



Jury awards \$10 million in fatal accident caused by 99-year-old driver

In February 2018, Walter Roney was driving his 40-foot recreational vehicle on Florida State Road 70. Mr. Roney and his girlfriend, 75-year-old Carolyn Bruns were taking the RV to Florida's Gulf coast to get the RV fixed. Unfortunately, Mr. Roney was driving in the wrong direction on a divided highway.

Two Port St. Lucie teenagers – 17-year-old Britney Poindexter and best friend 18-year-old Santia Feketa – were also driving on State Road 70, headed from Ms. Poindexter's home to a rollerskating rink. Mr. Roney's RV, which weighed 42,000 pounds, ploughed head-on into the girls' vehicle, killing both of the girls. The teenagers never had a chance. Mr. Roney died several weeks later.

Florida Highway Patrol troopers who investigated the crash noted that the RV's lights were not on at the time of the crash. Further investigation revealed that Mr. Roney suffered from memory problems and had poor eyesight, limited hearing, and a host of

other ailments. In the past, several of his children had taken his car keys away from him after they became increasingly worried about his mental competence and driving ability. Searcy Denney attorneys, **Chris Searcy, Karen Terry, and Jack Hill** represented the Poindexter family. Ms. Terry reported that, in 2017, Mr. Roney had been prohibited from driving until he received a driving and medical evaluation and passed Michigan's driving test. Nonetheless, the attorneys representing the Roney estate responded to claims of Mr. Roney's frailties that "The Michigan Department of State . . . determined that Mr. Roney had 'an acceptable medical condition,' had scored 'passing results' on a knowledge exam, vision test, and road test, and was 'eligible to continue driving with full privileges.' "

On the eve of trial, Mr. Roney's girlfriend, Ms. Bruns, who was a passenger, paid her entire police limits of \$1 million to settle claims that she was also responsible for the crash. Novelty, attorney Karen Terry argued that Ms. Bruns had been serving as Mr. Roney's "visual spotter" and caregiver while on this trip. Because they were in a joint enterprise while driving the RV, Ms. Bruns could have taken action that may have prevented the accident. *(Continued on page two.)*

\$10 million settlement for young woman's death in crash with negligent tractor-trailer driver

Nothing, however, will ever ease the lifetime of pain suffered by the family over the loss of their daughter.

In April 2017, Anne Jones (not her real name) was driving on Interstate 95 in Florida, north of Daytona. The young woman was driving within the flow of surrounding traffic on the highway. Suddenly, a large tractor-trailer slammed violently into the rear-end of Anne's vehicle killing her almost instantly. The truck was leased by Burns Trucking Company (not the real name) and driven by John Smith (not his real name).

A later investigation by Searcy Denney attorneys confirmed that Smith was traveling at approximately 68 miles per hour when he struck Anne's car. The truck's speedometer was stuck at that speed. He had made no effort to slow down before the collision. Anne never had a chance to avoid the crash. Smith was charged with operating the truck in "a careless or negligent manner and driver distraction."

The grief associated with a parent's loss of a child is perhaps the most traumatic loss a human being can endure. *(Continued on page three.)*

Above: The fatal accident scene with the 42,000 pound RV driven by a 99-year-old man.

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SEARCY DENNEY SCAROLA BARNHART & SHIPLEY PA

ATTORNEYS AT LAW



Young victims in the crash with the RV: 17-year-old Britney Poindexter, (left) and best friend 18-year-old Santia Feketa.



**SDSBS Attorneys
Karen Terry and Jack Hill.**

Jury awards \$10 million in fatal accident caused by 99-year-old driver

(Continued from page one.)

When the trial began, Roney’s attorneys acknowledged that Mr. Roney was at fault for the crash. The jury, however, was not told about Mr. Roney’s ongoing disputes with his children and doctors over whether he was fit to drive.

The unanswered question arising from this case remains: how can a man of Mr. Roney’s age, frailties, and limitations obtain a fully-privileged driver’s license to operate a massive vehicle on this nation’s roads?

Instead, the jury was told about the teenagers and about the impact their deaths had on their families. Attorneys Terry and Hill tried the case to a federal jury in West Palm Beach, Florida. The only question left to the jury to decide was how much Mr. Roney’s estate should pay to the two victims’ parents. The jury awarded \$10 million to the four parents. Despite the \$11 million victory, the parents remain forever heartbroken.

The unanswered question arising from this case remains: how can a man of Mr. Roney’s age, frailties, and limitations obtain a fully-privileged driver’s license to operate a massive vehicle on this nation’s roads? As our population ages, it is a question that needs to be addressed immediately – by our elder drivers, their families, and state and local law enforcement and licensing offices. ♦

Read Attorney Karen Terry’s article about ELDER DRIVERS: WHERE ARE WE HEADING? on page four of this newsletter, or on our website: www.SearcyLaw.com



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A REPORT TO CLIENTS & ATTORNEYS **VOLUME 19, NUMBER 2**

MANAGER: **JOAN WILLIAMS**
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NOTE: The accounts of recent trials, verdicts and settlements contained in this newsletter are intended to illustrate the experience of the firm in a variety of litigation areas. Each case is unique, and the results in one case do not necessarily indicate the quality or value of any other case. Omitting clients’ names and/or defendants’ names are the result of requests for anonymity.

Speaking Opportunities



**Jack
Scarola**



**Sia
Baker-Barnes**



**Brenda
Fulmer**



**Ed
Ricci**



**David
Vitale**



**Katie
Kiziah**

Jack Scarola was a featured speaker at the 2019 Annual Meeting of the International Academy of Trial Lawyers in London, England. His topic was the Crime Victims Rights Act challenge to the federal government's grant of immunity to billionaire child molester, Jeffrey Epstein. Attendees reported that Mr. Scarola was recognized with a standing ovation after his presentation. The IATL is an international group of elite trial lawyers whose purpose includes elevating the standards of honor, integrity, and courtesy in the legal profession. ♦

Katie Kiziah spoke at the Palm Beach County Bar Association's Bench Bar Conference in February 2019. She was the co-chair of the Personal Injury/Medical Malpractice session. **Sia Baker-Barnes** was a moderator on the Conference's Medical Malpractice panel's discussion on "Bad Faith." ♦

Sia Baker-Barnes and **David Vitale** participated in 360 Advocacy's conference, "Damages: Go Big or Go Home." The conference was held in March 2019 in Las Vegas, Nevada. Ms. Baker-Barnes' topic was "Important Considerations for Litigators in the Era of the MeToo Movement." Mr. Vitale's topic was "Finding the Impossible Bad Faith Claim." ♦

Sia Baker-Barnes was also a speaker at the Miami-Dade Inns of Court conference held March 1, 2019, in Miami, Florida. Her topic was "Winning a Case in Voir Dire." ♦

Brenda Fulmer spoke at the "Mass Torts Made Perfect" conference on the topic, "The Nuts and Bolts of Mass Tort Litigation." The conference was held in April 2019 at Las Vegas, Nevada. Ms. Fulmer also spoke at the Masters of Mass Tort Conference in February 2019, held in Mexico. Her topic included "Ethical Issues Regarding Mass Tort Marketing" and her work on the Zimmer M/L Taper Hip Implant MDL. ♦

Brenda Fulmer and **Ed Ricci** participated in the "Speed Law Mixer" held in May 2019 at the Palm Beach Lakes High School Law Academy in West Palm Beach, Florida. The event allows high school law academy students to interact with local attorneys in four minute short conversations, or "speed rounds." Attorneys have the opportunity to share experiences and advice with many pre-law students. ♦



\$10 million settlement for young woman's death in crash with negligent tractor-trailer driver

(Continued from page one.)

It is every parent's nightmare, and it is now a permanent reality for Anne's parents, Mary and William Jones. Anne lived at home with her mother. They shared all of life's ups and downs, traveling and socializing together, and drawing on each other for support, love, and friendship. Anne's father was also quite close to his daughter. He had an active role in Anne's life, talking with her almost daily, taking her on fishing and camping trips, and frequently meeting her for dinner to catch up on her activities.

Anne was sweet, innocent, fun, and loving. She lifted the spirits of everyone who had the fortune of spending time with her. Her passion in life was dance and music. She radiated positive energy and was always able to see a glass as half full, regardless of circumstances. Anne had graduated from college and was on the cusp of a career promotion moving her to a full-time position at the local branch of a national financial organization. Her promotion was to begin on April 17th. She was killed just four days before she was to start her new career.

William and Mary Jones contacted Searcy Denney attorneys **Chris Searcy** and **Brian Denney** to ask for help in finding accountability for the tragic loss of their daughter. Liability in the case was very clear.

The discovery process had not yet begun when Mr. Searcy and Mr. Denney initiated negotiations and were able to settle the case for the \$10 million policy limits available. Nothing, however, will ever ease the lifetime of pain suffered by Mary and William Jones over the loss of their daughter. ♦

Elder drivers, driving privileges, and safer roads: Where are we heading?

by Searcy Denney Attorney Karen Terry

Driving a motor vehicle is a privilege, not a right. Driving a vehicle in Florida is, legally, the operation of a “dangerous instrumentality.” Why? Because people operating motor vehicles injure and kill people every day. It is that simple. It is why we have laws that require drivers to pass a driving test, maintain driving skills, and obtain a state-issued driver’s license.

Recently, I represented a family whose 17-year-old daughter, along with her 18-year-old best friend, were killed in a head-on collision with a 40-foot RV being driven the wrong way down a Florida highway by a man who was 99 years old. He suffered from limitations in vision, hearing, cognitive abilities, and other physical limitations. Yet he held a fully-privileged drivers license issued by Michigan.

I am not yet one of society’s senior citizens. However, I see those around me changing with age and physical conditions, and with this wrongful death case prominently in mind, I am beginning to ask questions about elder drivers and our responsibilities. Florida has an exceptionally large population of senior citizens.

First, let’s look at some statistics. Drivers 70 years of age or more have the highest accident rate per mile traveled. Yet, older drivers have fewer accidents overall than do 16- to 25-year-old drivers. Per mile traveled, fatal accident rates increase beginning at age 75. Elder fatalities include drivers, passengers, pedestrians, and victims in other vehicles. The higher fatality rate is mainly due to increased risk of injury and medical complications, rather than an increased tendency to get into vehicle accidents. Limitations that more often come with age do, however, factor into the mortality and injury rates – weaker muscles, reduced physical flexibility and limited range of motion, inability to grip steering wheels or press accelerator or brake pedals, limited vision, and the adverse effects on the body and mind by the increased use of various medications.

Many states, including Florida, require older drivers to renew their drivers license more frequently and in person, in order to help identify those who should not be driving. But to what extent will simply showing up in person resolve the question of ability? Vision exams, of course, help identify drivers with those specific limitations. Some states include physical driving tests for older drivers. Many states include a written test to determine the applicant’s comprehension of the state’s rules on vehicle operation. Would a poor score on a written test, followed by a good score on a practical driving test, result in a license approval or revocation? Should there be a simple age cut-off – no drivers licenses issued for persons over 70 years of age, 80 years – when? We already have rules governing the limitations of drivers under 16 years (e.g., no night driving; an adult accompanying the young driver; a limitation on the number of passengers in the vehicle; etc). Would it be necessary to formulate a list of such limitations for elder drivers to be applied by the licensing states following testing, or following statements submitted by the applicant’s physician or by law enforcement personnel? What happens to the elder driver who has driven safely – legally with no accidents – for 50 years or more, who is now informed that he may no longer be licensed to operate a vehicle on the roadways of his community? Is there a sufficient public transportation system available for this person to maintain his independence and mobility?

Now is the time to have these conversations – between and among elder drivers, their families, the medical community, the highway and transportation regulators, and law enforcement. Let’s do not wait until I become an elder driver, nor wait until another tragic accident occurs which puts this question of our collective responsibilities back onto our tables. ♦

How do we reconcile the very admirable determination to maintain an independent lifestyle, with the callous, often criminal, determination by individuals suffering from physical and mental limitations to operate vehicles that might kill or injure the rest of the traveling public?



After insurance company fails to act in good faith, SDSBS finds justice for families of workers killed in horrific bus crash

The dead and injured were Mexican farmworkers being transported from Michigan to Texas

On November 6, 2015, a bus transporting migrant farmworkers from Michigan to Texas ran off a highway and hit an overpass in Arkansas. The crash ripped the roof off the bus and ejected the passengers onto the interstate highway. Six people were killed and six were injured. The driver survived. An investigation by the National Transportation Safety Board and the U. S. Department of Labor revealed that the driver may have fallen asleep at the wheel. Factors leading to the crash included the driver's failure to pay attention to conditions of the roadway and his failure to comply with federal transportation requirements.

The dead and injured were Mexican farm laborers – legal migrants under the federal H-2A visa program. A national farm labor company that had hired the workers was transporting them from Monroe, Michigan, to Laredo, Texas. The Mexican government reported that the workers were headed home to Mexico to be reunited with their families. The driver and two other people riding on the bus were from Florida.

The gruesome deaths sent shockwaves through the migrant community. News of the crash was well known to the Mexican consulate that was working to help the families who were seeking justice for the loss of their loved ones. Some of the workers were the only source of income for their families back in rural Mexico. The consulate found support

from two well known non-profit organizations: Florida Rural Legal Services and Southern Migrant Legal Services (SMLS) Program, a project of the Texas RioGrande Legal Aid. For decades, both organizations have fought for employment rights for migrant workers. SMLS attorney Greg Schell filed the initial lawsuit on behalf of three families in November 2017, but he knew that the case would need the help of trial attorneys who regularly handle these types of catastrophic personal injury cases. Mr. Schell sought the help of long-time friend and advocate, Searcy Denney attorney **Jack Scarola**.

Mr. Scarola enlisted fellow Searcy Denney attorney, **Jordan Dulcie**, to look into the case. Mr. Dulcie took the lead in investigating and building the case in the U. S. District Court for the Southern District of Florida where the case was being brought. In early 2018, when Searcy Denney received the case – two years after the crash – there still had been no offer made by the plaintiff's insurance company even though there was a \$1 million insurance policy available. Realizing that the insurance company was acting in bad faith, Mr. Dulcie knew that the only way the families could receive just compensation for the wrongful death of their loved ones would be if the case proceeded to a jury trial.

After 10 months of discovery and trial preparations, the insurance company finally realized that they were in an untenable position with claims for horrific losses and clear liability. In December 2018, Jack Scarola and Jordan Dulcie were able to secure a settlement of \$2,250,000 for the families of the decedents, well above the available coverage. It was a welcome victory for the families who had been denied the justice and accountability they deserved years earlier. It was believed that the nationality and immigration status of the Mexican workers were the reasons that the insurance company failed to act in good faith and to properly investigate the circumstances of the crash. ♦

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Restaurant and truck owner/employer held accountable for drunk driver in fatal crash

Restaurant deliberately overserved alcohol to designated driver; vehicle owner/employer knew of his condition

In the article below, note that all names of people and businesses have been changed to maintain confidentiality.

In August 2015, John Smith was living far from his wife, Jane, and their two young children. Mr. Smith was working in West Texas for Oil Industries, Inc., in a job that supported the booming oil production industry. The job paid well, but John missed his family in south Florida and was looking for work that would bring him back home. Tragically, John never got a chance to return to his family.

Like countless other men working the Texas oil fields, John was stationed for long periods of time at a “man camp,” a temporary, barracks-style housing community. These camps are typically located in remote areas outside of city limits. They provide only the bare essentials and not much in the way of creature comforts or entertainment. One evening after their shift was cancelled, John and a number of his fellow workers decided to go into town for dinner and drinks. None of the workers had personal vehicles at the camp, so crew supervisor Frank Doe drove John and two other workers to town in a company pickup. Oil Industries routinely allowed employees to use company-owned vehicles for personal errands.

The group headed to ABC Restaurant where they remained for several hours, all of them consuming a number of alcoholic beverages. Frank Doe, however, was served a staggering number of drinks over the course of the evening; his restaurant bill listed 22 different alcoholic drinks that evening. Frank Doe’s state of intoxication was so apparent to his server that she felt he would not notice that she had added close to a 100% tip to his bill after he had signed the credit card authorization. By the time the group left ABC Restaurant to head to the man camp, they were all very intoxicated. Frank Doe was driving.

As the pickup moved down the highway, Frank ran through a red light and violently struck another vehicle. Frank Doe and John Smith (seated in the front passenger seat) were killed instantly. Postmortem toxicology tests revealed that Frank’s blood alcohol level was .243 g/dL, three times the legal limit.



Jane Smith enlisted the help of Searcy Denney attorneys **Chris Searcy** and **Jack Hill** to represent her and her two children in an effort to establish accountability for the crash. Because the crash occurred in Texas, a lawsuit would need to be filed in Texas. Searcy Denney partnered with two Texas law firms and suit was filed against the Estate of Frank Doe; Oil Industries, the employer and owner of the truck; and ABC Restaurant. The circumstances of the crash itself were clear. Making a recovery against the parties that contributed to it was a legal challenge.

Texas law, unlike Florida, does not include the dangerous instrumentality doctrine whereby an owner of a vehicle is legally responsible for any harm caused by an individual to whom it entrusts its vehicle. In order for the clear negligence of Frank Doe and the death of John Smith to be covered by Oil Industries’ insurance policies, Mrs. Smith had to prove that Frank Doe was a permissive user of the company vehicle. The challenge for Searcy Denney and co-counsel was to establish that the employees of Oil Industries were routinely permitted to use company vehicles for personal errands. Oil Industries argued that it had an “unwritten policy” prohibiting personal use and a clear written policy prohibiting the consumption of alcohol while in company vehicles. Discovery revealed that an Oil Industries manager had met the group at the ABC Restaurant, that the manager knew that Frank was drinking,

(Continued on next page.)

Employees of Texas company were routinely permitted to access company vehicles for personal use. Restaurant offered servers incentive pay for overserving alcohol.

Restaurant and truck owner/employer held accountable for drunk driver in fatal crash

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and that Frank had driven the truck to the restaurant. Shortly before the manager's deposition, Oil Industries and the Estate of Frank Doe agreed to a settlement for a confidential amount of seven figures.

The claim against ABC Restaurant remained. Most states, including Texas, have laws that protect companies engaged in selling alcohol. These liability-shielding laws, commonly referred to as "dram shop" laws, serve to limit the right of someone who is injured or killed by the actions of a drunk driver from suing the establishment that served the alcohol. Texas' dram shop law requires the plaintiff to prove not only that the patron was served so much alcohol that he/she was "obviously intoxicated" and posed a "clear danger" to himself or herself or others, but also that certain safe harbor defenses which, if proven, would shield the restaurant from liability, do not apply. It was discovered that ABC Restaurant provided financial incentives to its servers to serve customers more alcohol. Company policies which purported to limit the number of drinks that could be served to a customer per hour were not routinely enforced. Shortly before trial, ABC Restaurant agreed to a seven figure settlement.

No amount of recovery will ever take the place of this family's husband and father. The family can only be comforted by the fact that Mr. Searcy and Mr. Hill were able to provide them a measure of justice by holding accountable those who were responsible for John's death. ♦



The risks of overserving alcohol

Searcy Denney attorney **Brian Denney** recently represented a client who was overserved alcohol at an establishment and who later became catastrophically injured as a result of being overserved. Mr. Denney was able to achieve a multiple seven-figure settlement on behalf of his client who greatly needs the proceeds for medical care.

Knowingly and willfully overserving alcohol to a minor, or knowingly and willfully overserving alcohol to an adult who is addicted or impaired by alcohol and/or drugs, will bring the server and his/her establishment under liability for death or injury caused by the impaired person who was served. Establishments and employees who serve alcohol should be aware of their responsibilities and risks. Mr. Denney has provided a short video on this issue, available at:

<https://youtu.be/69JyWfy53WY>.

Searcy Denney provides hundreds of other *Informational Videos* on legal topics of interest to everyone. Please visit

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Log on to...

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



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MASS TORT PROJECTS OF INTEREST

3M Dual-Ended Combat Arms Earplugs

Tinnitus
Hearing Loss

Abilify

Pathological Gambling

Actemra

Heart Attacks
Strokes

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

Metal-on-Metal Hip Implants

Device Failure and Loosening
Inflammatory Response
Metallosis

Smith & Nephew Modular SMF and REDAPT Hip Implants

Premature Device Failure
Metallosis
Inflammatory Response

Onglyza, Kombiglyze and Kombiglyze XR

Heart Failure

OxyContin and Oxycodone

Local Government Abatement
Costs

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

Renal/Kidney Failure

Risperdal

Gynecomastia

Roundup Weed Killer

Cancer

Stryker Modular Hip Implants

Premature Device Failure
Metallosis
Inflammatory Response

Talcum Powder

Ovarian Cancer
Mesothelioma

Tasigna

Atherosclerosis
Amputation
Stroke
Death

Taxotere

Permanent Hair Loss

Valsartan

Cancer

Viagra and Cialis

Melanoma

Xeljanz

Blood Clots
Pulmonary Embolism

Zimmer Biomet Shoulder

Device Fracture

Zimmer M/L Taper, Kinectiv, and VerSys Hip Components

Premature Device Failure
Trunnionosis
Metallosis
Inflammatory Response

Zofran and Depakote

Birth Defects

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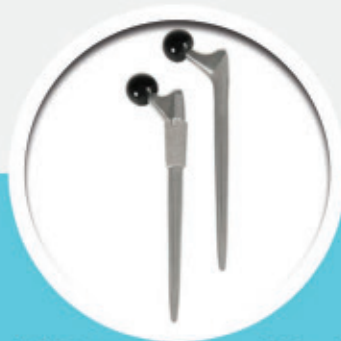
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3M Dual-Ended Combat Arms Earplugs

USE: Ear Protection

HARM: Tinnitus; hearing loss and other hearing problems.



Smith & Nephew and Stryker Modular Hip Implants

USE: Hip implant devices

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



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.



Zimmer M/L Taper, Kinectiv, and VerSys Hip Components

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.

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Searcy Denney represents veterans who suffered hearing-related injuries following use of 3M Dual-Ended Combat-Arms™ Earplugs



Military service members in training, standard military operations, and, especially, those in combat, are often exposed to high intensity noise of various types.[1] Between 2003 and 2015, Aero Technologies and 3M Company (which acquired Aero Technologies in 2008) sold millions of the dual-ended Combat Arms™ Earplugs Version 2 (CAvE2) to the military for use by service members in active combat and otherwise. The earplugs are non-linear, or selective attenuation earplugs; they have two sides – one olive green and one yellow - giving soldiers two options for hearing reduction in one product. When worn on the olive-colored side, the “closed” position, the earplugs were intended to block noise like a traditional earplug. When worn on the yellow side, the “open” position, the earplugs were intended to block or significantly reduce loud noises while allowing the user to hear lower level noises, like communications from commanding officers.

3M Dual-Ended Combat Arms™, Version 2 (CAvE2) earplugs are alleged to have been designed with a stem that is too short to allow for proper insertion into the user’s ears. Because

of this defect, the earplugs would imperceptibly loosen and allow dangerous sounds to enter the ear canal resulting in noise-induced hearing injuries following exposure to combat noises. The earplug’s instructions for use also did not consistently reference a known adjustment that could help ensure a better level of protection for service members.

In July 2018, 3M paid \$9.1 million to the United States to resolve allegations the company sold the earplugs to the military with knowledge of these design defects that impaired their effectiveness and without disclosing those defects.

Injuries suffered by defective earplugs include tinnitus as well as noise-induced hearing loss, among others. Noise-induced hearing loss is damage to structures in the inner ear resulting from exposure to harmful noise levels. It can be caused by a one-time exposure to an intense sound – such as an explosion – or by continuous exposure to loud sounds over an extended period of time. Noise-induced hearing loss can be immediate or take time to become noticeable. Tinnitus is the perception of noise or ringing in the ear. Tinnitus sufferers may hear sounds they would describe as ringing, hissing, static, crickets, screeching, whooshing, roaring, pulsing, waves, buzzing, or dial tones.

Lawsuits filed against the manufacturers of the Combat Arms Earplugs are currently being overseen by Judge M. Casey Rodgers, a military veteran herself, in the Northern District of Florida in Pensacola, as part of the Multidistrict Litigation In Re: 3M Combat Arms Earplug Products Liability Litigation. Searcy Denney is proud to represent veterans who are experiencing hearing-related injuries following use of the Combat-Arms™ Earplugs during their service. ♦

[1] <https://www.nap.edu/read/11443/chapter/2>



Searcy Denney named one of 'America's 25 Most Influential Law Firms' by *The Trial Lawyer* and *The National Law Journal*

In January 2019, Searcy Denney received notice that the firm had been recognized by *The Trial Lawyer* magazine and *The National Law Journal* as a 2018 member of The Forum: America’s 25 Most Influential Law Firms. Searcy Denney is among the top 25 civil plaintiff firms in the United States. Consistent demonstration of professional excellence was an instrumental factor in the selection. The honorees were recognized at the 2019 Trial Lawyers Summit held in South Beach, Florida. ♦

Doctor and hospital fail in attempt to limit damages caused by their negligence resulting in infant's death

Courtney and Neil Hays grew up together in Arizona. They eventually married and started their family with the births of their two boys. In 2015, the couple moved to Florida when Neil, a machinist in the United States Coast Guard, was assigned to Patrick Air Force Base near Melbourne, Florida. At the time of their move, Courtney was pregnant with their third child, another boy. She established obstetric care with Mark S. McTammany, M.D., who practiced at Holmes Regional Hospital in Melbourne. Courtney visited Holmes three times prior to her due date, concerned that she might be in labor. The pregnancy, however, appeared to proceed normally until September 25, 2015, the day of delivery.

Courtney's two earlier pregnancies had been delivered by cesarean section. At the hospital on delivery day, there was clear evidence that Courtney was not progressing with normal labor for her third baby. Despite this, Dr. McTammany proceeded with a vaginal delivery. During the course of delivery, Courtney suffered a uterine rupture. As a result, the baby, whom they named Cian, incurred permanent brain damage. A uterine rupture is a medical emergency that requires immediate cesarean section to deliver the child. Due to the failure of Dr. McTammany and Holmes Regional to provide a timely and safe delivery via that procedure, baby Cian died several weeks later.

Courtney and Neil contacted Searcy Denney and asked for help in prosecuting a medical negligence action against the doctor and hospital. After an extensive investigation, Searcy Denney attorney **Sia Baker-Barnes** discovered that although there were clear grounds demonstrating medical negligence, both Dr. McTammany and Holmes Regional were claiming immunity from a lawsuit based upon their participation in Florida's Birth-Related Neurological Injury Compensation Association. NICA is a statutory act that deprives injured babies and their families of the right to a jury trial and, under certain circumstances, compels families to accept severely limited compensation for a baby who is injured or dies from a birth-related neurological injury. Doctors and hospitals participate in the Plan by paying an annual fee. Providers are required to give every patient "reasonable pre-delivery notice" of the fact that they participate in the Plan and of the consequences of their participation. Notice gives the patient an opportunity to make an informed choice as to whether or not they wish to use a NICA provider.

During the effort to deliver baby Cian, Courtney and Neil had no idea that the doctor and hospital were NICA providers. Dr. McTammany had never informed them of his participation in

"Mrs. Hays became an obstetrical patient of HRMC well before delivery. She was never furnished the NICA notice by the doctor or the hospital despite three opportunities to do so. The compensation limitations provided by NICA for neurological injuries or death are contingent upon notification to the patient. Because there was no notice provided, limitations were inapplicable."

NICA, and Holmes Regional did not provide Courtney with the consent form until the day of delivery when she was already in labor and unable to choose another provider. There were multiple opportunities to provide NICA notice during Courtney's earlier visits, but the providers had not done so.

Ms. Baker-Barnes filed an administrative NICA action to prove that the providers did not give the patient pre-delivery notice as required by Florida law. Using key witness testimony, she proved that no notice had been provided. In October 2018, the administrative trial began. Ms. Baker-Barnes was joined by Searcy Denney attorney **Jordan Dulcie**. At the hearing, Dr. McTammany claimed that, although he had no signed form indicating notice had been provided to Courtney, his office's "custom and practice" was to provide such notice to each patient, and therefore it must be presumed that Courtney Hays received the notice. Holmes Regional argued that Courtney's prior visits were not related to her pregnancy, and that notice provided on the day of delivery was sufficient because she had over 12 hours from the time of notice to delivery of baby Cian. The Searcy Denney attorneys demonstrated the absurdity of these defense positions.

The Administrative Law Judge issued an order finding in favor of Courtney and Neil Hays, ruling that the doctor and hospital had failed to provide required notice. The plaintiffs may now proceed with their civil action against the doctor and hospital. That action will not be subject to the severely limited compensation plan provided under NICA. ♦

For additional information regarding the Administrative Final Order:

<https://www.doah.state.fl.us/ROs/2017/17006497.pdf>

Accolades



Congratulations to **Chris Searcy**, President and CEO of Searcy Denney, on his 45th year practicing law! ♦



For the fourth consecutive year, **Brenda Fulmer** was a recipient of the 2019 JD Supra Readers' Choice Award for her publications in the area of product liability. Ms. Fulmer and Searcy Denney were included in the publication of the top authors and firms. The award recognizes top authors and firms who were read by C-suite executives, in-house counsel, media, and other professionals across the JD Supra platform during 2018. ♦



In April 2019, the International Society of Barristers' Board of Governors invited **Mariano Garcia** to be a Fellow of the Society. The Society recognizes lawyers adjudged by their peers and judges to be outstanding in the field of advocacy. One of the principal goals of the Society is the preservation of the adversary system and jury trial. ♦



In February 2019, **Hardee Bass** was accepted into the National Trial Lawyers Top 100 – 2019. The recognition for the top 100 civil plaintiff lawyers in each state promotes excellence in law. The criteria for selection includes the candidates reputation among peers, the judiciary, and the public; achievements, settlements, and verdicts; and recognition for leadership and memberships in other national and state organizations. ♦



Ed Ricci, Matt Schwencke and **Hardee Bass** have cases listed in the Top 50 Verdicts in Florida for 2018 by TopVerdicts.com. ♦



Adam Hecht was recently asked to join the board of The Winning Round Foundation, Inc., a non-profit organization whose mission is to enhance the quality of life for people who have acquired Parkinson's Disease through non-contact boxing-based fitness programs. Winning Round helps to build power, strength, agility, flexibility, hand-eye coordination, and balance. The program has been proven to help lessen the symptoms associated with Parkinson's Disease. ♦



Sia Baker-Barnes was sworn in as a member of the U. S. Supreme Court, along with several fellow members of The Florida Bar Board of Governors. In March 2019, Ms. Baker-Barnes was appointed to the Magistrate Selection Committee by the Chief Judge of the Southern District of Florida. This Committee will make a recommendation to the District Judges as to whether Magistrate Judges Lee Brannon and William Matthewman will be re-appointed. ♦



Katie Kiziah was also sworn in as a member of the U. S. Supreme Court with a group of fellow members of the American Association for Justice. ♦ (Photos of the sworn-in groups below.)



Sia Baker-Barnes: on her first term with Florida Bar Board of Governors

Just about a year ago, I was sworn in for my first term on The Florida Bar Board of Governors, one of four representatives of the 15th Judicial Circuit. Although I had some familiarity with what the Board does, I truly had no idea about what was in store for me. In fact, that is the question I get most often – what exactly do you do on the Board?

We are charged with drafting rules and policies that govern the over 106,000 lawyers in our state; we safeguard members of the public through our disciplinary review and recommendations to the Florida Supreme Court; we oversee the Bar's many sections and committees; we provide education, training and experience to our lawyers through our extensive Continuing Legal Education (CLE) programs; we connect with members of our circuits and raise and address issues of concern with other members of the board; and we are committed to the principles of service, civility, and professionalism for our Bar.

There are 52 members on the Board. We come from different jurisdictions and different areas of practice. We each have a wide variety of experience that has led us to serve on the Board. The Board has improved in diversity, although we still have a long way to go. Our vastly different backgrounds and experiences allow us to bring those perspectives to the table as we do our best to make decisions that are fair to all of our members.

This year, I served on three committees as a Governor. The Communications Committee is responsible for ensuring that members are well informed about all that we offer as a Bar and about the issues facing our members. We launched Legal Fuel this year, designed as a one-stop-shop for CLE and advice on all areas of practice and how to effectively and ethically run a law practice. Next is the Disciplinary Review Committee, which reviews all pending disciplinary actions and makes recommendations to the Florida Supreme Court. I also served on the Special Committee on Technologies Affecting the Practice of Law. This Committee addresses how the Bar interacts with companies that provide legal services to ensure that members of the public are protected and that they are in compliance with our rules regulating the practice of law in our state.

We meet just about every other month, six times per year, at locations throughout the state of Florida. In between our meetings, which take place over three days, we are working on our various committees and sub-committees



The new group of attorneys for the Florida Bar Board of Governors.

to ensure that we are prepared for each meeting. Materials for each meeting exceed thousands of pages, all of which are necessary in order to prepare for our responsibilities. I am tasked with overseeing two Grievance Committees and one Unlicensed Practice of Law Committee. I also serve on a Judicial Nominating Screening Committee and am the liaison to the Constitutional Judiciary Committee. Now you may see why I had no idea what was in store for me as a new Board Governor!

It is not easy to juggle all of these responsibilities and still practice law, but as a member of the Board I am constantly reminded of what a great privilege it is to practice law. I am also reminded that we chose to be lawyers to help people, and sometimes, in the quest for success, we may lose sight of the larger and more important goals. For me, serving on the Board has allowed me to understand in much greater detail that, even as we go about our daily grind, we should never lose sight of the fact that as lawyers people look to us for help. We are held to a high standard. Although that can bring great rewards, our roles as lawyers also command great responsibility.

My highlight of the year? Each year, the Board President selects a location for our out-of-state meeting. President Michelle Suskauer attended law school in Washington DC and chose that venue for her meeting. She did not disappoint! We began a very special swearing-in ceremony at the United States Supreme Court, where we became official members of the U.S. Supreme Court before all of the sitting justices. Our visit to Washington, for me, reinforced our core values as lawyers of fairness, integrity, and most of all, justice. I am proud to serve on this Board. I look forward to what the next year has in store for me. Most of all, I am proud and honored to be a lawyer. ♦



The Lord's Place SleepOut holds successful 12th annual fundraising event

On April 5, 2019, Jack Scarola and his family celebrated The Lord's Place 12th Annual SleepOut, along with close to 600 other attendees, at the annual event held to support programs and services provided by The Lord's Place. The program is dedicated to transforming the lives of homeless men, women, and children living in Palm Beach County, Florida. The event raised over \$700,000 for use in breaking the cycle of homelessness by providing innovative, compassionate, and effective services in the community. Mr. Scarola and Searcy Denney have been long-time supporters of The Lord's Place. ♦



WPB Police Foundation's 'Run With The Cops 5K' raises funds to aid in crime prevention

On March 30, 2019, the West Palm Beach Police Foundation held its "Run With The Cops 5K" Run/Jog/Walk at Dreher Park, West Palm Beach, Florida. Searcy Denney was the presenting sponsor and staff members participated as a team. The WPB Police Foundation is a non-profit, charitable organization dedicated to raising funds to aid in the prevention of crime in the community. Their efforts enhance the effectiveness of the police department while funding community outreach programs. ♦



Taking... *Time to Care*

Sixth annual Style for Hope Luncheon supports Dress for Success programs

The Sixth Annual Style for Hope Luncheon was held in March 2019, coinciding with International Women's Day. Organized by the Dress for Success Palm Beaches, the event seeks to provide inspiring experiences to exemplify its commitment to empowering women. Searcy Denney was a sponsor of the event and staff attended. Iris Apfel, fashion legend, was the honored guest. ♦



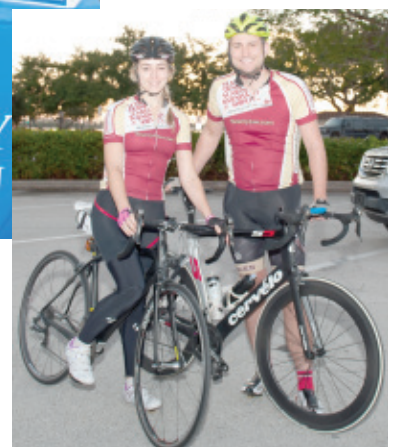
Searcy Denney participates in 18th annual "Walk" to benefit Peggy Adams Animal Rescue League

The Peggy Adams Animal Rescue League held its 18th Annual Walk for the Animals in February 2019 at the Meyer Amphitheatre in West Palm Beach, Florida. The event raised over \$115,000 to support programs to save homeless, abandoned, or injured animals in need. Searcy Denney was a sponsor and staff participated as a team. ♦



Literacy Coalition "Loop for Literacy" benefits literacy programs in Palm Beach County

The Literacy Coalition of Palm Beach County sponsored a "Loop for Literacy" event in February 2019, at Bryant Park in Lake Worth, Florida. Searcy Denney was a sponsor and staff participated as a team. The walk/run/bike event raised funds to benefit the programs of the Coalition, helping ensure that adults and children gain the literacy skills necessary to succeed in life. ♦





Searcy Denney sponsors mini-golf fundraiser held in library to support their Summer Reading Program

On May 24 and 25, 2019, the West Palm Beach Mandel Library hosted its “CaddyStacks,” a mini-golf fundraiser held in the Library. Friends of the Mandel Library help support the Summer Reading Program that incentivizes reading by providing gift cards and free books for kids and teens. Over the summer, young visitors are provided snacks and free lunches when visiting the Library. Searcy Denney was a sponsor of the event and staff participated in 18 holes of golf over the Library’s four floors. ♦



“Red Nose Day” campaigns to raise funds to help kids in need of programs to help them be safe, healthy and educated.

On May 16, 2019, Searcy Denney celebrated “Red Nose Day,” a fundraising campaign organized by Comic Relief, Inc. Participants donate money to help change the lives of kids in need of programs that ensure they are safe, healthy, and educated. Half of the funds are spent here in America, and the other half supports programs in some of the poorest communities in Latin America, Africa, and Asia. ♦