

Profile: Gerry Mannion

This activist at heart holds insurance carriers accountable

By Stephen Ellison

Timing wasn't exactly on Gerry Mannion's side when he came out of law school, eager to pursue social change. His path of choice, environmental law, had recently become a crowded one – jobs were being snatched up as quickly as they were created – and by the time Mannion graduated, the field had reached near-maximum capacity.

But Mannion got past the disappointment and discovered, perhaps out of necessity, he had a knack for trial work, going on to carve a niche in plaintiffs' insurance coverage and bad-faith work. It was enough to where he never looked back at his original aspirations.

"Until much later in the development of the environmental law field, there was very little jury trial work," said Mannion, partner with San Francisco-based Mannion & Lowe. "Most of it was done through regulatory agencies, so you were just dealing with administrative law judges, or it was done with judges, federal and some state, to enforce executive rules or agency rules. I decided I liked the jury work more, so I never pushed to get back into the environmental field."

Today, Mannion & Lowe is a version of the very firm Mannion started his career with under Richard Sangster more than 35 years ago. In the beginning, it was a mix of insurance defense and some plaintiffs' work, he said, and over the years, it has grown and morphed into a practice that focuses almost exclusively on plaintiffs' insurance coverage. In the end, it seems, Mannion has found his own way of generating social change – by making sure everyday working men and women get what they are paying for from the multibillion-dollar insurance industry.

"We are sort of in a unique area; there are not many firms that do what we do," Mannion said. "Some large firms do it on an hourly basis, and so an ordinary Joe can't really afford them. … So they come to us because we do the majority – I'd say about 95 percent – of our insurance coverage cases on a contingency basis. That opens us up to the world of people that are small businesses and individuals who are mistreated or misled or mishandled by insurance companies."



Mannion

Because of the complexity of the area, Mannion's work also includes consulting for other firms on cases that involve or center on insurance coverage. Most of the time, it may entail just answering a question or two or providing advice on a case, but now and then, it turns out to be something more. "Sometimes we have to get involved because it's complicated," Mannion explained, "and then sometimes we just have to send a draft letter or direct them to a case that would help out."

It's settled – mostly

Insurance coverage and bad-faith cases also don't lend themselves well to trial – for either side – so most end up settling, Mannion said. For the most part, insurance carriers will pay enough to keep the case from a jury because they realize they aren't going to win on technical grounds, he said. And due to some significant changes over the years in how punitive damages are calculated, awarded and taxed, plaintiffs don't have a lot of incentive to push for a higher award.

"From a trial lawyer's standpoint, the unfortunate thing is that in the old days you could hope to get punitive damages and really punish the carriers," Mannion said. "But the courts have been abysmal in terms of their approach to punitive damages."

The U.S. Supreme Court has indicated that, in most cases, a punitive damage sum of four times the compensatory damages is sufficient punishment, and any punitive sum more than 10 times the compensatory damages is unconstitutional. In bad-faith insurance cases, Mannion said, the punitive-to-compensatory ratio tends to fall between 2:1 and 3:1. "It starts becoming less economical for everyone to keep pushing for punitive damages," Mannion contended. "At the end of the day, the amount you recover isn't that much larger because the tax rates on punitives can basically cause you to lose most of the award to taxes."

Indeed, while that ratio has shrunk, the income boost from most punitive awards still would kick the average plaintiff into a much higher tax bracket and thus bring into play the alternative minimum tax (ATM), a nearly-flat tax rate on an adjusted income above a certain threshold. Basically, Mannion said, the plaintiff would be required to pay ATM on the full amount they recover, including the 40 percent collected by his or her attorney. After the IRS takes its share and the lawyer takes the contingency fee, the plaintiff ends up with a fraction of the original award.

"So there's a real practical consideration when taking a case to trial if you're pushing for large punitive damage awards," Mannion explained. "You have to tell the client, 'Look, we can get a big award – ordinarily there's a pot of gold at the end of the rainbow, right? – except, if you win it, you've got this huge tax bill.' People are going to say, 'Nah, I'll take the lesser amount of money' (offered in a settlement).

"Of course, the insurance company still has to pay the full amount," he continued, "so in terms of leverage, they

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still are facing a big bill" whether they settle or go to trial. "But the plaintiff doesn't have a lot of incentive to push it. On the other hand, if the insurance company is going to be unreasonable, then you push for all of it and hopefully get an award."

'60's social activist

Mannion pointed to a very socially active high school history professor as one of his early influences – the class focused on social movements and political theory and got the young Mannion interested in social change, he recalled. It was the late 1960's, and many dramatic changes were occurring around the nation that involved legislation and the high court. So, he looked to law or politics as potential avenues to help accomplish such change, and at that point, he decided law would be the right path for him.

For his undergrad studies, Mannion attended University of California Santa Cruz with a major in environmental studies and biology. "In those days, environmental studies was not as developed of a major as it is now, and you had to take a traditional discipline major along with it," he explained. "And again I saw that law could be a strong force in accomplishing environmental protection and change, and that pretty much cemented my interest in going to law school.

"I also decided that I really didn't like sleeping in the outdoors and checking traps at 4 o'clock in the morning as a biologist," he continued. "I thought it would be more enjoyable to accomplish change from indoors."

Mannion went on to UC Hastings College of the Law, determined to make his mark in the fledgling area of environmental law. He landed a job in the state attorney general's newly created environmental enforcement unit for one summer during law school and then for a few months after graduation. Upon passing the bar, he sought work "on the side of the plants and animals," he said, but all the government regulatory agencies that were created just a few years prior – after the establishment of the Environmental Protection Agency and passage of the Clean Water and Air acts – were fully staffed, he said. The only jobs available in the area were with the big oil companies. So he took a shot to see if they would hire him and even landed an interview with one firm.

"I think my political bent and orientation came through a little too strongly, so they never gave me an offer," Mannion recalled. "Which was fine with me."

Though it was a tough time economically in Northern California, Mannion and his wife had family in the area and wanted to stay if they could. So he started looking for work outside of his ideal field, and that's when he and Sangster found each other. "He hired me and another fella at the time – it was a three-man shop for a while," he recalled. "Basically, I did insurance defense and some plaintiffs' work for the first two to three years of my practice because that was the only work I could find. I found that I really liked doing the insurance work on behalf of plaintiffs, and over time, our practice shifted to becoming more and more plaintiffs' insurance coverage and bad faith."

Mannion said some of his more poignant victories over the years have been settlements and didn't necessarily involve large awards. They were memorable for the impact they made on his clients, he said. One such case involved residents of the Mendocino area who experienced a loss caused by water and were turned down by their insurance carrier. The amount at issue was about $50,000, he recalled. "It wasn't a huge amount of money, but it made a dramatic difference in their life," Mannion said. "We were able to get that case settled and put enough money in their pockets to get them back in their homes and take care of expenses. It turned their life around because they had been living hand to mouth up to that point."

Another case close to Mannion's heart involved a woman who had been living without heat or electricity for nearly two years because of a dispute between her insurance carrier and a contractor that had performed work on her house. The work had been shabby at best, and it didn't allow her to turn on the heat and electricity, Mannion recalled. But the carrier just abandoned her. "They just let her sit there," he said. "They knew what kind of conditions she was living in, but they didn't do anything about it. I was able to get her a sizable recovery. Basically, she had been living hand to mouth for a long time, and I was able to put enough money in her pocket to where she was able to live a decent life after that."

The high road to success

When he's not working, Mannion enjoys traveling. In fact, he and his family recently spent the Christmas holiday in Paris – and fortunately, their departure from France came two days before "they shot the place up," he said, referring to the infamous terrorist attack on Charlie Hebdo. He also likes to read and has practiced martial arts for about 30 years, having achieved a black belt and instructor's certificate in taekwondo. He said he had to give up his teaching role after he suffered a back injury, but he continues to practice and has vowed to get back in shape in order to train his future grandson.

Mannion also can be considered a certified veteran in offering professional advice, as he often lectures to young colleagues with the San Francisco Trial Lawyers Association, for which he is a past president (1991) and a 33-year member. And not surprisingly, his musings can be simple and straightforward.

"Don't be an asshole," he said he usually tells his SFTLA audience. "San Francisco is a small legal community, and it is still a profession, and people will still treat you professionally in general terms – they will give you respect and treat you honorably if you do the same.

"If you approach it in that fashion, not only will you either elevate the profession or keep it at the level it should be," he added, "but your life will be that much more pleasant."

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