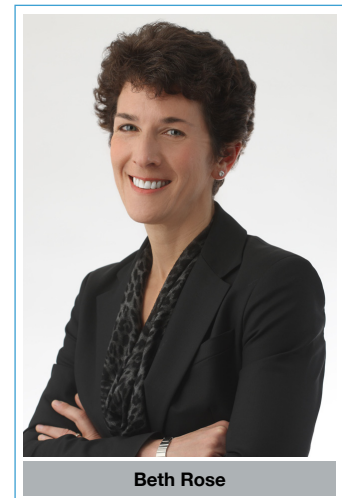


{ Q&A with Sills Cummis' Beth Rose }

Beth S. Rose, Chair of **Sills Cummis & Gross'** product liability practice group, developed her expertise in product liability matters in the late 1980s when she successfully defended a medical device manufacturer in a number of AIDS needle stick and AIDS phobia claims.

Rose has served as national counsel to several pharmaceutical and medical device companies defending mass tort litigation including claims relating to PPA, latex gloves and a generic form of Accutane. She also led the defense of a contract research organization defending claims against a new class of antibiotics. She has successfully defended matters involving a variety of medical devices, consumer products, pharmaceuticals, foods, chemicals and industrial machines, as well as asbestos, mask respirator, silica and benzene claims.



Rose also has experience handling personal injury, consumer fraud and medical monitoring class actions. She successfully represented a pharmaceutical company in a putative nationwide class action involving an anti-arrhythmic cardiac drug. She served as co-chair of the Mass Tort Subcommittee of the ABA Litigation Section's Class Action Committee.

Q: What is the most challenging case you have worked on and what made it challenging?

A: Several years ago, I handled a medical malpractice/product liability case involving the misconnection of a medical device by a medical intern. The misconnection resulted in the death of an 18-month-old child. Plaintiffs sued the doctor, hospital and any manufacturer that made any piece of medical equipment used during the hospital admission. The law in New Jersey, coupled with the fact that the child and her parents were blameless, led to challenging dynamics between and among the parties. Plaintiffs' counsel focused on establishing malpractice against the doctor; the doctor pointed the finger at the products at issue. Conventional rules regarding alliances among defendants fell by the wayside as the manufacturers sought to defend their products in a case where the doctor was clearly at fault.

Q: What aspects of your practice area are in need of reform and why?

A: Forum shopping by plaintiffs. This tactic is particularly prevalent in my home state of New Jersey where plaintiffs routinely dump cases in state court even though their clients reside outside of the jurisdiction and have no connection to the venue. This practice allows plaintiffs to create mini-mass torts in state court when they should be in federal court. Defendants can be prejudiced at trial because plaintiffs' treating physicians and other key witnesses are often beyond the subpoena power of the court.

Q: What is an important issue or case relevant to your practice area and why?

A: The issues raised by the U.S. Supreme Court's ruling in *Pliva v. Mensing*. In *Mensing*, the court found that since the label of a generic drug must be the same as the label of the brand name drug, failure to warn claims against manufacturers of generic drugs are preempted. This ruling formed the basis for motions by generic manufacturers to dismiss not only failure to warn claims, but design defect and warranty claims as well.

A split in the circuit courts has led the court to accept a petition for certiorari on the extent to which *Mensing* impacts non failure to warn claims. Claims against brand manufacturers have been affected as well, as shown by the Alabama Supreme court's recent decision in *Wyeth v. Weeks*, holding that a plaintiff can pursue a claim against a brand manufacturer even though the plaintiff only ingested its generic counterpart. Whether this case signals a trend remains to be seen.

Q: Outside your own firm, name an attorney in your field who has impressed you and explain why.

A: Jim Gray of the Venable firm. In addition to being smart, hardworking, forthright and fair, Jim is a natural leader and mentor. When we worked together on a mast tort, he often said that he was just "herding cats," but he was doing far more than that — he was leading by example.

Q: What is a mistake you made early in your career and what did you learn from it?

A: My biggest mistake early on was to try to adopt the persona of my then mentor, the late Honorable Charles J. Walsh ("Chuck"). Chuck had an exceptional legal mind, but his approach was to be literally "in the face" of an adversary's witness during depositions and trial. This style was quite effective for him, but not so good for me. It took me a few years, but I eventually realized that I was far more effective being myself than a female version of Chuck. I learned the hard way that if you want to attract bees, it is better to use honey than vinegar.