

Trial Pros: Carlton Fields' Markham Leventhal

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Markham Leventhal is a shareholder in the Miami and Washington, D.C., offices of Carlton Fields. He represents financial institutions, insurers and other sophisticated businesses in complex federal and state litigation. Leventhal is called upon to defend national and state class actions and other high exposure cases involving allegations of fraud, inadequate disclosure, breach of contract, breach of fiduciary duty, bad faith, regulatory violations, deceptive trade practices, false advertising, violations of privacy statutes, Racketeer Influenced and Corrupt Organizations Act, Truth In Lending Act, Employee Retirement Income Security Act, antitrust statutes and state consumer protection laws. Leventhal has litigated in federal and state courts across the U.S., and has defended over 150 class actions. He has experience managing multijurisdictional litigation, including parallel civil and regulatory proceedings, and has defended civil investigative demands, subpoenas and lawsuits brought by insurance regulators, attorneys general and other governmental agencies. Leventhal has served as lead or national coordinating counsel in multiple jurisdictions spanning from New York to California, and Michigan to Florida. As an appellate practitioner, Leventhal has served as lead counsel in appellate matters before the U.S. Supreme Court, the U.S. Court of Appeals for the Second, Fourth, Fifth, Sixth, Eighth, Tenth and Eleventh Circuits, and state appellate courts throughout the country. **Q:**

What's the most interesting trial you've worked on and why? A: Several years ago, our firm represented a group of insurance companies in a complicated breach of contract battle with a large public company and two of its subsidiaries. Our client should have been the plaintiff and had a claim approaching \$100 million for breach of a joint marketing agreement. But our opponents sued first and manufactured their own claims of \$100 million, pretending to the court and the jury that they were the aggrieved parties. It was a brilliant strategic move by a large New York law firm, forcing us to try our case in the form of a counterclaim. Given the complexity of the case, we were fortunate to be in an affluent suburb of Nashville with one of the most intelligent juries I have ever seen. Nevertheless, the case was extremely complicated, and I was in charge of developing the trial graphics to tell our story to the jury. We had an artist on site to create graphics on the fly, and we had a state-of-the-art multimedia trial presentation system for the jury. We covered the walls of our "war room" with cork boards and hundreds of graphics over the course of a four-week trial. We had a

gigantic timeline created on a hard board with bar codes linked to graphics and documents. The bar codes could be scanned with a wireless gun that would instantaneously project the linked document or graphics onto a large screen for the jury. The documents and graphics were all interactive and could be manipulated at will — text extracted, blown up and highlighted for the jury. Complicated corporate structures, personal relationships, arguments and evidence needed to be illustrated and explained to the jury with custom made visual graphics. The design and presentation was a creative challenge and is still one of my favorite parts of any trial. At the end of the day, we were able to show that the other parties had made a secret decision to get out of the agreement and had manufactured a plan to falsely blame our client for breaching the complicated contract. We had a great result and ultimately a \$70 million judgment in our favor. **Q: What's the most unexpected or amusing thing you've experienced while working on a trial?**

A: In the '90s, we tried a case in a particularly hostile Southern venue known for its multimillion-dollar punitive damage awards against out-of-state companies. The judge apparently did not believe in rules of evidence and allowed plaintiffs counsel to say anything and introduce virtually anything into evidence. Late in the day on a Friday, the judge entered an order compelling our client to produce a box of confidential documents from a multistate regulatory examination that contained allegations of wrongdoing by regulators across the country. Although the documents should have been inadmissible and were irrelevant to the claims and conduct at issue in our case, it was likely that the judge would allow plaintiffs counsel to parade the documents in front of the jury and prejudice our client as a “bad” actor. We organized a team that worked all night and all weekend to prepare an emergency petition for a writ of mandamus to stay the judge's order, and we filed it Monday morning at 8:30 a.m. Local appellate counsel handicapped the petition as having little-to-no chance of success. The documents were being copied all day Monday, and at 5 p.m., literally minutes before we turned them over, the state supreme court faxed an order to the judge's chambers staying his order. It was an intense surprise and the judge was red-faced with anger at being rebuffed by the higher court, but the result had a dramatic effect on the course of the trial, which turned out well. **Q: What does your trial prep routine consist of?**

A: My trial prep is similar to a sleep deprivation endurance race. I like to outline everything and spend a lot of time with our key witnesses, particularly preparing them for cross-examination. I am a big fan of repetitive practice for cross-examination, and we will always conduct one or two mock trials to prepare for any major trial. Regular team meetings and continual analysis and strategy sessions are key. I also like to begin preparing trial graphics early in the process to develop themes and the visual presentation of our trial story. **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: Never stop preparing, but relax once in the courtroom. Try your case with confidence, and no matter what happens, don't get rattled, always act like you expected the result. Be sincere and respectful, and project a belief in your case and your client. **Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.**

A: Charles Griffin at the Butler Snow PLLC in Jackson, Mississippi, has a miraculous ability to talk to juries and is especially effective at defending businesses against punitive damage claims. Frankly, I think it is relatively easy for a plaintiffs lawyer to inflame a jury and ask for millions of dollars in punitive damages against a large multinational business or an unsympathetic out-of-state insurance company. But it takes great

skill to defend these businesses and these types of claims before a jury. Mr. Griffin is one of the best. Republished with permission by [Law360](#) (subscription may be required).

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