

FOSTER PEPPER

2017 Insurance Coverage Legal Update

PRESENTATION MATERIALS
June 8, 2017

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Table of Contents

- Presentation
 - New Developments in Insurance Coverage Disputes – Thomas Ahearne
 - Cyber Risk Insurance – Brad Hoff
 - Insurance for Environmental Liability – Jack Zahner
 - Insurer “Bad Faith” Overview – Jay Donovan
- Speaker Bios
 - Thomas Ahearne, Foster Pepper PLLC
 - Brad Hoff, Foster Pepper PLLC
 - Jack Zahner, Foster Pepper PLLC
 - Jay Donovan, Foster Pepper PLLC

Presented by:

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Presentation

New developments in insurance coverage disputes:

FIVE GENERAL TOPICS

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New developments in insurance coverage disputes:

FIVE GENERAL TOPICS

1. **Who**
2. **What**
3. **When**
4. **Where**
5. **How**

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New developments in insurance coverage disputes:

FIVE GENERAL TOPICS

1. **Whose** policy can cover you?
2. **What** type of policy can cover you?
3. **When** is relevant to coverage?
4. **Where** can you get the relevant policies?
5. **How** should you pursue coverage?

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1. **Whose** policy can cover you?

- The policy you bought
- The policy someone else bought

Additional
Insured
Endorsements

PAR v. BlueLine, 2017 WL 374477 (E.D.Wash. 2017)

2. What type of policy can cover you?

Tapping
into the
excess
policy

excess

Seattle Times v. National Surety, 2016 WL 3033498 (W.D.Wash. 2016)

primary

3. When is relevant to coverage?



3. When is relevant to coverage?

"eight corners"
rule



Xia v. ProBuilders Ins., ---Wn.2d---, 393 P.3d 748 (2017)
State Farm v. El-Moslimany, 178 F.Supp.3d 1048 (W.D.Wash. 2016)
American Mgmt. v. Scottsdale, 2016 WL 1558615 (W.D.Wash. 2016)
State Farm v. Doucette, 2016 WL 4793294 (W.D.Wash. 2016)

3. When is relevant to coverage?

"Property Damage"

Keeley v. Travelers, 2016 WL 3405493 (W.D.Wash. 2016)
American Mgmt. v. Scottsdale, 2016 WL 1558615 (W.D.Wash. 2016)



"Bodily Injury"

State Farm v. El-Moslimany, 178 F.Supp.3d 1048 (W.D.Wash. 2016)
American Mgmt. v. Scottsdale, 2016 WL 1558615 (W.D.Wash. 2016)

3. When is relevant to coverage?

"efficient proximate cause" rule

Xia v. ProBuilders Ins., ---Wn.2d---, 393 P.3d 748 (2017)



3. When is relevant to coverage?

"efficient proximate cause" rule

Xia v. ProBuilders Ins., ---Wn.2d---, 393 P.3d 748 (2017)



"ensuing loss" clause

Eagle Ins. v. SAT, 187 F. Supp.3d 1231 (W.D.Wash. 2016)

4. Where can you get the relevant policies?



4. Where can you get the relevant policies?

"right" to demand a copy of the policy

Crowthers v. Travelers, 2016 WL 5944583 (W.D.Wash. 2016)



<i>excess / umbrella</i>					
primary	primary	primary	primary	primary	primary

<i>excess / umbrella</i>					
primary	primary	primary	primary	primary	primary

<i>excess / umbrella</i>					
primary	primary	primary	primary	primary	primary

4. Where can you get the relevant policies?

“Certificate Of Insurance”

is worth

the piece of paper it's written on

4. Where can you get the relevant policies?

**certified copy of
the
complete policy**

5. How should you pursue the policy's coverage?

**Read the
certified copy of
the
complete policy**

5. How should you pursue the policy's coverage?

Focus on the policy's basic components

- 1. Insuring Clause**
- 2. Declarations Page**
- 3. Exclusions**
- 4. Conditions** *(notice / cooperation / permission / etc.)*
- 5. Definitions**
- 6. Endorsements**

5. How should you pursue the policy's coverage?

Focus on the policy's basic components

1. Insuring Clause

2. Declarations Page

3. Exclusions

4. **Conditions** (notice / cooperation / permission / etc.)

cooperation
clause

Laurie v. National Assurance, 2016 WL 2739452 (W.D.Wash. 2016)

Taladay v. Metropolitan Ins., 2016 WL 3681469 (W.D.Wash. 2016)

Langley v. GEICO, 2016 WL 7494305 (E.D.Wash. 2016)

Hews v. State Farm, 2017 WL 591214 (W.D.Wash. 2017)

5. How should you pursue the policy's coverage?

Focus on the policy's basic components

1. Insuring Clause

2. Declarations Page

3. Exclusions

4. **Conditions** (notice / cooperation / permission / etc.)

5. **Definitions**

"occurrence" trigger

American Mgmt. v. Scottsdale, 2016 WL 1558615 (W.D.Wash. 2016)

Keeley v. Travelers, 2016 WL 3405493 (W.D.Wash. 2016)

Allstate v. Giroux, 2016 WL 3632490 (W.D.Wash. 2016)

New developments in insurance coverage disputes:

FIVE GENERAL TOPICS

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CYBER RISK INSURANCE

Brad Hoff

Cyber Risk Insurance: What “Might” It Cover?

- Data Breach/Privacy Liability
 - Covers liability to third-parties for breach of their private/confidential info
- Data Breach Loss
 - Covers losses sustained by named insured due to data breach
- Electronic Media Liability
 - Covers liability to third-parties for personal “offenses” committed through insured's website or online media (libel, slander, etc.)

Cyber Risk Insurance: Historical Overview

- Emerged in mid-1990s to protect tech companies
- More widespread usage since mid-2000s
- Approximately 50 companies offer standalone cyber risk policies – rapidly growing and “maturing” market
 - Many more offer narrow coverages via GL/E&O endorsements
- One-third of companies now purchase some form of cyber risk insurance
- Some cyber-related coverage might be available under standard general liability and errors & omissions policies
 - Cyber risk policies offer much broader protection

Cyber Risk Insurance: General Considerations

- Cyber risk policies generally provide a “package” of first-party and third-party coverages, but are not at all “standardized”
- Cyber risk policies go by a variety of policy names:
 - Cyber Risk Insurance
 - Information Security Insurance
 - Network Security Insurance
 - Data Breach Insurance
 - Tech E&O Insurance
 - Privacy Protection
 - Media Liability Insurance

Cyber Risk Insurance: Purchasing Considerations

- Cost: Between \$10K & \$50K per \$1 million in limits
 - Highly variable coverage = highly variable cost
- Real question is value to given company
- Involve legal/RM & IT personnel in process:
 - 1) Identify cyber risks to company
 - 2) Estimate expenses to respond to risk event
 - 3) Identify expenses for which coverage sought

Cyber Risk Insurance: Available Coverages

- Third-Party Coverages (for liability to others due to cyber event):
 - Network/Privacy Breach
 - Tip: Obtain “failure to protect” and “failure to respond” insuring clauses
 - Regulatory (government) Investigations
 - Tip: Obtain “claim” (rather than “suit”) trigger language
 - Notification Costs
 - Tip: Obtain “call center” coverage
 - Crisis Management
 - Tip: If vendors listed, make sure you are comfortable with list
 - Credit Monitoring
 - Tip: Watch for sublimits and vendor specifications
 - Media Liability
 - Tip: Don’t be fooled by similar-sounding coverages in general liability policy
 - Malicious Code/Virus Transmission to Others
 - Tip: Avoid “deliberate act” requirement

Cyber Risk Insurance: First-Party Coverages

- First-Party Coverages (for company's own losses due to cyber event):
 - Data Asset Loss (theft/fraud/malicious code)
 - Tip: Avoid intentional act requirement
 - Forensic Investigation
 - Tip: Focus on sublimit
 - Network/Business Interruption Loss
 - Tip: Pay attention to waiting period duration
 - Extortion/Ransom
 - Tip: Avoid "terrorism" exclusion
 - Usually Not Covered:
 - Reputational harm
 - Loss of future revenues
 - Cost of improving internal systems (beyond diagnosing and eliminating cause of loss)

Cyber Risk Insurance: Underwriting

- Be prepared to provide broad range of information/documentation in applying for cyber risk coverage, including:
 - General risk profile (incident history, network reach, nature and volume of information possessed, etc.)
 - Internal risk management mechanisms/procedures
 - Disaster response plan
 - Scope of network access (all vs. some employees)
 - Antivirus and malware software utilized

Questions/Discussion

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INSURANCE FOR ENVIRONMENTAL LIABILITY

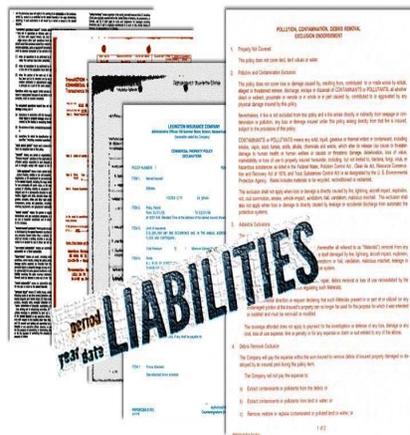
June 8, 2017

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Three Insurance Types for Environmental Liability

- Current policies
- Prospective policies
- Old (pre-1986) policies

Policies



Current Liability Policies

- Standard CGL policies *exclude* contamination with an absolute pollution exclusion
- Pollution coverage is usually a special stand alone policy or additional coverage added to liability policies
- Certain industries are more apt to offer special pollution coverage, e.g., maritime trades (vessel P&I coverage, marinas)



Current Liability Policies

- Pollution coverage also sold to other industries, like dairy operations
- Consider the coverage when dealing with specialty subcontractors who typically handle fuels, waste or other chemicals



Prospective Policies

- Often written for large redevelopment projects
- A way to cap risk for property with known contamination
- Policies are expensive and complicated, with many endorsements



Confidential

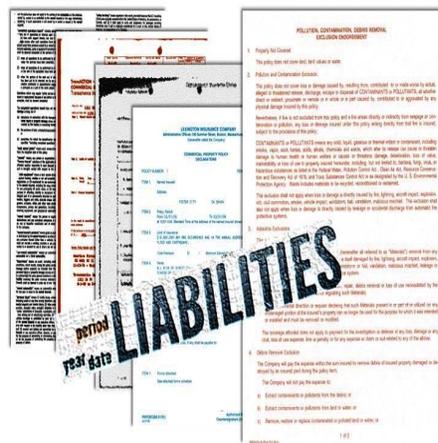
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Old Policies (pre-1986)

- Liability coverage - *not* first party property coverage
- In effect from 1972-1986, the “qualified pollution exclusion” is interpreted to *not exclude* unintended/accidental contamination
- After 1986, the “absolute pollution exclusion” is common

Policies



Confidential

6

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Old Policies (pre-1986)

- Requirement for third-party property damage
 - Groundwater
 - Contamination that has migrated off-site
- Insurance company defenses:
 - The *Gull Industries* decision
 - No third-party property damage
 - Timing of contamination

Old Policies (pre-1986)

- Defense vs. Indemnity
 - The *Gull* decision and the VCP
 - The *King County v. Travelers* decision and PLP / PRP letters

Xia v. ProBuilders (WA Supreme Ct. April 2017)

- Facts: hot water heater negligently installed
- Carbon monoxide poisoning
- Pollution exclusion in the policy



Xia v. ProBuilders (WA Supreme Ct. April 2017)

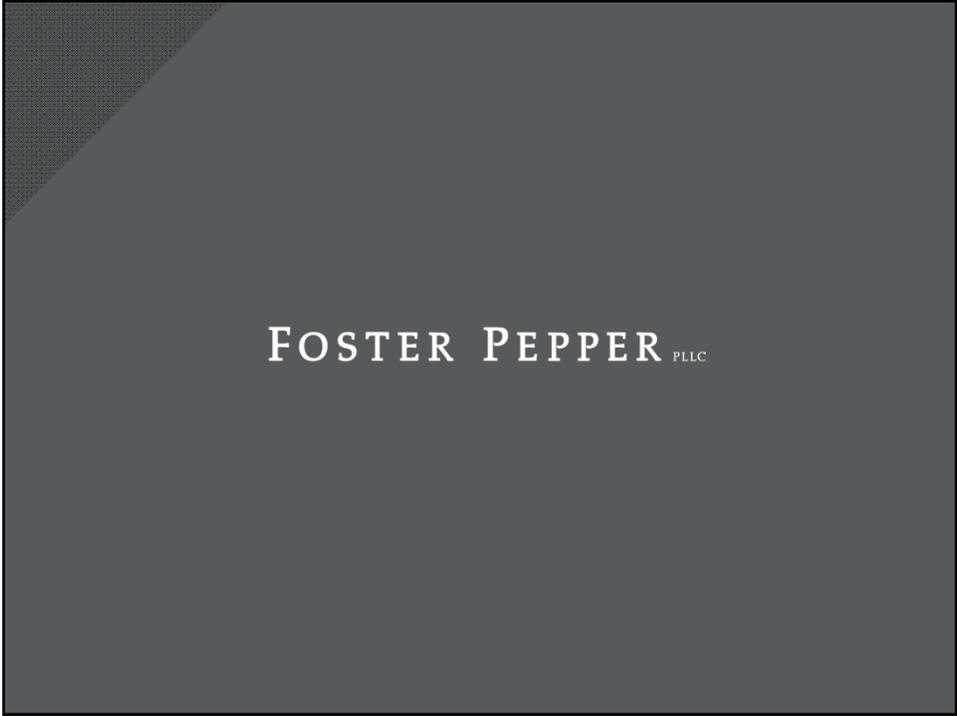
- Supreme Court holds that pollution exclusion would normally apply, but...
- Court then applies the “efficient proximate cause” rule to the interpretation of the developer’s liability policy
- Court holds that contractor’s negligence in installing the hot water heater was the leading or “efficient proximate” cause of the loss
- The result is that the liability is not excluded

Xia v. ProBuilders (WA Supreme Ct. April 2017)

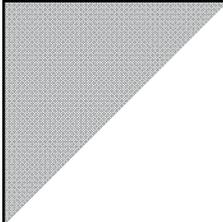
- The Significance of Xia:
 - for pollution - contamination cases
 - for other liability cases

Conclusion: Environmental Liability

- Coverage not just confined to old (pre-1986) policies
- Claims under the old policies: the battle lines with the insurers
- *Xia v. ProBuilders*: Tectonic shift?

The logo features a dark gray square with a thin black border. The top-left corner of the square is cut off by a diagonal line, creating a triangular section filled with a fine, light gray dot pattern. The text "FOSTER PEPPER" is centered in the square in a white, serif font. The word "PLLC" is positioned to the right of "PEPPER" in a smaller, all-caps, sans-serif font.

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INSURER “BAD FAITH” OVERVIEW

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THREE TYPES OF “BAD FAITH”



Consumer Protection Act (RCW 19.86.020)

Insurance Fair Conduct Act (RCW 48.30.015)

Common Law Bad Faith

CONSUMER PROTECTION ACT

“Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

(RCW 19.86.020)

INSURANCE-RELATED CPA VIOLATIONS

Violations of Insurance Regulations

(WAC 284-30-330 through 380)

=

Consumer Protection Act Violations

Damages: up to \$25,000 in “actual” damages & attorney fee award

INSURANCE FAIR CONDUCT ACT

Four Primary Parts:

1. Unreasonable Claim Denial;
2. Insurance Regulation Violation;
3. Triple Damages & Attorney Fee; and
4. Notice Requirement.

INSURANCE FAIR CONDUCT ACT

UNREASONABLE CLAIM DENIALS = IFCA VIOLATIONS

RCW 48.30.015(1): “Any first party claimant to a policy of insurance who is **unreasonably denied a claim for coverage** or payment of benefits by an insurer may bring in action in the superior court of this state to recover the actual damages sustained, together with the costs of the action, including reasonable attorneys’ fees and litigation costs.”

INSURANCE FAIR CONDUCT ACT

INSURANCE REGULATION VIOLATIONS = IFCA VIOLATIONS

RCW 48.30.015(2): "The superior court may, after finding that an insurer has acted unreasonably in denying a claim for coverage or payment of benefits **or has violated a rule in subsection (5) of this section**, increase the total award of damages to an amount not to exceed three times the actual damages."

RCW 49.30.015(5): A violation of any of the following is a violation for purposes of subsections (2) and (3) of this section:

- a. WAC 284-30-330 "specific unfair claims settlement practices defined"
- b. WAC 284-30-350 "misrepresentation of policy provisions"
- c. WAC 284-30-360 "failure to acknowledge pertinent communications"
- d. WAC 284-30-370 "standards for prompt investigation of claims"
- e. WAC 284-30-380 "standards for prompt, fair and equitable settlements"

INSURANCE FAIR CONDUCT ACT

IFCA DAMAGES:

RCW 48.30.015(3): "The superior court shall, after a finding of unreasonable denial of a claim for coverage or payment of benefits, or after a finding of a violation of a rule in subsection (5) of this section, award reasonable attorneys' fees and actual and statutory litigation costs, including expert witness fees, to the first party claimant of an insurance contract who is the prevailing party in such an action."

1. Actual Damages;
2. Triple Damages;
3. Reasonable Attorneys' Fees; and
4. Litigation Costs (e.g., experts).

INSURANCE FAIR CONDUCT ACT

IFCA NOTICE REQUIREMENT:

RCW 48.30.015(8):

(a): "Twenty days prior to filing an action based on this section, a first party claimant must provide written notice of the basis for the cause of action to the insurer and office of the insurance commissioner..."

(b) If the insurer fails to resolve the basis for the action within the twenty-day period after the written notice by the first party claimant, the first party claimant may bring the action without any further notice.

(c) The first party claimant may bring an action after the required period of time in (a) of this subsection has elapsed.

Failure to comply with the notice requirement subjects IFCA claims to dismissal **with prejudice**.

COMMON LAW BAD FAITH

To establish common law tort of bad faith, policyholder must show the insurer's conduct was **"unreasonable, frivolous, or unfounded."**

- Claims investigation
- Coverage determination
- Settlement opportunities

COMMON LAW BAD FAITH

Issues of Fact

v.

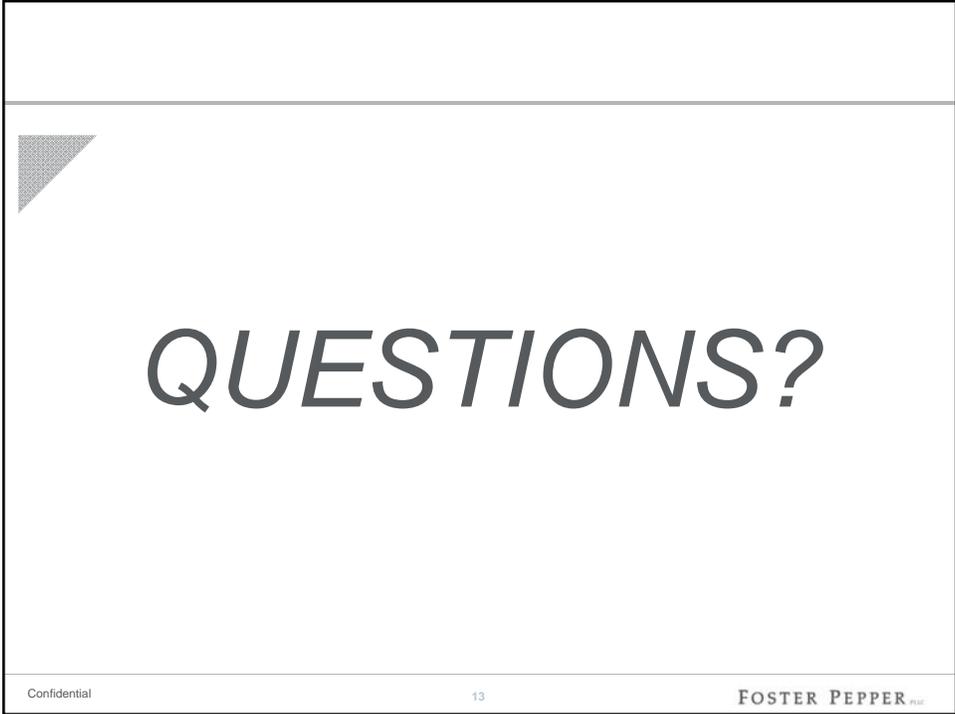
Issue of Law

COMMON LAW BAD FAITH

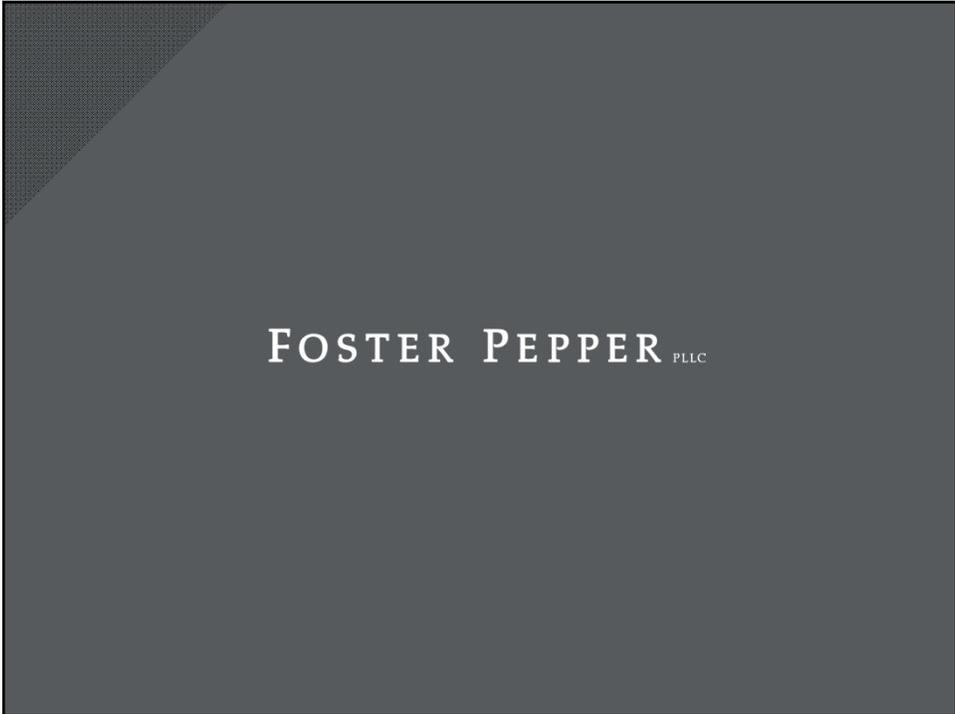
Estoppel and Bad Faith Damages

Estoppel: courts will bar third-party liability insurers from denying coverage if the insurer acts in bad faith and cannot rebut presumption of harm to policyholder.

Damages: “actual” damages; **no** attorney fee award.



QUESTIONS?



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Speaker Bios

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PRACTICE OVERVIEW

Tom Ahearne has over 30 years of litigation experience. His practice focuses on two distinct areas: (1) representing policyholders in insurance coverage disputes, and (2) representing litigants in suits based on constitutional law, statutory rights, and election disputes.

Insurance Coverage: Tom has been successfully representing insureds and claimants in a wide array of state and federal court coverage litigation since the 1980s. He's a frequent speaker on insurance coverage at trade association and legal industry seminars, and was named the *Best Lawyers*[®] 2011 Insurance Law "Lawyer of the Year" in Seattle.

Constitutional Law, Statutory Rights, & Elections: Tom's experience over the past three decades includes major constitutional suits such as the *McCleary* education funding litigation, election disputes such as the Rossi-Gregoire Governor's election lawsuits, numerous ballot title challenges including I-933, I-895, I-892, I-885, I-884, I-864, & I-860, and cases resolving the enforcement or validity of statutes and initiatives such as Washington's Top-Two primary system and various Tim Eyman measures. Tom's related work has been recognized in publications such as *Washington Super Lawyers* (2012 "[Paramount Duty](#)" article) and *Seattle Magazine* ("[2010 Most Influential Lawyer of the Year](#)").

SOME REPORTED CASES

- *McCleary v. State*, 173 Wn.2d 477 (King County Superior Court & Washington Supreme Court) (action to enforce State Constitution's public education clause)
- *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. 442, reversing 460 F.3d 1108 (9th Cir.) & 377 F.Supp.2d 907 (W.D.Wash.) (representing Washington State Grange in the ultimately successful defense of its Top-Two Primary Initiative against First Amendment "facial" challenges)
- *Washington State Democratic Party v. Washington State Grange*, 676 F.3d 784, cert. denied 133 S.Ct. 110 (W.D.Wash. & 9th Cir.) (representing defendant Grange in successfully obtaining dismissal of "as applied" challenges to constitutionality of the Grange's Top-Two Primary Initiative)

- *Bainbridge Ratepayers Alliance v. City of Bainbridge Island*, 158 Wn App. 1051, 2010 WL 4962942 (Kitsap County Superior Court & Washington Court of Appeals) (defending validity of municipal bonds)
- *Borders, et al. v. King County, et al.* (Chelan County Superior Court) (representing defendant Secretary of State in Republicans' suit to overturn the 2004 Governor's election) *Republican Party v. King County, et al.*, 153 Wn.2d 220 (Pierce County Superior Court & Washington Supreme Court) (representing defendant Secretary of State in Republicans' injunction action concerning hand recounts in the 2004 Governor's election)
- *McDonald et al. v. Reed, et al.*, 153 Wn.2d 201 (representing defendant Secretary of State in Democrats' original jurisdiction action in Washington Supreme Court suit concerning hand recounts in the 2004 Governor's election)
- *Republican Party v. King County, et al.* (W.D. Wash.) (representing defendant Secretary of State in Republicans' emergency weekend TRO suit concerning machine recounts in the 2004 Governor's election)
- *In re Coday*, 156 Wn.2d 485, Cert. Denied, 127 S.Ct. 444 (representing defendant Secretary of State in original jurisdiction action in Washington Supreme Court relating to Governor's election contest petitions)
- *Brown v. Owen*, 165 Wn.2d 706 (original jurisdiction mandamus action in Washington Supreme Court to enforce State constitution's majority-vote provision)
- *Pierce County v. State II*, 159 Wn.2d 16 (King County Superior Court & Washington Supreme Court) (class refunds and constitutional contracts clause litigation)
- *Brown v. State*, 155 Wn.2d 254 (King County Superior Court & Washington Supreme Court) (action to enforce State Constitution and portions of Initiative 732)
- *McGowan, et al. v. State*, 148 Wn.2d 278 (Thurston County Superior Court & Washington Supreme Court) (action to enforce portions of Initiative 732)
- *Washington Association of Neighborhood Stores v. State*, 149 Wn.2d 359 (Thurston County Superior Court & Washington Supreme Court) (representing Initiative sponsor defending constitutional challenge to Initiative 773)
- *City of Burien, et al. v. Kiga, et al.*, 144 Wn.2d 819 (Thurston, King, Kitsap, Spokane, & Skagit County Superior Courts and Washington Supreme Court) (representing plaintiffs in constitutional challenge invalidating Initiative 722)
- *Governor Locke, et al. v. Reed, et al.* (Washington Supreme Court #75392-0), (representing Governor in original jurisdiction action in Washington Supreme Court concerning referendum measures and veto power)
- *Pierce County, et al. v. State I*, 150 Wn.2d 422 (King County Superior Court & Washington Supreme Court) (representing plaintiffs in constitutional challenge to Initiative 776)
- *Amalgamated Transit Union, et al. v. State*, 142 Wn.2d 183 (King, Thurston, & Yakima County Superior Courts and Washington Supreme Court) (representing plaintiffs in constitutional challenge invalidating Initiative 695)
- *City of Seattle, et al. v. "Save Our Schools" Initiative Committee, et al.*, 779 P.2d 726 (King County Superior Court and Washington Supreme Court) (representing Seattle in defense of pre-election challenge to City Initiative 34)
- *1000 Virginia Ltd. Partnership v. Vertec*, 158 Wn.2d 566 (interpretation & application of construction claim statute)
- *Ballard Square Condominium Owners v. Dynasty Construction*, 158 Wn.2d 603 (interpretation & application of corporate dissolution statutes)
- *Satomi Owners Association v. Satomi LLC*, 167 Wn.2d 781 (King County Superior Court, Court of Appeals, & Washington Supreme Court) (action to enforce arbitration clause under U.S. Constitution's supremacy clause)
- *Wishart, et al. v. Clallam County Housing Authority, et al.* (Clallam County Superior Court & Washington Court of Appeals) (defending housing authority against statutory challenge to public housing construction)

- *Bonjorni v. City of Auburn*, 93 Wn.App. 1002, 1998 WL 781152 (King County Superior Court, Washington Court of Appeals, Washington Supreme Court) (defending city against constitutional and statutory challenges to its municipal court system)
- *Pierce County Housing Authority v. Washington Utilities and Transportation Commission, et al.*, 86 Wn.App. 138, 131 Wn.2d 1012 (Pierce County Superior Court, Washington Court of Appeals, Washington Supreme Court) (representing housing authority in overturning Washington Utility & Transportation Commission's statutory interpretation)
- *Concerned Citizens, et al. v. AHS Joint Operating Board, et al.*, 78 Wn.App. 333, 127 Wn.2d 1024 (Skagit County Superior Court, Washington Court of Appeals, Washington Supreme Court) (defending municipal Joint Operating Agency against constitutional, statutory, and common law challenges to its operations)
- *Wright, et al. v. King County, et al.*, 77 Wn.App. 1074 (King County Superior Court and Washington Court of Appeals) (defeating TRO claim against County's land use decision)
- *Kendall, et al. v. Public Hospital District No. 6*, 118 Wn.2d 1 (Grant County Superior Court and Washington Supreme Court) (defending hospital district against statutory and constitutional challenges to the legality of its operations)
- *No Boundaries Ltd. v. Pacific Indemnity Co. [Chubb]* 160 Wn.App. 951 (King County Superior Court & Washington Court of Appeals) (defeating insurance company's interpretation of its policy's code upgrade coverage)
- *Commonwealth Insurance Company v. Grays Harbor County*, 120 Wn.App. 232 (Pacific County Superior Court & Washington Court of Appeals) (defeating insurance company's interpretation of its policy's code upgrade and earthquake coverage)
- *Tacoma Narrows Constructors v. Nippon Steel-Kawada Bridge*, 138 Wn.App. 203, 163 Wn.2d 1011 (Thurston County Superior Court, Court of Appeals, & Washington Supreme Court) (enforceability of arbitration clause under international treaty)
- *Pinnacle Realty v. General Security Insurance Company* (St. Louis Circuit Court & Missouri Court of Appeals; King County Superior Court & Washington Court of Appeals) (defeating insurance company's interpretation of its policy's coverage for punitive damages)
- *Intracorp Real Estate LLC v. USI, et al.* (King County Superior Court) (representing policyholder in combined insurance policy reformation / broker malpractice action)
- *American Hardware Insurance Group v. West One Automotive*, 167 Ore.App. 244 (Klamath County Circuit Court & Oregon Court of Appeals) (defense against insurance company's interpretation of its policy's coverage for employment discrimination)
- *Wellbrock v. Assurance Company of America*, 90 Wn.App. 234 (King County Superior Court & Washington Court of Appeals) (representing insurance claimant in wrongful death coverage action)
- *Mercer International v. USF&G*, 938 F.Supp. 680, 189 F.3d 473, 1999 WL 594813 (W.D. Wash. & 9th Cir.) (defeating insurance company's interpretation of its policy's coverage for fire damage to residential complex)
- *Alaska Protein Recovery v. Puretek Corp.*, 2014 WL 2011235 (W.D. Wash.) (successfully enforcing arbitration rights under the Federal Arbitration Act)
- *McRory v. Catlin Specialty Ins. Co.*, 511 Fed.Appx. 632 (W.D. Wash. & 9th Cir.) (contesting coverage denial under Directors & Officers policy)
- *Wright v. Safeco Ins. Co.*, 124 Wn.App. 263 (King County Superior Court & Washington Court of Appeals) (contesting coverage denial under property policy)
- *Allstate Ins. Co. v. Forest Lynn Homeowners Association*, 914 F.Supp. 408 (W.D. Wash.) (contesting coverage denial for rot damage)

SOME RECOGNITION

- *The Best Lawyers in America*® - Insurance Law (2007-present)
- Washington Association of Educators of the Talented and Gifted – 2015 Distinguished Advocate Award
- *Best Lawyers*® 2011 Insurance Law “Lawyer of the Year” in Seattle
- *Washington Super Lawyers* – Super Lawyer selection (2000-present)
- Martindale-Hubbell AV rating
- *The Boston Globe* – “[In Northwest, a question of tax cuts or education](#)” (November 2015)
- *Publicola at Seattle Met* - “[Best of Fizz 2014](#)”(December 2014)
- *KING 5 News* - “KING 5 News: Washington Lawyer Fights Personal Battle” (September 2014)
- *KING 5 News* - “Inside Politics: McCleary v. the State of Washington” (September 2013)
- *KING 5 News* - “Jean Enersen’s Northwest Newsmakers on King 5” (February 2013)
- *Washington Super Lawyers* - 2012 “[Paramount Duty](#)” report
- *The Super Lawyers Blog* – “[Thomas Ahearne Scores Win for Education](#)” (January 2012)
- *Washington State Bar News* - “Briefly About: Tom Ahearne” (November 2011)
- *Seattle Magazine* – “[2010 Most Influential Lawyer of the Year](#)” (November 2010)
- Phi Beta Kappa
- Phi Delta Phi

LAW RELATED ACTIVITIES

- Washington Defense Trial Lawyers
- Washington State Association of Municipal Attorneys
- Risk and Insurance Management Society (RIMS)
- King County Bar Association, Judicial Screening Committee (2003-2009)
- Washington State Bar Association, Litigation Section
- Federal Bar Association
- American Bar Association, Litigation Section & Insurance Coverage Litigation Committee
- King County Prosecutor's Office, Special Deputy Prosecutor, Felony Drug Task Force (1990-1991)

NON-LAW ACTIVITIES

- Rocky Mountain Elk Foundation, Life Member (2001-death)
- Washington State Bowhunters, Member (2002-February 11, 2014)
- Washington Motorcycle Road Racing Association (WMRRA), 600cc Racer (2009-February 11, 2014)
- Bainbridge Island Football Club [a/k/a “Soccer”], Board Member & Secretary (2009-2013)
- Hillary Clinton delegate, Democratic National Convention, Denver, Colorado (2008)
- Bainbridge Island Planning Commission, Commissioner (1994-1997)
- United Way of King County, Literacy and Employment Funding Review Panel, Member (1993-1996)
- Bainbridge Island Comprehensive Plan Advisory Committee, Member (1992-1994)
- Notre Dame Alumni Club of Western Washington, Secretary & Newsletter Editor (1987-1994)
- Bainbridge Island Transportation Planning Committee, Chair (1991-1992)

SOME PRESENTATIONS

- “Insurance Bad Faith ‘Set-Up’ in Washington”, Bad Faith Law and the Origin of the Set-Up, October 2016
- “Insurance Bad Faith ‘Set-Up’ in Washington”, Recognize an Unreasonable Third-Party Demand, October 2016

Thomas F. Ahearne MEMBER

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- “Panel on an Overview of Ethical Rules in Washington as Compared to Oregon, Idaho and Alaska for the Tripartite Relationship”, Annual Insurance Law Update, Washington Defense Trial Lawyers, April 2015
- “Insurance Coverage Issues in Public Works Construction”, Public Contracts and Procurement Regulations seminar, Lorman Education Services (2013)
- “Insurance Coverage”, Public Ports and Contracting seminar, Washington Public Ports Association (2012)
- “How to Collect from Someone Else’s Insurance for Just About Anything”, Association of Washington Housing Authorities (AWHA) Conference (2012)
- “Insurance Considerations in the Bidding Process”, Competitive Public Construction Bidding seminar, The Seminar Group (2012 and 2011)
- “Insurance Coverage and Its Critical Role in Construction Defect Claims”, Construction Claims seminar, Lorman Education Services (2011 and 2008)
- “Ethical Considerations”, Construction Defect Litigation From A to Z seminar, National Business Institute (2010)
- “Pursuing Insurance Coverage for Construction Defects: Common Pitfalls for Construction Coverage”, Construction Defects Update and Strategies seminar, The Seminar Group (2011, 2010, 2009, and 2008)
- “Insurance Fair Conduct Act (IFCA)”, Insurance in the Construction Industry seminar, The Seminar Group (2009)
- “Insurance Coverage Issues in Public Works Construction” and “Public Bidding Procedures and Bid Contests”, Public Works Construction seminar, Lorman Education Services (2009 and 2008)
- “Coverage Disputes and Bad Faith Claims”, Construction Insurance and Disputes seminar, National Business Institute (2009)
- “Construction Projects — Coverages for Construction Defects”, Top 5 Issues in Insurance Coverage seminar, Lorman Education Services (2008)
- “Reducing Project Risks Through Insurance”, Construction Project Management seminar, Lorman Education Services (2008)
- “Initiatives and Referenda”, Election Law in Washington seminar, Lorman Education Services (2008)
- “Pursuing Insurance Coverage for Construction Defects”, Construction Defect Water Intrusion & Other Calamities seminar, The Seminar Group (2007)
- “Insurance Coverage & Indemnity Clauses — Ensuring that Someone Else Pays When Things Go Wrong”, Construction Law and Risk Management for Municipalities — Latest Traps & Strategies seminar, The Seminar Group (2007)
- “Myth vs. Reality in the World of Condominiums, Construction Litigation and Insurance Coverage — Traps in the Trenches”, Hot Issues in Real Estate and Land Use Development seminar, Foster Pepper PLLC (2007)
- “Constitution & Education Funding Litigation”, Full Funding Coalition Seminar at Washington Senate Office Building (2007)
- “Construction Defects: Water Intrusion & Other Calamities”, National Business Institute construction defect seminar (2006)
- “Insurance Coverage Trends”, National Business Institute insurance seminar (2006)
- “Insurance Law: Third Party Coverage”, National Business Institute insurance seminar (2006)
- “Public Works Construction: New & Dramatic Legal Changes in Washington”, Lorman Educational Services public works seminar (2006)
- “Construction Defects: Water Intrusion Claims”, The Seminar Group construction seminar (2005)
- “Election Law in Washington”, Northwest Legal Foundation seminar (2005)
- “Where’s My Vote? Lessons Learned From Washington’s Gubernatorial Election”, Seattle University School of Law Elections Law Symposium (2005)
- “Water Intrusion & Other Construction”, National Business Institute construction defect seminar (2004)
- “Insurance Coverage Challenges in Washington”, National Business Institute insurance seminar (2004)

Thomas F. Ahearne MEMBER

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- “Water Intrusion and Toxic Mold Claims”, Sterling Educational Services construction seminar (2004)
- “Insurance Litigation in Washington”, National Business Institute insurance seminar (2003)
- “Solving Water Intrusion And Mold Problems in Washington”, Lorman Education Services (2002)
- “Insurance Protection For Construction Defects, Terrorist Threats, And Other Losses”, Annual Technical & Management Conference of the Evergreen Rural Water Association (2002)
- “Protections And Limitations Of Home Owner Warranty/Insurance Programs Under Washington Law”, Master Builders Association Conference (2002)
- “Update on Terrorism Insurance After 9/11”, KING 5 Television (2002)
- “Understanding The Insurance Contract and Washington Insurance Coverage Law”, National Business Institute insurance seminar (2002)
- “Construction Defects & Mold Claims: Parties and Insurance Coverage”, National Business Institute insurance seminar (2002)
- “Insurance Law In Washington”, National Business Institute legal seminar (2001)
- “Terrorism Insurance After 9/11”, KING 5 Television (October 2001)
- “Getting The Most Insurance Protection For Your Taxpayers”, Municipal attorney conference CLE (2000)
- “Recent Collapse Cases & First—Party Property Cases In Washington”, Washington Defense Trial Lawyers Association seminar (1998)
- “Getting The Most Out Of The Insurance The Homeowner Paid For”, National Business Institute legal seminar (1998)
- “Getting The Most Out Of That Directors And Officers Policy The Company Bought”, National Business Institute corporate seminar (1998)
- “Insurance Coverage For Environmental Pollution Claims: Use Those Old Insurance Policies”, Risk Insurance Management Society (“RIMS”) conference (1996)

LEGAL CAREER

- Foster Pepper PLLC, Member (1993-present), Associate (1986-1992)
- U.S. District Court, Southern District of Texas, Houston Division, Law Clerk to Chief Judge John V. Singleton, Jr. (1984-1986)

BAR ADMISSIONS

- Washington (1984)
- U.S. District Court, Western District of Washington (1984)
- U.S. District Court, Eastern District of Washington (1991)
- U.S. Court of Appeals, Ninth Circuit (1991)
- United States Supreme Court (2006)

EDUCATION

- University of Chicago, J.D. *with honors* (1984)
- University of Notre Dame, B.A., Economics, *magna cum laude* (1981)



SEATTLE

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bradley.hoff@foster.com

SERVICES

Litigation & Dispute Resolution

Insurance Coverage (Chair)

Privacy, Cybersecurity & Data Protection

Sports Law (Chair)

PRACTICE OVERVIEW

Brad is a commercial litigator with more than 20 years of experience representing insurance policyholders in a wide variety of disputes with their insurance companies. Although Brad is an experienced litigator, his goal is to solve the particular problem facing his client in the least burdensome and distracting manner possible, and pursue litigation only when actually needed to solve the client’s problem.

Brad has substantial experience litigating and negotiating the resolution of disputes arising under “third-party” policies such as general liability, employment practices liability, pollution liability, directors & officers liability, and errors & omissions/professional liability policies, and under “first-party” policies such as commercial property, condominium, apartment, homeowners, business interruption, and employee dishonesty/theft policies. Brad also uses his experience handling insurance disputes to counsel his clients regarding risk management matters.

REPRESENTATIVE WORK – First-Party Coverage Matters

- Assisted owner of food processing facility in recovering, under commercial property policy, more than \$20 million for repair of fire damage to processing facility and business losses resulting from that damage.
- Represented condominium owners association in recovering, under condominium policy and separate apartment policy, total of nearly \$3 million for structural rot damage to multi-building condominium complex that had been converted from apartments.
- Represented owners of multi-building apartment complex in recovering, under apartment policy, more than \$2.5 million for repair of structural rot damage and rental income loss resulting from that damage.
- Represented agricultural product broker in recovering full coverage, under stock throughput policy, for damage to products while in cold storage, as well as attorney fees incurred in responding to insurer’s initial denial.
- Represented motel owner in recovering, under commercial property policy, nearly \$2 million for repair of water damage resulting from hurricane and business income loss resulting from that damage.

Bradley W. Hoff MEMBER

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- Represent homeowners in obtaining full coverage for cost of asbestos remediation undertaken as part of fire damage repairs to residence, as well as attorney fees incurred in responding to insurer’s initial denial.

REPRESENTATIVE WORK – Liability Coverage Matters

- Represented owner of contaminated property in successfully challenging general liability insurer’s seven year-long denial of coverage for remediation costs.
- Represented subcontractor in obtaining general liability coverage for six-figure costs of removing and replacing work that failed to comply with building specifications.
- Represented retail chain in obtaining coverage for range of third-party claims, as additional insured under general liability policies issued to vendors of products sold by chain.
- Represented client in obtaining, under general and errors and omissions liability policies, nearly \$6 million in funding for settlement of class action lawsuit brought under Telephone Consumer Protection Act of 1991 (the “TCPA”).
- Represented industrial construction equipment lessor in establishing lessee’s right to coverage (and thus funding of mid-six figure settlement with client) under lessee’s general liability insurance, for claim of conversion or actual loss of (inability to locate) equipment while in lessee’s possession.
- Represented material supplier in obtaining funding for six-figure settlement of third-party claim alleging damage to high-end residence resulting from defects in those materials.
- Represented commercial property owner in recovering mid-six figure settlement for cost of defending against tenant claim alleging constructive eviction due to property defects, despite fact that claim was not tendered until I was retained after conclusion of trial against commercial property owner.

RECOGNITION

- Washington Super Lawyers list, 2011-2016
- Rising Star, Washington Super Lawyers list, 2000-2004

ACTIVITIES

- Alliance for Education
 - + Board of Directors, Immediate Past Chair
 - + Board of Directors, Chair, 2014-2016
- Seattle Sports Commission
 - + Board of Directors, Member
- 101 Club (Washington Athletic Club)
 - + Board of Trustees, Member
- American Bar Association, Litigation Section, Member
- Washington State Bar Association, Litigation Section, Member
- King County Bar Association

PUBLICATIONS

- [“Triggering the Insurer’s Duty to Defend for MTCA Claims: *Gull Industries, Inc. v. State Farm Fire & Casualty Company*,”](#) Co-Author, Washington State Bar Association Environmental & Land Use Law Section Newsletter, Volume 41 Number 1, February 2015

Bradley W. Hoff MEMBER

SEATTLE T 206.447.2911 F 206.749.1953 bradley.hoff@foster.com

PRESENTATIONS

- “Cyber Risk Coverage,” Speaker, Association of Corporate Counsel CLE, October 2016
- “Additional Insured Tender Issues & Strategies,” Speaker, Costco Defense Counsel Conference, August 2016
- “[Protecting Against Risk](#),” Speaker, Bidding Public Works and Construction Contracts, The Seminar Group, May 2016
- “16th Annual Labor & Employment Law,” Speaker, August 2013
- “9th Annual Construction Defects: Updated Strategies,” Speaker, The Seminar Group, December 2012
- “Insurance and Indemnities,” Speaker, October 2012
- “Bad Faith Insurance Claims in Washington,” Speaker, December 2011
- “Insurance Law Primer: Understanding the Essential Components,” Speaker, December 2010
- “2010 Foster Pepper Bankers Briefing,” Panelist, May 2010
- “3rd Annual Sports Law & Business Seminar,” Co-Chair and Moderator, April 2010
- “Insurance Law: Current Topics and Strategies,” Speaker, March 2010
- “Insurance in the Construction Industry,” Speaker, The Seminar Group, October 2009
- “Insurance Coverage Litigation,” Speaker, National Business Institute, June 2009
- “2009 Foster Pepper Bankers Briefing,” Panelist, May 2009
- “The Liability of the Corporate Executive,” Speaker, The Seminar Group, May 2009
- “Insurance Coverage Litigation,” Speaker, National Business Institute, August 2008
- “Insurance Law from A to Z,” Speaker, National Business Institute, February 2008
- “Insurance Coverage Litigation,” Speaker, National Business Institute, September 2007
- “Insurance for Public Attorneys,” Speaker, Seattle City Attorney’s Office, June 2006
- “Insurance Coverage Breakfast Seminar, Foster Pepper,” Speaker, October 2005
- “Residential Redevelopment of Contaminated Property,” Speaker, Law Seminars International, March 2005
- “Earthquake and Insurance Coverage: What You Need to Know,” Speaker, Foster Pepper, April 2001

EXPERIENCE

- Foster Pepper PLLC
 - + Insurance Coverage Practice Group, Chair, 2007-Present
 - + Member, 2002-Present
 - + Associate, 1994-2001
 - + Summer Associate, 1993
- King County Superior Court, the Hon. Dale B. Ramerman, Law Clerk, 1992

BAR ADMISSIONS

- Washington, 1994
- U.S. District Court
 - + Eastern District of Washington, 2006
 - + Western District of Washington, 1995
- 9th Circuit U.S. Court of Appeals, 1997

Bradley W. Hoff MEMBER

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EDUCATION

- J.D., Georgetown University Law Center (*cum laude*), 1994
 - + *The Tax Lawyer*, Staff Member, 1992-1994
- B.A., University of Washington (*cum laude*), 1991
 - + Phi Beta Kappa
 - + Beta Gamma Sigma (Business Honor Society)

Jack Zahner

MEMBER



SEATTLE

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SERVICES

Litigation & Dispute
Resolution

Construction

Financial Institutions

Insurance Coverage

PRACTICE OVERVIEW

Jack is a member of the firm's Litigation & Dispute Resolution practice and concentrates on insurance coverage from the policyholder's perspective. Jack has successfully resolved significant insurance disputes including large first-party property losses, as well as third-party liabilities and lawsuits stemming from environmental contamination, consumer class actions, intellectual property and construction defect claims. Jack has also handled a wide array of commercial disputes through summary judgment, trial and appeal.

REPRESENTATIVE WORK – First-Party Property Damage and Business Interruption Losses (Earthquake, Fire and Water Damage)

- Obtained \$14.6 million for regional developer from primary and excess property insurers in litigation over water intrusion and business interruption losses. California law governed the dispute.
- *Commonwealth Insurance Company v. Grays Harbor County*, 120 Wn.App. 232. Involving coverage for code upgrades and earthquake damage to county courthouse.
- Bedford LLC adv. Agricultural Insurance Company. Obtained \$3.5 million from property insurer for collapse (structural decay) and business interruption claims.
- *Ellis Court v. State Farm* and *Ellis Court v. Greenwich Insurance Company* – Obtained judgments and settlements totaling \$2.25 million from property insurers for collapse (structural decay).
- Daniels Cleaners adv. The Hartford. Obtained \$1.5 million for fire and business interruption claims for loss of dry cleaning plant.

REPRESENTATIVE WORK – Liability Insurance Coverage for Businesses

- Counsel to beverage manufacturer related to liability coverage for Lanham Act, trademark and trade dress claims.
- Counsel for financial institution in litigation against Directors & Officers insurer over coverage for underlying \$150 million consumer class action lawsuit in California. Secured D & O policy limits to fund settlement of underlying class action.

Jack Zahner MEMBER

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- Coverage counsel for estates in environmental cleanup of former dry-cleaning supply site contaminated with perchloroethylene (PCE) – Secured over \$6 million in primary and excess/umbrella coverage to fund cleanup. Site is being cleaned up through electrical resistance heating (ERH).
- Coverage counsel for former dry-cleaning operator in environmental cleanup – Site slated for clean-up through electrical resistance heating.
- *Pinnacle v. General Security Insurance Company* – Litigation against excess/umbrella liability insurer in actions in Missouri and Washington trial and appellate courts concerning coverage for wrongful death punitive damages judgment, choice of law, conflicts of law, and res judicata.
- Defense and coverage counsel for Mercer Island residents sued after a landslide – Resolved lawsuit against residents and prosecuted third-party claims against engineer, developer and contractor for leaking underground stormwater detention tank.
- Coverage and settlement issues for certain directors and officers.
- Coverage for intellectual property / trademark claims for restaurant.
- Coverage for copyright claims for engineering company.
- Counsel for financial institution in litigation against London Market Errors & Omissions insurer for coverage related to consumer class action.
- Coverage counsel for former dry cleaner for environmental cleanup of chlorinated solvents (PCE).
- Coverage counsel for assisted living facility defendant in Nevada wrongful death and punitive damages litigation.
- Coverage counsel for policyholder/defendant in wrongful death and closed head injury litigation arising out of boating accident.
- Coverage counsel for policyholder/defendant in wrongful death action.
- Coverage counsel for property owner who cleaned up abandoned, leaking underground storage tanks from predecessor's former gas station.

REPRESENTATIVE WORK – Liability Insurance Coverage for Construction Defects

Coverage counsel for over a dozen developers and developer/general contractors for lawsuits brought by Condo Associations, including:

- Bay Colony
- Poulsbo Place
- Cypress Way
- Black Hawk
- Palisades Park
- Wild Horse
- Savannah Oaks
- Cedar Park
- Arbor Ridge
- Thea's Landing
- Barclay Court
- Magnolia / Bellagio
- Yehle Park
- Atwater Park
- Crofton
- The Falls

REPRESENTATIVE WORK – Commercial Litigation

- Trail Walk LLC v. CREI (Clearwater Real Estate Investments). On summary judgment filed 18 days after commencing the lawsuit, obtained declaratory judgment for Trail Walk terminating \$3.2 million second deed of trust in adversary action within a bankruptcy. The case involved the interpretation of a “Last-Out” Participation Agreement in the underlying loan.
- Sound Transit adv. Pine Street Stakeholders. Obtained expedited appellate review and reversal of Hearing Examiner decision interpreting Seattle Noise Ordinance. Reversal allowed Sound Transit to resume night-time construction of Pine Street substation.
- Obtained summary judgment for full reimbursement and prejudgment interest for infrastructure developer in action against later-in-time residential developer concerning sewer reimbursement contract.
- Represented property owner in action against adjoining property owner for landslide.
- Cleared \$970,000 lien from title for property owner in action against escrow agent.
- Obtained summary judgment on behalf of advertising agency in breach of contract litigation.
- Obtained summary judgment and fees on behalf of secured lender in litigation against mortgage brokerage for breach of contract due to broker's involvement in fraudulent pump and dump scheme.
- Represented advertising agency in contract dispute with client who preemptively terminated contract.
- Represented purchaser of undeveloped commercial real property in bench trial of rescission claim against seller. Trial judge awarded rescission with full refund of purchase price and prejudgment interest to purchaser.
- *Cabot v. Kobayashi*, 1996 WL 879469 (D. Guam) obtained summary judgment dismissal and Rule 11 sanctions against plaintiff real estate broker/attorney in commission dispute. Affirmed on appeal with award of double attorneys' fees and costs.

RECOGNITION

- Access to Justice Institute, “Public Service” Award, 2006

ACTIVITIES

- Washington State Bar Association, Litigation Section, Member
- King County Bar Association
- Foster Pepper Pro Bono Committee, 2002-Present
- Pro Bono Service
 - + King County Housing Justice Project, Volunteer Attorney, 2010
 - + Washington State Bar Association Pro Bono Service Commendation, 2003, 2005
 - + Access to Justice Institute, Leadership and Service Award, 2004

PRESENTATIONS

- “Who Pays for One and Two? Insurances Strategies – OCIP, GL, PL, E&O and Property,” Speaker, New Era of Condominium Development and Legal Trends, May 2015
- “Gain a New Perspective of Pre-Trial Practice,” Speaker, Bad Faith Insurance Claims in Washington, December 2012
- “Insurance Coverage and Claims for Public Works,” Speaker, Public Works Contracting: Success Strategies in Interesting Times, October
- “Insurance and Indemnities,” Speaker, Top 10 Commercial Lease Provisions, October 2012
- “Got Capital Bank Case Study - Safety and Soundness Risk Management,” Panelist, 2010 Bankers Briefing, May 2010

Jack Zahner MEMBER

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- “Insurance Products and Issues,” Speaker, Condominiums, Townhouses & Apartments: The New Wave of Construction, July 2009
- “Mastering Disaster – Dealing with Problem Credits,” March 2008
- “Special Insurance Issues in Condo Workouts,” 2008 Spring Bankers Briefing, May 2008
- “Pacific Northwest Coverage & Current Trends,” Panel presentation, 14th Annual West Region Construction Defect and Construction Law Conference, October 2008

EXPERIENCE

- Foster Pepper PLLC
 - + Member, 2005-Present
 - + Associate, 2002-2004
- Tousley Brain Stephens, Litigation Associate, 1999-2002
- Washington Court of Appeals, Division II (Tacoma, WA), Judicial Law Clerk, 1998-1999
- McCully, Lannen, Beggs & Melancon (Maite, Guam), Litigation Associate, 1995-1997
- King County Prosecutor’s Office, Special Deputy Prosecutor, 1994-1995

BAR ADMISSIONS

- Washington
- Oregon
- Guam (Inactive)
- U.S. District Court
 - + Western District of Washington
 - + District of Guam
- 9th Circuit U.S. Court of Appeals

EDUCATION

- J.D., University of Washington School of Law
- B.A., University of North Carolina

Jason R. Donovan

MEMBER



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SERVICES

Litigation & Dispute
Resolution

Construction

Insurance Coverage

Retail & Consumer
Products

Transportation

PRACTICE OVERVIEW

Jay has been a member of the firm's Litigation & Dispute Resolution and Insurance Coverage practices since 2008 and focuses on representing policyholders in insurance coverage and bad faith disputes involving commercial general liability, directors and officers liability, employment practices liability and professional services liability. In addition to his insurance coverage work, Jay has extensive experience handling various commercial matters, including the representation of transportation brokers in insurance, discrimination, contractual and other claims.

REPRESENTATIVE WORK

- Awarded summary judgment establishing homeowner's entitlement to insurance coverage for significant water damage after insurer asserted at least eight different reasons for denying coverage in serial fashion over a two-year period.
- Effectively had opposing counsel disqualified from serving as trial counsel in bad faith lawsuit stemming from opposing counsel's wrongful investigation, evaluation, and handling of client's insurance claim.
- Successfully procured insurance coverage for copyright infringement claims after insurer wrongfully refused to defend client.
- Obtained jury verdict against insurer for bad faith and Insurance Fair Conduct Act violations.
- Obtained Insurance Fair Conduct Act, bad faith and estoppel rulings in Federal Court against subcontractor's insurer for refusing to defend general contractor as an additional insured.
- Recovered more than \$2,500,000 for general contractor as additional insured under policies issued to subcontractors.
- Recovered policy limits, bad faith damages and all attorneys' fees from title insurer for property defects on clients' property.
- Successfully obtained employee embezzlement / fraud coverage for two local non-profits.
- Successfully defended non-profit against discrimination claims.
- Regularly advises and litigates insurance, contractual, and employment disputes on behalf of non-profit transportation brokers.

ACTIVITIES

- American Bar Association, Member
- Federal Bar Association, Member
- Washington State Bar Association
- Illinois State Bar Association
- Wisconsin State Bar Association
- King County Bar Association
- Bailey-Boushay House, Board Member, 2010-2012

PUBLICATIONS

- [“Insurers Can be Liable for Damages Even in the Absence of Coverage,”](#) Author, Foster Pepper News, November 2014
- [“Case Notes: Insurer’s Communication with Coverage Counsel Found Presumptively Discoverable in Bad Faith Cases,”](#) Author, American Bar Association, Section of Litigation, Insurance Coverage, May 2013

PRESENTATIONS

- “Protecting Against Risk,” Speaker, Bidding Public Works and Construction Contracts, The Seminar Group
 - + [May 2016](#)
 - + [March 2016](#)
- [“Real Life Cedell Issues,”](#) Speaker, 2016 Annual Insurance Law Update, Washington Defense Trial Lawyers, April 2016
- “Ongoing Bad Faith When Defense Counsel Acts As Claims Adjuster: *Babai V. Allstate*,” Speaker, WSAJ’s 38th Annual Insurance Law Seminar, January 2016
- “Employment Insurance for Tribes as Employers,” Speaker, Tribal Employment Rights & Law: Sovereignty, Jurisdiction and Best Practices
- “Gather Information Critical to Your Case ,” Speaker, NBI CLE - Bad Faith Insurance Claims
- “Understanding Insurance Coverage ,” Speaker, NBI CLE - Construction Defects Liability
- “Gather Information Critical to Your Case ,” Speaker, NBI CLE - Bad Faith Insurance Claims
- “Representative Matters/Multi-Disciplinary Experience,” Speaker, Foster Pepper Insurance Coverage Group
- “Employment Update - What Do They Need to Know About You? The Invasive and Informative Job Search Process in the Facebook Era,” Speaker, 27th Annual Civil Service Conference

EXPERIENCE

- Foster Pepper PLLC
- Jenner & Block LLP (Chicago, IL)
- Merlo Kanofsky Brinkmeier & Gregg, Ltd. (Chicago, IL)

BAR ADMISSIONS

- Washington, 2008
- Illinois, 2003
- U.S. District Court

Jason R. Donovan MEMBER

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- + Eastern District of Washington, 2012
- + Western District of Washington, 2009
- + Northern District of Illinois, 2004
- 9th Circuit U.S. Court of Appeals, 2011

EDUCATION

- J.D., University of Wisconsin Law School
- B.M., Northwestern University
- Université Paris-Sorbonne, L'Ecole Normale de Musique