

Stephen G. Masciocchi

Partner

With more than 20 years of complex civil litigation experience, Mr. Masciocchi specializes in appellate advocacy. He has handled more than 75 appeals and presented nearly 50 oral arguments in civil appeals in state and federal appellate courts.

Mr. Masciocchi chairs Holland & Hart's Appellate Practice Group. He is the past chair and a current member of both the Colorado Bar Association Ethics Committee and Holland & Hart's Ethics and Conflicts Committee. He represents attorneys in grievance, disqualification, and other ethics-related matters.

Mr. Masciocchi has represented clients on diverse subjects including bankruptcy, constitutional law, commercial litigation, insurance coverage, oil and gas litigation, personal injury, product liability, real estate, and UCC. He has appeared before state and federal courts in Colorado, Idaho, Nevada, New Mexico, Oklahoma, Tennessee, Virginia, Washington, and Wyoming. He is admitted to practice in Colorado; the Colorado Federal District Court; the Fourth, Eighth, Ninth, and Tenth Circuit Courts of Appeals; and the United States Supreme Court.



Denver

Related Practices

Appellate
Litigation

Education

(J.D., 1990)

With honors
Associate Editor,
Washington Law Review

(B.A., 1980)

English Literature

Bar Admissions

Colorado

Court Admissions

Colorado Federal District Court
Fourth Circuit Court of Appeals
Eighth Circuit Court of Appeals

Experience

Representative Cases

Wallace B. Roderick Revocable Living Trust v. XTO Energy Inc., 725 F.3d 1213 (10th Cir. 2013) and *Chieftain Royalty Co. v. XTO Energy Inc.*, 2013 WL 3388629 (10th Cir. July 9, 2013). In this Rule 23(f) appeal, the Tenth Circuit vacated orders certifying large classes of Kansas and Oklahoma royalty owners who claimed that our client underpaid millions of dollars in royalties. The court determined that the lower courts failed to follow recent Supreme Court precedent, particularly *Wal-Mart v. Dukes*, in certifying the classes.

Purco Fleet Services, Inc. v. Koenig, 285 P.3d 979 (Colo. 2012) and 240 P.3d 435 (Colo. App. 2010). In this case of first impression, the court reinstated our client's claim for breach of a commercial rental contract and established that loss-of-use damages are recoverable under such contracts. The court also upheld summary judgment for our client on plaintiff's claim under the Colorado Fair Debt Collection Practices Act and awarded our client attorney fees.

Beaver Creek Prop. Owners Ass'n v. Bachelor Gulch Metro. Dist., 271 P.3d 578 (Colo. App. 2011). Court upheld attorney fees awarded under on our clients' section 1983 claims as well as appellate fees.

Rodriguez v. Drive Financial Services, 609 F.3d 1106 (10th Cir. 2010). In a significant victory for our client and for consumer lenders, the Tenth Circuit held that when a bankruptcy trustee avoids a lien, the remedy of avoidance is usually sufficient and a money judgment against the creditor is neither required nor appropriate.

West Coast Life Ins. Co. v. Hoar, 558 F.3d 1151 (10th Cir. 2009). In this insurance coverage case, the Tenth Circuit upheld summary judgment and affirmed our client's right to rescind a \$3 million life insurance policy. Addressing an issue of first impression in Colorado, the court upheld our view of when an insurer becomes "chargeable with knowledge" of a fact concealed by the insured.

Isis Litigation LLC v. Svensk Filmindustri, 170 P.3d 742 (Colo. App. 2007) and 2005 WL 2327227 (Colo. App. Sept. 22, 2005). In the first appeal in this complex commercial dispute, the Colorado Court of Appeals held that a foreign guarantor was bound to the terms of its guaranty. The court affirmed a \$6.7 million judgment for our client and awarded appellate attorney fees. In the second appeal, the Court of Appeals reversed the trial court's denial of our client's requests for post-judgment discovery.

Loughridge v. Goodyear, 431 F.3d 1268 (10th Cir. 2005) and *Malek v. Goodyear Tire & Rubber Co.*, 2005 WL 3529215 (10th Cir. Dec. 20, 2005). In these companion product liability cases, the Tenth Circuit upheld prejudgment interest awards from the date of the defective product's installation. These rulings added almost \$11 million to the judgments in our clients' favor.

LMITCO v. LMAES, Civ. 98-0316-E-BLW (D. Idaho March 29, 2005). In this government contract dispute, the federal district court adopted our position that federal contract law, not Idaho law, governed whether the plaintiff was entitled to prejudgment interest, resulting in a savings of over \$23 million for our client.

Estate of Amos v. Vanderbilt Univ., 62 S.W.3d 133 (Tenn. 2001). In this transfusion-associated AIDS case, the Tennessee Supreme Court reinstated a \$4.36 million judgment for our clients. The Court agreed that (1) a hospital had a duty to warn our client that she had received a blood transfusion and was at risk for contracting HIV, and (2) special proof requirements for negligent infliction of emotional distress claims did not apply to this duty to warn claim. The judgment was worth nearly \$6 million at the time of reversal.

Roe # 2 v. Ogden, 253 F.3d 1225 (10th Cir. 2001). In this significant civil rights case challenging questions on the Colorado bar application, the Tenth Circuit reversed the dismissal of our clients' Americans with Disabilities Act and right of privacy claims, and remanded for trial.

Atmel Corp. v. Vitesse Semiconductor Corp., 30 P.3d 789 (Colo. App. 2001). In this case of first impression involving non-solicitation and non-disclosure clauses in employment contracts, the court vacated an injunction entered against our clients and awarded our clients attorney fees.

SWANCC v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001). We drafted an amicus brief on behalf of three industry groups in a challenge

to the validity of the "migratory bird rule," a regulation which extended the Army Corps of Engineers' permitting authority under the Clean Water Act to isolated bodies of water used by migratory birds. The Supreme Court ruled in favor of our clients' position and held that in adopting the rule, the Corps exceeded its authority under the Act.

Relative Value Studies, Inc. v. McGraw-Hill Companies, 981 P.2d 687 (Colo. App. 1999). In this appeal involving the intellectual property rights of authors and publishers upon the sale of a publishing contract to a new publisher, the Court affirmed summary judgment in favor of our client.

Bennett v. Greeley Gas Co., 969 P.2d 754 (Colo. App. 1998). In this gas explosion case, a judgment of approximately \$6 million (including punitive damages) had been entered against our client. The appellate court reversed and remanded for a new trial on both liability and damages. The victory facilitated the favorable settlement of all claims.

Honors & Awards

Colorado Super Lawyers® (2006-2008, 2010-2013)

The Best Lawyers in America® Appellate Practice (2013-2015)

Memberships & Affiliations

Coordinating Editor, *The Colorado Lawyer*, Professional Conduct and Legal Ethics column

American Bar Association

Litigation Section, Appellate Practice Committee

Colorado Bar Association

Ethics Committee

Litigation Section, Appellate Practice Subcommittee

Denver Bar Association

News

89 Holland & Hart Attorneys Named Leaders by Super Lawyers

Holland & Hart Attorneys Top the State's Super Lawyers Rankings

Publications

Client-Drafted Engagement Letters and Outside Counsel Policies
The Colorado Lawyer, Feb. 2014, p. 33.

Climate Change and Positional Conflicts of Interest
The Colorado Lawyer, October 2011, p. 43.

Co-author(s): Christopher Colclasure

Marketing Plus Referrals for a Fee - Feeder Operations by Any Other Name
The Colorado Lawyer, July 2007, p. 75.

Federal Anti-Terrorism Laws And Law Firm Clients

The Colorado Lawyer, October 2004, p. 117.
Export Control/Trade Sanctions

Novel Theories and Notable Exceptions: Making the Most of a Federal Appellate Court's Discretion to Hear Issues for the First Time on Appeal
Trial Talk, April/May 2004, p. 26.
Co-author(s): Megan C. Bertron

Ethical Marketing
The Colorado Lawyer, October 2003, p. 27.

The Insurer's Right to Recoup Defense Costs, the Insured's Right to Independent Counsel, and the Recovery of Attorney Fees in Coverage Actions
Paper for ABA TIPS Insurance Coverage Litigation Committee Midwinter Mtg.

Rights in Flux: The Insurer's "Right" to Recoup Defense Costs and the Insured's "Right" to Independent Counsel
The Brief, Winter 2003, p. 30.

Interlocutory Appeals
Paper for Colorado Appellate Practice, CLE in Colorado, Inc., October 29, 1999
Co-author(s): Judge John Criswell

The Insurer's Right to Reimbursement of Defense Costs: The Emerging Morass
American Bar Association Tips Corporate Counsel Comm. News, Summer 1999, p. 1.

Internet E-Mail: Legal and Practical Considerations
American Bar Association Journal Practice Mgmt., Oct. 1998, p. 42.

Internet E-Mail and Encryption: Privilege, Confidentiality, and Malpractice Risks
The Colorado Lawyer, Oct. 1998, p. 21.

Insurance Coverage for Environmental Liabilities
The American Law of Mining, Chapter 180 (2d ed. 1996)
Co-author(s): Co-authored with 5 others

Employment, Conflicts, and Professional Fees
Paper for Bankruptcy CLE, May 20, 1994
Co-author(s): Howard Tallman and Leo Weiss

The Item Veto Power in Washington
64 Washington Law Review 891

Speaking Engagements

December 13, 2013 Preservation of Issues for Appeal

December 04, 2013 Ethical Dilemmas Created by Client-Drafted

	Engagement Letters and Outside Counsel Policies
October 11, 2013	Ethical Marketing
July 13, 2013	Ethical Marketing
May 25, 2012	Not-So-Obvious Rules of Professional Conduct
December 1, 2011	Beginning and Ending the Attorney-Client Relationship: Engagement Letters and Withdrawal
October 25, 2011	Climate Change and Positional Conflicts of Interest
November 19, 2010	Interlocutory Appeals in Colorado State Courts
October 15, 2010	Not-So-Obvious Rules of Professional Conduct
March 18, 2010	Multi-Jurisdictional Practice and the Unauthorized Practice of Law
December 07, 2009	Will MJP be the End of Me? Multi-Jurisdictional Practice and the Unauthorized Practice of Law
November 06, 2009	The Ethics of Representing More Than One Party to a Real Estate Transaction
October 10, 2008	Interlocutory Appeals in Colorado State Courts
June 26, 2008	Collecting Prejudgment and Postjudgment Interest in Colorado
November 14, 2006	Lawyer Mobility and Conflicts Checking
June 28, 2006	Ethics When Emotions Run High

December 09, 2005	Motions to Disqualify Opposing Counsel
May 13, 2005	Current Ethical Issues in Appellate Practice
September 13, 2004	Ethics: Considerations When Emotions Run High
October 25, 2002	Internet Ethics: Email Confidentiality and Marketing on the Web
May 10, 2001	Appellate Advocacy Workshop
November 04, 1999	Ethics Update