



**Thomas S. James, Jr.**

*Why did we choose “Opus” for our name? Opus means work. When you hire us, that’s what you get—hard work, smart work, on time!*

206.438.5225 *direct*

206.438.5226 *fax*

tjames@opuslawgroup.com

#### **PRACTICE**

I founded and continue to lead our Retail Practice Group and our Litigation Practice Group. Both engaging practices expose me to cutting edge challenges, solutions and opportunities. Both practices enrich the other. For example, handling litigation over contractual disputes sharpens my role as a transactional lawyer, both in terms of advocacy and drafting. Conversely, negotiating and drafting leases sharpens my skills as a drafter of settlement and other litigation-related agreements and enriches my ability to resolve contractual disputes with practicality and creativity.

#### **EDUCATION**

- Harvard Law School, J.D., 1980; Executive Editor, *Harvard Environmental Law Review* (1979-80)
- University of Washington, B.A. with Distinction in Economics, 1977, summa cum laude; Phi Beta Kappa

#### **RETAIL PRACTICE**

**Leasing** I negotiate retail leases for regional and national chains, as well as for small and moderately-sized retailers. These negotiations involve locations in most major U.S. retail markets.

I have extensive experience representing retail chains in connection with expansion opportunities, store closures, downsizing, “re-inventions,” and rent re-structuring projects. Representative clients have included:

adidas	International News
Al’s Auto Supply	Jay Jacobs
American Retail Group	Levi’s by Most
Anchor Blue	Little Caesar’s Pizza
Baja Fresh	Maurices
Cinnabon	Mieko’s Fitness
Diesel USA, Inc.	Millers Outpost
Eddie Bauer	Modern Woman
Eastern Mountain Sports	Oakley
Forever 21	Occhiali da Sole
Fun Factory	Omaha Steaks
Hart’s Athletic Clubs	Paccar Automotive
Hot Topic	ROAD
lacon, Inc.	Shah Safari

ShopKo  
Sporting Eyes  
Starbucks Coffee Company  
Sunglass Designs  
Sweet Factory  
Taco Del Mar  
The Discovery Channel Store, Inc.

The Tux Shops  
Tilly's  
Washington Retail Association  
Weinerschnitzel  
Wizards of the Coast  
Woman's World Shops  
Zebraclub

**Store Closures/Down-Sizing/Lease Restructuring** I have extensive experience in efforts by retailers to restructure their businesses. I have personally closed stores or restructured leases for hundreds and hundreds of locations nationwide, which included negotiations with many national retail landlords.

**Purchase and Sale Transactions** Each year, I participate in dozens of transactions around the country that effect the purchase or sale of our clients' real estate, especially in the retail context. The subject parcels vary from entire developments to single parcel transactions.

**Licensing** I have handled many license arrangements, which are crucial to our clients because they touch the essence of their businesses, namely their brand itself.

**Sales and Acquisitions** I provide legal advice and direct due diligence concerning the sale and acquisition of retail chains, especially in connection with leasing and related operating issues.

**Operations** I represent and counsel retail customers about operations issues, vendor disputes, construction matters, liability issues, and promotional matters.

**Dispute Resolution** Our Litigation Practice Group, which I also lead, has represented retailers in a large variety of disputes that have involved vendors, store closures, other lease-related issues, advertising and promotions, environmental issues, licensing, defective products, contractual disputes, and operating issues. In addition to traditional courtroom litigation, I encourage our clients to employ Alternative Dispute Resolution techniques, which (when effectively utilized) produce fair and efficient resolutions of disputes.

**Training** I frequently provide private training sessions to clients in connection with retail matters, especially leasing and litigation management.

## PROFESSIONAL ACTIVITIES

### Speeches

- Founder and Moderator of Annual Washington Retail Seminars (annually from 1988 through the present)
- Numerous client training presentations (1986 – present)
- Advanced Conference on Real Estate Leases – Tenant's Point of View (annually from 1989 through the present)
- Food Marketing Institute Store Development Conference (Context Matters: Co-Tenancy Issues and Related Topics) (1995)

- Store Evaluation and Closure Issues (1994)
- Third Annual Northwest ADR Conference (1993)
- Lease-required Advertising (1993)
- Growth in Pacific Northwest Markets (1992)
- International Council of Shopping Center Law Conference — Implications of Major Tenant Closures and Other Material Changes to Retail Developments (1991)
- Location Strategies (1991)
- Current Topics in Retail Leasing (1990)
- International Council of Shopping Center Law Conference — Restrictions on Landlord and Tenant Operations in Modern Retail Leases (1989, 1990)
- Insurance Coverage for Environmental Liabilities — A Retailer's Perspective (1988)
- Washington Society of Mechanical Engineers concerning insurance coverage for environmental liabilities (1988)
- Important Legal Considerations in Negotiating Retail Leases (1985, 1986, 1987)
- Instructor of Business Law, School of Business, University of Washington (1984)
- Real estate professionals concerning structure of shopping center leases (1984, 1985, 1986).

#### Articles

- Retailers as Tenants (2005)
- Negotiating Key Lease Provisions – The Tenant's Point of View (2005)
- Less Traditional Locations – an Overview (2004)
- Why Are Retailers Talking About Mold (2003)
- Current Trends in Retail Leasing (2002)
- Radius Clauses: A Retailer's Checklist (2002)
- Exclusive Use Provisions: A Retailer's Perspective (2002)
- Current Hot Topics in Retail Leasing (2000)
- Environmental Concerns in Retail Leasing – A Tenant's Perspective (1999)
- Context Matters: Co Tenancy Issues and Related Topics (1995, rev. 1998)
- Negotiating Key Lease Provisions – The Tenant's Point of View (1989, 1990 rev., 1991 rev., 1992 rev., 1994 rev., 1995 rev., 1997 rev., 1999 rev., 2001 rev., 2002 rev., 2003 rev., 2004 rev., 2005 rev.)
- Major Tenant and Other Closures – Legal Implications (1990, 1991 rev., 1992 rev., 1995 rev., 1997 rev.)
- Negotiating Retail Leases (1990, 1991 rev., 1992 rev., 1993 rev., 1994 rev.)
- Effective Advocacy in Mediation – A Commercial Litigators Perspective (1993)
- Exclusives, Radius Clauses and Other Restrictions on Operations of Tenants and Landlords (1989, 1991 rev., 1997 rev.)
- The Hottest Topic in Retail Leasing: Those Extra Charges (1986, 1990 rev.)
- Leasing Commercial Real Estate Important Legal Considerations (1985, 1986 rev., 1987 rev.)
- How to Structure the Shopping Center Lease (1984, 1985 rev., 1986 rev.)
- Insurance Coverage for CERCLA Response Costs in the Wake of Armco and Nepacco II, ABA Environmental Section Newsletter (1988)
- Washington Case Law Reports, Community Property Journal (1981-86)
- The Municipal Program of the Clean Water Act: 1978 Administrative Implementation, 3 Harvard Environmental Law Review (1979)

## COMMERCIAL LITIGATION EXPERIENCE

**Environmental Insurance Coverage** I have represented insurers in many environmental insurance coverage disputes for more than two decades. These disputes include several large, multi-site and multi-party actions. Representative matters include:

- Travelers Insurance Company v. Ross Electric
- Zandt Brass Foundry, et al. v. Travelers, et al.
- Dant & Russell, Inc. v. United Insurance Company, et al.
- Cosden Oil v. Travelers, et al.
- Champion International v. Aetna, et al.
- Truck Insurance v. Leichner, et al.
- Joseph Simon & Sons v. Aetna Fire Underwriters Ins. Co., et al.
- Ace Galvanizing, Inc. v. Maryland Casualty, et al.
- Washington Natural Gas v. Aetna, et al.
- Joseph Seagram & Sons v. Travelers Indemnity Co., et al.
- PACCAR Inc. v. Alba General Insurance Company, et al.
- Georgia-Pacific v. Aetna, et al.
- American Linen Supply Co. v. Travelers Indemnity Co.
- Snokist Growers, et al. v. WIGA, et al.
- Daiichiya-Loves Bakery, Inc. v. Travelers
- E.J. Bartells v. Travelers Indemnity Co.
- Lewis County v. Travelers Indemnity Co.
- Public Utility Dist. No. 1 of Chelan County v. Cigna, et al.
- Cascade Natural Gas Corp. v. Aetna, et al.
- McGillis & Gibbs v. Travelers
- Puget Power & Light v. Aetna
- ICN Pharmaceuticals v. Fireman's Fund, et al.
- Foss Maritime v. Travelers
- Overall Petroleum Co. v. Kiewit Pacific Co., et al.
- Todd Shipyards v. Travelers
- ZRZ Realty Co., et al. v. Bellafonte Reinsurance, et al.
- Puget Sound Energy v. Alba General Insurance Company, et al.
- Dillingham Construction Co. v. The Continental Insurance Co., et al.
- Louisiana Pacific Corporation v. Aetna Casualty and Surety Co., et al.
- Travelers v. Ribl Immunochem
- North Pacific v. Travelers
- Sandvik v. Travelers
- Boeing v. London Market
- Weyerhaeuser v. Agricultural Ins.
- City of Seattle v. Travelers
- Lucky Stores v. Travelers
- Port of Bellingham v. Andrew Weir Insurance Co., et al.
- Puget Sound Energy v. Certain Underwriters at Lloyds, et al.
- Travelers v. Edwin Hunter
- City of Yakima v. Lexington Ins. Co.
- Rayonier v. Travelers Indemnity
- Travelers Indemnity Co. of Illinois v. National Union Fire Insurance Company of Pittsburgh, et al.

- The People of the State of California and the City of Lodi v. M & P Investments, et al.
- 1700 Seventh LP v. Aetna Casualty & Surety Company
- Transpacific Corporation, et al. v. AIG Insurance, et al.
- Continental Ins. Co. v. Foss Maritime Co., et al.
- Duwamish River Slip 4 Superfund Site
- Overlake Village - Redmond WA
- Royal Ins. v. Dil Trust, et al.
- Leathercare, Inc. v. Travelers
- Maryatt v. American Casualty, et al.
- King County v. Swiss Reinsurance America Corporation, et al.

In addition, I have represented the insurers in connection with amicus briefing before Washington and Oregon appellate courts in the following cases:

- Boeing v. Aetna, et al.
- Queen City Farms v. Central National Insurance Company
- Transamerican Insurance Company v. Genell Mays
- Key Tronic Corporation v. Aetna, et al.
- Weyerhaeuser Company v. Aetna Casualty and Surety Co.
- Olds-Olympic, Inc. v. Commercial Union Insurance Co., et al.
- Kitsap County v. Allstate Insurance Company, et al.
- Kathryn A. Ellis v. American States Insurance Co.
- Autosox USA, Inc., et al. v. Zurich North America and Northern Insurance Company of New York, Inc.
- Puget Sound Energy, Inc. v. Certain Underwriters at Lloyd's, London, et al.
- Certain London Market Insurance Companies v. Associated Electric & Gas Insurance Services Limited

**Construction Coverage and Other Insurance Matters** In addition to participation in numerous mediations and non-litigated negotiations concerning construction defects and other coverage matters, I have represented insurers in the following construction defect (and other insurance-related) cases:

- Seattle Heights v. Travelers
- Diamaco v. Travelers
- State Farm v. Travelers
- Holmberg v. Roy Street Associates
- Travelers v. Titan Construction
- 2400—8th Ave. North Condominium Owners v. Cascade Condominiums, et al.
- Nelson v. Best Western International
- St. Paul Fire & Marine v. Travelers, et al.
- Board of Trustees of the Western Conference of Teamsters Pensions Trust Fund v. The Travelers Insurance Company
- Frasu v. Lexington Ins. Co., et al.
- Travelers Insurance Co. v. WI, Inc.
- Northwest Family Practice v. Aetna
- Travelers v. Wausau
- Travelers v. Eastside Glass
- Sherron Associates v. Travelers

- McNeill Construction, Inc., et al. v. Don Brown, et ux., et al.
- SSHI, LLC, et al. v. Travelers Property Casualty Insurance Company, et al.
- Talbot Park Owners Association v. Talbot Park Development Partners, et al.
- Wells Exterior Wall Systems
- Travelers v. TRA Associates
- Lakeside at Leschi Building Association v. Maryland Casualty Company
- Splater v. Thermal Ease
- Hoyt Commons v. Aspen Commons
- Broadview Development v. TKCC, Inc., et al.
- Argonaut Ins. Co. v. TKCC, Inc., et al.
- MRC Holdings, et al. v. City of Homer, et al.
- Titan Construction v. Mid-Continent

#### **MEMBERSHIPS**

- American Bar Association
- Washington State Bar Association
- King County Bar Association
- International Council of Shopping Centers (including participating on panels and other programs)
- National Retail Tenants Association
- Washington Retail Association

#### **COMMUNITY INVOLVEMENT**

- Washington Retail Association, Board of Directors (1996-present)
- PONCHO, Board of Directors (1999-2005)
- Seattle Symphony Orchestra, Board of Directors (1993-1999; 2000-2003), Executive Committee, Marketing Committee, Liaison Committee, Labor Policy Committee and Centennial Committee
- St. James Cathedral Pastoral Council (President) (1984-1986)
- Facilities Strategy Planning Task Force – Archdiocese of Seattle (1985)