

MATA President Defends Plaintiff's Rights

Published: 1:00 am Mon, September 18, 2000

By WENDY L. PFAFFENBACH

Douglas K. Sheff is fighting an uphill battle.

Before the new president of the Massachusetts Academy of Trial Attorneys can even begin lobbying for the changes he wants, Sheff says the organization must protect what rights plaintiffs have left.

"Before I tell you what we need to promote, first we have to defend," the Boston lawyer says. Sheff says he and other plaintiffs' attorneys throughout Massachusetts face a daunting list of obstacles:

- * the possible creation of choice no-fault insurance;
- * the Division of Insurance's recent approval of a plan proposed by Premier Insurance Co. of Massachusetts, which Sheff says is blatantly aimed at containing a person's medical expenses under the \$2,000 tort cap; and
- * a bill seeking to limit accountants' joint and several liability, which could lead to the end of *all* joint and several liability.

Add to all of this what Sheff considers the "poisoning" by big businesses and insurance companies of citizens' perception of personal injury plaintiffs.

The negative propaganda, Sheff contends, is demonstrated by the recent study of the Department of Justice putting Massachusetts near the bottom of the barrel on both the frequency and size of jury awards for civil plaintiffs.

MATA To The Barricade

Overarching the current set of challenges confronting plaintiffs' lawyers in Massachusetts are longstanding statutory limits on recovery, Sheff explains.

"There are no punitive damages outside of the death statute and Chapter 93A. We have archaic caps on hospitals and other medical providers of \$20,000. In workers' compensation we were hit with unfair reforms a few years ago," he says.

But the attacks on the civil justice system this year are unprecedented, the MATA president charges.

On the possible creation of a commission aimed at creating no-fault insurance, Sheff says "that's a real misnomer. Choice no-fault essentially allows a lot of unsuspecting victims of motor vehicle accidents to go without any kind of pain and suffering [damages]."

Also cause for concern for plaintiffs' lawyers, Sheff says, is the Division of Insurance's approval of the Premier Insurance plan allowing insurance discounts for drivers who agree to be treated by their carrier's HMO after an accident.

"The statement from the president of Premier was that 'we are going to do this plan and use inexpensive doctors who will never allow the bills to exceed \$2,000.' And the plan is *still* approved," he exclaims.

Finally, Sheff believes that a bill abolishing accountants' joint and several liability could have serious implications for the tort system.

"Within months of that bill passing, the word 'accountant' will be changed to the word 'defendant,' so that manufacturers, doctors and everyone else who should bear responsibility for their own actions will be absolved," he predicts.

Initiatives

But despite the obstacles, Sheff, as MATA president, has the opportunity to do what he loves best: alter the legal landscape.

The Boston attorney has been active in the Association of Trial Lawyers of America, for which he has chaired the New Lawyers Division, acted as a state delegate and is currently chairman of the Council of Presidents.

Through ATLA, Sheff says he learned the power of lobbying and the importance of being heard by politicians.

“You get 60 or 70 people meeting with key legislators to talk about tort reform, and then you win by a few votes and can’t help but think that having a delegate lobby day had an impact,” he remarks.

Sheff has taken what he learned on the national level and applied it to Massachusetts, such as starting MATA’s delegate lobby day and the organization’s New Lawyer Division.

“Some of the elements I’ve learned from the state delegates, some of the ways they communicate and get things done, I’ve tried to employ in my committee work with MATA,” he acknowledges. Sheff will need all the experience he can muster to meet his goals leading MATA over the next year.

For starters, he will continue MATA’s ongoing effort to institute voir dire.

“Voir dire would let us get a non-biased jury,” he asserts. “The jury pool has been poisoned with big business propaganda for over a decade.”

If lawyers could ask jurors questions, they could “at least identify who is biased and who is not,” he says.

This is nearly impossible using the current juror questionnaire, Sheff contends.

Sheff is hopeful that voir dire will become a reality in the future, particularly under the reign of Superior Court Chief Justice Suzanne V. DeVecchio — whom he describes as “fair-minded and receptive.”

Under his leadership, MATA will also tackle abolishing secrecy in settlement agreements.

“To have more access to information is very important because [lack of information] is how our adversaries can get away with things they shouldn’t in settlement agreements,” he says.

For example, Sheff explains, if he brings a case against a manufacturer, he has no way of knowing if his case is the 44th brought against the company or the first.

If plaintiffs’ lawyers knew how many cases had been brought against a given manufacturer, or for how much money other cases settled, they would have greater bargaining power during negotiations, according to Sheff.

But as things currently stand, Sheff notes, secrecy agreements divide and conquer the plaintiffs’ bar.

“If I’m a manufacturer who saves a lot of money by making a defective product, it may behoove me when the occasional case comes along to settle it, sign off on secrecy, and keep doing the same thing.”

According to Sheff, other states have passed legislation prohibiting this type of confidentiality agreement, and he wants Massachusetts to do the same.

Father And Son

Sheff — now well-ensconced as a successful personal injury attorney — didn’t always harbor an aspiration to advocate the rights of injured people.

Growing up, he had little desire to follow in the footsteps of his father, well-known Boston lawyer Irving H. Sheff.

“I’d like to say I chose law for noble reasons,” he says. “But the fact of the matter is that, as a rather rebellious young man, I thought I would do everything *except* law. I was going to play drums. I was going to be a writer.”

Even after Sheff completed Boston College Law School in 1984, he was bent on practicing a different type of law than his father, a civil practitioner.

“At first, I said, ‘Well, I’ll be a lawyer, but I’ll be a criminal lawyer. It will have nothing to do with the type of law my dad practices,’” he recalls.

Initially, he was an assistant district attorney in the Barnstable County District Attorney’s Office. When he finally agreed to practice with his father, it was “just for a year, to satisfy everyone’s curiosity in the family.”

But more than a decade later, Sheff has taken over the practice from his now-retired father, and has changed it from a general practice to a specialized plaintiffs’ firm.

“Today we just don’t get to dabble,” he remarks. “We have to specialize or perish.”

Sheff and his colleagues focus mainly on medical malpractice, products liability and “larger, more complicated tort cases.”

But he has little patience for plaintiffs’ lawyers who turn up their noses at simpler matters.

“Anyone who tells you, ‘We don’t do slip and fall and we don’t do automobile,’ isn’t telling you the truth,” he insists.

Still, Sheff admits he derives the most satisfaction from the bigger cases.

“A high-end tort case that makes an impact on society, to me it’s like my precedent. It’s my statute. It’s my way of leaving something behind for other people,” he observes.

Sheff says he has worked on a number of cases that continue to impact people long after his client has received compensation.

The cross-walk between Faneuil Hall and Government Center in Boston was changed, lanterns on construction sites have been refitted, and “any seat belt in any Toyota truck that you ever use on the planet” is now different because of cases brought by his firm, he claims.

Sheff firmly believes in the work of plaintiffs’ lawyers and is confident about the continued vibrancy of MATA.

“Whatever people may think [of plaintiffs’ lawyers], I know their lives are better because of us,” he says.

And if he had one goal this year, what would it be?

“If we could get every practicing civil attorney in Massachusetts to understand that, to reach one’s potential, you must be a member of MATA, then I will feel like I did my job,” Sheff says.