

VERDICTS & SETTLEMENTS

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Bridging the Gap

Douglas deVries works hard to get disputants headed in a positive direction

By Shane Nelson

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For a long time, mediator Douglas K. deVries figured he'd be a teacher, and he was on course at one point to complete a doctorate in political science. But when he learned how fierce the competition was to land even a part time teaching position at a Los Angeles junior college, deVries said he decided to give law school a shot.

"I like to help people," deVries explained. "It just makes me feel good to help people, and you get to do a lot of that when you're working with people who are confronting legal challenges."

In 1976, deVries graduated from the University of the Pacific's McGeorge School of Law and spent the next 35 years as a trial attorney, primarily representing plaintiffs. He said he took on many personal injury, product liability and medical malpractice cases early, but spent his last two decades as an attorney handling mostly bad faith insurance matters.

In 2011, deVries joined Judicate West as a fulltime neutral, and initially considered the idea of doing mediation and arbitration work.

"Somebody told me something that really stuck with me at the time: 'When you do arbitration, you come down on one side, and you have a friend for a day and an enemy for life,'" deVries recalled. "I thought that was a pretty clever way of summing it up, and I thought it was just an inconsistency of jumping back and forth. So I very early on just went for mediation and no arbitration."



Malcolm Maclachlan / Daily Journal

Over the last 11 years, deVries said he's handled a range of cases, but his primary focus as a private neutral has remained pretty consistent.

"I try to handle complex cases that are not run of the mill," he explained. "So my practice is primarily complex and catastrophic loss cases with an emphasis on insurance-related issues."

E. Gerard Mannion of Mannion Lowe & Oksenendler A.P.C. has known deVries since his time as a plaintiffs' attorney and has since used the neutral frequently to resolve bad faith insurance cases.

"A lot of attorney neutrals – as opposed to retired judges – can't

seem to get the respect of the insurance representative or at least the cooperation of the insurance representative," Mannion said. "But Doug is able to do that. He has a world of experience, and he's very smart, and I think he impresses the insurance representatives. ... And he's known by the insurance side of the equation because he used to sue them, so he's always got their respect."

DeVries likes to receive briefs from both sides beforehand and he will speak ahead of time with parties if he sees "discrepancies in facts where one side is saying one thing and another side is saying another, and it can't be both."

Douglas K. deVries

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On the day of mediation, deVries said he believes joint sessions are not typically productive, but he does like to begin sessions by separately explaining to each side his understanding of each party's positions on the dispute.

"The primary focus in a mediation needs to be on negotiation," he explained. "It's not an exercise in spending a whole day arguing about the facts or arguing about the law or reinforcing the disputes between the parties."

Typically, both sides of the dispute are starting from very negative positions that are far apart, deVries said.

"And you're moving through an exchange of information and a negotiating process progressively from the negativity of opposing positions in an impasse toward the positivity of a resolution," he explained, "one that the parties control themselves by an agreement they believe, ultimately in some positive way, actually serves their separate self-interest in get-

ting the case settled."

Mediator's proposals are a strategy deVries employs, but said he often sees them as something of a last resort and a tool to be used carefully.

"At the end of the day, mediator proposals are not expressions by a mediator of the actual value of the case or the merits of one side's position or another," he said. "They're more of a number that's put in to close a final gap in the dynamics and negotiation."

Mannion said deVries built rapport with his clients by telling them he at one point represented plaintiffs in somewhat similar circumstances.

"That gives people more solace that they're not getting someone who is a born and bred insurance defense lawyer," Mannion said. "So I have clients that feel very comfortable with him."

But Mannion noted deVries' approach and experience in the practice area also goes a long way with the other side.

"The people at the insurance companies know what the score is. They know how the game is played," Mannion explained. "But if Doug calls them on it, he does so in a way that doesn't seem like he's trying to embarrass them."

Insurance defense attorney Robert E. Hess, of Maynard Cooper & Gale LLP, who litigated against deVries in the past but has also used him to successfully mediate cases, described him as a hard-working neutral who is fair to both sides.

"He brings a knowledge and viewpoint to the table that allows him to connect very well with plaintiffs' attorneys," Hess said. "But he also has a long history of litigating these same types of cases, so he knows pretty well how the insurance companies work."

Defense attorney Misty A. Murray, of Maynard Cooper & Gale, also opposed deVries in the past and has since used him as a mediator. Murray agreed that deVries has good relationships with plaintiffs

and defense attorneys.

"He's developed a lot of trust, which is a big thing as far as being able to settle the case," Murray said. "And he's not formulaic. He really digs deep to understand the issues and voices those issues and his opinions on how they might affect the other side's case."

Hess mentioned deVries doesn't give up on cases that don't reach resolution the first day.

"He is always willing to continue the negotiations post mediation and will do so effectively and knows how to keep the parties talking," he said. "There's just always a very good shot at settling a case when we sit down with Doug at mediation."

Here are some attorneys who have used deVries' services: Robert E. Hess, Maynard Cooper & Gale LLP; E. Gerard Mannion, Mannion Lowe & Oksenendler; Mark Ellis, Ellis Law Group LLP; Michael Horrow, Donau & Horrow LLP; Misty A. Murray, Maynard Cooper & Gale LLP.