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Bill Carmody of Susman Godfrey is one of the finalists for the NYLJ Attorney of the Year award.

## Winning Litigators: Bill Carmody, Susman Godfrey

Our 2019 special report honors trial lawyers for their victories in high-stakes matters.

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🕒 1 minute read

By ALM Staff

### *Susman Godfrey*

Tell us about your biggest trial win from January 2018 through June 2019 and how you achieved the result for your client.

I was scheduled to try two lawsuits on two coasts back-to-back. In the widely-publicized *Google/Waymo v. Uber* trial, my strategy to strike Waymo's billion-dollar damages expert worked—and led Uber to a favorable settlement during trial. But, right before the Uber trial began, I was back in the [Southern District of New York] trying a \$160 million breach-of-contract case for a GE subsidiary. After mock jury testing and brain-storming sessions, I concluded the key to winning was convincing the jury to focus less on the contract language and more on the post-contract course of dealing. This resulted in a full GE victory, and jury polling confirmed that my strategy to win this \$160M case worked.

Share two trial tips that have been key to your success.

- 1) Marketing 101 is "Play to your audience." I spend a significant amount of time knowing my jury so that my case themes resonate with them.
- 2) I may not be the smartest lawyer in the room, but I am always the most prepared. A prepared lawyer has the advantage every time.

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## ATTORNEY OF THE YEAR FINALIST

THIS "MVP" AWARD GOES TO THE LAWYER WHO HAD THE MOST PROFOUND EFFECT ON THE LAW OR LEGAL COMMUNITY IN THE PAST YEAR OR DID THE MOST TO ADVANCE THE CAUSE OF JUSTICE.



## BILL CARMODY

PARTNER, SUSMAN GODFREY

BY CHRISTINE SIMMONS

**W**HEN UBER Technologies Inc. retained Susman Godfrey partner Bill Carmody last year in its knock-down, drag-out fight against Waymo, trial was scheduled to start in just two months. Uber already had retained two large defense law firms from the start, but it was looking for a lead lawyer at trial.

While Uber's existing defense team had done a good job of working the case to trial, "We felt it was important to have someone in the leading position who was a pure trial lawyer—someone whose core skill was persuading a lay jury in a complex business case," said Bradford Berenson, general counsel at private equity firm TPG, which has a seat on Uber's board.

Carmody, who helped launch his firm's New York office more than a decade ago, immediately stepped in and scored favorable court rulings before trial that would later prove instrumental in Uber's momentous trade secrets litigation with Waymo, the business created from Google's self-driving car project. Waymo was seeking nearly \$2 billion against Uber in a case that ultimately led to a settlement that was worth a fraction of that.

Reflecting his significant leadership in courtrooms across the United States, Carmody has had a busy schedule the last two years, including the Uber trial and a series of high-profile victories and appointments in a variety of litigation, ranging from disputes over LIBOR manipulation to opioid liability.

**CARMODY HAS HAD A BUSY SCHEDULE THE LAST TWO YEARS, INCLUDING THE UBER TRIAL AND A SERIES OF HIGH-PROFILE VICTORIES AND APPOINTMENTS IN A VARIETY OF LITIGATION, RANGING FROM DISPUTES OVER LIBOR MANIPULATION TO OPIOID LIABILITY.**

Just last year, Carmody, 60, secured a jury verdict in Manhattan federal court on behalf of GE Funding Capital Market Services, a unit of General Electric. The judgment in the breach of contract case has been valued at \$161 million, said Carmody.

In another New York case, Carmody, as co-lead class counsel, along with Michael Hausfeld, represents the city of Baltimore and Yale University in the only class that has been certified in the consolidated antitrust proceeding over the LIBOR manipulation scandal in the U.S. District Court for

the Southern District of New York. The court has declined to certify several other classes, Carmody said.

Even before class certification this year, they have reached settlements totaling more than \$590 million from large bank defendants, including two settlements approved by the court.

Meanwhile, Baltimore selected Carmody earlier this year for another engagement—to sue opioid manufacturers and distributors in Maryland state court, claiming negligence, public nuisance and false claims.

Carmody, who has taken the case on a contingency arrangement, was scheduled for oral arguments in September over the defendants' motion to dismiss. According to the city's claims, "companies know at the time they're making these drugs that they're not being used for their intended purpose and people are being hurt. But [the defendants] are doing it anyway because they're making money," Carmody said.

While numerous municipalities are suing drug manufacturers across the United States, Carmody said Baltimore's matter may be one of the first opioid cases to be tried, under the court's current scheduling plans. Trial is scheduled for early May 2019.

**B**UT PERHAPS THE MOST intense litigation experience for Carmody in recent years has been on the Uber trial. Waymo sued Uber in February 2017 alleging that the ride-hailing giant was ripping off its self-driving technology by hiring key employees from Waymo and stealing trade secrets that helped Uber get a head start on self-driving programs. Every court development was followed closely during an intense year for Uber, already under public scrutiny for reports of a toxic workplace culture.

Before Uber hired Carmody in its battle with Waymo, it was already represented in the case by Boies Schiller Flexner and Morrison & Foerster. In the summer of 2017, Carmody, while on vacation, got a call from representatives of Uber's board of directors who were considering bringing in new lead counsel. After an interview, Carmody was retained in August 2017 and began working right away with Boies Schiller and Morrison & Foerster lawyers. At that time, trial was scheduled in October. Ultimately, the trial was pushed back twice and started

in February 2018. "It's always a little overwhelming to be called in at the end right before trial," but "it's also the most exciting thing to do" and he often gets that type of call from clients, Carmody said.

It was high stakes for Uber because Waymo had asserted that it had stolen many trade secrets and there could have been other suits against Uber if Waymo was successful at trial, Carmody said.

But in the weeks and months before trial began, Carmody's team was successful in striking Waymo's damages expert and several opinions of their technical experts related to damages. Further, they obtained motion in limine rulings that severely limited the ability of fact witnesses to present any competent evidence of damage at trial.

After the defense knocked out Waymo's damages arguments, even if Waymo had prevailed, it may have been awarded nominal damages, Carmody said.

"The effect of these damages rulings was tying one of Waymo's hands before the fight began," he said.

As the lead defense lawyer at trial, Carmody gave opening statements and cross-examined some witnesses, including Waymo's CEO. After the fourth day of trial, the parties reached a settlement. According to the press reports, as part of the settlement, Waymo obtained a 0.34 stake in Uber—about \$244.8 million in stock based on a \$72 billion valuation—and included an agreement that none of Waymo's confidential information was being incorporated in Uber's technology. It was reported that Waymo demanded \$1 billion in settlement talks in 2017.

Berenson, the general counsel at TPG, an investor in Uber, said, "Ultimately the case was settled on acceptable terms in large part through important victories that he [Carmody] won on motions prior to trial and a strong performance during the trial."

He added that Carmody, a problem solver, "Has a terrific ability to integrate his sense of how things will play out in a courtroom with a broader, strategic sense" of a client's business, Berenson said. While there are always concerns about bringing in new counsel right before trial, Berenson said, when Carmody's team "parachutes into a case, it is full and intense immersion" and "it's astonishing how quickly they can get their arms around the full factual and legal issues."

## Titan Of The Plaintiffs Bar: Susman Godfrey's Bill Carmody

By Matthew Perlman

Law360 (May 16, 2018, 5:43 PM EDT) -- Bill Carmody of Susman Godfrey LLP helped investors in the sprawling multidistrict litigation over alleged manipulation of Libor land a \$130 million settlement with Citigroup last year, and also scored a judgment worth more than \$100 million for General Electric after a jury verdict in a contract dispute, landing him among Law360's 2018 **Titans of the Plaintiffs Bar**.

With roots as a Texas trial attorney, Carmody has helped run Susman Godfrey's New York office for more than a decade. His practice has expanded to include work on both sides of the bar and he's often called into a case shortly before trial — which was the case when he defended Uber in its trade secrets row with Waymo earlier in 2018.

But Carmody also has spent years handling long-running, complex class actions for plaintiffs, like litigation that stretches back to 2011 over claims that some of the world's biggest banks manipulated the London Interbank Offered Rate, a key benchmark used to price trillions of dollars worth of securities worldwide.

He describes the theory in that case as simple — that the banks colluded to manipulate the Libor rate in the midst of the financial crisis as a way to stay afloat — but said progress in the litigation has been sluggish because of the enormous number of people and entities that invested in instruments tied to Libor.

“At its core, it's not a complicated case, but it's just been procedurally unwieldy because of a ton of parties involved, and all the purported classes,” Carmody said. “It's just a monster, monster case. The court has just been inundated.”

**“He's a storyteller. Whether it's sitting together over drinks or at dinner, or before a jury, he's someone that you want to be around and that juries want to relate to. He has a way of just connecting with people that I really haven't seen, among either the plaintiff or defense bar.”**

In that suit, Carmody serves as co-lead counsel for a recently certified class of over-the-counter investors — who purchased instruments tied to Libor directly from the big banks accused of manipulating the benchmark — alongside Michael D. Hausfeld of Hausfeld LLP. After a trip to the Second Circuit, the OTC investors reached an ice-breaker deal with Barclays PLC in late 2016 for \$120 million, followed by a \$130 million deal in August last year with Citigroup Inc.

The most recent settlements with HSBC Bank and Deutsche Bank AG earlier this year totaled \$340 million and the class is now preparing to move the litigation ahead against the remaining banks.

Law360  
**TITANS**  
OF THE  
Plaintiffs Bar

Brent Wisner  
Baum Hedlund

Mark Lebovitch  
Bernstein Litowitz

Steve Toll  
Cohen Milstein

Steve Berman  
Hagens Berman

David Sanford  
Sanford Heisler

Elizabeth Cabraser  
Lieff Cabraser

Jeremy Lieberman  
Pomerantz

Christopher Seeger  
Seeger Weiss

Bill Carmody  
Susman Godfrey

Mark Lanier  
The Lanier Law Firm

In addition to managing complex, longstanding matters, Carmody also has a knack for simplifying complicated concepts in a way that makes it easy for juries to understand, according to Shawn J. Rabin, a Susman Godfrey partner who has worked with Carmody since 2004.

“He’s a storyteller. Whether it’s sitting together over drinks or at dinner, or before a jury, he’s someone that you want to be around and that juries want to relate to,” Rabin said. “He has a way of just connecting with people that I really haven’t seen, among either the plaintiff or defense bar.”

Rabin worked with Carmody last year on a case brought by General Electric over a contract dispute with the Nebraska Investment Finance Authority.

The suit involved what are known as guaranteed investment contracts, which were financial instruments popular in the 1990s that were bought with the proceeds of municipal bond offerings. NIFA claimed it was entitled to continue receiving interest payments on the contracts even though the underlying bonds had been redeemed. GE sought a declaratory judgment finding that the contracts had terminated as well as other relief.

A jury sided with GE in November, and the company was awarded \$28 million in damages and \$11 million in interest. The result also wiped out around \$100 million in future interest payments that NIFA had claimed it was owed.

During opening arguments, Rabin said Carmody was able to break down the complicated issue in a way that was easy for the jury to digest, centering on a refrain that got their client’s point across with memorable clarity: “When the bonds go, the contracts go.”

“It was just one of those things, where everyone remembered it,” Rabin said. “We talked to the jury afterwards, and they said they were on our side since opening, that Bill got them right from the start.”

Carmody said he repeated the refrain several times, “like a rock-n-roll song,” during openings and also employed a visual aid that resembled a stop sign and included the same simple words to help drive it home. The difficulty in the case, he said, was breaking down a dry and esoteric issue in a way that would get the jury intrigued enough to want to learn about it — and then convince them that there was a simple answer.

“I find myself almost like a translator at times,” Carmody said. “But our job is to try to get to the essence of it, what it’s really about.”

And, he said, he often finds himself impressed by the jury’s eagerness to learn what he’s trying to teach.

“It’s truly amazing the level of attention they pay, the notes they take, the interest they have, to really do justice,” Carmody said. “To honor their roles as citizens, to really do the right thing.”

--Editing by Melissa Lipman and Kelly Duncan.

*Carmody on Juries:*

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