

Ex-El Pasoan wins big cases in courtroom

Lawyer Richard Mithoff was in a Houston courtroom last week, poised to begin battle, when his opponents had second thoughts.

Before the day was out, Mithoff, a former El Pasoan, had orchestrated what he considers the largest medical malpractice settlement ever awarded to a family — \$115 million to the family who claimed in a lawsuit that their child was retarded because of a doctor's neglect at her birth almost three years ago.

Ronnie and Linda Ferris expected to fight Dr. Michael Brody and Pasadena Bayshore Hospital in the legal arena.

But the hospital's malpractice insurance company instead agreed to an unprecedented settlement: \$4.25 million within 30 days and \$7,000 a year for the rest of Andrea Ferris' life. Doctors say Andrea could live a normal life span of more than 70 years. The monthly payments will escalate 6 percent a year and will continue for at least 20 years, even if she dies.

If Andrea lives a normal life span, the settlement could total \$115 million. But hospital administrator Donald Francis said the insurance company's cost would stop at \$5.64 million — the \$4.25 million cash settlement and \$1.4 million to purchase an annuity contract that will fund the monthly payments.

Mithoff speculated the hospital and insurance company chose to settle because of the uncertainty of what a jury might decide.

Brody, who was Mrs. Ferris' obstetrician, had no malpractice insurance, and the hospital's insurance company will pick up the tab, Mithoff said. The doctor left the hospital two years ago but still practices in Houston.

The settlement has gotten the 37-year-old Mithoff attention from the national news media and fellow lawyers.

Mithoff grew up in El Paso, leaving for college and law school at the University of Texas at Austin after he graduated from El Paso High School in 1964. His parents, Richard and Frances Mithoff, still live here.

He considered returning to his hometown but settled in the Gulf port city of Houston as a more

fruitful land of opportunity. He is a partner with the Houston firm of Jamail, Kolius and Mithoff.

His specialty has become taking personal injury cases before juries.

"I wanted to do trial work," he said last week. "I wanted to do something a little exciting and where the stakes were high. And I found it," he said with a chuckle. "I've always got something big going on."

The big cases are usually poignant.

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July 7, 1980, Linda Ferris checked into Pasadena Bayshore Hospital, in labor with her and husband Ronnie's first child.

Both mother and baby "showed obvious signs of distress" and the baby clearly wasn't getting enough oxygen, Mithoff said.

Hospital nurses testified in sworn depositions that they called Brody during Mrs. Ferris' 12 hours of labor, but he didn't appear.

Twelve hours "is not necessarily a long time," Mithoff said. "But if a baby is struggling to survive, it's a hell of a long time."

But the doctor had no malpractice insurance and regardless of any jury decision, no money to give the Ferris family.

"Hooking the hospital" — with its malpractice insurance company's money — was the hard part, Mithoff said. "My ultimate fear was that the jury would excuse the hospital."

Andrea's care costs about \$2,000 a month, including a nurse five days a week, Mithoff said. Ferris, a 32-year-old auto parts store manager, earns \$15,000 a year. He and his wife have a second child, 17-month-old Melissa, who is normal.

Andrea's mind will never progress beyond that of a 1- or 2-year-old child, the lawyer said. She will never walk or talk, feed or dress herself, remaining "a very large baby" as she grows older.

The family says it wants to keep her at home, but "they'll reach a point where they physically can't handle her," Mithoff predicted.

The Ferris case wasn't Mithoff's first of national note.

Last year he won a \$26.5 million settlement stemming from a highway accident.

Richard and Barbara McWhorter of Houston were traveling through New York state with their three children in April 1981, on the way to a marathon race in which Mrs. McWhorter was to compete.

Two trucks were heading in the opposite direction, one tailing the other. Then something went wrong. The first truck jackknifed. The second truck skidded into it before sliding across the freeway, meeting the McWhorter's car head-on.

The McWhorters and their 11-year-old daughter were killed in the grisly accident that somehow left their two sons, then 14 and 16, relatively unscathed.

Mithoff sued the two trucking companies. A year later, just as the case was to go to trial, the insurance companies for the firms agreed to swallow a \$26.5 million loss.

Mithoff expects his next big case to go to trial in Washington, D.C., in June. A 3-year-old boy, son of a law school professor, was in a grocery store near the gum machines when a machine fell, crushing the left side of the child's skull and tearing off an ear.

The cases can be gruesome.

"Children are the toughest," Mithoff said. "You see a lot of it, and you almost get conditioned to it. But I've got two kids (ages 9 and 11), and it hurts."

— Jeannie Kever