

FOSTER PEPPER

**“My Ex-Employee Did WHAT?” –  
Preventing and Addressing Post-  
Employment Misconduct**

PRESENTATION MATERIALS  
October 14, 2015

FOSTER PEPPER PLLC  
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# Table of Contents

- Presentation
- Speaker Bios
  - Steve Peltin, Foster Pepper PLLC
  - Joel Ard, Foster Pepper PLLC
  - Sam Bull, Foster Pepper
  - Emily Kelly, Foster Pepper

Presented by:

**FOSTER PEPPER**

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# Presentation

# “My Ex-Employee Did WHAT?” - Preventing and Addressing Post- Employment Misconduct

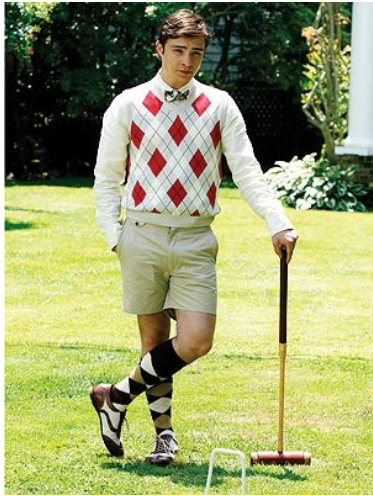
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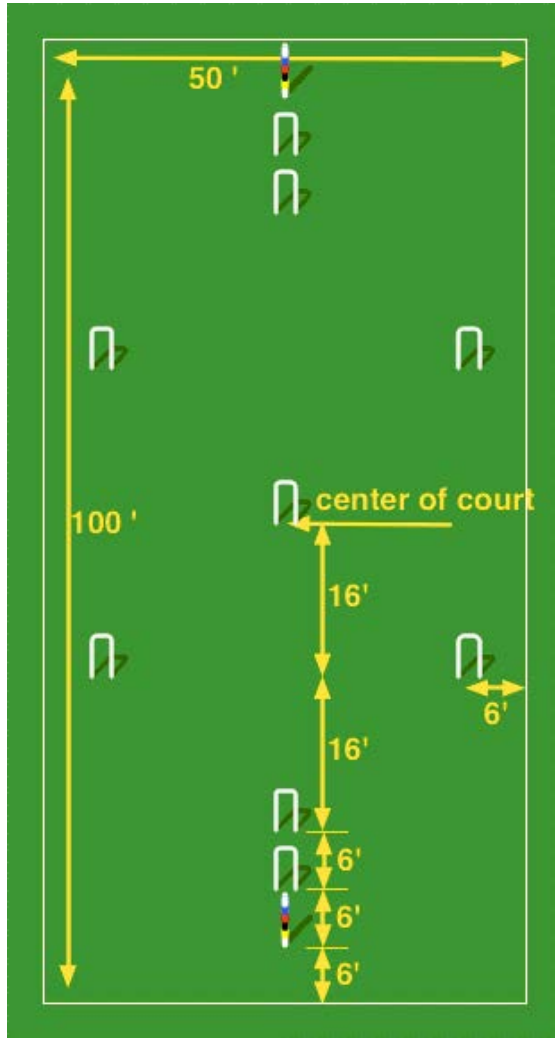
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# What We Know So Far

- Salesperson developed marketing, sales strategy.
- Patent application filed?
- IT cut off email and cell phone access, but too late
  - Engineer recently accessed design drawings
  - Marketing demos missing
  - No way to know if information or documents taken
- At hire, all employees sign standard confidentiality agreement, with a one-year non-compete
  - HR can't find a signed copy for one engineer
  - Sales employee signed two years after hire

# Response Strategies – What Outcome Do We Want to Achieve

- Communicate with former employee/new employer
  - Informal communications to explore creative solutions
  - Demand Letter identifying claims and requiring response
- Lawsuit
  - File complaint and temporary restraining order
  - Avoids risk of declaratory judgment action by former employee/new employer.



# Federal IP Ownership: Patent and Copyright

- A human inventor initially owns her invention
- An employer initially owns copyrightable works
- Ownership must be transferred in writing
- State law governs ownership (almost)
- Employment contracts often transfer patents:
  - “I promise I will assign anything I invent while employed”
  - OR -
  - “I hereby assign anything I will invent during the course of my employment”

# How Does the Employer Own A Patent?

- The patent “magic words” come from Federal Circuit cases but are governed by state law.
- State law governs whether an employer was allowed to use them; for now federal law governs the effect of the words.
- Watch out! The “magic words” federal rule is being challenged and may not last!

# IP Ownership: You Have To Pay

- How do you pay for it?
  - Have the clause in the employment contract when the employee starts work

– OR –

- Pay a bonus, salary increase, other additional comp to add it later.
- Continued employment is NOT sufficient.

# Consider Possible Claims

- Breach of Contract
- Breach of Fiduciary Duty
- Conversion
- Tortious Interference With a Contract or Business Expectancy
- Violation of Trade Secrets Act
- Computer Fraud and Abuse Act
- Declaratory Judgment Regarding Ownership of Intellectual Property

# Possible Claims: Violation of Trade Secrets Act

- Definition of a “trade secret”
- Information, including a formula, pattern, compilation, program, device, method, technique, or process that:
  - Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
  - Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

# Forms of Relief

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- Injunction
  - Preliminary and/or permanent
- Damages
  - Possibility for punitive double damages under trade secrets act.
- Attorneys' Fees
  - Possible recover under trade secrets act.

# Tips for Enforcement: Filing a Complaint

- Parties
  - Former employee? New employer?
- Jurisdiction and Venue
  - Contractual provision?
  - Enforceable against all parties to the lawsuit?
- Choice of Law
  - Contractual provision?
  - Non-competition laws vary significantly state to state.

# Tips for Enforcement: Preliminary Injunction

- Washington State Court
  - Must show a clear legal or equitable right;
  - Must show a well-grounded fear of immediate invasion of that right; and
  - Must show the acts complained of are either resulting in or will result in actual and substantial injury.
- Federal Court
  - Considers the likelihood of success on the merits;
  - Considers the likelihood that irreparable harm will result if an injunction does not issue;
  - Considers the balance of the equities; and
  - Considers the public interest.



# Tips for Enforcement: Preliminary Injunction

- Gather evidence to establish a compelling reason for immediate relief.
  - Demonstrate the company has undertaken meaningful efforts to protect confidential information and has acted diligently in response to misappropriation.
  - Forensic examination to identify confidential information with precision.
  - Identify third party witnesses to provide an unbiased perspective.
- Evaluate the need for expedited discovery to gather additional evidence.

# List of Sample Temporary Restraining Order Motion Pleadings

- To be filed at commencement of the lawsuit:
  - Complaint for Injunctive Relief and Damages
  - Summons
  - Motion for Temporary Restraining Order and Expedited Discovery
  - Attorney Declaration (including statement of efforts to provide notice)
  - Client Declaration
  - Non-Party Declaration 1
  - Non-Party Declaration 2
  - Proposed Order Granting TRO and Expedited Discovery (should have a proposed discovery and briefing schedule)
  - Declaration of Service
- To be included in the TRO:
  - Space for bond amount or notation that bond is waived
  - Return date for documents
  - Briefing schedule for preliminary injunction
- To be filed immediately after securing a TRO:
  - Bond (must contact the bond company ahead of time so that it can immediately issue a bond post-TRO)
  - Expedited Discovery Requests (depending on anticipated timing, may want to have these queued for immediate service following the issuance of the TRO)
  - Notices of Deposition and Subpoenas (depending on anticipated timing, may want to have these queued for immediate service following the issuance of the TRO)

# In the Future: Enforceable Documents

- Offer letter with confidentiality agreement
- Confidentiality agreement
  - With all new hires; if existing employee, provide **consideration**
  - Confidentiality of information
  - Assign inventions
  - Noncompete
  - No solicit of accounts
  - No solicit of employees
  - Respect secrets of prior employers
- Training and handbook policies



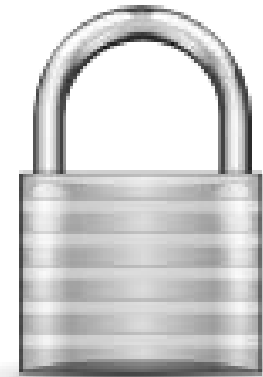
# In the Future: Enforceable Documents (cont.)

- Injunctive relief, damages, liquidated damages
- Integration clause, effect on other documents
- “Blue pencil”/severability
- Arbitration
- Venue/choice of law
- Legal representation



# In the Future: Security

- Protect secrets
  - Locked cabinets/limited access
  - Password protection
  - Limited distribution
  - CONFIDENTIAL stamps, etc.
  - Termination protocol
  - IT systems to electronically track access
- Be watchful



# In the Future: Protect IP

- Systematize disclosure
  - Periodic disclosure from employees of what they are working on and developing
  - Systematically evaluate internally for filing patents, copyrights
  - Suitable rewards for success to encourage disclosure
- Inventor's notebooks for development and prior art knowledge
- Archive copies of code or other documents worthy of copyright protection
- You also know already what you didn't care about

# “My Ex-Employee Did WHAT?” - Preventing and Addressing Post- Employment Misconduct

October 14, 2015

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# Speaker Bios



# Steven R. Peltin

**MEMBER**



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## SERVICES

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Financial Institutions

Nonprofit & Tax-Exempt  
Organizations

Retail & Consumer  
Products

Wine, Beer & Spirits

## PRACTICE OVERVIEW

Steve chairs the firm's Employment & Labor practice. His work covers the gamut of employment and labor law. His advice practice is dedicated to helping employers solve problems such as employee discipline and discharge, leaves of absence, discrimination and harassment claims, and threats of employee violence. Steve enhances employee handbooks and prepares and negotiates employment, confidentiality and non-compete agreements. He also counsels executives and professionals on employment and separation agreements, and assists with corporate transactions such as purchases and sales of businesses.

Steve has extensive litigation experience and represents public and private employers in lawsuits claiming discrimination, harassment, wrongful discharge and violations of wage and hour, employee benefits, trade secrets and non-compete obligations. He also appears before local, state and federal administrative agencies and arbitrators in employment and labor matters.

## REPRESENTATIVE WORK - Cases

- Won jury trial for an employer accused of age discrimination by laid-off union employee.
- Prevailed in hearing before the U.S. Department of Labor brought by a union business agent who claimed that the company conspired with the union to discharge him.
- Co-counsel in class action claiming pay for commuting in company vehicle; certification defeated and individual claim resolved promptly.
- Co-counsel for large employers in two U.S. Department of Labor collective actions claiming that employees worked off the clock; summary judgment obtained in one case, and the other was settled favorably.
- Won summary judgment on discrimination / harassment claim for financial services company.
- Obtained temporary restraining orders in two cases where employees refused to return computerized documents and information.
- Won summary judgment on sex bias claim by male employee of performing arts client.

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- Convinced OSHA that a safety whistleblower on a construction site was not subject to a hostile work environment.
- Obtained anti-harassment orders against former employees. Defended company in ERISA cases brought by former executive seeking payments under a Supplemental Executive Retirement Plan and by pension funds seeking payment of withdrawal liability.

## REPRESENTATIVE WORK – Transactions

- Employment and labor counsel in sales of business, including drafting of purchase agreement language, preparation of offer letters, executive employment agreements and employee communications.
- Assistance to client in reductions in force.
- Counseling of clients facing threat of workplace violence.
- Creation of documentation for background investigations, hiring, leaves of absence, requests for disability accommodation, last chance agreement and severance agreements.
- Preparation on policies such as travel pay, use of cell phones and blogging.
- Management training on employment law topics, including avoiding harassment and discrimination, performance management and hiring.

## RECOGNITION

- *The Best Lawyers in America*®
  - + Labor Law – Management, 2012-2016
  - + Litigation – Labor & Employment, 2013-2016
- Best in the Business: Leading Lawyers in the Puget Sound Region, *Seattle Business* magazine
  - + Labor – Management, 2013
  - + Litigation – Labor & Employment, 2013

## ACTIVITIES

- Seattle Theatre Group
  - + Board of Directors
  - + Executive Committee
- University Preparatory Academy
  - + Board of Directors, 2011-2012
  - + Chair of Personnel Committee, 2011-2012

## QUOTED

- [“Court Overturns Loan Officer Overtime Ruling in ‘Win’ for MBA,”](#) Quoted in *Reverse Mortgage Daily*, July 2013
- [“‘In Person’ Feature - Best Practices for Employers to Comply with the City of Seattle’s Paid Sick and Safe Time Ordinance,”](#) Interviewed in *Puget Sound Business Journal* - November 2012
- [“It’s Not Just Paid Time Off – It’s the Law: Attorneys explain what Seattle’s new sick leave ordinance means for employers,”](#) Quoted in *Puget Sound Business Journal* - September 2011
- “Your Office Away from the Office,” Quoted in *Utah CEO Magazine*
- “Keeping violent employees out of the workplace,” Quoted in *Risk Management* magazine
- “10 Considerations in Developing Telecommuting Policies and Agreements,” Quoted in HR.COM

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## PUBLICATIONS

Steve Peltin is a frequent contributor to Foster Pepper's [Washington Workplace Law](#) blog.

- “Effective Negotiation of Executive Employment Agreements,” Author, *Inside the Minds: Negotiating and Employment Agreements, Leading Lawyers on Constructing Effective Employment Contracts*, 2012 Edition
- [“Employers: Beware of High School Diploma Requirements,”](#) Author, *WIB HR & Training Digest*, February 2012
- [“Hidden Threats – There are steps you can take to prevent violence in the workplace,”](#) Co-author, *Washington CEO* magazine
- “Bad Acts: Smaller Employers Should Confront Threats of On-The-Job Physical Assaults,” Author, *Washington Journal*
- “Telecommuting: Legal and Management Risks For Employers,” Author, *Corporate Counsel Magazine*
- “Reducing Telecommuting Management Risks,” Author, *National Underwriter* magazine
- “How To Reduce Workplace Violence,” Author, *National Underwriter* magazine
- “50-State Survey of Employment Libel and Privacy Law, Washington Chapter,” Author, Media Law & Resource Center
- “Hiring Employees: Disability Questions and Medical Exams,” Author, *Realty & Building*

## PRESENTATIONS

- [“Top Emerging Issues in Employment and Labor Law,”](#) Speaker, 2015 WHAAP Annual Conference, October 2015
- [“Employee Handbooks: 2015 and Beyond,”](#) Speaker, American Public Power Association, September 2015
- [“FMLA and Leave Law Update,”](#) Speaker, 18<sup>th</sup> Annual Labor & Employment Law, The Seminar Group, August 2015
- [“Top 3 Employment Law Issues for 2015 That Should Keep You Up at Night,”](#) Speaker, Foster Pepper’s 10<sup>th</sup> Annual Bankers Briefing, May 2015
- [“Thriving Through Legal Resilience,”](#) Speaker, Washington State Nonprofit Conference, May 2015
- [“Association of Washington Housing Authorities Spring Meeting,”](#) Speaker, April 2015
- [“Is Your Employee Handbook Ready for Prime Time?”](#) Speaker, Foster Pepper Client Briefing, April 2015
- [“Privacy in the Workplace: Managing Employees in the Digital Age,”](#) Moderator, Foster Pepper Client Briefing, November 2014
- “The Alphabet Soup of Federal Employment Law,” Speaker, Tribal Employment Rights & Law: Sovereignty, Jurisdiction and Best Practices, July 2014
- [“Social Media and the Workplace - Protecting the Hospital in the Digital Age,”](#) Speaker, Washington State Hospital Association’s NW Council’s Hot Topics Meeting, June 2014
- “Filling the Empty Chairs: Legal and Effective Hiring,” Presenter, Northwest Marine Trade Association - Professional Development Series
- “What You Should Know About Executive Director Employment Agreements,” Speaker, Association of Washington Housing Authorities
- [“Bullying and Violence in the Workplace: Prevention and Intervention Strategies,”](#) Speaker, Foster Pepper Client Briefing, March 2014
- “Legalization of Marijuana - The Impact on Washington Employers”
  - + Speaker, South King County Human Resources Association December Meeting, 2013
  - + Speaker, Employee Assistance Professionals Association Pacific Northwest Chapter November Meeting, 2013
- [“Employment Discrimination Law – Hear From The Agencies,”](#) Speaker/Moderator, Foster Pepper Client Briefing
- [“Managing Employee Performance While Reducing Legal Risks,”](#) Speaker, Northwest Marine Trade Associations
- [“Wage & Hour Compliance – Beyond the Basics \(Part I\),”](#) Speaker/Moderator, Foster Pepper Client Briefing
- [“Wage & Hour Compliance – Beyond the Basics \(Part II\),”](#) Speaker/Moderator, Foster Pepper Client Briefing

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- [“Filling the Empty Chairs: Legal and Effective Hiring,”](#) Speaker/Moderator, Foster Pepper Client Briefing
- “Out of Sight But Not Out of Mind: Untangling Leave of Absence Requirements,” Speaker, 14<sup>th</sup>, 15<sup>th</sup> and 16<sup>th</sup> Annual Labor & Employment Law Seminar, The Seminar Group
- “Understanding Seattle Paid Sick and Safe Time”
  - + Speaker, Washington Trucking Associations
  - + Speaker, Northwest Marine Trade Association
- [“Seattle Paid Sick and Safe Time: Practical Guidance Employers Need to Know,”](#) Speaker/Moderator, Foster Pepper Client Briefing
- “Legal Issues for Startups: Employment Law,” Speaker, SURF Incubator
- “Employment Law Challenges for Public Employers and Current Developments under the Public Employees Collective Bargaining Act,” Speaker, 2012 Association of Washington Housing Authorities (AWHA) Meeting
- [“Reasonably Accommodating Employees with Disabilities,”](#) Speaker/Moderator, Foster Pepper Client Briefing
- “High-Stakes Employment and IP Protections: Protect your Company from Increasing Employment Risks and Shield Your Valuable Intellectual Property,” Speaker, Foster Pepper and Washington State Chapter of ACC America
- [“Conducting Effective Workplace Investigations,”](#) Speaker/Moderator, Foster Pepper Client Briefing
- “Managing the Process of Labor Negotiations,” Speaker, Washington Fire Commissioners Association 63rd Annual Conference
- [“Out of Sight but Not Out of Mind: Untangling Employer Obligations under FMLA and Other Leave Statutes,”](#) Speaker/Moderator, Foster Pepper Client Briefing
- [“Social Media in the Workplace,”](#) Speaker/Moderator, Foster Pepper Client Briefing
- “Payroll Management,” Speaker, Lorman Educational Services
- “Time Off: State and Federal Laws on Employee Leave, Vacations and Holidays,” Speaker, Lorman Educational Services
- “Recent Developments under the Family and Medical Leave Act,” Speaker, National Council of State Housing Agencies
- “10 Scary Issues You Need to Know About Your Employees,” Speaker, ASTRA Women’s Business Alliance
- “New Developments in Employment Law,” Speaker, Seattle CFO Arts Roundtable
- “Best Practice in FMLA Administration,” Speaker, Council on Education in Management
- “Conducting Effective Investigations Into Employee Complaints,” Speaker, PUD and Municipal Attorneys Association
- “Cyberstalking: The Washington Employer’s Perspective,” Speaker, King County Bar Association
- “Workplace Investigations,” Speaker, Council on Education in Management
- “Email and the Internet – Legal Challenges for Employers,” Speaker, PUD and Municipal Attorneys Association

## EXPERIENCE

- Foster Pepper PLLC, Member, 2010-Present
- K&L Gates LLP (formerly Preston Gates & Ellis, LLP), Partner, 1998-2010
- Georgia-Pacific Corporation, Senior Counsel, 1996-1998
- Altheimer & Gray (Chicago, IL), Associate and Partner, 1986-1996
- Isham Lincoln & Beale (Chicago, IL), Associate, 1983-1986
- U.S. District Court for the Western District of Wisconsin, Law clerk for the Hon. John C. Shabaz, 1982-1983

## BAR ADMISSIONS

- Washington, 1999
- Illinois, 1983 (Inactive)

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## EDUCATION

- J.D., Cornell Law School (*cum laude*), 1983
- B.A., University of Wisconsin-Madison (with distinction), 1978
  - + Phi Beta Kappa



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## SERVICES

Litigation & Dispute  
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Statutory Rights

Emerging Companies &  
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Intellectual Property

Intellectual Property  
Litigation

Media, Entertainment &  
Games

Patent Office Litigation

Wine, Beer & Spirits

## PRACTICE OVERVIEW

Joel focuses his litigation practice on the defense of patent infringement claims and challenges to patent validity as well as disputes over trademarks, copyrights, and other intellectual property. A registered patent attorney, he has deep experience in post-grant practice before the Patent Office, particularly contested review conducted in parallel with patent infringement litigation. Joel works closely with trial teams preparing patent portfolios for assertive litigation through rigorous “pre-examination” claim validity review and owner-directed re-examination and correction. He has also represented clients in copyright matters and related questions involving the rights surrounding various methods of copying, storing, reproducing, and streaming digital media.

Joel litigates and advises candidates, election officials, and members of the public on election law, including ballot access and integrity provisions of federal law. He has extensive experience in voter roll integrity and language minority ballot access provisions of federal election statutes. Joel has investigated and enforced statewide violations of Section 8 of the National Voter Registration Act, and implemented election day polling place observers in primary and general elections in numerous jurisdictions.

## REPRESENTATIVE WORK – Patent Litigation

- *Restoration Industry Association v. ThermaPure*, No. 2:13-cv-03169 (U.S.D.C., Central District of California) - Declaratory judgment action seeking invalidity of six patents, brought on behalf of industry association enforcing its rights and those of its members
- *ThermaPure v. Water Out Oregon*, No. 3:11-cv-05958 (U.S.D.C., Western District of Washington) - Successful defense of patent infringement claim resulting in summary judgment of non-infringement on motion filed at the outset of the case
- *ThermaPure v. Just Right Cleaning and Construction*, No. 2:11-cv-00431 (U.S.D.C., Eastern District of Washington) - Successful defense of patent infringement claim resulting in summary judgment of non-infringement on motion filed at the outset of the case
- *Napasol AG v. Cosmed Group, Inc.*, No. 2:11-cv-00130 (U.S.D.C., Northern District of Iowa) - Action seeking declaratory judgment of invalidity of a patent related to steam sterilization

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- *Verathon Medical (Canada) ULC v. Aircraft Medical Limited*, No. A680/07 (Court of Session, Edinburgh, Scotland) - Action enforcing a video laryngoscopy patent
- *Quiring Monuments, Inc. v. Memory Medallion, Inc.*, No. 2:11-cv-00909(U.S.D.C., Western District of Washington), action seeking declaratory judgment of non-infringement of patent related to data storage and access

### REPRESENTATIVE WORK – Post-Grant Patent Practice

- USPTO Control No. 95/000,161 - Successful inter partes re-examination defense of over 400 newly filed claims before Central Re-exam Unit)
- USPTO Control Nos. 90/009,282; 95/000,396; 95/000,397; 95/000,398 - Successful ex parte and inter partes re-examination defense, without amendment, of patents directed towards aspects of motion control)
- USPTO Control Nos. 95/001,565; 95/001,566, 95/001,567; and 95/001,568 - Inter partes re-examination defense of patents related to mobile video)
- EPO Post-Grant Defense of European Patent 1307131 - Successful defense of validity of video laryngoscope patent before European Patent Office in post-grant proceeding)
- USPTO Control No. 90/011,308 - Asserting an ex parte re-examination challenge to validity of medical device patent)

### REPRESENTATIVE WORK – Trademark, Copyright, Trade Secret

- *Visible v. Visibli*, No. 2:12-cv-00617(U.S.D.C., Western District of Washington) - Successful enforcement of trademark rights against Canadian internet company with confusingly similar name, domain name, and Twitter handle
- *Concretize, Inc. v. Fireshield, Inc.*, No. 08-cv-213(U.S.D.C., District of Oregon) - Dispute regarding ownership of copyright on software
- *Basta, Inc. v. Hydrohoist Marine Group, Inc.*, No. 2:09-cv-00217 (U.S.D.C., Western District of Washington) - Declaratory judgment action regarding ownership of trademark

### REPRESENTATIVE WORK – Election Integrity and Ballot Access

- *US v. Missouri* - First state-wide enforcement of election roll integrity provisions of 42 U.S.C. § 1973gg-6
- *US v. San Diego County, CA* - Election-day federal observer monitoring of compliance with minority language provisions of Voting Rights Act
- *US v. Berks County, PA* - Election-day federal observer monitoring of compliance with minority language provisions of Voting Rights Act

### RECOGNITION

- Washington Super Lawyers list, 2015

### ACTIVITIES

- United States Commission on Civil Rights, Washington State Advisory Board Member, 2013 - Present
- Puget Sound Lawyers Chapter of the Federalist Society, President, 2010 – Present

### QUOTED

- “Patently Obvious” *Seattle Business* magazine, April 2012

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## PUBLICATIONS

- “Best Practices for Protecting Your Start-Up with Patents and Trademarks,” Author, Foster Pepper News, October 2013
- “Liquor Control Board Enacts Emergency Rules for Craft Distillers; Begins Formal Rulemaking to Implement I-1183,” Co-Author, Foster Pepper News, December 2011
- “Washington State Liquor Control Board Issues Emergency Rules For Distillery and Craft Distillery Sales,” Co-Author, Foster Pepper News, December 2011

## PRESENTATIONS

- “How Has the America Invents Act Affected Patents and Innovation?” Panelist, The Federalist Society Annual Western Chapters Conference, January 2015
- “Creating and Protecting Intellectual Property,” Speaker, Wineries, Breweries and Distilleries: Practical Issues in the Alcohol Industry, August 2014
- “Operational Updates: Trademarks and the Art of Labeling,” Speaker, The Sixth Annual Seminar on New Developments in Wine Law in Washington, August 2012
- “High-Stakes IP Protections: Protect Your Company from Increasing Risks and Shield Your Valuable Intellectual Property,” Panelist, Foster Pepper and Washington State Chapter of ACC America, March 2012

## EXPERIENCE

- Foster Pepper PLLC, Member, 2011-Present
- Black Lowe & Graham PLLC, Member, 2008-2011
- U.S. Department of Justice, Trial Attorney, 2005-2007
- Latham & Watkins (Washington, D.C.), Associate, 2000-2004
- U.S. Court of Appeals for the Eighth Circuit, Law Clerk intern to the Hon. David R. Hansen, 1998

## BAR ADMISSIONS

- Washington, 2008
- California, 2014
- Washington, D.C., 2001
- U.S. District Court
  - + Eastern District of Washington, 2011
  - + Western District of Washington, 2008
  - + Central District of California, 2014
  - + District of Columbia District Court, 2002
  - + Northern District of Illinois, 2001
- U.S. Patent Office, 2010
- U.S. Court of Appeals for the Federal Circuit, 2011
- U.S. Supreme Court, 2004

## EDUCATION

- J.D., University of Chicago Law School, 2000
- B.A., St. John’s College, 1995





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## SERVICES

Litigation & Dispute Resolution

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Intellectual Property

Intellectual Property Litigation

Patent Office Litigation

## PRACTICE OVERVIEW

Sam focuses his practice on intellectual property litigation (trade secret, copyright, and trademark), unfair competition litigation, pension fund litigation, securities litigation, antitrust litigation, and class action defense. He is Chair of the firm's Emergency Injunction Team and regularly represents clients requesting emergency injunctive relief or defending against requests for such relief.

Sam has worked with several regional and national technology companies, not-for-profit entities, banks, mortgage companies, broker-dealers, hospitals, and government entities.

In 2012, Sam served as lead trial counsel for the plaintiffs in *Education Logistics, Inc. v. Laidlaw Transit, Inc.*, a top 100 jury verdict (\$28 million), as reported by *The National Law Journal*. He successfully argued for preservation of the entire jury verdict in front of the 9th Circuit Court of Appeals in June 2014.

## REPRESENTATIVE WORK

– *Education Logistics, Inc. v. Laidlaw Transit, Inc.* (D. Mont.) – 2012 Top 100 Jury Verdict

Lead trial counsel for Plaintiff Education Logistics (commonly known as Edulog), the producer of the world's preeminent school bus routing software, in a breach of contract case against Laidlaw Transit, Inc. (now First Student), the world's largest private school bus contractor. Following a two-week trial, the jury ruled in favor of Edulog on all its claims and awarded \$28.4 million in damages. Successfully argued for preservation of the entire jury verdict in front of the 9th Circuit Court of Appeals in June, 2014. In 2015, successfully opposed Laidlaw's Petition for Writ of Certiorari seeking review by the U.S. Supreme Court.

- Medical Communications Resources, Inc. v. Global Initiative For Asthma, Inc. (W.D. Wash.)  
Lead litigation counsel for Global Initiative for Asthma (“GINA”) and Global Initiative For Chronic Obstructive Lung Disease (“GOLD”), two not-for-profit organizations that publish the foremost treatment protocols for Asthma and Chronic Obstructive Pulmonary Disease (Emphysema). Obtained injunctive relief (as a defendant) restricting plaintiffs’ attempts to interfere with the operations of GINA and GOLD. Successfully protected GINA and GOLD’s trademarks and other intellectual property rights in their publications and other materials.
- Seattle Education Foundation v. The Foundation House At Northgate (King Co. Wash.)  
Lead litigation counsel for not-for-profit retirement community for retired school teachers in a dispute with a former affiliated entity. After targeted discovery, the plaintiff in the dispute voluntarily dismissed all of its claims.
- Seattle Education Foundation v. The Foundation House At Northgate (King Co. Wash.)  
Lead litigation counsel for not-for-profit retirement community for retired school teachers in a dispute with a former affiliated entity. After targeted discovery, the plaintiff in the dispute voluntarily dismissed all of its claims.
- Northwest Home Designing v. Pierce County (Pierce Co. Wash.)  
Represented construction design firm following a public records request by a competitor seeking confidential home design plans. Successfully obtained injunctive relief barring the disclosure of our client’s design plans.
- National City Mortgage v. Republic Mortgage Home Loans (W.D. Wash.)  
Helped protect National City Mortgage’s trade secrets following an attempt by a rival mortgage broker to poach key employees and convert several office locations. Successfully obtained injunctive relief requiring the return of trade secret protected material.
- Crane v. CTX (W.D. Wash. and arbitration)  
Represented national mortgage company in trademark and trade secrets claim. Prevailed at arbitration, recovering damages and attorney fees.
- Seattle City Employees Retirement System v. Epsilon Global Active Value Fund II (King Co. Wash. and W.D. Wash.)  
Represented City of Seattle against off-shore pension fund. Successfully obtained injunctive relief requiring the production of pension fund-related documents.
- Industrial Electric Systems, Inc. v. Power Breaker – Seattle, LLC (Snohomish Co. Wash.)  
Represented industrial circuit breaker distributor in trade secrets dispute. Successfully obtained preliminary injunctive relief requiring the return of trade secret protected information.
- Bearse v. Port of Seattle (King Co. Wash.)  
Assisted in representation of municipal airport operator in class action seeking damages and injunctive relief on alleged inverse condemnation, nuisance, and trespass caused by airport noise. Following several attempts by plaintiffs, class certification was denied.
- Probst v. Department of Retirement Systems (Thurston Co. Wash.)  
Assisted in the representation of the State of Washington defending against a class action claim for interest alleged to be owed under the State’s various pension plans.
- Pro Bono Cases  
Assisted victim of domestic violence and her daughters to obtain deferred action status and, subsequently, U.S. permanent legal resident status.  
Assisted new father struggling to make ends meet to retain unemployment benefits issued after he was laid off.

## RECOGNITION

- Obtained top 100 plaintiff’s verdict in U.S. in 2012 (\$28 million) by *The National Law Journal*
- Rising Star, Washington Super Lawyers list, 2010

Samuel T. Bull MEMBER

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## ACTIVITIES

- Leadership Tomorrow, Class of 2011
  - + 2011 Class Speaker
- Mercer Island Lions Club, Past President

## QUOTED

- [“When working with government agencies, companies can have a tough time keeping details private,”](#) Puget Sound Business Journal, December 12, 2014

## PUBLICATIONS

- “Preliminary Injunctive Relief: Procedure for Obtaining Preliminary Injunctive Relief,” Contributor, Practice Note, Practical Law Company, September 2012
- “Preliminary Injunctive Relief: Drafting the Required Documents,” Contributor, Practice Note, Practical Law Company, September 2012

## PRESENTATIONS

- Leadership Tomorrow's 28th Annual Community Leadership Celebration Honoring the LT Class of 2011, Speaker, June 2011
- “Local Federal Rules,” Speaker, WSBA Federal Practice Boot Camp, October 2010
- “When Time is Of the Essence: Temporary Restraining Orders,” Speaker, Non-Competes in a Down Economy: Protecting Your Company's Trade Secrets From Disclosure by Former Employees, June 2009

## EXPERIENCE

- Foster Pepper PLLC
  - + Member, 2011-Present
  - + Executive Committee, 2015-Present
  - + Emergency Injunction Team, Chair, 2013-Present
  - + Professional Development Committee, Co-chair
  - + Associate, 2003-2010
- New York State Office of the Attorney General (New York, NY), Legal Aide, Labor Bureau, 2001-2003
- Cognoscenti (Cambridge, MA), Publishing Director, 1998-2000

## BAR ADMISSIONS

- Washington, 2003
- U.S. District Court
  - + Eastern District of Washington, 2005
  - + Western District of Washington, 2005
- U.S. Court of Appeals
  - + 9th Circuit, 2009
  - + 10th Circuit, 2014
- United States Supreme Court, 2014

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## EDUCATION

- J.D., Columbia University School of Law, 2003
  - + Harlan Fiske Stone Scholar
  - + Columbia Journal of Transnational Law
- A.B., Harvard University (cum laude), 1998
  - + Henry M. Fuller Memorial Scholar
  - + Faculty of Arts and Sciences Scholarship
  - + Harvard College Scholarship

# Emily Kelly

## ASSOCIATE



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### SERVICES

Litigation & Dispute Resolution

Intellectual Property

Intellectual Property Litigation

Nonprofit & Tax-Exempt Organizations

Patent Office Litigation

### PRACTICE OVERVIEW

Emily is an associate in the Litigation & Dispute Resolution practice and focuses on a broad range of commercial litigation matters, including intellectual property and patent infringement, insurance coverage and employment law, as well as discovery issues. She also represents healthcare clients on certificate of need issues.

### RECOGNITION

– John J. Curtin, Jr. Justice Fund Fellowship for Commission on Homelessness and Poverty

### PUBLICATIONS

- International Organ Trafficking Crisis: Solutions Addressing the Heart of the Matter,” Note, Boston College Law Review, Volume 54, Issue 3, 2013
- Holding Blackwater Accountable: Private Security Contractors and the Protections of Use Immunity,” Comment, Boston College International and Comparative Law Review, Volume 35, Issue 3, 2013

### EXPERIENCE

- Foster Pepper PLLC
  - + Associate, 2013-Present
  - + Summer Associate, 2012
- Boston College Law School, Professor Elizabeth Keller, Legal Reasoning, Research and Writing Teaching Assistant, 2011-2013
- Shelter Legal Services, Clinic Manager and Summer Intern, 2011
- Common Ground Relief, Legal Intern, 2011
- Teach for America, 2007-2010

### BAR ADMISSIONS

- Washington, 2014

Emily Kelly

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## EDUCATION

- J.D., Boston College Law School (*cum laude*), 2013
  - + Boston College International and Comparative Law Review, Staff Writer (2011-2012), Executive Comments Editor (2012-2013)
- M.E., George Mason University, 2009
- B.A., Tufts University, 2007
  - + Dean's List