

KEITH HEBEISEN

From Highways and Harleys to Medical Malpractice

by Pat Milhizer



When you're handling medical malpractice cases with the kind of money on the line that Keith Hebeisen is trying to secure for his clients, it's probably not a bad idea to have some sort of a good luck charm.

Maybe it's a suit and tie combo. Or sticking with the same pre-trial breakfast.

But a picture of Barney the dinosaur?

Hebeisen, of **Clifford Law Offices**, has that and a collection of other drawings and colorings that find their way into his binder of trial notes.

One note even has a word misspelled, but let's give the author a break—she was barely out of diapers at the time it was written.

"Wish that you win the trial," says one of the notes, which were all done by Hebeisen's daughter.

"I always carry one of those in my trial notebook," Hebeisen says after pulling them out

of an office drawer. "She doesn't do it anymore, but I still have all these ones that she did before."

In his practice, Hebeisen (pronounced hay-bison) may represent everyday folks who work fixed hours. He does it with ease because he was once one of them.

Hebeisen, 54, grew up in Elgin, the son of a lawyer who had a general law practice and handled wills, taxes, traffic tickets and whatever else came in the door.

The second-oldest of six children, he readily admits that he was a rebellious teenager.

"At that stage of my life, I couldn't even imagine wearing a suit if I didn't have to. That was way too conservative for me. Like a lot of teenagers, I was the smartest person in the world. I knew more than my parents. I knew more than any authority figure," Hebeisen says.

After graduating from Elgin High School in

1970, the rebel had a cause. He went to the University of Illinois, ready to join demonstrations rallying against the conflict in Vietnam and narrowly avoiding arrest on at least one occasion.

Playing sports wasn't really all that attractive to Hebeisen, but rock music and motorcycles were.

But first, there were a few advanced science and math classes for the chemical engineering major to handle. Hebeisen says that he had some success, but not the right kind.

"I succeeded in quickly digging myself a hole with grades my freshman year. I was on probation for grades... And the next semester, I didn't [make] it," he says.

The university kicked him out during his sophomore year, but Hebeisen got back in on an appeal.

"I went one more semester and said 'I've got to take some time out.' I wanted to be able to earn some money and I wanted to buy things," he says.

In 1973, Hebeisen was back in Elgin and working construction. With his first \$2,000, he bought a Harley-Davidson motorcycle.

He spent the next year and a half working on extending what is now known in Illinois as I-88 from Aurora to the Mississippi River.

"Those days were Monday through Friday, and every time I went home, the job stayed there. And now it's always, some way or another, with me. If I have complaints about what I do now, that's one. I get tired of being stuck inside, especially when the weather is nice," Hebeisen says.

With his motorcycle, stereo and record collection that included albums from Led Zeppelin, Jefferson Airplane and The Doors, Hebeisen went back to school in Champaign.

At some point before he graduated in 1976 with a political science degree, Hebeisen took the LSAT.

"I probably took it when I was a senior, but I honestly don't remember. All I know is whatever my score was, it was in the top 5 percent. But I wasn't really thinking that I was going to law school," he says.

The high score didn't faze Hebeisen. He hardly studied for the test and didn't go to law school immediately after he graduated.

Instead, he stayed downstate for another six months to keep working at a motorcycle shop that handled repairs and sold parts.

Then he went back to Elgin and the construction gig for nearly four years.

"In the late '70s and early '80s, there was a nasty real estate depression so construction activity was dropping a lot. So it was like, 'I've got to figure out something else to do,'" he says.

Catching a Break

With his LSAT score, Hebeisen ended up at DePaul University College of Law. He caught a break one day after an evidence class during his second year.

The professor approached Hebeisen and said that he had just received a call from a lawyer at Philip H. Corboy & Associates. An attorney there, Robert Clifford, had indicated that he was looking for a clerk.

Hebeisen accepted the position, although he was somewhat intimidated.

"I hadn't worked in a law firm at all, and this was the top trial firm in the city," he says.

Soon enough, it became clear that calling the job "part time" was some serious false advertising.

"It became 50 hours a week in addition to going to law school during the day," Hebeisen recalls.

And he found a friend and supporter in Clifford.

"When I met him," Clifford says, "he was a tall lanky guy with a mustache—he used to have a mustache—who was kind of shy and introspective and rides a Harley. He's a contrast in a lot of different ways."

"But his work was exemplary in terms of the academic side of things. As a law clerk, he was an excellent writer and researcher. And he didn't whine, didn't gripe. He got to the job and did it in a timely fashion. He made me look good and he still does to this day," Clifford says.

Hebeisen graduated from law school in 1983 and took a job handling medical malpractice cases with Albert F. Hofeld Ltd.

On his first day as a practicing attorney, Hebeisen met a court reporter during five depositions. The court reporter would later become his wife.

"She didn't think much of me," Hebeisen says of his wife, Jodi, "because I was very green and didn't know what I was doing. I wasn't dressed real nice because I was a poor first-day lawyer."

Hebeisen waited about four years to ask her out. They married in 1989 and have a daughter Melanie, 17, and son Kenny, 15.

After a year at Hofeld's firm, Hebeisen joined Robert Clifford at a new firm—Robert Clifford & Associates, now known as Clifford Law Offices.

"Keith is one of the hardest-working guys I know," Clifford says. "He's not pretentious. He's not driven by ego. He got it right away that what we do is about the clients and not about the lawyer."

For Hebeisen, one of the best parts of the job



Hebeisen (the toddler) and his father (man on the edge of the truck) were both in construction before they attended law school.

is the intellectual challenge he faces working on cases that are always challenging and never the same.

"But the best part overall is being able to represent people who I think deserve justice for what has been done to them and being able to accomplish that for them," Hebeisen says.

What's perhaps most challenging in cases that go to trial is the opposition Hebeisen said he faces—and not only from the defense attorneys.

"The medical profession is against you. A lot of the jurors or at least potential jurors are against what I'm doing," Hebeisen says. "I can safely say that one of the most certain things that I know is that potential jurors are not automatically sympathetic to victims of medical malpractice or any other personal injury plaintiff."

"In fact, they're less sympathetic to medical malpractice plaintiffs...the closest you come to a guarantee is that you have the experience and good judgment and that you exercise that judgment appropriately so that you can achieve justice for someone's who's been wronged," Hebeisen says.

Having been at it for nearly 25 years, Hebeisen says that the biggest change he's noticed in his field has to do with the number of experts needed for a case.

"I remember that if you had a birth injury case 25 years ago, you would hire an obstetrician as an expert. You might have an expert in

assessing what the medical costs are going to be for this child in the future. And an economist, and that was all you ever had," Hebeisen says.

Then Hebeisen ticks off today's laundry list of experts.

"Now in the same kind of case, you're going to have an obstetrician; a pediatric neurologist; a neonatologist; you might have a pediatric neuroradiologist; you're going to have the future care needs person; an economist; you might have an infectious disease expert. And each one of those could be \$10,000," Hebeisen says.

Most cases settle out of court, but Hebeisen handles about one to three trials each year.

Plain Spoken

In court, he says that he tries to be plain spoken.

"And not come across like a lawyer," he says.

"I try not to be the focus of attention any other time than I'm supposed to be. The only time I'm supposed to be the focus of attention is when there's no witness on the stand, and it's just me," Hebeisen says. "I also try to be as organized as possible so that the trial moves along, and people can stay interested in what I'm presenting. I try not to waste people's time."



Hebeisen clerking for Robert Clifford in the early 80s.

Hebeisen, who was president of the Illinois Trial Lawyers Association in 2005–06, says that most of the lawyers he faces have been easy to deal with, in terms of not making the trial any more stressful and problematic than it naturally is.

"You fight over what you really have to fight about and nothing's personal. It's a lot easier to try a case when the guy on the other side is prepared. You might think that you're better off if he's not, but if they're not prepared, they take longer than they need to with things—which screws up scheduling for everybody—and they can put a jury to sleep," Hebeisen says.

Coordinating schedules is one of the most difficult aspects of trials because the cases involve doctors.

"It's not like getting some truck driver down to court with a subpoena," Hebeisen says.

Hebeisen also has gained respect from his adversaries.

"I really respect Keith because if you do not belong in the case, he eventually will figure it out, and he will drop your client from the case," says Dick Donohue of Donohue, Brown, Mathewson & Smyth LLC.

"And he is very good at narrowing the issues and focusing the case on the issues that need to be focused on," Donohue said.

On several occasions, Donohue has traveled with Hebeisen to Canada to depose medical experts hired by Clifford Law Offices.

keep track of how much money he's secured in settlements or verdicts.

But one case stands out.

Last October, Hebeisen represented a boy in a trial that ended when a DuPage County jury awarded a record \$12 million. The boy suffered brain damage at his birth in 1999 due to a delayed Caesarean section.

Benjamin Hayes, 8, has the intellect typical of his age group. But he is confined to a wheelchair for life because he can't control his

Hebeisen says.

The Hayes case—*The Northern Trust Co., Michelle Hayes, et al. v. Burandt & Armbrust LLP, etc., et al.*, No. 01 L 1115—helped "kill a false myth about that jurisdiction," he says.

In the end, the jury awarded \$10.5 million for the costs related to caring for the boy for the rest of his life.

The remaining \$1.5 million was awarded for non-economic damages. That figure wasn't subject to the malpractice caps that Illinois has on pain-and-suffering damages, because the lawsuit was filed before the caps were enacted in 2005.

Under the caps (which Hebeisen disagrees with) plaintiffs can recover no more than \$500,000 from a physician and \$1 million from a hospital for non-economic damages.

In his spare time, Hebeisen still enjoys listening to rock music and riding motorcycles. Value-wise, the \$30,000 Harley in his garage is a far cry from the one he bought in college. He's also a big Green Bay Packers fan.

"I certainly couldn't have pictured at age 20 what I'm living now. That's for sure. And what would that guy say then about me now? Probably something not complimentary," Hebeisen says.

"There are a lot of people who think (medical malpractice lawyers representing plaintiffs) are terrible people doing bad things. And the conversation is skewed based on what you hear from hospitals and insurance companies," Hebeisen says.



Hebeisen in 2001 with one of the motorcycles he has owned.

"Almost always," Donohue says, "these experts don't have very favorable testimony to offer about my clients. But Keith's secretary always calls me to tell me when he's going, that he's hired a car, that he would give me a ride...and he tries to make things as cooperative as you can even though when we get to a deposition, we might kill each other," Donohue says.

"And then we have a two-hour ride back to the airport. The thing I respect about Keith is he never takes it personally. He knows we all have a job to do," Donohue says.

Another adversary, Tom Hill of Dykema Gossett PLLC, says that Hebeisen is always well prepared for trial and doesn't claim unrealistic damages.

"That makes him formidable because he maintains his credibility when he's giving closing statements in front of the jury," Hill says. "The judges know him and have a high regard for him. When you argue motions, he's very prepared and the judges listen to him."

A Standout Verdict

Just as he can't tell you how large his vinyl collection is, Hebeisen said that he doesn't

arms and legs.

Hebeisen alleged in the lawsuit that the doctors who handled Hayes' birth performed a crash Caesarean section after they waited too long.

Hebeisen lined up experts who testified that the boy would have been a healthy child had his mother not been given a drug to induce labor when her contractions were too close together.

Unborn babies have a normal heart rate that runs rather high compared to healthy children and adults—between 120 and 160 beats per minute.

The procedure caused Hayes' heart rate to drop from 180 beats to 60 beats per minute.

Before the trial, Hebeisen settled with the Central DuPage Hospital and an obstetrician for a total of \$4.6 million. Heading into the trial, Hebeisen had repeatedly heard from lawyers and judges that he wouldn't be able to top the previous high verdict in DuPage County, which was \$7.2 million.

"The logic was nuts," Hebeisen says. "It's like a built-in cap, so to speak.

"Everybody was saying 'Even if you try a case and win it, the best you're going to do is maybe six or seven million, and you have to win to do that. And you still have to worry about the problem that it's really hard to win out here,'"



Hebeisen became President of the Illinois Trial Lawyers Association in 2005.

"There's the myth that doctors are fleeing the state because premiums are too high and that hospitals are closing because they can't afford med-mal insurance," he says.

But when it comes to his work, Hebeisen has a challenge for critics when it comes to the clients who he represents.

"What," he asks, "would they think if it was someone in their family?" ■



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