Wheeler Trigg O'Donnell

Malcolm E. Wheeler

Counsel Emeritus

WHEELER@WTOTRIAL.COM

303.244.1870

Malcolm Wheeler (Mal) is known for his long history of civil defense victories, especially in product liability, intellectual property, and class action lawsuits. Mal has served as national trial counsel for Ford, Pfizer, and Nissan, and national class action counsel for Whirlpool. In 2000, he won for Honda before the U.S. Supreme Court in a case that established the standard for federal preemption arguments in airbag litigation.

Mal has defended manufacturers at trial in several highly publicized cases, including the Ford Pinto criminal case, the damages trial in the Kearns windshield-wiper patent case, the first "no airbag" case tried to verdict, the first defective airbag case tried to verdict, and cases in the medical device, pharmaceutical, chemical, automotive, and appliance industries. He has served as national trial counsel for Ford, Pfizer, and Nissan, and as national class action counsel for Whirlpool. Mal has briefed and argued cases in the United States Supreme Court and in multiple United States Courts of Appeals and state appellate courts throughout the country.

Mal is an elected Fellow in the International Academy of Trial Lawyers and in the American College of Trial Lawyers. In 2010, *Product Liability Law360* named him one of the 10 most admired product liability lawyers in the United States. For several years beginning in 2010, *Chambers USA* named him one of only three nationwide "star individuals" in product liability.

Mal has appeared on the *Colorado Super Lawyers*® Top 10 list multiple times and was the "top point getter" in 2010 and 2011. In 2011, Mal was featured on the cover and profiled in the annual publication.

Mal has been the designated media representative for several Fortune 500 companies in connection with major litigation. In that role, he has appeared on nationally broadcast television programs, including ABC's 20/20, CNN's Burden of Proof, Dateline NBC, and 90 Minutes (a European news show), as well as nationally broadcast radio programs.

Top 10 Most Admired Product Liability Lawyers Nationwide

– Law360

Credentials

Education

Stanford Law School, J.D., 1969, *Stanford Law Review*, Editorial Board

Massachusetts Institute of Technology, S.B., 1966

GOVERNMENT SERVICE

Chief Counsel, United States Senate Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice (ABSCAM), 1982

LEGAL MEMBERSHIPS

American College of Trial Lawyers
Fellow

International Academy of Trial Lawyers
Fellow

The Tenth Judicial Circuit Historical Society
Board Member, 2007-2010

American Bar Association

Colorado Bar Association

California Bar Association

American Law Institute
Restatement of the Law Third, Torts
Adviser, Concluding Provisions
Adviser, Apportionment of Liability
Adviser, General Principles
Adviser, Liability for Physical and Emotional Harm
Members Consultative Group, Products Liability
Restatement of the Law, Liability Insurance Members Consultative Group

RECOGNITION

Chambers USA
Product Liability - Nationwide, 2005-2018
Star Individual, 2010-2013
Leading Individual, Automobile, 2010-2014
Litigation: Trial Lawyer - Nationwide, 2013
Commercial Litigation - Colorado, 2005-2024

Benchmark Litigation
Top 100 Trial Lawyers in America - 2015-2017
Commercial Litigation - National, 2011-2018
Commercial Litigation - Colorado, 2011-2018
Products Liability - National, 2012, 2014-2016
Products Liability - Colorado, 2013-2018

BTI Consulting
Client Service All-Star, 2011, 2013

The Legal 500 United States
Leading Lawyer, Litigation: Product Liability and Mass Tort Defense, 2007- 2013, 2015

The Best Lawyers in America
Denver Product Liability Litigation - Defendants Lawyer of the Year, 2018, 2021, 2024
Denver Personal Injury Litigation - Defense Lawyer of the Year, 2012
Commercial Litigation, 2018-2027

Personal Injury Litigation - Defendants, 2003-2027
Product Liability Litigation - Defendants, 2003-2027

The National Law Journal
Top 10 Trial Lawyers, 1998

Product Liability Law360
Most Admired Product Liability Lawyer, 2010

Product Liability Advisory Council
John Raleigh Lifetime Achievement Award, 2008

Colorado Super Lawyers
Personal Injury Defense: Products, 2022-2026
Civil Litigation Defense, 2006-2019, 2021
Top Point Getter, 2010, 2011
Top 10, 2008-2014
Top 100, 2008-2017

Law Week Colorado
"People's Court" Best Class Action/Mass Tort Defense Lawyer, 2011
Product Liability Lawyer of the Year, 2008

Who's Who in America
1987-2011

Who's Who in American Law
1998-2011

Who's Who in the West
1996-2012

Who's Who Legal
Litigation 2011-2017

The International Who's Who/Lexology Index of Product Liability Defense Lawyers
1997-2011, 2013-2017, 2024

The International Who's Who/Lexology Index of Life Sciences Lawyers
2008-2016, 2024

The International Who's Who/Lexology Index of Business Lawyers: Commercial Litigation
2011, 2013-2016, 2024

Euromoney's Expert Guides
Litigation and Product Liability

Product Liability Advisory Council

Martindale-Hubbell AV® Peer Review Rated*

BAR AND ADMISSIONS

California (Inactive)
Colorado
U.S. Supreme Court
U.S. Court of Appeals, 3rd Circuit
U.S. Court of Appeals, 4th Circuit
U.S. Court of Appeals, 6th Circuit
U.S. Court of Appeals, 7th Circuit
U.S. Court of Appeals, 8th Circuit
U.S. Court of Appeals, 9th Circuit
U.S. Court of Appeals, 10th Circuit
U.S. Court of Appeals, D.C. Circuit
U.S. Court of Appeals, Federal Circuit
U.S. District Court, D. Colorado
U.S. District Court, E.D. Michigan
U.S. District Court, E.D. Texas
U.S. District Court, E.D. Wisconsin
U.S. District Court, N.D. Illinois

ARTICLES AND PRESENTATIONS

Co-Author, "Litigation Financing: Balancing Access with Fairness," 13 J. Tort Law 2.

"A Look Through Tinted Glass: What Does the Future Hold for Preemption in Motor Vehicle Litigation?," Prod. Safety Liab. Rptr., Vol. 39, No. 20.

"The Trial of Class Actions," presented at Product Liability Advisory Council.

"The Changing Face of Preemption in Product Liability Actions," presented at American Bar Association's Emerging Issues In Motor Vehicle Product Liability Litigation.

"Preemption in Pharmaceutical Cases," presented at Association of American Law Schools.

Presenter, "Defending Against Punitive Damages Before and During Trial," DRI Masters of Product Liability Litigation Conference.

Presenter, "Using FDA Pronouncements to Defend Product Liability Claims," DRI Drug and Medical Device Conference.

Presenter, "Punitive Damages: How Much, How Far, What Conduct and Where Committed," The Network of Trial Law Firms' one-day Litigation Management SuperCourse.

Presenter, "Legal and Tactical Evidentiary Issues in Punitive Damages Cases," 2002 Annual Litigation Institute.

"Choice of Law: Little-Recognized Punitive Damages Issues," Leader's Prod. Liab. L. & Strategy, at 1.

"Product Liability Aspects of the Risks of Technological Change," 25 Can.-U.S. L.J. 137.

"How Now, Daubert: Dilemma About Application," Leader's Prod. Liab. L. & Strategy, at 1.

"Honda Motor Co. v. Oberg: A Guide for Punitive Damages Reform," Prod. Liab. Advisory, at 8.

"Defendants Confront Onerous Pretrial Tactics," Leader's Prod. Liab. L. & Strategy, at 1.

"Strict Liability in Design-Defect Cases: A Doctrinal Structure in Need of a Foundation," Wash. Legal Found. Legal Studies Division.

"The Need for Narrow Tort Reform: Abolishing Strict Liability, in Product Liability Reform: Debating the Issues," K. Chilton ed.

"A Proposal for Further Common Law Development of the Use of Punitive Damages in Modern Product Liability Litigation," 40 Ala. L. Rev. 919.

"Comment on Landes's and Posner's Positive Economic Analysis of Products Liability," 14 J. Legal Stud. 575.

"Pre Dismissal Notice and Statutes of Limitations in Federal Class Actions After American Pipe & Construction v. Utah," 48 S. Cal. L. Rev. 771.

"The Use of Criminal Sanctions to Regulate Product Safety," 13 J. Legal Stud. 593.

"Manufacturers' Criminal Liability," Chapter 1B in L. Frumer & M. Friedman, Products Liability.

"A Comment on Recent Developments in Judicial Imputation of Post-Manufacture Knowledge in Strict Liability Cases," 6 J. Prod. Liab. 127.

"The Constitutional Case for Reforming Punitive Damages Procedures," 69 Va. L. Rev. 269.

"Product Liability: Civil or Criminal," 17 Forum 250.

Enforcing Product Safety: A Maze of Legal Issues and Ramifications, Nat'l L.J.

Manufacturers: Wrong Targets for Threat of Criminal Sanctions?, Nat'l L.J.

Cost-Benefit Analysis on Trial: A Case of Delusion and Reality, Nat'l L. J.

The Public's Costly Mistrust of Cost-Benefit Safety Analysis, Nat'l L.J.

"In Defense of Economic Equal Protection," 22 U. Kan. L. Rev. 1.

"Parole Eligibility for Prisoners Serving Consecutive Sentences in Kansas: A Comment," 21 U. Kan. L. Rev. 167.

"The Statute of Limitations for Antitrust Damage Actions: Four Years or Forty?," with Robert J. Jones, 41 U. Chi. L. Rev. 72.

"Antitrust Treble-Damage Actions: Do They Work?," 61 Cal. L. Rev. 1319.

"Toward a Theory of Limited Punishment II: The Eighth Amendment After Furman v. Georgia," 25 Stan. L. Rev. 62.

"Toward a Theory of Limited Punishment: An Examination of the Eighth Amendment," 24 Stan. L. Rev. 838.

"Some Observations on Tie-Ins, the Single-Product Defense, Exclusive Dealing and Regulated Industries," 60 Cal. L. Rev. 1557.

"A Reexamination of Antitrust Law and Exclusive Territorial Grants by Patentees," 119 U. Pa. L. Rev. 642.

"Toward the Peaceful Modification of Treaties: The Panama Canal Proposals," 21 Stan. L. Rev. 938.

"Judicial Enforcement of Contract-Arbitration Agreements," Note, 21 Stan. L. Rev. 673.

OTHER EXPERIENCE

Skadden, Arps, Slate, Meagher & Flom
Partner

Hughes Hubbard & Reed
Partner

Parcel, Mauro, Hultin & Spaanstra, P.C.
Director

TEACHING POSITIONS

University of Iowa College of Law
Professor of Law, 1978-1979

University of Kansas Law School
Associate Professor of Law, 1971-1973
Professor of Law, 1973-1974 and 1981-1983

National Institute for Appellate Advocacy

Annual Advocacy Institute

Appellate Judges Conferences

CLE Programs

Practices

Antitrust
Appellate
Catastrophic Injury
Class Actions
Commercial Litigation
Mass Torts
Product Liability

Cases

Defeated certification of a multistate class action in Arkansas federal court involving claims that certain Whirlpool-made refrigerators were defective.

Won an 88% reduction in the appeal of a punitive damages award in a case tried by another firm.

Won a unanimous defense verdict in California Superior Court for Nissan in a lawsuit involving a claim that an allegedly defective seat system resulted in the plaintiff's quadriplegia following a horrific car crash.

Assisted a biotech company in an appellate briefing before the Federal Circuit, resulting in reversal of an adverse summary judgment and remand to the state court where our client had filed the complaint.

Won Colorado Supreme Court reversal of a unanimous court of appeals ruling in a case of national importance to the insurance industry. In its ruling for Travelers, the Court held that the "notice-prejudice rule" does not apply to "no-voluntary-payment" provisions in insurance policies. This was our fifth consecutive, fully-argued victory before the Colorado Supreme Court in two-and-a-half years. Law360 named Stresscon one of the top five insurance rulings of 2016.

Argued and won a U.S. Supreme Court victory for Honda in a precedent-setting case involving federal preemption standards as applied to airbags in the automotive industry.

Won a New Hampshire "no airbag" trial for Ford before getting all no-airbag cases held preempted in Geier in the U.S. Supreme Court.

Won reversal by the Ninth Circuit of verdict for plaintiffs in a defamation action against Howard Hughes by the fired head of his Nevada operations.

Successfully defended Ford Motor Co. against criminal charges of reckless homicide in the design of the Pinto automobile.

Successfully defended the first "no-airbag" case tried to a verdict.

Successfully defended the first airbag fatality case tried to verdict.

Obtained a defense verdict in a fire fatality case alleging design defects in appliance.

Won exclusion of a star expert for the plaintiffs in antidepressant suicide litigation and won summary judgment for Pfizer in federal court in Kansas in a case alleging that the company's antidepressant led to the suicide of a minor.

Obtained summary judgment for Pfizer in a case alleging wrongful death, failure to warn, and other claims involving the company's popular antidepressant, and won on appeal in the Ninth Circuit.

Won reversal in Tenth Circuit of plaintiff's verdict; case settled in hip implant case.

Won affirmance in the Tenth Circuit of summary judgment on federal preemption grounds.

Directed verdict on manufacturing defect; hung jury; case settled.

Won dismissal of no-airbag case by Ninth Circuit on federal preemption grounds.

Won dismissal of no-airbag claim on federal preemption grounds in the Michigan Court of Appeals.

Won affirmance by the Texas Court of Appeals of a lower court decision granting summary judgment to Ford on federal preemption of a no-airbag claim.

Won dismissal on federal preemption grounds in a no-airbag case.

Lebouef v. Ford - Favorable decision on federal preemption grounds in a no-airbag case.

Wolfe v. Ford - Favorable decision on federal preemption grounds in a no-airbag case.

Barnhill v. Ford - Won a favorable decision on federal preemption grounds in a no-airbag case.

Turnquest v. Ford - Favorable decision on federal preemption grounds in a no-airbag case.

Hubbard v. Ford - Favorable decision on federal preemption grounds in a no-airbag case.

Waters v. Ford - Favorable decision on federal preemption grounds in a no-airbag case.

Won summary judgment on federal preemption grounds on inadequate warning labels claim.

Won summary judgment from the district court in a design defect case. When plaintiffs appealed, the Court of Appeals affirmed in part, reversed in part, and remanded.

Defeated class status and a recall attempt against Nissan in a putative class action involving airbags.

Won an appeal for Pfizer in a groundbreaking preemption case before the Third Circuit.

Obtained dismissal with prejudice of plaintiffs' class action allegations in a putative nationwide class action alleging that more than one million of Whirlpool's refrigerators were defective.

Obtained summary judgment for Pfizer on preemption grounds in a case alleging that a popular antidepressant caused suicide.

Won a reversal and a new trial on the punitive damages phase of a product liability case originally tried by another firm. Persuaded the second jury to award only one-third of the amount awarded in the initial trial.

Defended Ford Motor Co. in a four-month certified class action trial involving $2 billion in consumer fraud claims. On the day set for closing arguments, the plaintiffs agreed to a no-cash, coupon-based settlement for the California class and classes in three other states with pending parallel actions.

Won favorable decision on federal preemption grounds in a no-airbag case.

Angelopolus v. Ford - Won a favorable decision on federal preemption grounds in a no-airbag case.

Martin v. Ford - Won a favorable decision on federal preemption grounds in a no-airbag case.

Teitloff v. Valcon Materials - Won a favorable decision on federal preemption grounds in a no-airbag case.

Winters v. Ford - Won a favorable decision on federal preemption grounds in a no-airbag case.

Wright v. Ford - Won a favorable decision on federal preemption grounds in a no-airbag case.

© 2026 Wheeler Trigg O'Donnell LLP. All Rights Reserved