

## Trial Pros: Bartlit Beck's Jeff Hall

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Jeff Hall, at Bartlit Beck Herman Palenchar & Scott LLP, has tried numerous cases to juries and judges throughout the country. His jury trial experience includes the successful representation of defendants in plaintiff-friendly venues in New Jersey, Miami, Chicago, Philadelphia, West Virginia and Texas. He has a broad business litigation practice with emphasis on mass tort, product liability, False Claims Act, government contract and other commercial and financial cases. He also has experience as an appellate advocate.



Jeffrey A. Hall

The National Law Journal has recognized two of Hall's jury verdicts as top verdicts of the year, and earlier in his career, the American Lawyer named him to its list of 45 Under 45: The Rising Stars of the Private Bar.

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

A: The most interesting trial I have worked on involved arcane legal and financial issues of taxation, accounting and corporate acquisitions. The subject matter could not have been drier. But this trial was memorable because of its distinctly personal and emotional nature: our client and each of the other numerous opposing parties were members of the same family litigating against each other over control of multibillion dollar investments. The lawsuit had fractured family relationships, and the trial risked financial ruin for our client. The trial was both a high-stakes financial dispute and a family tragedy.

The three-month jury trial was interesting for me on another level — it provided invaluable courtroom experience relatively early in my career that I draw on in every trial. The challenges of presenting obscure issues of corporate taxation and accounting in an understandable, persuasive way to a jury provided lessons in teaching and the use of demonstratives that I apply in every trial. Handling numerous unexpected trial developments produced by the raw emotion of family members litigating against each other showed the value of remaining calm, and never becoming rattled, in the face of any courtroom development — another universal trial lesson.

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

A: In a mass environmental tort trial, we defended a chemical company that had operated a manufacturing plant for nearly a century. The plaintiffs, who were residents in the community that had developed near the plant, claimed the plant's waste disposal practices had caused personal injuries and environmental contamination throughout the community. In the middle of the long jury trial, plaintiffs

called a surprise witness — an elderly ex-employee of our client who had worked at the plant several decades earlier and went by the nickname “Ace.”

We knew who Ace was because he had previously sued our client. We also knew that a few years earlier he had given deposition testimony about the plant’s operations in yet another case. But Ace’s deposition testimony in that earlier case would not be especially helpful to the plaintiffs in the environmental trial so we were uncertain why the plaintiffs now chose to call him. The judge allowed Ace to testify, but ruled that his examination would be conducted outside the presence of the jury, and, if admissible, his testimony would be presented to the jury by video the next day.

The judge sent the jury home for the day, the videographer arrived at court, and Ace took the stand. On direct examination, Ace testified that our client had improperly disposed of plant chemicals by burying hundreds of drums of liquid chemical waste at the plant site some 30-50 years earlier when he had worked there. Despite the passage of decades, Ace testified in impressive detail. He described the equipment he said he used to bury drums, he named specific chemical compounds he said were in the drums and he gave precise counts and the supposed burial locations of the drums. He was fully engaged, his testimony was colorful and he had no problems understanding any of the plaintiffs lawyer’s questions.

At the outset of the cross-examination, I impeached Ace with a series of his answers in the deposition from the other case. In that deposition Ace admitted under oath that he never had any role in transporting or disposing of plant waste, he had no responsibility for disposing of drums and he never saw anyone dispose of any drums. During these impeachments Ace’s demeanor changed. He became sullen and agitated. His powers of recall now faded as he said he could not remember his testimony in the recent deposition. And he suddenly developed a serious hearing impairment. As the cross proceeded, no matter how loudly and slowly I would ask a question, Ace said he could not understand me: “I can’t hear too good. I may be giving the wrong answers.”

Based on the transformation in Ace’s demeanor and the sudden onset of his hearing loss, I thought that the short cross-examination had successfully undermined his credibility and discredited his waste-disposal testimony (which I knew would be contradicted by other evidence we would later present). But what Ace did next ensured that the jury would not believe him. As soon as I ended the cross with “No further questions,” and turned my back to return to my chair, Ace — with the video camera still running — looked over to the plaintiffs lawyers, smiled broadly, and winked. The next day, when the jury watched the video of Ace’s testimony, during the cross-examination several jurors rolled their eyes or tried to conceal smiles when they saw his demeanor change, his memory fade and his hearing fail. After the cross, when Ace smiled and winked at the plaintiffs lawyers, all 12 jurors laughed out loud.

**Q: What does your trial prep routine consist of?**

A: In the final month or so before trial, my preparation focuses on three main areas:

1. Developing the opening statement. I practice again and again the telling of our side of the case, including the factual, technical and legal issues, in the form of a story in plain language. My objective is to give the opening by speaking in my own words directly to the jury, not by standing at the podium reading notes.
2. Preparing detailed outlines for each trial witness I will handle. I prepare extremely detailed examination outline for each witness based on my best judgments about the necessary subjects to

address, the key facts or admissions required of the witness, the best sequence of the examination and the documents and demonstrative exhibits that I will use (and their form — hard copy, electronic with screen display, board, notepad). Throughout the outline I include the actual language of the witness's prior testimony, documents, writings and other potential impeachment materials on each subject.

3. Working with our trial team. Successful trial presentation demands the coordinated preparation of a talented, hardworking team. A substantial portion of my trial preparation involves working with others on our team to help to ensure that we are completing all other witness examination outlines, developing effective demonstrative exhibits, preparing for the admission (or exclusion) of key evidence and completing the trial briefings and countless other trial submissions and tasks.

**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: My eve-of-trial advice would be:

Strive to be forceful and respectful. Treating everyone in the courtroom — including opposing counsel and witnesses on cross-examination — with basic dignity advances your client's interests. Juries do not forgive arrogance.

It is okay to be nervous. Nerves reflect how much you care about the case and want to do your best. Preparation is the antidote for excessive nerves. Even the most experienced trial lawyers are apprehensive on the eve of trial.

Be yourself. If you are not genuine, you are not credible.

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

A: Roger Thomasch of Ballard Spahr LLP in Denver. Roger is eminently credible, comfortable in his own skin and never arrogant. He is quick on his feet and draws on enormous courtroom experience in dealing with the unexpected. And most importantly, he understands the necessity of thorough trial preparation — the careful planning and hard work required to present examinations and arguments effectively at trial, including anticipating how things could go wrong and how best to avoid that. Roger knows that effective trial presentation requires extensive preparation. If I had to hire a trial lawyer, Roger would be on my short list.

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