

LAWDRAGON

Lawyer Limelight: Brian LaCien



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By Emily Jackoway

While the rest of the world was shutting down, attorney Brian LaCien was embarking on a new career path. In May of 2020, LaCien and his partner, Todd A. Smith, opened the doors to their new firm, Smith LaCien LLP. With more than \$2B in verdicts and settlements, the two partners are continuing to prove that no obstacle – not even a pandemic and a prolonged interruption in courthouse operations – can stop them from working towards securing recoveries for their clients.

Though LaCien may be new to starting a law firm, he brings nearly 20 years of high-stakes experience to the role. His career has focused on complex litigation in an array of matters including medical malpractice, aviation, product liability, accounting malpractice, trucking litigation and financial fraud. Among his recent cases, LaCien is continuing to work with others toward resolution of the

Takata Airbag Productions Liability Litigation, where Smith and his firm serve as a co-lead counsel. The firm also serves as co-lead counsel in a large environmental exposure case, where hundreds of individuals maintain that they suffered harm due to a sterilization facility's decades-long release of a toxic cancer-causing chemical into a residential community.

Outside of the courtroom, LaCien is active in several organizations including serving on the American Association for Justice's board of governors. In his service there, he works towards keeping the court system accessible to all Americans.

Lawdragon: Tell me about the founding of the firm. I imagine it was in spite of rather than due to the pandemic.

Brian LaCien: Yes, the planning of the firm predated the pandemic by a short period of time. Starting a firm or any business during a global health crisis presented unique challenges. However, these challenges pale in comparison to some of the everyday challenges faced by the clients we represent. As to opening the firm during a pandemic, there are difficulties in doing anything

that is worthwhile, so I have tried to look at the positives. Obviously, this has been a terrible pandemic, but it caused some shifts in the practice of law that were long overdue.

LD: Which changes in particular?

BL: The ability to uniformly attend court hearings and depositions via video conference. Such activities often involved travel whether locally, nationally or internationally. Before the pandemic, I was traveling up to 75,000 miles per year, which was by no means a high number in this profession, but with the integration, widespread availability and acceptance of platforms like Zoom, there is less of a need for that kind of travel. It is often much more efficient to attend depositions and hearings via video conference. While not every hearing or deposition can be done through Zoom, I think it can be useful for the case, the clients and the practice of law.

LD: On to the actual founding of the firm, why did you decide that now was the time to start your own firm and why specifically with your partner, Todd Smith?

BL: I'd worked with Todd for the majority of my career. As the years went on, we worked together on more and more cases. We had similar approaches to handling matters and were interested in the same types of cases. So, it just felt like the right time with the right person. I worked with good people at my previous firm, but I was ready for the next step in my career.

LD: Had you ever imagined that you might want to start your own firm, or did this move come as a surprise to you?

BL: I had thought about it. I think most attorneys think about it. Launching a firm is challenging because of the dual business and practice aspects of starting and operating a firm.

LD: How do the two of you complement each other in your work? Do your styles differ?

BL: Because we've worked together for so many years, we have similar approaches to handling cases – specifically, the need to thoroughly investigate a matter by way of discovery and prepare for anticipated defenses. Both of us have also been open to taking on difficult cases due to the nature of the case or legal issues involved in the matter.

I would say, though, that we have different styles. In the courtroom, you have to be yourself, because the jury will get a good read on you over the course of trial. Authenticity is important to a jury. So, Todd is a dynamic, compelling trial lawyer, while I have a measured, methodical approach.

LD: What led to that style?

BL: In the type of work that we do, our clients have experienced the worst things that can happen in life such as catastrophic injury and/or loss of a loved one. There's typically a lot of stress on them and on their families. Often, cases become contentious – not necessarily between the parties, but between the lawyers because of the high stakes of the litigation.

So, I try to be measured and methodical in pursuing the case because the end goal is to obtain justice for the client. Opposing counsel often can be difficult and obstinate, and many times, we

are using the testimony of a defendant or its own employees to prove a case. Needless to say, these are not pleasant, cooperative witnesses. Moreover, the subject matter of the cases is often complex. I find that it's effective to stay fixed on the goal of proving the case and not letting the conduct of witnesses, experts or opposing counsel deter our clients from obtaining the evidence to which they are entitled through discovery.

LD: Are there any challenges you've faced in getting cases to trial?

BL: In today's litigation environment, defendants often delay or just aren't cooperative for a variety of reasons. But we stay focused on the goal, which is to get the case to trial and win.

LD: It sounds like getting justice for your clients and their families is what you find most rewarding about your career.

BL: As a trial lawyer, you are truly helping people. That in and of itself is a reward. We help provide them with a sense of justice and the knowledge that the system does work.

One of the pillars of our constitutional system is that our state and federal courts are accessible to everyone, regardless of wealth or status. The courts are a place where legal disputes can be resolved peaceably.

LD: That access is built into the structure of your firm in that you operate on a contingency basis, correct?

BL: Completely. Most trial lawyers receive no payment unless they win the case.

LD: Moving on to specific cases, tell me about the helicopter case you had to piece together with no eyewitnesses.

BL: That was a challenging case. We represented the family of an experienced helicopter pilot who died when his helicopter crashed. It was his last day of work before retirement. He was gasping up the helicopter and it was nighttime. Otherwise, conditions were good.

There were no witnesses to the crash. So, piecing together what happened involved looking at air traffic control data, analyzing the badly burned wreckage and reconstructing the crash itself to determine the cause.

There had been only a few previous incidents where there were crashes due to failed tail rotor ball bearings. A tail rotor system helps a helicopter pilot fly – it's basically the tail of the helicopter. For this type of aircraft, according to the manufacturer, the tail rotor ball bearings were supposed to last a lifetime, but we found that the bearings had an irregularly high replacement rate. We combined the number of helicopters in the U.S., the number of bearings that were coming into the U.S. and the number of mechanics who were called to replace these bearings and discovered that there was evidence of these systems failing. We demonstrated through this evidence and expert testimony that it was likely due to the type of material used in the bearings. So, working with our experts, we demonstrated that the crash was due to the failure of the tail rotor system, not pilot error.

LD: In another case, you sued the city of Chicago over a bicycle crash that led to a severe traumatic brain injury, and you had to reconstruct part of the bicycle to demonstrate to help the jury understand what happened. Tell me about that.

BL: Our client was a cyclist who was doing what many people do in urban areas – riding his bike on a residential street. He was a relatively young father who had moved from Europe to the United States to go to college, then graduate school.

He was on a bike ride one day, and his bike tire became caught in the groove of an old streetcar track that was exposed through the asphalt. It took him right off his bike, and he suffered a catastrophic injury. The injury required extensive medical care and rehab and left him cognitively as well as physically impaired.

LD: What were some of the challenges of the case?

BL: The case was difficult partly because he had significant memory loss initially after the incident – which is not uncommon in head injuries. Even though he recovered some of his memories later, the defense tried to undercut his recollections of the event. So, we obtained testimony from neurologists and neuropsychologists and reviewed a lot of medical literature analyzing amnesia.

Since there were no witnesses to the injury, we also analyzed bike paths and old trolley systems in Chicago and across the country. We investigated how trolley tracks cause injuries to bicyclists and demonstrated that our client's injury was consistent with the danger posed by trolley tracks. Like many municipalities, the City of Chicago had recently put an emphasis on pedestrian and cyclist transportation and prioritized those systems of transportation over vehicular transportation in new projects. There's a lot of merit to that goal. But, if you're putting that system on top of a 100-plus-year-old system of streets and trolley tracks, you have to make sure that those bike lanes are safe.

At the location where our client crashed, we discovered that the trolley tracks had been asphalted over in the 1950s rather than being removed. The track had been exposed on and off for years. Maintenance workers patched over that asphalt multiple times, but they were patching asphalt to metal, which is not likely to last and led to the track continuously being exposed.

The major challenge in the cause was the immunities and defenses that the State of Illinois provides to a municipality like the City of Chicago. Under Illinois law, a plaintiff cannot pursue certain claims against the city and has a higher standard of proof compared to other claims. For instance, there's also something in Illinois law called discretionary immunity, meaning a municipality has discretion and you can't second-guess the discretion they exercise in performing certain acts.

LD: How did you overcome those defenses?

BL: The city had to prove it actually exercised discretion. Through discovery prior to trial, we were able to demonstrate that the city couldn't prove that its employees exercised discretion in planning for the repair of the street. They couldn't prove that they exercised discretion in not fixing the trolley tracks

That seems like it's an easy concept, but we had to litigate that issue through a number of depositions with exacting detail as to how and when work was performed. We did this so that someone from the municipality couldn't just come in and say, "Well, we've got a lot of streets. They're in poor condition. We do the best we can." They would have had to prove they made a decision about this street, which they couldn't end up proving.

LD: I'd be remiss if I didn't also ask for an update on your Takata Airbag litigation. Where are those cases now?

BL: Those cases are progressing. Cases against several manufacturers have been resolved, and the few which are left are moving ever closer to trial. It is an immensely complicated case because of the number of cars and people impacted by the defective product. Takata did business and supplied parts to basically every major vehicle manufacturer, and the case was prosecuted against each manufacturer

LD: Is there any part of that case that's been particularly impactful for you?

BL: Well, there are two major parts of the case: economic loss and personal injury. The economic loss is important because for nearly a decade people purchased and operated cars that weren't safe. As to personal injury, airbag systems are designed to save lives and reduce injury. Unfortunately, this safety device was causing injury and death. When you look back and see how many people died and how many were injured by what should have been a safety system, it's truly tragic.

LD: Finally, moving away from your cases, tell me about your role on the board of governors of the American Association for Justice.

BL: Working with AAJ has been rewarding. The American Association for Justice is an organization that primarily focuses on making sure there's equal access to our court system so that regular people have a chance at receiving justice.

LD: That's the goal of your firm, too, so those aims must connect well across your working life. What do you find vital about your role there?

BL: The organization's focus on making sure the courthouse doors remain open for all of us is crucial. Over the past few decades, we've seen certain forces constantly wanting to chip away at that access, making it more difficult to seek relief in court. It parallels the way that certain entities want to make it more difficult to vote.

It's important that people have a voice in our system of government, whether they're voting or seeking justice through the courts. The courts are one element in our governmental system where people actually do directly participate, whether it be as jurors, witnesses, plaintiffs or defendants. It is essential that the doors to the courthouse remain open for all.