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Mithoff's Medical Malpractice Magic *Firm Thrives on Lucrative Specialty*

BY RICHARD CONNELLY

The walls in Richard Mithoff's penthouse office in Houston are filled with framed newspaper clippings: Mithoff winning a huge verdict, Mithoff representing Willie Nelson, Mithoff donating to a good cause.

Mithoff makes no bones about the fact that he likes seeing his name in print, and his impressive trial record is likely to keep it there. In just five months this year, he racked up \$7 million in ver-

dicts and settlements, and in the past he has gotten single personal-injury judgments or settlements of \$119 million and \$26 million.

In one two-week period in May, he scored in three different trials: verdicts or settlements of \$1.3 million, \$890,000 and \$550,000.

"That's just the way it happened; they all came in at the same time," said the 42-year-old Mithoff.

Mithoff, former partner to litigation wizard Joe Jamail

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HOUSTON'S RICHARD MITHOFF: Five years after leaving Joe Jamail's firm, he has established his preeminence in a specialty within the medical malpractice specialty.

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of Houston, has made a name for himself in medical malpractice suits, including pioneering litigation in cases of babies suffering brain damage during childbirth.

Mithoff is an aggressive, sometimes combative lawyer who takes pride in his ability to communicate with juries and make complex subjects clear. Away from the courtroom, he keeps things loose.

"I've learned more about final arguments by listening to country-western tapes and drinking beer on the beach than by anything else," he said. "I've learned more about lawyering from trading talk in saloons. . . . I love hanging around lawyers, trying suits, trading stories."

Even with his penchant for the press and his string of conspicuous successes, Mithoff is well-liked by his peers — even those who see his more explosive side.

"David Weinstein says I gave him the biggest chewing-out he ever got," Mithoff said.

"That's true," said Weinstein, a partner at Houston's Fulbright & Jaworski. A young Weinstein found himself defending an IUD manufacturer against Mithoff and taking his first deposition concerning the delicate and personal matters that arise in those suits.

"I got nervous, I'd never asked those type of questions before," said Weinstein. "I was kind of stalling, and I asked [Mithoff's client] 'Have you ever had a traffic ticket before?' Mithoff just blew up, screamed 'What the hell difference does that make?'"

Weinstein struggled through the deposition and eventually settled the case. "Mithoff is very thorough, very prepared," he said. "You know you're dealing with a top-notch lawyer and he forces you to be at your best. He's really not abrasive, just very protective of his clients."

Terry Tottenham, another Fulbright partner who is a frequent opponent, agrees. "I think Richard is a total lawyer, a true professional," he said. "He enjoys a very outstanding reputation."

"I get into scraps," Mithoff said. "I control my temper better than I used to."

PICKING AND CHOOSING

Much of Mithoff's success in the medical malpractice area can be traced to his extensive screening of cases. He said he takes about one case out of every 75 he looks at, and keeps a full-time nurse on staff to conduct initial evaluations.

"If I think there's a 50-50 chance of winning, I'll take it to one of our doctors to take a closer look at it," he said. "I spend a good bit of money evaluating cases. I try to limit myself

to having 50 major cases pending."

"A lot of his success comes from his careful screening," Tottenham said. "He spends a great deal of time on it. I won't go so far as to say every case he takes has merit, but it's usually a horse race."

Although he handles other types of law — including the legal affairs of Willie Nelson, Doug Kershaw and the Doobie Brothers — medical malpractice has become Mithoff's forte.

"I got into it by accident with Joe Jamail," he said. "No one else wanted to try them and I was looking for a way to go to trial."

In the 15 years since then, he has seen the field grow. "Back then, in the small towns, I couldn't get a local lawyer to sit at the table with me. They didn't want to be seen taking on the town's doctor. I'd have to get someone to come at night to help me with picking a jury. They'd come at night but wouldn't want to show their face in court," he said.

"The biggest change has been that more and more doctors — particularly the young ones — are willing to come forward and testify. It just wasn't that way 15 years ago," he said.

"These kinds of cases are the hardest to try, and I've tried every kind of damage case, even partner suits [among lawyers]," he said. "You start out having to learn a

whole different language. The cases have enormous expenses. . . . The other side spares no expense. They'll hire 12 experts and you have to try to match them dollar for dollar on discovery. Doctors have a lot at stake, their reputation and standing in the community. It's more than just a struggle with an insurance company."

Even with the technical preparation, Mithoff bases his courtroom strategy on more personal grounds. "I just do things on instinct. I try to prepare as best I can, but the things that have worked best have never been planned. . . . I'm not much for documents or exhibits, I don't understand computers, but I like people," he said.

"He has a great deal of compassion for his client, and you combine that with the strength of his natural brilliance as far as the law and his ability to communicate with people, and you find he's an excellent trial lawyer," said William Stradley, name partner of Houston's Stradley, Barnett & Stein and a friend — and sometime client — of Mithoff.

Mithoff's instincts don't always work. "The plaintiff is always Exhibit A," he said, recalling one disaster. "I had a guy who had suffered several injuries. . . . In the depositions, he was being a macho John Wayne type. At the trial, I said 'Don't lie or fudge or anything, but go . . . loosen up a bit. Surely there was some pain — give me something to work with.'"

"He got up there and started blubbering and crying. It was horrible, just embarrassing. I finally called a recess and said 'If you shed another tear, I will walk out and you can try this on your own.' He was a silly SOB. I wanted to strangle him."

Probably his most famous malpractice case — "I got a clipping from a South Africa newspaper on it," he said — involved the \$119 million judgment for a baby who suffered brain damage during delivery. After the 1984 decision, Mithoff donated \$100,000 to fund a professorship at the University of Texas Health Science Center Medical School to improve training in neonatal and perinatal care. The case also spurred legislative changes improving hospital procedures, he said.

"Change comes slowly, but there

has been some progress," he said. "In large part, cases like this one help make a difference. It's been rewarding work."

The rewards — financial, professional and personal — are what keep Mithoff working a full case load. He says he always has been drawn to the drama of the courtroom and doesn't want to leave.

FIRST TASTE OF PUBLICITY

Reared in El Paso, Mithoff partied more than he studied as an undergraduate at the University of Texas. Getting married help settle him, he said, and he was project editor of the *Texas Law Review* in 1971.

While at UT, he got his first taste of victory and the resultant publicity. The city tried to prevent a march by 25,000 students protesting the Vietnam War, and Mithoff, with help from UT professor Charles Alan Wright, filed in federal court to lift the ban.

"I had to borrow a coat to get in the courtroom," he said. "It was really a volatile situation. I got the order and ran up the street and announced it over the public address system. It was pretty heady stuff."

"It was a very significant event," said Tottenham, who assisted in the 1970 march. "If students were forced to march on the sidewalk like the city wanted, it could have been disastrous. The feelings were running very high, it was a town versus gown thing, and it could have been a travesty."

While at UT, Mithoff worked for Warren Burnett, a solo practitioner with offices in Odessa and Galveston. "He was refreshingly bright and industrious," Burnett said. "He was the best possible social company — he's read quite a number of books, many of them books lawyers normally don't read. He'd have been a splendid teacher or a marvelous lecturer."

Mithoff and Burnett worked with Ralph Nader on curing abuses in the West Texas property-tax system, and then Mithoff left to clerk with U.S. District Judge William Wayne Justice.

"I enjoyed that a lot — the judge is much warmer in person than he's portrayed in the press," Mithoff said.

He went to Jamail's firm after his stint with Justice, leaving after 10

Richard W. Mithoff

Born: December 19, 1945, in Lufkin

Occupation: Sole partner in the Law Offices of Richard Mithoff of Houston

Education:

B.B.A. in business from the University of Texas, 1968; J.D. from the University of Texas Law School, 1971

Career Highlights: Clerked with U.S. District Judge William Wayne Justice, 1972-74; worked with Houston attorney Joe Jamail in what became Jamail, Kolius & Mithoff, 1974-83; established own firm in 1983; named one of "The Best Lawyers in the U.S." by *Town & Country* magazine, May 1985; became a member of the American Board of Trial Advocates, 1986; president of the Houston Trial Lawyers Association, 1986-87; became a member of the International Society of Barristers, 1988

Personal: Married to Ginni McTaggart; son Michael, 16; daughter Caroline, 14



years to practice with three associates in October 1983. His firm still has three associates, plus Austin's Tommy Jacks, who joined this year as of counsel after his partnership with Supreme Court candidate Lloyd Doggett dissolved.

"One of the hardest things I've done was deciding to set up my own shop," he said. "But I knew it was time, and I've been busier than I ever wanted to be since."

And the clips keep coming, and his office walls get a little fuller. "I enjoy what I'm doing," he said. "I get restless when I'm not in trial or involved in something big. I enjoy the variety of it. I just enjoy trying suits." ■