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News Story

## Tricks of the trade

### Med-mal attorneys discuss how settlements are keeping them afloat in rocky legal, economic times

By *Melissa P. Stewart, Esq.*

Business of Law

Tort reform and Michigan's rueful economic condition have made it harder for many personal injury attorneys to make a buck.

Yet, some medical-malpractice lawyers have thrived.

Why?

According to Norman D. Tucker, Jesse M. Reiter and Robert B. Sickels, it has everything to do with "the art of settlement."

In the last year alone, the three medical-malpractice gurus have reported a combined \$11 million in settlements to *Michigan Lawyers Weekly*.

That means these three plaintiffs' lawyers have secured nearly one-third of the total \$32.6 million in reported settlements.

And, although each of them has different tricks to his trade, certain themes run through each of their most lucrative cases.

According to Tucker and Reiter, a profitable outcome starts with case selection.

"Cases are selected very carefully," said Reiter, who specializes in birth trauma. "They must be

supported by medical literature and have strong facts and jury appeal."

Tucker agreed, but said that, in addition to "good facts," he liked to see "great clients and lots of coverage for the defendants."

Insurance coverage, that is.

Tucker said a defendant's policy limits is an important consideration in the case selection process because, no matter what the facts are, the case must be financially viable.

"Because of the cost of medical-malpractice litigation and the risks a plaintiffs' attorney runs with advancing costs, the floor on what cases to accept or reject goes up daily," he said. "It's very difficult to handle a medical-malpractice case with simple issues that is worth less than \$400,000."

Frankly, he said, "If you are going to spend \$70,000 to \$100,000 on a case and work on it for more than three years, [when that is] weighed over your chance of winning, you might be better off buying Treasury bills."

Reiter pointed out that, as medicine has grown more complex, so, too, has medical-malpractice litigation.

And, he said, with increased complexity has come increased cost.

"The greatest challenges these days are hypertechnical pleading and expert requirements, and the multiple *Daubert* and *Fulton* motions filed," Reiter said. "Every birth trauma case requires about 10 to 12 experts."

Nevertheless, Tucker, Reiter and Sickels all agree that, with proper preparation, the right cases are still worth the effort.

Recalling a recent \$5.3 million settlement stemming from tonsillectomy complications, Tucker said, "We had a game plan before the first deposition question was even asked."

Given the "sophistication of cases, you have to have all of your ducks in a row when your cases are filed," he explained.

To that end, Southfield-based Sommers Schwartz PC, where both Tucker and Sickels practice as shareholders, employs three in-house nurses.

"I work with a medical professional on every case, [and] it makes a critical difference in the level of preparation," Tucker said.

"What wins the case is knowing how the defendant is going to defend its conduct," he said. "So, I want the nurse to analyze how the defendant is going to defend its case. That way, I will know how I'm going to respond to those defenses."

To do that, Tucker said he looks to the facts in the record, as well as the medical literature and expert opinions that stand in opposition to the defendant's claims.

Even with the best preparation, however, all three lawyers acknowledged that the best settlements can only be secured from a willing defendant — and its insurer.

In this respect, Sickels said, numbers can be a problem because the more named defendants there are in a lawsuit, the more elusive a settlement may be.

"One of the difficulties with having multiple parties [is that] individual defendants may point the finger of blame at each other, rather than stepping up to take the blame for their own conduct," Sickels said. That's why "it is always difficult with multiple defendants to secure a simultaneous global settlement."

Still, Tucker said, when the right case presents itself, a favorable settlement might not be as difficult to secure today as it may have been prior to tort reform.

For him, the \$5.3 million settlement he secured with Sickels was just such a case.

The case involved a 3-year-old child who suffered brain damage when he was deprived of oxygen during a surgery to repair a bleed from his recently removed tonsils.

"Even though this child was brain injured and very young, he had a normal life expectancy," Sickels explained.

Given that, a settlement was the right resolution for the case, he said, because had it proceeded to trial, it would have been "saddled with a \$398,000 limit on recovery for pain and suffering."

Nevertheless, Sickels acknowledged that without cooperation from the defendants, the settlement may not have been possible.

"The defense attorneys and claims representatives ... appreciated that this child's injuries were due to negligence, and it was their obligation to provide for his future," he said.

*If you would like to comment on this story, please contact Melissa P. Stewart at (248) 865-3105 or [melissa.stewart@mi.lawyersweekly.com](mailto:melissa.stewart@mi.lawyersweekly.com).*

**[Editor's Note:** For more information on the \$5.3 million settlement, please see the Verdicts & Settlements report on our website.]

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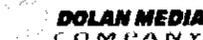
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