

DAILY BUSINESS REVIEW

PROFILES IN LAW

The Dramatic Turn That Helped a Miami Lawyer Score an \$8.5 Million Settlement

by Michael A. Mora

A Miami attorney has recovered a multimillion-dollar award for parents whose baby suffered severe injuries during his birth.

And the litigator’s fight for these families comes as he plans to continue to push the Florida Legislature to overhaul what he calls a broken law with tragic implications for thousands of families.

Stephen F. Cain, a partner at Stewart Tilghman Fox Bianchi & Cain, prevailed in the U.S. District Court for the Southern District of West Virginia for his clients, Chase and Brandy Fadlevich, and their son, Waylon, when his team planned to deliver heartbreaking testimony and orated a series of raw presentations to the jury.

In federal court, the plaintiffs’ opening statement was an account

that dramatized Waylon’s birth at the Raleigh General Hospital in West Virginia.

In the dramatic account, the presentation imagined Waylon describing how his parents and family were all waiting to welcome him. But it also imagined that Waylon started to panic as a yellow light simultaneously flashed on a nearby monitor, alerting nurses to immediately attend to him.

“Oh boy, my nurse didn’t seem to see my warnings,” Waylon is depicted as saying. “Things are getting tough in here and mom is getting ready to push but I am scared because I just don’t have much left. I am heading for the danger zone and now I am flashing a red light on my monitors.

“This cord that has fed me the blood and oxygen for the last nine months keeps getting squished and is around my neck and I can’t get the blood and oxygen I need,” Waylon is depicted as crying. “Why are they not getting me out! I need help!”

While Cain litigated several of these medical malpractice matters over the years and recovered substantial compensation for devastated parents, this case was the first in which he sued a hospital under the Federal Tort Claims Act.

And he explained that a fetal monitoring strip is a key to these cases. The strip allows babies to



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communicate in real-time to nurses through a monitor in the maternity ward that something may have gone amiss.

In Waylon’s case, the strip progressed to red, indicating that he was not receiving enough oxygen and blood flow to his brain, according to court documents. For nearly two hours, the nurses had problems getting a doctor to aid in the emergency.

“We actually got testimony out of the nurse-midwife, who at one point was praying that the doctor would intervene and deliver the

STEPHEN F. CAIN

Born: Panama City, Florida

Spouse: Marni

Children: Raftin, Hudson and Savannah

Education: University of Miami, JD, 2000; Florida State University, BS, 1994

Experience: Stewart Tilghman Fox Bianchi & Cain, Partner, 2005 to present; Stewart Tilghman Fox & Bianchi, Associate, 2002-2005; O’Connor, Chimpoulis, Restani, Marrero & McAllister, Associate, 2001-2002; O’Connor & Meyers, Associate, 2000-2001.

baby because she knew that this baby was being deprived of oxygen,” Cain said. “Frankly, this case was one of the most shocking in my career.”

Now, Cain and his team recovered an \$8.5 million settlement against the federal government, which is among the highest Federal Tort Claims Act recovery in West Virginia history.

Cain also indicated that they reached a substantial, confidential settlement with Raleigh General less than 24 hours before the trial against the hospital would have started.

But while Cain has built a reputation for his abilities as a trial lawyer, he said becoming a litigator was not always in his future plans.

At Florida State University, Cain studied political science and realized at the last minute he wanted to pursue a career as a lawyer. Neither of his parents graduated from college but were supportive of his plans.

The University of Miami School of Law accepted Cain, and he was fascinated by the litigation skills classes which led him to pursue that specialty. These seminars brought him in front of litigants, allowing him to take depositions and then placed him in the center of where everything happens: the courtroom.

After graduating from law school in 2000, Cain turned down a higher-paying job to work with Kevin O’Connor, a storied attorney who over his career has seen medical malpractice law evolve from medical mediation panels in the 1970s to pre-suit investigations and damage caps on awards for pain and suffering.

“Everybody that I spoke to in the community told me that he was one of the best attorneys in the state and it would be a good place to start,” Cain recalled. “I fell into the situation where his lead associate became pregnant. And, sort of baptism by fire, I got thrown into depositions

and expert discovery that new attorneys normally don’t get to experience when they break into the field.”

Cain indicated that the mentoring from O’Connor and the opportunity to take on responsibility propelled him to his current trajectory. And two years later, Cain accepted a job offer from his current law firm.

The law firm specializes in medical malpractice litigation, and over the years, Cain said he was drawn to litigation involving children. He said it had the most significant impact in the medical malpractice field.

“I’ve always looked back at the end of parents’ cases and felt really proud of what we accomplished,” Cain said. “I really felt we made a difference in those parents’ lives, and many I still call friends today.”

Michael Haggard, managing partner at the Haggard Law Firm in Coral Gables, said part of Cain’s success is his ability to speak proficiently about the science in a case while speaking conversationally to a jury.

“Sometimes you’ll get lawyers who are fantastic on medicine even though it’s such a challenge,” Haggard said. “You almost have to be a doctor and a lawyer, but then they can’t switch back to explain that to a jury, and how it affects the burden of proof and their particular case. Stephen does a great job with that, in kind of a folksy way, because he is a country boy from Panama City.”

And many of Cain’s cases occur outside of the Sunshine State due to Florida’s Birth-Related Neurological Injury Compensation Association. Cain’s goal, particularly when he becomes president of the Florida Justice Association in two years, is to improve NICA, which he characterized as a broken law, in order to provide families with the opportunity for greater benefits.

In June, Florida Gov. Ron DeSantis signed legislation overhauling the 33-year-old state program for

children born with catastrophic brain damage. The program prevents parents from suing doctors or hospitals, so these professionals would stop fleeing the state because of skyhigh malpractice insurance, according to the investigative nonprofit, ProPublica.

But Cain said an upfront payment by NICA of \$100,000—increased to \$150,000 after the legislative overhaul—does not do enough for families to take care of children with these medical ailments nor holds doctors and hospitals accountable for their errors.

“We typically don’t do any NICA cases, but I’ve had to listen to the horror stories through my work with the Florida Justice Association,” Cain said. “I have parents call me and we have to tell them that you’re stuck in this NICA program. They don’t understand why that is or how that could be. But that’s the reality if you’re in Florida.”

Gary Fox, a partner at Stewart Tilghman Fox Bianchi & Cain in Miami, said his colleague’s passion is readily conveyed when he speaks with parents, such as his clients in rougher areas of South Florida, as well as the mover and shakers of state politics in Tallahassee.

And when Fox reflected on his time working with Cain, he remembers in a separate case, a skilled pediatric neurologist was scared to travel to provide testimony as a witness in trial due to the viral nature of the coronavirus pandemic and his fear of commercial planes.

“Stephen said, ‘Let’s get the baby out to see the doctor,’” Fox recalled. “He chartered a jet to take the family out to Houston so the pediatric neurologist could give a deposition. It was very effective. That is the type of guy he is. He would do anything for his clients.”

Michael A. Mora primarily covers litigation in South Florida. You can contact him by email: mmora@alm.com.