

New York Law Journal

Monday, March 18, 2002

Small Firm Wins Two Big Verdicts

BY JOHN WOODS

THE LAW FIRM that achieved the highest medical malpractice jury award recorded last year by *The New York Jury Verdict Reporter* is no stranger to big verdicts.

Lake Success-based Pegalis & Erickson, whose \$114.8 million verdict against Brooklyn's St. Mary's Hospital is believed to be the second largest medical malpractice verdict in New York State history, also tried the case that is believed to top New York's all-time medical malpractice verdict list, a \$116 million judgment in 1998 against the New York City Health and Hospitals Corporation. The firm also recorded the seventh highest medical malpractice verdict last year of verdicts compiled by the *Jury Verdict Reporter* with a \$35 million judgment against the NYCHHC.

"Between [Stephen E. Erickson] and myself in the past year we had 25 verdicts or settlements of \$1 million or more," said co-founding partner Steven E. Pegalis.

The roots of Pegalis & Erickson, which now has nine attorneys, can be traced back to Queens, where Mr. Pegalis began his legal career, while still in law school in 1964, at O'Leary & O'Leary. Mr. Pegalis, 59, graduated from New York Law School in 1966.

"In those days the employer's major insurance carriers didn't object if you did work on both the plaintiff and defense side, but I was the 'plaintiff's man,'" recalled Mr. Pegalis. "The first malpractice case I tried was in 1967 involving a brain damaged child, and we won. I don't remember the exact amount, but in those days they used to say hot shot plaintiff attorneys were ones who got six figure verdicts, and I became a 'six figure lawyer.' That's not the case today, but it was very impressive in those days."

In 1972 Mr. Pegalis opened his own

solo practice where he built a reputation for winning medical malpractice verdicts involving brain injury. During one case, Mr. Pegalis recognized the talent of one of his opposing attorneys.

"Steve Erickson had been on the defense side during a malpractice case, and we were very impressed with him," recalled Mr. Pegalis. "Some people can't make the transition from the defense side to the plaintiff side, but he certainly did, and it seemed to me that every time he went to court he came back with good results."

After putting in time as an associate at smaller firms, Mr. Erickson, 48, a 1978 graduate of New York Law School, joined Manhattan-based medical malpractice defense firm Jones Hirsch Connors & Bull in 1984 and became a partner there in 1986. In 1995, Mr. Erickson left his defense work behind and joined Mr. Pegalis.

"The biggest change from defense to plaintiff is that ... you had the knowledge that the family was really depending on you," said Mr. Erickson. "On the defense side, the financial responsibility is primarily borne by the insurance company. Being successful for the plaintiff has a much more personal and profound impact on their lives."

Motion Pending

Pegalis & Erickson's biggest success last year, *Evans v. St. Mary's Hospital of Brooklyn*, involved a claim of a botched intubation that was performed in 1988 on Michelle McCord, who was suffering from a swollen larynx. While a successful



Stephen E. Erickson, left, and Steven E. Pegalis, partners at Pegalis & Erickson in Lake Success.

RICK KOPSTEIN

tracheotomy was performed after the intubation tube was allegedly removed too early, the patient, who was pregnant, went several minutes without sufficient oxygen and suffered brain damage.

Ms. McCord has been institutionalized since the malpractice occurred and will likely need to be for the rest of her life. An emergency cesarean was performed to protect Ms. McCord's baby who is now cared for by a guardian and paternal grandmother.

"It was a serious case of malpractice that left a 28-year-old mother of three with permanent brain damage," said Mr. Erickson, who tried the case. "This is a mother that has been institutionalized for the past 11 years and will be for the rest of her life. That's very devastating to the remaining family members as well as the injured party herself."

Claiming that the jury did not give sufficient consideration to the issue of liability, defense attorney Henry Z. Shaub of Lake Success's Shaub, Ahmuty, Citrin & Spratt, has filed a motion to set aside the verdict, or in the alternative to reduce the award.

"We had approximately 13 or 14 liability questions with regard to causation and apportionment of responsibility," said Mr. Shaub. "After the jury received the case they requested the economist's numbers [to assess damages] within 15 minutes, and within a half hour they returned the verdict. This suggests that they did not give full consideration to the somewhat complicated medical issues."

Mr. Shaub also said that the jury awarded numbers that exceeded what the plaintiffs were asking. For example, the jury ignored a stipulation for \$1.4 million in past medical expenses and granted \$2 million, according to Mr. Shaub. Other evidence that the verdict was excessive cited by Mr. Shaub was that the jury awarded a total of \$100 million for past and future pain and suffering, which he says was about 10 times what the plaintiffs recommended.

"The plaintiff's counsel had recommended 2 million in settlement to his client," said Mr. Shaub, explaining his view of what the plaintiff's attorneys thought about the value of the case. "I had actually put that on the record at the start of the case ... it was obviously

not accepted."

Mr. Erickson dismissed the claim that the award was excessive, saying that the jury members based their decision only on the evidence presented to them.

"With respect to the issues of liability following the testimony of defendants' experts, as well as the defendant [physician], the issues of liability clearly favored the plaintiff's position in the case," Mr. Erickson said. "With respect to economic damages the jury's award was fairly consistent with the testimony of the plaintiff's economist, and the jury's determination with respect to both liability and damages was consistent with the evidence at trial."

Settlement Reduces Award

Pegalis & Erickson's other large verdict, *Lopez v. NYCHHC*, involved an infant who sustained brain damage after Queens Hospital Center allegedly delayed treatment for his mother's toxemia, a condition that impairs the flow of oxygen to the fetus.

"My approach was that the doctor had to formulate a plan to work to the advantage of the plaintiff," said Mr. Pegalis, the lead trial attorney on the case. "Instead they allowed her to drift, and it was a bad result."

The \$35 million jury verdict was reduced to \$6.2 million under the terms of a settlement reached in the past few

weeks to avoid an appeal, according to the defendant's attorney, Luke M. Pittoni, of Manhattan's Heidell, Pittoni, Murphy & Bach.

Mr. Pittoni, who said the facts of the case limited him to arguing only that the life expectancy of the plaintiff was less than what the plaintiff's attorneys claimed, called the \$35 million judgment "clearly excessive." He claimed that the jury's feelings regarding the liability of Queens Hospital Center were so strong that they did not properly consider damages.

"The problem is the plaintiff's attorneys have experts that throw out these big numbers, and the juries are intimidated that they have to give damages close to those numbers," Mr. Pittoni said. "They think that if they gave them anything less they wouldn't have enough money for the life expectancy [the plaintiff's attorneys] projected. Defense attorneys have to come up with better ways of having jurors understand that these are not reasonable numbers."

Mr. Pegalis said he agreed to the settlement only because he felt it was in the best interest of his client.

"My feeling was that I was anxious to do something for these clients sooner rather than later," said Mr. Pegalis. "While I think we had a good chance to do better on appeal, [my clients] needed some relief. I already have them out looking for a house."

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