

SPECIAL REPORT: MOST EFFECTIVE LAWYERS 2015 | MONDAY, DECEMBER 7, 2015

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MOST EFFECTIVE LAWYERS of 2015

MEDICAL MALPRACTICE-FINALISTS

Attorneys Negotiate \$14 Million Settlement With Broward Health

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After a wayward nurse at Broward General Medical Center habitually re-used saline in cardiac stress tests, hundreds of patients had to be tested for blood-borne diseases like HIV and hepatitis.

Fortunately 1,850 of the patients tested negative. Still, the time between learning they could be infected and finding out they weren't was agonizing, especially because their loved ones might also have been exposed to a dreadful disease.

That waiting period proved expensive for Broward Health, the public health system that oversees Broward General in Fort Lauderdale. It settled a

class action lawsuit filed on behalf of the 1,850 patients for \$14 million in March, four months before a scheduled trial.

"We mock-tried the case to two different jury panels and videotaped the reaction of the juries to the story and shared that with the lawyers for Broward Health," said lead plaintiff counsel Jay Cohen. "Most people who heard the story had a visceral reaction to the negligent conduct and the responsibility of Broward Health for that conduct of the nurse."

A couple of months after the Broward Health lawyers saw the videotape their client settled, he said.

Cohen, who has his own firm in Fort Lauderdale, worked the case with William Rieder of Downs Law Group in Coral Springs and David Brill of Brill & Rinaldi in Weston. Rieder and Brill helped with legal analysis and arguments, client outreach, depositions, pleadings and mediation.

Aside from obtaining class action status, the plaintiff team had some significant obstacles to overcome. For

one, Broward Health is a public entity that argued it should be protected by sovereign immunity and a \$200,000 damage cap.

"It would be ridiculous to think that 1,850 people would have to share in one sovereign immunity limit," Cohen said. Had the judge not agreed, his team would have dropped the class action and pursued each claim individually, he said.

The defense also had an argument drawn from the impact doctrine: The plaintiffs suffered no physical harm and therefore no emotional distress.

But it didn't fly. "We were able to reflect that the impact occurred by the administration of these tests to the satisfaction of the judge," Cohen said.

The settlement provides a range of \$5,000 to \$10,000 per class member. Broward Circuit Judge John Bowman also approved a \$96,000 incentive payment to the class representatives and attorney fees of \$3.63 million.