



Profile: Boone Callaway

He never set out to be a med-mal lawyer – and then that Kaiser case landed on his desk and he was hooked

BY STEPHEN ELLISON

It's not often one comes across a lawyer who embraces both stability and change with equal vigor. Boone Callaway has made a career of such flexibility.

The longtime personal-injury and medical-malpractice attorney has worked with the same partner and same assistant for more than two decades, successfully advocating for people who have been injured or wronged by large entities. And in doing so, Callaway and his team at Callaway & Wolf in San Francisco essentially have rolled with the evolving legal landscape that has created more settlements, mediations and arbitrations and, in turn, fewer trials.

To be sure, Callaway would love to be in trial more often than his current once-a-year rate. But he knows it's rarely his decision to make.

"It's better for trial lawyers to frequently exercise that skill set – lawyers talk about keeping their chops up – and yet, in every case, it comes down to what's right for the client and the case," Callaway said. "You don't have that choice in the matter, of saying, 'Oh, I just want to try this case.' It's always risky, going to trial – there's a wide spectrum of what the outcome could be. So, you have to do the right thing in each individual case, and if the client wants to settle, it's their case, and you have to settle.

"The downside is people start expecting that all cases will settle, and the neutrals in ADR (alternate dispute resolutions) get a lot of repeat business from the defense side," Callaway continued. "So, it can sort of be a cookie-cutter process, where your best settlement may not be at mediation. The best settlements always come to the people who distinguish themselves from the pack and the people who will try the case if they don't get an appropriate offer."

Over the years, that philosophy has translated into numerous six- and seven-figure settlements and verdicts for



Callaway

Callaway and his clients, including multiple favorable results in the medical malpractice arena, an area most plaintiff's lawyers in California seem to

avoid because of the state's MICRA law that caps general damages at \$250,000.

Callaway said the MICRA cap law was designed to make it less and less feasible for plaintiff lawyers to take cases against doctors; it's a doctors' protection act, and it's been very effective in that regard. But there are attorneys who are genuinely intrigued by the medical malpractice arena and don't want to just drop it entirely for financial reasons. He did say, however, it limits a lawyer's practice to cases with significant economic damages because those are not subject to the MICRA limit.

"There's really a three-part challenge with medical malpractice cases," Callaway explained. "First, the MICRA cap on general damages on pain and suffering, which hasn't changed since 1975, and if you applied just a normal COLA (cost of living allowance), it would be well over \$1 million today. Second, limitations on attorneys' fees. And then, equally formidable, is the challenge that's posed by all of the very effective propaganda that's been put out by insurance companies year after year that has influenced jurors to believe the costs associated with medical malpractice cases are somehow harming our health care system."

Callaway said it didn't help that President George W. Bush, in his State of the

Union address eight years running, cited medical malpractice cases as a contributor to harming the nation's health care system. President Barack Obama also did so one year, he said.

"So, when you start talking to jurors at the beginning of those cases, you find there's a heavy bias against them," Callaway said. "The deep dive a case like that gives you as an attorney into the medicine, the much more complex and interesting issues that they sometimes can offer, is something many of us find intriguing.

"I never set out to be a medical malpractice lawyer," he added. "I was working at a small firm, and a Kaiser case file landed on my desk. That case went all the way through arbitration, and I was hooked."

A one-way ticket to the coast

Callaway was born and raised in the Midwest, a seventh-generation Missourian from Kansas City. Daniel Boone, he said, was his great, great, great, great grandfather. He had no familial influences in terms of the legal profession, but his argumentative nature as a youngster had close relatives telling him he should become a lawyer.

Callaway attended the University of Texas-Austin for his undergrad studies, first as a business major "because that's what my father told me I should do" before transitioning to philosophy. He attended law school at the University of Missouri-Columbia, and one week after he graduated, he bought a one-way ticket to San Francisco.

"I felt like I could go anywhere I wanted, like any entitled feeling young person, I suppose," Callaway explained. "And I wanted to live in a nice urban area where it didn't freeze and where it wasn't really hot and humid. ... That immediately boiled it down to a handful of cities in America, and San Francisco is the best of those."



Callaway worked briefly at a firm under John Hill, whom he considers one of his mentors. Hill taught him two keys to success that Callaway has carried with him throughout his three-decade career: you don't have to be a jerk to be a strong, effective advocate; and you should only take up clients and causes you believe in.

Early in his career, Callaway handled real estate and business dispute trials, along with a variety of civil law cases. In 1995, he partnered with Carl Wolf, and together they've taken on big insurance companies and other corporate defendants to help clients who couldn't necessarily stand up for themselves. That has been the most rewarding aspect of the job for Callaway.

"We plaintiff lawyers are fortunate to have our clients' cases and trust," he said. "Every time I have a good case, I know that there are literally scores of other tort lawyers who would have liked to have had it. I want to honor that client's choice of me."

Callaway considers himself fortunate to take up practice with someone with whom he could have a long-term, stable relationship. It provides a nice, stable platform from which to take on all the other travails in the business of law, he said.

"My law partner Carl Wolf really emphasized the 'counselor at law' aspect of the practice, and I've emulated that," he said. "Sometimes this work feels like being a well-compensated social worker. Being someone clients can really talk and relate to makes for a deeper ability to understand the case and to help them."

Favorable results

Over the years, Callaway has had numerous successful outcomes, including a bicyclist hit by a street sweeper in 2012 who received a \$4.7 million settlement; a pedestrian who sustained a badly broken leg in 2011 when he was struck by a car and received \$500,000; and a mother and daughter who received a \$2.675 million settlement for the death of their husband and father, who was misdiagnosed in an emergency room.

Strangely enough, a slip and fall case was perhaps his most memorable. It was

against BART last fall involving a landing at the Powell station where water had collected due to a drainage problem. It was a chronic issue during the rainy season, and the transit agency did nothing about it. In fact, Callaway said, BART responded to the lawsuit in a way that actually helped his case.

"When they got sued, I thought they were going to say it's exposed to the outdoors there, and we can't prevent water from pooling," Callaway explained. "Instead, they completely denied that the condition even existed. So, I thought that was good for us; I thought we would be able to prove that it did exist. Once you can prove that a company is lying about a material element, it's a big boost.

"It helped that the case had a wonderful client – the client was a social worker who works with homeless vets," he added. "Lawyers look at a client like that and say this is someone who will be sympathetic to a jury. A good plaintiff will always come out ahead in the popularity contest that a jury trial can sometimes be."

The jurors, however, weren't as outraged as Callaway expected, and the trial turned into a squeaker, he said. There were more than 20 written questions from the jurors, and they stayed out five days deliberating, twice telling the judge they were deadlocked. Finally, the judge reopened closing arguments, and Callaway got a second chance to argue the case.

"One major takeaway," he said. "Believe what a juror writes in a questionnaire response much more than what they tell you during voir dire."

Callaway said his approach in trial is to try to be himself and talk to the jurors in a very real way, a very honest way. He tries to tell the jury about his case as if he were talking to someone he just met who is interested in hearing about the case, just one on one, instead of ringing rhetorical.

Also important in trial, he said, is remaining polite, civil and professional, regardless of how combative an opponent might become.

"It's never helpful to anger opposing counsel unnecessarily. They'll just take it

out on you or your client," Callaway said. "I try to never let others' bad behavior change who I am and how I want to be as a person and a professional. My spouse (police misconduct litigator) David Helbraun likes to say, 'Don't take the bait' when people are antagonistic. If I just react when someone is rude or tries to be provocative, I'm surrendering control to them."

Work and play

When he's not in court or at the office, Callaway enjoys downhill skiing, photography, travel, reading, hiking and bike riding. He said he absolutely loves to ride his bike out through the San Francisco panhandle to the ocean. In terms of travel, he's been to a few places that he likely wouldn't return to today, such as Egypt, Turkey and Russia, and a few exotic places he can't wait to see again, such as Vietnam, Cambodia and Laos.

For young lawyers and law students today, Callaway said working with someone who has the time and ability to mentor them is perhaps the most important thing to consider early in their career, and there will be plenty of time to make more money later.

"If you want to be a litigator, make sure you work at a place that will honor and nurture that by letting you take the depositions, argue the motions and second-chair some trials," he said. "If you're not at a place like that, it will stunt your development as a litigator, and maybe you should find a way to do that even if it means sidestepping making good money for a while."

Other lawyers are great referral sources, he added, but it never hurts to listen to your own intuition. And bitterness has no real place in the law profession – or in life.

"Don't hold grudges. It harms your psyche and serves no useful purpose," Callaway said. "Your happiness depends not on what happens to you in life, but what you make of it."

Stephen Ellison is a freelance writer based in San Jose. Contact him at ssjellison@aol.com.