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ATTORNEYS OF THE YEAR

Chris Messerly: a good year for at least 11 million reasons



PHOTO: BILL KLOTZ

By Alice Sherren Brommer

One of the most memorable cases of the year 2000 in Minnesota involved a \$11.1 million verdict awarded last February to a woman who suffered irreversible brain damage after an ambulance was delayed in arriving at her house. The case gained notoriety as the second largest medical malpractice verdict ever in the state, and was also widely publicized because the injured woman, a 41-year old mother of two, is the sister of Minnesota Supreme Court Chief Justice Kathleen Blatz.

Minneapolis attorney Chris A. Messerly – the lawyer who procured the eight-

figure verdict – says he found the case rewarding, but not for the reasons one might think.

“The reason that case is memorable for me is not necessarily tied to the dollar amount,” explains Messerly, a partner with the Minneapolis law firm of Robins, Kaplan, Miller & Ciresi. “I went into the practice of law because I

is that she remembers her past, and she knows where she is. To help that family out is probably the most rewarding thing I’ve done this year.” Messerly adds that he remains in frequent contact with the family to this day.

Helping injured people seek redress in the courts has been important to

Born: Fort Dodge, Iowa, 1958

Education: Bowdoin College; Hamline University, J.D. 1986

Bar Admissions: Minnesota, U.S. District Court, District of Minnesota and 8th U.S. Circuit Court of Appeals, Wisconsin and U.S. District Court, Western District of Wisconsin

Professional experience: attorney, Robins Kaplan Miller & Ciresi, 1986-present (partner, 1993-present)

Bar activities: American Trial Lawyers Association; Minnesota Trial Lawyers Association (Executive Committee, Legislative Committee chair); Wisconsin Academy of Trial Lawyers; Hennepin County Bar Association; Ramsey County Bar Association

Family: Wife and three children

Hobbies: Captain of the Ramsey County Bar Association hockey team

want to help people that need help from a lawyer to seek justice in the courts. The Blatz family desperately needed that. A young mother – the main wage earner in her family – is now permanently institutionalized. It’s one thing for her to be incontinent and to have to be fed, but the tragedy

Messerly throughout his career. In addition to the medical negligence, products liability and personal injury cases that he handles, Messerly says he dedicates time working to eliminate legislation that unnecessarily restricts access to the courts.

“Probably the most rewarding thing I’ve done professionally in my whole career was playing an active role in getting the statute of limitations changed from two years to four years in medical cases,” said Messerly.

For 75 years, Minnesota’s statute of limitations in medical cases was more restrictive than that of most other states, Messerly explains. Unlike plaintiffs in most states, who had two years from the date that negligence leading to an injury was discovered to bring a claim, plaintiffs in Minnesota had to bring their claims within two years of the date of the negligence that caused their injury, he continues.

“There was no discovery rule,” Messerly observes. The old law was unnecessarily restrictive and prevented many people with meritorious claims from seeking redress, Messerly said.

In order to address this injustice, Messerly spent “many, many hours at the Legislature” working to change the statute of limitations in medical cases from two years to four years. The new four-year limitations period – which went into effect on Aug. 1, 1999 – affords potential plaintiffs some badly needed time to realize the extent of their injuries and sue, according to Messerly.

“[Extending the statute of limitations] helps everyone in the state – that’s the most rewarding thing of all,” he observes. “Any one case I have helps just one family – which is a wonder-

ful thing. But to have had some role in changing the statute of limitations was probably the highlight of my career so far. I could probably quit today and feel that I’ve had a successful career.”

Messerly feels strongly about protecting the public, and continues to work toward legislation that benefits the average citizen. He was instrumental in passing a law that prevents companies that purchase annuities from taking advantage of injured people. The law requires court supervision of the sale.

“[Before this law was passed], companies could prey on injured people who had annuities money laid out for their care for next 50 years but who were desperate for cash,” Messerly notes. “[The companies] could approach someone who had a terrible injury and offer to pay them, for example, \$20,000 all at once if they would give the company rights to the future payments that might have a present value of \$100,000. People who were desperate and who had no money would essentially sell their future health care for a little bit of short-lived benefit. [I was] able to assist in getting a law passed that still allows companies to [purchase annuities] but requires court approval in each case. People are still entitled to [sell their annuities], but the court is there to [protect vulnerable injured people].”

While he finds his legislative work rewarding, Messerly also describes

the process as both difficult and frustrating.

“The legislative process has been an eye-opener,” he says. “There’s a saying that there are two things you never want to see made – sausage and legislation. It’s frustrating because we go [before the Legislature] with a few other people who only do it because our hearts are in it. I suppose the other sides’s hearts are in it too, but we show up with two or three people and the business coalitions or those representing the other side come in with 50 lobbyists. Trying to convince legislators of the justice in the situation [against those odds] is frustrating. For someone who works on the merits of claims in litigation you tend to have this belief that the merits will ultimately prevail. It doesn’t necessarily work that way in the political process.”

In the year 2001 and beyond, Messerly plans to continue doing what makes the practice of law rewarding for him – helping families and individuals that have been wronged by tortfeasors. On a broader scale, he also plans to continue to work to ensure that the public has access to the courts.

“There are some very powerful groups that are fighting to prevent people from suing them. I don’t think that’s fair, and I’d like to do what I can to battle that,” says Messerly.

Unusual career path

Messerly began his legal career in a somewhat unusual way.

“I had no idea that I wanted to be a lawyer until I took the LSAT after a rugby game in college. I didn’t do too well so I had to take it again,” Messerly recalls. “Then I took two years off after college to work in a law firm and find out whether it was something I wanted to do before committing all that time and money to getting a law degree.”

Messerly applied for a position as a legal assistant at the national law firm of Robins, Kaplan, Miller & Ciresi L.L.P., but because he lacked legal experience, the firm would not give him the title “legal assistant.” The law firm instead hired Messerly as “an assistant to a legal assistant.”

“I was a weekend receptionist and a messenger and a mail boy. I was hired ... to three-hole punch and bate stamp documents. You name it, I’ve done it. I’m probably the only lawyer here who has had every single job [at the firm] except [for the job of] managing partner,” jokes Messerly. “I’ve only had one job my whole life!”

Messerly was eventually promoted to a position as a legal assistant, where his work focused on subrogation claims for large insurance companies. Although Messerly enjoyed his work, he realized that he would prefer to represent individuals and was intrigued by medical negligence law. He enrolled at Hamline University School of Law in 1983 and began

working as a law clerk at the firm. After graduating with honors in 1986, Messerly joined the firm as an associate, and he has been a partner at the firm since 1993.

Messerly does not take all the credit for his success.

“I couldn’t be doing this without the support of my family and my partners,” he says. “Being a trial lawyer is pretty demanding on time. You have to have an understanding and supportive family.”

Mentors and mentoring

No lawyer enters the profession with all of the skills they will need to represent their clients ethically and zealously. According to Messerly, seasoned attorneys have an obligation to mentor newer lawyers.

Messerly take a lot of time with the newer lawyers at his firm and frequently volunteers to speak to groups of newer attorneys.

Messerly cites Solly Robins, the founder of the firm of Robins, Kaplan, Miller & Ciresi L.L.P., and John Eisberg, a partner in the firm and the first lawyer in Minnesota to develop a specialty in medical negligence law, as two of his most influential mentors.

“When I was a young lawyer, Solly Robins taught me how to be an advocate for people and how to do my best for my clients while playing by the rules,” he recalls. “And likewise, John Eisberg, who I think most con-

sider the dean of medical negligence law, taught me how to do medical negligence cases “the right way” – that is, with the utmost respect for the people you are bringing a claim against ... I think because of [their leadership], all of us here [at Robins, Kaplan, Miller & Ciresi L.L.P.] have been successful in helping people in the medical negligence area.”

Messerly’s mentors taught him that it is counterproductive to pursue claims that are not meritorious. Messerly explained that his firm will decline to represent potential clients when there are significant concerns that the chance for success does not justify the financial and emotional costs of going forward.

“I feel an obligation to be honest with people and keep cases out of the system that don’t belong there. Rather than tell [a potential client that there is a conflict of interest], I explain to them as best I can why I don’t think [their claim] is worth pursuing. I think [attorneys] owe it to [their clients] to say ‘you may have a meritorious case on the negligence, but the damages will be so low that you will spend a dollar to get a dime,’” says Messerly.

Still, Messerly will refer potential clients to other attorneys and help them decide how to proceed.

“I’m not so arrogant as to believe that if I don’t think there’s a case there isn’t one. I’m sure I’ve declined cases that other people have taken successfully. But ultimately our job

is to do the best thing for the family or individual and be honest with them as to why we didn't take the case," Messerly explains.

Although financial concerns often play a role in the decision whether to take a case, money is not the only factor. When Messerly feels strongly about a case, or when he believes that raising the issues in the case will benefit the public, he will often represent clients on a pro bono basis – even when there is no chance for financial recovery. For example, Messerly once took a paternity case involving a botched blood test to the Minnesota Supreme Court. There was no financial recovery in that case, but it was important to Messerly – and to his client – to set the record straight. "It's nice to be in a firm like this where you can afford, with the support of your partners, to take cases pro bono," Messerly observes.

Sports and the law

According to Messerly, one should approach sporting events and the practice of law in much the same way – "play hard" in the courtroom, but be civil during and after the game.

"I dislike incivility in the law, whether it's from lawyers or judges," says Messerly. "There's a lot of incivility [in the law] and that's unfortunate. It's unnecessary."

Messerly, who coaches his three children in hockey and is himself very athletic, draws many analogies between the practice of law and play-

ing sports. As a coach he tries to instill in kids the rules of dealing with others in society along with the rules of the game.

"I don't think some kids who are now lawyers were coached very well because they're not very friendly," he says. "And they're unnecessarily mean. There's enough aggravation in the law and being a litigator. Litigation is inherently adversarial, but there really is no reason why lawyers can't be nice to each other."

Messerly is captain of the Ramsey County Bar Association (RCBA) hockey team, which is made up of judges and lawyers that play other teams from Minnesota and Canada. (Although Messerly currently practices in Minneapolis, he began his career in his firm's St. Paul office and has been a member of the RCBA hockey team for the past 10 years.) He draws certain parallels between the way the game is played and the way cases are tried.

"When I play hockey, I will go out and hit someone as hard as I can within the rules of the game. But when the game is over, I'll be the first to shake their hand and buy them a beverage," says Messerly. That's the way it should be in court as well, he adds.

While he is disappointed in the level of incivility in the law in general, Messerly describes the area of medical negligence law as "an alcove of a small group of defense lawyers and

plaintiff's lawyers who generally get along quite well. They'll pound on me and I'll pound on them, they'll do a great job and I'll do my very best job. But when it's over, we're professional colleagues. That gives me a certain level of satisfaction in being able to practice law that way."