



Loren D. Podwill

Shareholder
Firm President
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Loren Podwill heads the firm's Fidelity and Surety practice groups. He also represents clients in commercial and intellectual property litigation. Loren's experience includes trials ranging from one day to 12 weeks and numerous mediations and arbitrations.

Loren has represented sureties in both public and private construction projects and has litigated Dispute Act claims in the United States Court of Federal Claims. He has defended numerous fidelity, directors and officers (D&O), errors and omissions (E&O), and lender liability claims, with an emphasis on financial institutions.

Loren has litigated and tried a wide variety of commercial disputes, including breach of contract, securities, and anti-trust cases. He has litigated numerous copyright and trade secret cases with an emphasis on copyrighted music and departing employee cases.

Loren has also defended a number of consumer lawsuits, including class action lawsuits brought under the Fair Credit Reporting Act (FCRA). He regularly advises corporate clients, including insurance companies, financial institutions and others, regarding compliance with FCRA and other federal and state consumer statutes, and counsels Oregon lenders regarding compliance with the Oregon Consumer Finance Act, state agency administrative rules, and local ordinances.

Representative Matters

Commercial Litigation Cases (partial list)

Employee embezzlement

Represented local company in claims against its bank related to the embezzlement by an employee of hundreds of thousands of dollars through the use of unauthorized checks. Case settled following a jury verdict in favor of our client.

Probate litigation

Represent surety in recovery action on appeal bond requiring coordinated litigation in civil and probate courts in order to foreclose on real property collateral and address various probate claims.

Antitrust and defamation claims against towboat company

Defended towboat company in a case involving federal antitrust law claims and common law claims of defamation and intentional interference with contractual relations. Antitrust claims were based

on allegations of predatory conduct in the marketplace. Obtained judgment as a matter of law for defendants on common law claims and negotiated a settlement with the plaintiffs to resolve the antitrust claims.

Antitrust and Uniform Commercial Code (UCC) case for equipment manufacturer

Representation at trial of an international manufacturer of filling and processing equipment. Following a 10-week trial, obtained a multi-million dollar verdict and defeated anti-trust and UCC claims. Securities fraud claims were settled.

Fair Credit Reporting Act (FCRA) class action lawsuits

Defended several national personal lines insurance companies in federal class action cases alleging willful violations of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §1681, et seq. Potential exposure to our clients varied from millions to billions of dollars. On statutory issues of first impression, the insurance companies prevailed in the District Court on motions for summary judgment prior to the District Court's determination of whether to certify a class. The plaintiffs appealed. The Ninth Circuit Court of Appeals reversed. The U.S. Supreme Court reversed the Ninth Circuit in substantial part and affirmed in part. Cases were settled.

International aviation consulting firm

Represented an international aviation consulting firm in a \$100 million lawsuit brought by a state pension fund involving municipal bonds issued for the construction of an airplane maintenance facility. In defending the lawsuit, we filed third-party claims against several state agencies, including the Department of Treasury, Department of Justice, and the local port authority. The case against our clients was settled following mediation for a fraction of the original claim. The claims against the other defendants went to trial, resulting in a \$65 million verdict in favor of the state pension fund.

Music copyright infringement

Represented copyright holders in numerous lawsuits involving the unauthorized public performances of copyrighted music.

Pirate packing of life rafts

Represented commercial fishermen against a company that packed life rafts that failed to properly inflate when their boat sank. The company had previously been decertified by the life raft manufacturer. Prevailed after jury trial resulting in damages for fishermen and new Coast Guard rules prohibiting "pirate packing."

Fidelity & Surety Cases (partial list)

Failed bank litigation

Represent insurer on coverage issues and coverage litigation on

claims by the FDIC against directors and officers of failed banks in Oregon, Washington, Nevada and other jurisdictions.

Ponzi scheme

Represent insurer on crime policy with regard to multi-million dollar Ponzi scheme involving 1031 exchange accommodator.

Bank director dishonest acts

Represented insurer on \$10 million financial institution bond claim involving alleged dishonest acts of director in capacity as the bank's largest borrower. Bullivant's victory on summary judgment was reversed by the Ninth Circuit Court of Appeals, but led to a very favorable settlement for insurer.

Lender liability claim by bridge lender

Representation of insurer on coverage claims under director and officer and lender liability policies with regard to claims brought against insured bank by bridge lender and borrower. Prevailed on summary judgment. Judgment on bridge lender claim affirmed by the Ninth Circuit Court of Appeals. Claim involving borrower remanded and favorably settled for insurer.

D&O/E&O/Lender liability policies

Numerous coverage and defense assignments on financial institution bonds, commercial crime policies, D&O, E&O, and lender liability policies and endorsements.

Bio-containment research facility

Represented surety in default by electrical subcontractor regarding a state of the art bio-containment research facility complex in Montana. Assignment included claim evaluation, defense and prosecution.

Military base

Represented surety for a bond principal that defaulted on military base construction projects in Hawaii, Alaska and Guam. We handled the investigation, takeover, completion, and recovery, including successful trial in the Federal Court of Claims against the Air Force for payments made after receipt of stop-payment notices. Also recovered a substantial settlement from architects.

Multiple project default

Represented surety in default by bond principal on public works projects in Oregon and Washington involving several schools, fire stations and a police station. Bullivant assisted with takeover agreements, completion issues and recovery.

Probate conservator bonds

Represent surety on probate and conservatorship bond claims for alleged breaches of fiduciary duties and embezzlement of funds and related recovery claims against bond principal and

indemnitors.

License and miscellaneous bonds

Regularly represent sureties on license bond and miscellaneous bond claims including investigation, defense and indemnity.

Practice Areas

Fidelity & Surety
Professional Liability / D&O
Commercial Litigation
Construction
Insurance Law

Industries

Construction
Professional Services
Insurance
Financial Services

Education

Willamette University, College of Law - J.D., *cum laude*, 1984
Colorado State University - B.S., Business Administration
(Accounting), 1979

Bar Admissions

- Oregon, 1984
- Washington, 1984

Court Admissions

- U.S. Court of Federal Claims
- U.S. Court of Appeals, Ninth Circuit
- U.S. District Court, District of Oregon
- U.S. District Court, Eastern District of Washington
- U.S. District Court, Western District of Washington

Professional and Civic Involvement

- American Bar Association (Section Financial Officer, Tort Trial and Insurance Practice Section, 2014-2017; Council Member, Tort Trial and Insurance Practice Section, 2011-2014; Vice Chair, Tort Trial and Insurance Practice Section, Business Litigation Committee; Current Member & Former Chair, Pro Bono and Public Service Committee; Member, Long Range Planning Committee)
- Gus J. Solomon American Inn of Court (President, 2009-2010; Secretary & Treasurer, 1995-2009)
- Multnomah Bar Association (Member)

- Oregon Business Association (Director, 2000-2011)
- Oregon State Bar (Chair, Business Litigation Section, 2003; Member, Board of Bar Examiners, 1994-1997)
- Western States Surety Conference (Co-Sponsor & Speaker, 1994-Present)

Volunteer Work (partial list)

- American Bar Association Project Outreach (Nationwide High School Peer Mediation Program)
- American Bar Association Domestic Violence Project
- Oregon State Bar Association Senior Law Project
- Global Vision (Community Advisory Group)
- Community Vision, Inc. (Member, Seven Corners Community Collaborative Capital Campaign Committee)

Awards and Honors

- AV[®] Preeminent[™], Peer Review Rated by Martindale-Hubbell
- Named the *Best Lawyers*[®] 2013 Portland-OR Litigation - Banking & Finance "Lawyer of the Year"
- Selected for inclusion in *Oregon Super Lawyers* (2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007, 2006 — Business Litigation)
- Selected for inclusion in *The Best Lawyers in America*[®] (2020, 2019, 2018, 2017, 2016, 2015, 2014, 2013, 2012, 2011, 2010, 2009 — Commercial Litigation; Government Relations Practice; Litigation - Banking & Finance; Litigation - Construction)
- Named as a "Local Litigation Star" by *Benchmark Litigation* (2018, 2017, 2016 & 2015 — General Commercial; Insurance; Professional Liability)

Publications and Presentations

- Co-Speaker & Author, "*King County v. Travelers, et al.* – A Site Visit to the Washington Supreme Court," Western States Surety Conference (2017)
- Co-Speaker & Author, "Change is in the Air: Recent Changes in the Federal Rules of Civil Procedure," Western States Surety Conference (2016)
- Co-Speaker, "Surety Bad Faith: A Pre-Flight Safety Briefing," Western States Surety Conference (2015)
- Co-Speaker & Author, "Cyberwar, Hacks and Heartbleed: Introduction to Loss Recovery and Insurance Coverage Issues For Data Breaches," Western States Surety Conference (2014)
- Co-Speaker, "Introduction to Extra-Contractual Insurance Claims in Washington State," Western States Surety

- Conference (2013)
- Moderator, "The Bare Essentials: The ABC's of Payment Bond Claim Handling," Western States Surety Conference (2012)
- Speaker, "The Law of Payment Bonds," American Bar Association (ABA) Tort Trial and Insurance Practice Section (TIPS) Fidelity & Surety Fall Meeting (2011)
- Chapter Author, "Introduction To Payment Bonds," American Bar Association, Tort Trial and Insurance Practice Section (TIPS), *The Law of Payment Bonds*, 2nd Ed. (2011)
- Co-Speaker, "Washington's 'Insurance Fair Conduct Act'—A Potential Landmine for the Unwary," Western States Surety Conference (2011)
- Co-Speaker, "Dancing With the 'Solvent Principal': the Good, the Bad and the Ugly," Western States Surety Conference (2007)
- Chapter Author, "Performance Bond Manual (Oregon Chapter)," American Bar Association (ABA) Tort Trial and Insurance Practice Section (TIPS) (2006)
- Co-Speaker, "Contract Notice, Protest, and Formal Claims Procedures: A Potential Trap for the Unwary!" Western States Surety Conference (2006)
- Co-Speaker, "Tag, You're It! Can the Surety Shift the Loss or Enhance Recovery by Accessing the Principal's Insurance?" Western States Surety Conference (2005)
- Co-Speaker, "Fidelity Bonds: An Overview for Surety Law Practitioners," Western States Surety Conference (2004)
- Co-Speaker, "Mold Claims: Are Sureties at Risk?" Western States Surety Conference (2003)
- Co-Speaker, "The False Claims Act: What is a 'Claim'?" Western States Surety Conference (2002)
- Co-Speaker, "Sureties & Indemnity Agreements: Three Variations on a Theme," Western States Surety Conference (2001)
- Co-Speaker, "Watch Out for that Left Hook: The Bankruptcy Trustee, Preference Transactions, and the Risk to the Surety," Western States Surety Conference (2000)
- Co-Speaker, "Sun City: One Unhappy Owner," Western States Surety Conference (1999)
- Co-Speaker, "Handling Payment Bond Claims," Western States Surety Conference (1998)
- Co-Speaker, "Read My Lips: Surety Stop Payment Notices," Western States Surety Conference (1996)
- Chapter Author, "Summary Judgment," Oregon State Bar (OSB), *Federal Civil Litigation* (1994 & 1998; 2002 & 1998 Supplement)
- Chapter Author, "Scope of Payment Bond Surety's Obligation," American Bar Association (ABA) Tort Trial and Insurance Practice Section (TIPS), *The Law of Payment Bonds* (1998)

- Author & Speaker, "Civil Motion Practice in Oregon" (1995 & 1993)
- Co-Speaker, "Who Certifies the Government Claim: Principal or Surety?" Western States Surety Conference (1994)
- Alaska Chapter Author, "Fifty State Construction Lien & Bond Law," Wiley Law Publications (1992; 1994 Supplement)