

MURV PRETORIUS

Protecting Doctors' Reputations in Central Illinois

by Pat Milhizer

PEORIA—The doctors who have to sit across the table from Murvel Pretorius Jr. wish they weren't there. They've been accused of medical malpractice, and they need Pretorius to either clear their names or minimize the damage.

Needless to say, these meetings usually feature anger and feelings of resentment.

"Most times, the doctor has been very sincere and has tried hard," says Pretorius, a partner in the Peoria office of **Quinn, Johnston, Henderson, Pretorius & Cerulo Chtd.**

"And most times, the doctor may have been wrong but certainly only in retrospect," Pretorius says.

So the lawyer has to first act as a calming agent. "The first thing you have to do is make them understand they're not alone," he says. "They have friends who have been sued; they just don't know it."

Pretorius also tells them that physicians win approximately three out of every four medical malpractice trials in Illinois. And Pretorius says the winning percentage of medical malpractice defense attorneys in central Illinois is higher than that.

"They need to understand that we try these cases and win most of them. They're stepping into a foreign world—the legal world—and knowledge is comforting. If you can help them understand what lies ahead and what to expect, it's some comfort," he says.

It also helps that the jury pools he deals with live in a city that is home to a large manufacturer.

"In Peoria, you've got Caterpillar and people who have good jobs—jobs that have responsibility, jobs that require decisions to be made. And some of those decisions turn out wrong. And those types of people make better jurors," he says.

Pretorius, 63, represents physicians and hospitals facing medical malpractice lawsuits in Peoria, Bloomington, Galesburg, LaSalle, Peru and the towns near those municipalities.

Known as "Murv" to his friends, Pretorius grew up in Spring Valley, Illinois, the younger of two. His father worked as a manager in a factory that made rubber products, and his mother was a homemaker.

"Spring Valley is a typical small town," Pretorius says. "Everybody knew everybody else. It was like having a couple hundred parents. I couldn't get away with anything."

He learned the value of working at a young age, when he had a newspaper route in which he delivered the *Chicago Sun-Times*, the

Chicago Tribune, and two other newspapers that no longer exist.

For high school, he went to Indiana to attend Culver Military Academy. There, he played baseball, basketball and football. He continued playing baseball at Knox College in Galesburg, where he majored in English. Pretorius was the first person in his family to attend college, and he started thinking about attending law school by the end of his junior year.

"The prospect of good income was attractive, and it also sounded like something I'd like to do. I knew there would be a lot of reading, a lot of an analysis," he says. After graduating from Knox in 1968, he attended the University of Illinois College of Law.



After law school, he went to Peoria to start working at the firm where he works today. Then it was called McConnell, Kennedy, McConnell & Morris. The firm has had nearly a half-dozen name changes since then.

If Only They Could Clone Themselves

Pretorius has always represented defendants, and he spent his early years as a lawyer handling car accidents, slip-and-falls and workers' compensation cases. As for why he became interested in defense work, Pretorius can't really say.

"I wish I knew the answer to that. Seriously, when I came out of law school I had a fair amount of loans. They wouldn't sound like much now—probably \$15,000 to \$18,000. I interviewed here, and I liked the people," he says.

"I interviewed several places and had several offers. It just seemed like this was a chance to

have a solid income, and I don't remember too much more to it than that, other than trying to put food on the table and trying to pay some debts," he says.

By the late-1970s, Pretorius was primarily handling medical malpractice defense.

"In the early 1970s when I started, malpractice cases were unheard of. They picked up in the late '70s, and then we went through a series of so-called malpractice crises," he says.

"Now we are into a mature state of evolution where there are only a few plaintiffs' attorneys who take malpractice cases, and they have the luxury and ability to sort out the good ones.

"The frivolous cases and the part-time players have disappeared, and we're pretty much in a

group of pretty skilled and full-time malpractice attorneys on the other side," he says.

Because physicians can face the possibility of multi-million dollar verdicts in medical malpractice trials, Pretorius also has to work with the companies that evaluate claims and the insurance companies that pay the damages if necessary.

Donna Clayton, a claims supervisor at Illinois Provider Trust, has worked with Pretorius for about 10 years. She manages the claims for physicians and hospitals that face the lawsuits that Pretorius handles. Clayton says that Pretorius and his law firm are both professional and personable. "I feel like I am very important to them as a client," Clayton says.

"I feel that they are extremely timely in their correspondence. To me, that's important as a claims manager because I need to know where my claims are at, where my lawsuits are at."

When the suits are filed, Clayton evaluates the claims to figure out how much legal expenses will cost and if there is the potential for a settlement or a guilty verdict.

She also can call on Pretorius for advice. “Murv and his firm are very good at helping me value a claim,” Clayton says.

“He has a very good handle on the value of claims, how juries are going to react—just everything. I can’t speak highly enough... I wish [his firm] could clone themselves, because they’re fabulous. I would recommend him to anyone without reservation,” she says.

If there’s a case where a doctor is likely to face damages, Pretorius helps Clayton calculate the possible dollar amount that a jury would award. “For what he charges me for his work, I think I am getting the best value possible,” Clayton says.

Handling the High-Stakes Trials

When he’s not working, Pretorius enjoys hitting the golf course and watching the Fighting Illini play basketball. He’s married and has four children: one who is a lawyer in the U.S. Air Force, one who is a teacher, one who works in manufacturing, and another who is finishing nursing training. He met his wife, Mary Ann, when she was a legal secretary in Peoria.

At work, Pretorius may have 50 to 60 open files at any given time. He estimates that he handles about three major cases a year that go to trial. “The best part is doing trials. It’s a lot of stress. It’s a lot of fear, which can be a high. There’s adrenaline pumping, and of course, winning is really a lot of fun,” Pretorius says.

“Obviously there are some losses in there, too, but it sure beats sitting at a desk day in and day out,” he says.

A week before the interview for this article, he secured a not-guilty verdict for a physician in a jury trial that involved a birth injury. The plaintiff alleged that the doctor used excessive force to complete the delivery. “The child was 11 by the time we went to trial and had had seven surgeries on the arm. The plaintiff’s attorney was out of Boston, and it was just very tense,” he says.

“The plaintiff was asking for a recovery that was about four times as much as the doctor’s insurance coverage. So it was a high-stakes, stressful trial,” Pretorius says. When representing a doctor in a case like that one, Pretorius says the key is to accept the fact that the plaintiff has sustained a very significant injury.

“This was a child who had one arm hung down; he had very little use of it,” he says. “And of course that can be painful...and it’s a mistake to dispute the injury or to not sympathize with the people.”

“You don’t want to try the case on whether or not it’s a bad injury, because it is. So it’s just a matter of trying to make the jury accept that it

sympathizes with this family as we all do, but that’s not the big question in the case,” he says.

“You try to keep their eyes on the physician’s conduct and on whether this was due to negligence or the natural process of a delivery, which is sometimes difficult,” he says.

When he’s working outside of the courtroom, Pretorius enjoys taking the depositions of physicians. “It’s a real plus to have clients that, in most instances, are smarter than I am and listen and can understand things that are told to them,” he says.

Like any attorney, Pretorius says he runs across the occasional counterpart who can’t claim civility as a strong suit. “The most challenging part is the part that almost sounds crass—the uncivil attorney who’s also very bright,” he says. “There are a few who are not easy to deal with and they’re also very skilled and very bright.”

No matter what his legal adversary brings to a case, Pretorius says that he sticks to the same game plan for each opponent—even the uncivil ones. “It’s not easy, but the goal is to not change anything that you do,” he says. “Treat everyone the same, don’t give in, and don’t be pushed around. And don’t be contentious and disagreeable in return.”

That same approach also applies to talking to jurors. “I try to be on the level with the jury,” Pretorius says. “I don’t try to talk down to them. I don’t try to make them feel that I know more than they do. I try to make them feel like we’re going to go through this together.”

“I try to teach without being superior because there is a lot of information to communicate. The key time to do it is during opening statements when you have their attention the most and can make them see things from your client’s point of view,” he says.

During trial, the most important part for Pretorius is cross-examining the plaintiff’s expert. “That is a really critical point because in a malpractice case, usually the case is going to turn on that testimony. The jury has to base its decision on expert testimony, and if you can win a few battles with the plaintiff’s expert, then that really hurts their case,” he says.

Praise from Opponents

Tony Raccuglia has handled several trials against Pretorius, and he says he always expects to face a well-prepared defense attorney when their trials begin. “I find that he is extremely well-versed in the medicine that’s involved in the case. And as such, he’s a formidable opponent,” says Raccuglia, who has law offices in Ottawa and Peru.

Pretorius is the type of attorney who will cooperate with plaintiffs’ attorneys when working on pre-trial schedules so that the schedules can accommodate both sides, Raccuglia says.

“He’s also up-front, doesn’t use a lot of manipulative tactics, and is straightforward in his opinions of the case,” Raccuglia says.

“He’s a lawyer who, during the course of a trial, will not object just for the purpose of objecting.”

“That’s not to say that we don’t have our disagreements, but I find him very competent and probably one of the better defense medical malpractice lawyers I have come across in my cases,” Raccuglia says.

As a result, plaintiffs’ lawyers should know that, when facing Pretorius, they likely won’t have to deal with frustrating motions that lack impact on the case. “He is somebody you can trust,” Raccuglia says.

“It makes it a lot easier to try a case with somebody who knows the law and the medicine rather than somebody who is making it difficult to get things done,” Raccuglia says. “I find it much easier to try a case against a competent defense lawyer than one who is not competent.”

Plaintiff’s attorney James Carter of Carter Law Offices in Peoria also confirms Pretorius’ competence. “Murv is very well-prepared attorney who knows his material, speaks softly, and knows how to try a competent case,” Carter says. “So that makes him a dangerous person to try a case with. I think Murv is a good trial lawyer, no question about it,” Carter says.

The challenge for plaintiffs’ attorneys in medical malpractice cases, Carter says, is that they face jurors who may not want to accept that a physician could either hurt somebody or speak untruthfully. “Murv builds on that credibility,” Carter says. “He uses that credibility they’ve got, and he uses it well because he’s a credible person. And he comes across that way.”

A Highland Park plaintiff’s attorney, Joseph Kolar, has had one case against Pretorius.

“And he won,” says Kolar, an attorney at Baizer, Kolar & Lewis P.C. “He’s a very thorough attorney; competitive but not overbearing.”

“Murv was very much a tough opponent, but we got along fine throughout the life of the case. He has a good manner in front of the jury...he is trustworthy and I think that comes out in his presentation to jurors.

“He’s an advocate for his client without being difficult to work with. It’s important to the attorney because the cases are stressful,” Kolar says. “They’re big cases. There’s a lot at stake so it’s nice to work with somebody who represents a client zealously, without making it personal.”

In the courtroom, Pretorius has one superstition. He always wears an orange tie on the second day of trial. “I went to Illinois,” he explains, referring to the main color of his law school alma mater.

“It always seems like it works. Obviously I don’t win every trial, but I’ve won most.” ■