

FOSTER PEPPER

# 2018 Insurance Coverage Legal Update

PRESENTATION MATERIALS  
June 7, 2018

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Presented by:

**FOSTER PEPPER**

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# Presentation

# 2018 INSURANCE COVERAGE LEGAL UPDATE:

Safeguarding Your Operations with Insurance  
June 7, 2018



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# CONTRACTUAL RISK TRANSFER ISSUES & STRATEGIES

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## Goals:

- Survey available contractual risk transfer protections for third-party claims.
- Identify strategies for maximizing strength of those protections, both in drafting risk transfer protections and in pursuing/enforcing those protections when claims arise.
- All in 20 minutes...

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## Two Primary Sources of Risk Transfer Protections:

- Contractual indemnification
- Additional Insured (AI) status
- Both relate back to contractual insurance requirements (later).



## Contractual Indemnification:

- Third-party provides goods or services enabling you/your client to perform duties to others (sell products, perform services, etc.)
- Contract with that third-party protects you/your client against claims relating to those goods or services.
- Protection comes directly from counterparty.

## Sample Contractual Indemnification Provision:

10. INDEMNIFICATION. Contractor shall defend, hold harmless and indemnify Owner from and against any and all third-party claims, actions, liabilities, losses, and causes of action arising out of out of Contractor's services performed pursuant to this Agreement.

- Can be limited to certain types of injury/damage claims – e.g., bodily injury, property damage, etc.
- Can contain exceptions akin to insurance exclusions – e.g., sole negligence, intentional acts, etc.
- Enforceable scope depends upon governing law.



## Contractual Indemnification Pointers:

- Make sure indemnity is backed up by indemnitor's insurance.
- Sole negligence often non-indemnifiable, but only in some circumstances.
- Understand “arising out of” vs. “caused by” triggers.
- Pursue indemnification rights separately from additional insured rights (later).



## Additional Insured Status:

- Again, third-party provides goods or services enabling you/your client to perform duties to others (sell products, perform services, etc.).
- Contract with third-party protects you/your client against claims relating to those goods or services.
- Protection comes directly from counterparty's insurer.

Sample Contractual Indemnification Provision:

12. **INSURANCE.** Contractor shall purchase and maintain, at its own expense, a policy or policies of:

(a) **Commercial General Liability insurance written on an occurrence basis, including coverage for bodily injury and property damage, products and completed operations, contractual liability, with minimum limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate.**

\* \* \*

(d) **All policies of insurance purchased pursuant to this Section shall expressly name Owner as an additional insured pursuant to ISO form CG 20 10 11 85 or its substantive equivalent....**

- Important: Not enforceable directly against the insurer. Counterparty must act.
- Additional insured status depends upon:
  - Language of required additional insured endorsement.
  - Coverage actually provided under required policy or policies.
- Coverage depends upon law governing the required policy or policies (willful acts, punitive damages, etc.), which is difficult for you/your client to control.

AI Endorsement Example: CG 20 10 (ongoing operations)

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

- A. Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

AI Endorsement Example: CG 20 37 (completed operations)

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".



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## AI Endorsement Examples: CG 20 15 (products)

### **ADDITIONAL INSURED – VENDORS**

- A. Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) (referred to throughout this endorsement as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business.



### Additional Insured Pointers:

- Require the right insurance coverage, including limits and duration.
- Specify the proper AI scope/endorsement.
- Require AI to fullest extent of liability limits, regardless of contractual requirement.
- Follow through.
- Don't rely upon Certificates of Insurance.
- Require and make sure AI coverage is primary/non-contributing.
- "Push down" requirements to others involved.
- Specify who pays deductible/SIR.
- Don't let counterparty's insurer "meld" indemnification and coverage claims.
- Don't buy "caused by" requirement.
- "Manage" applicable law to maximize benefits/leverage.



## Key Differences Between Contractual Indemnification and AI Coverage Rights:

- Right (dispute) against counterparty vs its liability insurer.
- Sole negligence exception to contractual indemnification right, but not necessarily to AI coverage right.
- AI coverage subject to policy limits, while contractual indemnification subject to counterparty's financial ability to pay.
- Contractual indemnification right expressly governed by applicable law provision, while AI coverage rights governed by forum choice of law principles.
- AI coverage subject to additional consumer protection laws, while contractual indemnification subject solely to contract.
- Pursuing both indemnification and AI coverage for a third-party claim maximizes strategic options and arguments for full protection.



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Pursuing both indemnification and AI coverage for a third-party claim maximizes strategic options and arguments for full protection.

# Common Issues & Answers Re: AI Coverage Pursuit



Issue #1: Counterparty admittedly did not obtain contractually required insurance required by vendor agreement.

What to do:

- See for yourself: Obtain complete copy of counterparty's liability policy.
- Assert breach of contract (failure to procure) claim against counterparty in underlying litigation.
- Obtain counterparty's binding admission that it failed to procure required insurance.



Issue #2: Counterparty says it procured required insurance, but insurer says it didn't.

What to do:

- Assert breach of contract (failure to procure) claim against counterparty.
- Assert contractual indemnification claim against counterparty.
- Encourage counterparty to advocate for coverage through broker and/or coverage counsel.
- Obtain complete copy of counterparty's liability policy.
- Obtain counterparty's binding assertion that it procured required insurance.
- Explain bad faith exposure to insurer.
- Make economic argument to insurer.

Issue #3: Insurer acknowledges your/your client's AI status, but parrots counterparty's denial of indemnification liability in denying coverage (duty to defend).

What to do:

- Assert colorable contractual indemnification claim against counterparty.
- Consider asserting breach of contract (failure to procure) claim against counterparty.
- Explain to insurer that it has separate and direct coverage obligations to you/your client as its insured, which are governed by policy language not terms of indemnification provision.
- Explain broad meaning of "arising out of" in required AI endorsements.
- Obtain discovery confirming counterparty fault for or role in injury/damage.
- Explain to insurer that plaintiff's allegations, not counterparty's or insurer's self-serving defenses, control duty to defend determination.



Issue #4: Insurer acknowledges duty to defend your/your client as AI, but wants to do it through same counsel defending its Named Insured (the counterparty).

What to do:

- Assert colorable contractual indemnification claim against counterparty (if ROR).
- Explain to insurer that it has separate and direct coverage obligations to you/your client as if it were only insured.
- Explain conflicts of interest that necessitate separate counsel.

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# WAYS TO ESCAPE POTENTIALLY COVERAGE- DEFEATING POLICY LANGUAGE

June 7, 2018

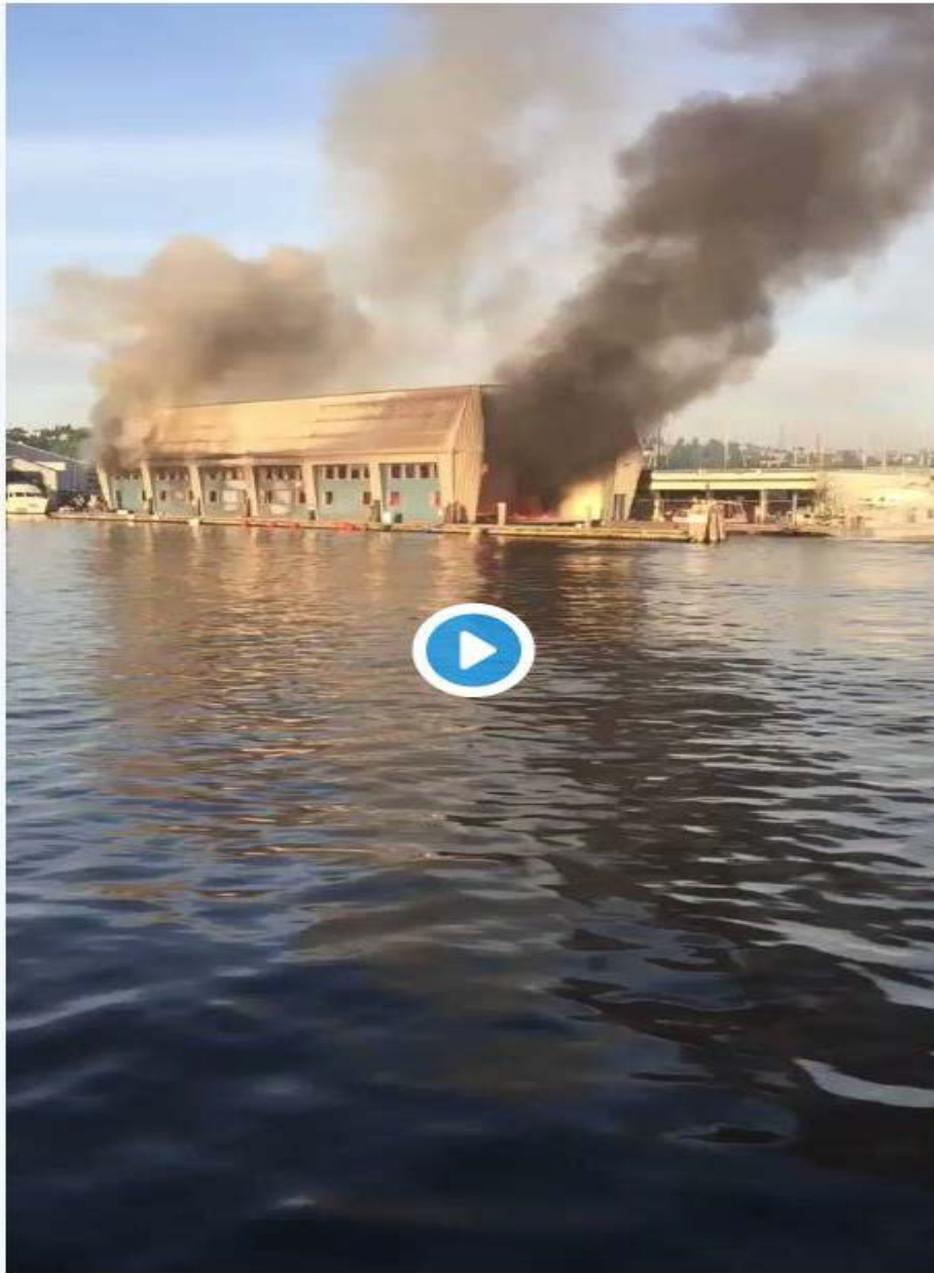


# Boat house in Ballard engulfed in flames

Originally published May 21, 2017 at 9:29 pm | Updated May 22, 2017 at 1:38 pm



 A boat house, just East of Covich Williams fuel dock at Canal Cove Marina in Seattle, was engulfed in flames Sunday evening. (Greg Gilbert/The Seattle Times)



**Kendra Gilbert**  
@KLGnews

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# Origin of the fire: a boathouse office



# After the fire



# After the fire





STARK- 00072

# Port Risk Endorsement



**MARKEL AMERICAN INSURANCE COMPANY**

## PORT RISK ONLY ASHORE ENDORSEMENT

In consideration of the premium charge shown on the Declarations Page, it is hereby agreed and understood that The Markel Helmsman Yacht Policy is amended as follows:

	Schedule
Insured yacht:	1960 CHRIS CRAFT CONSTELLATION CMA66002

**GENERAL CONDITIONS**, item 1. Use of the **Insured Yacht** is amended by adding the following restrictions on the use of the **insured yacht**:

- The **insured yacht** must not be afloat.
- The **insured yacht** may be transported overland only if the sole purpose of the transportation is for maintenance, servicing, repair, refurbishment or safety.
- There will be no live electrical feed of any form to the **insured yacht** while it is unattended.
- All battery cables will be disconnected while the **insured yacht** is unattended.
- Any contract workers will be bonded or insured for their negligent actions.

All other terms, conditions, and limitations of the policy remain unchanged.

# Early Communications.

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- Information gathering: what are the facts?
  - Demand for coverage: please agree to remove the Port Risk endorsement and cover the loss.
  - Insurer thinks about it... and then says: “No.”
  - It becomes clear to both sides, it will take a lawsuit to resolve the coverage.

# The Importance of Choice of Forum.

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- Federal maritime law: breach of a warranty or condition forfeits coverage.
  - State law: not as absolute.
  - Another consideration: prejudgment interest.
  - There is broad concurrent jurisdiction (between state and federal courts) for most maritime-related claims.
  - Potential for a race to the courthouse to choose the forum for the dispute.

# The Litigation, Part I.

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- Policyholder files first, in state court.
  - Insurer files second, in federal court.
  - Insurer removes policyholder's state court suit to federal court.
  - Policyholder moves to remand state court action and moves to stay federal court action.
  - Policyholder prevails in these initial motions.

# A New Legal Theory.

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- Accept the policy “as is”, with the Port Risk endorsement. The policyholder should still prevail, because the breach of the condition was unrelated to the loss.
- The new theory depends on whether the Port Risk endorsement is interpreted to be a “lay-up warranty” or a “navigational warranty.”

# The Litigation, Part II.

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- 
- Amend the complaint and secure a hearing date.
  - Parties file cross motions for summary judgment.
  - Court rules that the condition requiring the boat “not be afloat” in the Port Risk endorsement is a lay-up warranty.
  - Accordingly, state law applies.
  - Under state law, there must be some causal relationship between the breach of the condition and the loss. Precedent: 1978 life insurance case involving intoxication.
  - Summary judgment granted to policyholder.

# Lessons Learned, Part I.

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- On the front end:
    1. The underwriting process is important.
    2. If you have questions about the coverage or terms of art, ask them.
    3. Confirm your understanding in writing.
    4. Double-check the policy language, before and after the policy is issued.

# Lessons Learned, Part II.

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- On the back end:

1. We did not “let the insurer off the hook” by solely pursuing the broker. We pursued both claims.
2. Choice of forum, in certain cases, can be important.
3. Being “first-to-file” can be important.
4. Be open-minded to adding a new legal theory.

# Other Escapes From Coverage-Defeating Language.

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Here, no causal connection between the breach of the condition or warranty and the loss.

Other “escapes” include:

- Notice – Prejudice Rule.
- Ambiguities in the policy construed against insurer.
- Reformation. Mutual mistake or unilateral mistake.
- Resulting loss clauses.



STARK- 00072

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# ATTORNEYS' FEES: NUTS & BOLTS

2018 Insurance Coverage Legal Update





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# The American Rule:

**NO** Fees For Prevailing Party

(Absent Agreement, Statute, or Other Rule)

# Washington Law: 4 Ways to Recover Attorney Fees

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1. Requests for Admission (Civil Rule 36)
  2. *Olympic Steamship* Doctrine (117 Wn.2d 37) (1991)
  3. Insurance Fair Conduct Act (RCW 48.30.015)
  4. Consumer Protection Act (RCW 19.86.090)

# Lodestar Methodology

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Lodestar Methodology = hours expended @ hourly rate + multiplier (maybe).

Burden of Proof: Policyholder

Factors: *Berryman v. Metcalf*, 177 Wn.App. 644, 312 P.2d 745 (2013)

- Reasonableness: hours and rates
- Proportionality
- Pre-litigation fees recoverable

# Strategies for Proving Reasonableness of Attorney Fees

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- Establish reasonableness of rates with supporting expert declaration
  - Explain why there's coverage at early stages / before litigation
  - Request that insurer voluntarily dismiss meritless claims to avoid futile motions
  - Advise insurer of standard hourly rates at early stages of litigation (insurer v. policyholder counsel rates)
  - Avoid issuing needless discovery (e.g., interrogatories)
  - Make an early settlement demand (and subsequent settlement demands)
  - Offer to participate in early mediation (and subsequent mediations)
  - Maintain detailed time entries that are broken down to avoid block billing
  - Draft time entries with privilege in mind to avoid redactions
  - Don't request 100%: eliminate any duplicative / excessive fees

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# Speaker Bios

# Thomas F. Ahearne

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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 cases based on constitutional law, statutory rights, and election disputes.

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

Constitutional Law, Statutory Rights, & Elections: Tom's experience over the past three decades includes (a) constitutional compliance suits such as the *McCleary* school funding litigation, (b) election disputes such as the saga of Rossi-Gregoire Governor's election cases, (c) ballot title challenges including I-933, I-895, I-892, I-885, I-884, I-864, & I-860, (d) Public Records Act suits arising out of the Pilchuck High School and Seattle Pacific University shootings, and (e) suits resolving the enforcement or validity of statutes and initiatives such as Washington's Top-Two primary system and various Tim Eyman measures.

## EXAMPLES OF 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)
- *McCleary v. State*, the ensuing 2012-2017 enforcement Orders & briefing on the Supreme Court's website: [McCleary Orders & briefing](#)
- *Washington State Grange v. Washington State Republican Party, et al.*, 552 U.S. 442, reversing 460 F.3d 1108 (9<sup>th</sup> 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 Democrat, Republican, & Libertarian parties' 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. & 9<sup>th</sup> Cir.) (representing defendant Grange in successfully obtaining dismissal of political parties' "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 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. & 9<sup>th</sup> 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. & 9<sup>th</sup> 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)

## EXAMPLES OF RECOGNITIONS

- *KING 5 News* - "Paralyzed Lawyer Still Standing For Washington Children" (September 2014)
- *KING 5 News* - "[McCleary Attorney: It's About Time](#)" (August 2015)
- *The Boston Globe* - "[In Northwest, a question of tax cuts or education](#)" (November 2015)
- *Publicola at Seattle Met* - "[Best of Fizz 2014](#)" (December 2014)
- Washington Association of Educators of the Talented and Gifted – Distinguished Advocate Award (2015)
- *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* - "[Paramount Duty - Thomas Ahearne Wins One For Public Education](#)" (2012)
- *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)
- Washington Association of School Administrators "Golden Gavel" Award for outstanding contribution to public education (2010)
- *Washington Super Lawyers* – Super Lawyer selection (2000-present)
- *The Best Lawyers in America*® - Insurance Law (2007-present)
- *Best Lawyers*® 2011 Insurance Law "Lawyer of the Year" in Seattle
- Martindale-Hubbell AV rating
- Phi Beta Kappa
- Phi Delta Phi

## LAW RELATED ACTIVITIES

- Washington Defense Trial Lawyers (WDTL)
- Washington State Association of Municipal Attorneys (WSAMA)
- 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)

## EXAMPLES OF LEGAL EDUCATION PRESENTATIONS

- “Details Of Washington Bad Faith Law” (National Business Institute, 2017)
- “Washington Insurance Law On Interpreting The Policy Language At Issue In A Bad Faith Case” (National Business Institute, 2017)
- “Insurance Coverage Legal Update” (FP Seattle Seminar, 2017)
- “Construction Law: What do You Do to Pursue Insurance Claims?” (National Business Institute, 2017)
- “Insurance Bad Faith ‘Set-Up’ in Washington: the Law and the Origin of the Set-Up” (National Business Institute, 2016)
- “Insurance Bad Faith ‘Set-Up’ in Washington: Recognize an Unreasonable Third-Party Demand” (National Business Institute, 2016)
- “Panel on an Overview of Ethical Rules in Washington as Compared to Oregon, Idaho and Alaska for the Tripartite Relationship” (Washington Defense Trial Lawyers, Annual Insurance Law Update, 2015)
- “Insurance Coverage Issues in Public Works Construction, Public Contracts, and Procurement” (Lorman Education Services, 2013)
- “Insurance Coverage: Public Ports and Contracting” ( Washington Public Ports Association, 2012)
- “How to Collect from Someone Else’s Insurance for Just About Anything” (Association of Washington Housing Authorities Conference, 2012)
- “Insurance Considerations in the Bidding Process” (The Seminar Group, 2012 & 2011)
- “Insurance Coverage and Its Critical Role in Construction Defect Claims” (Lorman Education Services, 2011 & 2008)
- “Ethical Considerations in Construction Defect Litigation & Insurance From A to Z” (National Business Institute , 2010)
- “Pursuing Insurance Coverage for Construction Defects: Common Pitfalls for Construction Coverage” (The Seminar Group, 2011, 2010, 2009, & 2008)
- “Insurance Fair Conduct Act (IFCA)” (The Seminar Group, 2009)
- “Insurance Coverage Issues in Public Works Construction” (Lorman Education Services, 2009 & 2008)
- “Public Bidding Procedures and Bid Contests” (Lorman Education Services, 2009 & 2008)
- “Coverage Disputes and Bad Faith Claims” (National Business Institute, 2009)
- “Construction Projects — Insurance Coverages for Construction Defects” (Lorman Education Services, 2008)
- “Reducing Project Risks Through Insurance” (Lorman Education Services, 2008)
- “Election Law in Washington: Initiatives and Referenda (Lorman Education Services, 2008)
- “Pursuing Insurance Coverage for Construction Defects, Water Intrusion, and Other Calamities” (The Seminar Group, 2007)
- “Insurance Coverage & Indemnity Clauses — Ensuring that Someone Else Pays When Things Go Wrong” (The Seminar Group, 2007)
- “Myth vs. Reality in the World of Condominiums, Construction Litigation and Insurance Coverage — Traps in the Trenches” (FP Real Estate and Land Use Development seminar, 2007)
- “Constitution & Education Funding Litigation” (Full Funding Coalition Seminar at Washington Senate Office Building, 2007)
- “Construction Defects: Insurance Coverage for Water Intrusion & Other Calamities” (National Business Institute, 2006)
- “Insurance Coverage Trends” (National Business Institute, 2006)
- “Insurance Law: Third Party Coverage” (National Business Institute, 2006)
- “Public Works Construction: New & Dramatic Legal Changes in Washington” (Lorman Educational Services, 2006)
- “Construction Defects: Water Intrusion Insurance Claims” (The Seminar Group, 2005)
- “Election Law in Washington” (Northwest Legal Foundation, 2005)

Thomas F. Ahearne MEMBER

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- “Where’s My Vote? Lessons Learned From Washington’s Gubernatorial Election” (Seattle University School of Law symposium, 2005)
- “Water Intrusion & Other Construction Insurance Issues” (National Business Institute, 2004)
- “Insurance Coverage Challenges in Washington” (National Business Institute, 2004)
- “Water Intrusion and Toxic Mold Claims” (Sterling Educational Services, 2004)
- “Insurance Litigation in Washington” (National Business Institute, 2003)
- “Solving Water Intrusion And Mold Problems in Washington” (Lorman Education Services, 2002)
- “Insurance Protection For Construction Defects, Terrorist Threats, And Other Losses” (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, 2002)
- “Construction Defects & Mold Claims: Parties and Insurance Coverage” (National Business Institute, 2002)
- “Insurance Law In Washington” (National Business Institute, 2001)
- “Terrorism Insurance After 9/11” (KING 5 Television, 2001)
- “Getting The Most Insurance Protection For Your Taxpayers” (Washington municipal attorney conference, 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, 1998)
- “Getting The Most Out Of That Directors And Officers Policy The Company Bought” (National Business Institute, 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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**SERVICES**

- Litigation & Dispute Resolution
- Insurance Coverage
- 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, 2011-2017
- Rising Star, Washington Super Lawyers list, 2000-2004

## ACTIVITIES

- Alliance for Education
  - + Board of Directors, Member (2008-present) and Past Chair
- Seattle Sports Commission
  - + Board of Commissioners, Member
- 101 Club (Washington Athletic Club)
- 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

## PRESENTATIONS

- [“Cyber Risk Insurance,”](#) Speaker, Foster Pepper 2017 Insurance Coverage Legal Update, June 2017

Bradley W. Hoff MEMBER

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- “Cyber Risk Coverage,” Speaker, Association of Corporate Counsel CLE, October 2016
- “Additional Insured Tender Issues & Strategies,” Speaker, 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

## EDUCATION

- J.D., Georgetown University Law Center (*cum laude*), 1994
  - + *The Tax Lawyer*, Staff Member, 1992-1994

Bradley W. Hoff MEMBER

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- 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

- “[Practical Insurance Tips for Common Real Estate Disputes](#),” Speaker, Foster Pepper 2017 Real Estate/Land Use Briefing: Essential Industry Updates, November 2017
- “[Case Law and regulatory Update: Washington](#),” Speaker, Insurance in the Construction Industry, The Seminar Group, October 2017
- “[Insurance for Environmental Liability](#),” Speaker, Foster Pepper 2017 Insurance Coverage Legal Update, June 2017
- “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

Jack Zahner MEMBER

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- “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
- “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



## SEATTLE

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## SERVICES

Litigation & Dispute Resolution

Construction

Insurance Coverage (Chair)

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.

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## 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 Alert, November 2014
- [“Washington Supreme Court: Insurer’s Communications with Coverage Counsel Now Presumptively Discoverable,”](#) Author, Foster Pepper News Alert, June 2013
- [“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
- [“Washington Passes Marriage Equality Act,”](#) Author, Foster Pepper News Alert, February 2012

## PRESENTATIONS

- [“Insurer ‘Bad Faith’ Overview,”](#) Speaker, Foster Pepper 2017 Insurance Coverage Legal Update, June 2017
- “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 38<sup>th</sup> 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)

Jason R. Donovan MEMBER

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## BAR ADMISSIONS

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