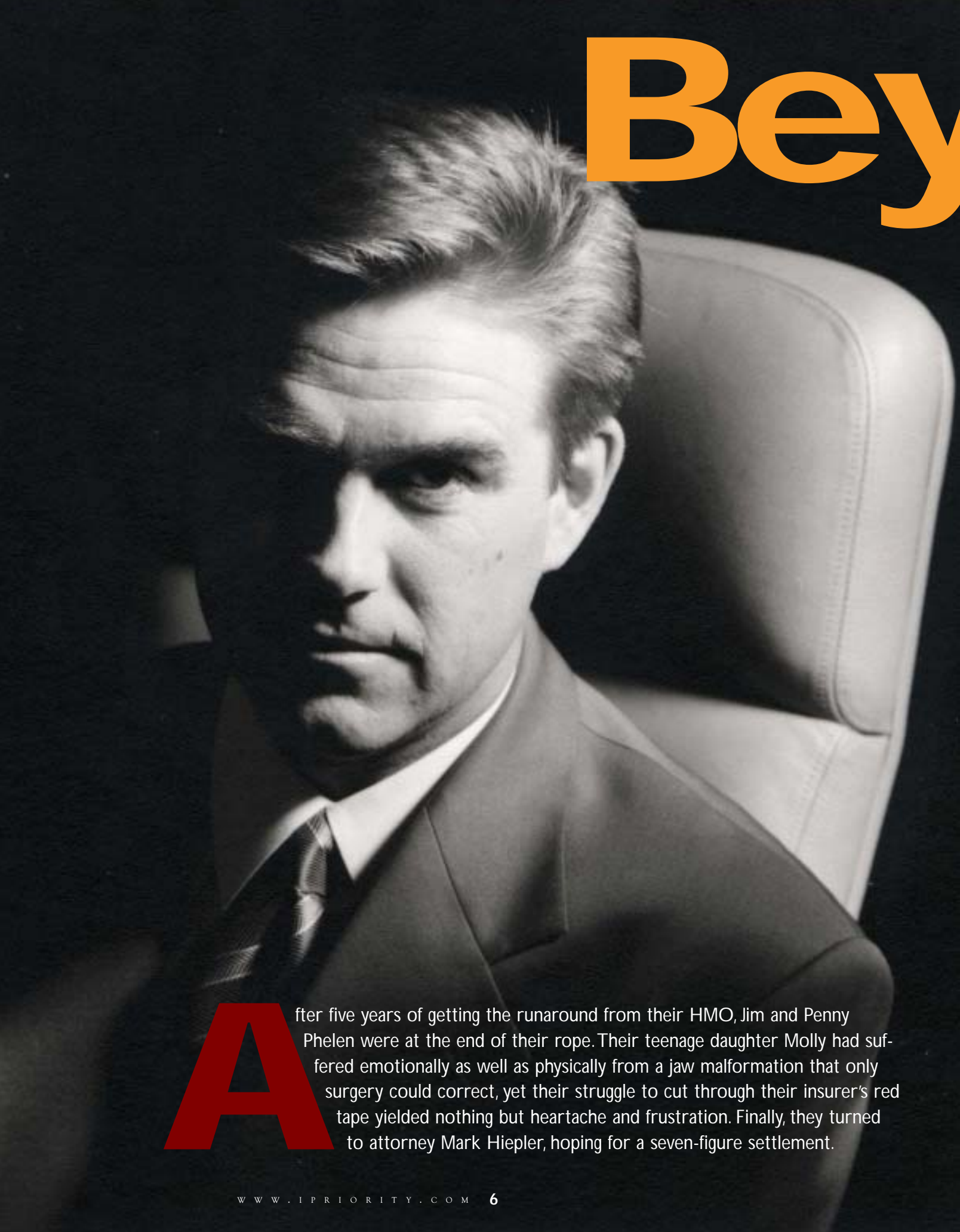


Bey



After five years of getting the runaround from their HMO, Jim and Penny Phelen were at the end of their rope. Their teenage daughter Molly had suffered emotionally as well as physically from a jaw malformation that only surgery could correct, yet their struggle to cut through their insurer's red tape yielded nothing but heartache and frustration. Finally, they turned to attorney Mark Hiepler, hoping for a seven-figure settlement.

Beyond Success

A CONVERSATION WITH MARK HIEPLER, ONE OF *NATIONAL LAW REVIEW'S* TOP 100 LAWYERS IN AMERICA

The famed California lawyer who carved out a name for himself by suing managed care companies did not disappoint. In fact, before he even filed, Health Net—the HMO against which Hiepler won his first multimillion-dollar verdict—agreed to the exact figure the Phelans were looking for: 4092505. This was the authorization code that the family's surgeon needed to perform the procedure—a LeFort maxillary osteotomy—that would properly align Molly's jaw.

It would be easy to attribute Hiepler & Hiepler's success to a media-created personality cult that catapulted Mark Hiepler's clean-cut image onto the national stage after winning huge judgments against managed care companies. But assuming that Hiepler's reputation is based more on hype than substance would be a huge mistake. His message that HMOs should fulfill the marketing promises they make to people when they are well once they become sick, resonates not only with print and television reporters but also with policy makers. The 41-year-old litigator has testified many times before state and federal legislators. He also speaks before medical, legal, and managed care industry groups.

Behind all he has accomplished, though, there is the memory of a single tragedy. His sister, Nelene Fox, died ten years ago of breast cancer, succumbing after Health Net refused to pay for the bone marrow transplant that was her last hope. Hiepler himself took the company to court after other, more-experienced lawyers turned down his sister's case, and in December 1993 he won an \$89 million verdict. At the time, it was the largest verdict ever against a managed care company.

Over the next five years Hiepler won three more multimillion-dollar decisions: in 1995 a \$3.2 million verdict, in 1996 a \$1.35 million arbitration award, and then in early 1999 a \$6.8 million verdict in a case that involved a baby girl left blinded by allegedly improper neonatal care.

With each victory Hiepler added to his reputation as a giant killer. His victories also helped sustain a debate over patients' rights that swept California and moved across the nation. The Hiepler firm points with pride to the Friedman-Knowles

Experimental Treatment Act of 1996. Passed in the wake of the Fox verdict, it requires HMOs to undertake an external, independent review before denying experimental therapies to anyone who suffers from a life-threatening condition.

Such is the extraordinary legacy left by his sister. Yet, ironically, to Hiepler, Fox was also a bitter defeat, since he was unable to figure out back then how to wrangle an authorization code out of a recalcitrant HMO before Nelene died. *"There's not a day that goes by when I don't think about her sacrifice,"* he says, and even today Nelene Fox is referred to within the firm as a "silent partner."

How has your personal background contributed to your professional success?

My dad was a very devoted pastor all his life and that was probably the best preparation I could have had for anything in my life. I deal with catastrophically injured people and people who are fighting insurance companies, usually over a life and death matter. By the age of ten I had been to more funerals and weddings than most people will attend in a lifetime.

After a funeral my dad and I would talk about the person's life, whether this was a joyful celebration of life or whether he could offer nothing but the hope of eternal life to this family. In addition to that, every Sunday we would go as a family, after church, to sing in one of 20 different rest homes. Then he would take me along when he went to the hospitals to visit catastrophically injured people or people who were dying from cancer. So from a very young age I was acquainted with dealing with tragedies from a spiritual perspective. Of course, at that point, I knew nothing about the legal side of dealing with the tragedies.

In what specific ways has that helped you in your work?

I saw that there are not always answers to problems that none of us can contemplate and never would have anticipated, and sometimes all you can do is pray. But being a pastor's son and being involved at a very gut level with everybody from rest



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homes, to hospitals, to people's homes, night and day, was a very positive experience. It really opened my eyes to people's pain and agony in the midst of terrible, tragic turmoil.

There are a lot of attorneys who are much smarter than me, but they look at things as a purely financial issue. I have a different approach in that I look at the support and the encouragement people need in addition to the medical treatment and financial resources. In my role I am sometimes a counselor and pastor.

Hopefully I use those opportunities appropriately. And, of course, I am a trial lawyer who takes on the institutions who don't seem to care about the individual. There is such a huge counseling and befriending and listening aspect to representing a catastrophically injured or brain injured person, a paraplegic, quadriplegic, or someone facing a bone marrow or organ transplant who are being denied treatment by an insurance company. I was blessed with a heritage of parents who loved God and served people and I want to continue that legacy.

What was the full impact of your sister's situation?

I could never have dreamt of Nelene's tragedy happening. And it was compounded by the fact that neither famous lawyers nor anyone else wanted to take the case. God allowed us to endure what was probably the worst human tragedy in life. My sister Nelene put me through law school and was probably my best friend. I still don't have an answer to why she died, but as I have spoken at countless medical conferences, legal conventions, and heard that her case made a significant difference in how people are now able to get treatments they need, it has helped my perspective.

The only thing we had to hold onto was the promise of eternal life. Eternal life is, of course, a beautiful thing even when you are alive and healthy, but when my sister was facing death, her ability to cling to the promise of heaven made all the difference.

Besides the memory of your sister, what else motivates you in your work?

You can work endless hours and be very dedicated to something if you know you are on the right side. The amount of time I

spend with very stressed people with tragic cases sometimes takes a toll on me, but somehow God strengthens me to keep going. He has blessed me with so many wonderful people who pray for us, pray for our clients and pray for our cases. I am committed to a cause; I believe in it and that enables me to outwork the competition and to go above and beyond the call of duty. And because I am representing an individual, a small family, the little guy, I have an even greater motivation to keep going. The important thing is that these families see that we are also dedicated to more than winning the case and getting some money. We're committed to following through with these people for a year after the case. We stay involved with these families, letting them know that we care about them even after the settlement check clears.

What lessons have you learned on the road to success?

You really need the ability to see who is telling the truth and who is not. You have to decide what is the best way to solve a problem. We tell 90 people a month not to file a lawsuit. We help them go directly to the individual or large company who may have caused some tragedy and try to resolve it. Many times that doesn't work, but at least we try to solve it on a person-to-person or attorney-to-person level. There are many disputes that can be resolved one-to-one. And if not, then we bring the full measure of the law, and every resource we have, whether it's a small case or a big case, to bear to try to make sure that the right thing is done, yet realizing that sometimes justice will never be done on this side of eternity.

The biggest lesson I have learned over the years is that there is a huge difference between a terminally ill person sitting in my chair who has a faith that assures him of eternal life, a faith that takes him beyond the grave, and the person who's whole life ends at death. I see the difference in these people. I saw it in my sister. It doesn't eliminate the pain, it doesn't eliminate the tragedy of these events, but it's a hope and a confidence that transcends whatever might happen in this world. 🙏