

# LAW WEEK

## COLORADO

Our Lawyers of the Year for 2014 have at least one thing in common: success. Victories came as attorneys won individual cases or brought about statewide reform, and one attorney embarked on a significant new job while another departed triumphantly from an old one. Across the board, these are attorneys to keep an eye on in 2015.

## Malpractice Master

By **Hannah Garcia**  
LAW WEEK COLORADO

CAROLYN FAIRLESS WAS raising a glass with her client when she saw the proverbial icing on the cake — a judge's order directing the plaintiff to literally pay for the jury's lunch.

"It was a nice little cap to the day we were having," Fairless said.

It was her second trial within five weeks this past summer, both dealing with complicated legal malpractice suits against two separate law firms. She won both.

"I had all of a week between the two trials, which actually worked out great," Fairless, a managing partner in Wheeler Trigg O'Donnell's Denver office, said. "I just kept going and never really ratcheted down before the second trial."

While it's not unusual for a lawyer to have two trials scheduled back-to-back, it is somewhat uncommon for both to proceed all the way to a jury's deliberation without a settlement or summary judgment, according to Fairless.

In the first trial, Fairless also won a complete defense verdict for an international law firm accused of negligence, breach of fiduciary duty and fraud in a case where the plaintiff sought \$3 million in damages.

The case involved an inventor who suffered brain trauma before hiring Fairless' client in a patent infringement suit. The inventor sued his lawyers, claiming their negligence resulted in a lower settlement. The jury rejected all of the plaintiff's claims after a two-week trial in a U.S. district court.

The second trial, the latest installment in a flurry of lawsuits, involved claims of a conflict of interest against Fairless' client. The case centered on a \$31 million asset sale and a dysfunctional family business that saw relatives and partners bring legal complaints against each other. Eventually, the plaintiffs began suing their lawyers, according to Fairless.

The jury found for the defense on all claims in July, including Fairless' client's counterclaim for unpaid legal fees. For both trials, Fairless and her team focused on plaintiffs' motivations for bringing the complaints because, in her and both juries' opinion, there were no legal mistakes to defend.

"We had two very different presentations for trials, but one common theme in both of the cases was that the lawsuits were not really about what the lawyers did or did not do," Fairless said. "The lawsuits were about the plaintiffs and the reasons they filed the complaints, which in our opinion had nothing to do with the lawyers making any mistakes."



CAROLYN FAIRLESS | LAW WEEK PHOTO ALI BIBBO

Not long after the victories, Fairless was pegged by Benchmark Litigation as one of the Top 250 Women in Litigation, calling her a "lawyer's lawyer." Since one of her main focuses is legal malpractice defense, that description can be taken literally.

Fairless is part of a three-member executive management team at WTO that has overseen additions to the client pool in 2014, including AIG and DISH Network, and expanded office space by 25 percent and hired 14 new lawyers. She also donates pro bono hours to the Eating Disorder Foundation of the Rockies and served as president of the Foothills Animal Foundation.

Despite her successes, Fairless is familiar with the privileges women in law miss as they fall into the gender gap.

"The law in general is still a male-dominated profession when you look at the partner ranks despite the fact that more than 50 percent of law school graduates are women," Fairless said. "I think there's this perception, particularly in litigation, that women in law need to be bulldogs to be effective, but you can still be amiable and professional while being a phenomenal lawyer."

Her legal victories weren't confined to courtrooms. Fairless tallied five dismissed lawsuits through dispositive motions this year, with some complaints involving millions of dollars in claims. In April, she successfully sought dismissal by arguing that the plaintiff in a legal malpractice case was not entitled to a lien in the case.

Four months later, another case was dismissed when Fairless asserted that the plaintiff in another professional liability case was not entitled to damages. She won a summary judgment in a September bankruptcy proceeding and last month got a dismissal in an insurance bad-faith suit and another legal malpractice case in which her clients were accused of fraud and conspiracy.

"I tell people I do God's work, which is representing lawyers," Fairless said. "It's very hard, when you're a professional, to be accused of making a mistake. It's not just about the money, it's about the reputation and the esteem in which you hold yourself. In my experience, it's the better lawyers that take getting sued the hardest."

When you're an attorney, "it can be an extraordinarily difficult thing to have your name on the caption as a party, and not as a lawyer," she said.

When she's not in the courtroom or the office, she's taking care of two rescue dogs with her longtime partner, Mike Villano, and the couple may add more to their pack. In March, Mike flew to Texas, rented a car and drove their newest adoption from a local humane society back to Colorado.

The highest number of dogs she's owned at one time is four, but she suspects that record will likely be broken at some point.

"I think there's a better than nominal chance that at some point in time, I'll come home and Mike will have plane tickets to Texas to go pick up another one or two dogs," Fairless said with a laugh.

Fairless is leading an appeal for the state Supreme Court with arguments expected next year in a case regarding whether lawyers owe duties to non-client beneficiaries.

She has seven to eight trials slated for next year, including two scheduled within a few weeks of each other next summer, leaving open the vague possibility of repeating her victories from this year.

"I'll just make it a tradition," Fairless said. •

—Hannah Garcia, HGarcia@CircuitMedia.com