

About the Author



Pamela Yates is a partner in Kaye Scholer's Los Angeles Complex Commercial Litigation Department. Her primary area of experience is product liability, where her work has included the defense of tort claims involving pharmaceuticals, medical devices, consumer and prescription product recalls, animal health and toxic torts. She has extensive experience in MDL and class action work, and for many years has acted as national coordinating counsel in mass tort cases. She can be reached at pamela.yates@kayescholer.com

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Q&A With Kaye Scholer's Pamela Yates

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

A: In the 20-plus years I have been practicing law, I have worked on many cases that meet the definition of "challenging." These cases regularly involve a combination of science and the law. To work with world-renowned experts and then explain everything to judge and jury, never mind convincing them we're correct on complex scientific issues, is never without challenge.

The most challenging cases tend to involve defending products that are still on the market, where the science keeps changing over the course of the litigation. When the results of a major study set the ball rolling for a mass tort and then 10 years later, that study comes under scrutiny from segments of the scientific community — it can be very challenging. You constantly have to assess your strategy.

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

A: Despite some excellent case law on the standard of admissibility of expert testimony set forth in *Daubert* and its progeny, it remains frustrating when the standard is applied inconsistently, creating uncertainty and confusion. The question is: how can we help resolve

this uncertainty? Should we become more limited in our approach to expert challenges? If we file 50-plus-page motions with hundreds of pages of exhibits, saying the other side only has "junk science," aren't we creating the appearance of "more than just junk?"

Perhaps we can help by taking two steps back and asking, where can we truly win a *Daubert* challenge? We need to then select key issues and carve up the expert claims rather than trying to throw out an entire litigation."

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

A: No doubt about it, *Daubert v. Merrell Dow* (*Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 727 F.Supp. 570 (S.D. Cal. 1989); aff'd 951 F.2d 1128 (1991); 509 U.S. 579 (1993)). *Daubert* set the standard for the admissibility of expert testimony and required judges to become "gatekeepers" in excluding junk science. As a first-year associate, I wrote the summary judgment in that case and attended oral

argument. Twenty-five years later, Daubert remains the cornerstone of our defense in pharmaceutical cases and has been effective in helping me win cases for our clients.

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

A: I have had the privilege of working with two of the top product liability defense lawyers in the country: Charles Goodell of Goodell DeVries in Baltimore and David Dukes of Nelson Mullins in South Carolina. Charlie, David and I tried a case together in 2011 in West Virginia and successfully obtained a defense verdict. David and I tried a second case together in Connecticut in 2012 and, again, obtained a defense verdict.

I admire and respect Charlie and David's courtroom skills and overall strategy. They are the ultimate team players, sharing their extensive knowledge with me. I have learned a lot from both of them and feel privileged to have tried cases with them.

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

A: I never admit to making mistakes — just ask my husband! All joking aside, as a young lawyer, I learned that you need to be careful not to put all your eggs in one basket. For example, if your exposure is to only one mentor, you should take a careful look at that mentor — have they historically supported the advancement and/or promotion of young lawyers? If not, then it is especially important to try to build supportive relationships with other people. While I do not think that anything I did early in my career hurt me, this is definitely something I look back on as an important lesson.

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