

JOHN J. MALONE

SENIOR MANAGER

John J. Malone manages engagements and develops accounting and financial analyses for the litigation consulting firm of Bruce L. Ross & Company. Prior to joining Bruce L. Ross & Company, Mr. Malone worked as an independent consultant on litigation and turnaround matters. He has a Bachelor of Arts degree in Chemistry from Harvard University and has previously held positions in the analytical instrumentation and environmental monitoring industry.

Mr. Malone has consulted on dozens of litigation matters. He specializes in the calculation of economic damages, complex spreadsheet modeling and large database analysis. He also has experience in the areas of fraud investigation and business valuations. As a Senior Manager, he is involved in all phases of an engagement with Bruce L. Ross & Company: attending meetings with clients, helping to define issues and areas of analysis, providing recommendations during the discovery process, reviewing documents, analyzing electronic data, creating accounting schedules, contributing to the process of drafting reports, communicating analysis results, participating in critique of opposing expert opinions and developing demonstrative exhibits.

Mr. Malone has been involved in many areas of litigation, including:

- Breach of Contract
- Business Valuation
- Class Actions
- Construction
- Entertainment/Sports
- Environmental
- Fraud Investigations
- Government
- Health Care
- Insurance
- Intellectual Property
- Labor & Employment
- Professional Malpractice
- Probate Litigation
- Real Estate

The attached addendum describes Mr. Malone's activities on selected matters in some of the above areas.

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Resume Addendum

Mr. Malone has consulted on dozens of different matters involving many areas of the law. His work involves the calculation or determination of lost profits, out-of-pocket damages, consequential damages and the tracing of accounting records to uncover fraudulent activity. Listed below are brief descriptions of selected cases in which Mr. Malone has provided his expertise and assistance.

Breach of Contract

- An owner of an Italian restaurant and bakery attempted to sell his business but the deal fell through when the landlord would not consent to assignment of the lease and demanded a percentage of the sale proceeds as a precondition for issuing a new lease. The restaurant/bakery owner filed suit against the landlord for breach of contract among other allegations. Counsel for the Defendant retained Bruce L. Ross and Company to assist in rebutting the testimony of Plaintiff's industry/damages expert. Mr. Malone reviewed the complaint and mediation briefs as well as Plaintiff's expert's report and deposition testimony. He created a model of Plaintiff's expert's calculations, performed adjustments to the model to illustrate the impact of varying several key assumptions and contributed to the development of a topical outline for use by counsel during cross examination.
- Plaintiff dairy cooperative entered into a requirements contract with Defendant, a manufacturer of specialty cheese. In 2003, Defendant produced a batch of bad cheese which had to be recalled. Defendant contended that the bad cheese was the result of tainted milk provided by Plaintiff, and negotiated with Plaintiff for four years to resolve the matter. Upon learning that Plaintiff had no intention of settling, despite alleged knowledge that the milk was tainted, Defendant immediately terminated the contract and found another milk vendor, without giving the six months notice provided for in their contract. Plaintiff sued for over ten million dollars covering the notice period. Defendant cross-complained for the damages arising from the recall. The BLR&Co. team was retained by counsel for the cheese manufacturer to rebut the damage claim prepared by employees of the dairy cooperative. Working closely with a dairy industry expert, Mr. Malone and other members of the BLR&Co. team analyzed Plaintiff's damage claim and found a number of areas in which it was inaccurate, unreliable and overstated. Mr. Malone also developed alternative damage calculations to demonstrate the scope of the overstatement and a PowerPoint presentation to support Mr. Ross' testimony at trial.
- Bruce L. Ross & Company was retained by the Defendants in a dispute after sale of a large security company. The buyer alleged that the purchase price was overstated because the seller had not properly paid some of its California employees the Uniform Maintenance Allowance and otherwise not included required expenses in its books and records. Mr. Malone reviewed Plaintiff's expert's damages calculation, analyzed documents and databases upon which he relied and assisted in the preparation of a report critiquing his opinion.

- A registered nurse entered into an agreement with a consortium of convalescent hospitals to establish hospice care programs at a number of nursing care facilities. In exchange for her efforts and expertise, the agreement spelled out a compensation structure that awarded her a percentage of the revenues generated by the hospice care programs. A dispute arose and the nurse sued the convalescent hospital management for breach. Bruce L. Ross & Company was retained by counsel for plaintiff to calculate damages. Using billing records and Medicare reimbursements, Mr. Malone developed a model to calculate lost profits and actual revenues and to project future revenues based on past performance, market data and government statistics.
- Nine limousine drivers sued their employer alleging breach of contract, fraud and a variety of other tortious causes of action. At issue was whether the plaintiffs were employees or independent contractors. Mr. Malone reviewed the limousine drivers' earnings history, participated in the development of a critique of the opposing expert's damages opinion and created spreadsheet models to perform alternative damages calculations. The case settled immediately prior to trial on terms satisfactory to both parties.
- Two companies formed a partnership to purchase a site for construction, development and operation of a shopping center. The operating agreement provided an option for one party to purchase the other party's interest in the shopping center if certain conditions were met and also described the formula for the calculation of the purchase price. After the party with the purchase option gave notice of its intent to exercise the option, a dispute arose over whether or not the conditions were properly met and whether or not the purchase price had been properly calculated. The party with the purchase option filed suit against its partner, and the defendants retained Bruce L. Ross & Company to assist them in answering questions about the validity of the exercise of the option and the purchase price. Mr. Malone reviewed spreadsheet data and documents, developed a spreadsheet model for calculating the purchase price as described in the operating agreement and created a matrix of conditions necessary for the proper exercise of the option.
- Two real estate developers were involved in a number of deals together. They formed a single-purpose entity through which they managed the various projects they developed. They had a falling out, and one of the members continued using the resources of the joint entity to develop projects of his own without reimbursing the entity or the other member. Ultimately, he excluded the other member from the business entirely. The ousted member sued and his counsel retained Bruce L. Ross & Company to calculate damages. Mr. Malone analyzed financial data from the joint entity as well as several dozen real estate ventures, both joint and separate, and created spreadsheet models to determine management fees owed, shareholder imbalances, available cash, future distributions and net profits in order to calculate damages associated with each project and the relationship as a whole. The case settled during mediation on terms favorable to both parties. Mr. Malone also participated in post-settlement resolution of various disputes.

Business Valuations

- Bruce L. Ross & Company was retained by the Defendants in a dispute after sale of a large security company. The buyer alleged that the purchase price was overstated because the seller had not properly paid some of its California employees the Uniform Maintenance Allowance and otherwise not included required expenses in its books and records. Mr. Malone reviewed Plaintiff's expert's damages calculation, analyzed documents and databases upon which he relied and assisted in the preparation of a report critiquing his opinion.

Class Actions

- A class action lawsuit was filed against an installer of satellite television services alleging failure to provide meal and rest breaks and itemized wage statements. Counsel for the defendants retained Bruce L. Ross and Company to assist in the calculation of damages. Mr. Malone reviewed employee census and payroll data and interviewed company personnel to develop a list of potential class members. He also analyzed time clock data to gain insight into the incidence of meal break violations and created a model for the calculation of damages. The case settled at mediation.
- Counsel for a large department store chain retained Bruce L. Ross & Company to determine the damages, if any, in connection with a class action filed on behalf of cosmetics counter managers. Plaintiffs alleged that the defendants improperly handled commissions on returned merchandise and failed to provide meal and rest breaks. Mr. Malone examined commissions reports, payroll data and time clock data for a number of the chain's stores and determined the amounts that should have been paid for returns commissions, as well as meal break penalties, rest break penalties and waiting time penalties.
- The defendant operated a program pursuant to which it would "pre-purchase dining credits" from restaurants, advancing cash to the restaurant and receiving repayment by retaining a percentage of meals purchased at the restaurant by its "members." The plaintiffs were a class of restaurants that were advanced funds under the program. They characterized the advances as loans and the repayments as usurious interest payments. Counsel for the class retained Bruce L. Ross & Company to determine the amounts actually advanced to and repaid by each plaintiff and whether, assuming the advances were actually characterized as loans, such repayments would be usurious. Mr. Malone analyzed numerous large and complex databases, developed a methodology for determining the effective interest rates and for calculating damages and participated in drafting several federal reports.

- Bruce L. Ross & Company was retained by counsel for the defendant in a class action brought by employees of a company engaged in the pest elimination business. Plaintiffs alleged that they are non-exempt employees and that defendants had failed to pay them for overtime, failed to provide itemized wage statements and failed to provide meal breaks. Mr. Malone analyzed a database of hundreds of thousands of service records to determine the incidence of overtime, the occurrence of meal break violations and a variety of other statistics regarding employee service time. In addition to analysis of service route data, Mr. Malone also developed, managed and participated in a time-and-motion study to determine the amount of time employees spend driving between service calls.
- A logistics company was sued in a class action filed on behalf of employees and temporary personnel working at one of its warehouse locations. Plaintiffs alleged that the company failed to provide meal and rest breaks. Counsel for the Defendant retained Bruce L. Ross & Company to calculate damages. Mr. Malone analyzed census data and time clock data and developed a model for calculation of damages for both the employee class and the temporary associates class. The matter settled at mediation.
- Counsel for an employer retained Bruce L. Ross & Company in connection with a class action lawsuit brought by sales representatives who sold advertising on a commission basis. Some of the class members alleged that the employer failed to compensate them properly for expenses and benefits. Mr. Malone and other team members created an employee database and analyzed the information, documenting whether the class members were employees or independent contractors and to what extent they had been compensated.
- A class action lawsuit was filed against a medical billing company alleging various wage & hour claims including unpaid overtime and failure to provide meal and rest breaks. Counsel for the defendants hired Bruce L. Ross and Company to determine potential damages. Mr. Malone reviewed company records including employee censuses, payroll registers, time clock data and keycard access data and developed several spreadsheet models to determine incidence of overtime/meal break violations and to calculate damages. He also visited the company headquarters to observe payroll, time clock and key card procedures. The case settled at mediation.

Entertainment/Sports

- A production company entered into a written distribution agreement with a major film distributor granting them worldwide distribution rights to a motion picture they had produced. The film starred a well-known film and television actress and had its world premiere at a major international film festival. After the distributor began world-wide exploitation of the film, the production company filed suit against them, alleging failure to utilize their best efforts to distribute the film, improper "packaging" of the film with less desirable motion pictures, and failure to properly account to the producers in profit participation statements. Counsel to the plaintiffs hired Bruce L. Ross and Company to perform an audit of the profit participation statements. Mr. Malone participated in the preparation of an audit work program and conducted the audit at the distributor's headquarters.

Environmental

- Bruce L. Ross & Company was retained by the defendants in an EPA superfund action to determine the expenditures made by the defendants in their investigation and response to the contamination at the superfund site. These defendants had filed an action to recoup a portion of the expenditures from the third party defendants and the United States Air Force. In a separate matter, Bruce L. Ross & Company was retained by first party defendants in an action against third party defendants for reimbursement of expenditures made at a superfund site. Mr. Malone created and maintained a Microsoft Access database of expenditure records and authored queries to generate reports and compute prejudgment interest.
- A start-up company was awarded a contract by a large city municipal utility agency to produce facilities for converting biowaste into energy. Subsequent to being awarded the contract, the company's license for use of the patented technology was revoked, and the start-up filed suit against its attorney and his firm, contending that their actions were a substantial factor in the loss of the technology license. Counsel for the Defendants retained Bruce L. Ross and Company to assist in examining Plaintiff's expert's damages opinion. Mr. Malone reviewed arbitration briefs and the report of Plaintiff's expert and provided counsel with critique points and information on the relevant professional standards for use in cross-examination.

Fraud Investigations

- Plaintiff was a security manager working for the Defendant, an aerospace company. Plaintiff was terminated and sued Defendant for wrongful termination. While employed by Defendant, Plaintiff obtained cell phones for certain employees who were working on classified programs. In order to maintain confidentiality, Plaintiff paid for the equipment and the cell phone bills personally and subsequently requested reimbursement by several different means: check requests, petty cash requests and expense reports. Mr. Malone reviewed data and documents pertaining to the Plaintiff's expense reimbursement requests and found evidence that the Plaintiff had been "double-dipping," repeatedly requesting and receiving multiple reimbursements for the same expense. The case settled at mediation prior to trial, based in large part upon the findings produced by the BLR&Co. work.
- An employee of an accounting firm embezzled funds from a client's account. Counsel for the firm engaged Bruce L. Ross & Company to evaluate the risk that the same employee or other employees may have fraudulently managed the accounts of other clients. Mr. Malone and other team members reviewed the firm's accounts and proposed audit procedures to be followed to assess the possibility of further fraud.

- Having made substantial investments in a series of distressed credit card debt portfolios, a major financial services company filed suit against the president of the collections agency servicing the portfolios, alleging fraud after the discovery that the value of the portfolios had been misrepresented and that some had been "double sold." Attorneys for the plaintiffs retained Bruce L. Ross & Company to help determine the financial condition of the collections agency prior to the perpetration of the fraud and to calculate damages. Mr. Malone extracted data from the accounting software package for the collections agency, performed various analyses and created numerous schedules to assist the team in demonstrating the perilous financial condition of the collections agency as well as the lavish lifestyle of the defendant.

Government

- A county was in a dispute with a private company, which claimed that it was unable to pay a large settlement. Desiring to settle the dispute, the county requested that Bruce L. Ross & Company perform an investigation into the financial capability of the company to make payments to the county. Mr. Malone analyzed the company's financial condition, within the scope permitted by the parties, and participated in drafting two reports which were submitted to the county. The county used the work to determine its course of action.
- A start-up company was awarded a contract by a large city municipal utility agency to produce facilities for converting biowaste into energy. Subsequent to being awarded the contract, the company's license for use of the patented technology was revoked, and the start-up filed suit against its attorney and his firm, contending that their actions were a substantial factor in the loss of the technology license. Counsel for the Defendants retained Bruce L. Ross and Company to assist in examining Plaintiff's expert's damages opinion. Mr. Malone reviewed arbitration briefs and the report of Plaintiff's expert and provided counsel with critique points and information on the relevant professional standards for use in cross-examination.

Health Care

- A registered nurse entered into an agreement with a consortium of convalescent hospitals to establish hospice care programs at a number of nursing care facilities. In exchange for her efforts and expertise, the agreement spelled out a compensation structure that awarded her a percentage of the revenues generated by the hospice care programs. A dispute arose and the nurse sued the convalescent hospital management for breach. Bruce L. Ross & Company was retained by counsel for plaintiff to calculate damages. Using billing records and Medicare reimbursements, Mr. Malone developed a model to calculate lost profits and actual revenues and to project future revenues based on past performance, market data and government statistics.

Insurance

- A small, start-up title insurance company and a number of its employees were sued by a larger, competing title insurance company. The competitor accused the start-up as well as a number of its former employees who had left to accept positions at the start-up of misappropriation of trade secrets, unfair competition, and other claims related to alleged "employee raiding." Working on a consulting basis, Mr. Malone analyzed each of the start-up's escrow transactions to determine which ones were closed by the competitor's former employees and were generated via the competitor's referral sources. This analysis of "improperly obtained" revenues was relied upon by the defendants' expert as the basis for his damage opinion.
- A title insurance company doing business in the state of Colorado filed suit against a competitor in that market for engaging in predatory "raiding" of its employees. Counsel for the plaintiffs retained Bruce L. Ross & Company to calculate damages. Mr. Malone and other members of the team, in conjunction with an outside statistician, developed a damages methodology utilizing company data as well as market data. Damages were calculated by measuring the relationship between the company's financial performance and overall market fluctuation prior to the raids and using that relationship to determine how the company should have performed if the raids had not occurred. The matter was resolved as part of an overall settlement agreement.
- Bruce L. Ross & Company was retained by counsel for a major title insurance company in connection with an action involving the hiring by a competitor of a number of employees from thirteen different business units. With the assistance of an outside statistician, Mr. Malone helped to analyze the performance of these business units to determine whether or not there was a correlation to the rises and falls of the overall residential real estate market before the "raidings." After such a correlation had been established, Mr. Malone contributed to the development of a model to calculate damages based on each unit's departure from the market after the "raidings." The matter was resolved as part of an overall settlement agreement.

Intellectual Property

- A start-up company was awarded a contract by a large city municipal utility agency to produce facilities for converting biowaste into energy. Subsequent to being awarded the contract, the company's license for use of the patented technology was revoked, and the start-up filed suit against its attorney and his firm, contending that their actions were a substantial factor in the loss of the technology license. Counsel for the Defendants retained Bruce L. Ross and Company to assist in examining Plaintiff's expert's damages opinion. Mr. Malone reviewed arbitration briefs and the report of Plaintiff's expert and provided counsel with critique points and information on the relevant professional standards for use in cross-examination.

Labor & Employment

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- A staffing company was accused of stealing employees from one of its competitors. Plaintiff's expert calculated damages including a loss in business value and out-of-pocket expenses. Bruce L. Ross and Company was retained to provide analysis and opinions in rebuttal. Mr. Malone created a model of Plaintiff's expert's calculations and identified numerous computational and data handling errors as well as a failure to perform adequate due diligence. Mr. Malone also performed a search for staffing industry experts and assisted in the creation of demonstrative exhibits.
- A wholesale real estate mortgage brokerage company sued a competitor for wrongfully hiring a number of its account executives. Counsel for the plaintiff retained Bruce L. Ross & Company to develop a non-speculative damage analysis. Because the account executives had relationships with certain brokers, Mr. Malone analyzed the loans generated by these brokers both before and after the executives' departure. By comparing the performance of each account executive's brokers before and after his or her departure date, Mr. Malone developed a model to determine the number of lost loans, lost revenues and lost profits and developed sophisticated queries to obtain information from the company's vast database. The matter settled prior to testimony.

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- A small, start-up title insurance company and a number of its employees were sued by a larger, competing title insurance company. The competitor accused the start-up as well as a number of its former employees who had left to accept positions at the start-up of misappropriation of trade secrets, unfair competition, and other claims related to alleged "employee raiding." Working on a consulting basis, Mr. Malone analyzed each of the start-up's escrow transactions to determine which ones were closed by the competitor's former employees and were generated via the competitor's referral sources. This analysis of "improperly obtained" revenues was relied upon by the defendants' expert as the basis for his damage opinion.

Probate Litigation

- A brother and sister were in a dispute with one another over their parents' estate. The brother retained Bruce L. Ross & Company to review documents to determine the status of numerous stocks, bonds and other assets that he suspected his sister had withheld from the estate. Mr. Malone analyzed numerous bank and brokerage account statements as well as other documents provided by the sister's accountants and assisted in drafting a report describing the status of each asset and recommendations for further investigation.

- A husband and wife died within a year of one another. The husband had amassed a substantial estate, mostly in real property, bank accounts, investment accounts and oil and gas leases. Titles to the assets were held in a variety of forms. A dispute arose among the heirs of the wife, who died first, and the heirs of the husband, necessitating the characterization of the property as his separate property, her separate property or community property. Mr. Malone and other team members identified and traced all of the monies through the various accounts and investments over a substantial period of time. This work enabled counsel for the estate to determine which of the assets were legitimately subject to the claims of the wife's heirs.
- A law firm prepared an estate plan for a man and his second wife. The will provided for his share of their estate to be divided equally, half to be immediately distributed to his children from a prior marriage and the remainder to go into a marital trust to provide for his wife. After his death, however, his wife claimed that the entire state should pass directly to her by joint tenancy transfers. The surviving children sued the law firm for malpractice, alleging that the law firm failed to properly advise their father that his share of the estate would not pass to his children as he intended without terminating joint tenancies and creating new titles to the assets. Working on a consulting basis, Mr. Malone reviewed the deposition testimony and damages analysis of the plaintiffs' expert and provided critique points as well as a separate damages calculation based on alternate assumptions. Counsel for the defendants used this work during cross-examination.

Professional Malpractice

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Real Estate

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