



James D. Nelson

Shareholder

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PRACTICE AREAS

Defense Litigation, Commercial Litigation, Construction Litigation, Indian Law, Intellectual Property, Professional Liability, Transportation Law, International Law, Insurance Coverage, Coverage Analysis, Extracontractual Exposure Advice and Insurance Litigation

OVERVIEW

James Nelson is a shareholder at Betts Patterson Mines where he has been a trial lawyer for over 30 years. He has a diverse complex litigation practice including business, intellectual property, insurance coverage, professional liability, and estate litigation. Mr. Nelson has represented a wide range of clients that include manufacturers, financial institutions, distributors, retailers, insurers, professionals, and technology companies. He is admitted to practice in the state and federal courts of Washington, Oregon, Alaska, and Idaho. Mr. Nelson is rated "AV" by Martindale-Hubbell and has been recognized as a "Super Lawyer" each year from 2003 to 2013. He is also a frequent writer and speaker in the legal community.

REPRESENTATIVE CASES

- Defended The James Marshall Hendrix Foundation in a lawsuit involving alleged violations of Lanham Act and the Washington Personality Rights Act arising out of the Foundation's promotion of the "The James Marshall Hendrix Awards Ceremony" utilizing rock legend Jimi Hendrix's likeness, image, photograph and signature. *Experience Hendrix L.L.C. v. The James Marshall Hendrix Foundation*, No. 05-36029, 2007 WL 1748354 (9th Cir. June 18, 2007), cert. denied, 128 S. Ct. 908 (2008).
- Represented a corporation in a suit to recover losses it suffered due to theft and mismanagement by the manager of its retail stores and to remove a member of its board of directors who had covered up the scheme. Following a jury trial in Alaska Superior Court, Cape Fox recovered a judgment for compensatory and punitive damages against the former manager and the director. The jury also barred the director from re-election to the Cape Fox board pursuant to Alaska Stat. § 10.06.463. *Martinez v. Cape Fox Corporation*, 113 P.3d 1226 (Alaska 2005).
- Represented an investor in a bankruptcy matter. Mr. Blohorn marked up environmental cleanup invoices 15% pursuant to Florida statute and applied for reimbursement from the state. The contractor's bankruptcy trustee later claimed that all of the \$10 million due Mr. Blohorn from the state was property of the contractor's bankruptcy estate under section 547. The trustee argued that Mr. Blohorn had not perfected his security interest by filing UCC-1 forms, and thus the trustee obtained a perfect lien over the \$10 million when the bankruptcy was filed. District

Court reversed Bankruptcy Court and awarded entire \$10 million to Mr. Blohorn. The Ninth Circuit affirmed the District Court. *Omega Environmental, Inc. v. Blohorn*, No. 00-35211, 2001 WL 1356831 (9th Cir. Nov. 5, 2001).

- Defended Cape Fox Corporation against shareholder suits challenging the results of its 1997 annual board of directors election on the basis that the proxy rules set forth in the Alaska Administrative Code were not validly adopted and applied by the corporation, its independent counsel, and the inspector of elections. In each case, the Alaska Superior Court granted Cape Fox Corporation's motion for summary judgment and dismissed the shareholders' challenges. The Alaska Supreme Court affirmed. *Undersigned Shareholders of the Cape Fox Corporation v. Cape Fox Corporation*, No. 0990 (Alaska Sup. Ct. Aug. 30, 2000).
- Defended Dr. Hewitt's daughter, son, and daughter-in-law, as well as his ex-wife's nurse, against Dr. Hewitt's claims that they had defamed him, caused him severe emotional distress, and caused him to lose control of \$20 million of real estate. The court dismissed the daughter and nurse from the case before trial on jurisdictional grounds. Dr. Hewitt recovered nothing and was required to pay the daughter's and the nurse's attorney's fees. Division I of the Washington State Court of Appeals affirmed. *Hewitt v. Hewitt*, No. 36607-6-I, 1997 WL 306417 (Wash. App. Div. I June 9, 1997).
- Defended Chrysler against Bickmore Dodge's claim that a one-percent charge Chrysler includes in vehicle prices to fund regional advertising violated an Oregon law prohibiting manufacturers from "coercing a dealer to participate monetarily in an advertising campaign." The suit imperiled a program that annually generates hundreds of millions of dollars of critical advertising revenues nationwide. James removed the case to federal court and demanded a jury trial. The dealer settled for \$45,000. *BBC Dodge, Inc. v. Chrysler Corporation*, No. 36799-4-I, 1996 WL 146723 (Wash. App. Div. I Apr. 1, 1996).
- Represented Cooper Industries in a dispute involving a \$6 million contract for the sale of massive, highly complex diesel generator sets that were specially designed to power an Air Force radar station on a remote Aleutian island. Wright Schuchart initially sued Cooper Industries for \$2.2 million for delaying the project. Ultimately, Cooper Industries recovered \$2.4 million on its counterclaim. *Wright Schuchart, Inc. v. Cooper Industries, Inc.*, Nos. 93-35778, 93-35946 and 93-36074, 1994 WL 621889 (9th Cir. Apr. 21, 1995) (notation of unreported decision at 40 F.3d 1247).
- Defended Chrysler in a misrepresentation suit involving a stock sale which was complicated by Chrysler's divestiture of Chrysler Realty to qualify for government loan guarantees. Overlake claimed lost profits in excess of \$10 million. Although Overlake's lowest settlement demand was \$3 million, Overlake recovered only \$47,000 following a three-week trial and the ensuing appeal. Division I of the Washington State Court of Appeals rejected Overlake's appeal. *Overlake Chrysler Plymouth, Inc. v. Chrysler Corporation*, Nos. 25917-2-I and 26122-3-I (Wash. App. Div. I Aug. 26, 1991).
- Defended Farmers Insurance against Sherman Act antitrust conspiracy claims brought by defecting insurance agents Farmers had previously enjoined by enforcing non-competition agreements. The district court dismissed all of the agents' claims against Farmers well in advance of trial, and the Ninth Circuit affirmed the dismissal. *Hoppenbrouwer v. Farmers Insurance Exchange*, No. 83-3752 (9th Cir. Feb. 17, 1984) (notation of unreported decision at 730 F.3d 766).

ADDITIONAL PUBLISHED CASES

- *Grand View Homes L.L.C. v. Cascade Testing Laboratory, Inc.*, No. 60217-9-I, 2008 WL 4053439 (Wash. App. Div. I September 2, 2008) (notation of unreported decision at 146 Wash. App. 1044).

- *Stonebridge Securities, LLC v. Devine*, No. 58458-8-I, 2007 WL 1464431 (Wash. App. Div. I May 21, 2007) (notation of unreported decision at 138 Wash. App. 1047).
- *Shields v. Cape Fox Corporation*, 42 P.3d 1083 (Alaska 2002).
- *Hamilton Properties, Inc. v. Associated Grocers, Inc.*, 144 Or. App. 171, 925 P.2d 1237 (1996).
- *City of Ketchikan d/b/a Ketchikan Public Utilities v. Cape Fox Corporation*, 65 F.3d 754 (9th Cir. 1995), *opinion withdrawn*, 74 F.3d 191, *opinion replaced*, 85 F.3d 1381 (1996).
- *Ketchikan Public Utilities*, 74 Fed. Energy Reg. Comm'n ¶ 62,113, 1996 WL 21903 (Fed. Energy Reg. Comm'n Jan. 22, 1996).
- *Tongass Alaska Girl Scout Council, Inc. v. Cape Fox Corporation*, No. 94-36177, 1995 WL 555747 (9th Cir. Sept. 18, 1995) (notation of unreported decision at 67 F.3d 309).
- *Hewitt v. Hewitt*, 78 Wash. App. 447, 896 P.2d 1312 (1995).
- *Beal v. Aexel*, No. 16355-1-II (Wash. App. Div. II Feb. 23, 1995).
- *Richter v. Trimberger*, 50 Wash. App. 780, 750 P.2d 1279 (1988).
- *Rawson v. United Steelworkers of America*, 111 Idaho 630, 726 P.2d 742 (1986).
- *Hewson Construction, Inc. v. Reintree Corporation*, 101 Wash. 2d 819, 685 P.2d 1062 (1984).
- *Cascade Cabinet Co. v. Western Cabinet & Millwork, Inc.*, 710 F.2d 1366 (9th Cir. 1983).
- *Williams v. Seattle School District No. 1*, 97 Wash. 2d 215, 643 P.2d 426 (1982).

EDUCATION

University of Washington, J.D., 1980

University of Oregon, B.S., 1977

ADMISSIONS

Idaho State Bar, 2009

Oregon State Bar, 2007

Alaska State Bar, 2004

Washington State Bar, 1980

PROFESSIONAL RECOGNITION

AV® Peer Review Rated by Martindale-Hubbell

Washington Law & Politics, "Super Lawyers" (2003-13)

PROFESSIONAL & CIVIC AFFILIATIONS

Washington State Bar Association

Oregon State Bar Association

Idaho State Bar Association

Alaska State Bar Association

King County Bar Association

LAWorld

International Association of Defense Counsel

Chair, Business Litigation Committee (2005-2007)

Instructor, Trial Advocacy Program (2006)

PUBLICATIONS & PRESENTATIONS

Developments in Antitrust Law That Impact Intellectual Property Licensing Transactions, 78 Defense Counsel Journal 274 (July 2011).

Recent Developments in Antitrust Law that Impact Intellectual Property Licensing Transactions, Address at the Fifth Annual Conference on Complex Licensing Transactions (August 26, 2010).

Antitrust and Intellectual Property: Where is that Crossroad in 2010?, Address at Antitrust Enforcement in Global Technology Markets Conference, Seattle, WA, (June 16-17, 2010).

Threats to Excellence in Civil Trial Advocacy, Address at the Installation of the Betts, Patterson & Mines Professorship in Trial Advocacy at The University of Washington School of Law (April 11, 2008).

Losing Priority: Security Interests in Collateral Obtained in Contravention of the Federal Securities Laws, Defense Research Institute Commercial Litigation Committee Newsletter The Business Suit 1-2 (Nov. 2005).

Composite Trademarks: Deconstructing the Similarity of Marks Element in a Trademark Infringement Action, 72 Defense Counsel Journal 347 (Oct. 2005).

The Basics of the Class Action Fairness Act of 2005, Address at the International Association of Defense Counsel Annual Meeting (July 4, 2005).

New Class Action Settlement Notice Requirements Made to Combat Clientless Litigation, 18 LAWWorld International Business Briefing 5 (May 2005).

Removing "Loss" from Loss Causation: An Assessment of the Loss Causation Pleading Requirement in the Ninth Circuit, Washington Defense Lawyers: Defense News 1-2, 4 (Feb./Mar. 2005).

Defending Managed Earnings Cases by Understanding Revenue Recognition, 71 Defense Counsel Journal 289 (July 2004).

Single Application International Trademark Registration Now Available to the United States, International Association of Defense Counsel Intellectual Property Committee Newsletter 1-2 (Feb. 2004).

A Few Things Civil Trial Lawyers Need to Know About the Fifth Amendment, Washington Defense Lawyers: Defense News 1-5, 14 (Sept. 2003).

Survey Evidence of Likelihood of Confusion in Trademark Cases: How Much Confusion Is Enough? International Association of Defense Counsel Intellectual Property Committee Newsletter 1-10 (April 2002).

Opposing Damages Claims Based Upon Discounted Cash Flow Analysis in Business Cases, International Association of Defense Counsel Business Litigation Committee Newsletter 1-4 (June 2000).

Barring Consequential Damages Despite the Failure of an Exclusive Remedy, International Association of Defense Counsel Business Litigation Committee Newsletter 1-5 (Sept. 1999).

ANCSA 14c and Shareholder Benefit Issues, Address at Alaska Bar Association Ninth Annual Alaska Native Law Conference (Oct. 16, 1996).

The Nuts and Bolts of Commercial Litigation, Address at Seattle Executives Association Luncheon (Feb. 12, 1994).

What Makes a Legal Matter Newsworthy? (or, How to Handle Your Case Without Prejudice to Your Client), Address at the Washington State Bar Association's Road Map to Better Understanding Bench/Bar Press Conference (Nov. 19, 1993).

Experienced Counsel.
Excellent Company.



Lender Liability: Closing Argument From a Hypothetical Case, Address at the Sixth Annual Pacific Northwest Bankruptcy and Credit Seminar (May 19, 1990).

When the Going Gets Rough, Address at the Alexander Hutton, Inc. Smart Borrower Seminar (Dec. 9, 1987).