

A REPORT TO CLIENTS & ATTORNEYS  
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# OF COUNSEL

## Super Bowl Weekend Ends in Tragedy

In February 2008, 42-year-old Amy Brown (not her real name), a successful insurance attorney from Hartford, Connecticut, traveled to Wellington, Florida, to visit with her friends, Carol and Dan Green (not their real names). The Greens, like Amy, were equestrian enthusiasts. Their home was located in a residential development at the Palm Beach International Polo Club in Wellington. On Super Bowl Sunday, the Greens invited Amy to join them for a Super Bowl party at Tavern on the Green, a restaurant in the community. Food and alcoholic beverages were served, and each of the three party-goers had consumed alcoholic beverages during the evening. At approximately 10:30 p.m., the Greens and Amy left the Tavern to return to the Greens' residence. Many Polo Club residents travel around the community by golf cart. In Florida, a golf cart is considered to be a "dangerous instrumentality," and the owner of such a vehicle is held responsible for the negligent operation of that vehicle if that negligence results in injury or death.

Upon leaving the Tavern, Carol Green noticed that the windshield and the seats of the golf cart were



wet with dew. Carol and Amy used a towel to dry the windshield and seats. Carol then drove the golf cart out onto Equestrian Club Road for the ride back to the Greens' residence. Her husband, Dan, sat on the back of the cart and Amy sat in the right front seat. Carol, as "captain of the ship," had a non-delegable duty to ensure that the windshield was clear and her view unobstructed. Additionally, she had a duty and responsibility, at all times, *(Continued on page five.)*

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## \$3.4 Million Awarded in the Fifth SDSBS Engle Case Filed Against Tobacco Industry

In February 2011, a jury in Alachua County, Florida, awarded almost \$3.4 million to the widow of a man who died of lung cancer after smoking more than 40 years. SDSBS attorneys **David Sales** and **Jim Gustafson** filed the action against R.J. Reynolds Tobacco Company and Phillip Morris USA, Inc., on behalf of Anna Louise Huish, whose husband, John, died of small cell lung cancer in 1993. John began smoking as a teenager in the 1940's, when about 80% of people John's age smoked. John smoked for nearly 20 years before the tobacco industry began placing warning labels on packs of cigarettes. Mr. Gustafson established, through testimony by family members and medical experts, and documentation on the history of the tobacco industry's marketing campaign, that the tobacco companies had conspired not only to increase the

addictiveness of their product, but to conceal that effort from their product users. They had, in fact, engineered cigarettes to be addictive, to entrap the products' users in a way that ensured future sales, and then they spent years lying about it and evading the truth. The jury originally awarded \$750,000 but then apportioned 50 percent of the fault to John, reducing the award to \$375,000 but finding that punitive damages were warranted against R.J. Reynolds and Phillip Morris U.S.A., Inc. Following another day and a half of evidence on punitive damages, during which the defendants called their employees as witnesses, the jury returned a punitive damages verdict of \$3 million (\$1.5 million assessed against R.J. Reynolds, and \$1.5 million assessed against Phillip Morris USA). *(Continued on page six.)*

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*(Continued from page one.)*

The Huish case is one of approximately 8,000 cases filed statewide as a result of a landmark class action suit filed in 1994 by a Miami pediatrician, Dr. Howard Engle, who, like the other class members, began smoking long before the dangers were known, became addicted to nicotine, and suffered from a smoking-related disease. The jury in the Engle case ruled against the tobacco companies in 2000, holding that smoking was addictive and caused a variety of diseases including lung cancer. However, the Florida Supreme Court reversed the award in 2006, ruling that each person in the class action must prove his/her damages individually. SDSBS has thus far taken five cases against the tobacco industry to verdict, and has won all five of those cases with jury verdicts ranging from \$2.5 million to \$80 million.

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The defense attempted to establish other factors responsible for John Huish's cancer -- that he had been exposed to carcinogenic materials during his years of work as an electrician, and that he had made no effort to quit smoking even when diagnosed with serious respiratory illness. Mr. Gustafson stated, "The biggest challenge for the plaintiffs' lawyers is to get

out of the way of the evidence. The tobacco companies' history is so sordid and disturbing that we can use their own documents and their own words to prove these cases."

John Huish died at the age of 64. Had he not succumbed to the addiction of nicotine, John could have expected to live to the age of 80. He and Anna had already spent 46 years together. He was her best friend. When his life was cut short, her life was changed forever. Since 1993, she has spent every holiday alone. She lost her life's companion and she continues to grieve for him and for their life together. ♦

## Speaking Opportunities



Chris Searcy



Greg Barnhart



John Hopkins



Brenda Fulmer



Brian Denney



Darryl Lewis

Several SDSBS staff members participated in seminars during the Florida Justice Association's Annual Convention held in June 2011 at The Breakers Resort in Palm Beach, Florida. **Chris Searcy** spoke on the topic of "An Angry Jury is a Good Jury – Making Your Theme and Case Bigger Than One Trial" at the Trial Skills Seminar.

**Greg Barnhart** spoke on "Prior Incidents: Notice and Negligence – The Key to Products Cases." **Brenda Fulmer** participated in the Mass Torts/Products Liability Seminar, speaking on "Reglan and Stevens Johnson Syndrome." Paralegal **John Hopkins**, a program chair of the FJA Paralegal Advisory Group, participated in a seminar on "Tools for Proven Results: Civil Litigation for Paralegals and Legal Assistants – It's All About Discovery, Discovery, Discovery!" speaking on "'Guerrilla' Discovery in Civil Litigation." ♦

SDSBS attorneys **Brenda Fulmer** and **Brian Denney** spoke at the Florida Justice Association's 2011 Workhorse Seminar held in February 2011 at Disney's Yacht & Beach Club Resorts, Lake Buena Vista, Florida. Ms. Fulmer's topic was "Mass Torts of Mention," and Mr. Denney's was "Case Strategies to Avoid 'Gotcha' Moments and Other Pitfalls at Trial." Also in February, Mr. Denney spoke to the Council of School Supervisors and Administrators Retiree Chapter in Boynton Beach, Florida, on "Protecting Your Assets and Your Health – an Injury Lawyer's Perspective." ♦

**Darryl Lewis** spoke at the 2011 Annual Convention of the American Association for Justice held in July 2011 in New York. Speaking before the Attorneys Information Exchange Group, Mr. Lewis' topic was "Identifying Vehicular Product Cases." Mr. Lewis also presented remarks on "Cross-Examination Techniques" at the Convention's seminar on "Motor Vehicle Collision, Highway, and Premises Liability." ♦