



Profile: Wes Lowe

Insurance bad-faith specialist follows his passion, not the money, to success

BY STEPHEN ELLISON

Even though his initial career aspirations did not point to plaintiffs' law, Wes Lowe quickly proved he was built for the job and turned his advocacy passions into a successful litigation practice that has endured the better part of three decades.

The partner with San Francisco-based Mannion & Lowe easily could have been teaching literature at a university or answering the legal call for a big Silicon Valley company, but while those professions may have supplied their share of rewards, Lowe took a flier – and pretty much stuck the landing – in plaintiffs' law.

"When I first applied and got into law school, the two areas that interested me most were criminal defense work and labor law," Lowe said. "I quickly decided after my first year, after taking a course in criminal law. I didn't think I could do this. I also took a course in labor law and just didn't like it that much."

Lowe had taken an undergrad course at UC Berkeley on law and social change that focused on civil rights litigation of the 1960's, and it piqued his interest. That, he said, may have steered him toward law school and plaintiffs' advocacy, in particular. "As a part of the course, I volunteered at San Francisco Neighborhood Legal Foundation in San Francisco's Chinatown," Lowe recalled. "I greatly admired the lawyers there, although most tried to dissuade me from going to law school because of their increasing pessimism about the direction of justice in this country under the Burger court."

Later, during law school at UCLA, Lowe had the opportunity to join some corporate law firms after working as a summer associate at such a practice in Los Angeles. But, ultimately, he decided to not go that route and moved back to



Lowe

the Bay Area. There, he answered an ad in the UC Hastings placement office for an associate position at Sangster & Mannion.

At the time, senior partner Dick Sangster had

just become the president of the American Board of Trial Advocates and was frequently traveling, and Lowe would get the opportunity to prove himself early. The firm had been defending a very large corporation in a toxic tort litigation, so he actually began his career on the defense side for the crossover practice. Though it wasn't as financially rewarding as other attorney positions, the experience was invaluable.

"They hired me in March of 1984, and the starting salary back then was substantially less than what I would have made at a corporate law firm," Lowe said. "But I thought this was a great opportunity. Dick and Gerry were great lawyers, and both were great people, and I didn't go to law school for the money."

Selective and complex area

Today, Lowe and Gerry Mannion are the go-to specialists in insurance coverage and insurance bad faith for the policyholder. The firm often advises other attorneys and firms on insurance cases. Just recently, Lowe helped a plaintiffs' attorney making a policy limits demand in light of a recent Ninth Circuit case, *McDaniel v. Geico*; advised another plaintiffs' firm on getting an underinsured motorist

coverage under a business auto policy for an injury claim by a nonemployee; and advised yet another firm on settling an underinsured motorist claim while preserving the right to sue for bad faith.

Lowe also represents plaintiffs in personal injury, wrongful death and consumer cases. But taking down insurance companies on coverage issues is the firm's bread and butter, and there is a process for litigating such cases. The first question to consider, Lowe said, is whether he can make the case on coverage.

"If you can't make the case on coverage, generally speaking, no matter how great the bad faith case might be, you're not going to get there," he said. "Then we also look at what's the contractual benefit involved – how much is it? That's a consideration just for economic reasons because there's a lot of cases we have to turn down; they're just not economically viable – potential recovery just doesn't justify the amount of resources it's going to take to prevail in the case."

Another important consideration is the potential for compensatory economic damages, Lowe said. Juries and courts have grown more conservative over the years, so if he is unable to get bad-faith and extra contractual damages, he needs to be sure there's a sufficient amount in economic damages.

Going to trial

Within the insurance coverage and bad-faith arenas, Lowe has litigated a variety of issues involving all manner of insurance, including auto, homeowner's, life, health and disability, renter's, accidental death and dismemberment, commercial property and liability, and mortgage protection. Though most of Lowe's cases end up settling out of court or in mediation, he does end up at trial



about once or twice a year. In those cases, he said, there are three critical factors.

“At trial, more than anything: Is your case credible? Do you have a worthy plaintiff? And can you justify claims that you’re making?” Lowe said. “Because, obviously, the plaintiff goes first and has the burden of proof. The plaintiff is going to get scrutinized. I think because of all the propaganda from the insurance industry, jurors are pretty skeptical these days. My old partner, Dick Sangster, used to say, ‘It’s not enough to win the case, you have to convince someone you are entitled to win.’ That’s so true. You could actually prove your case and still lose it on the plaintiff side.”

Back to the Bay

Lowe was born in San Francisco and raised in the Sacramento area. His father was a certified public accountant and neither encouraged nor discouraged the young Lowe to become a lawyer. As a teenager in high school, Lowe said, he was somewhat enthralled with the activism of the ‘60s, perhaps because the law during that era was used as a force for social good and for social change.

When he started his undergraduate studies at UC Berkeley, Lowe may have had designs on a law career at first but later switched directions – twice.

“I graduated with a degree in English lit, and I thought at that time I might become a teacher or a professor. But maybe law school was always in the back of my mind,” he recalled. “Certainly, that was the case when I started undergrad; I was a political science major, and I thought I would get the degree in poli sci and go to law school. But I ended up getting the degree in literature, took a year off and ultimately decided to go, to give law school a shot.”

Lowe went south to attend law school at UCLA and said he loved the time he spent in Southern California. But after graduating, he ended up back in the Bay Area because it was more familiar, he had roots there, and the general lifestyle was more appealing, he said.

In the first couple of years with Sangster & Mannion, he was deep into the toxic-tort defense work before crossing over to help the firm on the plaintiffs’ side. Through the years, he has tallied a number of six- and seven-figure results for his clients and has made sure large insurance companies have paid their dues.

Memorable cases

While most of his cases are somewhat memorable, Lowe said there have been some unique cases that are very hard to forget.

One such case involved a renter’s policy. Lowe represented a family that had moved to San Francisco from England for a couple of years because the husband was an engineer and was working on a project at Golden Gate Park. The family was renting a home in the Sunset district and had gone back to England for the holidays. During the two weeks they were gone, there were severe rain storms, and when they returned, the home was flooded.

“It turned out the home had only one roof drain, and there was a ball stuck in the drain,” Lowe recalled. “It flooded the roof, completely saturated the roof then penetrated the seal and flooded the entire house.”

The insurance company denied the family’s claim on the \$50,000 renter’s policy. Though Lowe said they were underinsured, he decided to take the case because it was appealing, they were worthy plaintiffs and “it was just kind of a righteous case to take.” Lowe agreed to binding arbitration with a high-low because it appeared to be a pure coverage issue, he said.

“We’d advanced four or five arguments for coverage at arbitration and lost every one,” Lowe recalled. “But we won on the final one. The arbitrator, who was a retired appellate justice, rejected the coverage on the grounds that it was a wind-driven rain, rejected coverage on the grounds that it was a sudden and accidental discharge or overflow of water in a

plumbing system, rejected coverage on the grounds of collapse; but ultimately found grounds on this fairly obscure clause – falling object.”

Despite arguments from State Farm that the ball didn’t fall, the arbitrator said there was circumstantial evidence that the boy next door used to hit the ball against the wall, and the ball accidentally flew over the wall and landed on the roof, and then rolled down and blocked the drain.

“The arbitration award was interesting and memorable because he quoted from Thoreau,” Lowe said. “He said, ‘This reminds me of Thoreau’s story of the evidentiary nature of finding trout in milk.’ I’d never heard of it. It has to do with circumstantial evidence. So, we ended up getting coverage.”

Peace and wisdom

When he’s not fighting for his clients’ insurance coverage, Lowe enjoys traveling and hanging around the city for its active nightlife – world-class restaurants, movies, galleries and museums. “When I was younger, I used to play basketball and tennis, but not with my knees, not anymore,” Lowe said. “Occasionally, I get away to Tahoe with friends from college, and we go hiking.”

After three successful decades in the profession, Lowe said one piece of advice he heeded as a young lawyer still applies today. “Know the facts,” he said. “I recall Dick Sangster telling me when I was a young lawyer that a lawyer who knew the facts should beat a lawyer who knew the law any day of the week. This is true, and in our insurance cases, I strive to know the claims file better than adjusters and claims reps.”

Beyond that wisdom specific to winning cases, Lowe said, “Try to find an area of law you’re passionate about because that will sustain you through the ups and downs, particularly on the plaintiff side.”

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