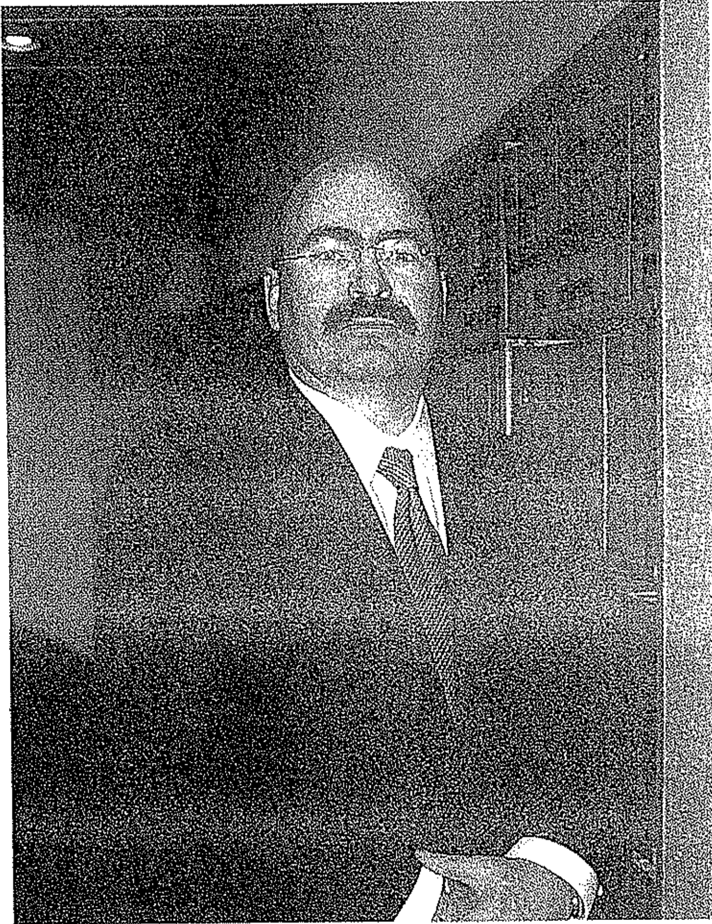

BRIAN J. McKEEN
Detroit

This Detroit med-mal attorney continued making big waves in 2006, garnering even larger verdicts and settlements for his clients.

NAME: Brian J. McKeen

BORN: 1956

EDUCATION: Thomas M. Cooley Law School (1982); Central Michigan University (1978)

ADMITTED TO BAR: Michigan (1982); U.S. Supreme Court (1985); 6th U.S. Circuit Court of Appeals (1982); U.S. District Court, Eastern District of Michigan (1982)

EXPERIENCE: McKeen & Associates (1998-present); Bleakley & McKeen (1983-98); clerk, the Hon. Dorothy Comstock Riley (1982-83)

LEGAL AFFILIATIONS: Negligence Law Section, State Bar of Michigan; American Bar Association; Professional Negligence Section, Association of Trial Lawyers of America; executive board, Michigan Trial Lawyers Association; Federal Bar Association; Oakland County Bar Association; Detroit Bar Association

Brian J. McKeen has become one of the "go-to" medical-malpractice attorneys in Michigan. When a large verdict is on the line, you want him representing you.

Perhaps it's because, over the past year, he has successfully settled and tried several multimillion-dollar medical negligence cases.

In 2006, the Detroit attorney litigated on behalf of a myriad of clients, with a case involving injuries to a plaintiff during a routine LASIK eye surgery procedure to cases dealing with severe birth trauma.

Most notably, though, McKeen represented the Lowe family in Lowe v. Henry Ford Health Systems, et al., *a case involving a newborn who was afflicted with cerebral palsy as a result of the hospital's error during the child's delivery. A Wayne County jury returned a verdict for the Lowes in the amount of $15.4 million.*

However, these huge verdicts and settlements aren't cause for McKeen to slow down.

"I've been doing this a long time, and every time you win one it's very gratifying," he told Lawyers Weekly. But "there's always the next case you've got to take on tomorrow. You can't rest on your laurels."

Though he has demonstrated his ability to bring his clients immense results, this plaintiff's attorney has many other interests as well.

Currently, he is a coach for the American Association for Justice's medical negligence exchange group, which he says sponsors "educational programs, round table discussions, and [facilitates] the sharing of information" among professional negligence attorneys.

Additionally, McKeen frequently lectures about developments in medical malpractice law. In fact, the Boston University School of Medicine has him slated to speak at the school's 7th Annual Conference on Medical Negligence and Risk Management, which will be held in Mexico in 2007.

Whether he's negotiating a settlement, arguing a case to a jury, or touring the country lecturing about medical negligence, McKeen enjoys the path his nearly 25-year career has taken.

"I am perfectly happy with what I'm doing," he explained. "I love this area of the law and the intellectual challenge of putting these cases together. I love being able to help my clients figure out what went wrong in their medical treatments and being able to show the jury how a better outcome could have — and should have — been obtained."

Q. What brought you to the medical malpractice field?

A. I clerked for a judge while in law school in Oakland County, the late Judge Robert C. Anderson. I got to watch jury trials, and I felt that the medical-malpractice cases were quite interesting.

Q. You've won several multimillion-dollar verdicts this year. One of your most recent cases was Lowe, *in which you got a jury verdict in excess of $15 million for your clients. You were brought into that case by attorney Lynn Foley of Cochran, Foley & Associates. What is it that attracted you to the case?*

A. As soon as I looked at that case, I thought, "What were the doctors waiting for?"

The birth trauma case was a significant win. It came in a case where, unlike most cases of birth trauma, the cesarean section was indicated not because of fetal distress, but rather because of the potential for fetal distress to develop.

The overall backdrop of the case was that it was very foreseeable that the baby could become distressed and, therefore, a cesarean section should have been done to avoid distress.

Q. How does it feel to be an attorney who is becoming known for winning so many large verdicts? Is that reputation a bit daunting at times?

A. It's very rewarding and gratifying that people would entrust

Continued on page 30

McKEEN Continued from page 22

me with a case involving catastrophic brain damage and that, of the attorneys who are out there and available and interested in handling such cases, they would select me. Almost all of the cases we do are on referrals from other attorneys. It's nice to think that you're well regarded by your colleagues who would select you to be the one to try the case.

Q. Your firm is relatively small. How do your cases find their way to your office? What makes you decide to join a particular case?

A. We don't do any advertising. The cases find us by word of mouth. People know our track record and the results that we deliver. That's why they come to me. We're a referral center, so most of our cases are on referral from other attorneys. While we do some general negligence work, the vast majority of what we do is medical-malpractice. As such, we've got a good network of prospective expert witnesses.

I think we have a unique ability to really give a thorough analysis of all cases. We try our best to not just cherry-pick the easiest cases. We scratch below the surface to find those cases that really do have merit. And our results have been such that we have demonstrated a proven ability [to] deliver top dollar in settlement and verdicts.

I've also had several cases where another law firm turned the case down and we wound up with a multimillion-dollar settlement or verdict.

But the fact that someone else turned it down is irrelevant to me. The real question is whether there was a violation of a standard of care that caused a person's injury or not. That's what my responsibility is to try to find out. You need to look beneath the surface in some of these cases to ascertain whether there is a true basis for liability.

Q. Is there any caselaw in particular that you believe presents an obstacle for medical malpractice attorneys?

A. Right now, there are efforts being made to block the path to the courthouse, particularly the path of victims of medical-malpractice. All kinds of arbitrary and capricious obstacles are being thrown in our path. The path to the courthouse door is filled with potential pitfalls, like the *Apsey v. Memorial Hospital* case.

Q. Why do you say that?

A. *Apsey* is the height of absurdity. It stemmed from an effort to curb so-called frivolous litigation. There was a requirement a number a years ago that you needed to have an affidavit of merit. Frankly, the idea that the affidavit needs to be notarized as opposed to just a signed report is inherently ludicrous in my opinion. What have we come to when you can't trust the word of a medical professional signing a document stating that one of their brethren has violated the standard of their profession? Why shouldn't that be sufficient?

But, if you want to impose a requirement of having an expert report, why does the fact that someone gets it signed by a notary make it more reliable? There is something inherently absurd about requiring physicians to drop what they are doing to go out and get notary to sign something. It's even more absurd to require that you then get a certificate, as envisioned by *Apsey*, to certify the fact that a notary public really is a notary public and that really is the notary's signature. Talk about frivolous.

There are hundreds of thousands of dollars being wasted each year when we require physicians to drive around and find a notary public, and then to have these documents certified by the clerk of court in the county in which they're issued. It's archaic. It just doesn't make any sense whatsoever.

Q. What do you think the impetus is behind the cases like Apsey*?*

A. It's obvious why it's out there. It's an organized effort for insurance companies to shield themselves from liability.

Q. How do you deal with these obstacles in your own practice?

A. You've got to cross your T's and dot your I's. But, we are getting to a point where common sense is going out the window. Concepts of fairness, fair play, and due process are secondary considerations. I absolutely believe that and so does any other attorney who does medical-malpractice litigation — not just plaintiffs' attorneys, but defense lawyers as well.

Q. How would you like to see this "block to the courthouse" dealt with — by the Legislature or by the courts?

A. Either or both. Perhaps some of these more draconian measures will be corrected through the Legislature. But there can't be a separate class of litigants. Those who litigate malpractice cases don't have the same rights as others.

Q. Medical malpractice seems like a very emotional area of the law to be involved in. Does it ever get easier?

A. It is not easy. You have to give of yourself, put some of yourself into each of these cases and leave a little bit of yourself in every courtroom. And, emotionally, you need to be there with your client and be able to convey the emotion to the jury to help them understand the full impact of what happened to your client.

Q. Do you find this area of practice requires you to be more involved in your clients' lives than in other areas?

A. Yes, and you need to be. We try to spend a lot of time with each client before trial so that we truly have an understanding of the deficits they experience. You need to understand it yourself before you can really convey it to the jury and make them realize the full impact that an injury has had on your client's life.

You can't ask for a jury's sympathy, but you do have to remind the jurors that if they are to properly evaluate damages, they have to let down their defenses. We all naturally want to shield ourselves from feeling other people's pain. But if a jury is going to do its job in evaluating those damages, the jurors have to let those barriers down enough so that they can allow themselves to have some understanding and feeling for the client's pain.

Q. So how do you get the jury to render verdicts without playing upon the jury's sympathy?

A. We ask them to render a verdict based on a common-sense evaluation of the evidence. If the evidence has shown that the injury was occasioned because of the defendant's negligence, they've got to allow themselves to really fully experience and understand the nature and extent of the client's damages, as well as the impact it's going to have on their lives and the lives of their family.

Q. Because your field is so entwined with the medical profession, how do you stay up on all the developments in both medicine and the law?

A. We spend a tremendous amount of time researching and reviewing the medical literature. Some witnesses — and even a defendant — have called me "Dr. McKeen" on the stand, which is always pretty funny.

But, yes, you had better be well versed in the medicine. If a doctor tries to say something that really isn't borne out by the medicine when you are taking his deposition or are cross-examining him at trial, you've got to be able to call him on the carpet for it and be ready to impeach him with medical literature that says otherwise. You had better know a lot of medicine if you want to be a successful medical malpractice lawyer.

— MOLLY F. DILBECK, J.D.