



## BRIAN S. OSTERMAN

Partner

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**Brian Osterman strategically leads clients through catastrophic medical malpractice and complex commercial matters. He has experience winning as a first chair medical malpractice trial lawyer, and he has also won early in litigation for clients facing high-exposure claims in challenging jurisdictions. Brian regularly takes on difficult cases—and achieves favorable outcomes—when prior strategies have not produced desirable results.**

### EDUCATION

Notre Dame Law School, J.D., 2011, *cum laude*

Boston College, B.A., 2008, Political Science, *cum laude*

### OTHER EXPERIENCE

Martin Clearwater & Bell LLP  
United States Attorney's Office,  
Western District of New York,  
Summer Clerk

### ADMISSIONS

Colorado  
New Mexico  
New York

### HIGHLIGHTS

- Won \$33M Jury Defense Verdict for Doctor
- WTO Secured Historic \$1.1 Million Pro Bono Settlement for Inmate
- Successfully defended a corporate client facing a multitude of claims including breach of contract, unjust enrichment, civil theft, piercing the corporate veil, and the claims under the Colorado Consumer Protection Act. WTO utilized early motion practice to eliminate all but one of the plaintiff's claims, which the plaintiff then dismissed for nuisance value.
- Following a successful trial, achieved favorable resolution for a client in a capacity to contract case.
- Successfully defended multiple physician clients in a high-exposure wrongful death case against a nationally recognized plaintiffs' attorney. WTO's strong expert witness development allowed us to attain favorable resolution for our clients at a fraction of the plaintiff's multimillion-dollar demand.
- Handle board matters for physician clients before the Department of Regulatory Agencies and Colorado Medical Board.
- Successfully defended a healthcare client facing multiple claims, including treble damages. After WTO's successful motion to dismiss resulted in the dismissal of all but one claim, WTO was able to resolve the sole remaining claim for nuisance value.

### INDUSTRIES

- Healthcare
- Professional Services
- Insurance
- Construction & Engineering

### PRACTICE AREAS

- Commercial Litigation
- Appellate
- Healthcare Professional Liability
- Catastrophic Injury Defense
- Pro Bono

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## BIOGRAPHY

Brian Osterman strategically leads clients through catastrophic medical malpractice and complex commercial matters. He has experience winning as a first chair medical malpractice trial lawyer, and he has also won early in litigation for clients facing high-exposure claims in challenging jurisdictions. Brian regularly takes on difficult cases—and achieves favorable outcomes—when prior strategies have not produced desirable results.

In addition to his professional liability practice, Brian represents healthcare facilities, long-term care facilities, and assisted living facilities in personal injury and commercial litigation matters. He also defends recreation industry clients in cases involving personal injury and wrongful death.

Brian brings particular knowledge to medical malpractice cases in the state of New Mexico. He understands the complexities of the state's unique legal landscape, and is skilled at representing clients across a range of malpractice and professional negligence cases.

Prior to joining WTO, Brian spent five years as an associate at a New York litigation firm.

## CASES

### Medical Malpractice & Professional Liability

- Won a jury defense verdict for a tele-neurologist in a \$33 million medical malpractice trial involving a stroke patient.
- Successfully defended multiple physician clients in a high-exposure wrongful death case against a nationally recognized plaintiffs' attorney. WTO's strong expert witness development allowed us to attain favorable resolution for our clients at a fraction of the plaintiff's multimillion-dollar demand.
- Handle board matters for physician clients before the Department of Regulatory Agencies and Colorado Medical Board.
- Successfully defended a healthcare client facing multiple claims, including treble damages. After WTO's successful motion to dismiss resulted in the dismissal of all but one claim, WTO was able to resolve the sole remaining claim for nuisance value.
- Obtained early dismissal in a multimillion-dollar case for a New Mexico healthcare client. WTO's aggressive early motion practice and creative expert discovery at the earliest stages of litigation were key to achieving this successful outcome.

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- Obtained a voluntary walkaway dismissal in a New Mexico wrongful death case. Early dispositive motion practice forced the plaintiff to withdraw claims against WTO's client.
- Representing a national hospital network in medical malpractice and professional negligence cases across the country.
- Won walkaway dismissal for a physician in an \$85 million birth injury case.
- Won dismissal on summary judgment—including an award of attorneys' fees—in a case involving medical malpractice and breach of contract claims.
- Won favorable settlement for a New Mexico healthcare client in a medical malpractice case after inheriting the case less than two months before expert disclosures.
- Won favorable settlement for a New Mexico hospital in a multimillion dollar case involving medical malpractice and unfair trade practices claims.
- Won favorable settlement for a healthcare client in a \$64 million birth injury case in Maryland.
- Won dismissal of all claims of vicarious liability and apparent agency for a hospital in multimillion dollar case in New Mexico.
- Drafted a winning amicus brief for the Colorado Defense Lawyers Association in an alleged medical malpractice case against a chiropractor 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.
- Obtained voluntary dismissal for a defendant physician in a multimillion dollar medical malpractice action.
- Following WTO's motion for summary judgment, obtained nuisance value settlement of professional liability claims of \$5 million against a New Mexico hospital.
- Obtained early voluntary dismissal of hospital in a \$25 million medical malpractice action.
- Obtained dismissal of claims against a private hospital, establishing an exception to the traditional rule of vicarious liability in New York State.

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- Won a motion to dismiss for a hospital client in New York in a matter of first impression involving Emergency Medical Treatment and Labor Act (EMTALA) claims in the Second Circuit. The Court affirmatively ruled that the hospital's obligations under EMTALA ceased upon admitting the plaintiff.

## Commercial Litigation

- Successfully defended a corporate client facing a multitude of claims including breach of contract, unjust enrichment, civil theft, piercing the corporate veil, and the claims under the Colorado Consumer Protection Act. WTO utilized early motion practice to eliminate all but one of the plaintiff's claims, which the plaintiff then dismissed for nuisance value.
- Following a successful trial, achieved favorable resolution for a client in a capacity to contract case.
- Successfully represented a party in a \$2 billion dispute surrounding the future ownership of the Broncos NFL franchise and family trust.
- Successfully represented a corporate client in a multimillion-dollar complex commercial dispute involving breach of contract, non-compete, and trade secret claims. Resolved all claims in the client's favor and obtained an additional monetary award.
- Representing a party in a multimillion-dollar breach of contract dispute involving claims surrounding contractual capacity.
- Representing a corporate client in a case involving allegations of breach of contract, unfair trade practices, and general corporate malfeasance.
- Represent ski and snowsports recreation clients in personal injury matters.
- Obtained multiple dismissals of Section 1983 claims, including one case in which a New York City police officer alleged he had been involuntarily hospitalized in retaliation for whistleblower claims.

## Pro Bono

- Secured a historic \$1.1 million settlement in a civil rights case for a pro bono client stabbed 43 times in prison.

## BAR & COURT ADMISSIONS

Colorado

New Mexico

New York

U.S. Court of Appeals, 10th Circuit

U.S. District Court, D. Colorado

# BRIAN S. OSTERMAN

U.S. District Court, D. New Mexico

U.S. District Court, E.D. New York

U.S. District Court, S.D. New York

U.S. District Court, W.D. New York

## LEGAL MEMBERSHIPS, ACTIVITIES & HONORS

The Best Lawyers in America

Ones to Watch - Personal Injury Litigation, Defendants, 2022-2024

Ones to Watch - Commercial Litigation, 2023-2024

Denver Bar Association

Colorado Bar Association

Colorado Super Lawyers

Rising Stars, Personal Injury - Medical Malpractice Defense, 2022, 2024

Colorado Defense Lawyers Association

New Mexico Bar Association

Faculty of Federal Advocates

New York Super Lawyers

Rising Star, 2016

New York State Bar Association

New York State Attorney General's Triple "C" Award

Colorado Notre Dame Lawyers' Committee

## COMMUNITY MEMBERSHIPS, ACTIVITIES & HONORS

Denver Health Foundation

Next Generation Giving, Board Member

Notre Dame Club of Denver

University of Denver Sturm College of Law Mentor

## PERSONAL INTERESTS

Sports, reading, history, spending time with family