



WM. KELLY NASH

Shareholder

Salt Lake City

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PRACTICE AREAS

- Commercial Agreements
- Construction Law
- Healthcare Law
- Litigation
- Intellectual Property Litigation
- Employment & Labor Law

ADMITTED TO PRACTICE

- Admitted Pro Hac Vice in numerous state courts
- Ninth Circuit Court of Appeals
- Tenth Circuit Court of Appeals
- United States District Court, District of Utah
- Utah



ATTORNEYS AT LAW

Mr. Nash is a Shareholder in the firm's Lehi office. His practice focuses on a broad range of business litigation and corporate law related matters. Mr. Nash also serves as an Adjunct Professor at BYU's Marriott School of Business teaching Business Law.

As a trial lawyer, Wm. Kelly Nash has extensive experience in state and federal trial and appellate courts throughout the Western U.S., with emphasis in complex commercial litigation, including contract, securities, employment, healthcare, ERISA, construction, sales, trade practices, MLM, IP, licensing, insurance, product defect, finance, real estate, leasing and other business law subjects.

From organizational and risk management concerns to employment, licensing and merger/acquisition issues, Mr. Nash is a solutions oriented lawyer with a business education and background complimented by a business centered legal training. He regularly engages in negotiations and contracting respecting the array of issues facing a broad range of entrepreneurs and businesses. Having served as an officer, director and owner of businesses, having advised business clients his entire career and having worked as a Senior Counsel in the General Counsel Office of a Fortune 100 company, Mr. Nash understands the economics of business and the critical balance between business pursuits and legal compliance.

Representative Clients include: Xcite Satellite, LLC; Northwest Research, Inc.; Coverstar, Inc.; Milliennaiata, Inc.; Federal Financial Group, LLC; CoBon Energy, LLC; New York Times Best Selling Author Robert G. Allen; Authorize.Net; First Health Strategies (TPA), Inc. fka Alta Health Strategies, Inc.; First Data Corp.; U.S. JVC Corporation; Intermountain Consumer Professional Engineers, Inc.; Strategis Financial Group, LLC; Stonehurst Securities, Inc.; Prosper, Inc.; Jordan Gateway

Corporate Center, LLC; Creekside Home Health Care, Inc.; Homecare of Utah, Inc.; CoBon Energy LLC and Affiliates; Love Medical, Inc.; Club Omni; Creditback, Inc.; Total Body & Fitness, Inc.; Granite Mill Cabinets & Fixtures, Inc.; Engels & Volkers US Holdings, Inc.; Business Legal Management, LLC; Pure; and numerous corporate officers/directors and individuals.

REPRESENTATIVE CASES/DEALS

- In April 2019, mediated and settled a hotly-contested member dispute relating to a software and website development company. Resolved conflicting operating agreement terms, mismanagement and interference claims and effectuated an equity buyout agreement on favorable terms, avoiding an estimated \$100k + litigation cost, unshackling management from baseless claims and permitting the continuation of growing company for the benefit of management and employees.
- In March 2019, successfully settled a large residential fire/flood loss claim against a well-known and national insurance company after preliminary deposition and documentary discovery. Incident to a lengthy mediation, the \$225,000 settlement represented a supplemental value in excess of policy limits based on breach of contract, bad faith and related claims.
- In January 2019, presented oral argument to a distinguished panel of U.S. Ninth Circuit Court of Appeals, requesting a \$385,000 attorneys' fees award granted by a California District Court be affirmed. The fee award followed a summary judgment obtained by Mr. Nash dismissing an 8 year-long fraud and conspiracy lawsuit against several of the firm clients, including a New York Times Bestselling author and a certified national education provider.
- In April and June of 2018, successfully managed two separate Lake Tahoe, NV real estate disputes to favorable pre-litigation settlements on behalf of an international luxury real estate brokerage firm. The disputes involved complex terms and values relating to properties worth \$830,000 and \$10,500,000 respectively, including resolution of disputed commissions and alleged fraudulent misconduct claims.
- In May 2018, obtained a Preliminary Injunction for a technology development company against an inventor for misappropriating trade secrets and breaching operating agreement and non-competition terms, together with a temporary restraining order against the inventor's marketing partner, halting corporate raiding and other misconduct pending trial.
- In April 2018, assisted international real estate brokerage firm resolve a dispute between competing buyers for a seller's \$835,000 property, including detailed REPC analysis, pre-litigation workout negotiations and settlement confirmation.
- In March 2018, mediated an IP infringement action in California federal court to a favorable resolution for a national IP licensing/marketing client and obtained permanent injunction and damages settlement.
- In November 2017, obtained a partial summary judgment barring all counterclaims against principals of a technology licensing and development company in a multi-million dollar matter based on non-compliance with engineering licensing statute.
- In November 2017, worked with Junior Partner to obtain substantial judgment for satellite TV services provider regarding breach of non-competition, trade secret misappropriation and fraud claims.
- Following entry of a TRO on July 26, 2017, obtained an August 22, 2017 permanent injunction preserving confidentiality of intellectual property (i.e., copyrights, trademarks, trade dress, etc.), enforcing non-solicitation/non-competition rights, and protecting customers of a national advertising firm in a day long trial with multiple witnesses and extensive documents.
- In spring of 2017, obtained a \$400,000 award of attorneys and costs from the U.S. District Court for the Central District of California relating to his successful defense of clients against commercial fraud/conspiracy and breach of contract claims.

- In fall 2016, obtained a TRO in enforcing non-disclosure, non-compete and non-recruitment provisions, which lead to a favorable settlement for a large contractor.
- In spring 2016, obtained a Preliminary Injunction for a large insurance company precluding defendants from raiding its marketing representatives. Thereafter, concluded a bench trial leading to a favorable settlement.
- In spring 2016, obtained a partial summary judgement in Utah Fourth District Court barring all counterclaims against principals for a technology licensing and development company on a multi-million dollar matter based on non-compliance with engineering licensing statute.
- In fall 2015, successfully obtained a Preliminary Injunction for educators precluding Defendants from misappropriating trade secrets and invalidating of governing non-compete restrictions on our clients.
- Following a 2015 evidentiary Preliminary Injunction hearing, obtained a stipulated \$500,000 judgment regarding breach of non-competition and trade secret misappropriation claims.
- In 2015, settled a complex multi-million dollar accounting, conversion and tax fraud dispute culminating in clients' discounted acquisition of a business.
- Annually, negotiates complex commercial consignment and sales contracts with Fortune 100 international transportation companies for national warehouseman.
- Extensive commercial contract negotiation and drafting.
- Over the years, negotiated numerous mergers and acquisitions, asset and stock sale agreements, employment agreements and other commercial contracts.

APPELLATE MATTERS

- C504750P LLC v. Baker, 2017 UT App 36 (affirmed denial of a Motion to Set Aside a Default Judgment based on analysis of constitutional and procedural due process issues relating to service by publication and sufficiency of notice).
- DuFour v. Allen, Case Nos. 14-56980, 14-57009 (9th Cir., 02/22/17) (affirmed summary judgment dismissing fraud and conspiracy claims per statutes of limitation).
- Preferred Product Placement Corp. v. HCG Platinum, LLC, Appeal No. 15-4157 (decision expected 2017) (challenging appeal from order dismissing claims for failure to disclose and insufficient evidence and granting fees).
- CoBon Energy, LLC v. AGTC, Inc., No. ____ 2011 (petition for certiorari).
- CoBon Energy, LLC v. AGTC, Inc., 2011 UT App 330 (reversed summary judgment re scope of release and remanded for further proceedings in complex commercial litigation).
- CoBon Energy, LLC v. AGTC, Inc., (unpublished 2006) (appeal re complaint summary judgment and counterclaim dismissal for failure to prosecute resulted in stipulated error and permissive refile).
- Federal Trade Comm'n v. Freecom Comm'n Inc., 401 F.3rd 1192 (10th Cir. 2005) (reversed fees and costs award incident to dismissal of FTC's unsupported and/or frivolous claims re seminar company and affiliates' alleged false and misleading advertising).
- Hart v. Tweedy, No. 970450 UT App. 1996) (petition for certiorari).
- Hart v. Tweedy, 945 P.2d 125 (UT App. 1997) (affirmed \$250,000 negligence and damages verdict and remanded for interest calculation).

- Hart v. Tweedy, ___ (unpublished circa 1995) (reversed summary judgment re causation and remanded for trial).
- Applied Technology, Inc. v. U.S. JVC Corporation, 61 F.3d 915 (10th Cir. 1995) (unpublished Order and Judgment in Case No. 94-4148 issued July 24, 1995) (affirmed summary judgment re at-will termination by JVC and disregarded implied covenant of good faith and fair dealing under Utah law).

AWARDS

- Distinguished® Martindale-Hubbell®

PUBLICATIONS & PRESENTATIONS

- “Inholders: An Endangered Species?” (1986)

PROFESSIONAL & CIVIC ACTIVITIES

- Utah State Bar Association
- Salt Lake County Bar Association
- Formerly Utah State Bar Litigation Section Executive Committee

EDUCATION

Brigham Young University, J. Reuben Clark Law School, magna cum laude – J.D. (1986)

- Law Review Note & Comment Editor
- Publication – “Inholders: An Endangered Species?” (1986)

Brigham Young University, summa cum laude – B.S. Business Management (1983)

PRIOR PROFESSIONAL EXPERIENCE

- Adjunct Professor, Business Law, BYU Marriott School of Accounting (nationally top-ranked accounting department) (2014 - Present)
- Director and Managing Director – Hill Johnson & Schmutz, LC (1998 - 2013)
- National Litigation Director for First Health (managed/selectively litigated thousands of health benefit claims/litigation matters across U.S. for 3 years, including complex and high cost cancer, bone marrow and organ transplant and related medical coverage disputes)
- Former in house Senior Counsel in the office of General Counsel of First Data Corporation (1995 – 1998)
- Associate – Jones Waldo (1986-1990)
- Associate/Partner – Holme, Roberts & Owen (1990 - 1995)
- Federal Clerkship, U.S. District Court of Utah | Honorable J. Thomas Greene (1986 - 1987)