

# THE NATIONAL LAW JOURNAL

## WINNING HALL OF FAME

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### WINNING

Attorneys with significant bench or jury trial verdicts and who have a record of success over many years. Each exemplifies the qualities that make a great lawyer.



**STEVEN E. PEGALIS**

*ATTORNEY: Steven E. Pegalis*

*OFFICE: Pegalis & Erickson, Lake Success, N.Y.*

*CASE: Reden v. Wagner, No. 16543/99 (Suffolk Co., N.Y., Sup. Ct.)*

## THE KEY QUESTION: WHY ARE WE HERE?

Steven Pegalis had a brief conversation with a 6-year-old last year that helped change her life. The topic: their favorite *Sesame Street* characters. Hers was the Count; his was Ernie.

The short discussion was lighthearted enough, as such talks usually go with 6-year-olds. But it was also part of something with the most serious of consequences for the child's future. It helped lead to a jury award of \$111.7 million for her family, among the largest in New York's history.

Pegalis, a partner at Pegalis & Erickson in Lake Success, N.Y., represented the family of Danielle Reden, who was born with brain damage after doctors failed to diagnose fetal distress five weeks before her mother's due date.

During the 2 1/2-week trial in Suffolk County, N.Y., Danielle appeared before the jury, not to testify, but to demonstrate the extent of her injuries. She could speak using just a few words at a time, and she suffered from seizures, partial blindness and severely impaired mobility.

And although Danielle's appearance as the last witness in his case was powerful evidence for his argument, Pegalis said the jury's decision came down to one issue: pure common sense.

The Redens ultimately received \$6 million as part of a settlement reached with the defense before the jury entered deliberations. But obtaining the verdict from a jury in Suffolk County-

known for its usually stingy jurors—was clear indication that Pegalis, 63, had won very big indeed.

#### Why are we here?

The key to victory in any case is to determine why we are here, Pegalis said. Trials for him are not about seeking revenge against the defendant or venting anger on the client's behalf, he explained. Rather, he uses himself as a lightning rod before he even considers taking a case to trial to determine what is at the heart of the case, why we are bothering the jurors, he said.

In the *Reden* trial, for example, the crux of the case was what doctors did after running tests on Elizabeth Reden, who went to see her doctor, a member of a prenatal care group, five weeks before her delivery date. She told her doctor that she was unable to feel her baby move.

The tests, which looked at fluid levels, the baby's movement and the way the child was positioned, indicated that she was fine. But one portion of the tests, which measured movements as they related to adrenaline levels, was suspect.

Rather than dig deeper, Pegalis argued, the doctor sent Reden home, telling her that the baby was sleeping, which had affected the last part of the test.

Five days later, when Reden felt no movement from the baby, she went to a Long Island hospital, where the child was delivered by Caesarean section. Danielle was diagnosed with spastic quadriplegia.

For Pegalis, the case was about answering one question: Isn't the standard of care to resolve issues in protecting the patient?

Evidently, the jury felt it was. Composed of five women and one man, it took less than four hours to reach its decision in New York State Supreme Court, the trial court in New York. Justice Paul Baisley Jr. presided over the case.

Pegalis said he had no qualms about settling for an amount that was a small fraction of the jury's decision, since the extent of each doctor's malpractice insurance was \$2 million.

The agreement he had with defense attorney Clifford Bartlett Jr., who represented all three doctor defendants, was for \$2 million if the jury found in favor of all three defendants.

If it found negligence on the part of one of the defendants other than the treating physician, the Redens would have received \$4 million. And if all three doctors were found liable, the Redens received \$6 million.

As it turned out, the jury found that Reden's physician, Karen Moriarty, was 50% negligent for failing to follow up on the tests given, and that Theodore Goldman and John Wagner, two physicians practicing with her, had negligently supervised Moriarty and were each 25% liable.

#### Understated opponent

Bartlett, who practices with Mineola, N.Y.'s Bartlett, McDonough, Bastone & Monaghan, disputes that the jury rendered a verdict, since the settlement agreement was in place, with the judge's approval, prior to deliberations. He prefers to call it a decision.

He has come up against Pegalis countless times in their 30-year history of practicing in the Long Island area and describes his opponent as understated.

He's not dramatic. He's not theatrical, Bartlett said.

What he is, however, is well prepared, he said, adding that Pegalis takes on high exposure cases where the injury is very substantial. In the *Reden* trial, the sympathy factor was extremely high, he said, which led to the jury's decision.

Pegalis' success in the *Reden* case followed other huge wins in his career. In 1998, his client garnered a \$116 million medical verdict from a jury in Queens, N.Y. The case, *Patel v. NYCHHC*, No. 2476/91 (Queens Co., N.Y., Sup. Ct.), involved a child who suffered permanent brain damage due to complications during a breech birth. In 2001, his client won a \$35 million verdict in *Lopez v. NYCHHC*, No. 12228/91 (Queens Co., N.Y., Sup. Ct.), a case involving injuries a boy sustained at birth.

Pegalis graduated from New York Law School in 1965, where he now is an adjunct professor, and worked for a personal injury firm in Queens before starting his own firm on Long Island in 1972.

Pegalis and Bartlett agree on the point that jurors tend to inflate personal injury verdicts because the jury does not reduce the award to present value. The adjustment, left for the trial judge in New York, requires a determination of what the plaintiff should receive to cover the costs of medical care in the future. That figure is then reduced to a present value, keeping in mind that the plaintiff will invest the award, which will grow in value over time.

Despite the inflation by fact finders, the *Reden* jury was level-headed, Pegalis said. They seemed like a sensible group, he said.

One Long Island trial judge who has seen Pegalis in action over the years is New York State Supreme Court Justice Dana Winslow.

He said that when Pegalis takes a case, the attorney is absolutely convinced of the merits and has the ability to convey that conviction to a jury. He is also able to distill medical jargon and concepts in a way that jurors can appreciate, the judge said.

Even when he's faced with a doctor or a defense expert who says damaging things on direct examination, they can start recanting on very important points because of Mr. Pegalis' facility with the facts and the medicine, he said.

—Leigh Jones, Staff Reporter



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