

VERDICTS & SETTLEMENTS

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Overlapping Skills

Elliot Gordon, with law firm and in-house background, sees cases from 2 sides.

By Justin Kloczko
Daily Journal Staff Writer

LOS ANGELES — Much of the neutral work Elliot K. Gordon does is among hospitals, doctors and health plans whose disputes can have longterm consequences if they are not resolved amicably.

“These are entities that have ongoing business relationships. They depend on each other,” said Gordon, a JAMS neutral since 2018.

Gordon spends time reminding them of their history, including the issues and frictions.

Gordon, who comes from a family of physicians, spent years working at large law firms and as in-house counsel overseeing litigation portfolios for Health Net Inc. and Anthem Inc. After 13 years as a litigator, he said he knows about the limits and capabilities of corporations.

“I bring a unique perspective in terms of mediations, having been both the advocate and the client,” said Gordon, whose wife is a physician, as were his father and uncle.

Gordon came to JAMS Inc. following nearly three years at ADR Services, handling health care, employment and business litigation. He handles

both mediation and arbitration, finding they complement each other quite well. He called mediation “a process and not an event.”

He said he tries to dive into the facts to really have a deep understanding of a dispute legally and factually but doing so from a 40,000-foot perspective to see the big picture.

Then there are the complications of working with clients who by and large have not interacted with the legal system before, against a larger entity drawing from a big pool of resources.

“The balance is explaining the legal system to them and empathizing with what they had gone through,” said Gordon.

“Whatever first number a party hears is just that. It’s a first number. I try to help people avoid acting too emotionally to the first number, so it doesn’t detract from what is ultimately important,” said Gordon.

His cases often consist of a condition or injury for which a person received treatment but did not get covered because a health insurance provider deemed it too experimental, such as deep brain stimulation or proton beam therapy. To determine that, Gordon will read peer-reviewed literature



Justin Kloczko / Daily Journal

and examine the science behind procedures, as well as look to see if other insurance companies offer coverage.

“Because that’s the battleground: Is this a proven treatment or is this really experimental and investigational?” said Gordon.

Often, plaintiffs aren’t seeking money but to change a company’s business practices. “That’s a challenge because companies are typically resistant to doing so,” said Gordon.

Or sometimes a mediation turns out to be as simple as an information exchange.

Mental health coverage has also become more relevant. Because of recent laws, mental illness can’t be treated differently from physical ailments, resulting in different treatments, Gordon said.

Gordon has dealt with claims brought under the Employee Retirement Income Security Act (ERISA), the California Insurance Code, and Business

Elliot K. Gordon

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& Professions Code Section 17200.

Because of ERISA, the federal law that governs health plans and employee benefits, one can only recover the value of the benefit. “So you can find yourself in a situation where the benefit might be \$25,000, but if you prevail you’re entitled to attorney fees, which could be \$150,000 to \$200,000. Fees may end up driving the mediation value,” he said.

Information exchanges early in the process are important, Gordon said, noting cases come to him at their outset and also close to trial.

“The earlier on they are the more I need to make sure the parties have an adequate information exchange so a settlement isn’t hung up because there are key pieces of evidence the parties don’t know about yet,” said Gordon.

Tamara S. Freeze, a plaintiffs’ attorney for Workplace Justice Advocates, said she was at first hesitant about having Gordon appointed to her arbitration case because of his corporate law background.

“I was concerned he might be biased for defense or big business,” said Freeze, who used Gordon as a discovery referee in what she described as a contentious employment case.

But Freeze said Gordon impressed her. She found him very responsive to immediate discovery request needs at deposition.

“He made fair rulings. He was trying to find a balanced approach to arbitration,” said Freeze, whose case ultimately settled. “We trusted him. He is very credible.”

“We had a contentious case. He was able to resolve the case along. He definitely has good skills as a discovery referee,” Freeze added. “Because he has such a calm demeanor and is a reasonable person, we decided we will use him as a discovery referee.”

Edward Stumpp, who mainly handles health care litigation for providers, said Gordon’s background saves time. “You can dispense with that and get right into it,” said Stumpp of Helton Law Group, who has used Gordon multiple times as a mediator and arbitrator.

And he said Gordon goes beyond just tossing numbers back and forth and will study, not just read, the briefs.

“He is willing to get into the weeds. In mediations, I have noticed he’ll go through the details of the examples and use that as a basis to start a discussion that is meaningful,” said Stumpp, who recommended attorneys go back to Gordon even if he’s

given them an unfavorable ruling.

“He is lawyer-friendly but only to a point,” said Stumpp, “meaning he is not afraid to make a ruling and move things along.”

“His recommendations can be difficult to ignore because they are well thought out. While not everyone’s going to agree, even people who don’t have the most successful day at arbitration are going to be hard-pressed to say he didn’t take a fair and impartial look at their case,” said Stumpp.

Attorney Robin A. Wofford of Wilson Turner Kosmo LLP said Gordon was very responsive to her employment arbitration case, to the point of attending a deposition with opposing counsel whom she felt was too obstreperous. “I thought he was very good and very knowledgeable,” said Wofford.

Gordon graduated from Harvard Law School and received a master’s degree in public policy from the Harvard

School of Government. He said the seeds for his career as a neutral were planted during his undergraduate days at Haverford College in Pennsylvania, where a lot was done by consensus. “I think mediation is like that as well,” said Gordon.

In the end, Gordon finds his mediation and arbitration skills cases overlap quite well.

“When I am in arbitration I’m often using my mediation skills, especially things like discovery disputes where I ask the party to meet and confer first,” Gordon said. “As a mediator, I’ll often put on my hat as an arbitrator to sort of take a look at a case.”

Here are some attorneys who have used Gordon’s services: Glenn Kantor, Kantor & Kantor; Michael Maddigan, Hogan Lovells; Rob Gianelli, Gianelli & Morris; Jennifer Romano, Crowell & Moring; Stephen Weigand, Faruki PLL; Russell Sayre, Taft Stettinius & Hollister.