

VERDICTS & SETTLEMENTS

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Doggedly Determined, 'The Closer' Is a Natural as a Neutral

By Susan McRae
Daily Journal Staff Writer

They call him "The Closer." Robert J. Kaplan, a mediator at Judicate West, earned the reputation because of his determination to stick with even the most impossible cases until a settlement is reached. Judges, lawyers and fellow mediators often turn to him when all else fails.

"Once I get on a case, I never let go," the San Diego-based Kaplan said. "If you ask me if it's settled, I never answer 'no.' I will either say 'yes' or 'not yet.'"

From complex litigation involving significant money to small cases with a highly emotional plaintiff, the former plaintiffs'-lawyer-turned-mediator said that, most of the time, parties want their case to settle.

And that is what Kaplan does best.

But it wasn't always so.

For 15 years, Kaplan was regarded as one of the top insurance bad-faith lawyers in San Diego. But as time went on, he said, his passion for practicing law dwindled considerably.

His transformation began in 1997, when he and his wife, Kelly Kaplan, took a two-week trip to London and Paris. Shortly after their return, his wife suggested they take their two young children and move to Paris.

Kaplan needed half an hour — the time of his drive from home to the courthouse — to make up his mind to do it.

They found an apartment within three blocks of five bakeries, four butcher shops, four cheese shops, three flower shops, three wine shops, dozens of boutiques and 50 restaurants. They enrolled the children in school and took family outings to the Swiss Alps, Tuscany, Spain, Amsterdam and Morocco.

For a year, he commuted to San Diego to handle cases, until he decided to wind down his practice.

When they returned to San Diego



ROBERT LEVINS / Daily Journal

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two years later, however, Kaplan picked up his practice again. At first, it felt good, he said, but he soon realized it had lost its appeal.

A chance meeting with a friend who had become a mediator while Kaplan was away persuaded him to give mediation a try.

Getting a foothold in the highly competitive field wasn't easy. He later wrote a step-by-step account for anyone thinking of following this path.

"If you are a litigator," Kaplan began his account, "you probably feel a little piece of life is sucked out of you every time you get to the final throes before trial and a not-so-little piece when you actually go through a trial.

"You take an inventory of your strengths and weaknesses. The one

thing you've always loved in your practice is going to mediation."

Kaplan advised setting aside enough money to get by for at least two years, taking a course in mediating the litigated case, drafting a business plan and making a 100 percent commitment.

For six months, Kaplan spread the word that he was becoming a full-time mediator. He needed another six months, after opening his San Diego office, to land his first case. But his marketing efforts paid off, and by the end of the year, he had mediated a dozen more cases.

The following year, he decided to affiliate with Judicate West, and it's been uphill ever since.

Although he is based in San Diego, Kaplan conducts mediations statewide.

"I work hard, but I love it," Kaplan, 50, said, hefting a bulging briefcase to a table at a restaurant across from Judicate West's downtown Los Angeles office, after finishing a daylong mediation.

He fishes two pieces of pink memo paper from his pocket. They are covered on both sides with notations.

"These are just callbacks from today," he said. "These are all people on cases I'm settling in mediation."

He pulls out his mobile phone.

"I am going to call the vice president of claims at home tonight," he continued, referring to an insurance dispute he's set to hear tomorrow.

"I know what it's like to be in the trenches," he said. "If there's any way I can help them not have to go

through that and get a result that will benefit their client, I am going to do what it takes.”

After earning a law degree in 1981 from University of San Diego School of Law, Kaplan was an associate at Los Angeles’ Cotkin, Collins, Kolts & Franscell and at the Law Offices of Gordon S. Churchill, becoming a name partner at Churchill, Kaplan & Roberts in 1985. He had a solo practice from 1991 to 1999, focusing on insurance bad faith.

The speciality proved to be an asset, he said, because it touched on so many other areas. Now in his mediation practice, Kaplan spends a third of his time settling insurance cases and the rest resolving complex business disputes.

Lawyers who have participated in mediations with Kaplan said he is a natural as a neutral and well-deserving of his “closer” nickname. They describe him as personable, insightful, persuasive and tenacious. Even when he fails to settle a case in mediation, lawyers credited his persistence for often leading the parties to resolve the case before a costly trial.

“He certainly is ‘The Closer,’” Irvine attorney Sherman Spitz said. “He’s tenacious. He will stay with you all the way and never give up.”

In one difficult case, Spitz recalled getting a phone call from Kaplan one night. He had been in Long Beach for a mediation, was staying in Orange County and asked whether Spitz would mind having a mediation.

Spitz and his client showed up



Robert J. Kaplan

Rate: \$4,500 per day, \$2,250 per half day in San Diego; rates vary in other counties

Location: Statewide

Speciality: Complex and large cases of all kinds; insurance bad-faith, including life, health and disability claims; product liability; employment disputes of all kinds, including wage and hour; partnership dissolution

Provider: Judicate West

Age: 50

at the Holiday Inn, where Kaplan was eating dinner. The case didn’t settle, but, Spitz said, Kaplan hasn’t given up.

“He calls and doesn’t take no for an answer,” Spitz said. “I tell people, ‘If Rob Kaplan can’t get the case settled, it will never happen.’”

Kenneth C. Turek, a partner at Endeman, Lincoln, Turek & Heater in San Diego, said Kaplan is “without a doubt the most dedicated-to-resolution” neutral with whom he has worked.

“He works a case doggedly while it is before him, but if it is not yet ripe, he stays on to completion,” Turek said. “You will get calls and letters and e-mails and carrier pigeons, if necessary, to make you come to reason and resolution.”

One of the most complex cases Kaplan has mediated came from a

federal magistrate judge, who ordered the parties and their lawyers from four states to appear before him in a two-day mediation.

The case involved potentially hundreds of millions of dollars in claims, accusations of extortion, violations of the Racketeer Influenced and Corrupt Organizations Act and misappropriation of trade secrets. The judge told Kaplan to call him at any hour if he got a settlement.

Kaplan phoned him at 11 p.m. on the second day with the good news.

Although most of his cases involve complex litigation, one of his most satisfying ones didn’t involve a lot of money or complexity. The plaintiff was a woman in her 60s who claimed she had been wrongfully fired.

In most cases, Kaplan prefers to keep the parties in separate rooms and shuttle between the two, bringing offers. But one thing mediators often do, he said, is rely on instinct.

It seemed clear to him in this case that the company regretted its action and the woman wanted her job back. He thought that, if they sat together, without the lawyers, they might be able to mend their differences.

Her lawyer was against reconciliation because he wouldn’t get a fee. But Kaplan was able to convince the employer it would be cheaper to pay the attorney’s fee now than if the litigation continued.

Everyone agreed. The lawyer was paid, the lawsuit was dissolved and the woman returned to work.

“That case, above all, brought tears to my eyes,” Kaplan said. “I love what I do. But when I went home that night, I felt especially good.”

Here is a list of attorneys who have used Kaplan’s services:

Kenneth C. Turek, Endeman, Lincoln, Turek & Heater, San Diego; Jean Claude Mazzola, Wilson Elser Moskowitz Edelman & Dicker, New York; Arnold R. Levinson, Pillsbury & Levinson, San Francisco; Sherman M. Spitz, Berger Kahn, Irvine; David M. Samuels, Michelman & Robinson, Encino; Dana A. Fox, Lynberg & Watkins, Los Angeles; Michael J. Bonesteel, Haight Brown, Los Angeles