

# Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 16, NUMBER 1

## \$23.1 million jury award for victim of police shooting

### SDSBS seeks expedited payment for permanently paralyzed 22-year-old

On the morning of September 13, 2013, Dontrell Stephens, an unarmed 20-year-old black man, was riding his bicycle in West Palm Beach, Florida. Palm Beach County Sheriff's Deputy Adams Lin, claiming that Mr. Stephens had obstructed traffic, drove after him. As Deputy Lin approached from behind, he activated the overhead lights on his police vehicle, which automatically turned on a camera mounted on the dashboard. The "dashcam" video shows Mr. Stephens riding with his left hand while holding an object to his right ear with his right hand. As Mr. Stephens gets off his bicycle, it becomes clear that the object in his right hand is a cell phone. Deputy Lin asks Mr. Stephens to come to him, and Mr. Stephens walks to his left, which takes him outside the view of the dashcam video. Less than two seconds later, shots ring out as Mr. Stephens turns, takes a few steps, and then falls to the ground – the cell phone still visible in his right hand. Deputy Lin



Attorney Jack Scarola with Dontrell Stephens, attorney Darryl Lewis and Dontrell's brother, Eric White. (Photo by Allen Eyestone/Palm Beach Post/ZUMA.)

shot Mr. Stephens a total of four times. The last shot, which entered through his back, left Mr. Stephens a paraplegic, paralyzed from the waist down.

In a statement taken shortly after the shooting, Deputy Lin swore that Mr. Stephens' hands were empty when he got off his bicycle, that Mr. Stephens ignored commands to raise his hands, and that he pulled a black object from his rear waistband that Deputy Lin thought was a gun. The obvious contradictions between the deputy's account and the dashcam video were never even identified, much less investigated, by the Palm Beach County Sheriff's Office. No attempt was made to talk with Mr. Stephens. Instead, the Sheriff's Office, including Sheriff Ric Bradshaw himself, quickly accepted Deputy Lin's version of the events and exonerated him of any wrongdoing. Indeed, the Palm Beach County Sheriff's Office later promoted him to the rank of sergeant and assigned him to train other officers in the appropriate use of force. *(Continued on page three.)*

## \$16 million award for two misdiagnoses that caused permanent blindness and paralysis

In May 2010, John Crossley was working as a chef during the day and attending culinary school in the evenings. The 27-year-old had a history of asthma but was otherwise in very good health. On May 22, 2010, John was awakened by a sudden and severe pain in his back. The pain radiated from his back to his chest. Alarmed, John called his mother, Elaine, and asked her to take him to a doctor. Elaine drove him to MD Now, an urgent care center in Palm Beach County, Florida. A doctor examined him, and ordered an x-ray of his chest. The doctor directed John to go immediately to the emergency room at Bethesda Hospital in Boynton Beach to have them

conduct a CT angiogram to rule out the possibility of a pulmonary embolism.

The first radiologist to interpret the study was Dr. Darlene DaCosta. Her preliminary report ruled out a pulmonary embolism and concluded that John was suffering from pneumonia. John was admitted to the hospital and began receiving antibiotic treatment. The following morning, a second radiologist, Dr. Carol Adami, conducted a final interpretation of the study and also concluded that John did not have a pulmonary embolism and she confirmed the diagnosis of pneumonia. Shortly after treatment, John was discharged from *(Continued on page two.)*



**Chris Searcy**  
included in  
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Influential People  
in Florida Politics"  
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## **\$16 million award for two misdiagnoses that caused permanent blindness and paralysis**

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the hospital. For three or four months, he felt fine, continuing to work and attend school. On September 1, 2010, however, John collapsed at home and was taken to the JFK Medical Center. John told the examining doctors about his earlier diagnosis of pneumonia. The doctors at JFK initially began treating John for an asthma exacerbation, but quickly determined that he was suffering from massive pulmonary emboli in his lungs. Treatment for the condition began immediately. Unfortunately, the next day



he suffered a stroke. John was placed in a medically-induced coma. Eventually he was awakened, but found that he could not see and that his left arm was paralyzed. The doctors found that John's occipital lobe – the part of the brain that controls vision – had been damaged by the stroke.

With John facing a lifetime of medical care and support, his family contacted SDSBS attorneys **Jack Scarola**, **Darryl Lewis**, and **Adam Hecht** and asked if they could help the family find accountability for what appeared to be negligence and misdiagnoses. The attorneys filed an action against Bethesda Hospital and the two doctors who had failed to properly diagnose John's condition. The attorneys presented testimony from an expert radiologist and an expert pulmonologist who explained that, had the proper diagnosis of a pulmonary embolism been made at Bethesda back in May, John would have been given anticoagulants which would have prevented further clots from forming. With the use of anticoagulants, the likelihood of another embolism forming is less than 1%.

In December 2015, following a lengthy trial, the jury returned a verdict in favor of John in the amount of \$16 million. ♦

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A REPORT TO CLIENTS & ATTORNEYS **VOLUME 16, 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.

## **\$23.1 million jury award for victim of police shooting**

*(Continued from page one.)*

Mr. Stephens was completely incapacitated. With medical bills mounting rapidly and his future care uncertain, Mr. Stephens contacted attorney Marshall Rosenbach, who referred the case to SDSBS attorneys **Jack Scarola**, **Darryl Lewis**, and **Patrick Quinlan**. He asked the firm for help in holding Deputy Lin and the Palm Beach County Sheriff's Office accountable for this tragic and unjust shooting. Mr. Scarola, Mr. Lewis, and Mr. Quinlan filed suit for state law battery and violation of Mr. Stephens' constitutional right to be free from excessive force. They obtained court approval for Evett Simmons, a well-known and widely-respected guardianship attorney, to serve as the guardian of Mr. Stephens' property. Then, over the course of nearly two years, with the help of paralegal **Emilio Diamantis**, they conducted the in-depth investigation that the Palm Beach County Sheriff's Office, and the State Attorney's Office, had neglected to perform.

On the eve of trial, the Sheriff's Office tendered a settlement offer of \$1.5 million, which was rejected. "That sum would not begin to satisfy Dontrell's unpaid medical bills, let alone alleviate the economic and physical burdens he faces for the rest of his life," stated Mr. Lewis. The trial lasted eight days in the United States District Court in Fort Lauderdale. In his closing argument, Mr. Scarola acknowledged that police officers have an important and difficult job and emphasized that this case was not an attack on law enforcement; rather, it is "a case about supporting the kind of policemen that everyone wants to be proud of, and that we as a society need as much or more than ever before. You do good policemen no favors by stamping a seal of approval on the kind of conduct and cover-up that Deputy Lin engaged in."

On February 3, 2016, after just three hours of deliberation, an eight-person federal jury found that Deputy Lin had used excessive force and returned a verdict for Mr. Stephens in the amount of \$23.1 million. That total included \$1.5 million for past medical expenses, \$5 million for future

medical expenses, and the remainder for such non-economic damages as pain, suffering, emotional distress, and disfigurement.

Despite the favorable jury award, the battle to find justice for Dontrell Stephens is far from over. Shortly following the verdict, Sheriff Bradshaw defiantly restated his support for now-Sgt. Lin and vowed to appeal. Mr. Stephens will also appeal a pretrial ruling that limited his recovery under federal civil right law. Mr. Stephens may ultimately need a "claims bill" – a payment approved by the Florida Legislature – to recover anything in excess of \$200,000. Claims bills can take years to pass, and the legislative process will not even begin until the Sheriff's Office has exhausted its legal appeals. In the meantime, Dontrell Stephens faces enormous medical bills and daily challenges. He presently lives in a one-room apartment with his three brothers. He sleeps on a mattress on the floor. There are no handicap-accessible facilities of any kind, other than a make-shift ramp to his front door. "His life literally depends on his ability to obtain immediate basic medical care," noted Mr. Scarola. Mr. Scarola has urged the Sheriff's Office to respect the jury verdict, accept its legal responsibility for Mr. Stephens' injuries, and make the payments that will be necessary to save his life.

The SDSBS team will continue to fight for Mr. Stephens and for improvements in how the Palm Beach County Sheriff's Office and State Attorney's Office investigates "officer involved shootings." Since 2000, 97% of fatal police shootings were cleared by the Sheriff's Office, and not one officer has been prosecuted for using excessive force on a citizen. It is hoped that this jury verdict will not only lead to a fair recovery by Dontrell Stephens, but will effect positive change throughout our community. ♦

**Shots ring out as Stephens turns, takes a few steps, and then falls to the ground -- the cell phone still visible in his right hand. Deputy Lin shot Mr. Stephens a total of four times.**

## **CVN's 'Super Six of 2015' includes Beber v. MDVIP**

As the new year began, Courtroom View Network posted a blog on its website reporting the top trials in Florida – its "Super Six in 2015." While verdicts are important, the Super Six selection weighs legal impact and trial storylines in its evaluations. Included in the three premier plaintiff verdicts this year was *Beber v. MDVIP, Inc.*, a case resulting in a verdict against one of the nation's largest medical concierge firms. Representing the plaintiffs were SDSBS attorneys **Jack Scarola**, **Karen Terry**, and **Andrea Robinson**. Concierge medical

services such as MDVIP, Inc., claim to offer exceptional medical care and more personalized services for annual membership fees. Joan and Robert Beber, members of MDVIP, claimed that MDVIP fell well below its promise of "selecting the finest, most skilled physicians in the country." A misdiagnosis by an MDVIP-approved doctor led to the amputation of Joan's left leg. The marketing deception and valueless illusory promises resulted in medical malpractice and false advertising. Jurors agreed, awarding over \$8.5 million to the Bebers. ♦



## Speaking Opportunities



**Greg Barnhart** spoke at the Florida Bar Civil Trial Certification Seminar held February 4, 2016, at the Marriott Hotel in Tampa, Florida. His topic was "Trial Skills: Opening and Closing." ♦



**Brenda Fulmer** spoke at the 2016 Mid-Winter Meeting of The Inner Circle of Advocates held in New Orleans, Louisiana January 22, 2016. Her topic was "Managing the People in Your Practice: How to Hire Rock Star Employees (and Avoid Slackers, Psychos, and Leeches)." ♦



**Andrea Robinson** moderated a presentation for the Palm Beach County Bar's Young Lawyers Section at the Bench Bar Conference held February 19, 2016, at the Palm Beach County Convention Center in West Palm Beach, Florida. She also sat on the Bench Bar Committee. ♦



Paralegal **Nick DeBellis** spoke at the December 2015 Palm Beach County Justice Association's Scope IX Brunch Seminar held at the Bear Lakes Country Club. His topic was "Getting the Most Out of Your Adjuster." ♦



**Kelly Hyman** spoke to the Florida Alliance for Retired Americans at its quarterly Executive Board Meeting held in December, in Palm Beach Gardens. Her presentation addressed dangerous drugs and medical devices. She also participated as a panelist at the Palm Beach County Bar Association's Judicial Relations Committee luncheon held in January. The subject of the panel's presentation was "Sanctions: A View from the Bench." ♦



*At the Judicial Relations luncheon, l-r: Jonathan Vine from Cole, Scott & Kissane, SDSBS attorney Kelly Hyman, and the Honorable Peter Blanc.*

## Meeting corner



### Michael Kugler

Michael Kugler has dedicated his career to obtaining justice through our court systems on behalf of many different victims. He approaches each case with tenacity, compassion, and respect. He relates to his clients in a unique and honest way, generating confidence in his ability to fight for them. Mr. Kugler began his legal career at the Office of the State Attorney in Palm Beach County, Florida. In over 100 jury trials, he prosecuted cases ranging from driving under the influence to capital sexual battery, and cases involving the death penalty. As a vital member of the Special Victims Unit, he prosecuted some of the most violent predators in the community, and gave a voice to child victims of sexual abuse. He is a member of Palm Beach County's Sexual Assault Response Team. SART coordinates the medical, law enforcement, forensic, and legal response to sexual violence occurring in the community. Mr. Kugler gained national attention during his prosecution of a local television meteorologist who had been sexually preying on young and vulnerable teenagers.

Originally from California, Mr. Kugler moved to south Florida to attend the University of Miami where he obtained his Bachelor of Business Administration degree. He worked as a licensed stock broker in south Florida before attending Nova Southeastern University Law School and receiving his law degree. ♦



### Nick DeBellis

Nick DeBellis brings to SDSBS nearly 25 years of experience with State Farm Insurance Company where he worked on dozens of jury trials and thousands of mediations involving motor vehicle accidents. At SDSBS, Mr. DeBellis works as a paralegal with Brian Denney, evaluating claims and assisting in preparation for litigating cases involving motor vehicle accidents, wrongful death, medical malpractice, and product liability.

A native of Queens, New York, Mr. DeBellis earned his Associate in Applied Science degree at Berkeley College of Business in New York. He began working for State Farm in New York and transferred to its Florida offices in 2003. He currently holds a Florida Adjusters 6-20 All Lines license. Since moving to Florida, Mr. DeBellis and his wife, Stacey, enjoy boating and fishing activities. During football season, they often travel to Minnesota to watch their son play wide-receiver on the University of Minnesota's football team. ♦

# Florida Supreme Court reverses Court of Appeal allowing litigation of claims against UPS

On March 3, 2016, the Florida Supreme Court reversed a 2013 decision by the Fourth District Court of Appeal, which had affirmed the dismissal of claims alleged against UPS. The Supreme Court's unanimous decision permits a local artist to litigate claims she filed against UPS, Inc., in 2008.

Artist Ivana Vidovic Mlinar of Wellington, Florida, alleges that UPS was targeting valuable packages in transit and directing them to Cargo Largo – its salvage goods buyer and lost packages handler. In exchange for the guarantee of “more product,” the on-line auction house agreed to assume a considerable portion of UPS's lost goods administration without any direct compensation for taking on the task.

Ms. Mlinar became a victim of that scheme when she brought her canvasses to Pak Mail to be shipped by UPS to New York City. The artist's masterpiece was accepted into a coveted Manhattan gallery showing from which high-quality prints were to be made and sold. She arrived only to find that the tube had been sliced open and the paintings removed. When she called UPS, she was told she was not a UPS customer and would have to wait for the Pak Mail center in Florida to open and file claims though them. Her opportunity lost, she filed claims including pictures of her paintings, which had her name and address on the back. Two years later, she received word that the paintings were bought as “lost UPS goods,” by an art collector who frequently purchased lost art from UPS through Cargo Largo. The company used her name in the sale of her artwork. In Florida, an artist's name is protected under law unless the artist agrees to the primary sale of the painting. Ms. Mlinar filed a lawsuit in Palm Beach Circuit Court claiming conversion, profiting from criminal activity, unauthorized publication of her name and likeness.

After the trial court granted Ms. Mlinar's motion to compel discovery into the agreements between UPS and its third-party outlet partners such as Pak Mail and UPS Store, Ms. Mlinar amended her claims to include a violation of Florida's Deceptive and Unfair Trade Practices Act. She specifically alleged that UPS cultivates deception because they require the retailer to promote UPS as its preferred carrier, allow the retailer to print the tracking number on the receipt, and yet prohibit the retailer from providing that same customer's information to UPS. In other words, people like Ms. Mlinar think that they are UPS customers and pay to be UPS customers, but, in the end, are told they are not. At the same time that UPS created a system whereby it refuses to accept individual consumer information, it uses a clearing house, Cargo Largo, to “find” the owners of goods that “become separated from packaging,” knowing full well that the task cannot be completed because UPS has refused to add anyone who uses a third party retailer to its list.

When faced with the fraud allegations, UPS moved to dismiss all the claims, arguing that each was precluded by the federal Carmack Amendment which limits the shipper's liability for negligent loss or damage to goods to an amount established in writing before shipment. The circuit court and district court sided with UPS, ruling that Ms. Mlinar's claims should be dismissed. Ms. Mlinar was represented by SDSBS attorneys **Mara Hatfield, Jack Scarola, and Patrick Quinlan**, and Shannon Mahoney of Law Offices of Shannon Mahoney in West Palm Beach.

The Florida Supreme Court found that Ms. Mlinar's claims were not preempted by Carmack, because the allegations “illustrate a course of criminal conduct by UPS and its cohorts that bears, at best, only a tangential relationship to interstate shipment process, and, more specifically, a carrier's contractual obligation to transport goods.” The Court remanded the case for further proceedings noting that according to Ms. Mlinar's allegations the “carrier has adopted or ratified the unscrupulous practices at issue.”

“Obviously, our client is thrilled with the opportunity to litigate her claims in court and tell her story to a jury,” said Ms. Hatfield. “It's thrilling that the individual artist, the little guy, is going to get an opportunity to tell that story despite some complicated laws and a big corporate defendant willing to misuse laws meant to protect consumers in cases of negligence as a means to avoid being taken to Court when its alleged to have engaged in some very bad acts.”

The case will now go to trial, but the first battle has been won. UPS essentially argued that even if these allegations were true, it was protected from suit by Carmack. UPS and other carriers have relied on an exaggerated and unfounded reading of that statute in cases throughout the nation. The Florida Supreme Court, based upon the very specific allegations in Mlinar's complaint, was able to address that argument head on, stating, “To insist...that lawmakers also intended to allow a common carrier to break one law and shield itself from liability under the protections afforded by another is dubious. Moreover, UPS's position would perpetuate dishonesty by companies that hold themselves out to the public as providers of interstate shipment services and in which consumers entrust their property.” ♦

**The artist's paintings, with her name and address printed on the back, disappeared during shipping. Two years later, she learned that her paintings had been sold as “lost UPS goods.”**



## Mass Tort Projects of Interest

### **Bair Hugger Warming Blankets**

Infections

### **Bard IVC Filter**

Heart and Lung Perforation  
Hemorrhagic Pericardial Effusion

### **Benicar**

Chronic Diarrhea  
Nausea and Vomiting  
Sprue-Like Enteropathy

### **Bisphosphonates (Boniva and Fosamax)**

Femur Fractures

### **Cymbalta**

Neurological Injuries

### **Fluoroquinolone Antibiotics (Levaquin, Cipro, Tequin, and Avelox)**

Peripheral Neuropathy

### **GranuFlo and Naturallyte Dialysis Products**

Cardiac Arrest  
Death  
Cardiac Arrhythmia  
Metabolic Alkalosis  
Stroke  
Sudden Cardiac Death

### **Januvia, Janumet, Byetta, and Victoza**

Pancreatic Cancer  
Thyroid Cancer

### **Laparoscopic Power Morcellator**

Uterine Cancer

### **Lipitor**

Diabetes

### **Medtronic Infuse Bone Graft**

Ectopic Bone Growth  
Respiratory Failure  
Nerve Damage  
Death

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

Device Failure and Loosening  
Inflammatory Response  
Metallosis

### **Mirena IUD**

Device Migration  
Organ Obstruction  
Organ Perforation  
Peritonitis  
Device Erosion

### **Propecia and Proscar**

Sexual Dysfunction  
Male Breast Cancer

### **Risperdal**

Gynecomastia

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

Birth Defects  
Pulmonary Hypertension

### **Stryker Rejuvenate, ABG II, and Accolade Hip Implants**

Premature Device Failure  
Metallosis  
Inflammatory Response

### **St. Jude Riata Defibrillator Leads**

Lead Fracture

### **Testosterone**

Blood Clots  
Heart Attacks  
Stroke

### **Transvaginal Mesh, Bladder Slings, and TVT Tape**

Tissue Erosion  
Device Failure

### **Viagra**

Melanoma

### **Xarelto, Pradaxa**

Uncontrollable Bleeding  
Death

### **Zimmer NexGen, CR-Flex, and Persona Knee Implants**

Device Failure and Loosening

### **Zofran**

Birth Defects

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

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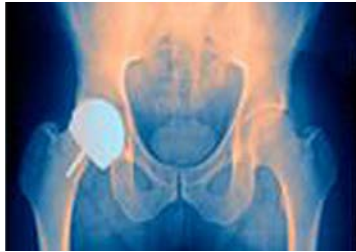
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## Mass Tort Highlights for 2015



### Stryker Rejuvenate and ABG II Hip Implant Claims

Searcy Denney partner **Cal Warriner** successfully negotiated a **\$1.5 billion national settlement with Stryker** in late 2014. In 2015, plaintiffs from around the country, including our law firm's clients, began receiving their

settlement funds. Under the settlement program, claimants received base awards of up to \$300,000 for undergoing surgery to remove the Stryker Rejuvenate or ABG II stem. The Stryker Rejuvenate and ABG II modular hip implants were recalled in July 2012 due to corrosion of the modular hip implant components which led to elevated metal ions, bone and tissue necrosis, the need for revision surgery, and other serious complications. Under the Stryker settlement agreement, patients who had significant complications after the revision surgery to remove the recalled Stryker Rejuvenate or ABG II modular hip implant stem can obtain additional monetary benefits under the settlement program as well as compensation in the future. Cal Warriner and the firm's Mass Tort Unit continue to litigate cases on behalf of clients who opted out of the Stryker settlement program or were ineligible for the program.



### Actos Diabetes Drug Claims

**Brenda Fulmer**, a partner with Searcy Denney, and her Mass Tort Unit team members worked for many months in 2015 to enroll dozens of clients in the \$2.37 billion national Actos settlement program. At the height of the litigation, more than 9,000

individual lawsuits had been filed against the manufacturers of Actos, a popular diabetes drug that remains on the market despite its link to bladder cancer. In early 2016, the Actos Settlement Program began issuing its first claims notices, and it is hoped that all claims will be reviewed and at least partial payments will be made to participating plaintiffs by the end of 2016. Under this Actos Settlement Program, claimants are entitled to receive varying sums of compensation based upon the staging of their bladder cancer as well as the treatments received. The settlement was reached after a number of Actos cases went to trial, resulting in both wins and losses for the plaintiffs.

## Metal-on-Metal Hip Implant Cases

In 2015, our Mass Tort Unit settled a number of hip implant cases with various manufacturers as well as filing new lawsuits on behalf of clients whose implants had failed. The firm is currently litigating cases on behalf of clients who were implanted with metal-on-metal hip implants manufactured by DePuy, Smith & Nephew, Zimmer, Biomet, and Wright Medical.

DePuy has entered into two settlement programs to compensate most of the plaintiffs who had to undergo revision surgery to remove defective ASR hip implants. Searcy Denney continues to litigate cases against DePuy for ASR hip implant client who were ineligible for the previous settlement programs. Brenda Fulmer has been active in the settlement of a number of our ASR clients' cases in 2014 and 2015, and Cal Warriner has worked at the national level as a member of the Plaintiff's Steering Committee.

**Cal Warriner** spent a great deal of 2015 working on preparation for the multi-plaintiff bellwether trial against DePuy over its Pinnacle metal-on-metal hip implants. That trial began in January of 2016 in federal court in Dallas. Cal serves on the Plaintiff's Steering Committee for this litigation, and has worked extensively with experts that have been retained around the world to support the plaintiffs' claims.

**Brenda Fulmer** was appointed as co-lead counsel of the Biomet Hip Implant litigation in South Bend in May, and spent most of 2015 working with plaintiffs' counsel and experts to further develop the plaintiffs' claims. In 2015, a number of Biomet claims were settled, but more than 300 remain in the new phase of the litigation. ♦

### Noteworthy Mass Tort Settlements in 2015

(Does not include Stryker)

**\$190,000** for Biomet Hip Implant client in Virginia

**\$587,500** confidential settlement from medical device manufacturer

**\$332,384** confidential settlement for Florida plaintiff from drug manufacturer

**\$374,625** confidential settlement for Wisconsin plaintiff from drug manufacturer

**\$278,168** settlement from medical device manufacturer for North Carolina plaintiff

**\$203,168** settlement from medical device manufacturer for Michigan plaintiff

**\$185,000** settlement from drug manufacturer for Minnesota plaintiff



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## Traffic crash victim recovers claims under uninsured motorist coverage from reluctant insurance company

**After deposition of the insured, insurance company tendered entire policy limits.**

Kelly Robertson was a 26-year-old who worked in the neonatal intensive care unit (NICU) at a local hospital in Florida. In September 2014, she was driving her car around town and had stopped at a red light. When the light turned green, Kelly began making a left turn. Suddenly, another car slammed into the passenger side of Kelly's vehicle. The driver that caused the accident fled the scene immediately without leaving any information about himself and before anyone could record his tag. The hit-and-run driver was never identified. Kelly's car was significantly damaged and had to be towed from the scene. She went home after the incident, seemingly okay.

Kelly was scheduled to work the morning after the crash. As she was getting ready to leave home to go to the NICU, she began vomiting uncontrollably. Nonetheless, she managed to get to work, but shortly after arriving began vomiting again. She had a severe headache and the pain in her neck and back was increasing. She was sent to the hospital's emergency room for evaluation where she was diagnosed with a concussion and neck and back strains. She was given pain medication and sent home to rest.

Over the next few days, Kelly continued to experience excruciating pain in her neck and back, and the headaches continued. The pain was so severe that she could not sleep. She tried to return to her work at the NICU, but was unable to make it through a full shift. It was nearly impossible for her to stand for long periods of time to care for the newborn babies. This

was her first job out of school and she loved it. The excitement and joy of caring for newborns was now overshadowed by pain.

After trying several different therapies with no improvement, Kelly's doctor sent her to an orthopedic doctor for evaluation and treatment. Tests revealed that she had suffered a herniated disk in her neck resulting in radiating pain. For the next six months, Kelly was unable to work. She continued with pain management and therapies by numerous different specialists. She had to be placed under anesthesia repeatedly in order to receive epidural injections. Kelly had no history of neck or back pain. Before the collision, she ran and did yoga exercises regularly. Now she was unable to do either one.

Kelly contacted SDSBS attorney **Karen Terry** and asked for help in filing a claim against her own uninsured motorist carrier. The purpose of uninsured motorist coverage is to have protection if someone else is at fault for causing an accident and injuring you, and that person is uninsured, underinsured, or cannot be located. After filing a claim, Ms. Terry received a paltry offer from Kelly's insurance company. Ms. Terry then filed a lawsuit on Kelly's behalf. Defense counsel representing the insurance company immediately requested a deposition from Kelly. During the deposition, it became clear that Kelly was an intelligent, hardworking, honest, young woman, grievously injured by the accident. Days after the deposition, the entire policy limits were tendered by her insurance company. ♦



## Wrong prescription of pain medication results in death

On August 19, 2010, Jane Doe underwent a scheduled outpatient orthopedic arthroscopic surgery where she was to be discharged the same day. She was in her mid-fifties, healthy, and enjoyed a full and active life. The surgery itself went well and Mrs. Doe was transferred to the hospital's Post Anesthesia Care Unit (PACU). While in the PACU, Mrs. Doe experienced the moderate post-operative pain that can be expected following the surgery she underwent. In an apparent effort to treat her moderate post-operative pain, the anesthesiologist ordered Mrs. Doe a 50 mcg/hr fentanyl pain patch. The order was approved by the hospital's pharmacist and the patch was applied to Mrs. Doe by a hospital nurse. Mrs. Doe was discharged from the hospital without any written discharge instructions regarding the fentanyl patch that was applied to her in the hospital's recovery room. On the second evening following her surgery, Mrs. Doe went to bed next to her doting and caring husband of twenty eight years in no apparent distress. In the early morning hours the next day, her husband awoke to what he thought were gurgling sounds. When he looked over at his wife, he discovered that she was not breathing and he immediately started CPR. The paramedics that responded were not able to resuscitate Mrs. Doe and she was ultimately pronounced dead. The Medical Examiner later concluded that the fentanyl found in Mrs. Doe's blood contributed to her untimely death. After reviewing the Medical Examiner's report, the family of Mrs. Doe contacted Searcy Denney attorneys **Chris Searcy** and **Jack Hill** seeking both answers and justice for Mrs. Doe's death.

Fentanyl is a powerful synthetic opioid used for pain management. In the mid-1990s fentanyl was modified into a gel that is placed into a patch worn on the skin. Fentanyl patches work by slowly releasing the fentanyl through the skin and into the bloodstream. Each patch lasts roughly 72 hours and provides a constant absorption rate. Because fentanyl is approximately 100 times more potent than morphine, the indications for the use of a patch are very restricted. Fentanyl patches should only be given to chronic pain patients who are already opioid tolerant. In fact, the Food and Drug Administration mandates that fentanyl patches come with the highest level of warnings that can be required of prescription drugs. The FDA-required "black box warnings" that accompany all fentanyl patches prohibit their use in patients who are not opioid tolerant, to treat

acute pain, or for the treatment of any post-operative pain or following outpatient surgery. The chief hazard of fentanyl patches is hypoventilation or respiratory depression.

Upon reviewing Mrs. Doe's medical records, the circumstances surrounding her being administered a 50mcg/hr fentanyl patch, and the literature regarding fentanyl patches, it was readily apparent to Mr. Searcy and Mr. Hill that Mrs. Doe never should have been administered one, let alone a 50 mcg/hr patch. The anesthesiologist who ordered the patch for Mrs. Doe admitted at his deposition that he had an incomplete understanding of the contraindications for fentanyl patches and acknowledged that he had never before ordered a patch under circumstances similar to those for which he prescribed one for Mrs. Doe. The hospital pharmacist that approved the fentanyl patch prescription testified that she did not thoroughly evaluate the prescription because it was for an outpatient and that she relied on the anesthesiologist's assessment about the appropriateness of the drug given all of its warnings and contraindications. The nurse who administered the powerful drug to Mrs. Doe admitted that she did not know that fentanyl patches came with FDA-required "black box warnings" but that she should have. Notwithstanding the powerful evidence to the contrary, the responsible parties argued that their care of Mrs. Doe was appropriate. Furthermore, the defendants argued that fentanyl played no role in Mrs. Doe's death and that she suddenly died of unrelated heart issues. Ultimately, the case was resolved for a confidential amount in the weeks leading up to the date for trial after a third mediation. Mrs. Doe's family, including her husband and now 28-year-old son, are still mourning her passing but can now hopefully find closure regarding her death. ♦



# Negligent care and incompetent diagnosis leads to patient's death

**The surgeon had a history of surgical mishaps and was unable to provide safe and competent care.**

SDSBS had the privilege of representing Stephen Jones (not his real name) individually and as Personal Representative of the Estate of Rene Jones (not her real name), his wife, in a medical malpractice/wrongful death case against a Hospital and the hospital's surgeon.

The facts of the case were that then forty seven (47) year old Rene Jones presented to the hospital with abdominal pain. The Hospital assigned a surgeon to the case who opined that Mrs. Jones' gallbladder needed to be removed. The surgeon performed a laparoscopic gallbladder surgery. The surgery was labelled uneventful.

Approximately twelve (12) hours after the surgery, Mrs. Jones stood up to go to the bathroom. She fell on her way to the bathroom and lost consciousness. She was then brought back for another surgery. The surgeon noted that there was two (2) liters of blood in the abdomen. The surgeon packed the abdomen with gauze and stapled her back up without repairing any source of the bleeding.

After surgery, Mrs. Jones bled to death.

Attorney **Matt Schwencke** was contacted by Mr. Jones and investigated the case. Mr. Schwencke put the hospital and the surgeon on notice of its negligence and claimed that the surgeon failed to appreciate active bleeding. Mr. Schwencke also claimed that the hospital negligently permitted this

general surgeon to remain on staff as his investigation into the public records concerning this surgeon revealed that the surgeon had a longstanding history of surgical mishaps and was unable to provide safe and competent care to patients due to his serious personal problems.

As such, Mr. Schwencke informed the hospital that this was a case of punitive damages as the hospital had an independent duty to ensure the competence of its medical staff. Mr. Schwencke claimed that the hospital's conduct in continuing to credential and provide privileges to this surgeon was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life of Mrs. Jones, causing her death.

At the conclusion of the pre-suit period, the hospital and the surgeon admitted fault and requested arbitration in an attempt to limit the economic and non-economic damages that would be awardable at trial. Mr. Schwencke contended that the arbitration statute was unconstitutional and that punitive damages were available if he elected to put the case into litigation. The settlement amount cannot be disclosed, but the defendants settled the case for its full value, regardless of the arbitration request.

Attorney **Karen Terry** had the exact same type of case against the exact same defendant surgeon and hospital one year later. The patient she represented also bled to death and it was not recognized. That case also settled for its full value. ♦

**Attorney Karen Terry had the exact same type of case against the exact same defendant surgeon and hospital one year later. The patient she represented also bled to death and it was not recognized. That case also settled for its full value.**



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## Taking... *Time to Care*

### **SDSBS a sponsor for National Alliance on Mental Illness Walk helping people in need**

In November 2015, SDSBS was a sponsor for the National Alliance on Mental Illness Walk held in West Palm Beach, Florida. The goal was to fund programs that educate and advocate for persons with mental illness, and to empower those persons and their families. SDSBS staff participated in the Walk as a team. The event raised almost \$74,000 toward the organization's goal to help people in need. NAMI/PBC is the leading organization for improving the quality of life and protecting the rights of those affected by mental illness in Palm Beach County. ♦



### **Team from SDSBS runs in 5K race to support Historical Society of Palm Beach County**

On January 23, 2016, the Young Lawyers Section of the Palm Beach County Bar Association held its inaugural YLS 5K Race along the Lake Trail in Palm Beach, Florida. Regardless of a chilly wind, 130 runners came out for the race, including a team from SDSBS. Dubbed "A Run through History," proceeds from the race benefited the Historical Society of Palm Beach County. ♦



### **SDSBS a sponsor of the annual Christmas Jack the Bike Man Children's Bicycle Charity**

In December 2015, just before Christmas, Jack the Bike Man (AKA Jack Hairston) hosted his 16th annual Bike Giveaway, providing over 1,000 repaired and refurbished bicycles, scooters, and tricycles to children whose families cannot afford such gifts. Each bike is fitted to its recipient and comes with a helmet and, sometimes, training wheels. The children are thrilled, and Jack, his workers, and lots of volunteers promote a great sense of community in Palm Beach County, Florida, and well beyond. SDSBS was a sponsor of the event and its staff participated in the giveaway. SDSBS attorney Mariano Garcia serves on the board of directors of Jack the Bike Man Children's Bicycle Charity. ♦



### **Several charities supported by Tallahassee SDSBS office participation in Turkey Trot**

On Thanksgiving Day 2015, a team of SDSBS staff from the Tallahassee office participated in the 40th Annual Turkey Trot race hosted by the Gulf Winds Track Club. Over 5,640 runners participated in the several races. The annual event raises funds to support several area non-profit organizations: The Shelter, which provides meals, shelter, and support to needy individuals and families; The Refuge House, which provides shelter for victims of domestic and sexual abuse; and the Boys & Girls Club of The Big Bend, offering after-school and summer programs for kids. ♦





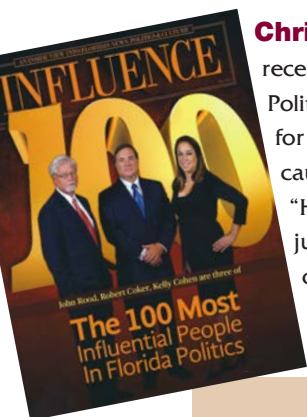
A REPORT TO CLIENTS & ATTORNEYS VOLUME 16, NUMBER 1

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## Accolades/Speaking



**Chris Searcy** was included in *Influence Magazine's* recent article, "100 Most Influential People in Florida Politics." "Chris is not just an amazing advocate for his clients, he has been a strong voice for the cause of civil justice in Florida," stated the article. "His leadership and devotion to the cause of justice has had a profound and lasting effect on our state." *Influence Magazine* is published quarterly and presents an inside view into Florida's news, politics, and culture. ♦

*"Chris Searcy sets the standard  
for consistent and effective advocacy."*



The National Trial Lawyers selected **Chris Searcy** as president-elect for 2017. The professional organization is composed of premier trial lawyers from across the country who exemplify superior qualifications as civil plaintiff or criminal defense trial lawyers. In April 2015, Mr. Searcy was inducted into the Trial Lawyer Hall of Fame during the National Trial Lawyers' annual conference. The honor recognizes Mr. Searcy's 41 years of litigation, especially on behalf of victims and families in catastrophic injury and wrongful death cases. ♦

On February 8, 2016, **Chris Searcy** spoke at the National Trial Lawyers Summit in Miami Beach, Florida. In a program offering "Words of Wisdom from the Trial Lawyer Hall of Fame," He spoke on the subject of "Direct Examination – Making the Complex Case Simple Through Expert Testimony." At the Trial Lawyers Awards and Recognition Luncheon that followed the presentations, all members of the NTL Roundtable were recognized, including Mr. Searcy. Law firms which have been selected as members of The Forum were recognized for their success, including SDSBS. ♦



On February 11, **Jack Hill** was invited as a guest lecturer at Palm Beach Atlantic University to speak to first and second year nursing students in their Introduction to Nursing. The topics covered included legal aspects of nursing negligence claims and common themes and pitfalls surrounding claims of nursing negligence. ♦



**Sia Baker-Barnes** has been elected president-elect of the Palm Beach County Bar Association. She will be sworn in as the 95th president, and first female African American president, during the Association's annual Installation Banquet to be held in Palm Beach in June 2017. The Palm Beach County Bar Association is a voluntary bar located in West Palm Beach with 3,100 local members. ♦



In February 2016, members of the Palm Beach County Chapter of the American Board of Trial Advocates (ABOTA/PBC) conducted a demonstration of oral arguments for actual cases pending before the Florida Fourth District Court of Appeal. The demonstration was held for Oxbridge Academy in West Palm Beach. According to SDSBS attorney **Mariano Garcia**, president of the Chapter, the program was part of the Chapter's educational outreach so that young people appreciate the important function that the judicial branch performs in our democracy. ♦



**Andrea Robinson** has been elected to the board of directors of the Junior League of the Palm Beaches. For over 70 years, the organization has promoted voluntarism to support educational and charitable programs. ♦