

Trials MVP: Greenberg Traurig's Lori Cohen

By **Cara Salvatore**

Law360, New York (December 16, 2016, 11:49 AM EST) -- The most intriguing detail of Lori Cohen's \$28 million trial win for Boston Scientific this February wasn't that eye-popping figure; it was a piece of surprise evidence that helped put the trial in her win column and helped make the Greenberg Traurig rainmaker one of Law360's 2016 Trials MVPs.

Yes, the amount at stake — that figure was the amount sought in compensatory damages alone — was quite a lot for one single plaintiff in one pelvic-mesh trial. And Cohen described the win as a big deal for her, even among other marquee work for Archer Daniels Midland and Medtronic over the past 12 months.

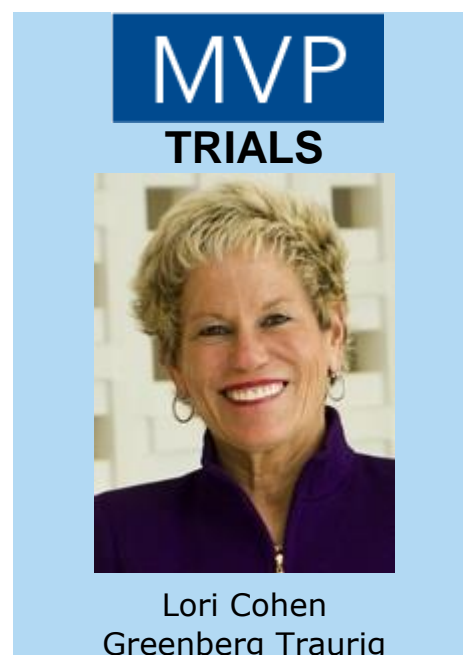
But what really left an impression on Cohen was a January on-the-stand revelation of the kind she says trial litigators rarely see anymore.

The trial centered on Boston Scientific's Solyx device and Bard's Align device. Patient Eve Sherrer said they caused a slew of maladies, including pain, difficulty walking and a "nonfunctional vagina." The defendants blamed doctor error, past surgeries and medical problems for Sherrer's conditions; the implants are safe and still on the market today, they said.

Sherrer knew and had said in depositions that she had a procedure done in 1997. But she couldn't remember the doctor's name or the name of the facility. "We'd been asking for three or four years," Cohen said.

But while Sherrer was on the stand during the plaintiffs' case, Cohen pressed her one last time and Sherrer came up with something: the name of the town — Richardson, Texas.

"We go get our team, and they start calling all the medical facilities in this town to see if they had any old medical records with her name on it from the '90s," Cohen said. "Finally, one facility in this little town in Texas came up with microfiche. Two days later we get the records faxed to us."



The trial had been dragging on, and it was over a week before the defense got to put on one of their key expert witnesses, Dr. Thomas Kennelly. It had always been Kennelly's position, from studying Sherrer's medical records, that the mystery procedure had involved mesh — not just sutures, as Sherrer's lawyers said. More surgeries mean more scarring and potential for problems, Cohen said, and the 1990s mesh was another company's to boot.

When Kennelly went up, Cohen was finally able to surprise the jury with that evidence. Days earlier the records had been nothing but a wish. But those faxed microfiches showed the jury with certainty that the plaintiff had mesh before the Boston Scientific mesh.

It wasn't the single puzzle piece that made the case. But “to have that moment in court in this day and age with full discovery, all of a sudden have this moment of reveal and to have the records still in existence — the stars all aligned,” Cohen said.

Cohen's year also included placement on a trial accusing Archer Daniels Midland of helping one of its salespeople perpetrate a Ponzi-like scheme on grain growers. That settled in the middle of trial while underway in St. Louis Circuit Court, Cohen said.

The pharma and health litigation practice chair and trial practice group chair also does a great deal of work for Medtronic, and a mid-September trial in Richmond (Virginia) Circuit Court, *Stewart v. Medtronic*, ended before it began, with her client dismissed by the plaintiff hours before trial was to start, alongside a “nominal payment,” Cohen said.

“All weekend the plaintiffs' attorney was reaching out to us, trying to get us to resolve the case. The phone was ringing off the hook,” she said.

And is it whiplash when settlements happen as you're sallying into battle?

“If your eye is on the ball and you're very focused on winning, it can be very distracting if you have to step out of that,” Cohen said with a laugh, explaining she leaves it to her team members to break the settlement ice. Eventually, “I end up getting into the discussions ... [but] I don't like to be the first one talking about settlement.”

— Additional reporting by Brandon Lowrey. Editing by Ben Guilfooy.