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## Trial Pros: Sills Cummis’ Joseph Fiorenzo

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Joseph B. Fiorenzo is co-chairman of the Sills Cummis & Gross PC litigation department and chairman of the complex business litigation practice group. Fiorenzo has over 30 years of trial experience in a broad range of complex business disputes in both federal and state courts in New Jersey and New York.

As leader of the firm’s complex business litigation practice group, Fiorenzo has handled complex commercial and tort litigation matters for the business community spanning a wide spectrum of subject matters, including corporate and partnership, complex contract dispute, intellectual property matters, complex insurance coverage issues, land use matters and high-stakes probate litigation. He has also been retained by a number of law firms to defend professional liability claims.

Fiorenzo has extensive trial experience, having tried approximately 100 cases to verdict. In addition, he has successfully argued many matters before the Superior Court, Appellate Division and the New Jersey Supreme Court.

Fiorenzo has lectured extensively regarding various aspect of the litigation process, including as an instructor in a number of trial advocacy seminars given by the New Jersey Institute of Continuing Legal Education.

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**Q: What’s the most interesting trial you’ve worked on and why?**

A: I represented a machine tool manufacturing company which filed a suit to enjoin several of its former employees from opening up a competing business, based on an allegation that they had misappropriated plans, drawings and other confidential information. We made an initial application for preliminary injunction, which was denied, which creates a significant hurdle to obtaining final injunctive relief. When



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**Joseph B. Fiorenzo, Esq.**

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the case came to trial, I knew the trial judge had a background, before becoming a lawyer, as a newspaper reporter. The former employees contended that they had created plans and drawings for manufacturing their machine tools, virtually identical to ours, independently without having stolen documents from their former employer. We presented at trial thousands of exhibits comparing the drawings that they “independently” developed to our confidential drawings which demonstrated that the details were virtually identical. We brought in the top experts in the country who established that the likelihood of the two sets of drawings being identical, both as to critical and noncritical items, was in excess of a million to one. The forensic analysis appealed to the judge’s journalistic background and ultimately, upon conclusion of the trial, we were able to obtain a judgment for a preliminary injunction, damages and counsel fees. It was a fascinating and interesting example of the value of circumstantial evidence and the ability to prevail on a misappropriation claim without direct proof of misappropriation.

**Q: What’s the most unexpected or amusing thing you’ve experienced while working on a trial?**

A: I represented a large developer out of Naples, Florida, in connection with a suit against a “hard money” lender who breached various agreements and who we contended fraudulently induced the payment of up-front fees which were wrongfully retained by the lender. Three days into the trial, I was about to have one of the principals of my client’s company testify. He was the key witness in support of our claim and was a very well-polished and articulate businessman. The case was tried in front of a jury and as we walked down the hallway towards the door to enter the courtroom, there were benches outside where the jurors were sitting. One of the jurors was opened to the front page of the New York Times Business Section. I had just learned that morning that there was a press report in the Times suggesting that our witness, who was about to testify, was subject to a criminal investigation for securities fraud. As I walked down the hallway with the witness, it became clear that at least one juror had to be reading the article alleging massive fraud by my key witness who was about to testify. This was one of the most unexpected events that I have ever encountered, which prompted a reevaluation of the claim. A determination was made in light of this revelation to settle the case before the witness took the stand. It was certainly not amusing, but it was probably the most unexpected turn of events I have had in any of the many trials I have participated in.

**Q: What does your trial prep routine consist of?**

A: My trial prep routine consists of assembling a team to assist in various aspects of the case. In my trial prep routine, I focus approximately 70 percent of my time in cross-examination of the critical witnesses in the case. My team puts together direct examination outlines for all of our witnesses and we prepare each of the witnesses for direct. In jury trials, the request to charge is put together two or three weeks prior to the scheduled trial date. Documents are assembled, initially, by an associate working in conjunction with a litigation paralegal. Ultimately, I have learned that cases are typically won, and lost, by the ability to effectively cross-examine the principal witnesses of the opposing side. It requires tremendous time and a command of the record, which is why I delegate very little cross-examination preparation to others, other than preparing deposition summaries of the key witnesses in the case.

**Q: If you could give just one piece of advice to a lawyer on the eve of their first trial, what would it be?**

A: The one piece of advice to a lawyer on the eve of their first trial would be that preparation is everything. A lawyer cannot intuit facts. You must make the commitment of effort and have complete command of the factual record so that it can be retrieved and utilized, on a moment's notice. By doing this, you will inspire confidence in the jury that you are competent and believe in your case. Without conveying this level of credibility to a jury it is difficult to be persuasive.

**Q: Name a trial attorney, outside your own firm, who has impressed you and tell us why.**

A: Paul Rowe, of Greenbaum Rowe Smith & Davis LLP. I have tried cases against him and as co-counsel with him and have always been impressed with his intelligence, hard work and ability to take a complex business issue and make it understandable for a judge or jury. The ability to take a complex fact pattern in a business setting and make it understandable to a layman is a talent very few lawyers possess.