

Kim D. Stephens

Member

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Professional Experience

Kim concentrates his practice on commercial, real property and class action litigation. He has a broad range of experience litigating condemnation, environmental, construction, products liability, and securities matters, and has been appointed special attorney general for Washington State and lead counsel to manage both state and federal, multi-district class actions. Kim is frequently retained by other lawyers to serve as lead trial or appellate counsel.

Kim practiced with the criminal defense firm of Allen & Hansen, and served as a judicial extern clerk to The Honorable Eugene A. Wright, Senior Judge, Ninth Circuit Court of Appeals, before joining Tousley Brain Stephens PLLC in 1981. He managed the firm from January 1994 through March 1997, reassuming this position from September 2001 through December 2008.

Real Estate, Land Use, and Construction Litigation

Residential Investment Partners v. S.C. Partners Inc. et al. - Successfully represented owner, developer, and general contractor against subtrades for construction defects. The case resulted in an excess insurance judgment of approximately \$2 million against one defendant and \$1.5 million in settlements against the others.

TFL Associates LLC et al. v. Rainier View Water Company et al. - Successfully procured and defended water rights for developer of master planned community consisting of approximately 2,500 residences on 483 acres of land before Washington State Utilities & Transportation Commission.

Commercial and Business Litigation

Anderson et al. v. Cedar Grove Composting, Inc. - Defended Queen City Farms, Inc., in \$2 billion pollution and environmental clean-up case involving thousands of class members. The trial court certified a settlement class and approved settlement of all claims against Queen City Farms in return for Queen City Farms assigning to the class its rights, if any, in one CGL insurance policy with a \$1 million limit while Queen City Farms retained all rights to defense costs under the same policy.

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DeGroot v. Doyle – Represented founding member of weight loss clinics related to conversion of intellectual property. The case settled for confidential sums.

Diamond Parking, Inc. v. Washington State Trade & Convention Center et al. - Appointed special attorney general for the state of Washington to handle development disputes arising in connection with a downtown office building developed on Washington State Convention Center property. Washington State prevailed on appeal in an unpublished opinion.

Ellis Court Apartments Limited Partnership v. State Farm Insurance Company - Successfully represented plaintiff at trial and on appeal against its property insurer related to wrongful denial of coverage for water intrusion and consequent collapse of low income housing project. This is the first reported case in Washington to reject the manifestation trigger for first-party property insurance coverage and is reported at 117 Wn. App. 807, 72 P.3d 1086 (2003).

Fjetland v. Lone Star Northwest, Inc., et al. - Successfully defended Lone Star Northwest, Inc., against \$90 million antitrust and racketeering claims. The trial court dismissed all claims and the Ninth Circuit Court of Appeals affirmed the dismissal and sanctioned the plaintiffs. The United States Supreme Court denied certiorari.

Proview Technology, Inc. v. AU Optronics Corporation, et al. - Represented retailer of products incorporating liquid crystal displays related to alleged antitrust, price-fixing conspiracy. The case settled for confidential payments in the low to mid eight figure range.

Stein v. Geonerco, Inc. - Successfully defended homebuilder Geonerco, Inc., in multi-million dollar putative class action litigation concerning siding installed in a manner that allegedly invalidated the manufacturer's warranty. The case was dismissed by the plaintiff class and the individual plaintiffs after the Court of Appeals stayed the litigation pending binding arbitration on an individual basis. The case is reported at 105 Wn. App. 41, 17 P.3d 1266 (2001).

Wood v. Bainbridge et al. - Successfully defended a group of 104 defendants sued for racketeering and mail and wire fraud. The trial court dismissed all claims and the Ninth Circuit Court of Appeals imposed sanctions on the plaintiff. The United States Supreme Court denied certiorari.

Securities Litigation and Arbitration

CMP Holdings, LP v. Swinomish Indian Tribal Community et al. - Successfully defended the Swinomish Indian Tribe and its advisers from securities fraud allegations in Dallas, Texas, related to multi-million dollar development of a marina on tribal land in Washington.

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John v. MidCom Communications, Inc., et al. - Successfully defended MidCom Communications, Inc., including its directors and officers, from securities and common law fraud claims. The case settled for confidential sums after the Washington State Securities Act claims were dismissed.

Johnson et al. v. Amgen Boulder, Inc., et al. - As lead counsel, successfully represented a large class of limited partners that invested approximately \$50 million to fund the development of a genetically-engineered molecule with the world's largest biotech company. The case settled shortly before trial for payments totaling \$82 million.

McCaugherty et al. v. Siffermann et al. - Successfully represented plaintiffs as lead counsel in securities fraud action against federal banking regulators and others arising out of a \$30 million leveraged buyout of a property management and syndication company from a failed savings and loan association. The case settled for confidential sums. Parts of the case are reported at 77 F. Supp. 1128 (N.D. Cal. 1991) and 132 F.R.D. 2341 (1990).

Phoenix Partners II Limited Partnership et al. v. Serviscope, Inc., et al. - Successfully represented plaintiff venture capitalists as lead counsel in securities fraud action against biotech company involving mezzanine financing. The case settled for \$2.6 million, which was the full amount invested, plus attorneys' fees and costs.

In re: Washington Mutual Mortgage Backed Securities Litigation - Appointed Liaison Counsel for a class of purchasers of certain mortgage backed securities sold by Washington Mutual subsidiaries. The case settled for \$26 million shortly before trial.

Wolf et al. v. Asiamerica et al. - Successfully represented plaintiff class of investors as lead counsel in securities fraud action against international leveraged buyout corporation. The case settled for \$4.6 million, which was the full amount invested, plus attorneys' fees and costs.

Class Action Litigation

Barrett v. PABCO, Inc. - As lead counsel, successfully represented a national class of homeowners with allegedly defective PABCO HO-25 or HZ-25 roofing shingles. The case settled on a claims-made basis doubling the compensation otherwise available to class members under a consent decree negotiated with the Attorney General.

Carroll v. Nuprecon, Inc. - Successfully defeated two attempts at class certification by truck drivers claiming to be entitled to be paid prevailing wages.

Cole v. Wells Fargo Bank, N.A. - Appointed lead counsel for national class of consumers who were overcharged banking fees. The case was resolved successfully by the bank reimbursing its customers for all overcharges.

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Commonwealth Land Title Ins. Co. adv. EC & Associates - Successfully defended class action suit alleging unfair and deceptive underwriting policies. The plaintiffs dismissed their claims with prejudice before seeking class certification.

Delay et al. v. Hurd Window Manufacturing Company - Appointed co-lead counsel for multi-state class of consumers who were fraudulently induced to purchase energy savings windows. The case settled for \$5.3 million.

Grays Harbor Adventist Christian School et al. v. Carrier Corp. - As co-lead counsel, represented a national class who alleged Carrier Corporation sold defective high efficiency furnaces. The case settled when Carrier agreed to provide an enhanced 20-year warranty for consumers whose furnaces had not failed, and reimburse consumers who had already repaired their furnaces. Three million consumers were covered under the settlement, which was valued at over \$300 million.

Ikuseghan v. Multicare – Represented class of patients who received unwanted cell phone calls. The case settled for \$2.5 million resulting in average compensation of \$2,500 per class member.

In re Behr Sealant Class Action Litigation - Appointed co-lead counsel for national class of purchasers of allegedly defective sealant. The case settled on a claims-made basis.

In re The Home Depot, Inc., Customer Data Security Breach Litigation, No. 14-md-02583 (N.D. Georgia) (Plaintiffs' Executive Committee) (\$43.5 million settlement for financial institutions impacted by data breach) - Served on the executive committee in multi-district litigation to prosecute claims of financial institutions against Home Depot related to its 2014 data breach. The financial institutions sought to recover losses they incurred in reissuing cancelled credit cards and paying fraud claims. The financial institutions alleged that Home Depot intentionally neglected its data security to maximize profits. Hon. Thomas W. Thrash, Jr., United States District Court Judge for the Northern District of Georgia, granted final approval to a \$43.5 million settlement to cover financial institution losses, attorneys' fees and costs.

In re Neurontin Class Action Litigation - Represented ASEA as class representative in litigation against Pfizer Inc. Pfizer Inc. agreed to pay \$325 million to resolve claims it defrauded insurers and other healthcare benefit providers by marketing Neurontin for unapproved uses.

In re Northwestern Mutual Class Action Litigation - Represented a putative Washington class of Northwestern Mutual annuity purchasers. Northwestern Mutual manipulated annuity payments to its insureds resulting in loss of income over 20 years. Northwestern Mutual Life Insurance Co. paid \$84 million to settle the claims after trial.

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In re Premera Blue Cross Custody Data Security Breach Litigation - Appointed sole interim lead counsel in multi-district litigation pending in the U.S. District Court for the District of Oregon. The lawsuit alleges that Premera allowed a massive breach of its data systems, permitting hackers access to the personal, medical, and financial information of more than 11 million Premera subscribers and employees.

JCC Pelletz v. Weyhauser Company - Appointed local and liaison counsel for national class of consumers who purchased defective Choicedek® decking and railing. The case settled on a claims made basis without any cap on damages.

Lloyd Clemons v. New Werner Co, et al. - Appointed co-lead counsel for a national class of consumers who purchased Werner "Easy Access Attic Ladders" with allegedly defective hinges. The case settled for relief valued in excess of \$48 million, entitling each class member to a free replacement ladder.

McAdams v. Monier, Inc. et al. - Represented California class of homeowners against Monier, Inc. over defective roofing tiles through trial. The California Court of Appeals in Case Number C73435 remanded this case to the trial court for entry of judgment exposing Monier, Inc. to damages of approximately \$500 million.

Nelson v. Appleway Chevrolet, Inc. - Successfully represented plaintiff class of purchasers of vehicles, parts, and services against automobile dealers in Washington who illegally charged and collected B&O tax. The trial court certified a CR23(b)(2) class and granted summary judgment of liability, which was affirmed on appeal, Nelson v. Appleway Chevrolet, Inc., 129 Wn. App. 927, 121 P.3d 95 (2005), and affirmed again by the Washington State Supreme Court at 160 Wn.2d 173, 152 P.3d 847 (2007).

Richison v. American Cemwood Corp. - Appointed as co-lead counsel for national (excluding Colorado) class of Cemwood shake property owners. The San Joaquin County Superior Court approved a \$105 million partial settlement with the manufacturer's parent company. The remaining claims settled shortly before trial for an additional \$85 million.

Ross v. Trex Company, Inc. - Appointed as co-lead counsel for a national class of consumers who purchased defective Trex® decking and railing. The case settled on a claims made basis without any cap on damages entitling class members to replacement product and a labor allowance.

Soft White Wheat Farmers v. Monsanto Company - Appointed co-lead counsel in multi-district consolidated litigation for class of Northwest wheat growers related to market losses they suffered after genetically-modified wheat was discovered in Eastern, Oregon. The case settled for \$2.375 million dollars.

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Spafford v. EchoStar Corp., et al. - Appointed co-lead counsel for Washington consumers who received illegal telephone solicitations. Parts of the case are published at 448 F. Supp. 2d 1220 (W.D. Wash. 2006) (involving First Amendment challenge) and 2007 WL 2055838 (W.D. Wash. July 16, 2007) (involving vicarious liability). The case was resolved successfully for injunctive and cy pres relief.

Zwicker et al. v. General Motors Corporation - Appointed co-lead counsel for national class of 4.2 million purchasers of certain GM trucks with defective speedometers. The case was resolved successfully by GM agreeing to fix defective speedometers for free and to reimburse class members for all past repair costs.

Eminent Domain/Condemnation Litigation

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City of Lake Forest Park v. Starbucks, et al. – Represented Starbucks in a partial parcel take minimizing revenue loss while preserving retail operations throughout re-construction.

City of Seattle v. Mark and Pennie, LLC – Represented property owner in take of commercial property resulting in a settlement of almost twice the City's original offer.

Port of Seattle v. Equitable Capital Group, Inc., et al. - Successfully represented the Port of Seattle through trial and before the Washington State Supreme Court as lead counsel in eminent domain action in which property owners sought \$70 million. The jury returned a \$12 million verdict favorable to the Port. The case was appealed, affirmed, and is reported at 127 Wn.2d 202, 395 P.2d 275 (1995).

Sound Transit v. Kent Central LLC - Negotiated resolution of condemnation action on behalf of Benaroya Properties as owners of the "Rainier Brewery" property whereby Benaroya Properties received over twice its purchase price for the condemned property just seven months after purchasing it.

Sound Transit v. L & R Investment Company (dba WallyPark) - Negotiated resolution of a condemnation action on behalf of WallyPark owners involving the redesign and construction of an approximately 2,000-stall parking garage serving Seattle-Tacoma Airport.

Sound Transit v. S. 200th Street LLC (dba SeaTacPark.com) - Successfully resolved condemnation of part of a commercial parking lot by almost doubling Sound Transit's offer while significantly reducing the area of the take and minimizing future development impacts.

Seattle Monorail Project v. SBTM LLC et al. - Successfully represented developer of downtown hotel and condominium project in condemnation of 1600-square-foot air-rights easement by the Seattle Popular Monorail Authority. The case settled shortly before trial in the mid-seven figure range, approximately ten times greater than the Monorail's initial offer.

Education

J.D., with honors, University of Washington School of Law

B.A., magna cum laude, University of Washington

Phi Beta Kappa

Undergraduate studies, Seattle University Honors Program

Admissions

Tousley Brain Stephens

Washington

Oregon

U.S. District Court District of Oregon

U.S. District Court for the Western District of Washington

U.S. District Court for the Eastern District of Washington

U.S. Bankruptcy Court for the Western District of Washington

U.S. Court of Appeals for the Seventh Circuit

U.S. Court of Appeals for the Eighth Circuit

U.S. Court of Appeals for the Ninth Circuit

U.S. Court of Appeals for the Tenth Circuit

U.S. Court of Appeals, Federal Circuit

U.S. Supreme Court

Pro Hac Admissions

U.S. District Court for the District of Alaska

U.S. District Court for the Northern District of California

U.S. District Court for the Southern District of California

U.S. District Court for the Central District of California

U.S. District Court for the Northern District of Georgia

U.S. District Court for the Northern District of Illinois

U.S. District Court for the Central District of Illinois

U.S. District Court for the Southern District of Iowa

U.S. District Court for the District of Kansas

U.S. District Court for the Eastern District of Michigan

U.S. District Court for the District Minnesota

U.S. District Court for the District New Jersey

Professional and Community Involvement

Tousley Brain Stephens

American Bar Association (Litigation, Securities, and Business Law Sections)

FINRA (Financial Industry Regulatory Authority, formerly NASD, Inc.) – Member and Board of Arbitrators

Gerson Lehrman Group Legal Council, International Consulting Group – Member

King County Superior Court – Arbitrator

National Campaign for Tolerance, Southern Poverty Law Center – Founding Member

Oregon State Bar Association

Public Justice Foundation – Member

Class Action Preservation Committee Member

Washington State Bar Association (Trial Practice and Real Property Sections)

Publications and Presentations

Associate Professor: Real Estate Litigation and Dispute Resolution - University of Washington School of Business, Commercial Real Estate Certificate Program (2003 through present term)

Speaker, Author and Panelist: Class Action Litigation Conference – Mediation and Settlement Strategies, Perrin Conferences (May 2016)

Speaker and Author: 6th Annual Eminent Domain Conference – Negotiating the Best Resolution to Your Condemnation Case, The Seminar Group (May 2016)

Speaker, Author and Panelist: The Future of Class Actions, featuring the Hon. Jon Tigar and the Hon. Laurel Beeler - Cutting Edge Topics in Class Action Litigation; Class Settlement: Approval, Fees, Cy Press, and Service Awards, The Federal Bar Association Litigation Section, Northern California Chapter (Nov. 2015)

Speaker and Author: Highlights and Strategies in Data Breach Litigation – Theories of Recovery, American Association for Justice (October 2015)

Speaker and Author: Consumer Financial Protection Bureau (CFPB) in the Obama Administration's Second Term: The Potential Impact on Securities and Financial Industry Class Actions, Law Seminars International (May 2013)

Speaker and Author: Litigating Class Actions, Preparing to File Class Actions: Case investigation; selection of class representatives; conflicts; solicitation; pre-filing investigation and strategies, Law Seminars International (May 2012)

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Speaker and Author: Issues in Condemnation, Valuing Contaminated Property, The Seminar Group, (December 2010)

Speaker and Author: Special Issues from Condemnation Disputes in a Weak Market: Evidentiary and Valuation Issues, Commercial Real Estate Workouts & Remedies, Law Seminars International (July 2008 and June 2009)

Speaker and Author: Dispute Resolution Through Litigation-Arbitration-Mediation, Seattle Chapter of the Appraisal Institute Annual Fall Real Estate Conference (November 2008)

Speaker and Author: What a Plaintiff's Class Action Lawyer Should Look for Before Filing a Complaint, Law Seminars International (2007)

Speaker and Author: A Practical Guide to Attorney-Client Privilege, the Work Product Doctrine, Joint Litigation Agreements, and Ex Parte Contacts (2006)

Speaker and Author: Cross-Examination of Expert Witnesses: Conducting an Effective Cross-Examination in Washington, Lorman Education Services (2001)

Speaker and Author: Finding, Preparing, and Using Expert Witnesses, Ethical Issues in Presenting Expert Testimony, Washington State Bar Association (1999)

Professional Recognition

Fellow, Litigation Counsel of America

Repeatedly recognized as a "Super Lawyer" in Washington Law & Politics magazine

Repeatedly designated as one of the Best Lawyers in Washington by Puget Sound Business Journal

Designated in 2013, 2015, 2017, and 2020 as Real Estate Litigation Lawyer of the Year for the greater Seattle Tacoma metropolitan area by US News - Best Lawyers®

Designated in 2014, 2015, 2016, 2017, 2019, and 2020 as one of The Best Lawyers in America in the areas of Commercial Litigation, Eminent Domain and Condemnation Law, Litigation - Real Estate, Litigation - Securities and Real Estate Law by Best Lawyers®

Listed among Top Attorneys in Washington by Seattle Magazine since 2012

Profiled in Who's Who in American Law, Business and Management

Recipient of American Jurisprudence Awards

AV Preeminent® Rated (Highest Rating for skill and ethics) in Martindale-Hubbell®

Washington State's Top 100 High Stakes Litigators, 2018

Tousley Brain Stephens

Listed as a top attorney in Washington by Seattle Met magazine, 2019