

Trial Pros: Andrews Kurth's Jim Maloney

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James Maloney is a trial lawyer at Andrews Kurth LLP. He has tried over 100 cases to jury and bench verdicts across the nation. He routinely defends individual, derivative and class action claims against business institutions and their directors related to public and private securities transactions. He frequently represents special and conflicts committees in connection with majority/minority transactions and interested party transactions. Beginning with T. Boone Pickens and Mesa Petroleum in the mid-1980s, he has both prosecuted and defended against hostile acquisition attempts. He represents clients before the U.S. Securities and Exchange Commission. In addition to his securities/transactional work, Maloney has handled a wide array of commercial disputes involving various industries, including matters related to contracts, trademarks, trade secrets, taxation, estate matters, health care, antitrust, ERISA, noncompetition agreements, tortious interference claims and executive/employer disputes.



James Maloney

Maloney is profiled as a leading lawyer in securities and commercial litigation by The Best Lawyers in America (2001-present), Benchmark Litigation (2013-present), Chambers & Partners USA (2007-present), The US Legal 500 (2015), Texas Super Lawyers (2003-present) and other ranking bodies.

Q: What's the most interesting trial you've worked on and why?

A: Picking one case is difficult, but one of the more interesting trials was a three-week cat fight in Houston in Texas state court, arising out of Shell Oil's acquisition of the Pennzoil-Quaker State Co. some years ago. The case was styled *Elloway v. Pate*, 238 S.W.3d 882 (2007). The class of Pennzoil/shareholders was represented by a group of very talented trial lawyers. Rebecca Aizpuru Huddle and Michael Massengale, both of whom now sit on the First Court of Appeals in Texas, tried the case with me. Good trial lawyers coupled with intellectually stimulating issues, e.g., how does one turn Delaware Chancery Court opinions into a Texas state court jury charge, make for a truly entertaining trial. The claim was that the shareholder class had been damaged by the Pennzoil Board's breach of its fiduciary duties by short-changing its shareholders in the negotiations in favor of enhancing the post-merger benefits of a group of its executives. Instead of the \$22 per share obtained in negotiations, the plaintiffs alleged the stock was worth up to \$30 per share. With over 80 million shares outstanding, the potential damages were pretty high. Add to the mix a great client with an innate feel for what is right and what is wrong and the backbone to take a class action to trial, and you have the perfect formula. At the time of argument, the settlement demand was something north of \$300 million; the settlement offer was \$0. At argument, the plaintiffs asked the jury for over \$800 million. However, the jury — particularly the 11 of the 12 who voted for my clients — right-minded men and women all, found that Pennzoil's Board and executives not only maximized the price for their shareholders, but literally extracted every last penny available to the buyer. They found no breach of any duty and no damages.

Q: What's the most unexpected or amusing thing you've experienced while working on a trial?

A: An unexpected and rather helpful event occurred in a products case for Bridgestone-Firestone I tried in the Northern District of Texas years ago. In the accident, the plaintiff's decedent sustained horrible brain damage from the explosion of a multipiece truck wheel. This resulted in, among other things, frequent severe seizures which could have been minimized by proper medication. The plaintiff's common-law wife, a licensed vocational nurse, administered her husband's medication. But, every time it was measured, it was far too low. He died of a seizure shortly before trial. On cross, while I was asking her about the medicine, dosage and timing, she proudly proclaimed that she had a calendar recording the administration of each dose of his medicine. FULLLLLL STOP. CALENDAR? I asked for it, and she produced it with a classic "got you" expression on her face. As plaintiff's counsel beamed at their clever client, I studied it for a moment and then began to ask who each of the different masculine names was that appeared at frequent intervals each month. As it turned out, she was doing some serious dating as her soon-to-be deceased husband languished. The jury's reaction was predictable and rather harsh.

Q: What does your trial prep routine consist of?

A: Trial preparation begins the day of opening a file. From that moment on, I am constantly arguing the case in my head, cross-examining witnesses and developing the themes that we will carry throughout the life of the case.

As we approach the day of trial, nothing is left to the last minute. Exhibits and motions are listed and ready well in advance — to be revised as time passes. Everyone is assigned his or her witnesses and tasks. I spend much of my time memorizing and annotating depositions and documents for use on cross and in direct. Each of the young lawyers — indeed everyone on my team — is asked to give me wish lists, ideas, for cross — not outlines. As the trial approaches, I find myself polishing the themes, arguing the case, cross-examining the witnesses and searching for just the right documents in my head. I am constantly changing, adding to my notes. By trial they are almost illegible.

There is simply no substitute for preparation — for knowing the record and the key documents cold. Nothing is scripted — depending on what the witness says on the stand — my notes allow me to change tacks quickly. I find that the most effective and memorable cross-examinations play off of the direct while it is fresh in the jury's mind.

Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?

A: Listen. Put away your outlines and scripts and listen. Listen all of the damn time. There is no more important skill to a trial lawyer. The corollary is the ability to quickly adjust. Adjust your questions, your argument, on the fly, to accommodate what you hear and what the jury is hearing. Be flexible. Dance. A tone-deaf lawyer, tied to his or her outlines or carefully prepared scripts, is an ineffective advocate.

Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.

A: Lee Godfrey of Susman & Godfrey in Houston was one of the finest trial lawyers I have ever dealt with. He had an uncanny ability to pick up a file — any file — just weeks before trial and to put his heart and soul into it. Once he arrived in the courtroom, he was ready — a true gunslinger — and a fine guy.

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