

# Q&A with Diane Sullivan

Operating from the New York and Princeton, NJ offices of Weil, Gotshal & Manges, **Diane Sullivan** has enjoyed a status as a nationally revered trial lawyer for several decades. Diane, as well as several of her landmark achievements, have been widely covered in the local and national news media, as well as in several case studies in trial law. With a particularly keen acumen in the product liability space, Diane has triumphed on behalf of her clients, which include a veritable “who’s who” of industry players, in the tobacco, pharmaceutical and environmental sectors, in cases that have literally defined the landscape in these respective capacities. However, Diane’s rich history in product liability only tells half of the story; illustrating how her trial acuity knows seemingly no limits, she has also led clients to victory in the corporate, commercial and intellectual property arenas as well. Most recently, she provided lead trial counsel for Johnson & Johnson in a four-week bellwether trial in New Jersey state court involving claims the client’s baby powder caused cancer. Diane secured a unanimous defense verdict, the first defense verdict in New Jersey courts, where thousands of cases in the talc mass tort are pending against the Company. “Diane Sullivan does it again,” trumpets a peer. “She is just a force of nature.” Benchmark’s managing editor **Michael Rafalowich** speaks to Diane about the trajectory of her storied history as a trial lawyer, reversing a client’s fortunes after receiving an unfavorable verdict, the climate for women in trial law and “paying it forward.”



**Hopefully you don’t take this the wrong way but you’re a seasoned veteran of trial law. At any point, does it ever get easier? Does it get harder? What are some of the most notable challenges that career trial lawyers have to grapple with?**

Being away from home for long stretches of time gets tougher as the years roll on. It was more exciting crisscrossing the country for trials in my 30’s than it is now. The actual trials are still fun – I love the strategy aspect, the competition, the “war room” camaraderie, and being “all in” when a client really needs you in a high-stakes trial. At this stage, I also enjoy training younger partners and associates in trial practice and seeing them flourish. We have some great young trial lawyers here at Weil, which bodes well for the future.

**Was there a “Eureka!” moment when you decided that being a trial lawyer was the life for you or are you simply a product of a time when trials, and trial lawyers, were more “the norm?”**

I got hooked on the excitement and theater of it after my first jury trial decades ago – everything else we do in litigation practice seems dull by comparison!

The point about the dwindling number of jury trials is a concern for our justice system, for the training of young lawyers and for parties on all sides. For all of its flaws, the jury system is still the best justice system in the world.

**You’re known as someone with the experience but also the stamina and the verve for parachuting in when a case passes a tipping point and seems inevitably marching toward trial. Are there any particularly telling**

**indicators or noticeable trend of variables that makes a company snap into the reality that a case is going to go all the way and hire you?**

I have been frequently “dropped” in on the eve of trial to work with another firm or take over from another firm to try a case. The setting of an actual trial date, the failure of a mediation or settlement conference, the denial of Daubert motions or motions for summary judgment, or a client seeing its then-counsel in action at a mock trial or elsewhere and being disappointed in the performance have served as reasons clients have hired me for a high stakes trial.

**Although this is not your exclusive area of practice, you are primarily known for your fluency with product liability cases. In recent years, its been a widely held belief that these have a tendency to go to trial more often than other types of cases. Have you found this to be true or is this more myth than reality?**

The sheer numbers of mass tort cases, the concern that settlements just invite more lawsuits, and the preference in trial settings given to dying plaintiffs have made jury trials in the mass tort context more common than in other practices.

**You have won many “bet-the-company” or “turning-the-tide” verdicts in your career, often on the heels of a bad verdict for a company. What has been your strategy for success that has made a difference in the results?**

Not being afraid to revamp a trial strategy. It is tempting to just take what has already been done and continue using that template, but if the template has been unsuccessful, figure out how to make it better, change it. In some of the “judicial hellholes” where I have tried cases, you have to be willing to take some risks to be successful. Playing it safe is not going to work. Plaintiff lawyers are typically very aggressive in their approach; don’t be afraid to give as good as you get.

**It’s no secret that there are fewer trial lawyers these days, which is not altogether surprising, as there are also fewer trials. Is this a “chicken-and-egg” scenario or was there some moment in history that you could point to where trials started dwindling?**

The increasing use of arbitration and alternative dispute resolution mechanisms, combined with the increasing cost of trials, companies being gun shy to take big case trials to verdicts because of the stakes – including press and stock concerns – and the shortage of judges, are resulting in case back logs and far fewer trials.

**Does being a female trial lawyer ever help or does it not matter? What would be some situations where it would be considered an asset?**

I am hoping there will come a day that it doesn’t matter. There is a view that in cases involving sympathetic plaintiffs and /or defendants accused of acting badly, a female lead trial lawyer helps soften a company’s image and make it more sympathetic or relatable.

**You’ve been with Weil for quite some time, as long as I can recall, which is going back 10 years. The firm is certainly noted for producing some celebrated litigation talent but what exactly is most special and attractive about this firm to you? Have you found its litigation culture to be more trial-centric than others?**

The opportunity to try all kinds of high-stakes cases, including antitrust, patent, media, and contract disputes, as well as energy plant construction disputes and significant product liability cases, has made Weil a natural fit and platform

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for me. What’s unique about Weil is it is a top-tier global firm, with top-flight corporate, bankruptcy, and antitrust practices, that fields a first-class destination trial practice. We place a high value on the development of trial talent because our clients need and want it for some of their most important cases.

**Have you made a point of grooming a “next generation” of trial lawyers at the firm? If so, were there any particular ones you want to bring to our attention?**

Jack Nolan, a senior associate here, recently second chaired me in a two-month jury trial and he was terrific. You’ll be hearing a lot more about him in the future. I also trained and am proud of Allison Brown who is a young first-chair trial lawyer. David Lender, who is Co- Chair of Weil’s Litigation department, is a terrific big case trial lawyer and certainly Ed Reines in our Silicon Valley office keeps stacking up jury trial wins in the patent space.

**Were there any other notable trial lawyers (at Weil and elsewhere in the legal community) that you wanted to give a shout-out to?**

I owe a debt of gratitude to a few women trials lawyers and a female in house counsel who helped me as a young trial lawyer. Marla Persky, the former General Counsel of Baxter Healthcare Corporation, first hired me to try cases when I was still an associate. Christy Jones, a terrific trial lawyer and former chair of Butler Snow’s litigation department, Mary Wells at Wells Anderson & Race, and Debra Pole at Sidley Austin were trying cases when virtually no women were and helped show me a thing or two about trial practice and helped pull me up.

I’m trying to pay it forward.