

WELLS
ANDERSON
&
RACE LLC
ATTORNEYS AT LAW



L. Michael Brooks Jr.

MEMBER

Education

- University of Denver College of Law, J.D., 1995; Order of St. Ives
- Regis University, B.A., magna cum laude, 1992

Licensure

- Admitted to the Colorado Bar in 1995.
- Admitted to practice before the United States Supreme Court, the 10th Circuit Court of Appeals, and the United States District Court for the District of Colorado

Professional Affiliations and Activities

- Colorado Supreme Court Committee on Civil Jury Instructions, Subcommittee Chair
- Product Liability Advisory Council, Inc.
- St. Thomas More Society of Colorado, President, 2008-Present
- Denver Bar Association
- Colorado Bar Association
- Faculty of Federal Advocates
- Colorado Catholic Lawyers Guild
- Thompson G. Marsh Inns of Court

A Denver native, Mr. Brooks's practice concentrates on trial and appellate litigation in the areas of insurance bad faith defense, product liability, mass torts, insurance coverage, and construction defects.

Mr. Brooks has been active in complex civil litigation on both the trial and appellate levels, particularly in product liability and insurance cases. His insurance practice concentrates on the representation of insurers in complex coverage and extra-contractual litigation arising out of both first- and third-party claims-both in Colorado and on a national basis. He also has primary responsibility for the preparation of summary-judgment motions and motions regarding the admissibility of expert testimony for several clients involved in toxic-tort cases nationwide. He has served as appellate advisory counsel in many product liability trials, developing and arguing pretrial motions, jury instructions, trial briefs, dispositive motions, post-trial motions,

and related pleadings, and in preserving appellate issues. His appellate practice has included diverse cases involving product liability, insurance coverage, public entity liability, and personal injury matters, as well as amicus curiae briefs in the United States Supreme Court, the Circuit Courts of Appeal, and many state courts of last resort regarding the standards governing the admissibility of expert testimony.

Mr. Brooks is listed in Colorado's Super Lawyers for 2015 and 2016.

After graduating from law school, Mr. Brooks served two terms as a law clerk on the Colorado Court of Appeals, serving the Hon. Karen S. Metzger and the Hon. Sandra I. Rothenberg.

Membership

Colorado Supreme Court Committee on Civil Jury Instructions, Subcommittee Chair

Product Liability Advisory Council, Inc.

St. Thomas More Society of Colorado, President, 2008-2011

Denver Bar Association

Colorado Bar Association

Faculty of Federal Advocates

Colorado Catholic Lawyers Guild

Thompson G. Marsh Inns of Court

Defense Research Institute

Special Distinctions

St. Thomas More Award 2012, Catholic Lawyers Guild

Presentations

Co-Presenter, Collecting Pre- and Post-Judgment Interest in Colorado, CLE Presentation (June 2008)

Co-Presenter, Additional Insureds & Public Entities, presentation to the Colorado Public Risk Managers Association (May 2008)

Co-Presenter, Preserving Your Right to Appeal: Essential Trial and Post-Trial Motions in Colorado Civil Practice, CLE Presentation (March 2006)

Co-Presenter, Federal Court Rules for Experienced Paralegals, CLE Presentation (February 2004)

Co-Presenter, How to Litigate Your First Civil Trial in Colorado, CLE Presentation (August 2003)

Co-Presenter, *People v. Shreck*, 22 P.3d 68 (Colo. 2001): Opening the Door for the Kumho Tire Standard to Colorado, presentation to the Colorado Attorney General's Office Criminal Appellate Division (August 2001)

Co-Presenter, Construction Defect Coverage Issues, presentation to the Rocky Mountain Property Claims Association (March 2001)

Presenter, *Kumho Tire Co. v. Carmichael*: Getting More Mileage From Daubert, presentation at the annual meeting of the Defense Trial Counsel of West Virginia (June 2000)

Annual presentations for the Colorado Close-Up Foundation, a civic education organization focusing upon middle school and high school students from across the state (1995-present)

Program Moderator, When Justice is Up to You, educational program regarding the jury system and jury reform proposals as part of a statewide law education conference, Winter 1998

Co-Presenter, What Makes a Good Judge, educational presentation for Colorado middle and high school educators, part of an annual statewide law education conference, Winter 1996

Program Moderator, What Makes a Good Judge: Analyzing Judicial Independence and Judicial Accountability in Colorado, an educational program for Colorado judges, presented at the Colorado Judicial Conference, Fall 1996

Co-Planner and Co-Presenter, Families and the Law: Changing Values, Rights, and Obligations, national education symposium for college and university professors; co-sponsored by the Colorado Supreme Court Committee on Public Education and the ABA Commission on College and University Legal Studies, Spring 1996

Co-Presenter, Moot Court and Mock Trial in the Classroom, educational presentation for Colorado middle and high school educators, statewide law education conference, Winter 1995

Co-Planner and Co-Presenter, Halls of Justice to Halls of Ivy: Law-Related Education in Colorado, educational symposium for Colorado college and university professors, sponsored by the Colorado Supreme Court Committee on Public Education, Fall 1994

Publications

St. Thomas More: Patron Saint of Lawyers & Inspiration to Families, Denver Catholic Register, Sept. 29, 2010

St. Thomas More: Inspiration in the Face of Adversity, Denver Catholic Register, Sept. 30, 2009

Taking Faith Off the Shelf: What It Means to be a Catholic Lawyer, Denver Catholic Register, Sept. 24, 2008

The Current State of Daubert in Business Litigation, Co-Authored with Mary A. Wells, Esq., CLE Materials prepared for use in Defense Research Institute Conference on Business Torts, June 1998, Denver, Colorado

Book Review, "Administrative Law: Principles & Practice," by John H. Reese, Transportation Law Journal, Summer 1995

Representative Cases and Amicus Curiae Briefs

United States Supreme Court:

U.S. Steel Corp. v. Milward, 132 S. Ct. 1002, 181 L. Ed. 2d 734 (2012), denying cert. to Milward v. Acuity Specialty Products Grp. Inc. 639 F.3d 11 (1st. Cir. 2011)

Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999) (Co-Author of brief of amicus curiae)

United States Circuit Courts of Appeal:

Mills v. Prudential Ins. Co. of Am., 513 F. App'x 713 (10th Cir. 201)

Bixby V. KBR, Inc., Nos 13-35513 & 13-35518 (9th Cir.) (Appeal Pending)

Ford Motor Co. v. Clay, 531 U.S. 1044 (2000) (Co-Author of brief of amicus curiae in support of petition for writ of certiorari) (cert. denied)

Rivelli v. Twin City Fire Ins. Co., 359 F. App'x. 1 (10th Cir. 2009)

AE, Inc. v. Goodyear Tire & Rubber Co., 576 F.3d 1050 (10th Cir. 2009)

Cabs, Inc. v. Hartford Fire Ins. Co., 151 F. App'x. 604 (10th Cir. 2005)

Bd. of County Comm'rs v. United States EEOC, 405 F.3d 840 (10th Cir. 2005)

Hulen v. Yates, 322 F.3d 1229 (10th Cir. 2003)

Allison v. McGhan Med. Corp., 184 F.3d 1300 (11th Cir. 1999) (Co-Author of brief of amicus curiae)

Moore v. Ashland Chem., Inc., 151 F.3d 269 (5th Cir. 1998) (en banc) (Co-Author of brief of amicus curiae)

United States District Court:

Smith v. Ford Motor Co. (In re Asbestos Products Liab. Litig. (No. VI)), CIV.A. No. 09-69125, 2011 WL 1539883 (E.D. Pa. Feb. 22, 2011), report and recommendation adopted, MDL 875, 2011 WL 1540124 (E.D. Pa. Apr. 22, 2011)

Seitz v. Adel Wiggins Group, No. 2:09-60004-ER (E.D. Pa. Sept. 17, 2010)

Bigsky, LLC v. Hartford Cas. Co., No. 09-CV-00893-MSK-KLM, 2010 WL 3075575 (D. Colo. Aug. 5, 2010)

Hernandez v. Hartford Fire Ins. Co., No. 05-CV-01605-REB-PAC, 2007 WL 549835 (D. Colo. Feb. 16, 2007)

Bloom v. Goodyear Tire & Rubber Co., No. 05-CV-01317-LTB-MJW, 2006 WL 2331135 (D. Colo. Aug. 10, 2006)

Tepper v. State Farm Fire & Cas. Co., No. 05-CV-01359-RPM, 2006 WL 2265276 (D. Colo. Aug. 8, 2006)

Colorado Supreme Court:

The Goodyear Tire & Rubber Co. v. Holmes, 193 P.3d 821 (Colo. 2008)

Lanahan v. Chi Psi Fraternity, 175 P.3d 97 (Colo. 2008)

AE, Inc. v. Goodyear Tire & Rubber Co., 168 P.3d 507 (Colo. 2007)

Thompson v. Md. Cas. Co., 84 P.3d 496 (Colo. 2004)

Brooks v. People, 975 P.2d 1105 (Colo. 1999) (co-author of brief of amicus curiae)

Colorado Court of Appeals:

Lafarge N. Am., Inc. v. K.E.C.I. Colo., Inc., 250 P.3d 682 (Colo. App. 2010)

Cross Mountain Ranch, LP v. The Goodyear Tire & Rubber Co., No. 06CA2587 (Colo. App. Nov. 8, 2008)

Kreft v. Adolph Coors Co., 170 P.3d 854 (Colo. App. 2007)

Miller v. Hartford Cas. Ins. Co., 160 P.3d 408 (Colo. App. 2007)

Griffin v. State Farm Fire & Cas. Co., 104 P.3d 283 (Colo. App. 2004)

State Farm Fire & Cas. Co. v. Bellino, 976 P.2d 342 (Colo. App. 1998)

Other State Courts:

Ex parte Diversey Corp., 742 So. 2d 1250 (Ala. 1999) (Co-Author of brief of amicus curiae)

Wagner v. Clark Equip. Co., 788 A.2d 83 (Conn. 2002) (Co-Author of brief of amicus curiae)

Price v. Philip Morris, Inc., 848 N.E.2d 1 (Ill. 2005) (Co-Author of brief of amicus curiae)

Donaldson v. Cent. Ill. Pub. Serv. Co., 767 N.E.2d 314 (Ill. 2002) (Co-Author of brief of amicus curiae)

Hyman & Armstrong, P.S.C. v. Gunderson, 279 S.W.3d 93 (Ky. 2008) (Co-Author of brief of amicus curiae)

Goeb v. Tharaldson, 615 N.W.2d 800 (Minn. 2000) (Co-Author of brief of amicus curiae)

Howerton v. Arai Helmet, Ltd., 597 S.E.2d 674 (N.C. 2004) (Co-Author of brief of amicus curiae)

Cassell v. Lancaster Mennonite Conf., 869 A.2d 974 (Pa. 2005) (Co-Author of brief of amicus curiae)

Grady v. Frito-Lay, Inc., 839 A.2d 1038 (Pa. 2003) (Co-Author of brief of amicus curiae)

Whirlpool Corp. v. Camacho, 298 S.W.3d 631 (Tex. 2009) (Co-Author of brief of amicus curiae)

Green v. Smith & Nephew AHP, Inc., 629 N.W.2d 727 (Wis. 2001) (Co-Author of brief of amicus curiae)

Representative Experience

- Participated as trial and appellate counsel in multiple state and federal court multi-plaintiff actions for Fortune 500 product manufacturers.
- Successfully defended appeal to the Colorado Supreme Court resulting in the announcement of a new, defense-favorable legal standard governing the accrual date of prejudgment interest in cases involving claims of latent property damage, resulting in combined savings of over \$1 million to client in two product liability cases.
- Achieved successful Colorado Supreme Court review of a certified question of state law about the choice-of-law rule applicable to prejudgment interest, overruling an 85-year-old precedent and avoiding a potential interest award of up to \$6 million for product-liability client.
- Successfully defended multiple appeals for liability insurance clients regarding the scope of the duty to defend or to reimburse defense costs, resulting in no-liability rulings for clients.
- Co-defense counsel in successful defense of original proceeding in the Colorado Supreme Court resulting in a ruling that the wrongful-death damages cap on non-economic damages applies on a per-claim basis regardless of the number of defendants.
- National defense coordinating counsel for clients in multiple mass-tort product-liability cases, including coordinating motions practice and briefing, discovery responses, deposition coverage, and trial preparation activities in multiple cases across several states, and serving as coordinator for client's central document depository for pattern litigation.
- Authored over 100 motions and briefs for summary judgment and to exclude expert testimony in product-liability and insurance cases in various jurisdictions.

- Authored numerous legal opinion letters and memoranda on complex insurance coverage questions for both insurance companies and insureds addressing the interpretation and application of insurance policy language, with a particular emphasis on general-liability, property, and errors-and-omissions coverage.



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