

A Shrewd Malpractice Lawyer Wins a \$16.9 Million Case—and Doctors Demand a Second Opinion

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At the time, it seemed like a shrewd move. In 1980 the Florida Medical Association convinced the state legislature to enact a law requiring the loser in medical malpractice cases to pay the winner's legal expenses. Since doctors win some 80 percent of malpractice trials, the association believed that the new law would discourage such suits by upping the ante for disgruntled patients. The reasoning was logical, but the doctors neglected one important factor—Sheldon “Shelley” Schlesinger, a feisty lawyer and self-proclaimed “champion of the oppressed” who just loves to tangle with the medical establishment.

This summer Schlesinger brought a malpractice suit against a Fort Lauderdale hospital on behalf of a patient, alleging she was rendered permanently comatose by a medical error. The jury concurred and awarded Schlesinger's client, Susan Ann Von Stetina, \$12.5 million in damages, said to be the largest such award in American history. But that didn't satisfy the angry attorney. Turning the doctors' own law against them, he sued the hospital to recover his legal fees—and won an additional \$4.4 million. “The medical lobby figured the law would intimidate malpractice victims not to

sue, and now it has boomeranged on them,” Schlesinger gloats. “I love to hear them cry.”

And cry they did. The case, now in appeal, has sparked an acrimonious controversy. Doctors and insurance companies have denounced the awards and heaped abuse on Schlesinger and Broward County Circuit Judge Robert Lance Andrews, who granted the attorney his unprecedented legal-fee award. “There have been editorials against me, letters and phone calls from doctors, and most have been directed against the legal fee,” remembers Judge Andrews. “It created a hell of a flap, particularly from the doctors.”

The case began with a routine traffic accident. Early on the morning of Nov. 26, 1980, Von Stetina, a 28-year-old assistant manager of an electronics store, was driving home after a night out with friends. In Tamarac, a suburb of Fort Lauderdale, she lost control of her car and slammed into a utility pole. Taken by ambulance to the nearby Florida Medical Center Hospital, she was treated in the emergency room for spleen and liver lacerations and a fractured leg. Emergency surgery was successful, and Von Stetina was transferred to the intensive care unit. There, according to court testimony, she was attended by untrained employees because the hospital was understaffed. In her eighth day at the hospital, Von Stetina’s respirator was somehow disconnected, and she was starved of oxygen for 90 minutes. That error left her permanently brain-damaged. “She lies in bed, her eyes open,” says Schlesinger. “She can’t speak, but she knows you’re there because she responds with a cooing sound to a gentle touch and voice. That’s the way she’ll be for the rest of her life.”

When Susan was released four months later, the medical center presented her father, a recently retired Fort Lauderdale city government employee, with a bill for \$125,000. Outraged, her parents hunted for a malpractice lawyer. “I didn’t know how to go about it,” says Mary, Susan’s mother and also a city government employee. “A friend mentioned Mr. Schlesinger. She said he was the best there is.”

The friend may be right. Schlesinger, a red-haired, 52-year-old Brooklyn-born attorney, casts himself as a legal buccaneer who revels in the risk and pressures of physical injury lawsuits. Schlesinger stakes his livelihood on his courtroom ability: He gets no payment if he loses a case but splits the settlement with his client if he wins. He seldom loses (the last case he lost was four years ago). If he wins the Von Stetina appeal, he will have won awards totaling \$26 million in four cases this year alone. He lives with his wife, Bobbe, and their sons Scott, 23, and Greg, 20, in a million-dollar house outside Fort Lauderdale and drives to court in a \$50,000 black-and-maroon Excalibur.

Schlesinger contends that he earns his wealth, that malpractice cases are not easy. “The plaintiff is often so physically damaged that he or she can’t assist in explaining what happened,” he says. “You have to dig for it like a detective, and the place you dig is the hospital—the enemy camp. Everything you want is behind closed doors. Records disappear or are altered. Physicians don’t want to testify against one another. You have to fight hard for every speck of information you get.”

In the Von Stetina case, the \$12.5 million award came after more than a year of detective work and a two-week trial. Winning his client’s \$4.4 million legal expenses took a separate two-day court action. Explaining his

decision in that case, Judge Andrews said: “The statute was enacted at the insistence of the health care industry, and its transparent primary purpose was to discourage medical malpractice actions.” Judge Andrews, who considers attorneys in Schlesinger’s field to be “brilliant people with enormous egos who are very professional,” later named another factor in the case: “Schlesinger is very, very good.”

The judge’s ruling stunned the medical profession and its insurance companies. “We want to compensate for losses,” said John Odum, director of Florida’s Patient Compensation Fund, “but what can one brain-damaged woman in a hospital do with \$12.5 million? It would be far more reasonable to pay an annuity of \$1 million, which would take care of her for the rest of her life.” Insurance executive Bob Atkins, who serves on a state panel to investigate malpractice awards, was frankly vitriolic: “I despise all lawyers.” Next spring, for the sixth consecutive year, the Florida Medical Association—which called the Judge Andrews award “ridiculous and obscene”—will propose a state law imposing limits on a malpractice attorney’s fees.

Predictably, Schlesinger is against it. “What they really want,” he charges, “is immunity—to outlaw all malpractice suits.” Schlesinger argues that the contingency fee system is the wronged patient’s only protection. “We trial lawyers unabashedly view ourselves as champions of the public,” he says. “We are their defense against malpractice.”