

Serendipitous Success

Mediator Viggo Boserup says his niche found him rather than the other way around

By **Steven Crighton**
Daily Journal Staff Writer

ORANGE — Taking a page from the industry he works with most closely, Viggo Boserup believes the key to being a great neutral is a thorough diagnosis. “You partner with them a little bit, try and understand their pain points, because they’ve got plenty of them. If you understand everyone’s pain points, you’re really one step ahead,” Boserup said. “It’s not something that you can read about in a brief; it’s about seeing the big picture.”

Boserup has presided over more than 5,000 cases in his 24 years as a special master, mediator and arbitrator, eight of which have been with JAMS. Boserup said the lion’s share of his cases are healthcare related, a field he fell into incidentally very early in his career as a neutral, when a lawyer friend came to him with a difficult case.

The case involved a patient in a cardiac surgery which required elevating the body temperature with an electric blanket during the procedure. The blanket allegedly malfunctioned, inflicting second and third degree burns on the patient, “a brittle diabetic,” who ultimately succumbed to his injuries.

Finger-pointing commenced, Boserup said, with blame being laid at the feet of the physicians, the blanket manufacturer, the hospital and its nursing staff, and so on. Despite the difficulties, all but one of the parties settled during mediation, Boserup said.

“The key to resolution was keeping the parties talking about how they sincerely and honestly evaluated the risks of trial and how far they might be willing to go in considering a resolution preferable to those risks,” Boserup said.

The resolution was unexpected for the attorneys involved, he said, who at the time in 1994 hadn’t seen much in the way of results in settlement

processes that continued beyond the initial session. Word of his unexpected success spread quickly, and rather than finding a niche of his own, his niche found him.

“The word got out amongst the plaintiff and defense bars, and the medical malpractice area is a tight group,” Boserup said. “So they heard about us and I started getting phone calls. Slowly, at first, but eventually it did really build up.”

Boserup predominantly does arbitrations, something he sees as a rarity for someone who isn’t a retired judge. Though he finds them to ultimately be more difficult, Boserup enjoys the complicated nature of arbitration and the authority that comes with it.

“You need to be decisive, because most of the battles in an arbitration are little skirmishes. You have to know your stuff so when the skirmishes pop up, you can address them and move on,” Boserup said. “In a mediation, you have to be open to wherever it goes. But in arbitration, decisiveness and preparation are critical.”

As part of a three-judge panel, Boserup worked on more than 2,000 homeowner lawsuits following the San Diego wildfires in 2007. The panel issued about \$2 billion in settlements to the affected homeowners, resolving 99 percent of the cases.

“99 percent – that’s unheard of in the United States. It was the most successful program of its kind by a longshot,” Boserup said.

The entire process took between four and five years, Boserup said, as hearings with each individual claimant most often took a full day. That’s where as a special master, Boserup is able to play to his arbitration strengths, pushing attorneys to get down to brass tacks.

“I like the managerial aspect of it, trying to help lawyers stay focused and avoid unnecessary fighting. Sometimes, all they’re really looking for is someone to tell them to stop,” Boserup said.

He plays to a different set of strengths as a mediator, where he first tries to facilitate parties toward resolution before offering an evaluation of their arguments.

“I’ll facilitate how I feel you



Alexander Drecun / Special to the Daily Journal

Viggo Boserup

JAMS
Southern California

Area of specialty:

Health care, personal injury/torts, commercial, construction, aviation, real property, discovery, employment, insurance, intellectual property

should deal with this issue or that issue. But when I’m not getting any traction, I might say ‘I’ve got to tell you, this response doesn’t feel right,’ or ‘you’d better hope the jury doesn’t react the same way I did,’” Boserup said.

For example, Boserup mediated a case between the owner of a camp where a boy died under mysterious circumstances and the boy’s parents. The parents were seeking a settlement that the defense wasn’t willing to pay, but Boserup got the feeling they were more concerned with something else.

“I kept hearing from mom and dad saying ‘you know, we dropped him off at the parking lot Sunday afternoon, and the next thing we know, he’s dead.’ I kept hearing that, and got that that’s what they wanted to know, what happened to their son in his last four days of life.”

With a little convincing, Boserup said he was able to get the parents and the camp owner in a room together. Soon after, Boserup said, they were able to resolve the case quickly.

“There wasn’t a dry eye in the place,” Boserup said. “There was a number involved, but we settled within 20 minutes, because the real issue was dealt with emotionally.”

In both mediations and arbitrations, Sedgwick LLP partner Edward A. Stumpp says it’s Boserup’s deep understanding of the matters at hand and his ability to get right to them that make him stand out.

“He’s able to sort through the noise, if you will, that mediators and arbitrators frequently hear,” Stumpp said. “Because he has an extensive and detailed knowledge

of healthcare law, I don’t have to wait, and neither of the parties have to waste time. It makes the job a lot easier.”

His knowledge base is so extensive because he’s genuinely enthusiastic about the field, according to Steve Goff, a partner with King & Spalding.

“If I take a case with him, I know I’m going to have to go at it 150 percent,” Goff said. “I have the greatest respect for all mediators and arbitrators, but Viggo has more of a feel of a person like me, who wants to make a name for himself.”

Here are some attorneys who have used Boserup’s alternative dispute resolution services:

Edward Stumpp, Sedgwick LLP; Greg Pimstone, Manatt Phelps & Phillips LLP; Andrew Hefty, Crowell & Moring LLP; John Godsil, Freeman, Freeman & Smiley LLP; Richard Lovich, Karlene Rogers-Aberman, Law Offices of S.A.C.

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