

## James L. Austin, Jr.



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### ATTORNEY PROFILE

Jim Austin's practice encompasses representation of both emerging and established enterprises, in their initial formation and in their capitalization, transactional dealings, and in business acquisitions and dispositions. Jim has served as principal outside counsel or regional counsel to a wide variety of advanced technology, industrial, and retail businesses, and as counsel to both foreign investors and national enterprises. He has significant experience in corporate and related affairs; venture capital and other equity transactions; lending relationships (both as lender's and as borrower's counsel); licensing, distribution, and strategic partnering arrangements; real estate transactions; mergers and acquisitions; and private and municipal transactions involving solid waste collection and disposal.

Although Jim's practice is primarily transactional in nature, he has participated as counsel in a variety of complex adversarial matters, including major commercial disputes, international trademark and domain name litigation, and in cases involving the application of the federal and state constitutions and statutes to municipal solid waste contracts and regulations.

Jim is a member of the Computer Law Association and has co-chaired or participated as a faculty member of Washington Software Alliance seminars on legal issues of interest to the software industry. He was the author of *The Seattle Times* info net series on "Internet Law," and has been a lecturer on Internet-related issues at continuing legal education seminars.

Jim was for many years the author of the "Bankruptcy Practice" section of the *Washington Lawyers Practice Manual* and has lectured frequently on matters involving insolvency proceedings, the financing of real property acquisitions and developments, and computer law matters. He is the author of the definitive "Receivership Proceedings in Washington State."

Jim chaired the committee of the Washington State Bar Association's Debtor-Creditor Section that produced Washington's comprehensive receivership code and

was a principal drafter of that statute. He has also participated in drafting Washington statutes governing trademark disputes and real property liens.

Jim is a former member of Karr Tuttle Campbell's board of directors and has served in the past as chairman of its Business and Finance Department. In addition to membership and participation in the American Bar Association, Washington State Bar Association, and King County Bar Association, Jim has served as a member of the Board of Governors and on the Executive Committee of the Bar Association of America and the CIS, for which he served as secretary.

Jim has been named a Washington State's "Super Lawyer" every year since 2001, and was selected as one of "Washington's Most Amazing Lawyers" in the March 2006 edition of *Washington CEO Magazine*. He also was recognized in 2007 by *Seattle* magazine as one of Seattle's "Top 155 Lawyers" and by *Seattle Business Monthly* as one of "Seattle's 90 Top Business Lawyers," as well as one of Seattle's "Top 87 Business Lawyers" in January 2008. Jim has also been named to *Best Lawyers in America*® every year since 2013. Jim currently serves as the president of the King County Bar Foundation.

### MAJOR AREAS OF PRACTICE

Commercial transactions, business financing, mergers and acquisitions

### ADMITTED TO PRACTICE

Washington State Bar, 1975  
U.S. District Court, Western District of Washington, 1975  
U.S. Court of Appeals for the Ninth Circuit, 1975

### EDUCATION

A.B. with honors, Stanford University, 1972  
J.D., University of Chicago, 1975

### PROFESSIONAL ACTIVITIES

American Bar Association  
Business Law Section  
Real Estate, Probate, and Trust Section  
Washington State Bar Association  
Debtor-Creditor Section  
Real Estate, Probate, and Trust Section  
King County Bar Association  
King County Bar Foundation, President  
Computer Law Association  
Washington Software Alliance

Bar Association of America and CIS  
**PRESENTATIONS/PUBLICATIONS**

Chairman and/or faculty member of continuing legal education seminars relating to corporate law, licensing and distribution arrangements, secured transactions,

internet services, receiverships and real estate financing.

## REPRESENTATIVE MATTERS

### Significant Commercial And Real Estate Matters:

- Representation of one of Washington's ten largest privately-held corporations in an \$80 million recapitalization and refinance of all multi-tranche long-term indebtedness.
- Representation of Air Canada in its purchase of passenger aircraft.
- Representation of Cingular Wireless in its establishment of network of owned and agency stores in Washington, Oregon and Idaho.
- Representation of subsidiaries of Allied Waste Industries, Inc. in various agreements relating to the collection, handling, transport and disposal of solid waste with counties, cities and private concerns throughout the state of Washington.
- Representation of Sawyer Falls Co., LLC in its acquisition out of bankruptcy of a 565 acre parcel in Pierce County, in its development of that parcel as a residential community with a retail center, and in its eventual sale of that property.
- Representation of Group Health Cooperative in its investment in and lease of its new headquarters in the South Lake Union area of Seattle.
- Representation of Regional Disposal Company in transactions involving the establishment of a methane gas co-generation facility at the Roosevelt Regional Landfill near Goldendale, Washington.
- Representation of KONG Television, Inc. in its successful applications to obtain necessary permits for new television and radio transmitting facility on Cougar Mountain.
- Representation of Broadcast Tools, Inc. in licensing of proprietary technology for the production of broadcasting equipment to Broadcast Electronics, Inc.
- Representation of Shamrock Broadcasting, Inc. (a Roy Disney company) in connection with efforts to consolidate FM broadcast facilities and other telecommunications services on Cougar Mountain onto a single tall tower.
- Representation of AudioControl in its licensing of technology for production and distribution of a multi-room audio system controller.
- Representation of Bridgeway Corporation in its license of system management software to Pacific Bell Telephone in California.
- Representation of Lemond Cycling, Inc. in matters involving the sale a license to use the Greg Lemond trademark in the bankruptcy of StairMaster.
- Representation of the Washington Association Of Vehicle Subagents in matters involving state statutes pertinent to the subagent succession.
- Retained in special investigative role by Grant County Public Utility District in its internal investigation of alleged violations of state law in the development of its fiber optic network.
- Representation of local bank in successful submission of claim against a bankers blanket bond for a \$2.5 million loan loss.
- Representation of Cosmos, Inc. (later Revelation Technologies) in its formation, and in a host of computer software licensing arrangements with Microdata (McDonnell Douglas), Prime Computers, Inc. and various VARS and OEMs throughout North America and Europe.
- Representation of West Coast Paper Company in its acquisitions of computer systems.
- Representation of Seattle radio station KXRX-FM in its successful application for permits necessary to construct its FM tower and transmitting facility on Cougar Mountain east of Seattle.
- Advised Lewis County Public Utility District as special counsel with respect to the District's rights under a letter of intent executed in 1957 with Tacoma City Light to compel a sale of hydroelectric power at cost from hydroelectric facilities on the Cowlitz River.
- Representation of a consortium of local FM radio stations in connection with the development of King County's telecommunications facilities siting ordinance.
- Representation of Pacific Bell Wireless in connection with the assumption and eventual sale by USTel, Inc., a debtor in bankruptcy, of its reseller contract with Pacific Bell.
- Representation of MasterSoft International of Australia and affiliated entities in their licensing of computer software to Group 1 Software Inc.
- Representation of Synrad, Inc. in its licensing of laser technology.
- Representation of Eclipse Properties, Inc. in its sale to the City of Everett for redevelopment of land along the Snohomish River.
- Representation of Todd Pacific Shipyards in its sale and assignment of its ownership rights in a software system managing government and civilian shipbuilding and repair contracts.
- Representation of Cornerstone Development, Inc. in the negotiation of a software development and licensing agreement with a major national banking institution.
- Representation of Kaseya Corporation and related entities in the establishment of their worldwide relationships for development and licensing of proprietary software technology.
- Representation of purchaser from Wells Fargo Bank of a multi-million dollar troubled loan secured by a feedstock facility in Eastern Washington
- Representation of Khan Air in sale of aircraft to Finnoff International.

## MERGERS AND ACQUISITIONS

- Representation of Brown & Cole Stores, one of Washington's largest independent supermarket businesses, in its stock and asset acquisitions of Thrifty Foods, Crown Groceries, Ennen Food Stores in 1996 and 1997
  - Representation of Rabanco, Ltd. in its acquisition of Northwest Waste Industries, Inc. and Seattle Disposal Company, Inc., providers of residential and commercial solid waste collection service in Seattle and Lynnwood.
  - Representation of Stuchell Enterprises, Inc. in its acquisition and refinance of the Inn At Port Gardner in Everett, Washington.
  - Representation of Lucky Dog Equipment, Inc. in its acquisitions of the Pet Pros chain of pet food and pet supply stores, the assets of Outlaw Decoys, Inc. and the web operations of Bubba's Gear.
  - Representation of Message!Check, Inc. in stock acquisition by Liberty Printing.
  - Representation of The Allied Printers in stock acquisition by Mail-Well, Inc.
  - Representation of receiver of Foremost Dairies Northwest in *U.S. Bank v. F.D. Processing, Inc.*, a general liquidating receivership, and in the receiver's sales of dairy plants in Seattle (to Quality Food Centers dba QFC Stores) and Spokane (to Goodale Barbieri Companies).
  - Representation of Captura Software, Inc. in its acquisition of Workflow Solutions, Inc.
  - Representation of Serverware, Inc. in its acquisition by Asymetrix Corporation (a Paul Allen company).
  - Representation of receiver appointed over subsidiaries of Olympic Broadcasting, Inc. and in the judicially-authorized sales of AM and FM radio stations in Alaska, California and Washington.
  - Local representation of Cellular One in its purchase of McCaw Cellular systems in Kentucky, Alabama and Tennessee.
  - Representation of Pacific Rim Network, Inc., a web hosting service, in its stock acquisition by Verio, Inc.
  - Representation of Thurman Industries, a Northwest hardware store chain, of in its acquisition of various retail locations out of the Pay 'N Pak bankruptcy.
  - Representation of AZCAR Technologies, Inc. of Toronto in its negotiations for acquisition of a local provider of technical services to ESPN.
- Whatcom County.
- Representation of Siemens Energy & Automation, Inc. In commercial product liability actions by Douglas County PUD, Bonneville Power Administration and U.S. Army Corps of Engineers arising out failures of generator stator coils at Wells Dam hydroelectric project on the Columbia River and the Broken Bow hydroelectric project in Oklahoma.
  - Representation of General Electric Corporation and Westinghouse Corporation in various actions involving claims of defective industrial equipment, including diesel engines used fishing vessels, steam turbine-generators at nuclear power plant, and electric transformers.
  - Representation of General Electric Corporation in challenge by a Seattle distributor to GE's termination of distributorship.
  - Representation of Security Pacific Bank (later Seafirst Bank) in claims against, and defense of lender liability claims by, a major local millwork manufacturer.
  - Representation of Puget Sound National Bank (now KeyBank) in matters involving defaulted commercial loans to Acro Tech, Inc.
  - Representation of the estate of Dewey Soriano, the man who brought major league baseball to Seattle, in will contest.
  - Representation of owner of mushroom composting facility in Ferndale, Washington, in its negotiation of a Consent Decree with Whatcom County and the City of Bellingham over claims of nuisance odors.
  - Representation of Regional Disposal Company in lawsuit by Waste Management, Inc. challenging Port of Seattle contract for cleanup of East Duwamish Waterway in Elliott Bay.
  - Representation of Brown & Cole, Inc. in the defense of infringement claims by Overwaitea Foods of British Columbia arising out of our client's use of "Save-On-Foods" as the name of retail supermarkets in Washington and Oregon.
  - Served with firm as general outside counsel to Peoples National Bank of Washington prior to its acquisition by U.S. Bank in large commercial loan workouts and bankruptcies.

## ADVERSARIAL PROCEEDINGS

- Representation of Frederick & Nelson, Inc. in trademark dispute with Dayton Hudson Corporation (now known as Target Corporation) over *Frango* trademark.
- Representation of Recomp of Washington, Inc., Regional Disposal Company and BFI Waste Systems of North America in a series of major federal court Commerce Clause cases pertaining to the handling and disposal of solid waste in