the faulty switches in more than 300 car crash deaths when front airbags did not deploy.

Our product liability lawyers at Searcy Denney are now representing clients involved in GM car crashes related to this defect.

If you are driving a General Motors car, here are some facts you should know:

- **The problem:** A defect in the ignition switch that, when it is bumped or jarred, can prompt a car's engine and electrical system to shut off suddenly, disabling airbags. As a result, a driver can lose control and be killed or seriously injured in a crash when front airbags do not deploy.
- **Cars recalled:** According to GM's recall website, recalled cars are Chevrolet Cobalt 2005-2010 models, Chevrolet HHR 2006-2011 models, Pontiac G5 2007-2010 models, Pontiac Solstice 2006-2010 models, Saturn Ion 2003-2007 models, and Saturn Sky 2007-2011 models.
- **Repair process:** Owners will get letters from GM notifying them when new ignition switches will be available. About one million replacement switches are expected to be available by the end of August. Sufficient replacement parts for all the cars recalled will not be available until the end of October.



- **What to do:** GM claims that these cars are safe to drive if everything on a key ring, except the key, is removed, in order to eliminate weight that is causing the malfunction. This means removing all other keys and the key fob that controls remote functions such as unlocking the car. Safety advocates say this does not eliminate the danger if the car hits a bump or a rough road.
- **Additional recalls:** In April, GM announced another recall covering many of these same cars, this time because of faulty cylinder locks. In models with the cylinder lock defects, the ignition key can come out of the lock while the car is running, resulting in possible rollaways and crashes.

If you or a family member has been seriously injured in an accident in one of the GM models recalled, please contact us immediately to learn more and schedule a meeting with one of our attorneys: 800.780.8607