

Q&A With Akin Gump's Neel Lane

Law360, New York (May 27, 2011) -- Neel Lane is a partner in Akin Gump Strauss Hauer & Feld LLP's San Antonio office and co-leader of the firm's litigation practice. Lane divides his work among three areas: representation of insurers in class action litigation and other disputes, representation of ceding companies and reinsurers in reinsurance arbitration proceedings, and representation of a diverse body of clients. He has conducted more than 30 jury trials, bench trials and arbitrations, and has argued before state and federal appellate courts.

Q: What is the most challenging lawsuit you have worked on and why?

A: About 15 years ago, we represented the defendant insurer in *Morgan v. Hartford Life*, a class action lawsuit in California state court, in which the plaintiff asserted state law claims for fraud and misrepresentations, and unfair competition (\$17200).

The plaintiffs were sympathetic public servants — teachers and police officers — who claimed that the defendant had defrauded them by selling them unsuitable variable annuity products within their employer-sponsored plan.

In those days — before the Class Action Fairness Act and the Securities Litigation Uniform Standards Act limited the scope of state court class actions, and before 17200 was largely defanged by a state proposition — insurers almost never tried these kinds of cases, settling the claims rather than going to trial.

But our client was confident they were in the right; they were proud that they had sold an excellent product that, for years, had helped families save for their retirement; and the allegations struck at the heart of their business. If they rewarded plaintiffs' counsel in this case, then they likely would face wave upon wave of similar cases in the future. So, we prepared to try the case to a San Diego jury.

The subject matter was complicated, so we prepared an opening that used large colorful exhibits to make the issues understandable to a typical San Diego juror. We could not expect the jurors to understand and remember PowerPoint-type slides for the length of a six-month trial. When the plaintiffs surprised us by waiving the jury on the first day of trial, we shifted our focus to persuading the trial judge, the Honorable Raymond Zvetina. He was an excellent judge, attentive and probative in his questioning, and we could never tell which way he was leaning. In the end, his judgment for the defendant vindicated our client's confidence that they could receive a fair trial and that justice would prevail. Corporate defendants, and especially insurers, often doubt that proposition.

Q: Describe your trial preparation routine.

A: By the time trial comes around, I will have developed a theme in briefing, arguments and questioning of witnesses at depositions. I craft an opening statement that establishes the theme and puts my opponents back on their heels. From that point on, a trial proceeds one question and answer at a time, so I prepare detailed outlines that cover the points I wish to make.

For direct examinations, I want the focus to be on my witness, and I organize the examination so that it is understandable and will stay with the jury. Cross-examinations are all about controlling witnesses, making them agree (where I can) with declarative statements that refute or undermine their case. Most important, no matter how busy I get preparing, I set aside time to get in a workout. Some of my best ideas for trying a case come during my runs!

Q: Name a judge who keeps you on your toes and explain how.

A: U.S. District Judge Nancy Atlas in Houston comes to court every day having read and understood the papers, having conducted her own research where she feels she needs to and having reviewed the evidence that has been submitted.

She is a hard worker, and clearly not given to relying solely on bench memos. She will point out things you may not have noticed about a piece of evidence. She is intellectually curious and may ask you about any aspect of your case — for instance, she may have spotted an issue that will arise down the road but is not the subject of that day's hearing.

And if she thinks you have serious problems with your case, she will tell you — she does not play hide-the-ball. She also has a great sense of humor. One day during a recent hearing, Judge Atlas saw one of the trial lawyers step back and take a big breath, like a tenor about to burst into his aria. "Here comes the drama," was her droll observation, just before her prediction rang true.

Q: Name a litigator you fear going up against in court and explain why.

A: I fear a weak case more than a strong lawyer, but one lawyer I have immense respect for is Tom Allingham of Skadden Arps Slate Meagher and Flom LLP in Wilmington, Del. Although his usual forum is Delaware Chancery Court, I went up against him in a hard-fought reinsurance arbitration some years ago. He is a lawyer's lawyer and a real gentleman.

Q: Tell us about a mistake you made early in your career and what you learned from it.

A: In one of my early trials, during the testimony of the plaintiff's expert, I thought I would let the jury know just how unimportant what he had to say was by giving the appearance of nodding off in boredom. I tried to be subtle, so it wouldn't be obvious to opposing counsel, letting my eyelids droop and even shut for a second.

We won, but after the trial was over, a juror told me she had thought perhaps I was not getting enough sleep. My little stunt had no impact on how she viewed the expert, but did affect her view of me. (Imagine if she had figured out I was faking it!) Be professional and attentive in court. The old courtroom tricks you heard about in law school are more likely to distract you than improve your client's chances.