

Daily Journal

VERDICTS & SETTLEMENTS

www.dailyjournal.com

FRIDAY, APRIL 3, 2015

The Experience Curve

Zee Claiborne handles complex commercial disputes of all stripes

By Alison Frost
Daily Journal Staff Writer

SAN FRANCISCO — A 17-year veteran of mediation and arbitration, Zela “Zee” G. Claiborne says nothing surprises her anymore.

The thousands of domestic and international complex commercial disputes she’s handled have ranged from an intellectual property dispute about the adequacy of testing parts for airplanes, nuclear plants and other high-risk items to an accounting malpractice case related to a business with millions of fake sales in China on the books. Recently, she even had a gold mining case.

“It’s never boring, let’s just say,” said Claiborne, who became a neutral in 1998 after 16 years in private practice at now-defunct Bronson, Bronson & McKinnon LLP.

Yet no matter the subject area, the lawyers who use Claiborne’s services say she gets up to speed with remarkable ease.

She’s “a quick study,” said Jeffrey J. Lederman, a partner at Joseph & Cohen PC who added that he can’t think of a list of potential mediators he’s proposed to opposing counsel in the past 10 years “that didn’t have Zee’s name on it.”

“I find her to be extremely knowledgeable and prepared for mediations having read everything that was submitted to her,” said Elizabeth M. Pappy, an attorney at Morgan Franich Fredkin & Marsh who has worked with Claiborne for more than a dozen years.

Andrea L. Kim, a partner at Diamond McCarthy LLP, praised Claiborne’s work on an audit malpractice arbitration between a Chapter 11 trustee for a defunct publicly traded electronics company and a global auditing firm.

“The case involved a lot of detail and technical standards, but Ms. Claiborne dug into the evidence and testimony throughout the trial and was extremely professional and insightful throughout the process,” Kim said.

Oftentimes, that signature combination of thoroughness and speed makes all the difference to the lawyers who use Claiborne’s services.

In an arbitration involving a complex sale of a domestic software firm to an international conglomerate, a last-minute challenge to the defendant’s attorney-client privilege log could have delayed the ruling.

“We discovered that several documents were business communications

rather than pure attorney-client consultations,” said Thomas M. Fulkerson, a partner at Fulkerson Lotz LLP. “Zee reviewed these during the hearing over evenings, and though quite voluminous, issued a quick ruling that turned out to be critical.”

Though he didn’t agree with all of Claiborne’s rulings, Fulkerson appreciated the promptness of their delivery and said he thought they were “well thought out.”

Claiborne, who was born in Minnesota, moved to Connecticut at age 11, but headed back to the Midwest to attend Beloit College. She met her husband, Jay W. Claiborne, while they were attending the University of Texas at Austin for graduate study in English.

The pair had two sons, who were ages 3 and 5 by the time Claiborne enrolled at UC Berkeley School of Law while her husband trained in architecture and planning — also at Berkeley.

During her time in law school, Claiborne said there weren’t any classes in mediation or arbitration, as the fields were relatively new. But since she started mediating and arbitrating in the ’90s, she’s observed changes in both.

Mediations used to follow one pattern, Claiborne said, with mediators meeting with the parties jointly first and then separately after the joint meeting. Now, she said — depending on the case, its stage and whether the parties are working together — she might follow that pattern, but she might not.

For example, when the parties in a multi-million dollar commercial case appeared to be nearing an impasse, Cooley LLP partner Martin S. Schenker said Claiborne brought the other side into the room so that he could make a point directly to them.

“I believe this short exchange was instrumental in breaking the impasse, and the parties settled soon thereafter,” Schenker said.

Claiborne said that, though trained to handle mediation a certain way, after seeing hundreds of cases, “you kind of get your own approach.”

In order to get a sense of “what’s really driving the dispute,” Claiborne makes a point of speaking with each side at the beginning of each day of a mediation.

“I’m always suspicious when somebody says to me, ‘Oh, I read the briefs, and now I think the case should settle this way,’” Claiborne said.

“The briefs don’t tell you enough, and pre-judging, I think, is really a mistake.”

She also looks for business deals during her mediations.

“Parties like that, I think,” she said. “They like cutting a business deal and they like making the decision of how to



Alison Frost / Daily Journal

solve the problem by themselves.”

Anthony B. Leuin, a partner at Shartsis Friese LLP, has been one such party. Speaking of a past case with Claiborne, he said she was “low-key but persistent, nonthreatening but persuasive and able to deliver blunt messages where necessary without causing any offense.”

Lederman said Claiborne has a knack for helping parties not only resolve matters, but also preserve ongoing working relationships — even in volatile cases.

“She has a calming effect on the parties and the attorneys, as well as business acumen that results in a constant search for business solutions, rather than simply urging one party to write a check,” Lederman said. “Even in cases she doesn’t succeed in settling, the parties generally walk out of a mediation with Zee with table set for further discussions.”

Looking back on the transformation of arbitration, Claiborne said “arbitrators were more inclined back in the ’90s to kind of just sit back and let it all come in.” As a result, efficiency was low and prices were high.

Today, Claiborne works hard with the lawyers to create a “blueprint” of every case from the very beginning so that everyone can agree on a process even while disagreeing on the merits of the case.

“In general I’d say the quality of the lawyering is excellent, so getting their input is really valuable to all of us,” she added. “If I see that the lawyers are having a hard time really deciding what will work, I’ll ask to meet with them in person and with their clients and we’ll all talk about it and figure out what’s really fair and how we can do this without having 50 depositions that are going to cost the clients hundreds of thousands of dollars.”

Thomas R. Kline said he and his colleagues at Andrews Kurth LLP were “very impressed” with Claiborne’s “wise, steady and even-handed approach” to an arbitration she handled for them.

“Only towards the very end of the entire proceeding, in the interest of allowing a full argument on the merits, did she be-

Zela G. Claiborne

Affiliation: JAMS

Location: San Francisco

Area of specialty: business and commercial matters, construction, engineering and infrastructure, employment, energy, intellectual property, professional liability and real estate.

gin to indicate the positions with which she had trouble,” Kline said.

Daniel Sharp, a partner at Crowell & Moring LLP, agreed. “She is among the most intelligent, perceptive, and even-tempered arbitrators I have encountered,” he said.

Moving forward, Claiborne said she believes the international and alternative energy arenas are the wave of the future for mediation and arbitration.

And as for her sons, who were not so fond of her legal career as toddlers, Claiborne said they now understand that it was a good thing for her, but they aren’t eager to follow in her footsteps.

“I did ask my older son one time, ‘Have you ever thought about law school?’” Claiborne said. “And he looked at me and he said, ‘Are you kidding, mom? You work too hard.’”

Here are some attorneys who have used Claiborne’s services: Elizabeth M. Pappy, Morgan Franich Fredkin & Marsh, San Jose; Anthony “Tony” B. Leuin, Shartsis Friese LLP, San Francisco; Jeffrey J. Lederman, Joseph & Cohen, San Francisco; Thomas R. Kline, Andrews Kurth LLP, Washington, DC; Andrea L. Kim, Diamond McCarthy LLP, Houston, Texas; J. Daniel Sharp, Crowell & Moring LLP, San Francisco; Thomas M. Fulkerson, Fulkerson Lotz LLP, Houston, Texas; Martin “Marty” S. Schenker, Cooley LLP, San Francisco; William Eliopoulos, Rutan & Tucker LLP, Palo Alto; Mark Mathie, McKool & Smith, Dallas, Texas; John Hinderaker, Minneapolis, Minnesota.