

SUSAN E. COHEN

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POSITION

Partner, Civil Litigation and Trials

EDUCATION

BOSTON UNIVERSITY LAW SCHOOL,
J.D., 1988

UNIVERSITY OF MASSACHUSETTS AT AMHERST
B.A., cum laude, 1983

PREVIOUS PRACTICE AND EXPERIENCE

POSTERNAK, BLANKSTEIN & LUND LLP, Boston, MA
Partner, 1995-2004
Associate, 1989-1995

NEW HAMPSHIRE SUPREME COURT
Law Clerk to Justice William E. Batchelder, 1988-1989

NYNEX INFORMATION RESOURCES
Litigation Law Clerk, 1986-1988

SILVERMAN & KUDISH
Law Clerk, 1985-1986

ELECTRONICS CORPORATION OF AMERICA
N.E. Regional Sales Office, 1983-1985

BAR ADMISSIONS

Massachusetts, 1988
United States District Court, District of Massachusetts, 1989
United States Court of Appeals for the First Circuit, 1989
United States Court of Federal Claims, 2008

DESCRIPTION OF PRACTICE

Civil litigation, including defense of professionals, toxic torts, commercial products, personal injury, wrongful death, premises liability, business practices, employment, insurance coverage and general liability. Extensive experience in dispute resolution, including settlement, mediation, arbitration and, where necessary, trial in state and federal courts.

Ms. Cohen has represented property owners, managers, housing authorities and municipalities in a variety of premises liability matters including lead poisoning, negligent security, sexual abuse, construction, negligent supervision, slip and fall and dram shop claims. She has also represented individuals and corporations in claims arising out of wrongful discharge, business practices, real estate transactions, bad faith claims, consumer and industrial products, asbestos, breast implants, food additives and many other products.

SPEAKING ENGAGEMENTS & PUBLICATIONS

ACI, NY LPL/Legal Malpractice Conference (January 2010)

How Carriers, Law Firms, and Defense Counsel Can Best Work Together to Reduce LPL Risks and Minimize Costs

Boston Bar Association (June 2009)

Thriving in Challenging Times: A Law Practice Toolbox for Solos and Small Firms

Law Governing Professionals', Officers', and Directors' Liability

44 Tort, Trial & Ins. L. J. 679 (2009)

CNA Insurance Company (September 2008, January 2009)

Effective Mediation Techniques ©

Boston Bar Association CLE Seminar (June 2007, June 2008)

Managing the Client Relationship

Lawyer's Protector Plan (March 2007)

Effective Mediation Techniques©

Accredited by:

Texas Insurance Department	2 CE Credits
Florida Insurance Department	2 CE Credits
New Hampshire Insurance	2 CE Credits
Missouri State Bar	2 CLE Credits
Georgia State Bar	2 CLE Credits
Illinois State Bar	2 CLE Credits
California State Bar	2 CLE Credits
Florida Bar	2 CLE Credits

Recent Developments Affecting the Liability of Professionals, Officers and Directors

41 Tort, Trial & Ins. L. J. 651 (2006)

Massachusetts Continuing Legal Education, Personal Injury Basics, Two Day Seminar (May 2006)

Defense View of Initial Stages, Use of Evidence at Trial and Evaluation of Damages

Monitor Insurance Company (January 2006)

Effective Mediation Techniques©

Accredited by:

Texas Insurance Department	2 CE Credits
Florida Insurance Department	2 CE Credits
New Hampshire Insurance	2 CE Credits
Missouri State Bar	2 CLE Credits
Georgia State Bar	2 CLE Credits
Illinois State Bar	2 CLE Credits
California State Bar	2 CLE Credits
Florida Bar	2 CLE Credits

GE Insurance Solutions, The Insurance Leadership Institute Seminar (May, June 2005)

Effective Mediation Techniques©

Accredited by:

Florida Department of Insurance	2 CE Credits
Texas Department of Insurance	2 CE Credits
Kansas State Bar	2 CLE Credits

Missouri State Bar

2 CLE Credits

Boston Bar Association Professional Liability Committee Seminar (2005)

Practical Effects of Proposed SJC Rules Change to Require Attorneys to Report Malpractice Coverage Status

Recent Developments Affecting the Liability of Professionals, Officers and Directors

40 Tort, Trial & Ins. L. J. 705 (2005)

Massachusetts Continuing Legal Education Trial Practice Series:

"Introduction of Evidence at Trial," "How to Take Depositions"

Fireman's Fund Interstate Insurance Group Training Seminar (December 2002)

A Practical Guide for:

1. *Responding to Tender of Claims;*
2. *Handling Unfair or Deceptive Practices Settlement Demands; and*
3. *Taking Recorded Statements.*

TIG Insurance Company Training Seminar (July 2002)

Common Problems in Residential Real Estate Practice

Interstate Insurance Group Training Seminar (1999)

*A Guide to Defending Claims Against Owners and Managers
of Residential Rental Properties and Related Coverage Issues*

Defense of Lead Claims Under the Revised Massachusetts Lead Poisoning Prevention and Control Law (1994)

PROFESSIONAL MEMBERSHIPS AND ACTIVITIES

American Bar Association

Professional Liability Underwriting Society ("PLUS")

Boston Bar Association

Defense Research Institute

Massachusetts Defense Lawyer's Association

APPOINTMENTS AND OFFICES

Meeting House Child Care Association

President, 2001-2002

Treasurer, 2000-2001

Member, Board of Directors, 1999-2000

Massachusetts Board of Bar Examiners, Special Prosecutor

REPRESENTATIVE CASES

Professional and Legal Malpractice Defense

- Attorney/Title Agent Real Estate Closing Error – Defense Verdict

In a case selected by Massachusetts Lawyer's Weekly as one of the "Biggest" Defense Wins of the Year, Ms. Cohen obtained a defense verdict after the closing attorney/real estate title agent admitted liability for closing on and insuring over a residential real estate purchase with an open cloud on title.

At closing, a 1950 subdivision plot plan referenced in the chain of title could not be found on record at the local registry of deeds. Plaintiff claimed damages in excess of \$1 million for lost property costs and value. Plaintiff offered expert witness and other “evidence” supporting claims that, due to defendants’ closing errors, he purchased and improved property which was unmarketable and worthless. Ms. Cohen put in evidence to establish that the real estate title problem was cleared by a confirmatory deed filed five months after its discovery and plaintiff later refinanced his property purchase for a lower rate than had been available while the property title remained clouded such that the plaintiff suffered little or no actual damage as a result of the title problem.

The Court granted Ms. Cohen’s motion for a directed verdict on all counts except negligence claims at the close of plaintiff-buyer’s case. The Jury returned a verdict for the defendants on the negligence claims by answering special questions: “Yes” on negligence and “No” as to whether buyer suffered any harm as a result of the negligence. This result came after highest settlement offer/demands of \$15,000/\$936,000.

- Failure to file suit within applicable statute of limitations – Directed Verdict.

Plaintiff alleged that Defendant attorney missed the statute of limitations for filing a nursing home negligence personal injury claim on behalf of an elderly nursing home resident and her daughter who had witnessed post accident emergency room treatment of her mother. Ms. Cohen revived the mother’s direct claim by establishing that her subsequent death (on unrelated causes) had tolled the statute of limitations and obtained summary judgment dismissing all but the adult daughter’s injury witness bystander emotional distress and loss of consortium claims. Nevertheless, plaintiff maintained settlement demands so far in excess of the witness bystander claim value that the case had to be tried to determine claim value.

Ms. Cohen obtained a defense verdict on the remaining claims at trial by (1) asserting successful objections to plaintiff’s hearsay testimony concerning the underlying nursing home negligence and the expert testimony proffered in the main case to establish nursing home negligence, and (2) persuading the Court to take the case away from the jury and direct the verdict in favor of defendant attorney because plaintiff had failed to prove key elements of the underlying claim, needed to establish that the “case within the case” had merit. See Fishman v. Brooks, 346 Mass. 643, 647 (1986); Brown v. Gerstein, 17 Mass. App. Ct. 558 (1984); Colucci v. Rosen, Slavet, Levenson & Wekstein, 25 Mass. App. Ct. 107 (1987).

- Longest legal malpractice trial – Defense Verdict with fee awards.

Successfully defended lead attorney parties against malpractice counterclaim through 62 day trial in a complex multi-party interpleader action which held a \$9 million underlying case settlement for distribution among five attorney lienholders’ claims for legal work done for a family tort claim group over a 20 year period leading up to the \$9 million settlement and 6 consolidated legal malpractice suits and claims alleging the underlying action should have recovered \$112 million or more but for the various attorneys’ negligence and malfeasance. The attorney parties prevailed by defeating all legal malpractice claims and obtaining fee claims awards of approximately \$2.5 million.

Ms. Cohen handled the medical discovery and defense on behalf of the attorney defense group. She obtained court orders excluding major portions of the complaining parties’ medical records and medical expert testimony from evidence at trial based upon successful motion practice and trial *voir dire* of experts to obtain Daubert-Lanigan rulings excluding testimony and evidence from several medical experts. Ms. Cohen also successfully cross examined the remaining medical experts and fact witnesses at trial leading to favorable fact findings on special juror questions concerning lack of substance and causation as to medical and emotional distress damage claims raised by the complaining parties both in relation to their underlying toxic tort damage claims and subsequent emotional distress claims arising out of their ongoing relationships with various attorney parties.

- Faulty mortgage foreclosure – Defense Verdict.

Ms. Cohen obtained a defense verdict for Massachusetts attorney in Federal Court trial by establishing that even though the Massachusetts attorney failed to follow the proper procedure to foreclose on the out-of-state bank's mortgage in time to avoid City of Worcester's final foreclosure on outstanding tax liens, the bank had equal or better opportunity to avoid the loss if it had only read material contained in attorney's foreclosure information packet. Ms. Cohen had also presented evidence establishing that the underlying foreclosed property value, for a vandalized crack house, was significantly less than the inflated property value which plaintiff bank had submitted. Ms. Cohen succeeded in excluding both plaintiff's written property appraisal and legal malpractice expert's conclusions from evidence at trial.

This was a liability case with disputed damages which Ms. Cohen succeeded in trying to a \$0 defense verdict by making successful evidentiary objections to exclude plaintiff's evidence and then presented creative argument on the merits of the liability claims to transform what could have been a damage valuation trial into a \$0 defense verdict.

Wrongful Death

- Case settled for short money based upon creative legal arguments by Ms. Cohen.

Six-year-old boy rode a snow sled from private alleyway into public street where he was struck and killed by an automobile. Dead boy's estate filed suit against three abutting property owners alleging that they created an attractive nuisance by plowing snow in a manner which promoted sledding down the alleyway into the street and failing to repair a fence which previously stopped snow sleds from sliding into the street. Ms. Cohen successfully asserted claims that the Massachusetts Recreational Use Statute which is usually advanced on behalf of city, town and government actors should be applied to private property owner defendants here and obtained a settlement wherein Ms. Cohen's client paid only \$30K to settle at mediation before the case was prepared for trial.

Lead Paint Poisoning

- Ms. Cohen has a strong track record of providing successful defense to lead poisoning claims made against property owners, landlords, property managers and rent subsidy administrators. She combines specialized knowledge and experience with aggressive discovery designed to uncover information limiting her clients' liability and minimizing the damages, which can be causally linked to lead exposure at her clients' premises. For more than fifteen years, Ms. Cohen has successfully defended many property owners and managers on lead paint poisoning claims and obtained case dismissals and settlement opportunities wherein her clients have paid considerably less than other defendants in similar cases.

COMMUNITY AFFILIATIONS AND ACTIVITIES

Executive Women's Golf Association

Member, Temple Beth Avodah, Newton, MA, 2002-Present

Member, Leventhal Sidman JCC, Newton, MA, 1994-Present