

JUNE 2017

LEADING LAWYERS

MAGAZINE
MICHIGAN EDITION

THE TRIAL LAWYER BRIAN McKEEN

Securing Record Results for Victims
of Medical Malpractice, Wrongful Death,
Product Liability and Serious Injuries

ALSO FEATURING:

BARRY CONYBEARE
JOHN SCHAEFER
JULIUS GIARMARCO
ED DAWDA
JOE DeVITO
DEBRA FREID
GEORGE SINAS
TOM BRANIGAN

**AS WELL AS 25 OTHERS
AND TOP 10 LISTS!**

Leading LawyersSM
Find a better lawyer, fasterSM

LEADINGLAWYERS.COM





Brian McKeen

The Lawyer No One Wants to Face in Court

by Mike Bailey

DETROIT — Brian J. McKeen enjoys an intellectual challenge. “It’s why I love medical malpractice and personal injury law,” he says. “It’s not the same thing over and over.”

While that is largely true, what is repetitive is McKeen’s success. He has more than a dozen verdicts or settlements in excess of \$5 million and several in excess of \$10 million, including a \$55 million verdict in *Wade v. Henry Ford Hospital*, Michigan’s largest medical malpractice verdict. Because of that reliable success, **McKeen & Associates, PC**, is considered Detroit’s premier medical malpractice and personal injury law firm. Its eponymous partner is a large part of that success, and his involvement in medical malpractice cases causes insurance companies and opposing lawyers to change their tactics when facing him.

“I love learning about medical issues, but more, I am always intrigued by the way bad things happen to people and how they could have been prevented. I realize how badly people need an advocate.”

It would be hard to find a better one. But it has not been an easy road. “Until you do these cases, you don’t realize the many advantages and resources that the defense has. It is very hard to take them on. I feel like I’m fighting for the little guy.”

But he has taken them on, and to great success. “Most people who call us don’t know exactly why something happened,” he says. “They just know something bad happened. They have no insight as to what went wrong. Often, doctors don’t take the time to listen to patients and explain things adequately. People don’t have the ability to correlate the lab reports (to see how a tragic event unfolded).”

It does not take long for McKeen and his team to immerse themselves in a case once they accept it. “I’d say we turn down nine out of 10 that come to us,” he says. “If the standard of care was followed, I have to tell them we cannot represent them. I can only accept righteous cases. I personally could not accept it if I prosecuted a case that wasn’t valid.”

McKeen says he does not cherry pick the

easy cases. He tries to help as many people as he can. But taking marginal cases with uncertain outcomes wastes time for the client and the firm and unrealistically raises hope that a favorable outcome is possible for people who have suffered a traumatic loss.

After the initial, extensive client interview, McKeen and his experienced staff review medical records to determine what occurred. McKeen has two veteran attorneys with more than 60 years' experience between them on the pre-suit staff, as well as nurses to explore that aspect of the care. All of them together examine all medical records, lab results, procedures and conclusions to determine whether the case has merit. But it doesn't end there.

"We have a very extensive network of expert witnesses we can contact who also have great practical experience. We don't just work with people who will tell us what we want to hear. We want the right answers. The last thing we want is to pursue a case that does not have merit. We won't waste our time and money or the client's time if we are not so convinced."

Once committed, McKeen is tireless, aggressive and thorough, says fellow medical malpractice attorney David Winter, former managing partner of Sommers Schwartz in suburban Detroit. "Brian is not always about the money. He wants his clients to be fairly compensated (for the loss they suffered). He's not only a brilliant tactician but he is one of the finest in cross-examination I have ever seen. His passion is for the client and for justice."

Former client Mary O'Donnell, herself a Michigan attorney, can attest to McKeen's devotion absent the strong promise of a large settlement.

O'Donnell decided to undergo Lasik surgery to correct her vision, utilizing a

physician with whom her family had some connection. The surgery was a disaster. "When I was driving and pulled up to a stoplight, the light looked like a burst red tulip." Road signs were difficult or impossible to read, and the vision problems made her life "unpleasant."

"He (the doctor) made excuses. He said he told me he might need to tweak it. But he never did. I felt betrayed. We were both professionals. And there was a family connection." Soon, she could no longer endure it and contacted McKeen. After the case was filed, she flew to Florida to consult with one of the foremost Lasik surgeons in the country. "He said the (local) surgeon had 'done a job on me.'" So impressive were his credentials and his opinion that McKeen flew him up to testify at the trial. "He was a powerful witness," she says.

In the end, she won a huge, multimillion dollar verdict that, because of the state's tort reform, was substantially reduced. She underwent more corrective surgery, but the damage was too severe. Soft contact lenses do not exert enough pressure to keep the cornea in place, and hard contacts are too painful for her to wear. Special contact lenses that are soft on the edges and hard in the middle work well enough for now. Her only other option appears to be a cornea transplant.

"Judgments in Michigan are capped, and Brian knew going in that this wasn't going to be a huge payday for him. But he worked the case just as hard as if it would be a multimillion-dollar judgment. He is not afraid to take on giants.

"In Michigan, it is very difficult for medical malpractice attorneys," she says. "It costs a lot to (pursue a case), and there are so many hoops and hurdles. But Brian has the tenacity, the diligence and the resources, while many others have just fallen by the

wayside. He is courageous and willing to put forth the time and the money to pursue these cases where others won't or can't."

More Than Just Another Tragedy

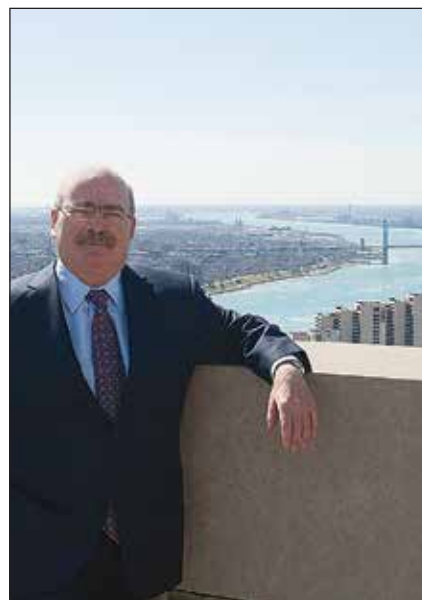
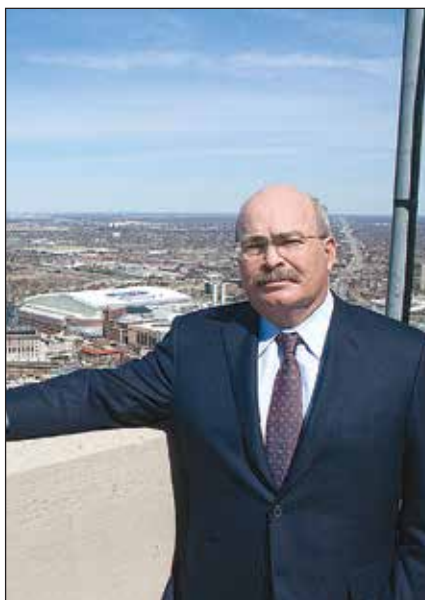
Once a determination is made to accept a case, the commitment is total, and often emotional. One case that deeply touched McKeen involved Jamia Brewer, a young black woman who rose from her impoverished, near-hopeless surroundings to build a life for herself.

It was 2005. "Jamia was putting herself through school," McKeen remembers. "She was working as an aerobics instructor in Flint. She was pregnant and went in to see her doctor with severe abdominal pain. We discovered later that her doctor had been sued 16 times previously. He had never passed his board certification, but the hospital at which he was practicing did not require that doctors be board certified."

The woman was hypertensive and later, it was discovered that the baby had died prior to birth. "He did not correctly diagnose the situation. The baby was stillborn. She was hypertensive and bleeding from a placental abruption. The doctor and nurses failed to diagnose the abruption, which led to a cardiac arrest and hypoxic brain damage, leaving her paralyzed and blind."

The circumstances of the case deeply affected McKeen. "She had worked so hard to make a better life for herself. She came from a severely impoverished background."

Another attorney who could not accept the case due to scheduling conflicts referred it to McKeen. "The doctor had just the barest minimum insurance, something like \$100,000-\$200,000. But we found that the nursing staff had a responsibility in that the clotting profile was not addressed.



They did not follow the chain of command, which made the hospital a part of the case.”

The case went to trial. After about a month of litigation, the hospital settled for enough money to take care of the young woman for the rest of her life. While that was the best outcome under the circumstances, it offered him no mitigation for the capricious and cruel nature of what happened. “She had no family support. She was putting herself through school. And even after the stroke, she remained cognitively intact.”

When McKeen takes on a case, he is totally devoted and committed, and he brings to bear every resource and bit of knowledge he has accumulated over his many years of practice.

“Opposing lawyers don’t want to go to trial against him,” says Jennifer Andreou, a defense attorney with Plunkett Cooney, who has opposed McKeen several times. “Unfortunately,” she laughs, “he is the best personal injury and medical malpractice attorney in Michigan. Because of this, his cases are valued differently. They have a higher value if he is involved.”

David Winter, a medical malpractice attorney with 40 years’ experience, agrees. “Brian has turned the tables on the insurance companies,” he says. “They usually come in, make an offer to settle a case, and then say ‘either take it or we go to trial.’ Brian is ready to go to trial, and they don’t want to try a case against him. When he does settle, it is always higher than usual because they are afraid to go to trial.”

In fact, says retired medical malpractice attorney Richard Lenter, it is essentially McKeen who issues the ultimatum. “He’s turned the tables on the insurance companies,” he says. “He tells them, ‘This is what I want, otherwise we go to trial.’”

Lenter is a member of McKeen’s vast network of experts and advisers. Now retired, Lenter often reviews cases for McKeen and recommends whether to accept or decline them. “Brian is simply one of the best medical malpractice attorneys in Michigan.”

What makes him so daunting to oppose, even in a state in which tort reform has made large verdicts extremely difficult to obtain? “It’s his ability to cross-examine,” says Andreou. “I’ve never seen anyone cross-examine like him. Because he knows medicine and medical terminology so well, he has the ability during cross to make brilliant physicians — tops in their field — concede that the standard of care may have been breached. We have to prepare our doctors differently when he is going to cross-examine them. He can get concessions out of them that increase the value of the case.”



McKeen stands next to his certificate for the Inner Circle of Advocates, an invitation-only group.

Lenter says McKeen’s skill is evident long before a single deposition has been taken. “Brian looks at cases in a way others don’t. He can see malpractice where other attorneys do not. When he gets into a case, his preparation frightens insurance companies. He gets tremendous jury verdicts and equally large settlements.”

While McKeen is perhaps best known for medical malpractice, his firm also enjoys a robust and vibrant personal injury practice as well. In fact, many of his most successful yet poignant cases have involved people whose lives were forever changed by a single moment over which they had no control.

A trucker who lived along a rural lane in the “thumb” of Michigan usually left his semi tractor-trailer parked in a service station near his home, taking his pickup truck parked there to get home. But one night, he decided to take the rig to his house.

“He went north along this country road and had to drive just past his house, make a U-turn, and then head back south, passing his house, and then jackknife back to get into his driveway which was on the east side of the road,” McKeen remembers.

Nighttime on a rural road with no street lights can be treacherous. But for just a handful of minutes, it was tragic. “As he backed into his driveway, his headlights were facing south, but the trailer was blocking the northbound lanes. The trailer had no lights on the side and was virtually invisible. My client came along, never saw the trailer across the road, and hit it without ever slowing down. He went under the (trailer’s undercarriage) and suffered massive brain damage.”

While the driver had very few recoverable resources, the trucking company did. After

litigation, the case settled.

Helping people piece their lives back together brings a certain satisfaction to one of Michigan’s most prominent attorneys. He is a member of the Inner Circle of Advocates, an invitation-only group of plaintiff lawyers in the United States. Since its inception in 1972, the group’s mission has been to promote standards of courtroom competence and exchange of knowledge among outstanding trial lawyers.

Membership is limited to about 100 attorneys nationwide. The group’s website indicates membership is restricted to attorneys with exceptional qualifications who are respected among their peers and who are experienced and skillful in the handling of courtroom litigation. Although spread across the country, members share experience, skill, knowledge, and often function as a collective law firm in the pursuit of justice.

Founded in 1972 by attorney Richard Grand, the group seeks to assemble lawyers who can consult with one another to share cumulative wisdom against big corporations and insurance companies with virtually unlimited resources. Grand decided that to be considered for membership, an attorney should have at least one million-dollar verdict and have completed at least 50 injury cases. Today, lawyers must have at least three verdicts of more than \$1 million or one verdict exceeding \$10 million, the most recent verdict must be no more than five years old, and members must have a substantial number of jury trials.

“These are the most accomplished personal injury attorneys in the country,” McKeen says. “We have two meetings a year and have a message board to exchange information

and answer questions. It is a national brain trust for lawyers who need research or the benefit of experience. I can contact any of the other 99 members at any time and get help from them if I need it," he says.

Bulldog in Cross-examination

Membership in that group is well deserved, says Hon. Richard Kaufmann, former Chief Judge of Wayne County Circuit Court. "Brian is one of the five most effective trial lawyers I had the privilege to see. He knows medicine and medical terminology better than almost any other attorney I've seen. He is articulate and clever in the way he presents his facts. He is also a bulldog in cross-examination."

Kaufmann says by way of example that many lawyers will introduce a document as an exhibit, but McKeen will use that document when working with his own witness and then find a way to also use it in cross-examination to keep emphasizing it.

"I had so many significant cases with him," he says. "He understands the issues as well as or even better than the doctor who is testifying."

Kaufman says McKeen appeared before him in about 20 cases while he was on the bench and dozens more during the 17 years after he left the judiciary to become a mediator. "He got the best settlements — more than any other attorney could have received because the defense attorneys feared him. He was very accurate in his facts, very knowledgeable and articulate."

Becoming an attorney was not part of his family's heritage. McKeen grew up in Detroit and attended public school. His father worked at General Motors, and his mother was an RN. McKeen attended Central Michigan University and went on to law school where he clerked for a circuit court trial judge. During that experience, he says, he observed both good attorneys and those who were not so good.

"In my career, one thing led to the next," he recalls. "I worked in the law library, and I learned how to do research. I was in the Michigan Attorney General's internship program, which allowed me to prosecute cases, even though I had not yet graduated from law school. It was great experience. I then clerked in the court of appeals and the Michigan Supreme Court. So, I had considerable experience in research and writing opinions before I even entered private practice."

After graduation and admission to the bar, McKeen entered private practice with an experienced attorney who had broken off from his former firm to form his own law firm. McKeen was one of three or four lawyers in that fledgling firm, which concentrated in medical malpractice,

personal injury and drug product liability. Today, McKeen heads that practice, which has grown to 16 attorneys.

One of the cases for which McKeen is best known concerned a 33-year-old man from Iowa with a wife and children who ran a successful aluminum siding business. He became addicted to pain medication after surgery for an injury and sought help. While he was online doing research, he discovered Project Straight, a firm that offered ultra-rapid opioid detoxification. The procedure involved inserting a medicated pellet under the skin, which would reverse the effect of the narcotics and, presumably, eliminate the need for them.

The young man agreed to the relatively minor surgery, but doctors failed to pre-operatively ascertain whether the man had cholinesterase deficiency, a condition that makes it more difficult to recover from anesthesia. Following the surgery, he was left unattended for a lengthy period and suffered hypoxic ischemic brain damage. After lingering for several days, he died.

Iowa attorneys who had a personal relationship with the man brought the case to McKeen. The autopsy concluded that the man had died of brain damage. But according to the records, he had normal vital signs during the period he was under anesthesia.

Thread That Unravels the Story

"You don't suffer hypoxic brain damage if you have normal readings," McKeen says. And, in his thorough research, another interesting development unfolded.

"This was a small clinic. They have one operating room and one recovery room. But we discovered that they had several patients after (his client). So, if they had one in the operating room and another in the recovery room, where was he?"

The answer, incredibly, was a storage room, unmonitored. Where then did they get the data they presented as being normal?

"The doctor said they pieced it together the best they could, which means they made it up. We discovered that the doctor himself had substance abuse in his past, and the doctor lost his license as a result of the case." The \$35 million verdict is believed to be the largest in Oakland County for medical malpractice.

McKeen stresses that those success stories are only possible with the teamwork of his two senior associates in the investigation department, Norm Rosen and Terry Dawes, a staff of paralegals and nurses who collectively pieced together what occurred and how it could have been prevented.

"It's a collaborative effort," he says. "The nurses review the records and help us determine which ones we need to send to

outside experts, and they work with us on drafting the pleadings. It's not easy to get a case to litigation in Michigan. You have to file a notice of intent and then affidavits of merit just to get a case into litigation."

As if the legal burden isn't enough, some firms don't have the vast network of resources that McKeen enjoys, thus discouraging them from digging deeply into a case. "Sometimes we find cases of great merit, brought to us by clients whose previous firm didn't scratch below the surface."

Sometimes what he finds just below that surface is deeply troubling. "Our client was in the hospital for heart surgery, and although there were no complications, he was becoming unstable so he was rushed to the operating room where he remained for several hours. Surgeons had to crack open his chest, but they said they found no problems and they closed him up. Days later, he had suffered hypoxic brain damage and died.

"We assumed he probably bled into the pericardial sac which surrounds the heart (a condition called 'pericardial tamponade'). When that happens, the heart can't pump adequately. We suspected that they repaired a bleeding site because he was in the operating room too long. But the defendant argued that the cardiac index and cardiac output data were so good it ruled out the possibility of tamponade."

Through their customarily thorough research, McKeen's team discovered a notation in the records that a catheter used to measure the cardiac index and output had been removed and not re-inserted until after the arrest. That meant that the data points recorded by the surgeon and the nursing staff, purporting to show that the cardiac readings were normal, were fabricated. Once that information was fully disclosed, the case settled.

When he is not practicing law or consulting with fellow attorneys across the nation, McKeen enjoys his children, Alex, 17, and Alaina, 15, both high school students and both deeply involved in high school athletics.

"I enjoy watching their sports activities and going to games whenever I can. I like to play golf as much as my schedule allows. I just really enjoy hitting balls and working on my game. Sometimes I'll stop at the course on my way home for about 45 minutes and hit a bucket of balls to unwind and relax before I go home and work. It helps me focus."

Focus, says David Winter, is one of McKeen's strengths. "I think of him as a prosecutor. He is prosecuting the health care industry for breaking the law in breaching the standard of care. His passion is for the client, the law and above all, justice." ■