

Of Counsel

A REPORT TO CLIENTS & ATTORNEYS VOLUME 17, NUMBER 1

Searcy Denney earns historic victory in Florida Supreme Court

Decision rejects legislature's ability to limit attorney fees in claims bills

On January 31, 2017, the Florida Supreme Court in a 4-3 decision found the fee and cost restriction in Aaron Edwards' claim bill to be unconstitutional and, therefore, invalid.

"Thank goodness!" was the response of **Chris Searcy**, lead counsel for Aaron Edwards and his family. "Had that limitation been allowed to stand, the negligently injured victims of medical malpractice in special district hospitals in the State of Florida would have been unable to get representation and thus would have been denied access to the courts."

SDSBS attorney Chris Searcy has been representing Aaron Edwards and his family since 1999. Aaron Edwards, who should have been a perfectly normal newborn baby, was severely brain injured by the negligence of a nurse midwife and a nurse at one of the hospitals owned by Lee Memorial Health System in August 1997. After 9½ years of litigation, the case finally went to trial in 2007. A jury of



Chris Searcy and Aaron Edwards.

the citizens of Lee County unanimously found Lee Memorial Health System, by and through its agents and employees, to have negligently caused the brain injury to Aaron Edwards. They determined Aaron Edwards' damages to be \$28.3 million, his mother's damages to be \$1.34 million, and his father's damages to be \$1 million for a total verdict of \$30.8 million.

Because of the special district status of Lee Memorial Health System, which cloaked it with sovereign immunity, the trial judge limited the judgment on the \$30.8 million verdict to \$200,000. For Aaron Edwards to receive compensation for his lifelong damages, it was necessary to pass a law in the Florida legislature requiring the payment by Lee Memorial Health System. Lee Memorial Health System appealed the verdict to the Second District Court of Appeals, which unanimously affirmed the jury's verdict.

SDSBS, with assistance by the firm of Grossman Roth, lobbied the *(Continued on page four.)*

Second national settlement successfully negotiated by SDSBS and the Mass Tort team

Settlement for the plaintiffs thus far will exceed \$1 billion

SDSBS attorney **Cal Warriner** has negotiated his second national settlement program for the Stryker Rejuvenate and ABG II hip implant litigation. In December 2016, Stryker Corporation and its subsidiary, Howmedica Osteonics Corporation, agreed to compensate additional plaintiffs in the multidistrict litigation that had netted a \$1 billion settlement in 2014 for plaintiffs who had undergone removal of the device more than 180 days after implantation, but before November 2014. In this second settlement program, eligible plaintiffs will now include patients

who had surgery to replace their Rejuvenate and/or ABG II modular-neck hip stems up to the date of this current December 2016 agreement.

Mr. Warriner has been a member of the plaintiff's court-appointed negotiating team since the litigation began. He was chosen by the team to give plaintiffs' opening presentation to Stryker's representatives regarding the liability and scientific evidence uncovered during their investigation and discovery process. Other members of the plaintiffs' negotiating team included Ellen Relkin of New York City, Tara Sutton of Minneapolis, and Thom Anapol of Philadelphia. *(Continued on page fifteen.)*



IN THIS ISSUE:

Sia Baker-Barnes
"Famous First"
as black female attorney to become president-elect of Palm Beach County Bar Association.

PAGE SEVEN

SDSBS
is title sponsor for Coastal Conservation Association Annual Banquet and Auction

PAGE EIGHTEEN

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA
ATTORNEYS AT LAW

Uninsured motorist slams into driver causing neck and back injuries

Thorough investigation provides evidence of severe damage supporting driver's claims against his insurance company



On April 28, 2012, John Doe was driving in Orange County, Florida, when his car was suddenly rear-ended by another driver. Mr. Doe's vehicle did not appear to sustain significant damage, but he suffered a sore neck and back. A couple of weeks later he sought medical help. His doctors attempted non-surgical, conservative treatments to relieve the pain. Unfortunately, the treatments were unsuccessful. Eventually, he had to endure several surgical procedures, including a lumbar decompression and cervical discectomy and fusion. Due to his injuries, he was restricted to light duty at his place of employment.

The motorist who struck Mr. Doe's vehicle was uninsured. Mr. Doe then found himself battling his own insurance company for damages resulting from the accident. From the outset, his insurance company focused on a perceived minor property damage to the vehicle and offered no compensation to Mr. Doe for his injuries and medical expenses.

Mr. Doe asked SDSBS attorney **Brian Denney** to represent him in his effort to obtain a fair response from the insurance company. Mr. Denney filed a lawsuit and, with the assistance of paralegal Nick DeBellis, conducted an investigation which revealed that the damage to Mr. Doe's vehicle was greater than was outwardly visible. Expert testimony confirmed that the steel impact bar located behind the rear bumper had sustained damage in the accident. Additional testimony established Mr. Doe's past wage losses and his earnings potential. Mr. Denney aggressively litigated the case. The insurance company still offered nothing to Mr. Doe and the case was scheduled on a trial docket. Shortly before the trial date, Mr. Denney was able to negotiate a settlement of \$1 million on behalf of his client. ♦



Mr. Denney and paralegal Mr. DeBellis conducted an investigation which revealed that the damage to Mr. Doe's vehicle was greater than outwardly visible.



2139 PALM BEACH LAKES BLVD.
WEST PALM BEACH, FL 33409
TOLL FREE: 800-780-8607
LOCAL: 561-686-6300
FAX: 561-478-0754



THE TOWLE HOUSE
517 NORTH CALHOUN ST.
TALLAHASSEE, FL 32301
TOLL FREE: 888-549-7011
LOCAL: 850-224-7600
FAX: 850-224-7602

ATTORNEYS AT LAW:

ROSALYN SIA BAKER-BARNES
F. GREGORY BARNHART
T. HARDEE BASS III
LAURIE J. BRIGGS
BRIAN R. DENNEY
BRENDA S. FULMER
MARIANO GARCIA
JAMES W. GUSTAFSON, JR.
MARA R. P. HATFIELD
ADAM HECHT
JACK P. HILL
KELLY HYMAN
CAMERON M. KENNEDY
MICHAEL H. KUGLER
DARRYL L. LEWIS
PABLO PERHACS
EDWARD V. RICCI
ANDREA A. ROBINSON
JACK SCAROLA
MATTHEW SCHWENCKE
CARTER W. SCOTT
CHRISTIAN D. SEARCY
CHRISTOPHER K. SPEED
KAREN E. TERRY
DONALD J. WARD III
C. CALVIN WARRINER III

OF COUNSEL:

EARL L. DENNEY, JR.
DAVID K. KELLEY
WILLIAM B. KING
JOHN A. SHIPLEY

PARALEGALS:

VIVIAN AYAN-TEJEDA
NICHOLAS F. DEBELLIS
RANDY M. DUFRESNE
JOHN C. HOPKINS
VINCENT LEONARD
ROBERT W. PITCHER
CHRIS R. RODGERS
KATHLEEN SIMON
STEVE M. SMITH
BONNIE STARK
WALTER STEIN



WEBSITES:

WWW.SEARCHYLAW.COM
WWW.SEARCHYLAWTALLAHASSEE.COM
WWW.SEARCHYLATINO.COM
WWW.SEARCHYMASSTORT.COM

**Of
Counsel**

A REPORT TO CLIENTS & ATTORNEYS VOLUME 17, NUMBER 1

MANAGER: **JOAN WILLIAMS**
MANAGING EDITOR: **ROBIN KRIBERNEY**
CREATIVE DIRECTOR: **DE CARTERBROWN**

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.

Failure to properly monitor LASIK patient results in permanent damage

Prolonged use of steroids without monitoring intraocular pressure caused glaucoma

Peter Jones (not his real name), a 47-year-old airline operations supervisor, had long suffered from near-sightedness (myopia) with astigmatism. In March 2012, Peter sought an evaluation of his condition and the potential for improvement from a Florida ophthalmology clinic specializing in LASIK surgery. The clinic determined that he was an appropriate candidate for a LASIK procedure and surgery was scheduled for May 31, 2012. During LASIK, a flap is created by cutting through the top layers of the cornea to reveal the stroma, the middle section of the cornea. Following surgery, Peter was sent home on prophylactic antibiotics, an anti-inflammatory, artificial tears, and steroid drops.

The next day, Peter visited the clinic for the standard post-LASIK follow-up. This evaluation revealed no issues of inflammation nor any problems with the flap. A week later, Peter returned to the clinic complaining of blurred visual acuity, an unexpected turn of events. The examining ophthalmologist increased Peter's steroid prescription, doubling the previous amount. A few days later, Peter again visited the clinic and was examined by the LASIK surgeon. By this time, Peter was having to constantly use the artificial tears (three to four times per hour), and was suffering from headaches. The surgeon diagnosed Peter with diffuse lamellar keratitis (DLK), an inflammation between the corneal flap and the underlying stroma – a condition more often seen the first day after LASIK surgery. Peter was not improving with use of the steroids. Nonetheless, the surgeon again increased the dosage to once every hour while awake.

Unnoticed by the surgeon and the other clinic medical personnel, Peter was actually suffering from pressure-induced lamellar keratitis (PISK). When not appropriately managed, PISK can cause severe glaucoma and visual field loss. It is well understood in LASIK procedures that every patient on chronic steroid use must have their intraocular pressure (IOP) monitored regularly because steroids increase the IOP. Incredibly, the clinic's medical personnel kept increasing Peter's steroid medication over several months, but did not check his IOP. On October 2, 2012, Peter returned to the clinic and asked the surgeon if his vision deterioration could be the result of complications from increased pressure. Finishing with his examination, he asked the attending technician if they were going to

check his IOP. The technician did a cursory check and recorded Peter's IOP as normal.

By the end of November 2012, Peter had no relief from his pain and vision loss. He sought evaluation and treatment from another ophthalmology clinic in Maryland. Their examination revealed an alarming level of IOP. Peter was diagnosed with glaucoma resulting from prolonged use of steroids. The damage is permanent. Peter is no longer able to participate in activities such as golf and rollerblading, sports he once enjoyed. He constantly trips over curbs and runs into small children. While he still drives some, he is limited and constantly aware of the risk he faces on the road. His work is limited and he has little opportunity to advance or change jobs. His eyesight will never improve, and may, in fact, continue to deteriorate.



Peter was diagnosed with glaucoma resulting from prolonged use of steroids. The damage is permanent.

Peter and his wife contacted SDSBS attorneys **Chris Speed** and **DJ Ward** seeking help in holding the clinic and its doctors accountable for their negligence. Because of an agreement that Peter had entered into with the LASIK clinic prior to his surgery, Mr. Speed and Mr. Ward pursued Peter's case through arbitration. Ultimately, on the eve of arbitration, they were able to reach a confidential settlement. In addition, the clinic has subsequently made changes to its policies, now requiring mandatory intraocular pressure checks beginning a week after a LASIK procedure. ♦

Meeting Corner: Chris Rodgers



Chris Rodgers brings to SDSBS over 25 years of experience as a litigation paralegal working with some of the highest caliber litigation firms in the southeast United States. Mr. Rodgers' vast experience includes commercial, personal injury, wrongful death, aviation negligence, intellectual property, health care, nursing home abuse, premises liability, employment, construction defects, and securities litigation. Throughout past years, he has assisted in hundreds of trials and arbitrations. He will be working primarily with Jack Scarola's team on commercial litigation.

Born in Sau Paulo, Brazil, Mr. Rodgers moved with his family to Coral Gables, Florida, in 1966. He attended Miami-Dade College and the University of Miami, finishing his college education at Northwood University in West Palm Beach. In addition to his legal experience, Mr. Rodgers worked as a sports writer for the *Miami Herald*, and owned and operated one of the largest minor restoration companies on Florida's Treasure Coast.

Mr. Rodgers volunteers his time with numerous civic and charitable organizations, and has served as a *guardian ad litem* in Palm Beach County. He lives in Palm City with his loyal rescued black lab, Shady. ♦

Searcy Denney earns historic victory in Florida Supreme Court

(Continued from page one.)

legislature for two years attempting to pass Aaron's claim bill. In 2011, the Florida legislature passed the claim bill for \$15 million, only half of Aaron's damages, and inserted a limitation of \$100,000 on attorney fees and costs.

In representing Aaron Edwards for 13 years, the attorneys had spent over 7,000 hours of time and had advanced over \$500,000 from their own pocket for the cost of litigation. The fee and cost restriction did not allow reimbursement of all costs and it allowed no fee.

Nevertheless, the trial court upheld the restriction ordering that, while it was very unfair, the trial court did not have the authority to declare it unconstitutional. In a majority opinion, the Fourth District Court of Appeals, through Judges Forst and Conner, likewise upheld the constitutionality of the limitation. However, Chief Judge Ciklin wrote a dissent stating that the limitation on fees and costs should be stricken as an unconstitutional impairment of the client's right to contract with its attorneys for legally valid attorney fees and reimbursement of costs.

The January 31, 2017, decision by the Florida Supreme Court reversed the majority decision of the Fourth District and adopted the dissent of Chief Judge Ciklin. The decision held that while the legislature had the right to pass a claim bill for the verdict in excess of \$200,000 (or reject it or pass some portion of it), it could not, in the passage of the claim bill, tack on a restriction that was an unconstitutional impairment of a preexisting contract lawfully entered into by a client and its counsel. "The clients were overjoyed with the Supreme Court's decision. They were very thankful that the door to the courthouse was open to hear their case," added Mr. Searcy. "This historic decision helps reserve the right of wrongfully injured victims to have access to counsel and the courts." SDSBS attorney **Jack Hill** assisted in the litigation. ♦

The case is No. SC15-1747 in the Florida Supreme Court.



Young Aaron Edwards

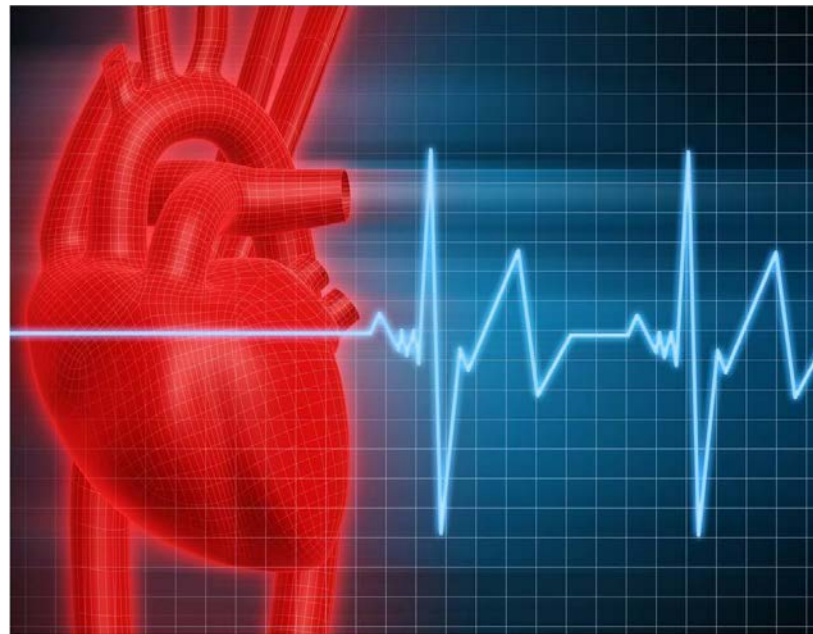
Failure to respond with emergent intervention results in death

Emergency room physicians ignore clear indications of aortic dissection for over 19 hours

On the evening of December 8, 2012, James Smith (not his real name), 51 years of age, was taken to the emergency room of a local hospital in central Florida complaining of a throbbing pain in his chest, a rapid heart rate, and pain in the right side of his jaw and neck that was radiating to his back. Earlier in the evening, he had nearly fainted. His intake records indicated that he had a history of hypertension. All of these signs and symptoms were classic indications of a life-threatening cardiac condition, the most dangerous of which can be an aortic dissection – a medical emergency that occurs when the inner layer of the aorta, the large blood vessel branching off the heart, tears. If the condition is left untreated, blood surges through the tear, causing the inner and middle layers of the aorta to separate (dissect), leading to cardiac arrest and death. When a patient presents with the signs and symptoms of a possible aortic dissection, doctors must treat the patient emergently and perform surgery to prevent the aorta from tearing apart. Mr. Smith not only did not receive emergent intervention, he waited more than 19 hours for a cardiology consultation, despite the fact that within the first hour of Mr. Smith's arrival at the hospital's emergency room, the physicians on duty examined him and diagnosed Mr. Smith as having a potential aortic dissection. In the face of this potential emergency cardiac condition requiring surgery that would have saved his life, no cardiologist visited the patient, no surgeon was called, and no operating room was prepared. Instead, Mr. Smith lay in his hospital bed for 19 hours – until he died of an aortic dissection.

An ER physician's job is to make determinations of life-threatening conditions of the presenting patient. In this case, the ER physician ordered a chest x-ray and noted the classic signs of aortic dissection, and "myocardial infarction, unstable angina, atypical chest pain, dehydration." At 11:00 p.m., the ER physician, evaluating the chest x-ray, raised the question of a "widened mediastinum," a textbook sign of aortic dissection. The radiologist interpreting the chest x-ray and the angiogram failed to report the presence of the widened mediastinum and read the chest x-ray as normal.

Nonetheless, the attending ER physician concluded that Mr. Smith was improved and stable, and he ordered admission to the hospital under the care of a hospitalist, noting that



it would be the hospitalist's job to determine the cause of Mr. Smith's heart issue. It was also noted that Mr. Smith required morphine for his pain and that the doctor had withheld nitroglycerine due to concern for the patient's low blood pressure, another troubling sign that required a cardiac evaluation to rule out an aortic dissection.

At 9:15 a.m. the next morning, Mr. Smith was being prepared for a routine echocardiogram. His chest pain worsened and the nurse called a physician who ordered a nitroglycerin drip. Despite all recorded indications of aortic dissection, this physician failed to examine Mr. Smith for more than two hours, and failed to order an examination by a cardiologist. The physician noted that the patient would have an echocardiography evaluation and be deferred to cardiology for further evaluation. About three hours later, Mr. Smith was sent for a transthoracic echocardiogram. The study was performed just before 2:00 p.m., and it confirmed the original diagnosis of aortic dissection, yet nothing was done to intervene and the results were not read by cardiology. Two hours later, while lying in bed, with his loving wife sitting in the chair next to him, Mr. Smith went into cardiac arrest and died. His nurse was on a break. His vital signs were not being monitored or reported and despite Mr. Smith's wife running to get whomever she could to help her husband, there were no notes documenting the length of his cardiac arrest.

Mr. Smith worked as a systems engineer for a technical corporation. His annual salary was well in excess of \$100,000. He and his wife had been married for 25 years, and they had been blessed with three sons, all under 25 years of age at the time of their father's death. ***(Continued on page sixteen.)***

Accolades

The South Florida Legal Guide recently published its 2017 selection of “Top Attorneys.” Included in this recognition were ten SDSBS attorneys: **Chris Searcy, Jack Scarola, Greg Barnhart, Brian Denney, Mariano Garcia, Jack Hill, Chris Speed, Karen Terry, Cal Warriner,** and **Laurie Briggs**. Recognized as a “2017 Top Up and Comer” was **Hardee Bass**. The same publication also listed **SDSBS** as a “Top Law Firm.” ♦

The October 2016 edition of the *Boca Raton Observer* magazine featured its listing of south Florida’s pre-eminent attorneys. The listing included **Chris Searcy, Jack Scarola, Greg Barnhart, John Shipley, Brian Denney, Mariano Garcia,** and **Cal Warriner**. ♦

In November 2016, **Jack Scarola** and **Darryl Lewis** were sworn in as members of the Palm Beach County Chapter of the American Board of Trial Advocates. ABOTA, an invitation-only organization, consists of an even number of plaintiff and defense lawyers dedicated to preserving the constitutional right to trial by jury, an independent judiciary, and professionalism in the legal profession. ♦

Sia Baker-Barnes attended the season opening meeting of the Executive Women of the Palm Beaches, participating in the new member spotlight by introducing herself and discussing her work, experience, and what she could contribute to the organization. EWPB’s mission is to empower women to succeed and lead, and to inspire integrity, equality, and leadership in the workplace and community. In September 2016, Ms. Baker-Barnes was also recognized by Black Enterprise as one of the Top Ten Black Female Attorneys in the United States for her work improving the lives of her clients. In particular, Ms. Baker-Barnes was lauded for helping infants and young children obtain medical care, therapy, and assistance following injuries caused by negligence. ♦

In July 2016, **Brian Denney** was appointed to serve on the Professional Ethics Committee of The Florida Bar. He will serve a two-year term ending June 2018. The Committee is charged with answering ethics inquiries, reviewing informal advisory opinions, and publishing formal advisory opinions to guide bar members. ♦

The American Association for Justice awarded **SDSBS** the Evergreen Fund Leadership Award at its annual Leadership Luncheon held in July 2016 in Los Angeles, California. The

Evergreen Fund supports AAJ’s efforts to develop and implement initiatives that protect and shape the future of the civil justice system and preserve the right to trial by jury. ♦

Kelly Hyman was approved for membership in the Craig S. Barnard American Inn of Court LIV for the 2016-2017 year. The Inns of Court foster excellence in professionalism, ethics, civility, and legal skills throughout the bench and bar. Ms. Hyman was also selected as a member of the board of directors for the Florida Justice Association’s Women’s Caucus. A primary objective of the Women’s Caucus has been to promote women trial lawyers in all areas of the Association. In September 2016, Ms. Hyman was sworn in as president-elect for the Palm Beach County Chapter of the Federal Bar Association. The FBA’s mission is to strengthen the federal legal system and the administration of justice by serving the federal practitioner and judiciary. ♦

In August 2016, **Laurie Briggs** was re-elected to the board of directors for the Florida Justice Association. She was also re-elected a member of FJA’s Executive Committee. ♦

In August 2016, **Carter Scott** was appointed to serve on the board of directors of the Young Lawyers Section of the Florida Justice Association. The YLS is actively involved in FJA’s goals of protecting the civil justice system by providing opportunities for young lawyers to network on a statewide level. ♦

The National Trial Lawyers recently announced its selection of **Cam Kennedy, Hardee Bass, Andrea Robinson, Matt Schwencke,** and **DJ Ward** as “Top 40 Under 40” attorneys in civil plaintiff actions in Florida. NTL promotes excellence in the legal profession through advocacy training, networking, and education. ♦

The National Trial Lawyers recently announced its 2016 members of “The Forum: America’s 25 Most Influential Law Firms.” Included in the selection was **SDSBS**. The firms were chosen from nominations submitted by readers of NTL’s magazine, *The Trial Lawyer*, and reflects law firms which have shaped the legal profession through leadership, innovation, and success in the practice of civil plaintiff law. Member firms were also recognized at NTL’s annual “Trial Lawyers Summit” held in February 2017. ♦





Chris Searcy



Jack Scarola



Greg Barnhart



John Shipley



Brian Denney



Mariano Garcia



Jim Gustafson



Jack Hill



Cameron Kennedy



Darryl Lewis



Chris Speed



Karen Terry



Cal Warriner



Hardee Bass



Laurie Briggs



Kelly Hyman



Andrea Robinson



Matt Schwencke



Carter Scott



D. J. Ward

Receive our regularly published articles –
Friend us on Facebook at
Searcy Denney



Rosalyn "Sia" Baker-Barnes, Esq.



Attorney Baker-Barnes earned her law degree from the Florida State University College of Law in 2000 and was admitted to practice law in Florida on September 22, 2000. She began her career at Searcy Denney Scarola Barnhart & Shipley, P.A., practicing medical negligence, personal injury, and products liability cases. In 2012, she became a Shareholder at the firm. On June 11, 2016, she was sworn in as the Palm Beach County Bar Association's first black female President-Elect.

First Black Female President-Elect of the Palm Beach County Bar Association



Special Section August 11
The Palm Beach County Bar Association has elected its first black female president-elect, Sia Baker-Barnes, Esq. The event took place at the Sheraton Hotel in Palm Beach, Florida. Baker-Barnes was elected to a two-year term starting on August 11, 2016. She is the first black female to hold this position in the history of the association.



Sia Baker-Barnes and the display from her "Famous First" event.

The F. Malcolm Cunningham, Sr., Bar Association chose **Sia Baker-Barnes** as one of their "Famous Firsts" for being the first black female attorney to become president-elect of the Palm Beach County Bar Association. Her achievement was also reported by the Historical Society of Palm Beach County. The Cunningham Bar Association is a voluntary bar association created in the 1970's by a group of black attorneys in West Palm Beach, Florida. It honors the perseverance and accomplishments of F. Malcolm Cunningham, Sr., who became the first black elected to a legislative position in Florida since Reconstruction. ♦



Brenda Fulmer, (right,) accepting the AAJ's 2016 Marie Lambert Award from A.J. De Bartolomeo, Chair of the Women Trial Lawyers Caucus.

Brenda Fulmer was the recipient of the American Association for Justice's 2016 Marie Lambert Award. Each year, the Women Trial Lawyers Caucus presents awards and scholarships to women lawyers and law students. The Marie Lambert Award is given in recognition of exemplary leadership to the profession, to her community, to AAJ, and to the Caucus. ♦



Stryker Hip Stems and LFIT-V40 Heads

USE: Modular, metal-on-metal hip implant.

HARM: Dissociation of femoral head resulting in catastrophic injuries; metallosis; elevated cobalt and chromium; pseudotumors; bone and tissue damage; and need for revision surgery.



Xarelto, Eliquis, and Pradaxa

USE: Treatment for atrial fibrillation, and post-operative blood clot prevention.

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



Modular Hip Implants

USE: Modular, non-metal-on-metal hip implant.

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



Stöckert 3T Heater-Cooler System

USE: Control a patient's body temperature surgery.

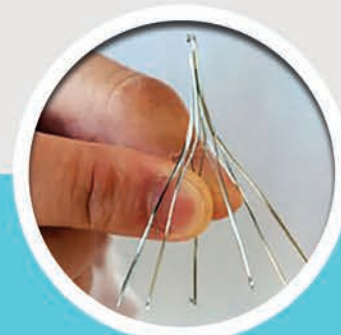
HARM: Non-tuberculous mycobacteria infection



Metal-On-Metal Hip Implants

USE: Hip implant devices with metal head and liner.

HARM: Breakdown of metallic surfaces; abnormal wear; premature device failure; elevated cobalt and chromium; metallosis and pseudotumor formation.



IVC Filters

USE: Temporary use to prevent blood clots.

HARM: Hemorrhage; migration; pulmonary embolism; stroke; and death

SEARCY DENNEY

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.

WEST PALM BEACH & TALLAHASSEE, FLORIDA

WWW.SEARCYMASSTORT.COM

Searcymtu@searcylaw.com

800-388-3905

MASS TORT PROJECTS OF INTEREST

Abilify

Pathological Gambling

Bair Hugger Warming Blankets

Infections

Bard IVC Filter

Heart and Lung Perforation
Hemorrhagic Pericardial Effusion

Benicar

Chronic Diarrhea
Nausea and Vomiting
Sprue-Like Enteropathy

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

Peripheral Neuropathy
Aortic Aneurysm

Invokana and Farxiga

Kidney Failure
Ketoacidosis

IVC Filter

Hemorrhage
Migration
Pulmonary Embolism
Stroke

Januvia, Janumet, Byetta, and Victoza

Pancreatic Cancer
Thyroid Cancer

Laparoscopic Power Morcellator

Uterine Cancer

Lipitor

Diabetes

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

Device Failure and Loosening
Inflammatory Response
Metallosis

Proton Pump Inhibitors (Nexium, Prevacid, Prilosec Aciphex, Protonix, Zegerid, and Dexilant)

Renal/Kidney Failure

Propecia and Proscar

Sexual Dysfunction
Male Breast Cancer

Risperdal

Gynecomastia

Roundup Weed Killer

Non-Hodgkin Lymphoma
Leukemia
Multiple Myeloma
Soft Tissue Carcinoma
Bone Cancer

Stöckert 3T Heater-Cooler System

Non-tuberculous mycobacteria infection

Stryker Rejuvenate, ABG II, LFIT V40, and Accolade Hip Implants

Premature Device Failure
Metallosis
Inflammatory Response

Talcum Powder

Ovarian Cancer

Taxotere

Permanent Hair Loss

Testosterone

Blood Clots
Heart Attacks
Stroke

Viagra and Cialis

Melanoma

Xarelto, Eliquis, and Pradaxa

Uncontrollable Bleeding
Death

Zofran

Birth Defects

SEARCY DENNEY

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.

If you have been harmed by a drug or medical device, please email Searcymtu@searcy.com or call our Mass Tort Unit.

CAL WARRINER

Attorney at Law
CCW@SearcyLaw.com

BRENDA FULMER

Attorney at Law
BSF@SearcyLaw.com

 **800-388-3905**

 WWW.SEARCYMASSORT.COM

 2139 PALM BEACH LAKES BLVD.
WEST PALM BEACH, FL 33409-6601

Speaking Opportunities



In August 2016, **Chris Searcy** spoke at a luncheon held by the Miami-Dade Trial Lawyers Association in Miami, Florida. His topic was “The Persuasive Challenge.” In September 2016, Mr. Searcy participated in 360 Advocacy’s conference on Injured Babies – Representing the Little Heroes. Mr. Searcy spoke at two separate sessions: “Managing the Top Defenses in Infant Cases,” and “From the Battlefield: What We Have Learned from the Wars Won and Lost.” ♦



Greg Barnhart spoke at the Palm Beach County Justice Association’s Attorney Luncheon held at the Marriott City Place in West Palm Beach, Florida, on August 19, 2016. Mr. Barnhart’s topic was “Proper and Improper Closing Arguments.” ♦



In July 2016, the American Board of Trial Advocates held a conference at the PGA National Resort & Spa in Palm Beach Gardens, Florida. The conference presentation was “Masters in Trial – A Trial Demonstration from Opening Statement through Jury Deliberation.” **Greg Barnhart, Karen Terry** and **Mariano Garcia** participated. ♦



Sia Baker-Barnes participated in the Women’s Empowerment Conference sponsored by Alpha Kappa Alpha Sorority, Inc. The conference was held October 8, 2016, in Jupiter, Florida. Ms. Baker-Barnes chaired a Legal Session at the conference. On October 28, the Palm Beach County Bar Association held a New Attorney Breakfast at its offices in West Palm Beach, Florida. Ms. Baker-Barnes participated on a panel sharing her knowledge of practice in Florida’s 15th Circuit to assist new attorneys. ♦



Brian Denney was a featured speaker at the Florida Justice Association’s Auto Negligence Seminar held September 28, 2016, in Orlando, Florida. Mr. Denney’s topic was “Autonomous Vehicles: Who’s in the Driver’s Seat?” The topic covered how the new technology will impact safety on Florida’s roads and the potential pitfalls of such autonomous vehicles. ♦



Brenda Fulmer spoke at the American Association for Justice’s 2016 annual convention held in Los Angeles, California, in July 2016. Ms. Fulmer’s topic was “Biomet Litigation Update.” In October 2016, Ms. Fulmer participated in Duke University School of Law’s conference on Emerging Issues in Mass Tort MDLs, held in Arlington, Virginia. Discussions included issues relating to mass tort litigation, ethical responsibilities of lead counsel, claims processing, the need for bellwether trials, and the impact of changes to federal rules on the practice. ♦



On October 26, 2016, **Andrea Robinson** participated in Palm Beach County Bar Association Young Lawyers Section’s Sidebar Series on the topic of “Cross Examinations.” For the presentation, Ms. Robinson was asked to cross examine Roy Black, a senior partner in a Miami-based trial firm specializing in civil litigation and criminal defense. Mr. Black then cross examined Ms. Robinson. The presentation was held in the Palm Beach County Courthouse in West Palm Beach, Florida. ♦



On January 11, 2017, paralegal **John Hopkins** spoke at the monthly meeting of the Paralegal Association of Florida, Inc. His topic was “What Everyone Needs to Know About Improving and Managing ‘All Digital’ E-Discovery Requests.” The meeting was held in West Palm Beach, Florida. ♦



Did you know you can get your issues of **Of Counsel** newsletters emailed to you?

All you have to do is request them by email to:

BRF@SearcyLaw.com

FOR OUR
SPANISH-SPEAKING
CLIENTS,
WE HAVE A
TOLL-FREE NUMBER
THAT WILL BE ANSWERED
BY OUR
SPANISH-SPEAKING
PERSONNEL.



**Para servirle
mejor a
nuestros clientes
que hablan
español, tenemos
un número
telefónico gratuito
(800)
que será
contestado
por nuestro
personal de
habla hispana.**

800-220-7006

**SEARCY
DENNEY
SCAROLA
BARNHART
& SHIPLEY PA
Abogados**

Pasión Para La Justicia™

**Second national settlement successfully negotiated
by SDSBS and the Mass Tort team will exceed \$1 billion**



***SDSBS attorney Cal Warriner
has negotiated his second
national settlement program
for the Stryker Rejuvenate
and ABG II hip implant
litigation.***

(Continued from page one.)

The coordinated litigation on these defective devices was filed in August 2012 in New Jersey's Bergen County Superior Court. Stryker's orthopedic device division is located in Bergen County. SDSBS attorney **Brenda Fulmer** collaborated with Mr. Warriner in litigation of the case.

The product was found to be defective and was recalled in 2012 following the company's use of dissimilar metals in the manufacturing process. Corrosion resulted causing post-operative infections, toxic poisoning, and deterioration of muscle, tissue, and bone. Patients suffered additional surgeries, hip dislocations, femur fractures, heart attacks, strokes, lost wages, and even death. An estimated 20,000 people have been implanted with these products.

This settlement, and the first one that occurred in 2014, were groundbreaking settlements for several reasons.

First, Stryker was required to pay for current injuries and damages as well as pay future complications that may occur over the next few years. Second, unlike most comprehensive settlements, it is not a fixed-fund settlement. Every claimant's injury will be measured individually. There is not a single lump sum to be distributed to claimants. Further, the settlement agreements were reached in an unusually short period of

**Proceeds for the plaintiffs will be
well over \$1 billion by completion
of the settlement programs.**

time, minimizing the total cost of this litigation, which will further increase the net recovery for participating plaintiffs. Nonetheless, proceeds for the plaintiffs will be well over \$1 billion by completion of the settlement programs. ◆



**At the event: (l-r):
Richard Slawson,
Mark Clark,
Greg Barnhart,
Chris Searcy,
John Romano,
Fred Cunningham,
James Gustafson.**

Seven past presidents of Florida Justice Association at the meeting

SDSBS was a sponsor of a Florida Justice Association meeting in February. Attending the meeting were seven past FJA presidents, including **Chris Searcy, Greg Barnhart** and **Jim Gustafson** (current President.) ♦



**Far left:
Nancy LaVista
and Jack Scarola;
Left: Laurie Briggs
and Paul Jess.**

Failure to respond with emergent intervention results in death

(Continued from page five.)

The family was devastated by their loss. Mr. Smith's death resulted from a chain of negligent events – one after another, after another – which cost Mr. Smith his life.

Mr. Smith's wife sought legal representation from SDSBS attorneys **Cameron Kennedy** and **James Gustafson** and asked if they could help her determine what happened to her husband. After obtaining the medical records and seeing what took place, Mr. Kennedy and Mr. Gustafson filed a lawsuit against the hospital and doctors responsible for mismanaging Mr. Smith's care and causing his wrongful death. Through their efforts, the Smith family was able to reach a settlement for a confidential sum. The void left in the lives of Mr. Smith's sons in the wake of his death was devastating. And Mrs. Smith lost her best friend and the husband she loved for more than two decades. While the confidential settlement provided financial security for Mrs. Smith and their sons, they still struggle to cope with his unfortunate and avoidable death. ♦

SDSBS Websites

Log on to...
www.SearcyLaw.com or
www.SearcyLawTallahassee.com
for the latest news and information on our firm, attorneys, articles, cases, etc.

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

Log on to...
www.SearcyLatino.com
for the latest news and information about our firm in Spanish.

Mr. Smith's death resulted from a chain of negligent events – one after another, after another – which cost Mr. Smith his life.



Accident caused by tractor driver interrupts cancer treatment and results in over \$3 million award

Because of delay in treating skin cancer, it metastasized, requiring far greater surgeries

On December 4, 2013, Barry Davis, a 59-year-old security guard, was driving eastbound on Indiantown Road in Jupiter, Florida. As he neared the intersection of Indiantown Road and I-95, Mr. Davis' vehicle was struck on the driver's side by a tractor towing a bushhog – a large, heavy commercial grass mower. The tractor, operated by Dale Vannelli, Jr., was in the process of mowing the grass around the intersection under a contract between Mr. Vannelli's employer, South Florida Bushhog Service, Inc., and Florida's Department of Transportation. The tractor driver was attempting to cross Indiantown Road from a median beneath the I-95 overpass. Just prior to the crash, Mr. Davis had been traveling about 76 mph in a 50 mph speed limit, as noted by his 2007 Ford Mustang's data recorder.

Mr. Davis suffered a left hemopneumothorax which required a thoracostomy, a splenic rupture which required exploratory laparotomy and splenectomy, fractures of his left clavicle and multiple ribs, lumbar injuries, and other injuries. Due to the severity of his injuries, Mr. Davis was air-lifted to a nearby hospital. He was hospitalized for 22 days, enduring surgeries, therapy, and rehabilitation.

At the time of the crash, Mr. Davis had been undergoing radiation treatment for a squamous cell carcinoma on the left cheek/jaw area. The carcinoma had metastasized to his lymph nodes. Due to injuries suffered from the crash, Mr. Davis' cancer treatments were interrupted for two months. Within two years following the crash, doctors found that the squamous cell carcinoma had returned to Mr. Davis' left cheek and had already metastasized to the parotid gland. The diagnosis resulted in extensive surgery to remove the tumor, and massive skin grafts from his right arm to repair the surgical areas. Mr. Davis endured additional chemotherapy and radiation treatments. Because the crash had caused so much physical damage to Mr. Davis, and had so adversely affected his ability to obtain successful treatment of his cancer, he asked SDSBS attorney **Brian Denney** to represent him in a legal action to hold the tractor driver and his employer accountable for the damages.

The defendants argued that Mr. Davis was solely liable for the crash due to exceeding the speed limit, and that Mr. Davis' recurrent cancer on his left cheek was not related to the interruption of treatment caused by the accident. Further, since Mr. Davis had a long history of other superficial skin cancers, the recurrence of cancer on his left cheek would have occurred



Ed Ricci, Brian Denney, Barry Davis and Nick DeBellis

anyway. Further, they argued Mr. Davis should not have been driving at all due to his receiving cancer treatments on the day of the accident. SDSBS attorneys disputed this with a treating oncologist who testified that the cancer recurrence was caused by the lapse in Mr. Davis' treatments.

Due to injuries suffered from the crash, Mr. Davis' cancer treatments were interrupted for two months... the squamous cell carcinoma had already metastasized to the parotid gland, requiring extensive surgery.

When the defendant accepted no responsibility, Mr. Denney was forced to take the case to trial. The trial conducted by Brian Denney and **Ed Ricci** lasted two weeks. On December 9, 2016, a Palm Beach County jury found for the plaintiff, Mr. Davis, awarding him \$3,220,000 in damages and found the defendant 57% liable for the crash. ♦

Taking... Time to Care



Jack Hill and Kelly Hyman were invited to speak to some nursing classes at Palm Beach Atlantic University's School of Nursing regarding the Legal Aspects of Nursing Negligence Claims. ♦



Matthew Behm, Regional Director CCA, Attorney Jack Scarola, and Attorney Chase Nugent, Chapter President.

SDSBS is title sponsor for Coastal Conservation Association Annual Banquet and Auction event

The Coastal Conservation Association North Palm Beach Chapter held its 31st Annual Banquet and Auction on November 11, 2016, at the PGA National Resort in Palm Beach Gardens, Florida. SDSBS was the title sponsor of this event. CCA's mission is to advise and educate the public on conservation of marine resources. ♦

American Foundation for Suicide Prevention's 'Out of the Darkness Walk' was supported by SDSBS, a sponsor of the event

On October 1, 2016, an SDSBS team participated in the American Foundation for Suicide Prevention's "Out of the Darkness Walk" held at John Prince Park in Lake Worth, Florida. SDSBS was a sponsor of the event. AFSP is the leader in the fight to prevent suicide. It funds research, creates educational programs, advocates for public policy, and supports survivors of suicide loss. With the support it enjoys from working together with similarly concerned people, AFSP has set a goal to reduce the annual suicide rate 20% by 2025. ♦

National Alliance on Mental Illness 5K walk supported by staff of SDSBS

SDSBS has been a longtime supporter of the National Alliance on Mental Illness, the nation's largest grassroots mental health organization dedicated to building better lives for the millions of Americans affected by mental illness. NAMI advocates for access to services, treatment, support and research. In November 2016, SDSBS staff participated in the NAMI 5K Walk to fund their programs. For further information, please visit www.nami.org. ♦

Gold Coast Down Syndrome Organization holds 22nd Annual Buddy Walk fundraiser sponsored by SDSBS, raising over \$150,000

A team of SDSBS staff participated in the Gold Coast Down Syndrome Organization's 22nd Annual Buddy Walk held October 16, 2016, at John Prince Park in Lake Worth, Florida. SDSBS was a sponsor for the event. The event raised over \$150,000 in funds to be used to provide support and resources for families and individuals with Down syndrome and other disabilities in Palm Beach County. ♦

In September 2016 SDSBS team participated in 'Walk/Run to End Childhood Cancer' held by St. Jude Children's Research Hospital

On September 24, 2016, an SDSBS team participated in the "Walk/Run to End Childhood Cancer" held by St. Jude Children's Research Hospital at John Prince Park in Lake Worth, Florida. SDSBS was a sponsor of the event. St. Jude is a nationally-renown non-profit pediatric treatment and research facility located in Memphis, Tennessee. It focuses on children's catastrophic diseases. ♦



SDSBS sponsors fine art "Wild Florida" photography exhibit as fundraiser for Center for Creative Education and South Florida Wildlands Association



The Center for Creative Education held a fine art photography exhibit, "Wild Florida," in November 2016 to raise funds for the benefit of the Center, and for the benefit of the South Florida Wildlands Association. SDSBS was a sponsor of the event. CCE is an educational nonprofit that was created more than 20 years ago to strengthen the presence of the arts in the classrooms of Palm Beach County, Florida. CCE empowers students to grow academically, creatively, and socially through arts-based education. SFWA was founded in March 2010 to protect the unparalleled beauty and biodiversity of the greater Everglades. It is a nonprofit organization committed to aggressively defending what remains of one of our planet's most unique natural areas. ♦



Nick DeBellis and Officer Ashley Puckett during kid's fun event on Halloween.

SDSBS provides candy and toys for Riviera Beach Police 'Trunk or Treat Event' during Halloween

At the end of October 2016, SDSBS provided candy and toys for the Riviera Beach (Florida) Police Department's "Trunk or Treat Event," sponsored by the Police Department's School Resource Officers. SDSBS paralegal/investigator Nick DeBellis and his wife attended the event. There was a great turnout in the rainy, gloomy (perfect for Halloween) evening. ♦



(l-r) Ed Ricci, Karen Terry, Jack Scarola, Greg Barnhart, Robin Kriberney, Marilyn Hoffman, Joan Williams, D. J. Ward and Kelly Hyman, who was a celebrity bartender.

Annual Barrister's Bash event supported by SDSBS 'celebrities'

Kelly Hyman participated as a "celebrity bartender" at the Annual Barrister's Bash sponsored by the Palm Beach County Justice Association. The event was held in August 2016 at the Revolutions, City Place, West Palm Beach, Florida. The event raised funds to support 211 Palm Beach, a community helpline and crisis hotline providing suicide prevention, crisis intervention, and information on community services for people living within the five counties surrounding Palm Beach. ♦

Tallahassee SDSBS raises funds for the Animal Shelter Foundation

SDSBS fielded a team of bowlers and sponsored a lane for the Fifth Annual Spare-A-Life Bowling Event held at Capital Lanes Bowling in Tallahassee, Florida. The event raised funds for the Tallahassee Animal Shelter Foundation. ASF and its volunteers support the animals in the care of the Tallahassee Animal Shelter at Tom Brown Park. It provides resources to help homeless, neglected, or abandoned animals find forever homes, veterinary care, and spay/neuter programs. ASF promotes kindness, respect, and responsible pet ownership. ♦

Free Risk-Assessment screenings for diabetes hosted by SDSBS and Diabetes Coalition group

On November 12, 2016, SDSBS was a sponsor at the Diabetes Coalition of Palm Beach County free risk-assessment screenings. It was hosted by Palm Beach Outlets – brand-name stores located in a shopping center in West Palm Beach, Florida. ♦



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

Presorted
Standard
US Postage
PAID
Permit 1478
Orlando FL

P. O. BOX 3626
WEST PALM BEACH
FLORIDA 33402-3626



Standing (l-r): Chris Speed, Jack Hill, Jack Scarola, Brian Denney, Chris Searcy, Greg Barnhart, John Shipley, Darryl Lewis, Ed Ricci, Cal Warriner, Mariano Garcia. Seated (l-r): Sia Baker-Barnes, Brenda Fulmer, Jim Gustafson, Karen Terry.

15 "Best Lawyers" & "Best Law Firm" in America 2017

The recent publication of *U. S. News & World Report's* "Best Lawyers in America 2017" recognized 15 SDSBS lawyers for their outstanding success in representing plaintiffs in medical malpractice, professional malpractice, product liability, mass tort litigation, commercial litigation, and personal injury litigation. SDSBS has the highest number of attorneys listed in "Best Lawyers" in comparison to other plaintiff personal injury law firms in Florida. The selection process is based upon extensive peer review surveys. Recognized as "Best Lawyers" were **Chris Searcy, Jack Scarola,**

Greg Barnhart, John Shipley, Sia Baker-Barnes, Brian Denney, Brenda Fulmer, Mariano Garcia, Jim Gustafson, Jack Hill, Darryl Lewis, Ed Ricci, Chris Speed, Karen Terry, and **Cal Warriner.**

Of significant note, **Karen Terry** was selected West Palm Beach, Florida, "Lawyer of the Year (2017 – Plaintiffs - Mass Tort Litigation/Class Actions)." The publication also included SDSBS as a "2017 Best Law Firm." This is the seventh consecutive year that SDSBS has been recognized for its professional excellence. ♦