

# Most Effective Lawyers 2008

South Florida attorneys who scored significant victories for their clients



## Medmal retrial produces \$30 million award for brain-damaged teen

**Crane Johnstone**  
Sheldon J. Schlesinger P.A.

**C**rane Johnstone had 16 years of evidence to present at the medical malpractice trial of a child injured at birth.

"Logistically, it was a monstrous case to get my arms around," Johnstone said of the five-week trial. "I could have taken three months to present the trial. ... I had to whittle it down."

By the time he got the case, it had been to trial in Broward Circuit Court and appealed to the 4th District Court of Appeal and the Florida Supreme Court, where the justices ordered a new trial. Jacob Tomlian, the newborn in the case, had turned 16. The retrial produced a \$30 million jury award in April.

The hospital — then Humana Hospital and now Westside Regional Medical Center in Plantation — is on the hook for all but \$2 million of the judgment. Court records show the hospital filed a \$32.6 million appellate



**Johnstone**

bond to take the case to the 4th DCA again.

One aspect that turned out to be an advantage was Jacob's age.

"When the case was first tried, Jacob was something like 6 or 7 years old," Johnstone said. "He was not able to articulate his story

then, and I think people thought 'Well, geez, he may get better.'"

At 16, "the consensus is he made a better, more compelling, sympathetic witness; a more terrific witness because you can see that he's never going to get better. He's not so brain-damaged that he doesn't know he's brain-damaged," his attorney said. "He's sensitive to the fact that he has disabilities."

The jury realized the teenager had overcome severe obstacles, including surgery to break his legs to repair an inward turn.

Jacob downplayed his injuries. He told jurors that he rode motorcycles and worked

as a carpenter with his father in Reno, Nev., where the family now lives. But Jacob, who is wheelchair-bound, cannot ride motorcycles or join his father on construction sites, Johnstone said.

Defense attorneys James Haliczek and John Mauro did not return calls seeking comment.

Johnstone said the defense maintained Jacob's brain damage occurred in utero and not when he was born in 1991. The defense said Dr. Mark S. Grenitz of Plantation did nothing wrong by waiting several hours before performing a Caesarean section.

But Johnstone said Grenitz should have performed emergency surgery as soon as Jacob showed signs of fetal distress.

"Our experts said the injury was not the type that would have occurred when the child was developing," Johnstone said.

As for winning the largest jury award against a hospital in Broward County at the time, he said he was happy his efforts were on Jacob's behalf.

"He's just a beautiful kid, a really sweet kid," he said.

— Kelly Cramer