



## 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

#### Clients:

The following are among the litigation clients that James has represented: Chrysler Corporation; Pfizer Inc.; 3M; Cooper Industries, Inc.; Cooper Cameron Corporation; Brunswick Corporation; Key Bank; Piper, Jaffray & Hopwood, Inc.; Honeywell, Inc.; Motorola, Inc.; Fleetwood Enterprises, Inc.; Champion Enterprises, Inc.; Farmers Insurance Group; Allied Van Lines, Inc.; Roffe, Inc.; Wendy's International, Inc.; Chrysler Financial Corporation; Chrysler Realty Corporation; Acustar, Inc.; Cooper-Bessemer Reciprocating, Inc.; McGraw-Edison, Inc.; Puget Sound Bank; Associated Grocers, Incorporated; Supermarket Development Corporation; Market Finance Company; Market Sales, Inc.; AG/Fleming Northwest, L.L.C.; Keith Uddenberg, Inc.; Spider Staging Corporation; Windswept Corporation; Alexander Hutton, Inc.; Damson Oil Company; Klauser Corporation; Equitable Capital Group, Inc.; Cape Fox Corporation; SJI Corporation; Cybersafe Corporation; Elliott Bay Marina Inc.; FDSI Consulting; Western Homes Corporation; National Advertising Company; Royal Pacific Orchards Limited Partnership; Columbia Crown Orchards, Inc.; NTM, Inc.; Howard Publications, Inc.; ImageScan, Inc.; Northwest Retail Ventures, L.L.C.; Dealer Computer Services, Inc.; KeyTrak, Inc.; Dymacol Corporation; Murray Franklyn Companies; Data-Part, Ltd.; HR Northwest, Inc.; Chauvin Arnoux, Inc.; GSG Corporation (Freddie's Club Casino); Poulsbo RV, Inc.; First Choice Business Machines; The Erection Company; The Toronto-Dominion Bank; Datacons Private Limited; The James Marshall Hendrix Foundation; Port of Tacoma; Fujisada L.L.C.; Our Land, Inc.; Grand View Homes L.L.C.; Seagulf Group LLC; SEBCO, Inc.; Interstate Battery System of America, Inc.; Sysco Food Services of Seattle, Inc.; Cosmopolitan Imports, L.L.C.;

Fringe Benefits Management Company; Argonaut Insurance Company; Searching Unlimited Limited; Domain Holdings Group; Northwest Auditing Resources; A R Hospitality, Inc.; Anvil Corporation; Altivity Packaging LLC; Smurfit-Stone Container Corporation; Regal Beloit Corporation; Industrial Ventilation, Inc.; 1,4Group, Inc.; Arrowood Indemnity Company; Kvalley Computers and Internet, Inc.; Santander Consumer USA Inc.; LDK Solar Co., Ltd.; Niniichik Natives Association, Inc.; ALPI International, Ltd.; Quality Logo Products, Inc.; AMH Canada Ltd.; F.B. Enterprises, LLC; MaxVision Biosciences, Inc.; Washington Federal; RSUI Group; Gerding Edlen; The Rushing Company; Professional Roof Consultants; The Clarke Group; Sherry Capital Advisors; Hiscox USA; Zurich American Insurance Company; Freedom Specialty Insurance Company; Opus Architects & Engineers.

#### Cases:

- In *Experience Hendrix, L.L.C. v. The James Marshall Hendrix Foundation*, James defended The James Marshall Hendrix Foundation against Experience Hendrix's claims for violations of the 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. The Foundation prevailed on summary judgment and on appeal in the Ninth Circuit. Experience's petition to the United States Supreme Court for a writ of certiorari was denied. The Foundation recovered attorney's fees.
- In *Fluke v. Chauvin Arnoux, Inc.*, James defended the leading manufacturer of digital multimeters in France against color-combination-related trade dress claims brought by the largest manufacturer of digital multimeters in the United States. Fluke claimed that Chauvin Arnoux infringed trademark rights that it had developed in its contrasting yellow and dark color scheme. The case settled on the eve of trial. Chauvin Arnoux acquiesced in Fluke's trade mark rights in the United States in exchange for a perpetual, paid up license that allowed it to continue to use its traditional corporate colors on certain key products lines.
- In *Searching Unlimited Limited v. Searching.com LLC*, James represented SUL in litigation arising out of SUL's troubled acquisition of Searching.com's websites, domain names, and proprietary technology. Searching.com was an Internet advertiser active in 53 countries with exposure to 72 million users. The case settled favorably after SUL obtained a series of temporary restraining orders prohibiting Searching.com's former owners from implementing a threatened transfer of Searching.com's websites and proprietary technology offshore or accessing its domain control panels at GoDaddy.com and Moniker.com.
- In *Wright Schuchart v. Cooper Industries*, James successfully defended a Texas-based Fortune 100 manufacturing conglomerate in a suit brought by the largest commercial construction contractor in the Pacific Northwest. The dispute involved 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. The district court granted Cooper's motion for summary judgment, and the Ninth Circuit affirmed. In the end, Cooper recovered \$2.4 million on its counterclaim.
- In *Financial Data Systems, Inc. v. Moss*, James represented a computer network consulting company in a suit against a former employee who secretly concluded an independent contract with a major client by presenting proprietary technical information as his own. Following a one-week trial in federal court, an Oregon jury returned a verdict for compensatory and punitive damages for violations of the Uniform Trade Secrets Act.

- In *Marshalltown Company v. Sole*, James represented the personal representative in a dispute over the valuation of an estate's shares in a fabulously successful Subchapter S tool manufacturing corporation. The company contended that the shares were worth only \$1.5 million based upon a number of insider transactions and valuations the IRS had accepted in other estates. The personal representative claimed that the shares were worth \$4.5 million based on earnings and claimed all post death dividends. Following a one week bench trial, the superior court held that the shares were worth \$3.5 million. The estate received \$3.5 million for the shares and nearly all of the post death dividends in settlement of the ensuing cross appeals.
- In *Chrysler v. Sea-Land Services, Inc.*, James represented an automobile manufacturer that purchased 12,000 motor vehicle engines in Japan for assembly in Windsor, Ontario. The engines were worth \$13 million. They had been shipped from Japan to Washington State for rail transport to Windsor and were delayed at Sea-Land's Tacoma dock due to a major West Coast Teamsters strike. Because the delay threatened to shut down Chrysler's Windsor minivan plant, Chrysler brought an emergency replevin action. Chrysler's engines were released from Sea-Land's dock within 24 hours.
- In *Associated Grocers v. Albertsons*, James successfully defended Washington's largest private corporation against Albertsons' antitrust and unfair competition claims arising out of a restrictive covenant in a shopping center lease. The case settled favorably on the morning of trial when the court granted Associated's *Noerr-Pennington* motion, which eviscerated Albertsons' damages claim.
- In *City of Seattle v. Heglund and West Marine*, James represented the owners of a retail property near South Lake Union that the City condemned for a road project to ameliorate the celebrated "Mercer Mess." The Heglunds mounted a constitutional challenge to the trial court's declaration of public use and necessity based upon the City's refusal to disclose the source and use of \$30 million of private funding, and the Washington Supreme Court accepted direct review. The City then settled for \$8.45 million (which exceeded its \$6.63 million appraisal by 27 percent). West Marine demanded \$3 million of the \$8.45 million proceeds as compensation for its leasehold interest, but the arbitrator awarded West Marine only \$596,374.
- In *Ohri v. A R Hospitality, Inc.*, James defended the owners of a Holiday Inn against securities fraud, racketeering, breach of fiduciary duty, and wrongful withholding of wages claims arising out a troubled hotel acquisition. The defense was seller's remorse—that is, that the plaintiff withdrew from the partnership because he could not tolerate the risks and was not entitled to share in the hard-won appreciation that occurred after he left. The plaintiff's motion for a preliminary injunction was denied, and the plaintiff's *lis pendens* was quashed. Rejecting the plaintiff's multi-million dollar damages claim, the jury returned a defense verdict after deliberating for only two hours following a two week jury trial.
- In *GSG Corporation v. Estate of Steiner*, James represented decedent Fred Steiner's former business partner, Keith Quale, in a struggle with Fred Steiner's estate for control of GSG Corporation. GSG owns Freddie's Club Casino. Initially, GSG won a preliminary injunction blocking an Estate-backed special shareholders meeting for the purpose of removing GSG's board and stopping the Estate's threatened 3,333 percent rent increase. Later, GSG won summary judgments thwarting the Estate's infringing use of the "Freddie's Club" trade name and style and awarding GSG \$3 million on its counterclaim.
- In *Legacy Investment Advisors v. Port of Tacoma*, James defended the Port of Tacoma against trade secrets claims arising out of its purchase, demolition, and remediation of a 97-acre Kaiser Aluminum plant on Blair

Waterway. According to Legacy, the Port misappropriated its proprietary plan acquire the Kaiser site, demolish it, remediate it, and immediately resell free and clear of historical environmental liabilities. Ultimately, the Port agreed not to seek to recover attorney's fees and costs from Legacy in exchange for a dismissal with prejudice.

- In *Haimowitz v. Marks*, James was a member of a team of civil and criminal defense attorneys that represented the former president of Cutter & Buck Inc. in connection with securities suits, derivative suits, a declaratory judgment action, an SEC investigation, and a Department of Justice investigation arising out of its 2001 restatement of earnings. Despite the chief financial officer's guilty plea to a felony and favorable testimony for the government, the former present was not charged with either a felony or a misdemeanor.
- In *Huffman v. Weiss Properties*, James represented 11 hard-working, low-income plaintiffs who were employed or were formerly employed by the defendant apartment building and car wash owners. The plaintiffs' working conditions were the stuff of a Dickens novel. The plaintiffs alleged that the defendants engaged in pattern or practice of requiring plaintiffs to work countless hours that they were not allowed to report without pay. The defendants agreed to pay the plaintiffs \$500,000 in mediation on the eve of trial.

#### 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).
- *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).
- *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).
- *Martinez v. Cape Fox Corporation*, 113 P.3d 1226 (Alaska 2005).
- *Shields v. Cape Fox Corporation*, 42 P.3d 1083 (Alaska 2002).
- *Omega Environmental, Inc. v. Blohorn*, No. 00-35211, 2001 WL 1356831 (9th Cir. Nov. 5, 2001).
- *Undersigned Shareholders of the Cape Fox Corporation v. Cape Fox Corporation*, No. 0990 (Alaska Sup. Ct. Aug. 30, 2000).
- *Hewitt v. Hewitt*, No. 36607-6-I, 1997 WL 306417 (Wash. App. Div. I June 9, 1997).
- *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).
- *BBC Dodge, Inc. v. Chrysler Corporation*, No. 36799-4-I, 1996 WL 146723 (Wash. App. Div. I Apr. 1, 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).
- *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).
- *Beal v. Aexel*, No. 16355-1-II (Wash. App. Div. II Feb. 23, 1995).
- *Overlake Chrysler Plymouth, Inc. v. Chrysler Corporation*, Nos. 25917-2-I and 26122-3-I (Wash. App. Div. I Aug. 26, 1991).
- *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).
- *Hoppenbrouwer v. Farmers Insurance Exchange*, No. 83-3752 (9th Cir. Feb. 17, 1984) (notation of unreported decision at 730 F.3d 766).
- *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  
Washington State Patent Law Association  
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 LAWorld 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).

*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).