

Product Liability Star Lori Cohen on Last-Minute Trials, Against-the-Odds Wins and Being Called ‘Honey’

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Greenberg Traurig partner Lori Cohen has racked up one of the most winning courtroom records around, going 57-1 before juries. Chair of the firm’s pharmaceutical, medical device and health care litigation practice, she typically handles high-stakes product liability suits, sometimes with only weeks to prepare for trial.

She spoke with The Litigation Daily about her practice--the unique challenges of being a woman litigator, how to counter the emotional pull of sympathetic plaintiffs, how she’s built a close-knit team that’s essential to her success.

The interview has been edited for clarity and length.

Litigation Daily: Are there one or two cases that stand out as particularly memorable?

Lori Cohen: It’s really hard to pick one or two cases that are the most memorable, though it always seems to be the more recent ones that stick out in your mind.

The most recent one we had ran from Thanksgiving of 2015 to Groundhog Day--Feb. 2, 2016. That was a pelvic mesh case. Most of cases in the ‘mesh litigation’ that have gone to trial have been big plaintiffs verdicts, big losses to the defense.

This was first mesh trial where there was more than one corporate defendant--different companies, different mesh products involved, but we had to work together collaboratively on behalf of the defense.

It was in Missouri state court, which can be a complex jurisdiction. There were very good plaintiffs attorneys on the other side. And we won it, which many said was against all odds. I thought it was a great team win.



Lori Cohen, Greenberg Traurig

John Disney/Staff

Shook Hardy represented the co-defendant Boston Scientific. We had [C.R.] Bard. A lot of times when you have two companies, two big law firms involved, and it’s hard for you all to get on the same page. Here, we literally became one team.

What about your 2013 win in *Anderson v. Medtronic* in Seattle, involving the company’s Laser-Shield II?

It was a tough case. Our opponent was a really nice plaintiff who had gone in for a 10-minute outpatient procedure, a low-risk lasering off some nodules on her vocal cords, just to make her sound less hoarse and able to sing better.

It turned into a totally catastrophic airway fire. Literally, her airway caught on fire. She developed what’s called a blowtorch injury and ended up on a ventilator.

DAILY DICTA



JENNA GREENE

So there were very, very severe injuries in that case, a huge life care plan and significant damages sought.

We were against a top firm in the Pacific Northwest [Luvera Law Firm], very well respected by everybody. We had co-defendants in that case, but we weren't one team--in fact, the opposite. They very much wanted us to settle the case and they came out firing against us.

It was a very challenging situation. In the end, we won which was not the case for all the other defendants. That was a remarkable outcome.

When you have such a sympathetic plaintiff, are you always conscious of calibrating your presentation so that you don't come across as callous or mean?

That is always in my mind. I have several trials coming up this fall where I'm already thinking about how to deal with catastrophically injured plaintiffs.

It ties in to how you present yourself in court. As a female trial attorney, you can be viewed as being too combative, too harsh. You hesitate to say it, but the 'b-word' can come up. There's always that risk, that balancing. You want to be as firm and confident as your male counterparts. But especially in a case with significantly injured and very sympathetic plaintiffs, you have to be very wary. You're constantly trying, as you said, to calibrate and balance that. I've had many cases through the years like that.

Can you give an example?

There's one that was similar to the one I just mentioned. It was in 2007-2008, where we had a beautiful young teenage girl who had a cardiac arrest at the age of 13. She ended up in a vegetative state. Even worse, the plaintiffs asserted that she wasn't just in a vegetative state, but she was 'locked in,' meaning that inside she knew exactly what was going on, exactly how destroyed her life was.

That's horrible.

She couldn't speak or communicate in any way. A terrible situation. They wheeled her into the courtroom.

You have to be constantly cognizant of showing respect and sympathy and empathy. You have to present your case in a way that doesn't jeopardize how the jury views you. You have to be a strong advocate for your client and at the same time, you have to stop and remember that the jury is always there watching you and your team at every turn.

Many of your cases involve pharmaceuticals or medical devices, with complex evidence or technology. How do you make it all understandable to jurors?

When I get a case, I dig in. I learn the medicine, learn the technology, learn the science. I'm thinking right from the first day, 'How am I ultimately going to explain it to a jury, in a way that is both informative and interesting?'

It's a much different world today than 25 years ago when I started. I would come into court with my 20 or 30 big blow-up boards, literally cardboard boards that we'd put in the back of a truck and bring into court. We'd write on them with magic markers.

Now, with social media, everybody being connected all the time, even if you're in a small court in the middle of nowhere, you usually can't do that—though some courts are exceptions.

With current juries, you have to think about how to keep it informative and interesting.

We pay very close attention to presentation. What I try to do, especially in a long trial like most of mine are, is change things up. I may show a video of a vaginal mesh surgery one day, and the next day, have an expert with a model he holds up. The next day I may do an animation.

With every witness, I think about using a different medium. I come at it from different angles and perspectives. In jury selection and opening statements, I tell the jury what the case is about and that I want them to understand it the way I do.

One thing I've seen other attorneys do that I think is a mistake is to talk down to juries, to say 'Look, these are really high-tech issues, you'll never understand it, I'll never understand it.'

I never take that approach. I always say 'Look, if I can understand it, you can understand it. My job, if I'm doing my job, is not only to help you understand it, but to enjoy the process. I want you to get to the end of trial and love the jury experience you've had because you learned something exciting and new.'

Tell us about the team of people you work with.

There are about 40 of us in total. People will say, 'How many are attorneys?' but that's not really important to me. In my mind, I don't think about how many attorneys we have. What's important to me in my core

Atlanta team is that we are cohesive and tight-knit. People have been on my team for 18 or 19 years. I have attorneys who are now partners--or shareholders, as we call them--who started with me as summer associates.

We're made up of shareholder attorneys, associates, counsel, but we also have four registered nurses, trial technology people, paralegals, case clerks, legal assistants. I view us all as one team, which I think is really important to our success.

Beyond Atlanta, we have members that I still consider our core team in virtually every Greenberg Traurig office. If someone calls me and says 'Who is on your team in Tampa?' I'd say, 'Here's the person.'

In addition to heading the firm's pharmaceutical, medical device and health care litigation practice, you're also chair of the trial practice group. How do you give young lawyers opportunities to grow?

My rule of thumb is that if you come to me with a great idea, I will never say no. If you want to fly to wherever and meet with this person or go to this conference or develop this diversity initiative, I'm always really supportive.

If someone comes to me and says 'I haven't taken any expert depositions. I want to do that,' I'll find a way to make it happen.

And when we go to trial, which is our hallmark, a lot of times I'll have a client who is trying to be as efficient as possible and not over-staff. I might say, 'Look, I'd like to bring these other two associates with us. I want them to see the trial and have their lightbulb moments in court. Why don't we let Greenberg Traurig pay for their travel, their hotel? They'll still be doing the work for you, but they'll get trial opportunity and client contact, and you'll see them in court.' It's a win-win.

When you're in trial, how do you divvy up the court roles?

For me, to gain credibility with the jury, the smaller the actual speaking team in court, the better.

It's not because I want to hog the spotlight at all. I'd rather have more people have opportunities.

Depending on how long the trial is, we'll have at most three attorneys who are speaking to the jury. We'll have more people in court, more people talking to the judge and arguing motions and helping with witness preparation.

But actually standing up in court making presentations to the jury, doing openings and closings? It's usually two, maybe three of us.

If necessary, are you able to go to trial on short notice?

Yes. It happens all the time. It's part of our reputation.

People know that if they're facing a very tough situation with a case they hoped would be resolved, they may look in their proverbial rolodex and think about us. If you have situation where you're in a jam or decide to change horses and use a different team for trial, if we have enough time to pack and get there, we'll do it.

Last summer, I was called to try one of the last trials for [diabetes drug] Actos in a bladder cancer case. It was in Las Vegas state court--a very difficult jurisdiction against some very high-powered, tough adversaries.

There was a big settlement underway already for Takeda, the client, and everyone expected these cases would not go trial. But when they weren't getting resolved, they said uh-oh, we need somebody who can come in and go to battle.

We got the call and it turned into a nine-week trial in Las Vegas. We got ready for that in a matter of months.

I have a situation right now where I am starting trial in the city of St. Louis--again a challenging jurisdiction for corporate defendants by all accounts. It's set for trial on Aug. 22.

That's coming right up.

It is--I should be packing right now. That case has been going on for five years. Another law firm had been handling it. I got asked to join the trial team in May. Not much time. It's shifted from 'Lori is going to be a consultant to the trial team' to I'm lead counsel and Greenberg Traurig is the lead trial team. We've had three months to, as we say, drink from the firehose and get ready for a trial.

What is the case?

It is a case for ADM, or Archer Daniels Midland. It's a case that's out of our normal sphere. It's a commercial litigation case related to the grain industry. There are claims of fraud and conspiracy and misrepresentation and breach of contract. The plaintiffs in these cases are a large number of Missouri farmers who are suing ADM.

Taking cases to trial is tough--you travel constantly, it takes a huge amount of time. But what do you love about it?

For me, it's talking to the jury, presenting your client's defense or story in the best light and in a way that's understandable and informative, and then bringing it all together.

It goes back long before you come to court. When I get a case, whether it's three months or five years before trial--the first time I pick up a file or look at a complaint, I can almost in my mind's eye envision myself standing in court giving my opening statement.

When I'm in bed at night thinking about my cases, I'm thinking 'How am I going to be talking to the jury?' It goes back to presentation.

It's a team process. It's not just about Lori Cohen in court or with the client. It's about bringing the team along. It's very exciting to me to have my second and third chair attorneys in court making their presentations and seeing how the jurors look at them with admiration and respect, and knowing they're credible to the jury too.

What made you become a lawyer? Were you one of those people who knew from the time you were a little kid that's what you wanted to do?

Yes, but not because I had anyone in my family who was in the law. I came from a very blue-collar family. My dad was a furniture delivery man in the South Boston area and my mom did telemarketing after I went to college. There were certainly no lawyers in my family.

This is going to sound trite, but I loved "To Kill a Mockingbird." I loved the book, I loved the movie, and I very early on wanted to be Atticus Finch. I wanted to be in court.

And I did have a little tendency to advocate for whatever was going on. That's stuck with me through the years.

You started practicing law in 1990. Over the years, have there been instances as a woman where you've faced subtle or overt bias? And how did you respond?

I have. It exists, there's no question. For many years, I was the youngest in the courtroom and the only woman

in the courtroom doing stand-up witnesses and major, significant parts of trials. Very early on, I decided that I was going to walk through it and not pay attention to it and try to use it to my advantage.

Back in 1990s when I started practicing, I had opportunities and I created opportunities with my mentors. I said 'I want to be in court, but I don't want to be your bag carrier. I want to be doing opening statements. How soon can I do it?'

I tried to push and press and get the opportunities as fast and as early as possible. Even today, I look around courtrooms and I may be only woman in the first-chair role. It's very hard to find a lot of first-chair female trial attorneys, though there are definitely more now than in the 1990s.

It's been more subtle than overt. I've had cases in South Georgia where a judge may say 'honey' or something like that. But through it all, I decided I would turn it to my advantage.

In the courtroom, no matter what year it was--the 1990s, 2000, 2010--there have always been a lot of women on juries. So for them to see a woman in court who can be confident and do a major part of the trial, not be second chair or third chair, but be in a lead role--women tend to really like that. As long as you don't rub people the wrong way, where you irritate them or try to be too aggressive or too strong.

It goes back to what you said before, my new favorite word of the day, you calibrate. You have to find a way not to turn people off, especially the women, because as we know, women are especially hard on other women.

When you're dealing with female jurors, you have to make sure most of all that you're coming across in a way that is true to yourself.

You can't try to be the male first chair. You have to be yourself, to be strong and confident, but not forget you are a woman.

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