

Michael Cowen:

This is Michael Cowen, and welcome to Trial Lawyer Nation.

Voiceover:

You are the leader in the courtroom, and you want the jury to be looking to you for the answers.

When you figure out your theory, never deviate.

You want the facts to be consistent, complete, and credible.

The defense has no problem running out the clock. Delay is the friend of the defense.

It's tough to grow a firm by trying to hold on and micromanage.

You've got to front load a simple structure for jurors to be able to hold onto.

What types of creative things can we do as lawyers, even though we don't have a trial setting?

Whatever you've got to do to make it real, you've got to do to make it real, but the person who needs convincing is you.

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 my partner, Sonia Rodriguez. Sonia, how are you doing today?

Sonia Rodriguez:

I'm great, Michael. How are you?

Michael Cowen:

I'm doing great, and we are going to talk about how you have been getting all of these multi-million dollar settlements on cases, and give our listeners some useful things that they can use to get those kind of results in their own case. Before we dive in, though, as always, I want to give a big thank you and shout-out to our sponsor, Law Pods. Law Pods produces this podcast for us. Just this morning, they've been super helpful because we had some technical issues, and they walked us through them and got them fixed, which, if we were recording this ourselves, we probably wouldn't have done. They do all the editing. They do all the clips for our little social media ads. Just make life really easy. So, if you're thinking about doing your own podcast, I highly recommend Law Pods.

So, Sonia. Well, you have been on a run the last six months. Just off the top of my head, I know you have that \$5 million settlement, a \$5.89 million partial settlement, with more defendants yet to go in the case, and a \$7 million settlement. And I just wanted to talk to you a little bit. How are you doing it?

Sonia Rodriguez:

It sounds a little nuts, right?

Michael Cowen:

I'm not complaining. I'm just.

Sonia Rodriguez:

Neither am I. Neither am I. But I will tell you, Michael, that I think that this strategy has been the result of a mind shift in my law practice. As you know, I've been doing this 25 years, and apparently, an old dog can learn new tricks. Because, you know, one thing that I've really embraced is this ATRI study, American Transportation Research Institute study, in 2018, that says, obviously, drivers involved in a crash one year are 74% more likely to be in a crash the next year.

So, what made sense to me about that was that if that study is true and accurate about crashes, then when I'm picking up a tractor trailer case, the likelihood is that those drivers, those defendant drivers, will have been in another crash before. And maybe not just one, but multiple prior crashes. So, what I've started doing in these cases, and in all of those three really terrific cases, terrific results that we've had for our clients, every single one of those cases, I was able to dig up some real good dirt on the defendant drivers. And I know that our philosophy is that the motor carrier is the villain, but it does require us to find the dirt on the driver, and why the motor carrier was so reckless in putting these people behind the wheel of an 80,000-pound tractor trailer. So, it's a philosophical shift in your thinking.

Michael Cowen:

And frankly, that philosophical shift is not just for trucking cases, but any kind of case. I mean, you look back and you try to go into the "why did this happen?" I mean, let's say we have a building collapse, we have even a slip and fall. Why would a company have employees mopping the floor without putting up warning signs? Or why would someone set up something in an unsafe way? Has this ever happened before? Do they know any better? Did they teach their people, or did they hire people that they didn't know what they were doing? I mean, just learning how to dig deep and looking for the punitive damage type facts in a case makes all the difference.

You said you had a mind shift change. What led to this mind shift change?

Sonia Rodriguez:

So, you know, we live in San Antonio, and obviously, 35 runs right through our neighborhoods, I-35. And we drive around tractor trailers all the time. And I think we've always instinctively known that tractor trailers are scary, you know. I think instinctively, we kind of stay, I do, anyway, stay a little bit behind.

Michael Cowen:

Yeah.

Sonia Rodriguez:

Or speed up to move ahead. Definitely don't drive too close, in the same lane. So, I think we inherently knew kind of scary things about driving close to tractor trailers, but one thing that has really been the impetus for my mind shift was appreciating the data about how dangerous crashes are, how extremely bad crashes can be with a tractor trailer, because of their size, weight, length, height, and the hazardous things they're hauling. So, part of the mind shift for me was really appreciating and understanding the fact that they are dangerous. A crash is going to cause pretty extreme injuries. And that trucking companies know it. They know it by virtue of their involvement in the industry, their exposure to industry publications. But tragically, they also know it because they've had prior crashes. And so, once you see that a motor carrier has had even one prior crash, it tells me that they knew better.

Michael Cowen:

Yup.

Sonia Rodriguez:

Once they applied for a DOT number, and they filled out that OP1, they knew better. And so, it's a mind shift. You have to absolutely believe that these trucking companies, if they are not training their drivers and they're not properly vetting them, it is absolutely reckless. And I believe it 100%. And so, if you don't believe it in your core, you're not going to go get five, six, seven million dollar settlements on a regular basis, because part of it is if you don't believe it, I don't know. I think insurance adjusters and defense lawyers are like dogs. They will smell fear. And so, unless you believe it and are unafraid, they're going to know it.

Michael Cowen:

I totally agree with that. You have to really educate yourself so that you can build the belief in how dangerous they are. And I mean, I think that you and I, we've done that, you know? We've gone out there. We've driven 18-wheelers to learn what it's like to be behind the wheel, to learn what it's like to stop them, to learn how to inspect them. We've read the studies. I think it just takes that level of commitment to do all that work, so that you can build the mindset and build the sincere belief. You know, because if you're just saying it and it rings hollow, I mean, one, if you have to try the case, a jury's going to pick up on that quickly. But the defense, it scares the crap out of them when you just have this confidence, because you believe in your case so deeply. And you're able to walk away from their offers, you're able to, when they say things, you don't get scared, you don't react. It really freaks them out, and I think it really causes them to increase their evaluations on the cases.

Sonia Rodriguez:

I think that's true. I mean, it's one thing to have a stupid confidence, you know, a misplaced confidence.

Michael Cowen:

Yeah.

Sonia Rodriguez:

But once you've really done the homework and done all of the work, we spent, what, a week in learning to drive tractor trailers? And it was scary and fun at the same time.

Michael Cowen:

Yup.

Sonia Rodriguez:

Mostly because it highlighted for me all of the things that a tractor trailer driver has to be, is charged with, on the road. I mean, the idea that they have to maneuver this huge vehicle on a regular basis, daily, weekly, for as long as they are, and when you're behind the wheel of one of those things and you see all of the buttons and lights and the viewpoints that they have and the mirrors and the gadgets and everything, it's pretty intimidating. And it just reinforced for me the obligation that we have placed on motor carriers in this country to protect us.

Michael Cowen:

So, where do you really start learning how to really dig into a case, and how to sequence the case to make it a bigger story than the crash, but make it about the company, make it about systemic risk to public safety?

Sonia Rodriguez:

Well, I think that it's kind of, one thing that we've done in our office that has helped me a lot is doing these root cause analysis. You start with the root cause, and then I think a genuine curiosity and creativity. It reminds me of the three C's. Michael, what are our three C's?

Michael Cowen:

Our three C's are creativity, commitment, and courage. Those are the three things we think you need to get a big result in a big case.

Sonia Rodriguez:

And so, I do think it starts with creativity. I mean, you've got to start, step one, really looking at what story you want to tell, whether it's a big company or a small company. You've got to craft the story for your crash, and pretty quickly figure out whether or not your driver is going to be the villain, or you're going to be able to find a super villain who put that villain behind the wheel of a tractor trailer. And so, the creativity is a big part of it. Early on in the case, I like to kind of start crafting my story.

Michael Cowen:

Yeah, and I think the creativity and commitment, they go together in two different ways. Because one, you have to commit to putting the time in for creativity. Creativity's not something you can do in 10 minutes.

Sonia Rodriguez:

Right.

Michael Cowen:

You have to block out hours of uninterrupted time, preferably with other people, to brainstorm out, game out, figure out how can we make this, what, could it be this, could it be that? Let's see what we can find out now. Let's see what we have to find out in discovery. And without blocking out that time where you can really focus on the case, you just don't get the creativity. Yeah, every now and then, you wake up at six in the morning or three in the morning with an idea, and you send yourself an email or write it down and then get back to it. But a lot of times, creativity comes after hours of work, and take a break, and work on it some more, and get frustrated, and then you get the breakthrough, and maybe it's even the next day. But you've got to put that time in.

And then I think commitment comes to actually doing the work. I mean, we had creativity. You know, before I changed the way I practiced, and didn't have too many cases, and frankly, didn't team up with people that are better at the commitment part than I am. You know, I'd have all these ideas and notes, and then I would only do like 10% of them, because I would just run out of time, or I'd get distracted. But the commitment to actually doing the things you come up with, so like, well, we need to find out these 10 things in discovery to see if this story really rings true, or to see if there was another crash. I'll give an example. We have a case right now where a major trucking company was backing across a road at night at an angle, and it led to someone's death.

Sonia Rodriguez:

Scary.

Michael Cowen:

I want to show that they knew better. And so, we are literally going through hundreds of police reports. We're getting every police report we can from every crash this company's had that we can find, and we can definitely get back two years, but we're also looking on Paystar, getting every lawsuit that's ever been filed against this company, because we want to show that they actually knew it, they'd been sued before, they've paid money before, and yet, they didn't change. And that's commitment. Now, I don't have to do all that myself, luckily. We have a team of people. But if you don't commit to actually doing the work, then you can be as creative as you want. Then, you're just an idea person that never gets to put those ideas into reality. I mean, turn a desire into reality. Everyone can dream about it, but actually doing the work to put it into reality is a whole different story.

Sonia Rodriguez:

Exactly. I think one of the things that I keep telling myself after the last six months is when people say, wow, you were really lucky, you're really lucky you settled those cases, and you're on a lucky streak. I don't think it is luck. I mean, like crashes, luck is predictable.

Michael Cowen:

Yup.

Sonia Rodriguez:

And so, you can get real lucky when you spend countless hours scouring crash reports and scouring social media to find out who the defendant driver worked for in the past few years, and issue subpoenas for those DQ files from prior employers. And I mean, you've got to put the work in, you've got to put the time in. And so, luck is predictable.

Michael Cowen:

And part of the luck is doing all the work on the cases where it doesn't pan out. Sometimes, you do all the work and you find out that the company was an okay company, the driver hadn't been in a prior wreck, they did have training, and the driver just had a bad day and was negligent. And that's still a case, but what you have to do is you don't quit. You have to say, okay, well, I did all the work on this case. I still got a decent recovery, but I didn't get anything extra. So, I'm not going to quit. I'm going to go keep doing it because I know that about half the time, I am going to find something really good, and I really am going to add value to a case. And I think that's another part of the commitment is just, you know, not quitting because you don't "get lucky" on every case. But you'll never have the luck unless you do the work.

And I also hear, "Oh, well, y'all get such good results because you're lucky because you get such good cases." Well, how do you get good cases? You get good cases because you get a reputation because you do the work. You put the work in, you let your referral partners and the world know that you're doing the work, you get the result, people find out that you're getting the results, and then you treat people fairly afterwards. You make sure you pay that referral fee, and you don't try to change it on somebody. You make sure the client gets taken care of and the client's happy. And then you end up getting more big cases.

So, I agree. It's not luck. Maybe on one individual case there could be some luck involved, but when you're looking at a practice, at a year, it's, again, it's that creativity, putting the time in, the commitment, doing the work, and then the courage to, frankly, turn down the smaller money to get the big money, to not be scared of the defense tactics, and to push your cases.

Sonia Rodriguez:

And I think that the ability to dig into a case, whether people think, well, you guys get all the good cases, I don't think that's true. I think we've got some tough cases. That case that I settled most recently for \$7 million, the crash report was against our client. And the police officers in their county faulted our client for the crash. So, it takes a lot to be able to turn a case around. So, that goes to your second C, commitment. I mean, you've got to be able to push where you need to push, and like you said, it does test your risk tolerance when you have to walk away from what you think is a decent offer for what you believe the case is really worth.

Michael Cowen:

Yeah. I think the courage comes when you take those cases, you know, where the police report is against you, or other lawyers don't think it's a good case, but you see it. You see the angle. You know, part of those are, you know. I remember we had one where a tractor trailer was parked on the side of the road, partially blocking a lane to travel. Well, that's super dangerous. But we had a passenger, the driver of our phone, was texting, was not paying attention. She was definitely negligent. But I believed that that didn't excuse what the 18-wheeler company did. And as a result, we took that case, and we got a good result in that case. But other people told me I was nuts. The police didn't think we had a case. Frankly, before we took it to a consultant we work with, a lot of people in the office told me I was nuts.

Sonia Rodriguez:

I think I told you you were nuts.

Michael Cowen:

But not after we worked it for a week.

Sonia Rodriguez:

Right, right.

Michael Cowen:

But then, you know, we worked up that case. Mallory and I did a good job. You gave us some good advice, and we got a good result for that client. So, I think that, again, having the courage of your convictions, and there is a fine line between courage and insanity.

Sonia Rodriguez:

Yeah.

Michael Cowen:

And I have seen lawyers just fall in love with their cases, and they're totally unrealistic, and they do all this work, put in all this money, and then they get killed. They go try it and either they chicken out and take a small settlement, or they go try it and get their butt kicked. And frankly, I've had that happen to

me multiple times while I was growing up in my career. So, it's learning that line between courage and insanity. But without the courage and maybe a tiny speck of insanity, you're not going to get the big numbers.

Voiceover:

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 by calling 210-941-1301 to discuss the case in detail and see where we can add value in a partnership. And now, back to the show.

Sonia Rodriguez:

I do think, too, there is, you've got to realize the sunk cost fallacy.

Michael Cowen:

Mm-hmm.

Sonia Rodriguez:

And you can put a lot of time, energy, and money into a case, and it may not be the case that it started out what you thought it was going to be.

Michael Cowen:

Right.

Sonia Rodriguez:

And you've got to be able to extricate your client from the case, and extricate yourself from the case emotionally, and that's an important part of practicing law with people like you and Mallory and Natalie and Laura, where we kind of talk ourselves off the ledge sometimes.

Michael Cowen:

Yeah. And the sunk cost fallacy is this thought that just because I put a lot of time and money into something, that I have to keep putting more time and money to get something back out of it. And that is true. Sometimes, you do all this work. I mean, you get creative, you get committed, you go do all the work, and then when you get the data, turns out you don't have a very good case. And part of doing this is if you keep putting a bunch of time into that bad case, then you don't have any time for the good case, or you don't have enough time to block out for your good cases.

So, you know, learning that, what they call the Pareto Principle. You know, they say that 20% of your work brings 80% of your results. So, you look at, you know, where are those best cases where I can really put in the time, commit the time, be creative, be brave, courageous, and get our good results in those cases. Because a bad case, you know, you can make it a little bit better, but not that much better.

Sonia Rodriguez:

I agree. I agree. There's a saying that the case never looks better than the day it walked in the door.

Michael Cowen:

I disagree with that on trucking cases, though, because a lot of times, what we learn when we get the documents from the Federal Motor Carrier Safety Administration, you find out that they had this problem before, they'd been warned about it, they'd been audited, they've had prior citations, prior crashes. They have a bad attitude in depositions. I think trucking cases often get better than they do when they walk in the door. But not always, and that's the thing to remember.

It's just, you've got to do the work to find out, but then you have to be honest with yourself and your client, and sometimes, that takes talking to somebody who's not in the middle of it and doesn't have that emotional investment. It could be a focus group. It could just be talking to partners, if you have partners. If you don't have partners, I mean, talk to colleagues. Go to lunch with a friend, buy someone coffee or a beer, glass of wine, and say, you know, hey, I want to ask you about this case. What do you think? And if enough people tell you it stinks, then you really need to do a focus group and say, is this a winnable case or not?

Sonia Rodriguez:

I do think it's important to talk to various types of people. You know, I told you I had a mediation with a magistrate judge recently, federal magistrate judge, and the magistrate judge was completely, had no experience or knowledge with tractor trailer crashes. And so, he genuinely had not bought into my philosophy that tractor trailers, because of their size, weight, and length, are extremely dangerous on the roadway, and motor carriers have an obligation to us, the public, to ensure that they're properly vetting these drivers. It took some convincing.

I mean, so, the gut reaction, you know, is this a good case or a bad case? You've got to be able to educate, lay the foundation, for why we're taking these hard line positions on the value of our cases. And I think once you're able to articulate that, and that's just understood, then you can evaluate the case. It's real hard to talk to somebody about a value of a trucking case if they don't understand the mechanics of it and the physics of a crash.

Michael Cowen:

Absolutely. And I think the other thing, and you have to take some cases to trial. You know, if you always take the last offer, word gets around. I mean, insurance companies keep databases on us, and they know. What were the offers? What did you settle for? When did you settle? So, if you are consistently just taking whatever the offer is right before trial, or consistently taking the offer at mediation, on a big case, at least the first mediation, that's there to test you. That's not there to settle the case for full value. That's there to see. Let's offer something that's going to tempt them, and see if they're brave enough to walk away.

Sonia Rodriguez:

Right.

Michael Cowen:

I've been told some of the excess insurance companies won't even fully engage you until two weeks before trial. They're just told. Don't offer real money until two weeks before, because 90% of lawyers will chicken out, because they don't want to do the work, because they're scared of losing, and then they settle the cases for far less than they're worth. And we've seen them. And we've seen people triple, quadruple value of a case between the week before trial and when you get in to start trying the case.

Sonia Rodriguez:

Didn't you and Mallory have a case where it was not until after, what was it, a week of trial, that they doubled the offer?

Michael Cowen:

Actually, you and I had one where they tripled the offer after a week of trial, a while back, and then Mallory and I had one where they actually, trial ended up going better than we thought it would, and they actually paid us a million dollars more on the Thursday of trial than our demand was the Friday before, because the trial made it better. And so, when they offered us what we demanded the week before, we said that was last week, this is this week. That was fun. You don't get to do that very often, but that was fun.

But consistently, we do see, you know, sometimes you do have to go all the way and try it and go to verdict, but sometimes just getting in there and not blinking, they'll cry uncle and put fair money up once you start trying that case. But you have to go in there committed to trying it. You can't go say, I'm trying the case because I want them to raise their offer. You have to say, they're not offering fair money, so I'm going to go try this case, and I trust the jury to give me fair money. And then when you do that, sometimes they come around and offer fair money. Sometimes you have, like Mallory and I's trial last year, they offered us \$50,000. We go try it, they never increased the offer, and we go get a big verdict. Sometimes you have like my other trial where they offered little money and you go try it and it turns out they were right. But you have to be willing to do that and accept it either way.

Sonia Rodriguez:

One thing that I think helps me be able to walk away from what is not fair value on a case is I start doing my depo cuts early on my cases.

Michael Cowen:

Mm-hmm.

Sonia Rodriguez:

Because that's sometimes the thing that I think we dread the most, working on our jury charge, motion limine, depo cuts. But once I start working on my depo cuts, like super ridiculously early, six months before trial, and I start envisioning the story I want to tell, you start really wanting to tell that story to a jury. You want the jury to hear your story the way you've crafted it with these witnesses over the course of your case. And then, it's really hard to convince me to walk away at that point.

Michael Cowen:

Absolutely.

Sonia Rodriguez:

Because I'm like, I want to tell this story. So, that's one thing that psychologically, I've started doing to myself, is get ready for trial long before, in little ways. I mean, obviously, we've all got crazy busy dockets and multiple clients, but if there are little ways that you have started preparing for trial, it gives you kind of like the psychological wherewithal to be ready to walk away.

Michael Cowen:

I think something else you do that's incredibly effective is that, you know, in Texas at least, in Texas, depositions can just be played at trial. A lot of states, you have to have certain exceptions to the rules, an unavailable witness. But almost always, a doctor, a defendant witness, because the defendant's employees, those are statements of party opponent, they're not hearsay, you can bring them in. So, a lot of times, a lot of the trial is playing video clips. And you are so good at creating compelling visuals, and either having them created in advance, or even creating them on-the-fly in the depo, and creating a video that is, you know, it's not just a talking head on a screen. You have different visuals, it's compelling, you're telling the story.

And they can see you're getting this case ready for trial from the first deposition, rather than I'm going to go take a few depositions, I'm going to go mediate, see what happens. If we can't settle, then I'm going to start getting ready for trial. I mean, they see you getting ready for trial from the very first deposition, and I'm just telling you, I think that's a huge part of your success.

Sonia Rodriguez:

Well, one thing that I started doing after the pandemic, I think the pandemic for trial lawyers obviously was a curse and a blessing, at least for me, because it taught me to use Zoom, and being able to create these PowerPoint exhibits literally on the real time with the witness. But what I started doing is creating a PowerPoint for each case, and then as I take more and more and more witnesses in the case, I've got a case right now where I've taken 13 witnesses, but I'm using the same font, the same color scheme, the same kind of layout throughout, and you're exactly right. I am laying out my trial exhibits as we go, with every single witness. And so, when it comes time to depose the next person, I just go back to that original PowerPoint and either create new slides or rework the ones I previously wrote or created, and it helps keep me straight.

Michael Cowen:

Yup.

Sonia Rodriguez:

Because I don't have to reinvent the wheel every time. But it also ensures that ultimately, when we are going to present the case for trial, it looks pretty. You know, we've got the same font, we've got the same colors. You know, red means bad, green means good. Blue means trust. Those kinds of things that I'm always thinking about when I want to tell a story.

Michael Cowen:

Yeah. And when we're doing a case together, we come up with our vocabulary. What are we going to call the driver? So, whether we're consistent. So, it's like, is it going to be the company's driver? The defendant driver? Usually, we'd say the company's name, not defendant, because you're risking getting confused with plaintiff and defendant sometimes. But we come up with our vocabulary. We frame the question. So, damages is not just like, what injuries did John suffer? It's just like, what injuries did the trucking company cause when its driver ran a stop sign? You know? That way, we're framing in the liability with the damages. And when you're doing that early on, and again, it freaks them out.

Sonia Rodriguez:

Right. Right.

Michael Cowen:

But it also makes it where if you can't settle, you are ready for trial. And part of the reason you're getting these incredible settlements is because you are ready for trial, and they know it. And they're not.

Sonia Rodriguez:

Right.

Michael Cowen:

Or they're scared, and they should be.

Sonia Rodriguez:

It is fun, and we are doing good, so I feel like, again, when it goes back to the philosophical buy-in, you know, when you truly do believe that these motor carriers who aren't properly vetting drivers and not training them when they should be training them, I mean, it's really infuriating.

Michael Cowen:

Yeah.

Sonia Rodriguez:

It really does get under your skin when you see a motor carrier just completely flaunting the regulations and being reckless.

Michael Cowen:

And for our listeners, if you want to see how we do this, you want to get the visuals, I highly encourage you to come on July 12th to our Big Rig Boot Camp. Go to bigrigbootcamp.com to sign up. It's only \$249. We have CLE credit in Texas and New Mexico. Other states, you can ask nicely and maybe your state will give you credit, too. I know a lot of them will, but we only submitted in advance for Texas and New Mexico.

But we're actually going to do a live exam of one of our trucking experts, and show how we use all these visuals, and what they are and why we use them. We're going to go do an opening statement, and again, show how we use the visuals, why we use them, show how you get all the documents that we get from the Federal Motor Carrier Safety Administration, what they are, how to use them, what you find when you inspect a truck, what's good, and how to use it. So, you know, we really want to help you get great success in your practice, and of course, if there's ever a case where we can add value, we'd love to partner with you on your case as well. So, anything else you want to add today, Sonia?

Sonia Rodriguez:

No, just come to San Antonio for the Big Rig Boot Camp. It'll be fun, and there's lots of treats and prizes and surprises.

Michael Cowen:

And the biggest one is you get to meet Mallory and Sonia.

Sonia Rodriguez:

Yeah, we'll be there.

Michael Cowen:

All right. Well, thank y'all for joining us today on Trial Lawyer Nation. Hope you join us again next time.

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Voiceover:

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