



# Denise Brinker Bense

## Member

## West Conshohocken

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Denise Brinker Bense has a demanding local and national litigation practice which encompasses complex product liability cases with a heavy emphasis on life-science matters for medical device, pharmaceutical and tissue processing companies and hospitals. She represents clients as national and local counsel in mass tort, class action, multidistrict and individual litigation, including claims based on consumer fraud and unfair trade practices.

Denise also represents a broad array of clients in complex and contentious insurance coverage and bad faith litigation matters, locally and nationally. She regularly provides legal advice to firm clients on issues relevant to insurance, risk management, recalls and product liability.

Over the past 28 years she has had gained significant experience before the Pennsylvania, New Jersey, New York, Florida, Georgia and Utah state (and Virgin Islands Territorial court) and federal courts as well as the Third, Fourth and Eighth Circuit Court of Appeals and the Utah Supreme Court.

Denise lectures and writes extensively on litigation, mass tort, multi-district, regulatory and first and third party liability insurance issues. She recently authored a section on "Medical Device Approvals" in DRI's *FDA Basics for the Drug and Medical Device Lawyer*. The book is designed to be a go-to reference guide for drug and device litigators, with straightforward explanations of the FDA's regulation of the drug and medical device industry, including approval applications and processes, labeling, advertising and promotion, manufacturing, and post-approval commitments.

A representative list of her speaking engagements includes the following:

"Motions in Limine," Cozen O'Connor Attorney Training Seminar.

"How to Prepare For A Fact Deposition," Insurer Client Seminar in Ga. and NY and Cozen O'Connor Attorney Training Seminar.

"What a Corporate Designee Needs to Know About 30 (b)(6) Depositions," Insurer Client Seminar in Ga. and NY and Cozen O'Connor Attorney Training Seminar.

"How to Conduct an Appraisal," Numerous Insurer Client Seminars in Pennsylvania, Maryland, New Jersey and New York and Cozen O'Connor Attorney Training Seminar.

"Multiple Claimants and Insufficient Policy Limits" Presentation, Defense Research Institute Insurance Claims and Coverage program in Chicago, April 2013.

"Multiple Claimants and Insufficient Policy Limits" Workshop at PLRB Large Loss Conference in Jacksonville, November 2013.

"The Effect of the Recent Enactment of State Statutory Definitions of "Occurrence" on Construction Defect Claims," Insurer Client Women's Program in Georgia.

"Bad Faith Failure To Settle Time-Limit Demands," Insurer Client Seminars in Boston, New Jersey and Pennsylvania and Cozen O'Connor Attorney Training Seminar.

### Practice Areas

- Bad Faith
- Complex Risk & Litigation
- Professional Liability
- Appellate

### Industry Sectors

- Health Care & Life Sciences
- Insurance

### Education

- Temple University School of Law, J.D., 1981
- Florida State University, B.S., 1977

### Bar Admissions

- Pennsylvania
- New York

### Court Admissions

- U.S. Court of Appeals for the Eighth Circuit
- U.S. Court of Appeals for the Fourth Circuit
- U.S. Court of Appeals for the Third Circuit
- U.S. District Court -- Eastern District of Pennsylvania
- U.S. District Court -- Middle District of Pennsylvania
- U.S. District Court -- Southern District of New York
- U.S. District Court -- Eastern District of New York

### Affiliations

- Defense Research Institute (Products Liability, Mass Torts, and Insurance Committees)
- Montgomery County Child Advocacy Project
- Pennsylvania Bar Association
- Philadelphia Bar Association

### Denise Brinker Bense

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"Update On Bad Faith Third Party Liability," Insurer Client Seminars in Pennsylvania and Delaware and Cozen O'Connor Attorney Training Seminar.

"Investigations Coverage Issues Raised By D&O Policies," Anti-Bribery International Conference.

"Litigating Medical Product/Device Mass Tort, Managing, Controlling and Coordinating Discovery in State and Federal Cases," Several Insurer Client Seminars in Pennsylvania, New Jersey and New York.

"Federal State Coordination in Mass Tort Litigation," Life Sciences Leadership Conference.

"The Case For Considering Science First, "Current Issues in Medical Device Litigation," American Bar Association and Cozen O'Connor Attorney Training Seminar.

"Forming a Captive Insurance Company," Client Seminar and Cozen O'Connor Training Seminar.

## **Experience**

Handled 12 Hurricane Hugo-related property insurance coverage and bad faith cases in St. Croix and St. Thomas, U.S.V.I.

Acted as National coordinating counsel in the multidistrict pedicle screw litigation for a local medical device company.

Prosecuted a large property damage insurance coverage case in Ohio federal court which resulted in a jury verdict of \$30 million.

Defended an asbestos coverage and bad faith action in Ohio state court.

Medical Device Litigation: First chair trial counsel currently defending a national orthopedic manufacturer in Maryland state court.

Hydroxycut Mass Tort and Class Action Litigation: Counsel for manufacturer and distributor in cases assigned to Mass Tort program in Philadelphia with oversight responsibility of cases filed in Hydroxycut litigation filed in New Jersey state court as well and coordination with MDL litigation in California. Involvement in the development and implementation of national eDiscovery strategies (preservation, collection and production) from manufacturers, distributors and retailers.

Asbestos Insurance Litigation in Ohio state court: Counsel for insurance carrier in coverage litigation concerning Owens Corning asbestos claims.

First trial chair in Pedicle Screw case in Utah state court: Jury verdict against defense on one count was overturned on appeal to the Utah Supreme Court.

Pedicle Screw Summary Judgment Victories: Drafted, argued and prevailed in numerous motions for summary judgment and Daubert/Frye challenges in federal and state courts nationwide.

Pedicle Screw Mass Tort and Class Action Litigation: Seminal mass tort which involved multiple complex, cutting edge life science concepts involving off-label use of orthopedic plates and screws in spinal surgery, with focus on federal preemption relating to alleged "fraud on the FDA" and IDEs, 510ks and PMAs, failure to warn and promotion claims alleging violation of Medical Device Act and federal regulations and the application of the Learned Intermediary Doctrine in numerous jurisdictions. Direct responsibilities involved: management, control, oversight and coordination of all discovery and all substantive issues in state and federal courts involving a in firm team and local counsel from six jurisdictions; retention, preparation and presentation of FDA expert; preparation and presentation of fifty corporate designees for deposition; drafted, argued and prevailed against a unique discovery sanctions attempt from plaintiff's bar in the MDL proceedings.

\$30 Million Jury Verdict in Ohio Federal court: Prosecuted property damage insurance coverage case in a 2 ½ month trial.

Hurricane Hugo Insurance Litigation: Counsel for insurance company in coverage and bad faith claims adjustment and litigation filed in the U.S. Virgin Islands, in both Territorial and federal court, relating to condominium property damage in 12 separate condominium complexes. Summary judgment granted in 11 of the 12 cases.

Asbestos Insurance Litigation: National counsel for insurance companies in insurance coverage litigation filed in Texas, Indiana, Ohio and New Jersey state courts relating to thousands of asbestos personal injury.

Human Tissue Mass Tort and Class Action Litigation: Complex matter involving more than 1000 cases filed nationally in multiple jurisdictions involving a criminal scheme by a defunct harvesting company that provided unconsented-to human tissue to tissue processing company for processing. Summary judgment granted, marking the dismissal of a mass tort case on an unique theory of “Science-First” briefing and argument. Primary oversight, management, control and coordination of in firm team and fifteen local counsel firms including the origination of all substantive legal and factual advocacy and discovery including: specific court-appointment as MDL Defense Liaison Counsel with reporting responsibility to MDL court for entire matter; author of framework (including initial submission and oral argument) for “Science First” approach to MDL court, origination of state/federal coordination effort and motion practice and oral argument aimed specifically at dismissal before formal discovery (successfully implemented); chief litigation counsel including preparation and presentation of eleven corporate designees and fact witnesses for depositions and multiple oral arguments on numerous issues; develop and implement national eDiscovery strategies (preservation, collection and production) implementing search terms and sampling; identification and collection of eDiscovery from 70 custodians with oversight and direction of outside vendor and in-house IT staff.

Medical Device Litigation: First chair trial counsel granted summary judgment for a manufacturer in spinal implant case in New Jersey federal court.

Obtained jury verdict for employer in the retail industry by an employee claiming racial harassment.