



## **Brian Tooley**

Shareholder

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Licensed in Colorado

### **Overview**

**Brian is a highly experienced litigator and trial lawyer, with more than 30 years' of success for clients in resolving and preventing disputes in business, real property, natural resources and commercial matters, including arbitrations, trials and appeals.**

He regularly litigates or arbitrates contract and business disputes involving a wide variety of subject matters – including disputes involving real property transactions, development and joint venture agreements, land use, corporate and partnership matters, mineral rights, anti-trust claims, class actions, governmental regulation and agency action, business torts, construction claims, oil and gas operations, mining, employment, and a variety of other business disputes.

### **Experience & Results**

For more than 35 years, Brian Tooley has successfully tried cases in federal and state courts and before various arbitration tribunals involving a wide range of disputes, including class actions, anti-trust claims, joint venture and partnership disputes, development agreements, oil and gas leases, mining claims, royalty disputes, business contracts and torts, real property and construction disputes, governmental regulations, and employment claims.

#### **Joint Ventures, Development Agreements & Business Torts**

- Obtained prohibitory and mandatory injunction and specific performance decree in California State Court for the removal and replacement of Operator in the heart of a major oilfield in California following a two-month jury trial.
- Successfully defended hearing for preliminary injunction and obtained summary judgment in Wyoming State Court on counterclaims requiring release of each aliquot section not capable of producing in paying quantities under development agreement covering twenty-six thousand acres of oil and gas leases.
- Secured dismissal of anti-trust claims asserted against defendants in state and federal court.

### **Experience & Results (cont'd)**

- Litigated dispute over operatorship of an \$80 million natural gas pipeline in Gunnison County District Court.
- Successfully defended \$8 million claim for alleged tortious interference with prospective purchase and sale agreement involving 285 natural gas wells.
- Obtained arbitration award on behalf of defendant on all claims concerning area of mutual interest agreement covering Bakken play in Montana.
- Successfully litigated and resolved various disputes involving farmout agreements, development agreements, operating agreements, gathering and processing agreements, title, accounting, reversionary interests, and environmental remediation.

### **Construction/Real Estate/Drilling Operations**

- Obtained jury verdict in Mesa County District Court in favor of defendant on claims for trespass and breach of natural gas pipeline easement and an award of damages and attorney fees on defendant's counterclaim for interference with pipeline construction operations.
- Obtained jury verdict in favor of defendant in Arapahoe County District Court on claims for alleged failure to disclose defects in connection with a sale of commercial office building.
- Enforced obligations for the construction of a \$12 million dollar oil and gas access road for transporting rigs and heavy equipment in Garfield County, Colorado.
- Successfully prosecuted multi-million dollar lawsuit in Utah state court arising out of drilling company's failure to properly hang liner, leading to cementation of 2,000 feet of drill pipe and four months of milling and fishing operations.
- Successfully litigated claims against drilling contractor for dropping over 4,000 feet of tubing which destroyed the oil and gas well.
- Prosecuted claims against drilling contractor for negligence and breach of contract involving lost mud circulation and stuck drill string.
- Represented various clients on bid protests, payment claims and contract disputes in connection with the construction of Denver International Airport.
- Represented manager of shopping mall in multiple claims involving disturbance of asbestos during renovation.
- Obtained jury verdict for subcontractor for delay impacts and overruns for work in constructing the Anheuser-Busch Brewery in Fort Collins.

### **Oil and Gas Leases, Royalty Disputes and Class Action Defense**

- Defended multi-million dollar class action lawsuit for alleged underpaid royalties and successfully settled claims during class certification proceedings.
- Defended royalty underpayment claims involving 223 natural gas wells in Yuma County, Colorado. After favorable jury verdict and court of appeals' decision, favorably settled after Colorado Supreme Court remanded for new trial.
- Defended class action arbitration over alleged breach of class action royalty settlement agreement.

## **Experience & Results (cont'd)**

- Represented clients in federal, state, and Indian oil and gas royalty audits.
- Obtained judgment for landowner terminating oil and gas lease in Gunnison County, Colorado for lessee's failure to timely develop and an award of attorney's fees, affirmed on appeal.
- Successfully defended oil and gas lessees in actions seeking to terminate oil and gas lease for failure to produce in paying quantities.
- Prosecuted claims against operators for breach of implied covenant to protect against drainage.

## **Government Agencies and Regulations**

- Obtained judgment in federal court in Wyoming requiring Secretary of Interior to make lease issuance decisions within 60-day period mandated by Congress under the Mineral Leasing Act.
- Successfully challenged legality of county oil and gas regulations after COGCC's overhaul of state oil and gas regulations.
- Successfully opposed application seeking retroactive force pooling for wells governed by communization agreement with the Southern Ute Indian Tribe.

## **Title, Trespass, Surface Use**

- Obtained dismissal of surface owner trespass claim and an award of attorney fees against surface owner, affirmed on appeal.
- Successfully cleared title to oil and gas leasehold interests in Wyoming purchased at auction.
- Obtained favorable judgment in trial to the court in Yuma County, Colorado after remand establishing ownership of disputed minerals.
- Obtained injunction against surface owners enjoining them from interfering with surface access and oil and gas operations in Las Animas County, Colorado.
- Prosecuted mineral trespass dispute over the location and drainage of gas well drilled on fee lands within Southern Ute Indian Reservation.

## **Mining**

- Represented gold mining company in dispute over ownership and control of a Mexican gold mine under an Earn/In Agreement pursuant to international arbitration under the Panama Convention.
- Successfully prosecuted dispute over conflicting uranium mining claims near Moab, Utah.
- Prosecuted claims over gravel pit operations, accounting and termination of gravel pit lease.
- Litigated dispute over reclamation of gold mine in Nevada.
- Represented numerous clients concerning validity and disputes over mining claims and mining operations and in evaluating pending litigation and claims as part of due diligence in acquisition of mining claims and assets.

## Experience & Results (cont'd)

### Employment

- Obtained jury verdict in federal court against City of Aurora, Aurora Chief of Police, individually, and Aurora Deputy Chief of Police, individually, under American with Disabilities Act and outrageous conduct claims.
- Successfully defended oil and gas company in federal class action alleging violation of the Worker Adjustment and Retraining Notification Act of 1988 in connection with alleged mass layoff of oilfield workers.
- Represented numerous employers and employees in disputes over wages, ownership interests, non-compete agreements, misappropriation of trade secrets, discrimination and wrongful termination claims.

### Practice Areas

- Complex Commercial Litigation
- General Civil Litigation
- Trials and Appeals
- Mediation & Arbitration
- Business Contracts & Torts
- Real Property Litigation
- Oil & Gas Conservation Commission and Regulatory
- Oil & Gas Litigation
- Natural Resources
- Construction
- Employment
- Public Lands
- Mining
- Eminent Domain
- Appeals
- Trial

### Honors

- Listed by Lawdragon as one of the “500 Leading U.S. Energy Lawyers” in 2023
- Top Lawyers, Civil Litigation, 5280 – The Denver Magazine, 2017
- Selected to Colorado Super Lawyers, 2009–2023
- Selected for Inclusion in the *Best Lawyers in America*® in the fields of Natural Resources Law, 2013–2019, 2021–2027; Commercial Litigation, 2015–2019, 2021–2027; and Energy Law 2027
- AV rated by Martindale Hubbell
- Phi Beta Kappa Society

## **Insights**

- Co-author of “The Marketable Product Approach in the Natural Gas Royalty Case,” 44 Rocky Mt. Min. L. Inst. 21-1 (1998)
- Adjunct Professor of Oil and Gas Law at the University of Denver Law School (1998)
- Frequent Lecturer, various continuing legal education seminars, professional associations, and University of Denver School of Law

## **Education**

- J.D., University of Colorado at Boulder, Order of the Coif, 1988
- B.A., University of Colorado at Boulder, with distinction, 1984

## **Bar Admissions/Qualifications**

- Colorado, 1988
- U.S. District Court, District of Colorado
- U.S. Court of Appeals, Tenth Circuit
- U.S. Court of Federal Claims
- South Ute Indian Tribal Court through 2015
- Admitted pro hoc vice in cases in Wyoming, North Dakota, Utah, and California

## **Professional & Community Involvement**

- Member of CBA and ABA, (litigation, energy, and environment sections)
- Former adjunct professor at the University of Denver
- Prior member and officer of the Independent Petroleum Association of Mountain States
- Prior board member of Denver Mountain Parks Foundation
- Prior board member and Secretary of IPAMS
- Prior member of Dale Tooley Cancer Research Laboratory