



Profile: Mark Burton

Whether it's suing Uber over employment status or proving that the weed killer Roundup causes cancer, he thrives in complex litigation

BY STEPHEN ELLISON

There's nothing simple about complex litigation. Thus, the name. But Mark Burton does not shy away from the challenge of cases that most of his colleagues consider taboo.

Burton, of Audet & Partners LLP in San Francisco, developed a reputation early in his career as a go-to person for cases involving complicated issues or ones that had never been done before. Unenviable as it may be, that particular skill set seemed to bring out a sense of pride in Burton, but in a humble sort of way.

"Any case that involves some complicated issue that others didn't want to touch became my specialty," he said. "It was always something like, 'Well, nobody's filed that case yet over a drug or a medical device; we're going to be the first to do it.' Well, then, that was my case. Whatever it was, I would be the one. I did the first Uber arbitration cases over employment status, and I've continued that over the years."

Burton this summer brought the first trial against agrichemical giant Monsanto in a lawsuit alleging its weed killing products, including the widely used Roundup, cause cancer. In the highly publicized case, plaintiff Dewayne Johnson had been diagnosed with non-Hodgkin lymphoma after using Monsanto's herbicide products for years as a school groundskeeper in the East Bay Area. Burton and his team obtained a \$289 million jury verdict in August and now must endure the inevitable post-trial battles.

"A lot of good memories about that case just because it's the first Roundup cancer case," he said. "We really had an incredible team of attorneys for that. Everyone was from out of town, so we



Burton

kind of lived together for a couple of months. All summer long, I would bring them out to my ranch on the weekends for a barbecue.

"We're going through the post-trial stuff now, so

there's still that whole battle," Burton continued. "Meantime, in theory, the judgment is earning interest, which comes out to about \$2.5 million a month."

Monsanto indeed filed motions with Superior Court Judge Suzanne Bolanos to set aside the verdict, reduce the award or grant a new trial. A hearing on the motions was scheduled for October 10. Meanwhile, the company, now owned by Bayer AG, continued to deny that its chemical glyphosate causes cancer, saying on its Twitter account the jury got it wrong.

Thousands of similar lawsuits have been filed nationwide against Monsanto, and Burton said his team will be trying another one in 2019.

'Law chose me'

Burton insisted that as he was considering career choices, law sort of chose him. He started taking business courses in college, and the business law class came rather easy to him, he said. Soon, he discovered he just happened to be a quick study when it came to law.

"I can't play music or dance or do anything like that. The law is the only thing I have any talent for," he said. "I was forced into it that way, so to speak."

Burton graduated from UC Santa Barbara and chose Golden Gate University law school because, he said, it had a great clinical program that would allow him to get into the courtroom sooner rather than later.

"In my second year of law school, I was a certified law student and able to represent people in court," he said. "I was doing public defender work in Contra Costa County, writing motions, arguing them, and I ended up second chairing a juvenile murder trial. I wanted to be in the courtroom. I just had a natural pick-up for that type of work. I wasn't so interested in building a resume in law school as I was in gaining experience."

Still, he wasn't sure what he would do within the law profession. Initially, he thought of getting a public defender position that would get him trial experience. But he graduated from law school during the George W. Bush recession in 1995 and nobody was hiring, he said. With his options limited, Burton tried to become a research attorney for San Francisco Superior Court, which interviewed law students before they even took the bar exam. He ended up in the final round of interviews, but at the time, "I looked like I was about 16," he said. The judges told him they were interested in hiring someone with more experience.

"While talking with one of the judges, Judge Mitchell, he said, 'I know a place where you can get a lot of experience in the courtroom.' That was the Al Brayton law firm, doing asbestos litigation," Burton recalled. "He actually hooked me up with the firm, and I was hired there. (The judge) was right; they threw you right into the courtroom. In two years, I got a tremendous amount of



trial experience. They were assigning me trials, big multi-plaintiff, multi-month trials. I must have argued over 1,000 motions, it was crazy.”

Because he was in court so often, Burton sort of bumped into his next mentor, LeRoy Hersh, who had seen him in court and basically approached him about a job.

“LeRoy was kind of a legend around San Francisco,” Burton said, “so I felt like I couldn’t pass it up.”

Hersh & Hersh is where Burton developed a knack for complex litigation. There he built a diverse practice, trying personal injury cases, employment law, wage and hour, harassment, pharmaceuticals, medical devices and medical malpractice. He worked his way up to partner in 2004.

In simpler terms

Today, working mostly in complex litigation, Burton has an approach that may differ a bit from basic personal injury or employment cases.

“Obviously, I think the most important part of our cases – because they usually involve complicated issues – is trying to simplify those issues, make them as simple and clear as we can when it comes to the evidence or the issues, whether it’s for the judge or the jury,” he said. “Turning what’s complicated into a simple and clear message ... can be tedious. It depends on the case and what’s going on. When we’re trying to make that issue simple, it’s usually a team effort, there’s usually other firms involved in that litigation. So, a lot of times you have to play well with others if you’re going to accomplish something.”

With the Roundup trial, Burton said the team did mock juries beforehand as a means for honing the messages about how they were going to simplify the issues and figure out what was important for the jurors to understand about the case, about cancer and about Roundup, he said. In the run-up to the trial, they had a

team of about a dozen attorneys working on different issues. And during the trial, they continued to run a mock jury using the issues taken from the trial each day.

“We would have that mock jury give us feedback during the trial, watching the opening statements on video at night,” Burton explained. “We were working through that process with a jury consultant, getting feedback to figure out where we might have some confusion or where we hadn’t simplified or made understandable yet whatever messages we needed to make.”

Burton also took from the Roundup trial a nice little anecdote involving a certain celebrity couple who also happened to be avid environmentalists very intrigued with the outcome.

Rock musician Neil Young and actress Darryl Hannah were following the trial, and Burton along with some of his colleagues ran into the couple inside an attorneys’ private room at the courthouse. It was one of those truly memorable moments, he said.

“They were being very complimentary, saying we’re their heroes,” Burton recalled. “Then Neil Young says, ‘This is awesome what you’re doing. Seeing what you’re doing makes me want to go back to school and learn to do what you guys do.’ When he finishes, Darryl Hannah turns to him and says, ‘Back to school? You never even went to school.’ He says, ‘Oh, that’s right.’ I’ll never forget that.”

Another case that was quite memorable for Burton was the one involving Zyprexa, in which the firm represented more than 300 clients who allegedly developed diabetes after ingesting the medication. The settlement total overall is approaching \$2 billion, and Burton negotiated the first at \$190 million, he said.

“It took a lot of work to get that done. It was one of the first state-mass-tort settlements without a trial ever happening,” Burton said. “We had a lot of

courtroom work that had gone into the case, a lot of discovery motions here in California, and that really pressed the company to settle just based on the discovery orders we obtained. That was a pretty big case for me and got me started on mass torts at the time.”

Busy body

In between the lengthy, complex trials, Burton stays busy taking care of his ranch in Marin County, whether it’s projects on the ranch or caring for the many animals the family has. His two sons “are really into baseball,” and he enjoys coaching them. He even built a baseball field on his property.

Burton also serves as a volunteer firefighter, participating in weekly training and responding to calls. And if all that weren’t enough, he’s also on the board of trustees for the local school district.

“There’s always a lot of things to be done,” he said.

When presented with the prospect of advising young or aspiring lawyers, Burton instinctively joked: “Go into tech.”

But he qualified it by saying seriously, “Don’t become a lawyer unless it’s really the only thing you enjoy in life. ... If you’re already a young attorney, try to take control over your work as soon as you can. If you’re only taking work that’s assigned to you and accomplishing things for another attorney, that’s going to be a grind. Don’t think you’re too young or too busy to step up and say, ‘I have a new case or a new idea that I want to work on.’ Some people are hesitant to branch out on their own or take responsibility because they think they’re too young or too inexperienced or too busy with work that’s already assigned to them. It’s really important to, as soon as possible, find things that are interesting to you.”

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