

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 can 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 at 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, I'm joined by one of my favorite guests, Malorie Peacock, my law partner. How are you doing today, Malorie?

Malorie Peacock:

I'm good. I'm good. I'm getting ready for the end of the year, trying to wind stuff down before Christmas.

Michael Cowen:

And we're actually doing our annual meeting a little early this year. Usually, we go as a leadership team and have our offsite in January, once we get the books closed, to really look to see how the year went and to plan out what we're going to do the following year, but you've got something happening in January.

Malorie Peacock:

Yes. Yes. I will be busy. I'm having a baby in January at some point, and so we don't know when that is.

Michael Cowen:

Yes.

Malorie Peacock:

We wanted to make sure we got all this done before I leave.

Michael Cowen:

I wanted make sure you were included too because your input is very valuable. Who else would know what goes on with the firm that has your name on the door? We're meeting next week and you and I were going over some of the numbers, and just comparing what's happened to our firm from 2014 when I started tracking this stuff to now. The incredible changes we've had and what we've done to get there, we thought would be something that some of our listeners would get some value from.

Malorie Peacock:

Yeah, I think so. I've talked to a lot of people that listen to the podcast and people are interested in two things, trial skills and how to run your business. This is a podcast about running your business.

Michael Cowen:

Specifically, something that I've historically been embarrassed to talk about, it's a podcast about actually making money practicing law. I have found in past years before I focused on making money and got rid of my guilt about making money, that I could work a lot of hours and not end up with very much money in my pocket at the end of the year.

Malorie Peacock:

Yeah. And making smart choices with your time and with your efforts, and with your investments, with your money, investing into cases and investing into things at your firm, make a huge difference to the bottom line, which I think is what we're going to talk about today.

Michael Cowen:

Yeah, I just want to give just some details, because I was pretty impressed. I'm not going to give exact dollar figures.

Malorie Peacock:

Yeah. I think that's fair.

Michael Cowen:

Listeners, I like you guys, but we do want to keep some proprietary information like the exact amount of money we make, but we can talk about percentages. And so from 2014, we had more of a general, personal injury practice, lots of the smaller dollar car wreck cases, more of a volume practice. And we had made a decision sometime around then to stop taking what we call non-commercial auto cases, unless there was a really big insurance your policy, and focus on the bigger stuff which was really scary, because that docket, it was a profitable docket.

Michael Cowen:

It turned out to be the right decision, but it was scary to give up a docket that made money and was my bread and butter because I always knew I could get those cases. I wasn't sure that people would still refer me bigger cases if I wouldn't take their smaller cases.

Malorie Peacock:

Right. Yeah. I was here at that time when you made that decision, I had been with the firm for about a year. It was a big change and you were very nervous about it.

Michael Cowen:

Yep.

Malorie Peacock:

And I think just so that the audience doesn't think that this was something that was taken lightly, you were still nervous about it even when it was working.

Michael Cowen:

Yes. It had to be working for multiple years. I'm still not the best at saying no to cases I should say no to, especially when it's from someone I have a longstanding referral relationship. I still have that fear of well, if I say no, they'll never call me again on any other case, which is absolutely untrue.

Michael Cowen:

I found that some of the people that I said no to some mediocre cases and maybe I would've taken, but we had one lawyer out on maternity leave, you're getting ready to be on maternity leave. I just did not want to overstress the firm and wanted to make sure we had room for good cases that came in. Then those same lawyers came back with some really good cases like a month later. So learning to have the courage to say no to things is so important.

Malorie Peacock:

Yeah. The tracking of the numbers that you're going to share with audience right now, started around 2014 because of that decision. You wanted to make sure that you were making the right decision. So, that's why we have the numbers. It's not a full 10 years, but it's since 2014.

Michael Cowen:

Yeah, seven years. One of the things we do is we look at... I just get all our fees. When I just put them in an Excel spreadsheet, and I say, "What's the average fee? What's the median fee?" We also can break that down by case type, by lawyer that it's assigned to. It's most useful by case type, as well as the firm average.

Malorie Peacock:

So why the average and the median fee though?

Michael Cowen:

Well, the average is important because if you were consistent, you know that every time you assign the case, you're going to get about that much money. It's really important for marketing decisions. It's really important for staffing. Okay, if we add another lawyer and paralegal, could we handle... So they're spending more cases and will that make it where we could pay that lawyer and paralegal and still make a profit off those cases? But the median's important too because averages, you get one big case, can really skew your average. So the median, you took all your cases from the smallest fee to biggest fee, what's the number in the middle. The median was really important too because I used to only look at average. And then the first year I looked at median, we had a small car wreck docket. It was depressing because half of our cases, I'm just going to, this is one number I will share, although I'm embarrassed, but it was a long time ago.

Michael Cowen:

Our median fee was \$2,500. And then of the 279 fees we had that year on cases, half of them were \$2,500 or less. Which if you have a large volume car wreck case and you put a bunch of kids in there, you sign up mom, dad, and three kids, and mom and dad had a good case and the three kids settled for \$500 or \$1,500, whatever, because they didn't really get hurt, had a pediatrician visit and that was it, that skews those numbers. But it's still realizing we were doing that much work on cases that we weren't making a profit on was really an eyeopener. But we track all that and then we look at it year over year,

because you just have a really good year where one big case hits and so you need to look for multiple year trends. But since we've made the decisions to become a lower volume, higher quality case firm, the number of cases per year has plummeted. But the average fee, as well as the gross income, has gone way up.

Malorie Peacock:

At the median fee.

Michael Cowen:

In the median fee. The median fee has got way, way up. So the median fee is 18 times higher than it was when we started. The average is six times larger than when we started, which is just incredible.

Malorie Peacock:

I think those numbers speak volumes just by themselves, and the percentages, and that kind of growth in seven years.

Michael Cowen:

You could tell me we doubled or tripled it, I would've been thrilled. I didn't dare to dream that we'd end up with the average and median fees where we are now. That includes per client, not per case. So, like I said, when we have mom, dad, and two kids, the two kids are in there equally.

Malorie Peacock:

Right. And something that we should add to that is how much has the number of clients dropped.

Michael Cowen:

Yeah. So I just looked at not the number the firm carried at the time, because that's a harder... I don't necessarily track that historically. I guess I could try to see if I could parse that out in our databases. But the number of fees deposited per year has gone down to less than one-third of what it was. So meaning we were doing three times as many cases settling in 2014 than we are now this year.

Malorie Peacock:

Wow.

Michael Cowen:

But we're making almost twice as much money just in gross income this year on one third of the cases.

Malorie Peacock:

Yeah, yeah. I think you told me right before we started this podcast, this podcast is about how to work smarter.

Michael Cowen:

I think I said to more money by working less.

Malorie Peacock:

I think that is what you said.

Michael Cowen:

And it sounds like a scam or a multilevel marketing thing, but it really does work if you market yourself well enough to get those better cases, and you can just get the courage to say no. It's not just courage. It's part courage because you have to believe that the better case will come in when you say no to the cases not right for you. And then it's just a matter of also feeling like you don't have to help everybody in the world.

Michael Cowen:

We're not the only law firm, and really on those cases... I was talking to Sonia this morning. It used to be if you settled a case back in let's say 2001, 2002, if we settled a case for \$100,000 or more, we would go buy champagne. Wouldn't be Dom Perignon, but like a Moet White Star, \$25, \$35 bottles of champagne, and we get the whole office together and we would pop the cork and we'll toast because we got a... because most of our cases were small auto cases. Back then it was a \$20,000 or \$25,000 policy limit, lower limits back then and so a \$100,000 victory was huge. And then if we got a million, we would actually get a bottle of Dom Perignon. Now, if we get every six figure settlement, we'd all be drunk all the time. That's not an above average. That's a below average case at our firm. That's like why we take it.

Michael Cowen:

And I don't want to suggest to our listeners, I've been doing this for 20-something years. It was appropriate to celebrate those cases then, and it would not have been appropriate for me to say no to the kind of cases I say no now, because nobody was going to hire me on a big case when I was four years out of school.

Malorie Peacock:

Right. I think that's important to be said. This isn't something that I think can be replicated if you're opening up your own practice this year, or you're five or even 10 years out and just getting your name out there. I don't think it would necessarily work for you.

Michael Cowen:

I think the concept of looking at what work is actually making you money and what cases you're spending an inordinate amount of time on and making very little money on them for the amount of time you spend. I think is worth note. I've toyed with the idea of tracking hours, but I think the revolt I would get if I asked everyone to enter their hours, and then you'd get the people with insurance defense background that would bill like insurance defense lawyers and have their 26 hour days when they're only in the office for nine hours.

Malorie Peacock:

Yeah. I don't think that. I think we know where we're spending. We do make an effort at the firm to look at where we're spending our time. It's the Pareto principle that you've talked about on the podcast multiple times, which is you want to make an effort to spend your time on your highest value cases and spend less of your time on your lowest value cases. That doesn't mean it's always possible, but that's the

background that you want to have going into how you organize your day, your life and the effort that you're spending on things.

Michael Cowen:

And it's interesting, but when we were less picky on cases the Pareto principle definitely applied. We actually were getting sometimes 90 to 92% of our fees on our top 20% of our cases. And we were often getting more than half of our fees on our top 5% of cases. Once we got peak year and our averages started going up and we started getting more good cases and stopped working on as many not so good cases, the actually 80/20 principle doesn't work. The principal is still sound. You should spend 80% of your time on your top 20% of your cases. But we actually, I think, are at 67% of RPs from our top 20%, not 80. Still disproportionate, those few big cases still carry you the year.

Michael Cowen:

If you and I could figure way just to get our top five cases in the door and let everybody else go have one secretary, and you and I just do the really big, we'd both make a lot more money. I just don't know how to do that. I still don't have that level of courage. And I like all the people we practice with, I like the community, I love... We just hire three new associates and I love watching people come into their own. We had a lawyer here just hit a milestone when she brought in... I'll say she brought in over a million a piece, and to see her develop to be able to do that from starting not having had to handle her own docket before, it makes me feel so good. It's not just the money, it's just seeing the development and watching that. I like the comradery and someone to have lunch with.

Malorie Peacock:

Yeah. So, to grow that much, I say grow because I guess it's growing in income. It's not necessarily in our firm size or anything like that, and it's definitely not in our case size, we're actually shrinking in the number of cases we have.

Michael Cowen:

Well, our case size, the size of each case is increasing, the number of cases we have, I say firm-wide and per lawyer, has definitely decreased.

Malorie Peacock:

Yeah. And so I think that our growth goals are different, I think, than what you would expect. The goal was not to bring in more cases, which I think is counterintuitive to some people.

Michael Cowen:

And I'm spending more money and time on marketing to get fewer cases, and that sounds counterintuitive first because there are only so many big cases out there. And so it takes a lot of work and a lot of spend to get some of those cases. And so if you're going to be picky, you can't just say, "Well, I'm only going to take one-third as many cases. I can take my marketing budget down by one-third." No, you can't. I spend more on what they call B2B, business to business marketing, referring lawyers. I spend more on that than I did when I was trying to advertise to the general public. I'm not counting the referral fees, our co-counsel fees we pay.

Malorie Peacock:

Yeah. So, this is a process that has happened over the course of seven years. So it wasn't from one year to the next suddenly we have this income growth that we're talking about. It has taken seven years and it's been a steady rise, if you look at the way that it's developed. And remember we're tracking this every year at the end of the year so that we can make sure that we're still on the right track and the decision still makes sense for us.

Michael Cowen:

It's been a steady rise. We had one exceptional year in 2019 because we had a lot of big cases pop. We had a not so great year in 2020 because of COVID. This year's been an incredible year. Although, we got to look at next year because was this year an incredible year because it was a great year, or is this year an incredible year because we got cases that should have settled last year plus cases that we're supposed to settle this year also.

Malorie Peacock:

Right. So it's something that we have to continue to track. It's not now we've reach this milestone and we give up tracking these numbers. We need to keep making sure that the decisions make sense. And if they don't, then we can always switch pace. And being open to that idea that you don't have to. If it doesn't work, then you can make other decisions. You don't have to die on this hill.

Michael Cowen:

I will tell you that I don't miss working tons of late nights, almost every weekend. I just don't miss that. If I have a big trial coming up or something huge. That's not to say on a weekend I don't go spend an hour or two checking my email, doing a little research, but I'm not coming to the office and spending hours. Usually, once my kids wake up... If I work on the weekend, it's typically I'll get up just because I'm old now. I'll wake up at 6:30 or 7:00, drag myself out of bed at 7:30 or 8:00, get my cup of coffee, and everyone else is asleep, the house is quiet. So sometimes I do a little work, but not a lot, but not working all day where I'm not spending time with my family.

Malorie Peacock:

Yeah. Yeah. It's definitely different than it was in 2013. And then there was a lot of work that went in through the course of these years to get to the point that you are now. So it's-

Michael Cowen:

Absolutely.

Malorie Peacock:

And a lot of big and small decisions that were made. So I think talking about some of those decisions might be interesting to the audience because I think it wasn't just one big decision that caused this. It was some big decisions, but then a bunch of little small tweaks that we made too that helped get us here.

Michael Cowen:

Yeah. The big decision was we weren't going to take a car crash case that did not have a company vehicle, an 18-wheeler or a company owned vehicle, unless it was a large insurance policy. I think the definition of large has changed.

Malorie Peacock:

It has. It has. But I think that's something important to note, that when we first started this, we thought that a large insurance policy was-

Michael Cowen:

\$100,000.

Malorie Peacock:

... \$100,000. Now a large insurance policy is \$500,000. But it's because we have to keep progressing as we go. I don't know if we could have done it all at once, but we weren't ready to do it all at once.

Michael Cowen:

It would've been tough because we weren't getting in the... If we had done it all at once, well, one, we had to finish out those other cases, but two, doing it all at once without layoffs, because I generated some bigger cases then, but not enough to feed all the people that were working for us.

Malorie Peacock:

I think that was the decision that was made in the 2013, '14 time period, when we started tracking this information was, "Okay, we're only going to take cases that have a large insurance policy." At that time it meant \$100,000, at least, policy. And then we changed over the year for what our criteria are, and they change every single year. So why have we changed the criteria every year? Why didn't we make that decision and just, that was the decision and then we don't reevaluate it? Why do we look at it every year?

Michael Cowen:

Well, one, you want to make sure it's working, and then two, sometimes you want to say, "Okay, we raised it this much and we're having a good result, what will happen if we go up a year and raised it some more?" Now, we don't even have to wait for the whole year. We could go mid-year if we're losing a lot of referring lawyers. They're so mad at us, we could've tweaked and done things differently. Because another thing I could've done is just, if I could let go and just hire someone else to run that other department and not worry about it, but if I'm going to be involved in it, it's going to be a big problem. So yeah, we've been tweaking it over time so it's not permanent. That was a big decision.

Michael Cowen:

Also, specializing the type of cases we do. We thought about doing nothing, and I've had some good friends encouraging me to just take trucking cases or just take trucking company vehicle cases, and I thought, "Man, let's do it. Let's do it. These other people are doing this great." But then when we ran our data, a lot of our top five, and definitely a lot of our top 20%, of cases were other types of cases, and we would've lost out on at least one eight figure case and a lot of mid-seven figure cases had we said we're only going to do trucking cases.

Michael Cowen:

The two cases I've been in trial on this year there, the operation you and I did and then the jury trial Sonia and I did were both non-trucking cases. They were both brain injury cases. They both were worthy of our time. So we just had to say, "Okay, what is our criteria for those types of cases?"

Malorie Peacock:

Yeah. That was a harder criteria to come up with because what we found with those cases is that they always take a lot more work than a trucking case. And not because trucking cases aren't complicated or not because we don't know how to do these other cases, but because with trucking cases, since it's such a big portion of our business, we have really good systems for it. Whereas, when we get one of these other kind of cases that's a premises case or it's a workplace injury or it's a product liability case, because we don't get them as much we don't have the systems for it.

Michael Cowen:

Yeah. There's a lot more research, a lot more having to do custom things, hire experts early and meet with them to get educated, reading literature. It's a lot more work. And so basically, the numbers changed over time, again, on those too. And then on the product cases, because the expenses will get super duper big, also because we've had some that didn't go well and we lost thousands of dollars. So, that also lets you become a little pickier when you have to do that a couple times. I think what we learned, if it doesn't have the potential to be in your top 5% of cases fee-wise, then you probably shouldn't take something. Definitely if it's not in your top 20% of cases. I don't know whether that's right for the percentages or not, but if it doesn't look like it's more likely than not to be a million dollar plus case, if it doesn't have wheels on it, we won't take it.

Malorie Peacock:

Yeah. And that's changed over time.

Michael Cowen:

That's hard. That's been a hard decision because there have been some good cases that we would've been thrilled to get five years ago that we said no to, and I was so scared my referring lawyer, he's going to go to someone else, someone else is going to take that case, they're going to do a good job on it, and I'm going to lose that person forever. It's like letting your spouse go on a date with some other guy or some other girl. It's like, well, is your spouse going to want to come back? Maybe that person's going to be more charming.

Michael Cowen:

But it's turned out to be you actually earn people's respect when you say, "This is what I do." You explain it, "I've got these cases we're doing together. I'm trying to do a really good job with them, putting the time they deserve, and if I take this other kind of case, I'm going to have to choose between not doing a good enough job on the case I'm already doing for you or not putting in the time that this other case deserves. So you really need to take it to someone that specializes." And I even help them, "Here's some good lawyers."

CRP Commercial:

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.

Malorie Peacock:

So I think those are some of the big decisions we make over time. I think the biggest one was, "Okay, we're not going to take \$30,000 car wreck case policies anymore. We're not going to take any of those." That was the big catalyst that led to all these other decisions, but we are tweaking them every year and we're going to look at it again this year. So we're going to look at our numbers and we're going to say, "Okay, where are we spending an inordinate amount of time to not make very much money, and do we want to eliminate that from our docket?" And we've asked that question in the past about certain things and we've decided, no, we still make enough money that this is a profitable piece of the business.

Michael Cowen:

One example of that is car crashes where you don't have a lot of visible property damage. So one of our thoughts was, "Well, let's stop taking those." Because the logic would be, well, those aren't as good a cases. They're harder to settle. They cost more money. But when we ran the numbers this summer, we had enough six figure fees on those cases where it did not make sense to stop taking them. We're like, "Okay, we get rid of all these good fees, what's going to replace them?" So, at least at that time, we're going to revisit this again... We were going to do it tomorrow, but I got busy and didn't get the data we need. So we're not going to do it tomorrow, but we're going to revisit that again soon. But I still think if we make any change, it'll be a gradual change. It won't be we only take cases where the car's all smashed up, although those are easier cases. But we found when we do enough work and we hire the experts to prove that people really do get hurt in these crashes. We have to try more of them, but we've done well enough on them that it still is a profitable area for the firm.

Malorie Peacock:

We've put some limitations on those lower property damage cases. So there's a certain injury threshold or there's a certain something else that we look at before we take it. And we started doing that, I think at the beginning of this year, because we thought, "Well, while it's a profitable area, this piece of that area is not profitable. We can't make money on this kind of case. So we don't need to."

Michael Cowen:

And also the cases where we end up having to cut our fee way down to get our expenses back, where everything goes to crap, tended to be more low property damage cases, and we do have to look at cases expenses we have to write off or fees that have to be cut way down, and try to take that into consideration. Now, we don't track fee reductions, but it's just something we kind of get a feel for. Maybe we should, but we don't.

Michael Cowen:

Yeah, absolutely, and I think one of the things I've learned there is you can't fight a war on three fronts. If liability is disputed and there's a fight about whether your client was really seriously injured, and there's a fight about whether you have a serious injury or not. Is this disk degeneration? Do you have prior injuries? Or is this something that was definitely caused by the crash? And then was the property damage bad enough? Was the crash bad enough to have because this injury that you state your client has? If you have to fight all three of those issues, it's really hard to get a jury to go with you all three and still give you a lot of money. So we're looking for liability's going to be really clear if we're going to have

property damage. And the damages are enough where they've got enough injury where it's worth... we could justify hiring an expert. Those cases are hard. They not impossible to win with an expert. I've done it, but they're harder to win with experts. We're trying to only take one's where we can justify hiring the experts that we need to try it right.

Malorie Peacock:

And if someone has only gone to the chiropractor and they're better, and their medical bills are \$2,000 and they're completely better. Obviously, you can't afford to hire an expert in that case. And so that makes it very, very difficult to make any kind of good case out of it. And so why are we taking that at this point?

Michael Cowen:

Exactly. I think something else that's been a game changer, it's been really hard for me, is fully implementing the lesson to the sunk cost fallacy. The sunk cost fallacy is let's say someone says, "You've got this case. It's going to cost you \$200,000 to do the case, and you only have a 20% chance of winning." Most of us would say, "No, I'm not going to take that case."

Michael Cowen:

But if you've had this case for six months, you've been working on it, you've spent \$50,000 of your own money, but you're only going to have a 20% chance of winning. You have to spend more money, another \$150,000 to get there, you do the case. A lot of people, "Well, I'm already in it. I've made a promise to the client. I've already this money," and you end up putting good time and money up for bad that what happened to those cases is even if you get a recovery, they're not very good. You're cutting your fees or not even taking a fee because you want to get your expenses back. You're having to hurt your relationship with medical providers because you're asking to get these gigantic discounts. The referring lawyer's not really happy with you at the end of the day, because they didn't get very much money and their fee's getting cut. The client's not happy giving you a five star review because while you did a fantastic job for the case, they view their injury as compared to another person's injury that was in a great case.

Michael Cowen:

And so we've had some cases where we've spent some time and money investigating and working them up. We found out that the client lied to us or the facts weren't what we thought they were, or the other lawyer was a psycho that just took the case, whatever it might be. So we got out of the case. Whereas years ago we would've stayed in to the bitter end.

Michael Cowen:

It really was a product of me realizing, I looked back, I said, "For the past five years, each year the case I worked most on was the case that hardly made any money." And I spent a ton of money. I'd spent six figures in case expenses, I'd spent countless hours briefing, taking depositions, doing hearings, and then we'd resolve it and I would not make very much money. And I said, "Why am I doing this? Why don't I create a principle? Why don't I put my time into the cases that are going to make us the most money and where we can do the most good for our clients, too, and really maximize those cases?" Which means, sometimes saying, "No, thank you. Look, I'm not the right lawyer for this case. I'm going to withdraw. You need to get another lawyer." As long as you don't put the client in a bad spot.

Michael Cowen:

I don't love doing that. I still feel horrible every time I do, but sometimes that's the right move. Especially when people have not told us the truth when we came into a case, we should not feel a moral obligation to be stuck in a deal that we would not have taken had we known the truth.

Malorie Peacock:

It's hard though. You're losing money right then, because you're going to have to lose whatever you spent. Typically, in order to get out of it, you can't keep a fee, at least from what I understand of the rules.

Michael Cowen:

Not in Texas. Every single place is different, but in Texas, if we withdraw from a contingent fee case, we eat our expenses, we eat our fees. Plus, if it was that good of a case, we would've kept it. It's probably not going to go anywhere.

Malorie Peacock:

So right then when you do it, you're losing all that money. It's gone. So that makes it hard. But I know this year in particular, you've made more of an effort to get out of cases where... especially when someone has not told us the truth and it's a very critical piece of the case that's just going to make the case impossible. And frankly, I don't think you should feel bad about not representing people who aren't truthful with their lawyers.

Michael Cowen:

And I've got a lot better at that. I don't feel bad very often about that. It's still a little bit of the feeling, "Well, I'm moving out. I could find some way to do something with this case." Someone says, "Absolutely, I've never had a prior wreck. I've never had this injury before." Then they had a lawsuit and had an MRI that looks identical, and had a recommendation for the same surgery that your doctor's recommending in your case. They lied to you and they lied to everybody that got caught. Why would I want to stay on that case?

Malorie Peacock:

But we don't just limit the withdrawing from those. Sometimes you get in a case and you do the investigation and there's just something about it that isn't what you thought it was going to be. Maybe the science isn't there, or it's a product liability case and the alternative isn't there. There's a lot of different reasons to get out of a case.

Michael Cowen:

Or you got a video and the video's really bad for you.

Malorie Peacock:

Right. Or you got a video, and it's not that anybody lied to you, it's just that it's just not what you thought that it was. And sometimes those are worth getting out of too, because if the evidence isn't going to support a good chance of you winning, and you're going to have to spend hundreds of thousands of dollars to explain this new evidence. What do you do? You end up losing money, and mostly you end up losing a lot of your time that you could have spent making money somewhere else.

Michael Cowen:

The other thing is there are some really, really toxic clients that sometimes, because of a referral relationship, we still stay in, but I'm getting better. In fact, I had such a conversation this morning. We had a pair of very- clients that are very, very difficult to deal with. They don't have a very good case, and we just made the decision that we're probably not the right lawyers for them. They need somebody that can make miracles and take a bunch of abuse while they're doing it, and that's just not us.

Malorie Peacock:

Yeah. But I will tell you that probably in 2014, 2013, we would've taken the abuse and tried to make it work.

Michael Cowen:

And then cut our fees down by 90% to get the money they wanted at the end of the day.

Malorie Peacock:

Everybody's unhappy. They're unhappy. They're never going to be happy. They're those clients. It's just never going to make them happy no matter what, and we're not happy. And I think you made a decision a few years ago that, "Why are you doing this if it's not going to make you happy and you're not going to enjoy it?"

Michael Cowen:

I had a huge epiphany when my uncle died. I had an uncle who was an insurance defense lawyer, but he was a big mentor to me. He was on the client's side, gave me a lot of advise, actually got me referred from his firm to the first huge cases we ever had, really landed on everybody. He worked and he worked. He was divorced so he lived in an apartment. He would buy a used car, drive it for 10 or 12 years. He never went on vacation, and he had enough money to retire. He had several million dollars in his account. Then he gets colon cancer that's already metastasized by the time they caught it, and dies like a year and a half later. He went on one vacation when he was during a couple of rounds of chemo, and that was it.

Michael Cowen:

And it really made me realize, yes, we got to work hard. This is not easy stuff we do. You got to put some hours in. But you got take time to be happy. We get one ride on this earth and I want to choose to be happy and enjoy my time. That doesn't mean I'm going to be frivolous and spend every penny I make, but I don't want to spend my time working for almost free for toxic people who don't appreciate me and are rude, or rude to my staff, or don't respect- give respect. I don't want to spend time working on cases I don't believe in. I don't want to spend every weekend at the office, but I also want to do a great job on my cases and get maximum value. So how can I do that?

Michael Cowen:

It's the power of saying no to things that aren't right for me, and then it's the power of when someone's really ugly, or someone lied to us, or someone's case goes south, unless there's a there's a compelling reason to do so, say, "Hey, look, I'm really sorry but it doesn't make any sense for me to continue representing you."

Malorie Peacock:

And at the end of the day, this is not a nonprofit, this is a business and it is what it is. I mean, if we're not making money, then we're not doing it right. If we're working all these hours and we're putting all this time in and all this effort in, and it's not successful, well that doesn't help anybody either.

Michael Cowen:

And having the financial wherewith all to do our cases right, and not worry about are we going to hire an expert? We'd always have lines of credit run up. Somebody's even putting things on their credit card that we're going to pay off three months later, six months later if the case settled. There are some scary times coming up, and it's because we took on too much. We didn't say no enough and we made some bad economic decisions because of that. And I think part of it was legitimately wanting to help. Part of it was hubris, thinking I could win every case. But part of it was just the fear of, if I say no to this case, I won't get the next big case.

Malorie Peacock:

I think these are smaller tweaks that have been made in the last seven or so years, more or recently probably, is getting really good... You've always been a systems person. So you've always had systems in your-

Michael Cowen:

I've not always. Since you've known me, I've been a systems person.

Malorie Peacock:

Since I've known you, you've been a systems person, but I think really honing those and developing those for our most common types of cases, and making sure they're implemented the way that we want them to, gives our cases... makes them settle faster, and when cases settle faster or get resolved faster, or go to trial, whatever the issue, however they're going to get resolved, if they're resolved faster everybody benefits. And the longer that a case goes on, the worse it gets, just because of life, just because of things that happen in people's lives.

Malorie Peacock:

We've had clients die. We've had clients get deported. We've had clients go to jail. We've had clients get in other more catastrophic wrecks, or even just other wrecks that cause a huge problem. We've had clients so scared of getting surgery that, then, by the time we actually get to trial, there's this huge gap and it's hard to explain that maybe one day they might... Just all of it. And so it makes the cases worth less than they would've been if we could have gotten them resolved at six months instead of 18 months.

Michael Cowen:

Now you can't do it too early. You still need to make sure they get... If a client actually has a back surgery versus a client that's been recommended a back surgery, or a client that hasn't even gotten to the surgeon yet, it's worth more when you have had the liability bite and you find the bad stuff that the company did and how they knew they were doing something dangerous. There's some things that you do add value that take time. But in general, yeah. The cases, they're not wine, they do not age well.

Malorie Peacock:

Yeah. And so making sure that our systems in place were really good and tight and clear so that we could get cases moving at a pace that made sense.

Michael Cowen:

And also that we can spend our time, because we still work. We probably put more hours per case in than we did in 2013.

Malorie Peacock:

That's probably true.

Michael Cowen:

We might not be spending as many hours in the office working in that seven day period, but on a per case basis, the cases are getting a lot more work and they're getting a lot more deep work. There's getting a lot less, "We have a deadline tomorrow, we got to hurry up and get this done. Can we get an extension?" We're panicking. And a lot more, "Let's be strategic. What can we do to maximize value of the case?" They'll do a lot more research looking for the anchors, industry standards, other problems that this company's had before, other problems this driver has had before. But we can do that because we have so much stuff happening automatically.

Michael Cowen:

We get a trucking case, the first day that it comes in a non-lawyer, without us telling them to do so, because the computer tells them to do it, and then if they haven't done it by the week, their manager will say, "Why haven't you done this?" They'll have to go online and download data. They'll have to send out a Freedom of Information Act request. All these things just happen automatically without us thinking about it. Even having someone call the client consistently, "How are you doing? Do you need help getting to the doctor? When was the last time you saw a doctor?" Reminding them that having gaps in the medical is bad if they're still hurting, setting them up for lawyer meetings when they need one because they're unsure about what to do. That speeds things up.

Michael Cowen:

If you have to wait until you think about it instead of having all these things that are happening automatically, I say automatically, we do have to still manage the firm and enforce and check, but we're not do all these little things ourselves and they're not waiting until we think of them to happen.

Malorie Peacock:

Right. And a big one of those is doing basic things in your lawsuit that you don't want to just do whenever you think about the case or whatever you think about it. But if you have a system in place, like send out your discovery requests or send out your... list your damages witnesses, or whatever the reminder is, what you don't want to do is wait until you think about it because then it might be close to a deadline or too close in time to do something about it. And if you have the system in place, then you're not constantly scrambling to get a continuance or extensions or whatever the issue is, and the defense sees you doing that.

Michael Cowen:

I think that's the other thing. Texas, we have an initial mandatory disclosure like we in federal court. State cases too, and one thing I've really been preaching with our lawyers and trying to enforce with our lawyers and paralegals, when you do your initial disclosures, you have already found your, what we call before and after witnesses; the friends, family, coworkers, people that can talk about what they were like before, what they're like afterwards. You've already found photos and videos of them doing those other things before. You've already gone out and done all this stuff. You've already found... Let's say it's a trucking case, you're producing the literature you're going to use to show their violations.

Michael Cowen:

When you do all that 30, 60 days after the defense files their answer, they're like, "Wow, these people are really getting ready to try this case," from the get go. This isn't like, "Oh, let's see if this settles. See if they're like, 'Hey, let's get rid this squeaky wheel. We don't like this.'"

Malorie Peacock:

And so they're taking note about what you're doing on the other side and it affects the value of your case. If you're the kind of lawyer that's not going to be ready for the first trial setting, you're also the kind of lawyer that's not going to get a very good offer right at first. What you want to do is be ready the first time that you're able to go, if it's possible. There's always reasons that it can't be, your client's still treating, there's some other issue, COVID, whatever. There's always a reason that it can't be, but if that is how you practice with that goal in mind, it makes a huge difference for how quickly your case settles.

Michael Cowen:

I still like the goal of from crash to cash within 12 months. Ideally, COVID has really messed us up on this because we have a litigation-based practice. But ideally, from the time the case comes into our office, within 12 months we want that lawsuit filed, we want a trial date set, hopefully within that 12 month period if we think the court will do it, and get it resolved, or try, within that first 12 months. Sometimes it's outside of our control. The board contests the dockets now. You often, on the biggest cases, you don't get real money until you're down there at the courthouse. Now the mid-sized cases, sometimes you're better off settling in mediation because the increased cost of doing all those expert depositions eats up... You and I, we just settled one in Chicago where the... The offers went way up, but we spent so much money on the case that we're still going to lose our fee picking the case up.

Malorie Peacock:

Yeah. And it's one of those settlements where you feel bad about or you think, "This is a really great settlement for this." It is a really good deal on this case, but we had to spend so much money to get there.

Michael Cowen:

Right. If we could have settled-

Malorie Peacock:

If we could have settled earlier.

Michael Cowen:

... the year before. Now that they weren't offering it. If we could have taken \$100,000 less a year before, the client would've been better off, at least on a per hour basis we would've been a lot better off.

Malorie Peacock:

Yeah. Those are some of the decisions you have to make and some of the things that you have to look at, but if you're practicing, especially a litigation practice, thinking about, "How am I going to make sure that I'm ready for trial the first time I get called?" Whether or not it's realistic that you get to go. I hear people driving in their car saying, "Well in my jurisdiction you have to announce ready 10 times before you get to go to trial." I hear you. But if the goal is to be ready the first time, the defense sees it and it's more likely to resolve.

Michael Cowen:

In the one case where you're not ready that first time will be the one that actually goes.

Malorie Peacock:

Oh, that's true too. That's true too.

TLN App Commercial:

Enjoying the episode? Do you wish you had Trial Lawyer Nation on the go? Well, wish no more. The Trial Lawyer Nation app is available now exclusively on iOS devices. Access our entire podcast library, create a favorites list, search for old and new episodes, and much more. It truly is Trial Lawyer Nation at your fingertips. Download this free app now and enjoy the top legal podcast for plaintiff attorneys wherever you go.

Malorie Peacock:

One of the things that I think some lawyers probably think is crazy, because I know when I first started going to CLEs and I would hear these lawyers talk about their five cases that they have, and there are all these enormous cases, and you just think, "Oh, that could never be us. Okay, they must have some really good deal with someone or some really... I don't know. They're extra special. It's just something extra special about them," and while we're not there limiting the docket size at the firm, counterintuitively, has made everybody happier, but also has made everybody more money. And the more we limit it, it seems like people just aren't going to have enough to work on. If we worked up cases the same way we did 10 years ago, the way we do now, people wouldn't have enough to work on. But now, spending that extra time on each of these cases has really paid off.

Michael Cowen:

Yeah, the values have gone up and you feel better about what you do.

Malorie Peacock:

Yeah. It's more fun.

Michael Cowen:

And you're able to find those cases where you can really hold out for top number. But even on our medium sized cases, we're getting at least 150 if not 200% of what we're getting on the same injuries,

same type of wreck in 2014, because we're able to put more thought and effort into them, and also because we're able to keep up with our clients and we're not having as many big gaps in treatment.

Malorie Peacock:

And issues and other kinds of things. And like I said before, we're getting things done in a timely way, showing that we're ready, being proactive instead of reactive. All of that gets reported back and it makes your case more valuable and more likely to settle quickly.

Michael Cowen:

Yep. I guess to wrap it up to the listeners, if you have control over your docket, if you don't have control over your docket, what I would say is pick your top five cases, or four cases, work the heck out them. Try to spend at least half your time, if not more, on those top few cases. So even if they give you 80 cases, take your top ones and do a really good job on them, and try to show your boss, "Look, I'm increasing value on these. If your look at your cases." And at some point, maybe don't stay there if they're going to keep you on 80-100 docket forever.

Malorie Peacock:

Well, and I know you're wrapping up. I'm about to open a whole 'nother subject.

Michael Cowen:

Oh, go ahead. Great.

Malorie Peacock:

But you said that and it made me think of something. If you don't have control over your docket, but you do have control over the time that you spend on something, we did something at the firm, which I'm not sure we talked about it on the podcast before, but we have a five star rating system for our cases. So can you explain to us what that is?

Michael Cowen:

Sure. And I didn't come up with this. I learned it from Rodney Jew, but he got it from somebody else. I don't know who he got it from. He told us, and I don't remember.

Malorie Peacock:

Yeah.

Michael Cowen:

But basically, you want to look at your probability of success and you want to look at your likely fee. A one star case is really one you shouldn't have taken. So, one star case. And for us, was we're more likely than not to lose, and our fee is something that's well under our... basically, our fee is under the median fee and we're more likely than not to lose, more likely than not to lose if we try. So those are cases we shouldn't have taken.

Michael Cowen:

A two star, two star's actually kind of the bread and butter, where more likely than not to win, so it's a good liability case, but the fee is not going to be in our top 20%. It's going to be in that bottom 80... It's going to be the 80 part of the 80/20 Principle. And so they're good cases. You don't want to stop taking them. They're your bread and butter, but you're just going to be working for a living.

Michael Cowen:

Your three star case is one where you have a shot at getting big damages, but it's a harder liability case. So if you tried it, you're less than 50% likely to win, in our firm, but your fee would be like the top 5% at the firm.

Michael Cowen:

Your four star case is your fee's going to be in the top 5% of your firm, and you're most likely to win it. Actually, no, the fee would be the top 20% of the firm and more likely to win it.

Michael Cowen:

The five star case would be this fee would be one of the top 5% of the firm, a huge fee, and you've got a 75% or more chance of winning this case. So this is a case that's a slam dunk where you're going to get a bunch... The more effort we put in this case, the bigger it's going to get. And we do that so that we can prioritize our time on, "Let's work more on our five stars." And is there a way on our one stars; one, do we want to keep them? If we do want to keep them, how do we get this case resolved with the least amount of expense and time, if possible?

Malorie Peacock:

And so even if you don't have control over what cases you get, how many cases you have, whether you get to withdraw from a case, you can still rank your cases in this way so that you're maximizing your time and effort that you're spending on things. and getting stuff off your docket that is not that great, because who wants to spend a lot of time working on a one star case? If you have a way to get it done, get it resolved, move it off, you can make more money because then you can spend more time on your five star case.

Michael Cowen:

And you give the clients that are really... Usually those five star clients are very deserving people. They're very hurt. They can't go alone, and they deserve that time. No one's going to be happy with the one star case anyway. So get her done is what Larry the Cable Guy says. But even then, the criteria is not the same. If you look at our original five star memo that I wrote when I came up with it, our numbers have changed because as our average fees have increased, our median fees have increased, well, then our cutoffs have changed. And there're other cases that used to be a three star are now a one star. Other cases that used to be a four star are now a two star.

Malorie Peacock:

You know what? That reminds me. We should probably look at that tomorrow.

Michael Cowen:

We should.

Malorie Peacock:

We should bring that with us.

Michael Cowen:

We should. I think the numbers are going to be about the same, based on what I was talking about. We haven't crunched it out yet. So I think we're going to be pretty... because we just raised the five star criteria a year or two ago. But absolutely we should. The five star we definitely had to raise because we were getting, like 20% of our cases were five star, which is really awesome. We had to change what we consider a five star.

Malorie Peacock:

But you want to keep adjusting it because you want to make sure that your very, very top cases are five star cases. If all of your cases are five star cases, you need to adjust your criteria.

Michael Cowen:

Absolutely. So like I said, even if you don't have control, find out what your best cases are and where you're adding more work to those and more focus will add value to that. I don't want to say that we don't work hard on each case. We do, but we're just wasting a lot less time, a lot less time. And we're also being more productive because we're not always stressed out. I'm not saying we're never stressed out because litigation has inherent stress. But when you're not constantly worrying about deadlines and trying to scramble at the last minute to do things, you are so much more productive, so much more creative. And frankly, when you come in with that, you go to negotiation with that, you're calm, you're assured, like, "I don't care to settle this amount. I'm ready to try this case. If you pay enough to make my client happy, I'm fine with it. I'm not going to give it away, but I'm not here to push a settlement because I really don't care." They will pay you a lot more money than if you act like you want to settle the case.

Malorie Peacock:

Yeah, definitely. So I interrupted your wrap up with an aside about five star ratings.

Michael Cowen:

Well that was a good one.

Malorie Peacock:

So I think in wrapping up, just to remind people, it is super critical that you look at these numbers every year because you need to make adjustments. Whether they're big adjustments or they're small adjustments, or no adjustments, there's been years like we just talked about, the five star rating hasn't changed in a few years, but that's okay. But you look at it and say, "Does it need to?" And if it doesn't need to, you don't change it.

Michael Cowen:

And I think every year you need to look back, "Are there things I'm spending my time on that I shouldn't? The Marie Kondo test, does this spark joy? Is my life better because I'm working on these cases?" And if the answer is no, and you have a choice. Now, I know if you're an associated of the firm you don't necessarily have a choice. But if you have a choice, what are you doing? If you're not making much money on them, they don't make you happy. I mean, if you want to go do a pro bono practice, do

a pro bono practice. But you don't do personal injury as a pro bono lawyer. There are other things you could do for free if you want to do them for free, or spend your own money on them, but look at that. And then look at where can I add the most value, and how can I structure my life where I can add value there? And then how can I structure my life where I'm not going to be stressed out all the time? Where I'm going to have time to do the things I do and make the money I need to do this?

Michael Cowen:

It's not just about greed. It's fun to make money. But the other thing is it does give you the freedom to go travel, take some time off. You're really good about that. I mean, you work really hard, but then you take your breaks for your weekend and your family time. And that's so important, and even more important for you next year.

Malorie Peacock:

Yeah.

Michael Cowen:

So, I guess those are the big takeaways I think. Work smarter and not harder, that way you can work harder on each case. Learn to say no. People respect you more when you say no. The more boundaries you set, the more you say, "This is what I do. This is what I don't do." They respect you. And I learned that... I was with a referring lawyer once and I said no to a case. He goes, "Oh, that's okay. I'll give it to so-and-so. He takes all the trash."

Michael Cowen:

Now that lawyer was thinking by taking these smaller, harder cases, like I used to think, "Well, when he gets a good one, he's going to give me the case." Oh no, he's not going to give it to that lawyer. That's the trash lawyer. He's going to give him all the trash cases. He's going to bring me the good cases, but he didn't think of me as a good lawyer until I started saying no to the trash cases. And this particular lawyer was number two on our average... our number of referrals from him has gone way down. But he was number two on average fee, and number two on total fees. Even though he had fewer cases than almost anyone else, they were all so good. It's a great relationship. And he's a good friend too.

Michael Cowen:

But because I started saying no to the smaller stuff, when he got the bigger stuff he thought, "Well, he's a big case lawyer." When I took smaller cases, then I was a small case lawyer. So just having the courage to make those changes, but then be realistic enough to know what changes you can make and when. Because like I said, at the age of 29 I said, "I'm only going to do clear liability death cases with at least 20 million in coverage." I think I would've starved to death.

Malorie Peacock:

Like I said, it's not something that... You can't mirror Michael Cowen's strategy unless you're at Michael Cowen's level, but you can use-

Michael Cowen:

You can hear my strategy, but you have to start where I started. You have to start at the beginning and work your way up. And there's nothing wrong with that. When you do these things, when you look

realistically, "Where am I? What can I cut out and make more time for the good stuff? What can I do to get more of the good stuff? What can I do to maximize the good stuff I have?" You start doing that, your life will get better and you will find joy in the practice of law again.

Malorie Peacock:

All right. Wow. I hope you all found this helpful. When we were looking at it yesterday, I thought the podcast listeners just have to hear about this.

Michael Cowen:

This will air December 15th. So we're coming up on a new year. I really do encourage everyone to really reflect. This is a good time of year to reflect. We slow down a little bit over the holidays and reflect on where you are and what can you do to take control of your life? Don't let your practice govern your life. Design the life you want and then make your practice work around it. I'm not perfect at that. I'm going to try really hard. One of my resolutions for next year is I'm going to get my exercise and travel booked first, and then I'm going to book my work around it. Sometimes courts don't give me that choice and stuff, but in general, or 80% of the days, I can do that. But it's a mindset shift. It's not like I have to put my life around what's scheduled for me at the office. It's like, "No, I want to schedule my life and then schedule everything else around that." Then I'm going to be more productive and get more value. But I really encourage you to find... It's a happy new year, find a way to be happy in this next new year. You can be happy in the law, it's not a miserable profession. I love it. I love the people I work with. I love almost all my clients. I have fun at what I do.

Michael Cowen:

Well, I'm not going to lie. I don't like all of our clients. The vast majority of our clients, I love. There's a few that...

Malorie Peacock:

They're hard to love.

Michael Cowen:

There a few that I wish I had a little more courage to say no. We're still a work in progress. And there's a few that while I love them, I love them because I understand what they're going through and why they act the way they do. And if you're going through enough, I'll give you some grace, but I have a fairly joyous life, but it's by choice and by design, and I hope everyone here does the thing because could have a joyous life, too. I'm not going to say you're never going to be sad, you're never going to be stressed out, but you really can make your life much happier and healthier in the law if you're conscious and deliberate about it.

Michael Cowen:

So, happy new year. Have a great year. I hope everyone has a great holiday, and I hope you guys can incorporate these lessons into your practice. And let me know, send us an email or give us a comment in our Trial Lawyer Nation Insider Circle, and let us know if any of these things are working in your career.

Michael Cowen:

This transcript was exported on Dec 15, 2021 - view latest version [here](#).

Thank you for joining us on Trial Lawyer Nation. I hope you enjoyed our show. If you'd like to receive updates, insider information and more from Trial Lawyer Nation, sign up for our mailing list at triallawyernation.com. You could also visit our episodes page on the website for show notes and direct links to any resources in this or any past episode. To help more attorneys find our podcasts, please like, share, and subscribe to our podcast on any of our social media outlets. If you'd like access to exclusive plaintiff lawyer only content and live monthly discussions with me, send a request to join the Trial Lawyer Nation Insider Circle Facebook group. Thanks again for tuning in. I look forward to having you with us next time on Trial Lawyer Nation.

CRP Commercial:

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.

Disclaimer:

This podcast has been hosted by Michael Cowen. It is not intended to, nor does it create, the attorney client privilege between our host, guest, and any listener for any reason. Content from the podcast is not to be interpreted as legal advice. All thoughts and opinions expressed herein are only those from which they came.