

## Tamera Dietrich Westerberg

### Partner

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Denver

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Tammy Dietrich Westerberg is a business litigator who represents clients in the energy, financial services, consumer products, real estate, and cannabis sectors. She guides her clients through thorny legal challenges, including complex contract disputes, competition-related issues, business divorces, consumer fraud, employment, investigations, professional liability, and other business tort claims.

A strong litigator with deep client relationships, Tammy not only knows how to navigate in the courtroom, she understands how her clients' businesses operate. She offers her clients balanced and nuanced advice, backed up by decades of experience. Before turning to litigation, Tammy worked on M&A and other corporate matters and knows how transactional matters can impact commercial litigation.

Tammy's experience includes corporate governance matters, contract and partnership disputes, internal investigations, and litigation and counseling related to consumer protection issues. She brings significant experience representing clients in all aspects of sophisticated and complex commercial litigation, with a particular emphasis on navigating disputes in the Colorado market. She also represents clients in high-stakes contractual disputes as well as competition-related issues, business ownership disputes, consumer fraud, employment conflicts, investigations, professional liability, oil and gas and energy transition litigation, and other business tort claims.

### Representative Experience\*

#### Commercial Litigation

- Won a plaintiff's jury verdict in Denver District Court for an investor in a multimillion dollar breach of contract trial. The case arose out of a mismanaged real estate development project.
- Won a trial verdict for a commercial property management company in a real estate dispute involving a marijuana growing facility. The seven-day trial began in March 2020, was interrupted by the pandemic, and concluded remotely in July 2020.

- Successfully settled \$40 million dispute involving claims for breach of contract, breach of fiduciary duty, defamation and fraud, with no monetary obligation.
- Successfully represented financial services company in various securities investigations.
- Won summary judgment on multiple claims for a national dermatology practice with over 50 offices. Claims included breach of contract, conspiracy, fraud, and other allegations. Once the major claims were dismissed, the plaintiffs agreed to a nuisance settlement that involved no payment by the client.
- Served on a trial team for commercial matters for a large automobile manufacturer.
- Won a motion for temporary restraining order and preliminary injunction related to the sale of pipelines in Mexico against seller's attempt to sell property to third party in Texas.
- Successfully represented a construction materials manufacturer and installer in several commercial contract and construction defect claims.
- Represented a large steel manufacturer in a case filed by the Attorney General of Colorado alleging significant consumer protection act violations and seeking millions of dollars, resulting in minimal damages awarded.
- Represented a large transportation company for several years in its dissolution with a former business partner, and in contract disputes and negotiations with local contracting authorities.
- Secured appellate affirmance of the dismissal of a commercial case involving a bank's leasing division and allegations of consumer fraud.
- Successfully represented a construction management company in a large, public housing development dispute in Texas.
- Successfully represented various entities and individuals in government investigations involving claims of securities fraud, healthcare industry violations, consumer protection violations, and fiduciary violations.
- Represent residential property owners in fraud and breach of contract claims against seller arising out of failure to disclose significant mold and water intrusion before sale.
- Successfully managed settlement negotiations for large financial debt relief company in significant litigation filed by Colorado Attorney General alleging consumer fraud and statutory violations.

## **Employment & Competition**

- Successfully negotiated settlement of a multimillion-dollar dispute arising out of broker-dealer's termination from employment at Fortune 500 company with no monetary obligation. Won affirmance preserving the trial court dismissal of a wrongful termination lawsuit involving the public policy exception to employment at will.
- Successfully tried to a jury an unfair gas pricing case for two locally owned gas station/convenience stores in federal court.
- Represented a private equity company and three individuals involved in the distressed debt industry in a case asserting a multimillion-dollar damage award for alleged misappropriation of trade secrets. The three-year litigation was complex and contentious, involving claims asserting substantial trade secret violations, as well as fiduciary duty, contract, and other tort claims.

- Obtained a preliminary injunction enforcing client's non-competition agreement with a former employee after a two-day hearing in Jefferson County, Colorado.
- Represented an information services company in obtaining a voluntary temporary restraining order and preliminary injunction against two former employees in connection with trade secret, noncompete and other contract-related claims.
- Represented several companies in a variety of industries in enforcing non-compete and non-solicitation provisions in employment contracts, as well as advice and counseling in relation to such provisions.
- Represented a large financial investment firm in connection with claims against a former broker in connection with alleged fraud, fiduciary duty and negligent supervision claims.

## **Oil & Gas**

- Successfully managed settlement negotiations for an oil and gas client facing divergent concerns from two sets of plaintiffs. Worked closely with our client to develop a detailed surface use agreement providing access to underlying resources while also addressing fugitive dust concerns.
- *Belmont v. BP America Production* (D. Wyo. 2015) – Defeated class certification for BP in a natural gas royalties underpayment case heard in federal court in Wyoming.
- Represented BP in several class actions involving underpayment of royalties and other contractual disputes.
- Won a reversal from the Tenth Circuit in favor of BP in a case alleging underpayment of royalties.

## **Legal Malpractice**

- Successfully represented several lawyers and law firms in nine different actions involving complex allegations of professional negligence in various issues, including contract, fiduciary duty, fraud, consumer protection, and others.
- Obtained a complete dismissal and an award of attorneys' fees in a legal malpractice case involving several defendants and other claims of defamation and campaign violations.
- Successfully resolved a professional liability case involving a contested dissolution action without any lawsuit or monetary settlement. The putative plaintiff was seeking over \$30 million in damages.
- Successfully resolved a professional liability action involving complex real estate transactions, allegations of fraud, and breach of fiduciary duties.
- Represented an international law firm and lawyers in a multidefendant action involving claims for professional negligence, constitutional and statutory violations, and conspiracy among private entities, individuals, and governmental entities and representatives, arising out of a public-private partnership and contract.
- Represented a Canadian law firm in a professional negligence action against several defendants arising out of failed securities transactions.

*\*Matters handled prior to joining Foley*

## **Awards and Recognition**

- *The Best Lawyers in America*®
  - Commercial Litigation, 2017-2024
  - Legal Malpractice Law – Defendants, 2021-2023
- *Colorado Super Lawyers*
  - Business Litigation, 2017-2022
  - Top 50 Women, 2015-2022
  - Top 100, 2018-2022
  - Professional Liability Defense, 2013-2016
- Colorado Rising Stars 2009-2011
  - Business Litigation, 2009-2011
- Benchmark Litigation
  - Future Star – Colorado, 2015-2018, 2020, 2022
- *Law Week Colorado* – One of Six Top Women Lawyers of 2015

## Affiliations

- American Bar Association
- Colorado Bar Association
- Colorado Women's Bar Association, CWBA's Circle of Minerva
- American Bar Foundation, Fellow
- Denver Bar Association

## Sectors

- [Energy](#)
- [Health Care & Life Sciences](#)
- [Innovative Technology](#)
- [Manufacturing](#)

## Practice Areas

- [Business Litigation & Dispute Resolution](#)
- [Energy Litigation](#)
- [Labor & Employment](#)
- [Litigation](#)

## Education

- University of Denver Sturm College of Law (J.D., 1998)
  - *Law Review*, General Editor
  - American Jurisprudence Award, Constitutional Law I & II
- Whittier College (B.A., 1992)
  - Political Science
  - Minors in Music Performance and Psychology

## **Admissions**

- Colorado
- U.S. Court of Appeals, 10th Circuit
- U.S. District Court, D. Colorado
- International Association of Defense Counsel (IADC)
- Defense Research Institute
- American Inns of Court
- University of Denver Sturm College of Law Alumni Council