

## Jack Zahner

Principal

1111 Third Avenue  
Suite 3000  
Seattle, WA 98101

T 206.447.2886  
F 206.749.1936  
jack.zahner@foster.com



Jack concentrates his practice 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.

### Education

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

### Honors & Recognition

Access to Justice Institute  
"Public Service" Award, 2006  
"Leadership and Service" Award, 2004

Washington State Bar Association Pro Bono Service  
Commendation, 2003, 2005

### Professional Activities

King County Bar Association

### Services

Litigation  
Construction  
Financial Services  
Insurance Coverage  
Securities Litigation & Enforcement  
Transportation & Logistics  
Yachts, Ships & Submersibles

### Admissions

Washington  
Oregon  
U.S. District Court, District of Guam  
U.S. District Court, Western District of Washington  
U.S. Court of Appeals for the 9th Circuit

King County Housing Justice Project, Volunteer Attorney, 2010

Pro Bono Committee

- Foster Garvey, 2019-present
- Foster Pepper, 2002-2019

Washington State Bar Association, Litigation Section, Member

## News

Securing Insurance for Those Unable to Work

*Foster Garvey Newsroom*, 19

## Speaking Engagements

2019 Insurance Coverage Legal Update: Safeguarding Your Operations With Insurance  
Event

Seattle, WA, 11.12.19

2018 Insurance Coverage Legal Update: Safeguarding Your Operations With Insurance  
Event

Seattle, WA, 6.7.18

2017 Real Estate/Land Use Briefing: Essential Industry Updates  
Event

Seattle, WA, 11.9.17

“Case Law and Regulatory Update: Washington,” Insurance in the Construction Industry, The  
Seminar Group

Speaking Engagement

Seattle, WA, 10.6.17

2017 Insurance Coverage Legal Update  
Event

Seattle, WA, 6.8.17

## Legal Alerts

Maximizing Recovery From Insurance For Your COVID-19 Losses  
3.18.20

## Experience

### **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.

### **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.

#### **Liability Insurance Coverage for Construction Defects**

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

- 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

### 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.