



ELLEN E. HERZOG

Partner

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Ellen Herzog handles sensitive and catastrophic torts cases for clients across industries. Her experience includes defending companies in class and mass tort actions and focuses on cases involving alleged physical or sexual abuse. Ellen has significant trial experience across multiple states and serves as the Vice-Chair of DRI's Sexual Torts Defense Committee.

EDUCATION

University of Texas School of Law, J.D., 2011

Georgetown University, A.B., 2005, Government

GOVERNMENT SERVICE

Law Clerk to The Honorable Randy Crane, U.S. District Court for the Southern District of Texas

ADMISSIONS

Colorado
New York

HIGHLIGHTS

- Secured a zero-dollar walkaway settlement from a plaintiff in Boulder County who demanded \$10 million in a civil case following a high-profile alleged criminal assault.
- Won the first medical malpractice defense verdict in Las Vegas, New Mexico in over 35 years.
- Won exclusion of the plaintiff's causation expert and achieved summary judgment in a medical malpractice case.
- Won summary judgment for a correctional healthcare provider and nurse in a medical malpractice case involving endocarditis.
- Achieved exoneration for an oncologist facing sexual assault allegations in Indiana.
- Achieved a complete defense victory for a hospital client and staff by negotiating dismissal with prejudice—with no money paid—of a lawsuit in Colorado state court.
- Won a defense verdict in federal court against \$27 million malpractice and negligence claims involving a subdural empyema.

INDUSTRIES

- Healthcare
- Medical Devices & Pharmaceuticals
- Professional Services

PRACTICE AREAS

- Healthcare Professional Liability
- Product Liability
- Mass Torts
- Employment
- Environmental Litigation
- Commercial Litigation

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BIOGRAPHY

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Before joining Wheeler Trigg O'Donnell, Ellen served as a judicial law clerk to The Honorable Randy Crane of the U.S. District Court for the Southern District of Texas. She is a graduate of the University of Texas School of Law and Georgetown University.

CASES

- Secured a zero-dollar walkaway settlement from a plaintiff in Boulder County who demanded \$10 million in a civil case following a high-profile alleged criminal assault.
- Won the first medical malpractice defense verdict in plaintiff-friendly Las Vegas, New Mexico in over 35 years for a hospital in a \$40 million case involving allegations of failure to diagnose and treat a lung disease which resulted in a patient's death. The jury unanimously found for WTO's client.
- Won exclusion of the plaintiff's causation expert and achieved summary judgment in a medical malpractice case. The victory also led to an award of more than \$40,000 in attorney fees.
- Won summary judgment for a correctional healthcare provider and nurse in a medical malpractice case involving endocarditis.
- Achieved exoneration for an oncologist facing sexual assault allegations in Indiana. After a two-year investigation, the State of Indiana determined that the allegations were unfounded and announced that it was dropping the case.
- Achieved a complete defense victory for a hospital client and staff by negotiating dismissal with prejudice—with no money paid—of a lawsuit in Colorado state court. The case involved highly sensitive criminal and civil claims of post-surgery sexual assault.
- Won a defense verdict in federal court for a hospital and its staff against \$27 million malpractice and negligence claims involving a subdural empyema.
- Represented a New Mexico hospital in 12 cases involving criminal conduct allegations against a psychiatrist.
- Conducted an internal investigation of a hospital employee accused of sexually assaulting two patients in the recovery room following surgery.
- Represented a psychiatric facility in Georgia in a wrongful death case involving a patient who murdered two family members after being discharged.

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- Served as monitoring counsel to an insurance company in nine cases in California involving claims of sexual abuse against a physician.
- Defended an Oregon clinic and multiple healthcare providers against claims of sexual assault alleged to have occurred during an out-patient procedure.
- Won a unanimous defense verdict in a \$55 million trial in eastern Kentucky for a hospital accused of malpractice.
- Won a complete defense jury verdict for a mental health hospital in Virginia. The plaintiff claimed \$32 million in damages arising from an alleged patient-on-patient sexual assault.
- Won a complete defense jury verdict in California for an emergency room doctor in a medical malpractice lawsuit with over \$22 million at stake in damages claims. WTO was called in just 10 days prior to the three-week trial.
- Served as national counsel to a global healthcare company in multidistrict litigation involving over 12,000 claims relating to dialysis products. WTO helped develop national resolution strategy, identified bellwether cases, and negotiated settlement of all claims.
- Obtained dismissal of class action allegations and 15 of 17 claims against Whirlpool in an environmental toxic tort case. Plaintiffs voluntarily dismissed their remaining claims after the court's ruling.

BAR & COURT ADMISSIONS

Colorado

New York

LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

Colorado Super Lawyers

Rising Stars, Professional Liability: Defense, 2022-2023

Rising Stars, Business Litigation, 2020-2021

Program Vice Chair, DRI Sexual Torts Committee, 2022

ARTICLES & PRESENTATIONS

Articles

- "Case Resources to Support Discovery Stay or Deposition Deferral During the COVID-19 Pandemic," (April 2020).
- "Defending Rule 30(b)(6) Depositions In Professional Liability Cases," *An ExecSense eBook*, Digital Thought Leadership, (February 2013).

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Presentations

- "Defending Suicide: Investigating and Defending a High-Profile Event," Kentucky Society of Health Risks Managers, (November 2014).
- "Texting & Social Media in Medicine: A Prescription for Trouble," American Society of Health Risks Managers, (October 2014).
- Presenter, "False Advertising & Marketing in the Healthcare Industry, Marketing Risk," Mountain States Healthcare Risk Retention Group, (May 2014).