



Profile: Brian Graziani

PI lawyer defies the odds – and the MICRA cap – in a big medical-malpractice case

By STEPHEN ELLISON

Diligence, creativity and a dash of good, old-fashioned common sense have driven Brian Graziani to a successful law career that reached new heights recently with a victory in a challenging medical malpractice trial.

Graziani, founding partner of Sisneros Graziani LLP in San Francisco, had a lot riding on the November case in which his client suffered undue, life-altering injuries during surgery. It was more than what a plaintiff's trial lawyer typically has at stake in a trial.

"The thing about that case was it really did take on my client's issues," Graziani said. "I felt bad for him; he was going to lose his land. He had about 40 acres up in a rural area of Butte County. I advanced a lot of costs, six-figures-plus of costs on a challenging case, and if I lost, I wasn't going to get those costs back. So, it was a risk, but it was a calculated risk. And it ended up working out very well."

There were plenty of aspects about the case that were challenging from Graziani's vantage: medical malpractice cases are difficult for plaintiffs to prove and win; Butte County is a small conservative county, where most of the potential jurors likely went to the defendant hospital and perhaps knew the defendant doctor; and Graziani's office for three weeks was a Holiday Inn Express in Chico.

But with the odds stacked against him, Graziani was able to persuade the jury in his favor and obtain a \$3.6 million verdict. Even that aspect of the trial became an obstacle with California's MICRA cap on medical malpractice cases. Graziani came up with a strategic solution.

Emphasizing future medical damages

"In this case, the verdict for pain and suffering was something like \$650,000,"



Graziani

he said. "So, the judgment post-MICRA reduction was \$2.63 million. That's a big success actually. I strategized for that result by emphasizing to the jury that future medical expenses are the most im-

portant aspect of damages in the case, and if you pay for those future medical expenses, you don't have to be so concerned with pain and suffering for the future. What I was doing was presenting a strategic, persuasive argument emphasizing those type of damages that would not be able to be reduced post-verdict, and those worked out terrifically."

In the end, Graziani attributed credit to the jurors on a number of counts: they were conscientious, they were paying attention, they were following the evidence when it came through, they were on time, he said.

The key to swaying the jury, he said, was emphasizing his client was a member of the community just like them.

"I thought people are people, and based on the facts of this case, they're going to have to decide: Is this just the plaintiff's problem now, or is this something the hospital should be responsible for?" Graziani said. "In my mind, I felt they would not see this as just something the plaintiff was responsible for. My expert was very creative with this sort of complication, the injury that happened to my client. It does not happen during this kind of procedure unless the doctor was acting below the reasonable standard of care."

"During jury selection, I asked them, is there a problem with the actual suing of

a doctor? Is there a problem with the lawsuit? Is one party starting ahead of the other from the start just because the defendant is a doctor?" he continued. "So, I think I just got a good jury who was open-minded and willing to listen to the facts."

Graziani said he considers himself a conduit of the evidence, and in the end, he told the jurors they're the conscience of the community. He made it simple for the jurors, telling them they get to decide whose fault it is and in what amount.

"I was just pointing out the facts that came into evidence during the trial, and I could see their heads were nodding," he said. "There was no magic trick. I just asked those important questions during jury selection."

And the jurors, for the most part, stayed healthy, which ended up being a crucial factor because two of the initial 12 got sick, and both alternates were inserted.

"The judge was begging the jury to stay healthy because if you get down to 11, and the plaintiff and the defense can't agree on how to divide up the votes during deliberations, that's a mistrial, and you have to start all over again," he said.

From SoCal to Sierra to SF

Graziani grew up in Southern California and attended UC Santa Barbara for his undergrad studies, majoring in environmental studies and ecology. But after graduating with two degrees, he wasn't quite ready to commit himself one way or another to much more than living and enjoying life.

"I went to Tahoe and lived there, kind of snowboarding and living for about four years," he said. "I felt I had to do something more, and I thought, even though I don't know what it is I want to do, I felt like law kind of touched everything. So, I could follow my interests one way or another if I got a law degree."



At Golden Gate University School of Law, Graziani's first instinct was to work toward environmental law. He interned with the California Coastal Commission to get an idea of what lawyers were doing there, but in the end, his competitive nature steered him toward litigation.

His first job out of law school was as an independent contractor with the Law Offices of Arnold Laub, and about five years in, he decided to start his own business, the Graziani Law Firm, which he called a stop-gap on the way to opening his own firm with Roger Sisneros. The two became friends while at the Laub firm, had mutual respect for each other's work and decided they were going to launch their own practice. Those doors opened in January 2015.

The transition was about as smooth as one could hope, Graziani said.

"I already had a good inventory of cases and found a way to minimize my overhead upfront, so I wasn't nervous about it," he said. "I never looked back. We just kind of experienced a steady growth since then. The offices are getting bigger; we have three offices now. We just moved into a new place in Jackson Square; we're at the top of the 850 Montgomery building on the corner of Montgomery and Pacific. We're really excited about it; it's a beautiful location."

Taking care of the evidence

Graziani's practice generally sticks to personal injury – it covers about 90 percent of his caseload, he said. He has done employment cases, real estate work, legal malpractice, business matters and of course, medical malpractice. Over the course of his career, he has adhered to a strategy in which evidence trumps all.

When he's headed to trial, Graziani first tries to figure out the theme of the case, the main idea or ideas he's going to structure his case around. Then the bulk of the work becomes harvesting and submitting the evidence he needs.

"That includes experts, coordinating experts – expert evidence is probably the

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Getaway Spot: South Lake Tahoe

Go-To Music or Artist: Music from the '80s or '90s, punk

Recommended Reading: Not a big reader, but I love movies – "Midnight Run" is my favorite

Dream Job: Pro athlete, maybe soccer or snowboarding

Words to Live By: "You do not have a constitutional right to be boring." – Bernie Segal, my college trial advocacy professor

most important part of plaintiff work," he said. "Coordinating evidence means gathering all the documents you need, making sure you have all your depositions lined up, and making sure you're coordinating with your experts. Also being prepared to defend your case against the defense. It's all about making sure you can get your evidence in that you need to prove your case and persuade the jury.

"My approach is pretty mechanical," Graziani said, "but it's one that ensures that I get the evidence I need in and I build a foundation for keeping out the evidence I want to keep out."

Another recent case where such a strategy likely applied was a mishandling of remains case involving a crematory in San Mateo County. Graziani represented three of 16 families whose loved ones' remains were lost or comingled during a fire that destroyed the crematory. He took the lead role and had to get down to the nuts and bolts of the crematory's job, essentially how one performs a cremation, as well as getting with fire experts to determine the cause of fire.

The crematory manager had started two cremations at one time and then left the building. When he looked back across the street, the building was engulfed in flames.

"There was forensic work that had to be done with regard to the cause of the fire. With the help of crematory operations experts and fire experts, I was able

to piece together and connect the dots and do a pretty strong line of evidence pointing at the defendants for negligence in how they were running their crematory," Graziani said.

The case had gone up for trial about four times prior, Graziani said, and every time it went up for trial, they would have a settlement conference. And every time, the court would punt because there were about 50 plaintiffs within the three remaining families.

"Eventually, the families were just tired, and they wanted to settle," he said. "So, we settled for a confidential amount. That was one of the more interesting cases I've handled in my career. I think it's kind of a regular trajectory – the longer you get into it, the more interesting they become."

Staying passionate

When Graziani isn't in the office or courtroom, he's likely on his snowboard in Tahoe, enjoying his No. 1 hobby, or spending time with his girlfriend and friends. He also is a huge movie buff and an avid sports fan, having converted from his SoCal roots into a San Francisco Giants and 49ers fan.

When pushed about what advice he would offer a younger lawyer, Graziani said they should follow their heart.

"Follow your passion. There's a lot of things within the law you can do," he said. "If your passion is justice or one part of society or one category of people, one idea, I'd say follow that. And happiness and success will follow. If you're doing something you're passionate about, then you've best positioned yourself to actually be fulfilled, happy, satisfied and successful in your profession as a lawyer.

"For me, it kind of ended up being representing the little man," he continued. "I take a lot of pleasure in doing that and stuck with it, and it's been very gratifying. And I have no intention of stopping."

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