

VERDICTS & SETTLEMENTS

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Mediator Creates Healthy Settlement Environment

By Gabe Friedman

Daily Journal Staff Writer

In summer 1994, a smokestack on a Unocal Corp. oil refinery in San Francisco's East Bay spat a dirty chemical into the air and surrounding neighborhoods for 16 days before a leak was repaired.

Residents reported nosebleeds, headaches and illnesses. Then they filed lawsuits.

Between those who claimed serious injuries and minor aches, 11,000 people filed claims in a class action. Plaintiffs' lawyers negotiated a settlement with Unocal that funneled \$80 million into a fund for the victims, but medical experts assessed the actual damages at \$15 million — so someone needed to find a fair way to distribute the extra \$65 million. That landed on the desk of Lester J. Levy, a court-appointed special master.

"He worked hard to put together this complex disbursement plan, and it worked well," said Michael D. Meadows, lead plaintiffs' lawyer at Casper, Meadows, Schwartz & Cook in Walnut Creek.

As Meadows describes it, the chemical released, catacarb, is only a pulmonary irritant. The \$65 million difference between actual damages and the settlement amount should have been called punitive damages, according to Meadows, but because punitive damages are taxable, they were lumped in with actual damages. That meant the money could not be distributed based on a medical expert's survey of injuries.

Levy, 50, who had spent eight years as an environmental lawyer at Munger, Tolles & Olson in Los Angeles, was a natural fit to mediate the distribution of funds. With help from others, he produced a map of where the chemical leak was likely to have spread - based on prevailing wind patterns - and superimposed it on a street map. Then, he broke the surrounding neighborhoods into classes of injury. Within a year, most of the money had been distributed, Levy said.

"People trust him to be honest and objective but also to be efficient and not to burn all the money on administrative costs," Meadows said.

A full-time mediator, Levy probably is a more natural neutral than litigator, say lawyers who have worked with him. He left Munger Tolles in 1994, before making partner, to join JAMS.

Meadows describes Levy as having a light touch when it comes to speaking with emotional people and gaining their trust.



S. TODD ROGERS/ Daily Journal

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"From when I first started practicing [law], I found myself looking at the cases from all angles - not just my own, but also my adversary's," Levy said.

When he began to think about mediation as a full-time career, Levy called Anthony B. Leuin, a partner at Shartsis Friese, for advice. At that time, there really wasn't a career path for a lawyer who had not been on the bench to become a mediator, according to Leuin, who was not a mediator.

"[Levy] was a very capable lawyer at the height of his game, but he's temperamentally suited to be a mediator," Leuin said.

Levy began seeking advice on how to transition his career and eventually became the first nonjudge mediator hired at JAMS.

"I heard, 'Don't quit your day job,'" Levy said.

Since then, Levy has plunged into some of the nation's largest, most-complex disputes. He mostly handles cases pertaining to environmental law, but he also is known for mediating bankruptcies.

He is mediating a case in Washington, D.C., that involves 25,000 African-American farmers who sued the U.S. Department of Agriculture to redress historical discrimination when they applied for crop loans and subsidies. Levy was referred to the judge as a court adjudicator by the claims administrator, with whom he had worked on the Unocal case.

In 1999, U.S. District Judge Paul L. Friedman

approved a settlement that essentially grants each farmer \$50,000, as well as debt relief — but farmers with better documentation to support their claims can pursue higher damage awards. Levy is monitoring each claim; so far, the total claims amounts have surpassed \$830 million.

Levy says that when he took the case, he had little understanding of the rancor that had accumulated during the decades-long struggle between African-American farmers, mostly in the Southwest and West, and the government. Literally and figuratively, the farmers' world was miles from his in Marin County, where Levy and his wife have raised their two children.

Levy lives in San Anselmo, a small town north of San Francisco known for its antique furniture stores, and has served on the board of the Ross Valley School District.

"You're guaranteed that somebody won't like something that you do," he said of his public-service experience.

But even that life is vastly different from his childhood. Levy grew up in Stuyvesant Town, a large cluster of housing-project-style apartment buildings in Manhattan. The complex was built after World War II to accommodate New York City's growing middle class.

Housing was an issue about which Levy heard a lot as a child. Harry, his father, was the son of two immigrants from Eastern Europe and had risen to general counsel for the New York City Housing Authority. That made him a gear

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in the city's massive political machinery and instrumental in the earliest legislation to create public housing, Levy said.

Although his father passed away a year ago, Levy said he still sees his shadow.

"He was a man of principle, and he dedicated his life to other people's lives," Levy said.

Levy learned from his father and followed in his footsteps by attending law school in New York. Before that, he had earned his undergraduate degree in classical guitar performance and composition at the San Francisco Conservatory of Music. For a year after college, Levy returned to New York City and taught music to children.

But then he attended Yeshiva University's Benjamin N. Cardozo School of Law, where he was chief articles editor of the Cardozo Law Review and graduated magna cum laude.



Lester J. Levy
Mediator

Affiliation: JAMS

Location: San Francisco

Areas of Specialty:

Environment, bankruptcy and other complex cases

Rate: \$500 an hour

Upon graduation, he clerked for Judge Irving R. Kaufman at the 2nd U.S. Circuit Court of Appeals.

After his clerkship in New York, Levy crossed the continent again, this time to work at Munger Tolles. After four years as a general business litigator, Levy moved to San Francisco and

developed an expertise in environmental work.

"What makes him useful is he practiced environmental law for a very long time," said R. Morgan Gilhuly, a partner at Barg Coffin Lewis & Trapp in San Francisco. "He brings a very sophisticated understanding of the law."

Here are some lawyers who have used Levy's services:

William Bernstein, Lieff Cabraser Heimann & Bernstein, San Francisco; W. David Campagne, Sinnott, Dito, Moura & Puebla, San Francisco; Margaret R. Dollbaum, Folger Levin & Kahn, San Francisco; David R. Isola, Isola Bowers, Lodi; Anthony B. Leuin, Shartsis Friese, San Francisco; Michael D. Meadows, Casper, Meadows, Schwartz & Cook, Walnut Creek; Jeffrey L. Richardson, Mitchell Silberberg & Knupp, Los Angeles