

David Spellman

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Attorney

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Areas of Practice & Industry Specialties

Litigation; Intellectual Property Law; Government, Regulatory & Administrative Law



David Spellman serves as an attorney in the Firm's Seattle office. Mr. Spellman is a seasoned advisor, trial lawyer, and arbitrator. He provides legal counsel for startups and established organizations in structuring and transactions, compliance, planning and project, conflict and risk management. Mr. Spellman represents clients in direct negotiations and in third-party processes before mediators, expert panels, arbitrators, judges, juries, and appellate courts.

Mr. Spellman received a 2019 Judicial AV Preeminent[®] rating by Martindale Hubbell.

Representative Matters

Government, Administrative Law, Construction, and Public Contracts

- Timber company successfully suing the federal government to terminate the 100-year contract for a cooperative sustained yield unit under the Administrative Procedure Act (APA), Quiet Title Act, and Tucker Act, and negotiating the cancellation of the contract and easements. No. 3:00-cv-05207-RJB (W.D. Wash.); No. 1:00-cv-00198-LB (Fed. Ct. Claims).
- Transportation companies defeating a competitor's bid protest for airport concession. *Seattle-Tacoma Int'l Taxi Ass'n v. Port of Seattle*, No. 64857-8-1, 2010 WL 2283621 (Wash. Ct. App. June 7, 2010).
- Citizen group winning on appeal the authorization for an initiative about a transportation issue to be placed on the ballot.
- Local governments in bid and contract disputes.
- Local governments negotiating and drafting agreements.
- Local government and elected official resolving suit challenging its authority under a one person, one vote theory, No. 2:16-cv-00600-JCC (2016).
- Local government defeating a general contractor's claim on summary judgment.
- National engineering firm appealing a contracting officer's decision on an airport tower project.
- Cable company asserting antitrust and open access claims during franchise renewal hearings before the county council.
- International holding company suing Washington Office of Insurance Commissioner (WOIC) to obtain declaratory relief relating to a merger involving an insurer.
- National bank defending against forfeiture of property interests under drug laws.
- Civil rights suits involving local governments.
- Individuals and entities responding to investigations and proceedings in the SEC. *E.g. Pierce v. Securities and Exchange Commission*, No. 14-1079, 786 F.3d 1027 (9th Cir. 2015).
- Manufacturer responding to claims about product labeling from Department of Agriculture.

- Businesses and individuals before the Washington Utilities and Transportation Commission (UTC), Liquor Cannabis Board (LCB), Department of Financial Institutions (DFI), Department of Licensing (DOL), and other state agencies.
- Homeowner winning reinstatement of claims and reversing summary judgment dismissing counterclaims for construction defects; the appellate court ruled the parties had waived the mandatory dispute resolution and arbitration process. *Shepler Constr. Inc. v. Leonard*, 175 Wash. App. 239, 306 P.3d 988 (2013).
- Geothermal heating system contractor winning reversal of decision reducing construction lien. *Geo Exchange Systems, LLC v. CAM*, 115 Wash. App. 625, 65 P.3d 11 (2003).
- Parties on construction and development projects including airports, bridges, convention centers, high-rises, highways, hillside and lateral support, jails, libraries, parking structures, schools, stadiums, transit facilities, tunnels, streets, utilities, and waste treatment.

Commercial, Consumer, Corporate, and Employment

- A financial institution resolving three consumer class-action suits (including settlement class paid \$26.5 million) and single-plaintiff suits (2015-18).
- An appraisal firm winning a defense verdict in a securities and tort suit brought by 18 investors claiming a loss of over a million dollars in mortgage-paper security investments regulated by the state department of financial institutions. *Gig Harbor Family Trust v. Columbia Valuation Group, Inc.*, 15 N.W.P.I.Lit.Rpts. 94, 2014 WL 8818261 (King Cty. Super. Ct. 2014).
- Investors receiving a pre-litigation settlement of securities and professional negligence claims (2014).
- A *Fortune 500* company receiving an initial arbitration award permitting the sale of a text messaging business unit and a federal court decision denying the injunction against the sale.
- A minority owner prevailing twice in state supreme court, which reversed lower court orders in a dissenter's rights suit stemming from a merger. *Humphrey Indus., Ltd. v. Clay St. Assocs., LLC*, 170 Wash.2d 495, 242 P.2d 846 (2010) and 176 Wash.2d 662, 295 P.3d 231 (2013).
- A multinational company resolving a \$30 million claim over the development, commercialization, and supply of a new line of health and functional food products.
- Foreign and domestic companies sued or investigated for price-fixing, market allocation, tying, price discrimination, and unfair practices in electronics, retailing, fish, and branded products.
- Start-ups in the cannabis, biotech, and other spaces organizing and implementing operations.
- An engine reseller suing a foreign manufacturer under a distribution contract.
- Lumber wholesalers suing under the racketeering (RICO) laws Canadian wholesalers, lumber graders, and others for the sale of millions of dollars of fraudulently misgraded lumber sold in Washington.
- Lawyer and lender defeating defamation suits with a pre-answer dismissal motion under the anti-strategic lawsuits against public participation (anti-SLAPP) statute.
- Employers negotiating employment agreements, separations, and defending against discrimination and other claims.

Intellectual Property and Technology

- Medical products supplier winning a jury verdict for willful trademark infringement and unfair competition and attorney fees and defeating counterclaims by national medical products distributor. No. 2:97-cv-01787-JCC (W.D. Wash.)
- Designer winning an arbitration award for copyright infringement of architectural works against a leading manufacturer of homes. No. 2:01-cv-02084-RSL (W.D. Wash.)
- Branded food company winning the denial of preliminary injunction motion for a product recall in a trademark case. No. 2:16-cv-00407-RSL, 2016 WL 8738668 (W.D. Wash. 2016).
- Former employee winning summary judgment dismissal of a trade secret, loyalty and fiduciary duty suit brought by former employer and defeating the reconsideration motion. 2016 WL 8201828, 2016 WL

8201827 (Wash. Super. Ct.)

- A financial institution receiving from federal court a temporary restraining order (TRO) requiring vendor to return confidential and private data and refrain from contacting customers (W.D. Wash. 2015).
- Biotech, cannabis, encryption, and software companies drafting inventorship, work for hire, licensing, noncompete, and other IP agreements (2016-18).
- Companies deciding on marks, names, and branding strategies (1997-2019).
- Fashion designer mediating IP and ownership claims with social media influencer (2018).
- Ontario art museum defending and resolving claims to ownership of sculptures and receivership issues federal suit and through a parallel suit in Ontario court. No. 16-cv-01893-TSZ (W.D. Wash. 2016-19).
- A cannabis conference resolving a trademark suit in federal court (2016).
- A national food company resolving suit for personality rights used on branded product and obtaining coverage under advertising injury coverage (2015).
- A manufacturer winning a summary judgment dismissal of copyright, trade secret and preempted state law claims in a decision addressing untested issues regarding copyright protection for useful designs. *Enters. Int'l Inc. v. Int'l Knife & Saw, Inc.*, No. C12-5638 BHS, 2014 U.S. Dist. LEXIS 101375, Copy. L. Rep. (CCH) ¶ 30,641 (W.D. Wash. July 24, 2014).
- Inventor receiving a pre-litigation settlement of professional negligence claims against lawyer prosecuting patent suit (2013).
- Technology company defeating a preliminary injunction motion seeking to bar the transfer of patent rights and the completion of a share purchase by an offshore company. *Benson v. NFC Data, Inc.*, No. 1:12cv1161, 2013 U.S. Dist. LEXIS 63115 (E.D. Va. 2013).
- An educational program winning summary judgment dismissal copyright infringement claims for traffic safety diagrams and text and winning the appeal. *Evergreen Safety Council v. RSA Network, Inc.*, No. C09-1643-RSM, 2011 WL 2462303 (W.D. Wash. June 17, 2011) *aff'd* 697 F.3d 1221, 104 U.S.P.Q.2D (BNA) 1380, Copy. L. Rep. (CCH) ¶ 30,333 (9th Cir. 2012).
- Genealogy website resolving suit for copyright infringement and state law claims. No. 3:12-cv-06074-RBL (W.D. Wash. 2012-13).
- National branded vegetable company resolving trademark suit by national branded fruit company. No. 1:10-cv-00148-LJOU JTL, 2011 WL 3348056 (E.D. Cal.)
- Local restaurant winning a preliminary injunction against trademark infringement by a national chain and resulting in the national chain changing its name. No. 2:97-cv-01787-JCC (W.D. Wash.)
- Local sign company winning a preliminary injunction against a national company for trademark infringement. No. 2:98-cv-00112-TSZ (W.D. Wash.)
- Insurer defeating summary judgment dismissal of claims for trademark infringement, unfair competition, anti-dilution, and for the violation of the anti-cybersquatting consumer protection act and Washington consumer protection act regarding registration and use of domain name. No. 2:05-cv-00277-RSL (W.D. Wash.)
- Athletic equipment company defending against patent infringement and other claims and asserting counterclaims relating to cushioned treadmill. No. 2:94-cv-01586-JCC
- Supplier winning the vacation of a binding arbitration award for medical laboratory over HIPPA compliant software. (Wash. Super. Ct.)
- National celebrity speaker Tony Robbins and Robbins Research resolving unfair competition claims by Wade Cook seminars. (Wash. Super. Ct.)
- Former speakers at Wade Cook seminars defeating preliminary injunction motions brought by seminar company. No. 2:00-cv-00075-RSL (W.D. Wash.)
- Prosecuting and resolving fire place and stove product company's infringement claims for word and logo trademarks. *Meeco Mfg. Co., Inc. v. True Value Co.*, No. C06-1582RSL, 2007 WL 1051259, Copyright L.

Rep. (CCH) ¶ (29368 (W.D. Wash. April 4, 2007).

- Distributor prevailing against supplier on a preliminary injunction for the exclusive use of trademarked logo/design mark for thermal metalizing equipment, defeating supplier's motion, and resolving patent claims shortly before trial. *Thermion, Inc. v. Thermion Metalizing Systems, Ltd.*, 423 F. Supp. 2d 1146 (W.D. Wash. 2006).
- Manufacturer resolving claims against a national manufacturer and distributor of pet products for breach of contract, false advertising and mislabeling. No. 2:00-cv-00075-RSL (W.D. Wash.)
- Equipment manufacture defending against trademark and trade dress claims (1996).
- Winery resolving a trademark and labeling suit. No. 2:88-cv-00325-WLD (W.D. Wash.)
- Prosecuting and defending suits involving claims for patent infringement, invalidity and inventorship.
- Defeating TRO and preliminary injunction motions against engineers and suppliers for trade secret misappropriation (Wash. Super. Ct.)
- Non-party witnesses in discovery disputes involving IP and technology cases.

Publications

- Rule 52: Decisions, Findings and Conclusions, *2 Washington Civil Procedure Deskbook at 52-1*, WSBA, 2014
- Restraints of Trade, *Washington Antitrust and Consumer Protection Handbook*, Wash. St. Bar Ass'n (WSBA), 2007
- Antitrust and Unfair Competition Issues Involving Intellectual Property, *Washington Antitrust and Consumer Protection Handbook*, Wash. St. Bar Ass'n (WSBA), 2001
- 2020 Check List: Update Noncompete Agreements to Comply with New Restrictions in Washington and Revisit IP and Arbitration Provisions in Employment and Independent Contractor Agreements, *Buchalter Client Alert*, January 8, 2020
- Small Businesses: Inventorying IP, Privacy Compliance and Better Documentation Are on Your Critical Path When Taking Retention. Measures in an Employees' Market, Post, *Small Businesses*, June 12, 2018
- 2018 Washington State Comfort Legislation for the Financial Industry and Accountants Dealing With Licensed Marijuana Businesses, April 16, 2018
- The DEA Is Getting Past Just Saying No: Scientific Research Into Medical Uses of Marijuana Is a Bridge Toward a Policy Shift, August 16, 2016
- Deciphering Smoke Signals—FDA's New Tobacco Product Rules and Their Impact on the Cannabis Industry, August 8, 2016
- High Stakes: Investing in a Legal Marijuana Business, July 11, 2016
- Court Declines to Prevent Merger of Washington Medical and Recreational Marijuana Markets, July 1, 2016
- Marijuana Labeling and Packaging and Marijuana Trademarks, Spring 2016
- Design Professional Liens Attached When Nothing Is Built: Answering the Devil's Advocate, *Washington State Bar Association's Construction Law newsletter*, Spring 2014
- Reviving Construction Projects — How to Avoid Creating a Frankenstein Monster, *Issues and Answers magazine*, *Washington Bankers Association*, January/February 2014
- Premature Post-mortem for the Implied Duty of Good Faith and Fair Dealing in Washington Contract Law, *Antitrust, Consumer Protection and Unfair Business Practices No. 21 at 6-10*, Summer 2002

Presentations

- Speaker, "IP and Cannabusiness: The Whole Package, Developments in Marijuana Law," October 3,

2017

- Speaker, "CLE, Developments in Marijuana Law, Federal Bar Association for the Eastern District of Washington, Spokane, Washington," Spokane, Washington, September 29, 2017
- Speaker, "CLE, The Legal Practice of Marijuana, Marijuana Policy in Washington State: Moving Forward," June 14, 2016
- Speaker, "CLE, Corporate Trade Secret Protection in Washington," March 1, 2004

Education

Mr. Spellman earned his J.D. with honors from Georgetown University Law Center, where he was an editor of the American Criminal Law Review. He received his B.A. in Philosophy from Seattle University.

Bar Admissions

- Washington

Court Admissions

- United States District Court for the Eastern District of Washington
- United States District Court for the Western District of Washington