



Theresa Wardon Benz

Partner

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Theresa Wardon Benz represents clients such as Ford, Michelin, and Whirlpool in high-stakes product liability and class action appeals, trials, and litigation nationwide. In 2017, the American Bar Association named Theresa one of the top 40 young lawyers in America in its annual "On the Rise" list.

EDUCATION

Northwestern University School of Law, J.D., 2008, *magna cum laude*

Order of the Coif
Northwestern University Law Review, Senior Articles Editor

Boston College, B.A., 2003, History, *summa cum laude*, with distinction of Scholar of the College
Phi Beta Kappa

GOVERNMENT SERVICE

Law Clerk to The Honorable Neil M. Gorsuch, United States Court of Appeals for the Tenth Circuit

ADMISSIONS

Colorado

HIGHLIGHTS

- Won affirmance of a defense verdict for Michelin in a nine-week product liability trial that WTO won in Florida with \$80 million to \$1.2 billion at stake.
- Drafted a winning amicus brief to the Colorado Supreme Court that helped establish a new rule to determine when a third party's involvement in an attorney-client communication waives the attorney-client privilege.
- Drafted and filed an amicus brief to the U.S. Supreme Court, at the request of Sidley Austin and the Northwestern Supreme Court Clinic, in a matter involving immigration issues with dire consequences for the petitioner.
- Engaged for amicus briefs by the Colorado Civil Justice League, the Colorado Defense Lawyers Association, and COPIC.
- Won a significant product liability appeal for Ford in the Colorado Supreme Court.
- Won "extraordinary remedy" for Ford in the Colorado Supreme Court.
- Won a complete defense jury verdict for Michelin in a nine-week trial in Florida with \$80 million to \$1.2 billion at stake.

INDUSTRIES

- Medical Devices & Pharmaceuticals
- Consumer Products & Services
- Automotive

PRACTICE AREAS

- Appellate
- Class Actions
- Commercial Litigation
- Mass Torts
- Personal Injury Defense
- Product Liability

THERESA WARDON BENZ

BIOGRAPHY

Theresa Wardon Benz represents leading companies in complex commercial, class action, and product liability appeals, trials, and litigation nationwide. In particular, she defends product manufacturers in personal injury, design defect, and consumer class action lawsuits. Theresa has briefed and argued winning appeals in the Colorado Supreme Court and the Colorado Court of Appeals and served on winning trial teams in Arizona, Florida, and Ohio. She recently authored her first amicus brief to the U.S. Supreme Court, at the request of Sidley Austin and the Northwestern Supreme Court Clinic.

In 2017, the American Bar Association named Theresa one of the top 40 young lawyers in America in its annual "On the Rise" list. Additionally, Theresa represents asylum seekers, pro bono, fleeing extreme violence in their home countries. She served on the governing board of The Gathering Place, Denver's only daytime shelter for women, children, and transgender individuals experiencing poverty. Before joining WTO, Theresa clerked for The Honorable Neil M. Gorsuch, then of the United States Court of Appeals for the Tenth Circuit.

CASES

Appellate

- *Dukes v. Michelin* (4th Dist. Ct. App. Fla. 2019) - Won affirmance for Michelin to preserve a defense verdict WTO won in a nine-week product liability trial in Florida with \$80 million to \$1.2 billion at stake.
- *Fox v. Alfini et al.*, 2018 CO 94 (Colorado Supreme Court) - Drafted an amicus brief for the Colorado Defense Lawyers Association in a case that establishes, for the first time, that a third party's involvement in a conversation between an attorney and a client waives the attorney-client privilege, unless the third party's presence is reasonably necessary to facilitate the communication. The Court opinion adopted the defendants' position.
- *Arjune v. State of New York* (U.S. 17-8587) - Drafted and filed an amicus brief to the U.S. Supreme Court, at the request of Sidley Austin and the Northwestern Supreme Court Clinic, in a matter involving immigration issues with dire consequences for the petitioner.
- Engaged for amicus briefs by the Colorado Civil Justice League, the Colorado Defense Lawyers Association, and COPIC.
- *Walker v. Ford Motor Co.*, 2017 CO 102 - Won a significant victory for Ford Motor Co. in the Colorado Supreme Court. The case reestablishes that the risk-benefit test is the appropriate test for juries to assess whether a product has been defectively designed. The Court also held that a manufacturer could not be negligent if it designed a "reasonably safe" product.

THERESA WARDON BENZ

- *Magill v. Ford Motor Co.* (Colo. 2016) - Won a Rule 21 petition (an "extraordinary remedy") for Ford to the Colorado Supreme Court in a case involving general jurisdiction and venue claims. The opinion makes it harder for companies with no connection to Colorado to be sued in the state.
- *Walker v. Ford Motor Co.* (Colo. App. 2015) - Won reversal of a 2013 jury verdict against Ford Motor Co. in a case that alleged strict liability and negligence relating to a rear-end collision in a 1998 Ford Explorer. The Court of Appeals concluded that the application of consumer expectation as a standalone test in Colorado's pattern jury instructions does not comply with Colorado law as established by the Colorado Supreme Court in *Camacho v. Honda Motor Co.* (1987).
- Served as appellate monitoring counsel to a national food distributor in a tractor-trailer accident trial in South Carolina.
- *Schanel v. Ford Motor Co.* (Colo. Ct. App. 2012) - Defended the appeal to the Colorado Court of Appeals of a 2010 jury verdict that WTO won on behalf of Ford Motor Company in an electronic throttle product liability case.

Trials & Litigation

- *Dukes v. Michelin* (Nineteenth Jud. Cir. St. Lucie Cnty. FL 2016) - Won a complete defense jury verdict for Michelin following a nine-week trial in Florida in which the plaintiffs requested damages between \$80 million and \$1.2 billion. WTO attorneys demonstrated that Michelin's tire was not defective, was well-designed and well-manufactured, and had been previously damaged during its service life. The jury found Michelin not liable for the accident.
- *Allen v. Michelin* (Ariz. Sup. Ct. Mohave Cnty. 2015) - Won a unanimous defense verdict for Michelin following a three-week trial in Arizona state court in which the plaintiff demanded \$20 million in actual and punitive damages.
- *Glazer v. Whirlpool* (N.D. Ohio 2014) - Won a complete defense jury verdict for Whirlpool in a \$66 million certified class action trial in Ohio involving allegedly "moldy" washing machines.
- Defeated class certification for Nash Finch (now SpartanNash), a Fortune 500 food distribution company, in claims involving common law fraud, civil theft, and violations of the Colorado Consumer Protection Act stemming from complaints about a specific pricing program in various grocery stores. WTO then obtained summary judgment against the 55 named plaintiffs.
- *Tietsworth v. Sears* (N.D. Cal. 2013) - Defeated a motion to certify a nationwide breach of warranty class in a case alleging that certain Kenmore washing machines contained defective electronic control boards that caused the machines to malfunction.

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Pro Bono

- Successfully appealed a decision by the Office of the Inspector General, Department of Health and Human Services, to impose on WTO's pro bono client, a Navy nurse and corpsman, a mandatory five-year exclusion from working in any federally funded healthcare program, which jeopardized her Navy service. WTO showed why the decision was not warranted or authorized under current statutes. The Inspector General withdrew the exclusion, dropping the case and allowing our client to return to military service.
- Negotiated access rights as part of an entitlement claim in a pro bono effort on behalf of more than two dozen families and landowners in matters relating to a large tract of land originally administered under a land grant dating back to Spanish colonial rule in southern Colorado.
- Represent asylum seekers fleeing extreme domestic violence in their home countries.

REPRESENTATIVE CLIENTS

Ford Motor Company
Michelin North America, Inc.
Skyjack
Whirlpool - National Trial Counsel

BAR & COURT ADMISSIONS

Colorado
U.S. Court of Appeals for the Seventh Circuit
U.S. Court of Appeals for the Tenth Circuit
U.S. District Court for the District of Colorado
U.S. District Court for the Northern District of Illinois
U.S. Supreme Court

LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

American Bar Association's "On the Rise" 2017
Denver Business Journal
40 Under 40, 2016
Colorado Rising Stars
Civil Litigation Defense, 2012-2019
Law Week Colorado
Top Litigators, 2016
Up-and-Coming Lawyers, 2012
Benchmark Litigation
Under 40 Hotlist, 2017-2018
Judge William E. Doyle American Inn of Court
Wheeler Trigg O'Donnell Recruiting Committee
Member
Defense Research Institute

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COMMUNITY MEMBERSHIPS, ACTIVITIES & HONORS

The Gathering Place

Board of Directors, 2012-2018

Law School . . . Yes We Can

Mentor

ARTICLES & PRESENTATIONS

- Co-authored, Colorado chapter of DRI's *Compendium on Warnings, Instructions and Recalls* (February 2019).
- "Emerging Doctrines of Jurisdiction and Their Impact on Automotive Product Liability Litigation: The Aftermath of Bristol-Myers Squibb and BNSF Railway," presented at ACI's Automotive Product Liability Litigation Forum in Chicago (July 19, 2018).
- Co-author, "Reclaiming the Immigration Constitution of the Early Republic: Prospectivity, Uniformity, and Transparency," 96 Va. L. Rev. 359 (2010).

PERSONAL INTERESTS

Running, hiking, skiing, dance, and international travel