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'Lawyer of the Year' by ABOTA**

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## **\$4 Million settlement in motorcycle crash permanently disabling police officer**

**Motorcycle dealership failed to  
perform required servicing.**

On a bright afternoon in March 2020, Police Officer Tom Smith (not his real name) was on motorcycle patrol duty in Palm Beach County, Florida. The 30-year law enforcement veteran, in uniform and helmet, was riding his department-issued motorcycle on a rural highway. There was very little traffic, the road was paved and flat, and the officer was traveling about 75 miles per hour. Just as Officer Smith began to change lanes, his motorcycle started to wobble and swerve all over the road. The officer tried in vain to bring the bike under control. Just before it crashed, he was violently thrown 20 to 30 feet onto the ground.

Passersby – good Samaritans all – quickly pulled over to stop traffic and attend to Officer Smith as he lay unconscious in the median. Within minutes, the road was shut down and shortly thereafter first responders arrived. He was transported by helicopter to a nearby hospital in critical condition. An



examination revealed that he had suffered a subdural hematoma (brain bleed), spinal injuries, and multiple other orthopedic damages. He began exhibiting cognitive memory problems and behavioral issues. He was in pain every day. He was hospitalized for several weeks and remained in in-patient rehabilitation for an additional month. As a result of the severe injuries, Officer Smith would no longer be able to work in law enforcement.

Following hospitalization and efforts at rehabilitation, Officer Smith contacted Searcy Denney attorney **Adam Hecht** and asked the attorney to [\(Continued on page fifteen.\)](#)

## **Chiquita Brands International again faces suit over terrorist murders in Colombia**



Thousands of Colombians have spent more than a decade in court fighting to hold Chiquita Brands International responsible for financially backing a terrorist organization that ravaged their country. Even after one of the leaders of the terrorist group publicly apologized to a grieving family for kidnapping and fatally shooting their father, and Colombian government authorities formally

agreed the terrorist leader was responsible for the murder, a United States federal court ruled that the evidence was not presented in a form sufficient to link that and other murders to the terrorists. The court's decision to enter judgment in favor of Chiquita was appealed and a crucial reversal was issued in September 2022. The 11th Circuit Court of Appeals reinstated civil damage claims against Chiquita which had already pled guilty to federal criminal charges that it had funneled \$1.7 million to the Autodefensas Unidas de Colombia (AUC) at a time when the U.S. Government had designated the AUC as a foreign terrorist organization. That designation outlawed all financial transactions between the AUC and U.S. companies, resulting in Chiquita paying a \$25 million criminal fine, the largest ever imposed under global terrorism sanctions regulations. [\(Continued on page two.\)](#)

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**Of  
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A REPORT TO  
CLIENTS & ATTORNEYS  
VOLUME 22, NUMBER 3

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**Chiquita Brands International again faces suits over terrorist murders in Colombia**  
*(Continued from page one.)*

The AUC was known to target political enemies, banana workers, and unionists who were seeking better pay, benefits, and working conditions. The AUC tormented the rural banana-growing region by grabbing people off buses, torturing, and decapitating victims. Some of the murders were public executions. In many cases, people simply disappeared. "Funding a terrorist organization can never be treated as a cost of doing business," said Jeffrey Taylor, U.S. Attorney for the District of Columbia, in announcing the plea deal. "American businesses must take note that payments to terrorists are of a whole different category. They are crimes." As is the case with many other crimes, the victims of Chiquita's criminal conduct were not compensated as part of the criminal prosecution. To address that injustice, more than 7,500 people who lost loved ones during AUC's gruesome campaign have filed civil lawsuits against Chiquita. The suits were consolidated and the complex litigation is being considered by U.S. District Judge Kenneth Marra in West Palm Beach, Florida. The Appeals Court ruling directly affects about a dozen "bellwether" cases selected from scores of cases to give both sides an idea of the chances of success.

"After favorable summary judgment rulings, Chiquita had every reason to be optimistic about escaping financial responsibility to the thousands who suffered from its sponsorship of terrorist violence. However, as a result of the recent appellate decision, Chiquita is again facing, by any reasonable measure, billions of dollars in damages," according to Searcy Denney attorney **Jack Scarola** and West Palm Beach co-counsel James Green. "The decision paves the way for thousands of victims of the bloody rule of the AUC to finally get their day in court." ♦



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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.

# Woman commits suicide just hours after being released from Baker Act hospital admittance

The woman was brought to an emergency room and Baker Acted after attempting to commit suicide by overdosing on sedatives.

Tragedy followed efforts to protect a patient under the Baker Act. The hospital staff failed to follow evaluation procedures. The Florida Baker Act allows doctors, mental health professionals, judges, and law enforcement to commit a person (voluntarily or involuntarily) to a mental health treatment center for up to 72 hours if they display certain violent or suicidal signs of mental illness. The purpose of the Act is to allow time for an evaluation and de-escalation of a crisis to protect vulnerable people from harm. It is imperative that facilities that receive Baker Act patients follow procedures to ensure these individuals are protected.

In February 2020, Kate Doe (not her real name), a vibrant 51-year-old woman, was brought to a Florida hospital emergency room and Baker Acted after an attempt to commit suicide by overdosing on sedatives. After Kate was admitted, nurses noted that she appeared to be at risk for physical injury, medication misuse, and suicide. Their nursing care plan was limited. There was no nursing narrative or behavioral assessment and a Suicide Risk Assessment Screening was not performed.

Kate reportedly was consulted by a psychiatrist. That consultation was completed and documented at the very time the nursing staff had reported that Kate had been asleep. The psychiatrist did not draft his consultation with his own review of Kate's history and physical intake. Instead, he copied and pasted the history and physical intake that had been written by the emergency room doctor just a few hours earlier. The psychiatrist's consultation included comments Kate made to the emergency room doctor earlier that she had "made a mistake." The psychiatrist's consultation document indicates that he had conducted his own examination, finding that Kate exhibited a "roller-coaster mood," disrupted sleep patterns, and poor insight and judgment. He also noted that she had been under psychiatric care and had not been taking her medications.

Despite the emergency room doctor's evaluation information and very clear warning signs of risks, the psychiatrist indicated that Kate could have the Baker Act restriction lifted because "she doesn't currently meet criteria, and there are other less restrictive treatment options." Among those options, the psychiatrist noted, was that Kate had



an outpatient psychiatrist as well as community support – information he never verified. The psychiatrist concluded his notes by stating that he would be signing off on the case.

At 1:00 p.m., before the psychiatrist signed his consultation document, he signed a form releasing Kate from the involuntary status of her Baker Act admission. On the form, he checked that Kate had met the criteria for release because she had not refused placement in the Baker Act facility, and because there were "less restrictive treatment alternatives" for her condition. The alternatives, according to the psychiatrist, were that Kate's doctor believed that Kate was "future-oriented and regretted taking the overdose." At 2:51 p.m., with no further evaluations, the hospital ordered Kate discharged to her home, the same place where she had just tried to take her life. Her only instruction was to follow up with her primary care physician within a week. About 3:00 p.m., a hospital employee made a note that Kate was "medically clear and Baker Act lifted." He added, "Patient declines any referrals for [mental health/substance abuse] services," and simply encouraged Kate to call 211 or the suicide hotline in case of crisis.

Although the psychiatrist had noted that his reason for the Baker Act release was because he felt outpatient treatment was the better alternative, he neither discussed Kate's discharge plans nor took any steps to assure she would transition into a safe mental health environment. To the contrary, Kate had declined any such referrals as she was still in an extremely fragile emotional state. Kate was discharged home about 5:30 p.m. with no nursing evaluation ever performed and no instruction provided for follow-up psychiatric care.

The hospital presents itself as "home to a full-service, inpatient behavioral health unit [that is] a Baker Act receiving facility and provide[s] adult psychiatric care to people who need it most. Our patients begin their mental health treatment in an intensive, medically monitored environment." During her brief hospital stay, the psychiatrist and the hospital initiated no mental health treatment for Kate, let alone delivered such treatment in an "intensive, medically monitored environment." *(Continued on page twelve.)*

## Champlain Towers collapse: the civil justice system does work!

*Per the National Center for State Courts, “The civil justice system in the United States is arguably the most complex and comprehensive in the world. It involves state and federal statutes, regulations, and common law that guide governmental, commercial, and personal decision-making in the areas of consumer safety, employment and other contractual relationships, the sale of goods and services - to name only a few.”*

Searcy Denney takes great pride in the leadership role it played on the Plaintiffs’ Steering Committee in the Champlain Towers Collapse Litigation. But enough credit cannot be given to Miami-Dade Circuit Court Judge Michael Hanzman whose extraordinary efforts were crucial in achieving the successful settlement of this very complex litigation in less than one year with a recovery of over \$1.2 billion.

On June 24, 2021, at approximately 1:30 a.m., the Champlain Towers South Condominium suffered a catastrophic failure and partial collapse resulting in a tragic loss of 98 lives and the eventual destruction of 136 condominium units. Despite the herculean toil of courageous first responders who risked their own lives in a valiant rescue effort, virtually everyone in the portion of the building that collapsed perished. Survivors in the remainder of the structure were severely traumatized.

Lawsuits followed including a class action brought on behalf of those who suffered loss of life and/or economic damage. Given the highly unusual circumstances, the Court made it clear at the outset that this would not be “business as usual.” Counsel seeking a leadership role in the litigation would be committing to public service. Their work would be performed on a pro bono basis with absolutely no assurance of payment or legal entitlement to any fees.

To their credit, many of the most skilled, experienced, and reputable members of the bar enthusiastically, and without hesitation, agreed to accept the Court’s terms. At the start, the prospect for a substantial recovery relative to the harm suffered appeared bleak. There were 98 wrongful death claims, multiple personal injury claims, the destruction of 136 condominium units, and a staggering loss of personal property. The Champlain Towers South Condo Association was woefully underinsured. Those involved in the initial development and construction of the building were long gone. Statutes of limitation and repose had expired. The apparent litigation targets that did still exist did not possess sufficient resources to satisfy the extensive claims. Insurance proceeds, along with proceeds from the sale of the remaining



real estate (the structure itself was eventually demolished), minus the considerable expense to operate a receivership and pursue claims would leave victims with the ability to recover only a fraction of the damages they had suffered.

With considerable skill and perseverance, counsel identified and pursued every conceivable viable claim against over thirty defendants (or potential defendants). Among the professional legal volunteers representing the victims were Searcy Denney attorneys **Jack Scarola**, **Chris Searcy**, **Mariano Garcia**, **David Vitale**, and senior paralegal, **Chris Rodgers**. Novel legal theories, substantive issues, and procedural complexities presented formidable obstacles. All involved attorneys had to cope with the intense pressure imposed by the Court’s strictly enforced deadlines. Few extensions of time were granted. Trial was scheduled within 18 months of filing. Counsel responded without complaint.

The result was extraordinary and unprecedented as parties reached settlement within ten months. Judge Hanzman stated that in over 35 years as a practicing lawyer/judge, he had never encountered a more complex and difficult case. Counsel’s skill, diligence, and tenacity uncovered substantial claims, and the quality of their work contributed to the remarkable result. The Court also acknowledged the emotional toll the case had taken on counsel as they worked closely with clients guiding them through difficult processes with empathy, compassion, kindness, and, often, with tears.

Almost immediately, the Association’s insurance carriers tendered policy limits of approximately \$50 million. The Receiver secured \$120 million from the sale of the remaining real estate. Counsel negotiated settlement with all named defendants (and some potential defendants) which came to \$1.02 billion. The total recovery reached over \$1.2 billion. Condominium owners received full appraised value for units which no longer existed. A \$15 million remedial works program

to address a long-term degradation of the building's structural support had been approved before the collapse but work had not begun. Unit owners' recovery would not be reduced by this assessment. Wrongful death/personal injury claimants would receive "full value" on claims without reduction for attorney's fees and costs. Most class members received an award within (and often more than) the "value" estimated by counsel. The result was unprecedented in any class action/mass tort case.

The Court had initially asked for, and received, numerous counsel who volunteered for this incredibly difficult and potentially long-term litigation – with the caveat that counsel would be committing to public service with no assurance of any compensation. Upon reaching preliminary settlement, the Court engaged in an evaluation for attorney fees. Examining governing legal principles on the issue and affidavits from counsel stating services rendered and time expended on this litigation, the Court ordered fees in the amount of \$65 million for counsel.

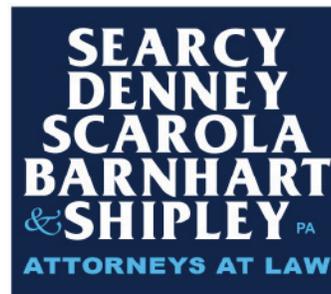
It was a privilege for Searcy Denney's attorneys, paralegals, and other staff to participate in this unique litigation. The manner and procedures in which the Court and counsel came together to reach conclusion effectively and promptly will serve as a model for any similar catastrophe that may occur in the future. ♦

**Enough credit cannot be given to Miami-Dade Circuit Court Judge Michael Hanzman whose extraordinary efforts were crucial in achieving the successful settlement of this very complex litigation in less than one year with a recovery of over \$1.2 billion.**



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- CONSTRUCTION DISPUTES
- INTELLECTUAL PROPERTIES
- MASS TORTS
- (DRUGS & MEDICAL DEVICES)
- MEDICAL MALPRACTICE
- PRODUCT DEFECT CASES
- PROPERTY LIABILITY
- PROFESSIONAL LIABILITY
- TRUCKING ACCIDENTS
- UNSAFE PRODUCTS
- WILL & TRUST DISPUTES



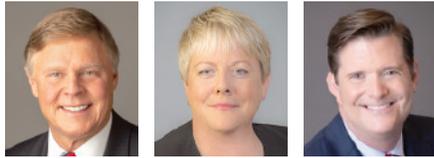
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# Accolades



Florida Trend announced its list of “2022 Florida Legal Elite” in July 2022. The list included **Chris Searcy** in its Legal Elite Hall of Fame. The Hall of Fame is a distinguished group of attorneys who have consistently been awarded high rankings from their peers in the annual Legal Elite voting. **Laurie Briggs** and **Jim Gustafson** were selected in the list of Florida Legal Elite of 2022. All in-state members of The Florida Bar are invited to participate in polling. Now in its 19th year, Florida Legal Elite presents the state’s top licensed and practicing attorneys selected by their peers, fewer than 2% of active Florida Bar members. ♦



**Greg Barnhart** is a board member of the 1000 Friends of Florida. He has been a member for over 25 years. This leading not-for-profit organization advocates for smart growth and better communities in one of the fastest growing states in the nation. ♦



**Karen Terry** was selected as one of *The Boca Raton Observer’s* “Top Lawyers of 2022” in Boca Raton, Florida. The *Observer* polled lawyers throughout Broward and Palm Beach Counties asking for nominations. The list is exclusively peer-nominated. ♦

In 2022, **Sia Baker-Barnes** received The Florida Bar President’s Award of Merit on behalf of its Covid-19 Pandemic Recovery Task Force. She was co-chair of the Committee, with Jay Kim. Both Ms. Baker-Barnes and Mr. Kim are also members of the Board of Governors. The Committee had developed recommendations for an automated platform for the complete management and resolution of small-value civil claims. ♦



**David Vitale** was appointed to the Personal Injury/Wrongful Death CLE Committee by the Palm Beach County Bar Association. He joins **Brian Sullivan** who has been on this Committee for three years. ♦



**Laurie Briggs** was appointed by The Florida Bar Association to serve on the Diversity and Inclusion Committee for the 2022-2023 term. ♦

Searcy Denney’s newest associate attorney, **Victoria Mesa-Estrada** received the Justice Labarga Leadership Award in recognition of her contributions to the Hispanic Bar Association of Palm Beach County and to our community as a whole. The award was presented by its namesake, Florida Supreme Court Justice Jorge Labarga who was guest of honor at the gala. ♦



## Karen Terry selected as ‘Lawyer of the Year’ by ABOTA

The Palm Beach Chapter of the American Board of Trial Advocates (ABOTA) recently announced the selection of **Karen Terry** as “Lawyer of the Year.” ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the U.S. Constitution. ♦

*(l-r) Mariano Garcia, Sia Baker-Barnes, Karen Terry, Matt Schwencke, Stephanie Barnhart and Greg Barnhart.*



AMERICAN  
ASSOCIATION FOR  
**JUSTICE**

The Association for Trial Lawyers



*(l-r) Katie Kiziah, Chris Searcy, Olga Patterson and Brenda Fulmer.*

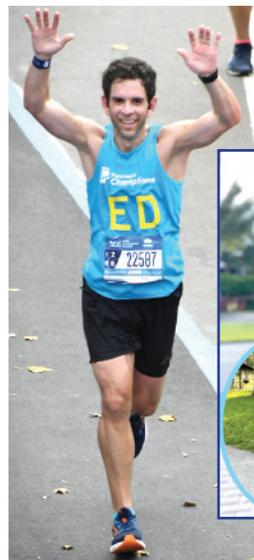
## Searcy Denney Recognized at AAJ 2022 Convention

The American Association for Justice (AAJ) held its annual convention in July 2022 at the Washington Convention Center in Seattle, Washington. Searcy Denney staff were active and well recognized at the event. Attorney **Brenda Fulmer** received their Lifetime Achievement Award and, for the second time, received their Wiedemann & Wysocki Award recognizing her efforts to enhance the practice of law. In recognition of her service on the AAJ's Board of Governors, AAJ President Tad Thomas presented her their Distinguished Service Award (again, a recognition that has been presented to her in past conventions). At the beginning of the convention, Ms. Fulmer was a speaker at AAJ's Mass Tort Seminar. Paralegal **Olga Patterson** was recognized as Paralegal of the Year at the American Justice Association's annual conference in July 2022.

Ms. Fulmer, attorney **Katie Kiziah**, and Ms. Patterson accepted AAJ's Evergreen Fund Recognition Award on behalf of Searcy Denney. Both Ms. Fulmer and Ms. Patterson volunteered with AAJ's Trial Lawyers Care group which includes the Minority Caucus, LGBT Caucus, New Lawyers Division, and Women Trial Lawyers Caucus, at the Friends of Youth in Seattle – a local charity serving youth and young families facing homelessness, foster care, and behavioral health challenges. Searcy Denney's employees have donated clothing and household items requested by that charity. Ms. Kiziah and Ms. Patterson attended the AAJ Public Justice Awards Gala which included a presentation to Hillary Clinton. ♦



Florida Children First announced attorney **Ted Babbitt** as an "Outstanding Champion for Children" in recognition of his 20 years of service as a founding board member. The non-profit organization helps Florida's public and private agencies and programs work in a coordinated and comprehensive manner to maximize resources and effectively implement public policies that will lead to healthy children and families. ♦



On November 6, 2022, Searcy Denney attorney **Ed Ricci** ran the 51st New York City Marathon. He finished with a very respectful time of 3:59:14. In completing the race, Mr. Ricci raised \$17,267 for the Parkinson's Foundation, in honor to his father, Ed, who has battled this disease for years. Both father and son continue to support efforts to eradicate this disease. ♦

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## LAWYERS OF THE YEAR 2023



**Karen Terry**



**Cameron Kennedy**

## BEST LAWYERS 2023



**Chris Searcy**



**Jack Scarola**



**Greg Barnhart**



**Ted Babbitt**



**Sia Baker-Barnes**



**Hardee Bass**



**Brian Denney**



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**Mariano Garcia**



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## ONES TO WATCH 2023



**Elise Sherr Allison**



**Juan Diaz**



**Jordan Dulcie**



**Adam Hecht**



**Guy Murphy**



**David Vitale**



**Boris Zhadanovskiy**

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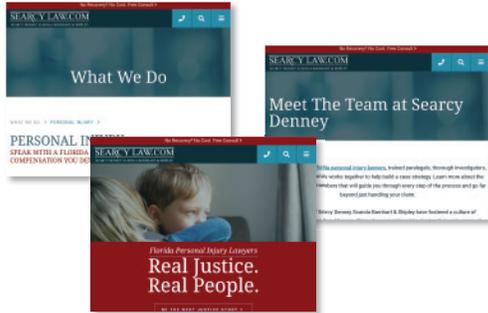


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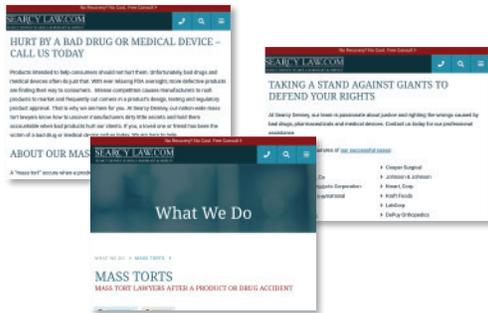
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## A distinguished legal career, a legacy of community leadership



**Earl L. Denney, Jr.**  
 (1943-2022)

**Earl L. Denney** was recognized as one of Florida’s leading experts in medical malpractice cases and was listed in “Super Lawyers” for many years. The attorneys at Searcy Denney Scarola Barnhart & Shipley remember their founding partner not only for his passionate representation of clients, but for his dedication to equality and fairness.

One of the defining moments of Earl’s legal career was during the Civil Rights Movement when, with fellow law students at the University of Mississippi, he founded the Lawyers Constitutional Defense Committee. Later, he took on the cause of an African American who was denied admission to Phi Alpha Delta, the legal fraternity. The student was granted membership and ultimately became the first African American on the Mississippi Supreme Court.

**Earl’s lifelong commitment to justice and his early fight for civil rights live on in the hearts of the people whose lives he touched.**

# MASS TORT PROJECTS OF INTEREST

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Tinnitus  
Hearing Loss

## **Allergan Breast Implants\***

Immune System Cancer

## **Belviq**

Pancreatic, Lung, and Colorectal Cancers

## **Sunscreen with Benzene**

Leukemia

## **CPAP/BiPAP**

Lung, Kidney, Liver, Respiratory Tract Cancers, Non-Hodgkin's Lymphoma, Respiratory Failure

## **Cow's Milk Baby Formula**

Necrotizing Enterocolitis (NEC)

## **Elmiron**

Pigmentary Maculopathy  
Central Vision Loss  
Blindness

## **Ethicon and Covidien Surgical Staplers**

Internal Suture Line Failure  
Sepsis  
Anastomotic Leakage  
Death

## **Exactech Connexion GXL Hip Implant**

Aseptic Loosening  
Revision Surgery

## **Exactech Optetrak Knee Implant**

Osteolysis  
Loosening

## **FinPlus**

Minoxidil Toxicity  
Rapid Heart Rate  
Low Blood Pressure

## **Hernia Mesh**

Bowel Obstruction  
Mesh Migration

## **Injectafer**

Severe Hypophosphatemia  
Osteomalacia  
Rhabdomyolysis

## **JUUL Vaping Pods**

Lung Disease  
Nicotine Addiction

## **Losartan and Valsartan\***

Bladder, Liver, Colorectal, Stomach and Esophageal Cancers

## **Metal-on-Metal Hip Implants**

Device Failure and Loosening  
Inflammatory Response  
Metallosis

## **Paragard IUD\***

Device Fracture

## **Paraquat**

Parkinson's Disease

## **PFAS Firefighting Foam\***

Water Contamination  
Kidney Cancer  
Bladder Cancer  
Leukemia

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

Renal/Kidney Failure

## **Roundup Weed Killer\***

Non-Hodgkin's Lymphoma

## **Stryker and Wright Medical/MicroPort Modular Hip Implants**

Premature Device Failure  
Metallosis  
Inflammatory Response  
Dissociation and Neck Fractures

## **Stryker STAR Ankle**

Premature Failure

## **Talcum Powder\***

Ovarian Cancer  
Mesothelioma

## **Tenofovir Disoproxil Fumarates (Atripla, Complera, Stribild, Truvada, and Viread)\***

Kidney Disease  
Osteoporosis  
Osteomalacia

## **Zantac**

Bladder, Colorectal/Intestinal, Esophageal, Gastric, Liver, Lung, Pancreatic, and Prostate Cancers

## **Zimmer Biomet Shoulder**

Device Fracture

## **Zostavax\***

Shingles  
Vision Loss/Retinal Damage  
Autoimmune Disorders

## **Xeljanz**

Cancer, Blood Clots, Strokes  
Heart Attack

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WEST PALM BEACH, FL 33409-6601



### Elmiron

**USE:** Interstitial Cystitis

**HARM:** Pigmentary Maculopathy, Central Vision Loss, and Blindness.



### Philips CPAP, BiPAP, and Ventilators

**USE:** Breathing assistance for the treatment of conditions including obstructive sleep apnea, COPD, pneumonia, and more.

**HARM:** Cancer of the Lung, and Kidney, Liver, Respiratory Tract, Non-Hodgkin's Lymphoma, Acute Respiratory Failure, Pulmonary Conditions Requiring Hospitalization.



### Surgical Staplers

**USE:** Internal Staples (Not External or Incisional) Used in Gastrointestinal and Other Surgeries

**HARM:** Surgical Failures, Sepsis, Anastomotic Leaks, and Life-Threatening Complications.



### Paraquat

**USE:** Non-selective herbicide widely used commercially for undesirable weeds or grasses

**HARM:** Early Onset Parkinson's Disease.



### Exactech Hips / Knees

**USE:** Joint Replacement

**HARM:** Polyethylene Poisoning, Tissue Bone and Muscle Death, Premature Revision Surgery.



### Hip Implants

**USE:** Joint Replacement

**HARM:** Breakdown of Metallic Surfaces, Trunnionosis, Abnormal Wear, Premature Device Failure, Elevated Cobalt and Chromium Levels, Metallosis, Loosening, Dissociation, and Pseudotumor Formation.

# SEARCY DENNEY

SEARCY DENNEY SCAROLA BARNHART & SHIPLEY, P.A.

WEST PALM BEACH & TALLAHASSEE, FLORIDA

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**Woman commits suicide just hours after being released from Baker Act hospital admittance**

*(Continued from page three.)*

The psychiatrist and the hospital obtained no records of Kate's prior medical and psychological care, sought no information from any collateral sources, and isolated Kate from any contact with her family while hospitalized. Without initiating any follow-up care and without any treatment plan, she was then released from the hospital into the same emotionally-charged environment that had served as the acute trigger for her suicide attempt the day before. Within hours of that release, Kate would be dead.

With no support system and no treatment in place for stabilizing her acute mental health condition, Kate tragically ended her life just hours after being sent out of the hospital where the physician who had initiated her Baker Act admission had pointed out the substantial likelihood that Kate would cause serious harm to herself without care or treatment. Kate's surviving family member reached out to attorney **Brian Denney** and asked for help. Mr. Denney instituted proceedings to hold the hospital and the physician accountable. The case was settled for a confidential amount. ♦

**988**  
**SUICIDE & CRISIS LIFELINE**  
**VETERANS CRISIS LINE**  
**Dial 988**  
**Then press 1 or text 838255**

**CRISIS TEXT LINE**  
**(text HELLO to 741741)**  
**211**  
**HELPLINE AND CRISIS HOTLINE**  
**(PB and Treasure Coast)**  
**800-273-8255 (talk)**  
**NATIONAL SUICIDE PREVENTION**  
**LIFELINE**

## Exactech Medical Device Update

A lot has happened since we last wrote about the Exactech litigation. Exactech, a medical device company based in Gainesville, Florida, produces a variety of surgical instruments and software but has specialized in orthopedic implant devices for joint replacement surgery – hip, knee, and ankle. Over the years, it has focused its sales efforts within Florida. As a result, Florida has become “ground zero” for litigation involving the requirement of the company to recall these devices due to oxidation, degradation, and delamination of the polyethylene components in the implants. Implant patients were experiencing a high rate of revision surgery necessary to avoid the danger and pain of joint failure. The company has faced litigation for many years on several different issues. The most recent recall involves its production of GXL hip liners.

Since the beginning of this year, many cases have been filed in the Eighth Judicial Circuit Court, Alachua County, Florida. Recently, Judge Donna Keim ordered all cases to be coordinated before her. She conducted several hearings and scheduled monthly case management conferences. There is currently a GXL hip liner case scheduled for trial in 2023. Despite Exactech's best efforts to get that case continued, Judge Keim refused to move the trial date. As the cases were coordinated, Judge Keim appointed leadership counsel similar to what is often used in federal multi-district litigation proceedings. Searcy Denney partner **Cal Warriner** was appointed co-lead counsel. A protective order has been entered, and Exactech is now producing documents which are currently being reviewed.

**The more our attorneys study Exactech's recalled devices, the more we are convinced the products are defective... leading to oxidation and degradation of the plastic in the body, known as "poly wear disease".**



In September 2022, we appeared before the Judicial Panel on Multi-District Litigation (JPML) in St. Louis, Missouri. Plaintiffs argued for coordination in the Eastern District of New York. Exactech agreed to coordination but wanted the cases coordinated in either Louisiana or South Carolina. This drew laughter from the panel since Exactech is based in Florida and took the position that a venue in Florida was inconvenient. Following the hearing, the JPML ordered coordination before Judge Nicholas Garaufis in the Eastern District of New York. Judge Garaufis scheduled the first case management hearing for November 16, 2022, and has indicated interest in quickly appointing leadership.

The more our attorneys study Exactech's recalled devices, the more we are convinced the products are defective. The design and manufacturing of the polyethylene (plastic) spacers in both the hip and knee implants is bad. Poor design and packaging lead to oxidation and degradation of the plastic in the body. Known as “poly wear disease,” plastic particulates cause bone and soft tissue to die. Patients frequently experience swelling and pain in the affected joint. The only option is to remove and replace the device.

Our referral partners have been sending us a steady stream of cases. We now have hundreds of Exactech clients. We are committed to doing our part to make the litigation successful. Please contact us if you have any questions regarding this litigation. ♦

# Hospital's failure to report CT scan information causes months of pain and suffering for patient

## Two radiologists failed to diagnose a clearly documented physical ailment.

Marty Thompson (not his real name) was a 25-year-old man with a history of Crohn's Disease since he was 11 years old. The disease had been fairly well controlled with appropriate medications. Flare-ups of the disease required additional medical intervention, but once resolved, Marty resumed normal activities.

In December 2014, 17-year-old Marty began losing a significant amount of weight and was enduring persistent diarrhea and abdominal pain. Because of his medical history, his doctors ordered a CT scan with contrast. The reading radiologist suggested colitis involving the descending, sigmoid colon and rectum. Although the scan had also revealed a large abscess in the abdominal wall muscle, the abscess was not reported by the radiologist. Thus, Marty received no medical intervention for this critical finding, and his health continued to deteriorate.

Early in 2015, Marty's gastroenterologist recommended that Marty be admitted to a hospital. His health had declined significantly, and he was now suffering from dehydration along with weight loss, pain, and diarrhea. Another CT scan was performed and read by a second

radiologist who compared that scan with the one from December 2014. The scans were similar, but the more recent scan appeared less significant to the degree of mucosal thickening and edema. Once again, no mention was made in this second radiologist's report of the large abscess in the abdominal wall and a fistula (or opening) to the colon. Marty was consulted by gastrointestinal and infectious disease doctors, provided intravenous rehydration, and treated for

acute Crohn's colitis. He was discharged after nine days without being informed of the CT scan's critical findings regarding the large abscess in his abdomen.

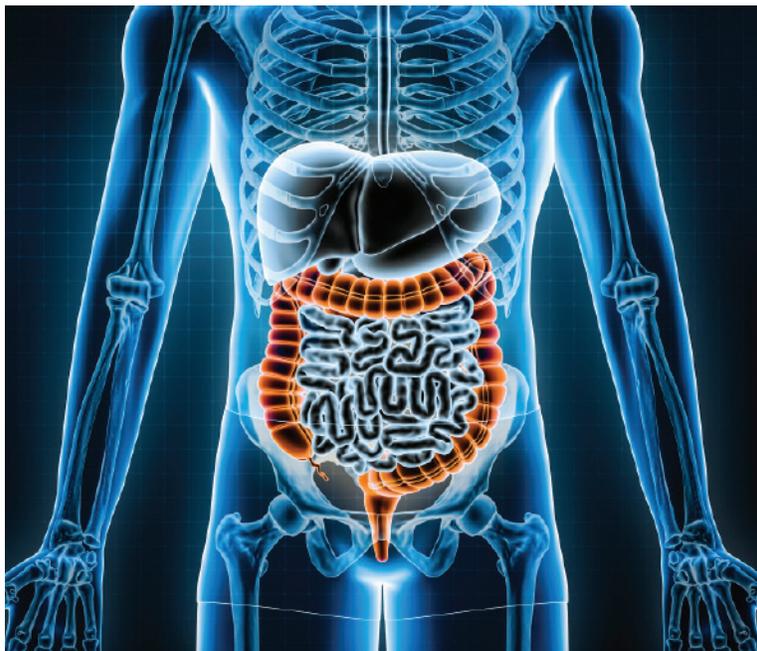
Three days later, Marty returned to the emergency room of the hospital complaining of the pain and diarrhea. He was again rehydrated and given pain medication. Prednisone was prescribed in addition to his prior Crohn's disease medications. No CT scans were ordered. Again, the third time, Marty returned home without knowledge of, or medical intervention for, the abdominal abscess and fistula.

Less than one week later, Marty had to return to the hospital complaining of pain so severe that he had almost lost consciousness. A third CT scan was ordered and read by a

third radiologist, with comparisons to the earlier (second) CT scan. The new radiologist identified and reported the abscess noted on both scans that suggested ulcerative colitis. Marty was now gravely ill due to the three-month delay in diagnosis and treatment for his condition. He now endured several months of painful, grueling treatments and invasive surgeries, including multiple bowel resections.

Seeking help in finding accountability for his months' long suffering and long-term health risks, Marty and his

family contacted Searcy Denney attorney **Brian Denney**. Mr. Denney conducted a detailed investigation and filed lawsuits against the hospital and the first two radiologists who had failed to diagnose Marty's clearly documented physical ailment. After vigorously litigating the case for several years, Mr. Denney was able to reach a settlement prior to trial for a confidential amount that will help Marty continue a lifetime of qualified health care. ♦



## Marty was now gravely ill due to the three-month delay in diagnosis and treatment for his condition.



**Remarkable New Brain Studies  
-Encourage Revisiting Advance  
Health Care Directives -**

As many of our clients have experienced the last few years, drafting health care advance directives has included a discussion on new brain research successfully restoring memory capacity or providing comfort care to an incapacitated patient.

The July issue of Frontiers in Human Neuroscience Journal just reported some "amazing" success with a prosthesis brain implant of a single electrode in the brain. In another Boston University study, individuals who received electric stimulation at different frequencies improved both short and longer term memory. People who received electrical stimulation recalled four to six more words, compared to the placebo group — a 50% to 65% boost in recall. The historic reluctance to authorize experimental treatment in advance care directives has waned over the years and delightfully reiterates the need for such discussion when drafting health care advance directive documents.



**MARNIE RITCHIE PONCY, ESQ.  
REGISTERED NURSE AND LAWYER**

CHAIR, HEALTH COUNCIL OF SOUTHEAST FL  
SUPERVISOR, PBC BIOETHICS LAW PROJECT  
TASK FORCE ON CRIMES AGAINST ELDERLY  
MULTIPLE HOSPICE ETHICS COMMITTEES  
HERO IN MEDICINE AWARD  
F. D. ROOSEVELT HUMANITARIAN AWARD

HEALTH CARE ADVOCACY  
BIOETHICS LAW  
DEATH WITH DIGNITY  
GUARDIANSHIP PROCEEDINGS

**KEMPE**

Law | Estates | Tax | Wealth

**JUPITER STUART VERO BEACH**

**A FAMILY PATIENT ADVOCATE**

**- NECESSARY IF THE PATIENT CAN'T DO IT! -**

When confronting a serious health concern, our office is often asked by a client or family members for guidance to assist with the challenging task of navigating through the often bewildering maze of health care services.

There are two common entry points for the healthcare advocate: the beginning of the journey or, more often than not, the mid-point when the client or patient is becoming overwhelmed by difficulties inherent in the process and no longer chooses to conduct the visits and scheduling alone.

The first task of any advocate is to secure a full HIPAA consent from the patient, (whom we are going to call "Alice" for this article), so as to be able to communicate with any service provider at anytime with or without Alice being present.

Because the mission of the patient advocate is to facilitate and improve communication, the second task (best if done by Alice) is to inform all treaters that she now has an advocate who is to be included in the plan of care, whether it is scheduling appointments, referral to another treater or facility, and any changes in medications.

When visiting a new treating practice, it is necessary to have all medical records, x-rays and scans for the office to copy (always maintain and continuously update a complete set of your own records and test results). An accurate and complete patient history is extremely important and should never be taken for granted. Quality healthcare is the result of a collaborative effort with the patient and patient advocate playing an essential role in the team effort. Carefully review patient history information. Document all correction requests in contemporaneous written or electronic communications.

Have a notebook and pen to take contemporaneous notes or (with permission) use your phone to record the conversation.

As an advocate, you need not necessarily speak as long as Alice is capable of communicating on her own, but do not hesitate to assure that all potentially relevant information is accurately conveyed. During Alice's healthcare visits, listen to the interaction between Alice and the service providers. Note each and every question asked by either party and the answer given.

If no plan is established, help to create one, for example:

\* You recommend Alice take the following medication which is new to her. You have told us that the medication should be taken \_\_\_ and that Alice can expect \_\_\_.

\* You are changing the dosage of the following medication to: \_\_\_\_\_. The medication times are the following:\_\_\_\_\_.

\* You would like Alice to undergo the following additional tests \_\_\_\_\_ and consult Dr. \_\_\_\_\_.

\* Would your office please make the appointment and let us know. (Physician offices have better chances of getting timely appointments).

\* You would like Alice to follow this regimen:\_\_\_\_\_.

\* You have asked Alice to alert you to any of the following changes \_\_\_\_\_.

\* Would you like Alice to keep a journal of food intake and elimination habits?

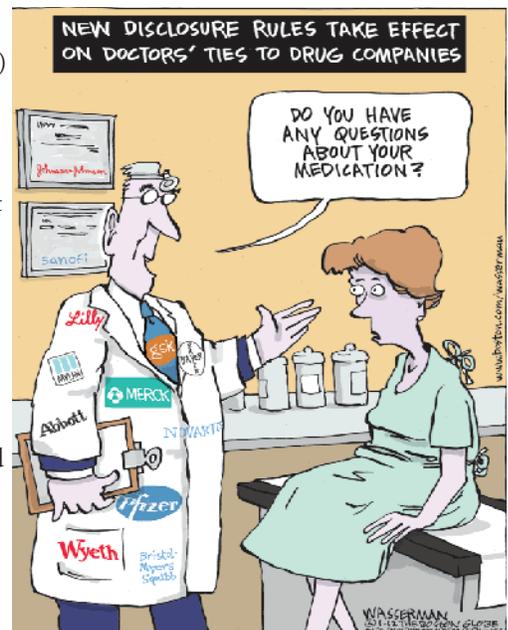
In summary:

You think Alice has \_\_\_\_\_ and she is going to \_\_\_\_\_ in the short term.

Her long term prognosis is \_\_\_\_\_. You would like to see her again on \_\_\_\_\_; or sooner if \_\_\_\_\_.

Remember, you are there to help facilitate and improve communications between both Alice and the treating physician. Helping Alice understand her situation can take some of the anxiety out of an otherwise potentially stressful time in her life. We find that physicians are often very open to this type of advocacy and encourage it in the best interest of their patient.

We are also available to assist in acting as an advocate if children or spouses are logistically unable to do so. Feel free to contact the office should you desire to discuss this.



## **\$4 Million settlement in motorcycle crash permanently disabling police officer**

*(Continued from page one.)*

investigate the cause of the crash since law enforcement had concluded that Officer Smith was at fault for this single vehicle crash. Mr. Hecht had the motorcycle inspected by experts, surveyed the accident scene, and spoke to witnesses. Most revealing to the investigation, Mr. Hecht reviewed the service records of the motorcycle dealership which had recently serviced the motorcycle. In a service conducted just 30 days prior to the crash, the dealership failed to disassemble, inspect, and adjust the main component of the steering head assembly, as was required to be performed according to its service manual. Using prior testings, Mr. Hecht was able to prove Officer Smith was not at fault for the crash and that failure to perform this required maintenance does, in fact, cause even the most experienced motorcycle rider to lose control of the motorcycle.

**The dealership failed to disassemble, inspect, and adjust the main component of the steering head assembly, as was required to be performed according to its service manual.**

Mr. Hecht filed a legal action on behalf of Officer Smith against the dealership for its failure to perform the required maintenance that would have provided safe and secure operation of the motorcycle. Prior to trial, the parties reached a settlement of \$4 million, insurance policy limits. The settlement will, of course, not reverse the damages and limitations suffered by Officer Smith. It will, however, allow Officer Smith to seek the best continuing medical care available and help him continue to care for his family. ♦



## **Settlement for policy limits in case against tire shop for negligent wheel installation**

In November 2017, Lucia Rodriguez (not her real name) purchased four new tires from a local tire shop in Palm Beach County, Florida. About one week after installation of the new tires, Ms. Rodriguez was driving westbound on a local highway. Without warning, her vehicle abruptly stopped causing her to be thrown forward, then snapped backward. Although immediately in pain, she was able to exit her car. The cause of the abrupt stop was apparent: the front left wheel had detached from the axle hub. An ambulance was called and she was transported to a nearby hospital where she was treated for headaches as well as pain in her neck and back. An orthopedic surgeon examined Ms. Rodriguez and determined that the incident had caused multiple herniations in her cervical and lumbar spine. He recommended treatment involving surgery, epidural injections, and physical therapy.

Seeking help to pursue a claim against the tire shop, Ms. Rodriguez contacted a local personal injury attorney who was quick to file a lawsuit on her behalf. However, as litigation progressed, the attorney became concerned about his ability to prove that the tire shop was negligent in installing the tires. He was also of the opinion that Ms. Rodriguez had made certain statements during deposition that condemned her case. Accordingly, the attorney withdrew his representation. The judge gave Ms. Rodriguez 30 days to find a new attorney, prompting her to contact several attorneys in the area. Each one turned her down.

Facing the impending deadline and a threat of owing fees and defense costs, Ms. Rodriguez reluctantly dismissed her lawsuit. Her continuing physical pain and her confident belief that the tire shop had been negligent, however, led her to contact Searcy Denney attorneys **Mariano Garcia** and **Juan Diaz**, along with paralegal Helem Marquez, for advice and representation. After evaluating Ms. Rodriguez's case, the Searcy Denney team agreed to represent her, promising that no matter what challenges lay ahead they would remain with her and take the case to trial if necessary.

Searcy Denney then filed a new lawsuit. Through investigation and discovery, the team gathered information to prove that the tire shop was in fact negligent in the installation of the new tires, evidenced by the incident itself and by post-incident photographs of the wheel rim which showed significant wear and tear around the lug holes caused by lug nuts that were improperly tightened. Approximately one year and three months after filing the second lawsuit, the Searcy Denney team secured a settlement of \$500,000 (policy limits) for Ms. Rodriguez. ♦



**Chris Searcy**



**Jack Scarola**



**Greg Barnhart**



**Sia Baker-Barnes**



**Brian Denney**



**Brenda Fulmer**



**Mariano Garcia**



**Jack Hill**



**Joe Johnson**



**Ed Ricci**



**Matthew Schwencke**



**Karen Terry**



**Cal Warriner**



**Elise Sherr Allison**



**Jordan Dulcie**



**Andrea Lewis**



**David Vitale**

## We've been honored to be included in Top Lawyers in Palm Beach County

The September issue of *Palm Beach Illustrated* magazine recognizes the Top Lawyers in Palm Beach County for 2022. The list included **Chris Searcy, Jack Scarola, Greg Barnhart, Sia Baker-Barnes, Brian Denney, Brenda Fulmer, Mariano Garcia, Jack Hill, Joe Johnson, Ed Ricci, Matthew Schwencke, Karen Terry, Cal Warriner, Elise Sherr Alison, Jordan Dulcie, Andrea Lewis,** and **David Vitale.** ♦



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

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& SHIPLEY PA**  
**ABOGADOS**

*Pasion Para La Justicia*™



*(l-r) Sidey Munoz, Mariano Garcia and Juan Diaz, reading to students at elementary schools.*

## Speaking



**Chris Searcy**



**Brian Denney**



**Karen Terry**



**Laurie Briggs**



**Yasmeen Lewis**



**Victoria Mesa-Estrada**

**Chris Searcy** spoke at the Christian D. Searcy Voir Dire Institute held in October 2022 in Orlando. His topic was “Voir Dire – The Centerpiece of a Fair Trial.” ◆

In August 2022, Searcy Denney was well represented at the “Masters in Trial” Seminar presented by the American Board of Trial Advocates (ABOTA) in August 2022. **Brian Denney** gave the opening statement in his role on behalf of the plaintiff. **Karen Terry** played the role of the defendant in the seminar presentation.

Palm Beach Atlantic College asked **Brian Denney** to help critique student presentations for their public speaking final exam. Mr. Denney provided students a review of the verbal skills required of an effective public speaker. ◆

In July 2022, **Mariano Garcia** spoke at the Community Leaders’ Meeting of the Hispanic Vote Palm Beach County. Hispanic Vote was created to encourage more qualified Hispanic lawyers to become judges, state attorneys, law enforcement, and other community leaders. ◆

Attorneys **Mariano Garcia, Juan Diaz**, and paralegal **Sidey Munoz** served as guest readers to children at Hagen Road Elementary and Egret Lake Elementary Schools during Hispanic Heritage Month. ◆

**Laurie Briggs** was program chair for “Nuts & Bolts – Beyond the Basics,” a webinar series hosted by the Florida Justice Association. In FJA’s “Boot Camp Series,” this webinar series addressed topics that helped improve work involving personal injury law. ◆

In August 2022, **Yasmeen Lewis** moderated a forum for the Palm Beach County and Circuit Court candidates (Group 9 and Group 23). The program was hosted by “When We All Vote and the F. Malcolm Cunningham Sr. Bar Association. Ms. Lewis is secretary of the Bar Association. ◆

**Victoria Mesa-Estrada** was a panelist at the Florida Association for Women Lawyers September 2022 conference held in West Palm Beach, Florida at the Fourth District Court of Appeals. ◆

*“You only have what you give. It’s by spending yourself that you become rich.”*

-- Isabel Allende



**Searcy Denney  
proudly continues  
our commitment  
for taking...  
*Time to Care***

The staff at SDSBS has never wavered in our commitment to participate in events to support our partners in caring for our community. We “in-person” and “virtually” ran and walked in 5K events and helped with fundraising and other support activities. This list includes walks/runs, events and casual days. Some of the organizations we recently supported are:

- UNICEF NY – Ukranian Children**
- American Association for Justice  
Trial Lawyers Care**
- Latin Quarter**
- Palm Beach County Bar Association  
Young Lawyers Section 5K**
- Children’s Healing Institute**
- PBC Justice Association  
School Supply Drive**
- Guardian Ad Litem Foundation –  
Second Circuit**
- The Education Foundation  
of Palm Beach County**
- Colombian Bar Association**
- Best Buddies**
- St. Joseph’s Table**
- Peggy Adams Animal  
Rescue League**
- Gold Coast Down Syndrome  
Organization**
- Forgotten Soldiers**
- United Way PBC**
- Gathering PBC**





(l-r) CARTER SCOTT, ANDREA LEWIS AND ADAM HECHT.

## **We are proud to announce that three of our dedicated attorneys have joined our shareholder team!**

**Adam Hecht**, a former Chief County Court Prosecutor for the Palm Beach County State Attorney's office, represents victims in medical malpractice and product liability cases. U.S. News – *The Best Lawyers in America*® lists him in its "Ones to Watch 2023."

**Andrea Lewis** has conducted more than 80 high profile trials and is cited by US News & World Report as one of "The Best Lawyers in America" in the field of personal injury.

**Carter Scott**, who focuses on wrongful death and serious injury cases, has been named a Rising Star by Florida Super Lawyers and as a "Legal Elite Up & Comer" by Florida Trend Magazine. He was chosen a "Best Lawyer 2023" by U.S. News – *The Best Lawyers in America*.®

*Happy Holidays...*

**FROM ALL OF US AT SEARCY DENNEY!**