



Rising Jury Verdicts, Attached Housing Litigation on the Mind for Best Law Firm Attorneys in Commercial Litigation, Construction

MICHAEL RUMMEL | LAW WEEK COLORADO

While Colorado's legal community continues to grow with new firms moving in, established firms growing and a busy year for mergers, it's done little to dilute the quality of legal work being done in the state. More than a dozen firms with a Colorado presence shared their Best Law Firms rankings with Law Week, with recognitions across a wide array of practice areas.

Lisa Bondy Dunn, a partner at Higgins, Hopkins, McLain & Roswell and Law Week's 2024 Barrister's Best Construction Defects Lawyer for Defendants, said that it was an honor for the firm to be recognized for its work representing construction professionals. "Our firm is dedicated to serving the construction industry, with partners having nearly 100 years of collective experience in construction litigation," Dunn told Law Week via email. HHMR was listed in Best Law Firms by Best Lawyers for its work in the construction practice area.

Paul Williams, the co-chair of Shook, Hardy & Bacon's general liability litigation practice group and its Denver managing partner, said the firm was pleased and honored to be recognized as a Best Law Firm in Colorado as it enters its 10th year in Denver. Best Law Firms recognized Shook's Denver office for its work in commercial litigation.

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"We are grateful and appreciate the support of the Colorado business and in-house counsel and are proud to contribute with others in the legal community to the collective efforts to enhance our Colorado home," Williams said.

Commercial Trends

In commercial litigation, Eric Hobbs, a partner in Shook's Denver office, noted that fewer cases are going to trial, but when they do, jury verdicts are growing. He's also seeing an uptick in insurance-related trials.

"In all jury trials this past year in the District of Colorado, plaintiffs prevailed in 58% of civil cases with an average award of \$4.76 million according to the annual report by Magistrate Judge Michael Hegarty," Hobbs said via email.

On the privacy front of commercial litigation, Dan Rohner, a partner in Shook's Denver office, said that his team is leading the defense on dozens of privacy cases. "Plaintiffs are targeting the use of routine website analytics and marketing tools like the Meta Pixel and Google Analytics, alleging that those types of ubiquitous website tools intercept communications between visitors and the website in violation of state and federal law," Rohner said via email.

Rohner noted that the health care industry has been a focus of this litigation, with arguments that data shared by using such technologies violates patient privacy laws. But it isn't stopping there. The issue is now impacting other industries, including manufacturers, retailers and direct service providers.

“Simply put, if your business operates a website visited by consumers, there is a risk that you could someday fall into the crosshairs of these website privacy actions,” Rohner said.

He said his team is also tracking risks associated with the use of artificial intelligence.

“AI technology companies are being sued for purported violations of state privacy and consumer protection laws,” Rohner said. “Plaintiffs claim that the AI companies are wrongfully collecting personal and private information from the Internet to train generative AI tools. Retail companies that use AI Chatbots are being sued for illegally recording and storing conversations.”

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What to Look for in Construction

One area where Dunn is seeing rampant litigation is attached housing, which is seeing a decline in production. She noted companies pursuing those projects are also struggling to secure insurance.

Apartment construction, contrary to attached housing, is on the rise. “Eventually, we will see some of those apartments converted to condominiums, which will likely give rise to disputes about whether the statute of repose is running while the developer owns those apartments,” Dunn said.

Dunn was also monitoring the most recent Colorado legislative session, and she noted that she was tracking two bills in particular. One of the bills would have expanded claims that could be brought under the Colorado Consumer Protection Act and would’ve expanded the statute of repose, which was supported by a plaintiff group.

The second was supported by the Home Builders Association, which aimed to create a right to remedy construction defects and limit the standing of a homeowner’s association to make claims. While the end of the legislative session ended in a status quo on that front with both bills ultimately failing, she said that she expects efforts to continue from both sides to strengthen legislative protections.

While the legislative session ended without much aplomb there, Dunn said that a recent case heard by the Colorado Supreme Court, *In Re Hill Hotel v. Hanover*, which the state’s high court remanded, has potentially significant ramifications. On remand, the court will have to determine whether certain communications were protected by attorney-client privilege.

“The issue presented was whether Hanover’s pre-litigation communications with its outside counsel were privileged,” Dunn said. “The case has widespread implications for attorneys in general, but certainly with regard to the construction litigation community because of the pre-litigation Notice of Claim procedures required under the Construction Defect Action Reform Act.”

“We have already seen the impact of this on our ability to protect communications with expert consultants who are hired pre-litigation,” Dunn noted.

New Legislation Impacting Commercial Litigation

A big change that lawyers on both sides of the aisle will need to be aware of when the new year starts is the increase in limits to noneconomic damages in personal and wrongful death cases, according to Hobbs. The cap will also increase every year for the next five years, being pegged to inflation after.

“It is expected that these changes will increase the damages awards not only in cases that do proceed to trial, but also in settlement demands for a wide range of personal injury cases,” Hobbs said. “This comes on the heels of the Colorado Supreme Court precedent expanding liability for businesses in recent years.”

On a different front, Hobbs noted that the new review rules propagated by the Federal Trade Commission are something that companies and legal professionals need to be aware of.

“These changes are likely to lead to an increase not only in direct consumer litigation for false and deceptive advertising, but also an increase in business-to-business disputes between competitors over similar claims rooted in false or misleading ‘review’ practices,” Hobbs said.

A focus of Rohner’s on the legislative front are the new laws being passed around the country targeting AI and data privacy, including recent Colorado legislation. “Given the expanding use of AI, these types of regulations will impact all manner of businesses and industries,” Rohner said.

He noted the Colorado bills that now treat neural data as sensitive data and new protections for the processing of biometric data. “The latter is a notable deviation from standard privacy legislation.

The restrictions and obligations tied to biometric data even apply in the employment context,” Rohner said.

“Arguably the most significant legislative achievement was the passage of the nation’s first comprehensive AI law, which targets algorithmic discrimination (and chat bots),” Rohner said. But the stakeholders on that bill have said that it’s still a work in progress, with reforms to the bill planned for the 2026 legislative session.

What to Look Out for in Commercial Litigation

Rohner is seeing a shift in class actions, with plaintiff’s counsel asserting claims as mass arbitrations, rather than collective actions in courts.

“In the past, corporate defendants embraced arbitration provisions with class action waivers as a means to limit the risks and costs of multi-plaintiff litigation, and allow companies to more easily address cases on a one-by-one basis,” Rohner said. “Now, plaintiff’s counsel are turning the underlying purpose of such provisions on their head by filing hundreds or even thousands of virtually identical arbitration demands that necessarily require the companies to pay massive amounts for arbitration filing fees.”

He noted that this tactic often forces companies to settle early, because of the scale of the arbitration filing fees, even when the claims are without merit. Rohner recommends companies revisit their arbitration provisions and their commercial rules for their applicable arbiter forum to make sure that a mandatory arbitration benefit is a benefit to the company rather than a burden.

Hobbs is seeing the rising awards in civil cases become more ingrained and firmly rooted as costs rise across the board.

“Businesses face legal threats on many fronts, and it’s more important to have competent counsel at every stage of the process, from the time business decisions are made through the time a case might come to the court system,” Hobbs said. “The risk of being ‘penny-wise but pound-foolish’ is worse than ever.”

High Marks

It was a year full of success for HHMR, Dunn told Law Week.

“On a personal level, I was so pleased to be honored by Law Week Colorado as 2024’s Barrister’s Best Construction Defects Lawyer for Defendants. My partner David McLain was also on the list of The Best Lawyers in America in Construction Law and Litigation. And our firm had two victories at the appellate level, and numerous notable decisions at the trial court level,” Dunn said.

Katie Reilly, a partner and member of the management committee at Wheeler Trigg O’Donnell, told Law Week about a few of the high moments for the firm in the past year. WTO was recognized by Best Law Firms in its commercial litigation practice area.

“Highlights in the past year, to name just a few, include winning a jury verdict for DISH Wireless in a breach of contract claim worth hundreds of millions of dollars, winning a Colorado Supreme Court victory for Denver International Airport in a decades-long series of contract disputes, and winning a jury verdict for an international polo star in a commercial dispute over the high-profile issue of cloning and breeding polo horses,” Reilly said.

Rohner and the Shook privacy team have secured dismissals for their clients on numerous class action privacy-related lawsuits.

“Attorneys from our office have continued their streak of trial and settlement victories on behalf of companies nationwide relating to claims of false and deceptive business practices, trademark infringement and other business torts,” Hobbs said.

Two significant cases he noted are still in the works, one an appeal in the Fourth Circuit for a Charlotte-based client, and a continued defense of a Colorado-based company against claims relating to a corporate reorganization. The trial in the Colorado case is set for early next year.

Honorable Mentions

Law Week also heard from several other firms who were honored in the commercial litigation and construction practice areas. Other firms named as Best Law Firms in those practice areas include:

- Sherman & Howard & Taft – *Commercial Litigation*
- Woods Aitken – *Commercial Litigation and Construction*
- Werge & Corbin Law Group – *Commercial Litigation*
- Robinson Waters O’Dorisio – *Commercial Litigation*
- Ogborn Mihm – *Commercial Litigation and Construction*
- Davis Graham – *Construction*
- Coan, Payton & Payne – *Construction*
- Crisham & Holman LLC – *Commercial Litigation*
- Dickinson Wright – *Commercial Litigation and Construction*
- Michael Best – *Commercial Litigation*
- Kilpatrick Townsend – *Commercial Litigation and Construction*
- Perkins Coie – *Commercial Litigation*