

Intro:

This is Michael Cowen and welcome to Trial Lawyer Nation. You've got to have the right case because if you take it up and it's the wrong case, then you could make some really bad law that's going to affect a lot of plaintiffs- There's always an answer, the joy is in finding it- One of the reasons that I love being a lawyer is this exact process- The way we live our life has nothing to do with the presentation sequence at trial- As trial lawyers we pick up and move on and keep going- You're losing or gaining one out of every 10 jurors which can really make a huge difference in the ultimate result of the case- Whatever you think about, you create- Learn all you can and never stop and then have the guts to try case after case after case- Welcome to the award winning podcast, Trial Lawyer Nation, your source to win bigger verdicts, get more cases and manage your law firm, and now here's your host, noteworthy author, sought after speaker and renowned trial lawyer, Michael Cowen.

Michael Cowen:

Today on Trial Lawyer Nation we have attorney Mallory Storey out of Alabama. How you doing today Mallory?

Mallory Storey Ulmer:

I'm doing good, how are you Michael?

Michael Cowen:

I'm doing great. I've met Mallory at conferences over the last couple of years. She does a lot of trucking and other kinds of work, but what really impressed me is that she was just involved and settled a case for \$15 million. And it was a tough case and a contributory negligence state. That means if they put anything, 1% of fault on her client, they would get nothing. And it really impressed me.

Michael Cowen:

Frankly I'd like to have more \$15 million settlements, so I wanted to learn how you did it, because I want to do that.

Michael Cowen:

So how are you doing today Mallory?

Mallory Storey Ulmer:

Thanks first, thank you for your kind words. I follow you, I follow all of Trial Lawyer Nation, I go to the very great boot camp that you put on. I think maybe I was the first person that signed up when that opened a couple of weeks ago. Thank you for having me on and this \$15 million settlement was really exciting for our firm, for me, for the clients obviously. And so I'm glad to be here to talk about it and share anything that I can with people who are experienced and people who maybe don't have as much experience with these kind of cases.

Michael Cowen:

I think that we could count up on one hand the number of people that have experience in multiple eight figure settlements. They're rare, but when you get such a case you need to really work it up. And I think there's lessons from working up those cases that we can apply to other cases for maximizing their value.

Mallory Storey Ulmer:

Absolutely. Just to give you a little bit of background on me. I've only been practicing for about five years, but I left a really lucrative offer on the table after law school. People would consider it lucrative because of the firm, the plaintiff's firm that's it's with. They're a national level plaintiffs firm. And I had the opportunity to stay but I knew that I would be writing briefs for big NDLS and chose to come be with Trip Walton, the founder this firm, Walton Law Firm, that I'm with now, because of the experience and the access to the cases, big cases.

Mallory Storey Ulmer:

We do bread and butter cases, we do small matter vehicle cases also, but we end up getting a lot of catastrophic injury, serious injury, wrongful death injury cases. And I've gotten so much more experience than a lot of people my age or just more fresh out of school. What we call baby lawyers. That's something unique that I've been able to use to bolster my career that most other people don't get the opportunity to.

Mallory Storey Ulmer:

And I've been able to learn a lot from Trip and a lot from other lawyers in the firm and lawyers that I've worked with, co-counsel. That has really been great for me individually growing. And the way that I practice individually.

Michael Cowen:

What made you want to go... it's almost unusual that someone wants to go into plaintiffs work right out of law school. A lot of people, this is like a second choice in their legal path. They see the light later. What made you want to do right out of the box?

Mallory Storey Ulmer:

I got a clerkship offer at the law firm I was... that everybody at my school wanted to get a clerkship at, in Montgomery. And I was put in the fraud department and I took that opportunity. I had had eight years of previous legal experience, before law school. I was a paralegal for a firm. I kind of knew what the plaintiff side looked like. Knew what the defense side looked like. I had worked those cases closely with the lawyers in that firm.

Mallory Storey Ulmer:

And honestly, I went into law school wanting to be an insurance defense attorney for a hospital or a health care related. But then I took the opportunity at this big client law firm in Montgomery because everybody else wanted it, but I was offered it. And I wasn't even seeking that job. It was kind of funny how that worked out. But after working there for two years and getting to work on big whistle blower and fraud cases I was like, you know, I don't think I could ever go back. Once you're on the right side, you just can't switch over.

Mallory Storey Ulmer:

That's how I ended up on the plaintiffs side. I'll be honest with you, I wasn't thrilled about litigation, but I knew that it would get me experience in the courtroom representing clients, working with people, feeling like I'm actually helping people every day. Because that's ultimately what drives me.

Mallory Storey Ulmer:

Supposedly that's what drives all of us, everybody has their own opinion on it, but what's most fulfilling in life is being able to help other people and serve other people. That's why I stuck with it. I've learned so much and it's been a growing experience, for sure, these last five years.

Michael Cowen:

Absolutely. I think it's hard to start off or to get into the plaintiffs if you're only motivated by money, because frankly if you do the right kind of corporate work, corporate litigation, corporate defense work, you can still make a lot of money without all the risk and heartache.

Mallory Storey Ulmer:

Yeah, I mean, because we see things. You know this as well as I do. We see things and we help people and we're called out to people that are hurting, they're in a traumatic situation. They've been in a traumatic situation, or going through that. They may have lost a family member or they may be permanently injured for the rest of their life. For us as plaintiffs lawyers that's a very heavy burden to carry.

Mallory Storey Ulmer:

Some of us carry it better than other, and I think we're all ultimately still trying to figure out, we may never figure it out, how to best carry it, but somehow we put one foot in front of the other and keep going on to represent the next person that needs us.

Michael Cowen:

It is definitely, and we could talk forever about the emotional toll that this takes on us. And how to handle it. Learning how to handle that, took me a good 20 years, 25 years honestly. Learning what to take on and what to, not that you don't care, what to let go because it's not your burden.

Michael Cowen:

And a lot of it is just to help people, but we didn't create the problem. And our clients are more resilient than we think they are. We're there to give them their shot at justice and we're going to do everything we can for them. But whether we get a great settlement, get a great verdict or not do well at trial, get the rest on appeal. They're going to survive. And when we have that faith in them, it's a little easier. Because when you're scared you don't perform as well in the courtroom.

Michael Cowen:

It's like going on a date when you're real nervous. You just stumbling on things, you look like you're awkward, you're worried.

Mallory Storey Ulmer:

That's one of the biggest things that I have heard more recently from people that I follow. Part of my... I'm trying to be a great trial lawyer, right? There's some of those who are out there just to work the case, it's a job, maybe not happy and there are some of us who really try to work within what we're doing to find happiness and find joy, like Malorie talked about a week or two ago, last week or earlier this week, I can't remember. But really finding your purpose and your joy. And I think fear, like you mentioned, is a huge factor in our performance and sometimes the way we resolve cases.

Mallory Storey Ulmer:

There's big injuries involved. That's something that I keep hearing more about recently and really try to work on myself is now being controlled by fear or worry about the outcome, because you're right, we can only do our best individually to try to set things up, the way they need to be set up. And that's all we can do, we don't write the checks.

Michael Cowen:

What have you done to try to get past the fear and not be controlled by fear?

Mallory Storey Ulmer:

I know that you talk about Sari de la Motte, she was introduced to me a couple of months ago by a colleague and she talks a lot about fear, Friedman talks about fear. You have all these big trucking lawyers in the country who talk about fear in the courtroom. If you listen to them enough, they're not going around making talks on just this topic, but I make a point to attend educational seminars. We've been on Zoom a lot this past year, I attend as much as I can with that. And in that you pull little snippets of people's conversations because it comes up with everybody.

Mallory Storey Ulmer:

And it may just be one passing remark, but I collect those in my mind and I think ultimately, for me, I'm figuring out that I really need to be able to connect with the client and the case and the purpose.

Mallory Storey Ulmer:

And in this \$15 million settlement, it was a complex liability case, we're pure contrib like you mentioned, we're in Alabama. I mean, Lord, you keep just stacking these things on.

Michael Cowen:

Is Alabama not a plaintiff's paradise?

Mallory Storey Ulmer:

No. We have a couple of counties that are much better than others, but then you always have the Supreme Court. And the Supreme Court of Alabama it's basically bought and paid for by big insurance, it's not... everybody chose these multi million settlements or multi million dollar verdicts rather and they don't tell you what happens with the Supreme Court after that verdict. Because all of these big verdicts, anything over about \$8 million of jury verdict in Alabama over \$8 million, will get appealed for some reason. And it will probably get either stripped, or sent back down and that's something we're always aware of here.

Mallory Storey Ulmer:

Especially cases with larger damages. And that's something I was very aware of in this State case. Because our damages blackboard were at 21.8 million, that's something that was a real threat to this case and my client.

Mallory Storey Ulmer:

But fear, just to tie that all together. I just had a feeling about this case from the beginning that everything was going to be okay.

Mallory Storey Ulmer:

I don't know how to explain that, but I just knew that this family needed help. And in the beginning of it, I didn't know what that was going to look like. But I'm a fighter and I like to be aggressive and I like to go take what I want. And that was my mentality with this case, is that we're on the side of right. We will win. I don't know what that will look like, but we will win.

Michael Cowen:

I really love your mentality. That mindset is going to serve you very well as you continue on this career that's already doing incredibly well. For five years, I'm honestly a little shocked that you're only five years out. You remind me of my Malorie that I work with. My partner, because it's always shocking how little time, I think she's eight or nine years out now. I should remember, it's a blur. I remember she came working with me and she became my partner at some point. Sometimes it feels like it's been 20 years, sometimes it feels like it's been three, because it just... time flies. But I'm really impressed with the way you're doing that.

Michael Cowen:

What have you done to develop your skillset? You've talked about your mindset some, but as far as how to analyze cases, how to work them up?

Mallory Storey Ulmer:

I stepped into a practice that had a very good reputation. A reputation for trying cases, big verdicts, a lot of experience and a lot of personal, inter community networking here, around where we are. Other than learning how the firm does things generally, our system, what works and what doesn't work. We have systems in place, we have books everywhere, research everywhere. When I started here we had one person who just did all of the research and the writing. He was a legal genius. He has since passed away, but I'm talking old school, legal genius.

Mallory Storey Ulmer:

You could go to him with any little thing and he could give you his opinion on it and show you where all the cases are. We don't have that any more, but getting to experience that initially set the bar pretty high. Expectation wise and then just the access to cases to work on. I try to not only learn from the lawyers here who have a lot more experience, but I think we have over 75 years of experience here combined. But just surrounding myself with people who I think are really great lawyers, for one reason or another, not all because this person gets the biggest verdict. And this person gets the biggest settlement.

Mallory Storey Ulmer:

I look at is this person likable, are they cool, are they low key? How do they communicate? I, like I said earlier, I go to those seminars. I make that a priority. Luckily the firm here, makes that a priority, because I know some firms don't either have the resources or don't make education a priority for younger lawyers in the firm. Or lawyers who may be practicing for 15 years that haven't litigated and just want to get into the litigation of trucking cases or commercial cases.

Mallory Storey Ulmer:

Education is valued here. And so I've been able to attend, just joining ATAA and the AAJ Trucking Litigation Group. Right now I'm the assistant to the editor for the journal that comes out twice a year. Going to the AAJ's deposition colleges.

Michael Cowen:

That's a great program.

Mallory Storey Ulmer:

Just really focusing on being better at the different elements of trial. Slowly working my way through and obviously the case resource comes in for practice. It's hard to just learn information and take it in if you never get to practice it in your life. That's the biggest thing, it's just baptism by fire. Just start doing it. Make sure that you're not going to commit malpractice, obviously. But just start doing it and get your feet wet, get the experience and overtime if you're focusing on, if you're really aware of what you're doing, I think you just become better as a lawyer.

Michael Cowen:

There is no way to learn without getting in there and doing it. We can to all the seminars and learn all the theory that you want, but until you jump in and you take a deposition and deal with not getting the answer you anticipated or not getting what you want, or hearing that opportunity that you didn't think was going to be there. Someone might say something good for you if you sop on and ask the right question. It just takes time to experience.

Michael Cowen:

One thing I am happy to hear, your choices of education too, because not all seminars are created equal. There's a lot that are just boring case law updates, that may or may not be relevant to your practice or a bunch of people talking about how complicated things are. The subtext being that you need to refer all your cases to the speakers rather than speakers actually trying to help you with your practice.

Mallory Storey Ulmer:

Right. I think, I've gotten picky and choosy about what I do now. Because, time is money, right, for us? And I think just focusing on... the biggest thing for me was starting with schools with the AAJ. I also initially, when I first started the Don Keenan's method of correct trial knowledge. Just getting into some of those courses and learning and hearing is helpful. Just being exposed to it, like you said. But you're right, not all programs are created equal.

Michael Cowen:

Are you starting to get asked to speak a bit? I know I have you on the speaker line-up for the Academy of Truck Accident Attorney's symposium in Austin, Texas in September, because I think you're impressive and you have something to share. Anyone else starting to get you in there yet?

Mallory Storey Ulmer:

I had, let's see. It was at the end of Covid, I was asked to speak for AAJ on a trucking, a limited edition series on trucking litigation. That was my first speaking engagement and that may be at the beginning of this year. And the obviously here today, which I'm very happy about. ATTA I'll be looking forward to and

then the New Jersey trial lawyers, a few weeks ago, asked me if I would be willing to speak at their annual symposium at the end of June.

Michael Cowen:

The Boardwalk?

Mallory Storey Ulmer:

Yeah.

Michael Cowen:

That's a fun one and there is a shelf-, I don't remember the name, there's some restaurant you go to the night before with other speakers and stuff, it should be a fun time.

Mallory Storey Ulmer:

That's what I heard and I think they're doing it virtual this year.

Michael Cowen:

Aw that stinks. So you'll miss out on the experience. I would encourage you also to, you don't want to be obnoxious about it, but don't be afraid to put yourself out there to speak. Because I've been on a lot of the committee where we're asking... we're trying to plan the seminar, and it's really, who can we think of, what are the topics and who can we think of. A lot of times, it's like, a month later you run into somebody, I should have asked that person, this person is really good. Not that the other people you asked weren't good. But it's a lot of just who comes top of mind in a seminar. And sometimes if you asked nicely, you'd get in.

Michael Cowen:

I've noticed that some people, they don't want to seem rude or they don't want to seem pushy and so they don't ask. And then the people that do ask get in. If you want to advance your career, you need to advocate for yourself and frankly, probably shouldn't be talking about this on a podcast, but show up to the, they've the group is, show up to dinners, show up to the happy hours and do that networking. Because it's just... once you get your shot, you got to do a good job.

Michael Cowen:

But being top of mind makes a difference and then, being the one to pick up the phone and talk to all of these great lawyers. I'm luckily in a position now where I have trial coming up. I wanted to try a slightly different voir dire, Joe Fried spent thirty minutes on the phone with me, talking about what he did on a case on jury selection and other issues. Micheal Leizerman got on the phone with me. Just the ability to have that kind of a resources, not asking for anything in return other than to be their friend and to be there for them. And you'll get that as you network because you're friends with these people.

Mallory Storey Ulmer:

Absolutely. The person that got me started with AAJ was actually Tim Lange.

Michael Cowen:

He's a great guy.

Mallory Storey Ulmer:

He's the current president of the trucking litigation group and we had a triple, tractor trailer crash in Kentucky that I got him in on and we worked together on that, and that was awesome. Just meeting him, seeing how he works, going to Kentucky and Chicago and getting to drive. We were dragged into federal courts, so I'm getting to argue some pertinent discovery issues at that point, it was really awesome. You mentioned making friends and networking, I think the listservs that are attached to these groups are awesome. Because you do, even if you're younger or newer to trucking or whatever area it is, you're going to make friends, you're going to make contacts. If you are responsive and active on these list servers, people are going to recognize your name, it definitely helps. And there were people on the list servers that I kind of tossed some pieces of this case for the \$15 million settlement out to, wanting advice on. Just to see what other people are doing.

Mallory Storey Ulmer:

Because there's not one right way to do everything. It's always good to keep an eye on what's trendy or what's working or what's not working, or new ideas when you're prepping a case and that was an invaluable resource to me.

Commercial 1:

Each year the law firm of Cowen Rodriguez Peacock pays millions of dollars in co-counsel fees to attorneys nationwide on trucking and commercial vehicle cases. If you have an injury case involving death or catastrophic injuries and would like to partner with our firm, please contact us. You can reach Delisi Friday by calling 210 941 1301 or send an email to delisi@cowenlaw.com. That's D-E-L-I-S-I @cowenlaw.com. She will coordinate a time for Michael Cowen to speak with you in person or by phone to discuss the case in detail and see where we can add value in a partnership. And now back to the show.

Michael Cowen:

Let's cut to the case now. Tell me about the case.

Mallory Storey Ulmer:

I'm limited in what I can say about the case, but this was a complex liability case stemming from a series of car wrecks. And those car wrecks resulted in catastrophic injuries to my client. He didn't die, but he will have to live with what he's got for the rest of his life. And that's really hard. He's young, fortunately he has family. Most of our clients in catastrophic injury cases, the brain injuries, the spinal injuries, which we handle a lot of. They don't have family to help. That was one thing I'm thankful for in the scenario. If it had to happen at least this client has family that can help take care of him.

Mallory Storey Ulmer:

But the case involved a commercial, a company operating under the commercial federal regs. This particular, one of the defendants involved was not in a commercial vehicle at the time, which was a big issue in the case, that gave me a little bit of trouble at first. Trying to work my brain around how to argue and grapple with that appropriately and persuasively.

Mallory Storey Ulmer:

And based on our investigation of the case, calling experts, we made our own determination on liability and we stuck with that. That was probably one of the harder points in the case. Because I'm used to doing commercial cases, trucking litigation with everything more clear cut. I know the rules, I know what applies, I know what arguments I'm going to make. But in this case that posed a little bit of a challenge for me initially.

Mallory Storey Ulmer:

It as a complex liability situation because there was my client's car and a couple of other vehicles that were involved also.

Michael Cowen:

Was there, and again if I go too far, I don't want to risk your confidentiality and get you or your client sued or anything, just put me in my place if I step out too much, I'm just trying to get enough information where it makes sense to the listener without getting you into trouble.

Michael Cowen:

Was there more than one impact, I guess, over a period of time. Because you have like one car hits a car, that hits a car and you have like someone gets in a wreck and then someone else hits it and then maybe someone else hits it?

Mallory Storey Ulmer:

Multiple impacts and ultimately, my client was had brain injuries and a spinal cord injury from that. The complexity comes from the liability sequence there. That's kind of, in a nutshell, what the liability was.

Michael Cowen:

Were they trying to blame your client for setting up the situation that caused the wreck, or having some fault in the wreck?

Mallory Storey Ulmer:

Yes, and that's always, in all of our cases here, because Alabama is pure contrib, like you said, that one percent gets us a big fat zero with the jury. It may get us thrown out on summary judgment depending on what it is and what the facts for the particular case show. But that's always something in the back of our minds that is, going back to the fear thing, a little bit of the fear monger in this case, is that contributory negligence. What do you do with that? Is something going to come up on this case that's going to blow up the theory? Blow it out of the water, we've spent all of this money, time, resources and we're going to end up with nothing, because some unknown fact is going to be revealed, showing contributory negligence on the part of the client. In small cases, you worry about that, but when you have the catastrophic injury that's one of the bigger worries for us down here in Alabama.

Mallory Storey Ulmer:

But that's basically one of the arguments was as far as contributing, that was still on the table. For us in Alabama, any time we have the contributory defense, I'm always looking at the other driver's conduct to see was their conduct wanton. Because in Alabama you cannot use the contributory defense if wanton conduct is involved.

Michael Cowen:

What is wanton in Alabama.

Mallory Storey Ulmer:

Willful, or malice. Knowingly doing an act and you know it's going to cause harm to somebody and probably cause harm to somebody and you do it anyways. There's that conscious disregard phrase that going around with that. But we don't have any case law in Alabama that really clearly says what is wanton conduct.

Mallory Storey Ulmer:

We have a couple of texting and driving opinions out, but there's nothing that really clearly says this is wanton conduct, it's always just a question for the jury.

Michael Cowen:

What did you do to try to develop whether you could, you thought and obviously the other side thought that you have a chance of proving wanton conduct which would take away the contributory defense.

Mallory Storey Ulmer:

We really had to rely on discovery for that. Like in every case, sometimes you don't know what you're going to get until you get into discovery. In this case, discovery was slim, like it is initially in most cases against companies. You have to pull teeth to get exactly what you're looking for. And some companies believe it or not, just don't have what you think they should have. It still surprises me. I'm just like, what.

Mallory Storey Ulmer:

But that was the case here. There wasn't really anything glaring. That golden nugget, that I always try to find, that I've been taught to find. Look for the golden nugget, because that is your case. We really didn't have that here.

Mallory Storey Ulmer:

I can't get into too much about what was the conduct and what was our theory on it, but if the case had not resolved in mediation, one of my strategies was to file a motion to strike the contributory affirmative defense and go and argue that based on wanton conduct and evidence we had gathered during the case. And I don't want to believe I wouldn't have been successful on that, but I was damned sure going to try my hardest to argue that. And I do think that the doors opened there for this particular case, and unfortunately we didn't really. I say unfortunately, I should say fortunately, I guess for the client. We didn't have to go through that extended process of trial, but that motion was drafted in this case.

Mallory Storey Ulmer:

And that's something that motion described the contributory negligence affirmative defense, is something that we hadn't done before. That was a tool that I brainstormed with my co-counsel, my trial counsel. It was like, I think we can do this. Let's figure out a way to do this.

Mallory Storey Ulmer:

I think that's a tool that I'm going to use in the future and just keep that in my back pocket, if I ever need it again.

Michael Cowen:

Before you went into depositions was that something you were setting out to try to prove, and try to establish?

Mallory Storey Ulmer:

Not necessarily, there was a lot of unknowns in this particular law case which can be good or bad. In all of our cases, let's just take the simple, rear-ender. I never saw him, I never saw him. He was there, I never saw him or I looked down and grabbed my chap stick and looked up and I never saw anything. That's the kind of something that we're always looking for, is what is the reason. And if you don't have the answer sometimes that's obviously more helpful. I sometimes like it when there's no answers, because the jury's going to expect this person to be able to answer why.

Mallory Storey Ulmer:

And so my goal was to pursue it as a systems case. Systems failure, like we talk about. And look for and figure out what's the reason. And pin the defendant down on what caused it. Did you see, did you not see why didn't you, what is it. And we do that in every case. Especially when people aren't really willing to come out and say why whatever happened, happened.

Mallory Storey Ulmer:

And so we were able to get some very favorable testimony from this person and typically if you have a company involved one of the strategies we talk about is trying to look for the opportunity to take an employee or a contractor or whatever, and flip them against the company.

Mallory Storey Ulmer:

Sometimes those opportunities just aren't there, sometimes it's not the right person, sometimes it's not the right employment situation, sometimes the facts just really aren't there and you just don't have a person that's going to be able to do that for you. That's what we were successful on in this particular case. And that was our fear again, and that was part of my own strategy.

Michael Cowen:

You said systems failure. I'm always trying to find systems failure too, but not every listener may have heard the theory. What do you mean by a systems failure, as opposed to just an accident?

Mallory Storey Ulmer:

Juries don't like... I think my baseline is always juries don't like for there to be an individual driver on the other side of the table in a car wreck. They don't want to award a million dollars against a person, you know, Buddy Joe that lives down the street from them. They would rather award money against a company, an insurance company, a big corporation of some sort. And stemming from that, if you can do anything to say that... position the case and frame it such that the company's failed the driver. The employer failed the driver. They didn't either, qualification, training, hiring process, supervising, there's a whole bunch of different factors that you can put on that.

Mallory Storey Ulmer:

We typically use the three legged stool which is a Don Keenan thing, and we pick our three basically in the system. Most cases we start at qualification, hiring and supervision. Sometimes training is in there, but it's really hard to get those claims through anyway, so we dance around some of those depending on the facts of the case.

Mallory Storey Ulmer:

But systems failure means find where the company has failed what didn't work, what did the company do or not do and you'll find I think that a lot of the companies on the qualifications side, or on the training side, or on the supervision side aren't doing what they need to do.

Mallory Storey Ulmer:

Juries understand that.

Michael Cowen:

Yeah absolutely. And it's a lot easier to have the defendant driver as a victim and not the bad guy. They're the victim of their own employer. That's why in Texas the legislator is looking like they're trying to take all that away from us right now. They have a bill pending.

Mallory Storey Ulmer:

Things are crazy out in Texas.

Michael Cowen:

Well our Supreme Court's gotten a lot better actually. We've had an eight figure jury verdict affirmed last week by Texas Supreme Court. We had some other cases affirmed that people were worried about. I actually had a coffee with one of our Texas Supreme Court judges, not to talk about cases, just she's running for re-election, and we didn't talk about specific cases, but just about the fact that I think that they're more balanced than they used to be. The fact that one would ask for money and go out for a cup of coffee with the plaintiff's lawyer is already telling something.

Mallory Storey Ulmer:

That's awesome though. Maybe Alabama will have something one day where we can break that eight million dollar type of threshold that has been created here for injury cases.

Michael Cowen:

Part of it is you can't, how can I put it. If you're in a State that can't elect liberal democrats then don't make conservative republicans your enemy. And I'm really unpopular with all of my brother and sister trial lawyers for saying that. But if you just antagonize people and you call them your enemy then they're going to have no love lost for you. And I think making peace on common issues when you can. Realize you can disagree without being disagreeable and not calling them Nazis and stuff like that, really helps.

Mallory Storey Ulmer:

I think that that translates over too in working these cases. It's defense lawyers and plaintiff's lawyers. There's a symbiosis there that has to happen for things to get done. And it's not there in all cases, but it helps if everybody can listen, can understand and still have their own opinions at the end of the day. And try to work together to make things better for the clients. Make things better for the public. If you're talking about election stuff and it's just better for everybody that way, so I'm with you on that.

Michael Cowen:

Absolutely, although all my really big cases I tend to get the defense lawyer that is so nice, and it's really hard to do.

Mallory Storey Ulmer:

It's a part of it. And I hate that too, because it makes our jobs a thousand times more time consuming than it is anyway. But I always tell myself, if I ever come across a defense attorney that is just not my speed, not jiving, very difficult to deal with, I can't be the only one. That's how I make myself feel better about it.

Michael Cowen:

I almost prefer to have an a-hole on the other side on a big case now for a couple of reasons. One, if you're an a-hole all day long, very few people can turn it off all the time in front of the jury. There are a few that are sociopaths that they can just be two different people. But most of the time it shows, or they did something that's going to be in one of the video depo clips, so you're being all nice and smarmy at trial, but then they see you on the video depositions being a total a-hole.

Michael Cowen:

And also, when you're negotiating a settlement you're thinking I'm not going to take a dime less than that. When it's been someone that's been a thorn in your side the whole time, and you've got them over the coals, and you're just not going to let up. Whereas if it's someone that been really nice to you, and like come on, can't we make a deal, can you give a little bit. When they've been giving to you, you still have to do it, but it feels bad. Whereas when you get extra money out of somebody. You know what your client will take, but you're pushing for even more and they've been a total a-hole the whole case, you feel good about doing that to them.

Mallory Storey Ulmer:

It makes you feel a little bit better, because it fuels the fire, for me too. You pointed out a great thing there. The jury is going to sniff that out so quickly that it is going to be over for them. That's something, in this particular case I was really wanting to try this case for that. And that was one of the things that we had looked at, how was the jury going to perceive us? How is the jury going to perceive the case, our clients, you know. But you take the lawyers into that picture.

Michael Cowen:

Absolutely. Did you all do any kind of focus group work or any kind of jury research?

Mallory Storey Ulmer:

We did not get to that in this case. I should actually... one of the things that I'm big on with cases is prepare, prepare, prepare. Right. Prepare like you're going to trial, that was my main goal. That was my

number one strategy in this case. I don't care what else is going on in this case, what other factors may or may not help us, I'm going to prepare from the beginning like I'm taking this to trial, and I'm not looking back. And that is the mentality that I think helped push the mediation and push the settlement. And that's the mentality that works, especially in bigger cases where you have catastrophic injuries. We typically use that same "go get 'em attitude", we're going to try this case, we're not going to mediate and then you kind of see how things unfold. But I think that's important.

Commercial 2:

Are you interested in attending Cowen's big rig boot camp? This year we'll be hosting the seminar in San Antonio, Texas on May 20, 2021. In person seating is available but will be limited per State guidelines in order to provide a safe event. And if you'd like to attend virtually, we'll be offering another professionally produced seminar available via Zoom. For more information visit www.bigrigbootcamp.com to sign up for our mailing list and find out details as soon as they're available.

Michael Cowen:

Mallory you mentioned, you have a vehicle that was not a quote unquote "commercial" motor vehicle. In other words it's not regulated by the Federal Motor Vehicle Safety Regulations or Alabama's, I don't know how many of the Regulations Alabama has adopted, I'd have to go look at my table in my book.

Mallory Storey Ulmer:

A good chunk of them.

Michael Cowen:

It's a different challenge. It's a company owned vehicle and they ought to do something if you want to do a systems failure, but they don't have the Federal government or the State government saying you have to do it. How do you find rules or systems that should be followed when you don't have a Federally regulated vehicle?

Mallory Storey Ulmer:

That was perplexing to me at first. Like I said earlier, ultimately I ended up going back through... I go back to the company's materials first. And I say okay, what did the company turn on? What were their expectations? They followed the company if they're Federally regulated they've got to follow the guidelines. They've got to do all the qualification. They've got to make sure that their files are padded with everything the regs said that they've got to be padded with. They have to supervise drivers when they're on the job.

Mallory Storey Ulmer:

That's kind of, in this case, the crux that I wanted to focus on was, training and supervision. The training hadn't really happened yet, which blew my mind. And they put their employee, most companies have, I think an orientation period, right. I think most vehicle cases, if you have a case against a new employee or a relatively fresh employee, you'll find that companies have different levels of training that they may go through over a period of time, and you've got to look to see whether your defendant driver actually... at what phase were they in the training? That was a big thing in this case.

Mallory Storey Ulmer:

The training was almost non-existent. But the company still has an obligation to train and to be responsible for that driver when they're on the road, was my argument. Whether the driver is in a commercial vehicle or not, they're on the job doing that job. And that matters.

Mallory Storey Ulmer:

And then, as far as the supervision portion that I was focused on. I went back to their records, you always look for policies and procedures. If you don't find any you rely on deposition testimony which was the strategy in this case. And got some good testimony on that. And so that was our case in a nutshell. And it was hard because there was no, we all think about these big cases and there's going to be some big wow factor, oh that's bad. The company's the bad guy. And this was my first big case, seven plus figure case that didn't have something horrible. It made it hard for my brain to process.

Michael Cowen:

It happens. When we go to work on one of those is finding a compared to what. In other words this is their training qualifications or supervision compared to another company, or a written standard. Even if it's not a regulation that has to be followed. So you have the American National Standard Institute has a standard. A lot of companies say they've never heard of it, but if they have more than just trucks, if they have. What do we have, in their factory floor they followed ANSI standards, they knew what ANSI was, but they don't follow it for the driving. And then look at other similar companies and what are their standards. You look at the National Safety Council sometimes puts things out there. OSHA sometimes has a little bit, not too much, but a little bit about driving.

Michael Cowen:

You just look at what can we find, in writing showing this is what reasonable companies do. And then show that this defendant is an exception to that rule. You don't always find it, or sometimes it's hard to get someone to say this is the standard. But I think industry standards are something that more and more we need to look at when we go outside of the trucking. Even in trucking, the regulations don't cover every single little point. And let's face it, there's lobbyists for the trucking industry that are watering down those regulations. And sometimes we need to show, hey the reason we say... like parking on the shoulder of the road. You shouldn't do it. There's not a reg that prohibits it, but it's a really bad idea and it's really dangerous.

Michael Cowen:

You can show these 50 companies don't allow that, or these 50 companies don't allow u-turns even though it might be technically legal, it's a really bad idea, so it's negligent to do it.

Mallory Storey Ulmer:

Yeah, and I think with, you mentioned ANSI, it is funny how everybody comes "Oh I've never heard of that." But they're in a lot of corporations, especially commercial motor vehicle operations are insured by insurers who support those national standards. That's what they're grading on. That's what the insurance companies require certain things of the company to be able to operate motor vehicles as a part of the business. And so if you fall back to whatever that insurance company relies on that gives you another set to work on when a discovery is slim.

Michael Cowen:

Sometimes they have stuff on the insurance company websites and sometimes there's actually things the insurance company send to some of their bigger policy holders. Like here are some tips for hiring new drivers and what you should look for. Here are some tips for how to supervise people, and that's really helpful.

Michael Cowen:

What doesn't seem to work, and maybe it works for you. What doesn't seem to work for me as much as, where you ought to have the same rules for your non commercial drivers as you do for your regulated drivers. Juries in my experience have not been super receptive to that argument. I don't know what you found there.

Mallory Storey Ulmer:

That was a point that I was struggling with strategy wise is what do we have here. And I think that's why it's really important to get good depositions of the company. The defendant company in any case, you need to take those depositions and get good soundbites on those things. Because a lot of companies just don't care or they just don't know. And so when you have a company that just doesn't care about what happens or just doesn't know what the rules are or what they're supposed to be doing, I think that that almost makes up for any lack and bury any bombshell. Oh my gosh this is so horrible. Because people expect, at least down here where we practice primarily, we have an educated jury pool. We have people that are business centers, they're going to be able to relate with company owners and they're going to feel like well I'm held to this. I'm supposed to know this, you're supposed to know this. You're supposed to care about this.

Mallory Storey Ulmer:

That's what's kind of the fall back, was the deposition testimony and the sound bites that we were able to get from the company. And, like I said, a lot of times the companies just don't care.

Commercial 3:

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Michael Cowen:

Just of in conclusion. Someone is lucky enough to get one of these cases come across their desk. You get hired on something, catastrophic injury or death. Were you all hired fairly early on, or did you get brought in by someone else after they'd worked on it for a while?

Mallory Storey Ulmer:

This case came directly to us about a week after it happened. Most of the cases we get are the same way. I tend to get trucking cases that have been sat on for a year or so, passed over because I do a lot of trucking. Will you kind of wrap this up or file it. And I'm like this needs to be filed, we've lost evidence here. So that was a good thing and a good thing in any case is to get it upfront. And we did here. So we were able to preserve evidence. We were able to get our writers out. We were able to try to start

investigating and because there were so many unknowns, in a lot of times, if your client is catastrophically injured or they have a brain injury, they can't tell you what happened. They don't remember. And it makes your job as a lawyer a little bit harder as far as the facts of the case and the liability goes because you don't have them to tell their side of the story.

Mallory Storey Ulmer:

You have to find a way to tell their story for them.

Michael Cowen:

What kind of big picture advice do you have for someone. They get one of these cases, they want to maximize it like you did. What's the big two or three points you could give on that?

Mallory Storey Ulmer:

The biggest point, and I'll say this with the caveat that what works for me, may not work for everybody else. I'm still trying to... I have a pretty aggressive approach to litigation and so I'm still trying to hone in, how to be my real self, and hone my own way of tackling all cases and adversarial things and find that balance.

Mallory Storey Ulmer:

My first piece of advice would be that I do think it's helpful when you have high D images in a case to really focus on your overall strategy and most of the time that's going to be posturing aggressively like you're going to take it to trial. You're not going to settle out early, because the damages are so high. Too much at stake. Obviously you have to consider your venue, your plaintiff and stuff like that, but generally, I think you should start out with filing the case, pursuing it as if you're going to try the case. Preparing early on as if you're going to try the case.

Mallory Storey Ulmer:

Figure out your experts months in advance. Get people involved. If you need trial counsel, go ahead and incorporate that person in, or those people in so that they can be in the case from the starting point and not jumping in a couple of months or a month before trial.

Mallory Storey Ulmer:

Posturing aggressively is scary for defense lawyers that don't want to try the case. Or if your venue is not great for them, they don't want you to posture that way because they want to believe that they'll be able to ultimately resolve the case no matter what they do in the meantime. That they're going to have a chance to look good for their client too. That would be my first piece of advice.

Mallory Storey Ulmer:

My second piece of advice would be prepare, prepare, prepare. Don't be fearful. Being prepared helps ferret out fear. It helps shut it out, get it out. The more you prepare and the more you know your case, being actively involved. Being at every deposition. Preparing an outline for every deposition. Working with your paralegal or your team. Or even if it's just you by yourself, work the case up and be involved in it the whole time.

Mallory Storey Ulmer:

I think as lawyers we tend to get so busy, but these bigger cases with bigger damages require so much more time. Time and investment. This particular case, me and my paralegal worked on it every day for almost three years. Even on the weekends, even at night. And some people aren't willing to do that, and some people were workaholics anyways. But the ability to be able to focus on preparing for that is important to that case and finding a balance with getting the rest of your cases done and your other clients taken care of with the amount of case load. But being prepared and really over prepared is so important. I find that most defense attorneys are not as prepared as I am. That always seems to benefit me.

Mallory Storey Ulmer:

I was taught that if you work hard that you will probably always outwork the other side. You'll do better if you just work hard.

Mallory Storey Ulmer:

The third thing, my third piece of advice, would be just to know what you don't know. Don't be afraid to ask questions. Don't be afraid to ask for help. If you don't have experience handling serious injuries, catastrophic injuries, high damages cases. Think about somebody that you know that does and call them in. Associate them at some level. Make them trial counsel if you don't have trial experience. Or if you feel like you need a team because you've got so many witnesses, so much information, so many documents. Don't be afraid to do that. Because ultimately whatever money you spend on experts, co-counsel whatever resources you need to posture the case appropriately, you will earn that back, most likely threefold. And at the end of it, you'll be glad that you did and that you did what you needed to do to pull the right people in and get people involved.

Mallory Storey Ulmer:

And you learn from those people in the process. It's like a give and a take situation. And going to that point a lot of attorneys don't have experience working a big truck case, or working a brain injury case with limits, higher limits. And they do it themselves and maybe lose out on more money, for themselves and the client. You want to get the best result possible for the client and do all that you can do. And if you think you know how to handle it, I you think you're good, but you don't really have the experience to do it, don't be afraid to say, "Hey help me out." Go find help. And ultimately it will pay off and then the next one you have, you many not have to get so many people involved or use so many resources.

Michael Cowen:

Absolutely. Mallory, we'll have your website and your contact on the show notes. But if someone is driving and doesn't feel like checking out the show notes. How does someone find you if they want to brainstorm with you on a case, maybe they have a case that they want to bring you in on.

Mallory Storey Ulmer:

My email mallory@waltonlaw.net.

Michael Cowen:

That's M-A-L-L-O-R-Y?

Mallory Storey Ulmer:

Yes, O-R-Y @waltonlaw.net. And then I'm with Walton Law Firm in Auburn, Alabama and we have a website, Facebook and whatever. Our phone number is 334 321 3000. I try to be active on the listservs and stuff like that. If you need me, you should be able to find me. But I'll be glad. I love bouncing ideas off people and talking cases and hearing what other people are doing and strategizing. All of our seven plus figure cases, they're never perfect, there's always some little caveat to them, so I kind of, baptism by fire, working on cases that were really hard to be successful at. I really have come to enjoy that, so I'll be glad to talk to anybody or help anybody in any way. I'm just a sitting resource if people want to reach out.

Michael Cowen:

Thank you so much for joining us. I look forward to seeing you soon at my boot camp, big rig boot camp which is coming up on May 20th and all the other seminars I'm sure to see you at, coming up this year. It's going to be nice to see people in person again. I cannot wait. And I also look forward to watching your career ascent continue over the years, while you continue to climb up the ladder and get better and better. Thank you so much.

Mallory Storey Ulmer:

Thank you so much for having me Michael. And I look forward to that too. I cannot wait to be back in person with everybody.

Outro:

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Commercial 4:

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