

J. Kent Mathewson Receives Outstanding Attorney of the Year Award

American Physicians recognized three attorneys for exceptional defense work at a dinner held in April at the Radisson Hotel in Lansing, Michigan. Among them was Chicago attorney, J. Kent Mathewson, a founding partner of the Donohue Brown Mathewson & Smyth law firm, who received an Outstanding Attorney of the Year Award for a trial he handled in 2007.



“Kent was assigned a very difficult, almost impossible, case to defend,” said Cathy Shutack, Vice President of Claims. “His expertise in representing our insured physician, as well as the final outcome at trial, is a perfect example of the effectiveness of our tough claims philosophy.”

The claim involved a 29-year-old male who presented to an inner-city emergency department three times on three consecutive days complaining of abdominal pain and constipation. The morning after his third visit to the ER, the patient was taken by ambulance to a different hospital. While hospital staff was attempting to place an NG tube, the patient suffered cardiac arrest and died. An autopsy report stated the cause of death as, “diffuse peritonitis, which eroded through the bowel wall.”

The patient was survived by a young daughter whose mother filed suit on the child’s behalf. Mr. Mathewson represented the ER doctor who treated the patient on his third visit to the hospital. Allegations against the doctor included failure to: perform adequate tests and exams; observe the signs and symptoms, and properly diagnose the condition; adequately treat the condition; seek the appropriate consultation; and provide proper follow-up.

“We could not find an expert to support our insured’s care, so we offered a settlement,” said Shutack. “However, the plaintiff demanded more than twice what we determined to be a fair value for the claim. In addition, we had an insured who presented well and was willing to try the case – as well as defense counsel, Kent Mathewson, who was tough enough to take on the challenge of going to court without an expert.”

The plaintiff’s expert was a Harvard professor who testified that our insured did not meet the standard of care. “Still, we gave it a good run on the liability issues,” said Mathewson. “Our insured did extremely well on the stand. He told the jury about his extensive experience with these types of patients and was able to

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explain his thought process in treating the patient.” Mr. Mathewson was then able to convince the jury that hindsight is 20/20 and that the plaintiff’s expert couldn’t possibly diagnose a patient he had never examined.

After six days of testimony, closing arguments were presented. The plaintiff attorney asked the jury to award more than \$6.8 million in damages, but Mr. Mathewson presented a convincing argument as to why this amount was unreasonable. The jury deliberated for approximately eight hours over two days and, on the eighth day of trial, returned a verdict of less than \$800,000. This was a fraction of what was requested at trial, as well as less than the amount that American Physicians had offered to settle the claim prior to trial.

After the verdict was rendered, the defense team met with the jury. The jurors indicated that they liked the ER doctor, but believed he simply missed making the right diagnosis. “Being a ‘likeable’ defendant is so important,” says Shutack. “We have many cases with excellent medicine that we simply can’t take to court because our insured would not make a good witness. Juries want to see physicians who are caring, compassionate and competent. When they come across as angry or hostile, they almost always lose at trial. Having a likeable insured can mean the difference between a multi-million dollar verdict and a Not Guilty.” In cases like this one, a likeable defendant helps keep the verdict at a reasonable level.

When asked whether he was hesitant to take such a difficult case to court, Mathewson said, “I like trying cases. That’s why I do what I do. We expected to lose this one, but actually came close to winning. Our goal was to secure a reasonable payment for damages, which we accomplished. It was a good challenge and turned out better than expected.”

Shutack explained that successful resolution of claims can only be accomplished with excellent defense counsel, well-prepared physicians, and a company that will stand behind its policyholders.

J. Kent Mathewson

Mr. Mathewson is one of the founding partners of the Chicago law firm of Donohue Brown Mathewson & Smyth. His practice is concentrated on the defense of professional negligence and product liability claims. He also has extensive experience in the trial and resolution of business and commercial cases in state and federal courts. Mr. Mathewson has taken numerous cases to trial and achieved successful jury verdicts for clients ranging from product manufacturers and physicians to the Chicago White Sox Baseball Club. He has developed special expertise in the defense of ophthalmologists and ophthalmic device manufacturers, having obtained more than 15 successful jury verdicts in such matters alone.

Recognized as an expert in his field, Mr. Mathewson has been named a Leading Lawyer in the areas of Commercial Litigation, Medical Malpractice Defense Law, and Products Liability Defense Law. The list of Leading Lawyers is the result of contacting thousands of Illinois attorneys and asking them which of

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of their peers they believe comprise the top lawyers. Only those who are most often recommended qualify as Leading Lawyers. In 2006 and 2007, he was named a Super Lawyer in Illinois in the area of Civil Litigation Defense. Super Lawyers are the top five percent of attorneys in each state, as chosen by their peers and through the independent research of *Law & Politics*.

Mr. Mathewson received his law degree from the University of Chicago in 1982 and his undergraduate degree from Dartmouth College (cum laude and with distinction). In addition, he is a former President of the Trial Lawyers Club of Chicago and has served as Chairman of his firm's Management Committee. Mr. Mathewson is also a member of the Colorado Bar.
