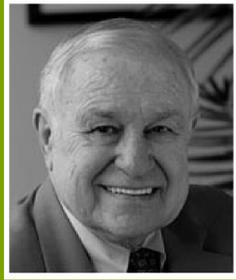


Profile



Verdicts & Settlements Section, Friday, September 4, 2009

LOS ANGELES - There aren't many mediators around who can grasp right off the bat the significance of a C-ring in the turbocharger of an aircraft.

Thomas Sharkey is one who can.

He knows because **he's been flying planes since he was in high school.**

The former San Diego trial attorney, now a full-time neutral at Judicate West, **bought his first plane in 1961.** He's owned several since, which he uses to visit family in the Midwest, go on weekend fishing jaunts to Baja, or just to practice instrument flying up and down the Southern California coast. He currently owns a six-passenger Beach Bonanza, and, at age 78, still flies regularly.

Over the years, the pastime also has figured prominently in his work. As a litigator, he defended a number of aviation-related lawsuits. He represented PSA, the now-defunct commercial carrier, in a 1978 midair collision of its 727 jetliner with a two-passenger Cessna on approach to San Diego's Lindbergh Field that killed 142 people.

"There's a whole, almost a different, language that applies to aviation," said Sharkey, who traveled here recently from his San Diego base to mediate several cases. **"If you're unfamiliar with the language, let alone the substance of what the case may be about, you're at a terrible disadvantage."**

"I'm working on a mediation right now where the issue is whether a C-ring in a turbocharger was negligently installed and resulted in the crash of the aircraft that killed two people. Plaintiffs' position is that it was ... defendant says no. So unless you know what a turbocharger is—I'm not an engineer but I know what a turbocharger is, I know what a C-ring is, I know what overboosting temperatures means—a person would be just lost."

The son of a railroad switch-man and a homemaker mother, Sharkey grew up in Chicago, one of four children. His younger brother also went into law and now serves as an administrative law judge in Washington, D.C.

Sharkey ended up in California on a football scholarship to St. Mary's College, a private Catholic liberal arts school in the Bay Area town of Moraga. Soon after he arrived, however, the school dropped its intercollegiate football program, so he returned to Chicago. He spent a year at the University of Illinois, when football coaches from San Diego State University contacted him. He transferred there and received a bachelor's degree in business and economics in 1954.

He went on to earn a law degree from the University of San Diego School of Law in 1959 and has stayed in the city ever since.

For the first 10 years, Sharkey worked as a plaintiffs' personal injury litigator, first at Dattan, Peterson & Sharkey and then at Hewitt, Klitgaard, McMahon & Sharkey. In 1968, he joined McInnis, Fitzgerald, Rees & Sharkey, which later became Higgs, Fletcher & Mack, where he focused mainly on insurance defense litigation.

Sometime in the early 1980s, the American Arbitration Association started calling on lawyers in active practice to serve as arbitrators. Sharkey started doing arbitrations, along with his full-time practice. Later, while still in private practice, he affiliated with JAMS, where he served as both arbitrator and mediator.

In 1999, when the McInnis firm was acquired by Higgs Fletcher, Sharkey continued on as special counsel, in addition to his ADR work. He eventually began affiliating with Judicate West, mainly because it was more convenient to his office than JAMS.

The last case Sharkey got involved with as a lawyer, before becoming a full-time ADR neutral in 2006, was in assisting several firms representing a class of plaintiffs suing the tobacco industry. The complaint claimed the industry was enticing minors to smoke through deceptive advertising. The state Supreme Court struck down the case on summary judgment, ruling the assertions were pre-empted by federal law. In *re Tobacco II*, 41 Cal. 4th 1257, 1262 (Cal. 2007).

As a neutral, Sharkey spends 80 percent of his time in mediation. The remainder is devoted to arbitration and serving as a discovery referee. **Because of his background, he does a lot of aviation-related cases.** He also has done a good deal of professional negligence cases involving legal and medical malpractice, which draw similarly on his experience as a litigator.

"There are rules that are unique and standards of care that have to be applied," Sharkey said. "Many people think, for example, a bad result in an operation means the doctor was negligent. It does not mean that at all. A doctor is not a guarantor. A doctor has to adhere to a standard of care that applies to a particular practice, and you have to understand that and know what those standards are. With a background of doing those types of cases, it helps you to give a reality check to both sides."

Sharkey's extensive experience, both as a lawyer and ADR neutral, has earned him the respect of the local legal community; people say he is exceptionally competent, honest, effective and persuasive.

"He's very realistic about the cases, even when I don't like what he has to say," says Jeffrey Doggett, a medical malpractice defense lawyer and partner at Lotz Doggett & Rawers in San Diego, who has mediated cases before Sharkey numerous times. "Despite the fact that he was a defense attorney for a long time, the plaintiffs' bar respects him. He has no problem pounding on the defense attorneys, as well. So, it helps when he tells you he thinks you have some exposure. **You respect his opinion.**"

Lawyers also commend Sharkey for his persistent follow-up when a case doesn't settle. They say they can call him at any time, without expecting another bill for his services.

"He just does it," Doggett said. **"Clients like him. He's very respected, very friendly.** He doesn't waste time with a spiel about himself and the process. He pretty much gets to the point. He's familiar with the issues."

San Diego plaintiffs' lawyer James Pokorny, a fellow pilot who specializes in air crash cases, said he has chosen Sharkey to mediate a number of his cases because, **"he's smart, very good with people and has an intimate knowledge of things aeronautical."**

Most recently, Pokorny had a case before Sharkey which alleged an air traffic controller guided a plane into a mountainside; another case accused an air traffic controller of guiding two planes into each other. Pokorny said all the cases he's brought before Sharkey have settled.

James R. Milliken, a retired San Diego County Superior Court Judge, who practiced with Sharkey and now also affiliates with Judicate West, **marvels at his colleague's seemingly boundless energy.**

"He's 78 years old and doing mediation and arbitration every day," Milliken said. "I'm 66, and I do maybe two a week. This is a young man's game. He's unbelievably tough."

Sharkey has slowed down a bit, though. **For years, he ran in marathons,** but a hip replacement and knee surgery have curtailed the sport. He's since switched to cycling and works out with weights in a home gym. He also keeps an office there, where he works on cases and dictates notes into a recorder, which his wife, Candace Sharkey, a former court reporter, transcribes. The couple have eight children between them, seven from his previous marriage and a daughter from his wife's marriage.

Besides his full-time ADR work, **Sharkey also stays active in numerous bar activities, including the Enright Inn of Court and the American College of Trial Lawyers.** "It keeps me in the game," he says.

~ Susan McRae

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