

Tractor-trailer/minivan collision results in \$5 million settlement

Injuries from horrific crash leaves happy, active, care-giving woman 46% permanently disabled

On Monday, November 7, 2016, Virginia Olivo, started a new shift at work with Disney World in Orlando, which meant she got to go home an hour earlier than usual. It was a bright, sunny Florida day when she began her commute home on SR 417, also known as the Central Florida Greenway, a four-lane highway divided by a grassy median. As Virginia approached the interchange with Boggy Creek Road in her Chrysler minivan, a tractor-trailer was travelling in the opposite direction on its way to Lakeland. The truck driver had been travelling the Greenway following a pick-up truck in the outside lane for approximately 20 minutes.

The truck driver testified that he noticed the pick-up truck beginning to slow down, so he decided to pass it. As he did so, the truck driver looked to his right to check his blind spot. When he returned his gaze



forward, he was already too close to the pick-up truck, striking it, causing it to spin around facing in the opposite direction. Since the truck driver had already started to turn the wheel to the left to pass the pick-up truck, his tractor-trailer continued in a leftward direction of travel, onto the grassy median and crashing through two sets of heavy steel guardrails. Before Virginia could take evasive action, the entire tractor-trailer was already in her path, blocking all lanes.

Virginia does not remember the crash, but the truck driver said that when he looked out the passenger side window of his truck and saw Virginia, he thought she was dead.

When the tractor-trailer came into her lane, it crashed head-on into Virginia's minivan. It is a miracle that she survived. She was air lifted to the nearest trauma center. *(Continued on page two.)*

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DENNEY
SCAROLA
BARNHART
& SHIPLEY PA**
ATTORNEYS AT LAW

Chris Searcy honored with Anti-Defamation League Award in 2017

The honor was for the 2017 ADL Palm Beach Jurisprudence Award for his contributions to the legal profession and his community

In November 2017, the Anti-Defamation League announced that **Chris Searcy** was a recipient of its "2017 ADL Palm Beach Jurisprudence Award." The Award was established to recognize individuals who have made an outstanding contribution to the legal profession and to the community at large, while exemplifying the principles upon which the Anti-Defamation League was founded. Following the announcement, U.S. Representative Lois Frankel

(D-FL) offered congratulations to Mr. Searcy and to co-recipient, Steven Daniels (Saul, Ewing, Arnstein, & Lehr) in her speech before the House of Representatives on November 8, 2017. In her comments regarding Mr. Searcy, she said, "For 43 years, he has litigated cases primarily involving catastrophic injury and death in venues throughout Florida, as well as other states. He has been honored numerous times for his exceptional advocacy and extraordinary contributions to the cause of justice. He is well known for his generous contributions to many non-profit organizations committed to helping the disabled, improving education, and advancing community causes." We join Rep. Frankel in saying, "Congratulations, Chris, and thank you for your many years of excellence." ♦



Tractor-trailer/minivan collision results in \$5 million settlement

(Continued from page one.)

She endured numerous surgeries over the course of the next several days. Although Virginia survived, her life was changed forever.

Virginia was bruised all over her body, a common result of a heavy frontal collision for a seat belted driver with airbag deployment. But she also had a dislocated right elbow; comminuted (pulverized) right tibia and fibula fractures; fracture of the left humerus (long bone of the upper arm); lacerations and fracture of the left elbow; comminuted

fracture of the left femur and patella; and fracture of the left ankle. Recovery, over many, many months, involved numerous surgeries, screws, plates, and wires installed in various reconstructions, physical therapies, and her own personal determination to survive the abrupt disruption to her ability to live her life.

Virginia was an incredibly active woman – truly living life to the fullest. She traveled, hiked, swam, fished, sky-dived, ran half-marathons, and danced with family and friends. As wife and mother of three, the collision had a devastating impact on her family. Virginia's husband, Peter Olivo, a highly decorated military veteran who lost both of his legs in Vietnam, enjoyed an active, loving marriage, where Virginia was

the happy caretaker of both home and husband. She took care of the house, including taking care of the pool, maintaining the water purification system, and in every other way taking care of their home. Virginia and Peter traveled, dined, entertained, and lived a very full and happy life.

Because of the accident, Virginia is no longer capable of fully caring for herself, or fulfilling her usual responsibilities and desire to care for Peter and their home. Their life has abruptly changed – and their joy with it. She was evaluated as having experienced a 46% permanent partial impairment of the whole person, not including the suffering she would endure for depression resulting from persistent pain.

The Olivos contacted SDSBS attorney **Mariano Garcia** through their long-time Kissimmee attorney and friend, Charles Draper. Mr. Draper felt that SDSBS' experience with trucking cases would serve his clients and friends well and asked that Mr. Garcia investigate the accident and see if there was a claim that could be pursued. Mr. Garcia immediately retained engineers and trucking experts to evaluate the scene, the tractor-trailer, and the driver's history to determine responsibility. As a result, suit was filed in Orange County Circuit Court and, after months of litigation, the parties participated in a court-ordered mediation before the case went to trial. As a result, Mr. Garcia obtained a settlement of \$5 million for the family. The settlement will not return the active life of Virginia and Peter, but it will help mitigate the cost of new life-style limitations. ♦



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A REPORT TO CLIENTS & ATTORNEYS **VOLUME 18, NUMBER 1**

MANAGER: **JOAN WILLIAMS**
MANAGING EDITOR: **ROBIN KRIBERNEY**
EDITOR: **DIANE TRUMAN**
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.

Patient loses eyesight when medical center fails to protect him

Doctor had ordered 24 hours a day patient monitoring, which was not provided.

In November 2013, Michael Jones (not his real name) was admitted to the care of ABC Medical Center (not its real name), a designated trauma facility. Michael was 32 years old and had a history of schizophrenia. Examination revealed pain and bleeding in his left eye, with full-thickness laceration of the left eyelid. The medical records clearly noted the patient's injuries were self-inflicted, the result of Michael's intent to remove his left eye while in the throes of a psychotic incident. An initial CT scan of his eye showed extra-orbital and inter-orbital injury, with hemorrhage and subcutaneous emphysema.

Dr. John Smith (not his real name), an ophthalmological surgeon, performed extensive surgery on Michael the same day he had been admitted to the Medical Center, repairing damage done to the eye socket and closing lacerations to the eyeball and eyelid. The doctor documented in his operative report that a psychiatric on-call physician was contacted, given that the overwhelming issue for the patient was psychiatric, and that Michael should be admitted to psychiatric services once discharged from the recovery room. Because Michael's postoperative condition identified him as a fall-risk and his

behavior indicated that he was at risk for danger to himself and others, he was placed in bilateral wrist restraints to minimize the risks. The doctor also issued an order for a Patient Safety Observer to remain as a sitter at Michael's bedside 24 hours each day throughout his stay on the medical surgical floor.

Despite the precautions ordered by the doctor, the next day Medical Center staff found that Michael had damaged his right eye with severe lacerations, hemorrhaging, and extensive injury to the eye socket. While under the care and protection of the Medical Center's personnel and still suffering psychotic episodes, Michael had managed to inflict severe trauma on his right eye and had rendered himself legally and functionally blind. Michael's guardians contacted SDSBS attorney **Greg Barnhart** and asked for help in holding the Medical

Center accountable for its negligence and failure to properly protect Michael while he was under their care, resulting in injuries that would last his lifetime.

Following investigations by both Mr. Barnhart and attorneys for the Medical Center, the Medical Center asked for voluntary binding arbitration of the damages suffered by Michael. In August 2016, Mr. Barnhart presented Michael's claim for damages at arbitration. After two days of testimony, the panel entered an award on behalf of Michael, including

After two days of testimony, the panel entered an award on behalf of Michael, including the maximum award for past and future non-economic damages, and a monetary award in excess of seven figures.

the maximum award for past and future non-economic damages, and a monetary award in excess of seven figures for the significant future economic damages Michael will endure as a result of total blindness. ♦

SDSBS Websites

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**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.



Speaking Opportunities



Chris Searcy participated in a mock trial held in March 2018 by the Dade County Bar Association at the Miracle Theater in Coral Gables, Florida. The presentation was “Super Stars in Trial and Jury Selection,” with attorneys from Miami facing attorneys from Broward and Palm Beach Counties. The program included discussions on strategies involving depositions, direct and cross examinations, opening and closing arguments, voir dire, and feedback from jurors. ♦



Sia Baker-Barnes and **Katherine Kiziah** participated in a panel discussion hosted by the Palm Beach County Bar Association’s Judicial Relations Committee and the Palm Beach County Chapter of the Florida Association for Women Lawyers at their Town Hall Discussion held in January 2018 at the 15th Judicial Circuit Courthouse in West Palm Beach, Florida. The goal of the presentation was to encourage the promotion of women in the legal profession and to encourage women to seek opportunities on the bench. ♦



For the third year in a row, **Jack Hill** spoke to a class of nursing students at Palm Beach Atlantic University in West Palm Beach, Florida. His topic was “Legal Aspects of Nursing Negligence Cases.” The presentation included the basics of bringing a nursing negligence case, pre-suit requirements, special protections afforded to healthcare providers, and common themes in such cases. In April 2018, Mr. Hill spoke at a meeting of the Palm Beach County Chapter of the Paralegal Association of Florida, Inc., held at the Holiday Inn Palm Beach Airport. His topic was “Truck Accident Litigation.” ♦



Brian Denney spoke to the Palm Beach County Hispanic Bar Association at their “Pathways to Partnership” luncheon held April 2, 2018, at the Palm Beach County Courthouse. Mr. Denney joined Judge Glenn Kelley in discussing traits law firms are looking for when evaluating attorneys for partnership. ♦



Brenda Fulmer participated in the 2018 Florida Justice Association’s Workhorse Seminar held in March 2018 at the Orlando World Center Marriott. Her topic was “The Daubert Report of Plaintiff’s Expert Witness in Federal Court Litigation – Who Really Prepares It; How to Avoid Setting Your Own Expert Up for Disaster.” Ms. Fulmer also participated at the Mass Torts Made Perfect Conference

held at The Wynn in Las Vegas, Nevada in April 2018. Her topic for this conference was “Mass Torts Settlement Concepts and Practices,” a series of presentations for new mass tort attorneys. Ms. Fulmer spoke at the Mass Torts Judicial Forum presented by HB Litigation Conferences in April 2018, participating as a panelist on the topic, “Post-Settlement Considerations: The Devil is in the Details.” She also participated in the AAJ’s Education Webinar in January discussing the opioid crisis and the litigation surrounding it. ♦



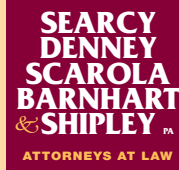
Bonnie Stark, paralegal in the SDSBS Tallahassee office, participated in the 2018 Spring Seminar for the Paralegal Association of Florida, Inc. The event was held in April 2018 at the Capitol Complex & Kaiser University in Tallahassee. Her topic was “Becoming the Indispensable Paralegal.” ♦



In November 2017, **Greg Barnhart** attended the Palm Beach County Bar Association’s “Wrongful Death Seminar,” providing a discussion on “Pursuing the Wrongful Death Case from the Plaintiff’s Side.” In December 2017, Mr. Barnhart moderated a Judicial Panel hosted by the Palm Beach County Justice Association and held at the Bear Lakes Country Club in West Palm Beach, Florida. The subject of the presentation was “Overcoming Challenges to Your Practice.” The Florida Bar held its Civil Trial Certification Review Court Seminar in February 2018 at the Tampa Airport Marriott. Mr. Barnhart presented a speech on “Trial Skills: Opening and Closing.” ♦



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Impaired driver rear-ends vehicle resulting in \$750,000 in damages

Testimony from the scene of the accident allowed a claim for punitive damages

On the evening of December 5, 2015, Jane Doe and her husband, John, were traveling south on I-95 in south Florida. Their son, James, was driving the family truck and towing a trailer containing the family's ATVs. The family had spent the day driving their ATVs out in the countryside and, following dinner in Okeechobee, were headed back home to Palm Beach County.

As they drove down the interstate, their truck/trailer was suddenly struck from behind, pushing them toward the shoulder of the road. James struggled to keep the truck on the road as the vehicle behind them hit them a second time. Then the family watched as a white SUV with flashing hazard lights pulled out from behind them and passed them, weaving in and out of traffic, narrowly missing other cars. With their vehicles back under control, James followed the white SUV for about seven miles down the interstate nearing the exit at 10th Avenue. The white SUV exited onto 10th Avenue. James exited behind the white SUV and then maneuvered his vehicles in front of the white SUV to block its driver from driving off and causing harm to other drivers.

John and James are both trained firefighter-paramedics. As they blocked the SUV, both jumped out of their truck and approached the other vehicle to check on its driver and determine if she had any injuries. They noted as they approached that the SUV's side airbag had deployed. Speaking to the driver, they realized that she was noticeably intoxicated and her speech was slurred. When John opened the driver's side door, the woman nearly fell over trying to get out of the vehicle, but John caught her. Worried that she would try to drive off again, James grabbed the keys from the ignition and put them on top of her vehicle. The woman then attempted to get into another person's vehicle but was unsuccessful. She then stumbled down the street on foot and disappeared before police arrived on scene.

Immediately after the crash, Jane Doe began to experience neck pain. MRIs taken of her neck showed that she had suffered herniated discs at C4-C5 and C5-C6. As a full-time registered nurse, the potential effects on Jane Doe's life and career were significant. Five months after the crash, with no relief from chiropractic and orthopedic treatments and steroid injections, Jane underwent surgery for anterior cervical decompression and fusion. She was unable to work for almost ten weeks.

Jane and John Doe contacted SDSBS attorneys **Chris Searcy** and **D.J. Ward** and asked them to investigate their case and hold the fleeing SUV driver and her insurance company accountable for the injuries Jane suffered. Mr. Searcy and Mr. Ward were able to get the court to allow a claim for punitive damages against the driver of the SUV by arguing that there was a reasonable basis to believe that the SUV driver was intoxicated as evidenced by her behavior at the scene and her ultimate fleeing of the crash scene. On the eve of trial, they secured a settlement of \$750,000 for the Does. ♦



Attorneys proved that the driver was intoxicated due to her behavior, plus fleeing the scene of the crash.

Accolades



Chris Searcy



Jack Scarola



Greg Barnhart



Brian Denney



Mariano Garcia



Jack Hill



Karen Terry



Chris Speed



Laurie Briggs



Hardee Bass



SDSBS recognized as 'Top Lawyers' by South Florida Legal Guide 2018 edition

The *South Florida Legal Guide* has released its "Top Lawyers" and "Top Up and Comers" listing for 2018. Included in the selection of "Top Lawyers" were **Chris Searcy**, **Jack Scarola**, **Greg Barnhart**, **Brian Denney**, **Mariano Garcia**, **Jack Hill**, **Karen Terry**, **Chris Speed**, and **Laurie Briggs**. The *Legal Guide*'s "Up and Comers" listing included **Hardee Bass**. SDSBS was listed as a "Top Law Firm." ♦



Chris Searcy has received recertification from the National Board of Trial Advocacy. He is recognized as a lawyer who has demonstrated the specialized knowledge, skills, and proficiency to be properly identified as a "Board Certified Advocate." Mr. Searcy was also recognized by *The Trial Lawyer Magazine* as one of "The Roundtable: America's Most Influential Trial Lawyers." Members of The Roundtable are among the top 50 civil plaintiff and criminal defense lawyers in the United States. Each year, *The Trial Lawyer Magazine* identifies a select group of remarkable trial lawyers who have met the challenges of the legal profession and achieved extraordinary success in the courtroom. ♦



Greg Barnhart was recently elected to the board of directors of the International Academy of Trial Lawyers. IATL is an international legal association in both spirit and membership. The Academy limits Fellowship to 500 active trial lawyers from the United States, and over 150 Fellows from nearly 40 other countries across the globe. Fellowship is by invitation only and recognizes a career of excellence as shown by skills in trial and demonstrated integrity and professionalism. ♦



Brenda Fulmer received the American Justice Association's "Board of Governors Outstanding Achievement 2017 Award" for going above and beyond in fulfilling her obligations and responsibilities as a board member of the Association. Ms. Fulmer has also been named one of JD Supra's top authors in the categories of "Medical Device Industry" and "Product Liability and Safety." JD Supra is a daily source of legal intelligence on topics from leading lawyers and law firms. Her award is based on visibility of the author, audience engagement, emerging topics, and level of readership. ♦



In April 2018, **Karen Terry** was inducted into the International Society of Barristers in London. Membership is by invitation only and is preceded by a rigorous screening process that considers the lawyer's ability, experience, accomplishments, and ethical standards as assessed by trial lawyers and judges. It is a considerable honor to be selected as a member of this notable group. ♦



Andrea Lewis was recently elected to the Board of Directors of the Palm Beach County Bar Association to serve the 2018-2019 term in office. Ms. Lewis has also been very active in the Junior League of the Palm Beaches. She was elected Fundraising Vice-President for the League. ♦



Jordan Dulcie was appointed to the board of directors of the Florida Medical Rights Association. The Association's mission is to repeal Florida Statute 768.21(8) – The Wrongful Death Act, which denies the constitutional rights of Floridians. Mr.

Dulcie and **Boris Zhadanovskiy** have both been appointed to the board of the Young Lawyers Section of the Palm Beach County Bar Association. ♦



Carter Scott has been elected to the Board of Directors of the Young Lawyers Section of the Tallahassee Bar Association. The Section promotes professional and social understanding and cooperation among law students and recently admitted lawyers. ♦



In April 2018, The Florida Bar appointed paralegal **Olga Patterson** to serve on the Florida Registered Paralegal Committee for one year beginning July 1st. A Paralegal, through education and experience, performs substantive legal work for which a member of The Florida Bar is responsible. ♦

Emergency care facility fails to diagnose clear indications of spinal damage

Young and active woman permanently disabled by negligence, will require additional surgeries, therapy, and counseling.

On May 18, 2013, 24-year-old Jane Doe (not her real name) began experiencing severe back pain and the onset of numbness in her buttocks and left leg. She had difficulty walking and a noticeable limp in her left leg. Alarmed, her father drove her to a local emergency care hospital in south Florida. An ER nurse examined her, noting that her pelvic and rectal areas were numb and she was unable to feel herself urinate. The examination also included in the patient's history that she had been recently diagnosed with a herniated disk. The history and symptoms were all classic signs for Cauda Equina Syndrome.

The cauda equina, commonly known as the "horse's tail," is a bundle of spinal nerves and nerve roots which innervate the pelvic organs and lower limbs – knees, ankles, feet, internal and external anal sphincter, perineum, and bladder. Any compromise or damage to the cauda equina requires immediate intervention to avoid long term damage.

Shortly after the ER nurses completed their initial examination and report, Jane Doe was visited by physician assistant Gail Green (not her real name). PA Green conducted an examination including a history of the patient and completed her report noting only the onset of "moderate" lumbar pain with spasms. The PA noted that the patient "denies" any inability to walk or weakness or numbness in her legs. The PA's report portrayed the patient as having an entirely normal motor and sensory exam and normal gait. The report contradicted the reports prepared by multiple ER nurses earlier. There were no indications of testing used by the PA to determine the "normal" condition of the patient. The PA concluded that Jane only wanted pain relief and a medication was prescribed. Noting that the patient was "better," the PA reported that there was no need for a further workup and ordered a discharge of Jane with the concurrence of the hospital's doctor who supervised the PA. The doctor never examined Jane.

Jane went back home and took the pain medication as directed. The next morning, her symptoms continued and her family took her to another hospital for assessment and management of her condition. An MRI showed severe stenosis with a large disk herniation at two levels and severe cauda equina compression. She was immediately taken



into surgery. By this point, Jane had sustained permanent neurological injury from the sustained compression to the cauda equina. Nine days later she endured a second surgical decompression procedure.

Numerous surgeries, rehabilitation, and medical care followed over the next several years. Jane has been left with motor and sensory deficits which impact her bowel and bladder function and ambulatory and activity levels. She will require lifelong medical attention and counseling. Jane and her family asked SDSBS attorney **Brian Denney** to help them hold the emergency care facility and its staff accountable for its abysmal failure to recognize and treat clear, unequivocal signs and symptoms of Cauda Equina Syndrome. Mr. Denney filed a medical malpractice case against the defendants. Following numerous efforts to reach a settlement, the defendants finally agreed to a settlement for a confidential amount just prior to trial. The proceeds of the settlement will assist Jane in obtaining the medical and other care she will need for the rest of her life, but she will continue to suffer substantial and permanent impairment of her daily activities and curtailment of future dreams. ♦

MASS TORT PROJECTS OF INTEREST

Abilify

Pathological Gambling

Bair Hugger Warming Blankets

Infections

DePuy Attune Knee Implants

Premature Device Failure
Tibial Baseplate Loosening

Essure

Organ Perforation

Hernia Mesh

Bowel Obstruction
Mesh Migration

Invokana and Farxiga

Amputations
Kidney Failure
Ketoacidosis

IVC Filter

Device Fracture
Heart and Lung Perforation
Migration

Januvia, Janumet, Byetta, and Victoza

Pancreatic Cancer
Thyroid Cancer

Laparoscopic Power Morcellator

Uterine Cancer

Lipitor

Diabetes

Metal-on-Metal Hip Implants (DePuy, Smith & Nephew, Wright Medical, and Zimmer)

Device Failure and Loosening
Inflammatory Response
Metallosis

Mirena IUD

Pseudotumor Cerebri
Intracranial Hypertension

OxyContin

Local Government Abatement Costs

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, LFT 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 and Pradaxa

Uncontrollable Bleeding
Death

Zimmer Biomet Shoulder

Device Fracture

Zofran and Depakote

Birth Defects

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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.



DePuy Attune Knee Implants

USE: Knee implant device

HARM: Premature device failure; tibial baseplate loosening; pain, painful revision, bone or muscle damage.



Stöckert 3T Heater-Cooler System

USE: Control a patient's body temperature during surgery.

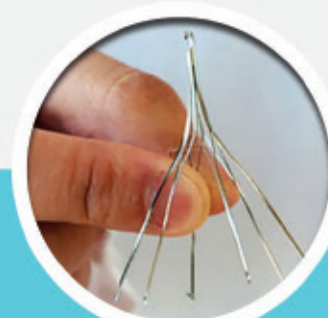
HARM: Non-tuberculous mycobacteria infection



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

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Stryker V40 cases are moving toward bellwether trials

Currently, there are two coordinated proceedings for Stryker V40 taper head and stem trunnion failure cases. The first and oldest is located in New Jersey state court and is being handled by MCL Judge Rachael Harz. The second is in federal court in Boston, Massachusetts before MDL Judge Indira Talwani.

Searcy Denney shareholder **Cal Warriner** has been appointed to the Plaintiffs' Executive Committee in both venues and is chairing the Science Committees.

Discovery is heating up as Stryker has produced thousands of documents that are being reviewed by teams of lawyers around the country. Depositions of Stryker employees are set to begin in the near future.

Judge Talwani has scheduled 18 cases for the initial bellwether trial pool. Plaintiffs were allowed nine picks as was the Defendant. Those cases are in the process of advancing to case-specific discovery. Judge Talwani has not indicated what procedure she will employ to decide which cases from the pool will be tried first.

Searcy Denney continues to be at the forefront of failed Stryker hip implant litigation. We filed the first Stryker V40 case in the nation in 2013, and currently have more cases filed than any firm nationwide. ♦

Noteworthy Mass Tort Settlements in Early 2018

\$506,500 settlement for a Florida plaintiff from a medical device manufacturer

\$577,000 confidential settlement for Tennessee plaintiff from manufacturer of Actos

\$500,500 settlement from medical device manufacturer for Minnesota plaintiff

\$125,000 settlement from medical device manufacturer for Florida plaintiff

\$430,000 settlement from drug manufacturer for Florida plaintiff

\$175,000 from medical device hip implant manufacturer for an Alaska plaintiff

\$302,000 confidential settlement for Pennsylvania plaintiff from drug manufacturer

Red-light runner “t-bones” another car, seriously injuring its driver

Surgeries, therapies, and pain medications for life-long injuries result in settlement of \$975,000 for damages

On December 31, 2014, Mary Smith (not her real name) was driving her car east on Okeechobee Boulevard in West Palm Beach, Florida. As she approached South Flagler Drive, she proceeded across the intersection, having the right of way under a green light. Suddenly, another car ran through its red light and crashed violently into Mary's vehicle. Mary was seriously injured in the crash and sought immediate care for neck and other injuries. Over the next year she endured surgery to repair damage to her neck, visits to orthopedists and physiatrists, physical therapy, evaluations, and pain medications. Her injuries were determined to be lifelong.

Mary contacted SDSBS attorney **Brian Denney** and asked if he could help her in a claim against the driver and the insurance companies involved. Following numerous unsuccessful efforts to reach a settlement with the defendants, trial was scheduled. Just prior to the trial's date, the parties reached a settlement of \$975,000. ♦

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Victims of uninsured motorist's car crash reached settlement with their own insurance company

Uninsured defendant's SUV rear-ended plaintiffs' car, resulting in years of pain, therapy, and other medical expenses

In July 2014, Ann and Charles Brown (not their real names) were driving north on Royal Palm Beach Boulevard in West Palm Beach, Florida. Charles was driving and his wife Ann sat in the passenger seat. They had attended the funeral of a friend's son and were now traveling as the last car in a funeral procession heading toward the cemetery. As the procession came to a stop, waiting to make a left turn, they were violently struck in the rear by an SUV driven by Dan Evans (not his real name), an uninsured motorist. A witness to the accident later said that the SUV hit the Browns' car so hard that it was lifted off the ground, slamming back down again. Damage to the Browns' vehicle was later determined to be over \$2,200.

Immediately after the crash, Ann went to her primary care physician. She was already experiencing headaches, neck pain, and back pain. She was unable to fully flex her cervical spine due to pain. On a second visit several days later, the doctor assessed herniation in the lumbar spine, somatic dysfunction in the cervical and lumbar regions, and other damage to Ann's back. A follow-up MRI impression revealed a C5-6 herniation, C6-7 herniation, and L5-S1 herniation with annular tear.

Ann began physical therapy right away. She reported, however, that not only was she having difficulty with work activities but she had problems with daily living activities – grooming, dressing, standing or walking, and driving or riding in a car. She was also having difficulty sleeping because

of the pain. She continued physical therapy and visits to her doctors. Eventually she visited a pain management clinic and after a consultation was treated with epidural injections. The injections provided no relief, and months later she underwent surgery for a decompression and discectomy at the injured areas of her spine. Surgery confirmed the herniations but brought no relief from pain. She was given additional injections with no improvement. The surgeon then advised her that she was a candidate for revision surgery.

Reluctant to endure further surgery that would not likely provide relief, she tried other conservative measures including laser therapy. Nothing relieved the pain. For the next three years she suffered constant pain and a drastic change in life. It interfered with her appetite, self-care, usual levels of activity, sexual activity, sports, and sleeping. Ann is a registered nurse and works full time as a research coordinator. She has to work every day in pain. The Browns finally contacted SDSBS attorney **Brian Denney** and asked for his help in finding a resolution to the mounting medical expenses and continuing personal damages they were suffering.

Mr. Evans, the uninsured motorist who had crashed into the Browns, had passed away some time after the accident due to unrelated reasons. The Browns had fortunately purchased uninsured/underinsured motorist policies from their insurance company. Mr. Denney filed a proposal for settlement with the insurance company, but the company offered only a minimal pre-suit amount. Just before the date of trial, the insurance company agreed to a settlement for all of the policy limits. ♦



SDSBS staff wears pink as part of "The Pink Shirt Day - An International Day for Anti-Bullying Awareness" hosted by the Literacy Coalition of Palm Beach County

In February 2018, SDSBS staff participated in "The Pink Shirt Day – An International Day for Anti-Bullying Awareness." The event was hosted by the Literacy Coalition of Palm Beach County, Florida. Everyone wore pink to highlight the event's goals. The mission of the organization is to improve the quality of life in the community by promoting and achieving literacy, ensuring that every child and adult in Palm Beach County can read. ♦

Confused and disoriented patient dies when ignored by rehab facility staff

Not properly supervised, the patient fell three times while trying to get out of bed, finally dying.

Allen Johnson (not his real name) was only 60 years old when he fell and broke his hip in the shower of his home. Allen suffered from Alzheimer's Disease and was often confused and disoriented. He was rushed to the hospital to have his hip fracture repaired. After a few days in the hospital, he was released to a rehabilitation facility to continue recuperating before going back home. Despite being fully aware of Allen's cognitive impairments, his recent surgery, and the pain medications that he had been given, the rehabilitation facility did not properly supervise the patient. The personnel at the facility left Allen alone for long periods of time and did not take appropriate precautions to ensure that he did not get out of bed and risk a fall.

Although Allen was only at the facility for a few days, he fell three times while trying to get up to use the restroom without waiting for supervision. Each time he fell, he lay helplessly on the floor until a staff member found him. He was never treated for injuries resulting from the falls or sent to the hospital's emergency room. Just three days after being admitted, he was found dead on the floor of his room in a large pool of blood. Allen's family contacted SDSBS attorneys **Karen Terry** and **Andrea Lewis** and asked for their help in holding the facility responsible for Allen's death. Ms. Terry and Ms. Lewis obtained a very sizable settlement for the family just before the case was set to go to trial. ♦

"You can only protect your liberties in this world by protecting the other man's freedom."

- - Clarence Darrow



SDSBS Attorney Matt Schwencke.

Law professor awarded \$222,717 for breach of contract

In May 2015, Professor Lee-Ford Tritt and the University of Florida settled a discrimination case that had previously been filed by the professor against UF. In an effort to maintain confidentiality in its payment of the damages owed to Professor Tritt for the discrimination he suffered, UF agreed to provide Professor Tritt with an extra sabbatical for the upcoming Fall 2015 semester, where Professor Tritt was already scheduled to teach as a visiting professor at Boston University. UF told Professor Tritt that Boston University would pay the professor directly, while at the same time he would be permitted to maintain his salary and fringe benefits from UF.

However, when it was found that Boston University's policy was to pay UF directly for the visiting professor, UF backed out of the agreement with Professor Tritt because it was leery of the paper trail that would have negated the confidential nature of the settlement. Professor Tritt sought representation from SDSBS attorney **Matt Schwencke**. The attorney filed a legal action against UF for breach of contract.

During trial, UF adamantly denied that any secret settlement terms existed. Attorney Schwencke confronted UF administrators with internal emails issued after the agreement was executed which proved that the intent of the agreement was, indeed, to pay Professor Tritt the funds from Boston University. After a three-day trial, an Alachua County, Florida, jury agreed with attorney Schwencke, finding that UF had breached the terms of the settlement agreement. Notably, the jury's damage award was more than twice what the attorney had asked for during trial. Post-trial, the court awarded Professor Tritt's attorney's fees and costs, as well. ♦



Staff and families of SDSBS participate in Best Buddies Friendship Walk as 'Team Priscilla' in memory of Priscilla Searcy's dedication

In April 2018, SDSBS staff and their families participated in the 2018 Best Buddies Friendship Walk held at CityPlace in West Palm Beach, Florida. The group formed "Team Priscilla" in honor of Priscilla Searcy. Priscilla was dedicated to supporting Best Buddies, an international organization that helps individuals with intellectual and developmental disabilities make friends and join communities. Funds raised by this event support Best Buddies in continuing their programs. ♦



SDSBS is active in the annual SleepOut event raising awareness of homelessness and support for The Lord's Place

In April, The Lord's Place held its annual SleepOut 2018 in West Palm Beach, Florida – an event to raise awareness about homelessness and to provide support for TLP's programs. TLP is a non-profit, non-sectarian organization committed to breaking the cycle of homelessness with programs that include safe, supportive housing, and job training and placement. SDSBS has for years been a sponsor of this event. Jack Scarola, his family, and numerous SDSBS staff participated in this year's event. TLP substantially exceeded its fundraising goal with contributions for the one-night event totaling over \$620,000. Equally important, and perhaps a greater part, is the care and compassion of the participants in SleepOut 2018, being part of a community that pays more than lip service to the obligations we share to meet the needs of our less fortunate neighbors. ♦



SDSBS recognized for its outstanding support of the Hispanic community by Hispanic Chamber of Commerce

In April SDSBS was recognized for its outstanding support of the Hispanic community at the 21st Annual Triunfo Awards hosted by the Hispanic Chamber of Commerce of Palm Beach County, Florida. SDSBS received the Chamber's "Large Business Award 2018." Proceeds from the gala and its silent auction assist local high school seniors with college expenses. ♦

SDSBS participates in Jack the Bike Man's annual 'Bike Giveaway' holiday program

In December 2017, just before Christmas, Jack the Bike Man (AKA Jack Hairston) hosts his annual "Bike Giveaway," providing almost 1,400 refurbished, free bicycles to needy kids and their families. His mission is to strengthen the Palm Beach County community through bicycle education and safety programs. Each bike is fitted to its recipient and comes with a helmet and sometimes with training wheels. SDSBS has long been a sponsor of these events. Mariano Garcia is a member of the organization's board of directors and numerous attorneys and SDSBS staff participate in Jack's annual Giveaways. ♦



Taking... *Time to Care*

Food and toys holiday gift drive to benefit members of our community aided by SDSBS and staff

Over the holidays at the end of 2017, SDSBS and its staff ran a food and toys gift drive to benefit members of the community in need of support. Over 100 Thanksgiving meals were provided to families in Okeechobee, Florida, through the organization "Helping People Succeed," a non-profit dedicated to protecting children who are at risk of abuse and neglect. SDSBS also collected and helped distribute toys and food to benefit Friends of Foster Children, the Guatemalan Center, Children's Outreach, and the Rehabilitation Center of the Palm Beaches. ♦



5K Race held by Young Lawyers Section supports Palm Beach County's Historical Society and Legal Aid Society

Karen Terry, Susan Barnhart, and Katie Kiziah participated in the 5K Race held by the Palm Beach County Bar Association's Young Lawyers Section in April 2018. Andrea Lewis helped organize the race and supported the SDSBS team throughout the day. The event took place at Bradley Park in Palm Beach, Florida. Proceeds from the event were donated to the Historical Society of Palm Beach County and the Legal Aid Society of Palm Beach County. ♦





A REPORT TO CLIENTS & ATTORNEYS VOLUME 18, NUMBER 1

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**SDSBS attorney
Mariano Garcia with
attorney Ellen Freidin.**

Mariano Garcia speaks at Voting Rights Coalition in its series of "Why Courts Matter"

**The Coalition consists of
chapters of League of Women Voters,
National Council of Jewish Women,
and American Civil Liberties Union.**

The Voting Rights Coalition hosted another lecture in its series, "Why Courts Matter." The event was held May 6, 2018, at the Atlantis Country Club in Atlantis, Florida. The Coalition is a non-partisan advocacy group consisting of the Palm Beach County chapters of League of Women Voters, National Council of Jewish Women, and American Civil Liberties Union. SDSBS attorney **Mariano Garcia** was invited to speak on "The Federal Courts System in Florida." Ellen Freidin spoke on "How Politicians Are Systematically Trying to Weaken the Courts and What We Can Do About It." SDSBS is an active supporter of the Coalition's mission to combat voter suppression in all its forms, joining the League in its belief that voting is a fundamental citizen right that must be guaranteed. ♦



Ed Ricci and Matt Schwencke

SDSBS attorneys listed in "2017 Top 10 Medical Malpractice Verdicts"

TopVerdict.com recently announced that the verdict in *Haley v. Paul Hyland, MD and Palm Coast Surgical Associates*, tried by SDSBS attorneys **Matt Schwencke** and **Ed Ricci**, was one of its "2017 Top 10 Medical Malpractice Verdicts in Florida." The case also made its list of "2017 Top 50 Personal Injury Verdicts in Florida." Congratulations are in order for Mr. Schwencke and Mr. Ricci. ♦