

# 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.

- 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.
- Acted as coverage counsel and defense counsel for the redeveloper of a complex contaminated site in Bellevue, Washington involving petroleum and other contamination. Secured satisfactory insurance-funded settlement from predecessor operator's pre-1986 CGL insurer.
- Represented a housing authority in a complex liability case related to the redevelopment of a project in Seattle and secured an insurance-funded settlement of all claims.
- *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

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- 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

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- “[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
- “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