



James E. Mountain, Jr. Shareholder

☎ 503.242.0000

✉ james.e.mountain@harrang.com

📍 Harrang Long P.C.
111 SW Columbia Street, Suite 950
Portland, OR 97201-5841

Overview

Jim Mountain's law practice focuses on appellate law and administrative regulatory law. He routinely defends clients against government regulation, sanctions, and assessments.

In appellate matters, Jim represents clients before the supreme courts and courts of appeal of the United States, the State of Oregon, and the State of Washington. With over 40 years of experience, Jim has briefed and argued hundreds of appellate cases.

Jim regularly provides appellate consulting services to other lawyers, in-house counsel, and their clients, including assistance with their preparation of written briefs and oral arguments. He is also available to assist trial attorneys before and during litigation in order to position and preserve critical matters for possible appeal.

Jim also represents his clients' business, professional, and personal interests before the various administrative agencies and trial courts of the federal, state, and local governments. This representation includes the defense of licensed professionals—doctors, pharmacists, psychologists, architects, geologists, accountants, lawyers, and even judges – in proceedings before their licensing boards or regulatory bodies and, particularly, in the appellate courts. He also represents clients in public records litigation, insurance coverage cases, and government ethics and election matters.

Before joining the firm, Jim served as the State of Oregon's chief appellate lawyer, its Solicitor General. He also held the number two job in the Oregon Department of Justice as the Deputy Attorney General with responsibility to manage one of the state's largest law firms.

How I Serve Clients

I am passionate about appellate advocacy, principally in presenting oral arguments to panels of appellate judges to explain why my client's position should prevail, but also in developing the client's legal position in written arguments in appellate briefs.

I also welcome opportunities to work with attorneys from other firms at the appellate stage to help their clients obtain favorable rulings and results. Through more than 40 years of practice, I've had the tremendous opportunity to make a difference in the lives of Oregon residents through public service and in private practice, and also to help businesses and other organization advance their objectives.

Professional Recognition

- Named "Lawyer of the Year" in Portland, OR for administrative/regulatory law – Best Lawyers, 2014, 2017 & 2019
- American Academy of Appellate Lawyers – inducted September 2008
- Listed in *The Best Lawyers in America*® for administrative/regulatory law and appellate practice every year since 2006
- Listed in Super Lawyers® for Appellate Practice every year beginning in 2006
- Listed as one of the top appellate lawyers in Portland by Portland Monthly Magazine
- AV® Preeminent™ 5.0 out of 5.0 Peer Review Rated with Martindale-Hubbell®

Education

- J.D. Northwestern School of Law at Lewis & Clark College (1975)
 - Recipient of the American Jurisprudence Award in Labor Law
 - Served as Associate Editor of the Law Review
- B.A. (History), University of Oregon (1970)

Practice Emphasis

- Appellate Law
- Regulatory (Administrative) Law & Proceedings
- Government Law, Legislative Affairs, & Oregon Public Records Law

Representative Matters

- Successfully appealed trial court and Court of Appeals decisions to Oregon Supreme Court, establishing law on corporate succession, contribution rights among insurers under the Oregon Environmental Cleanup Assistance Act and common law, and interpretation of liability insurance pollution exclusions. *Allianz Global Risks v. ACE Property & Casualty Ins. Co.*, 367 Or 711 (2021).
- Successfully defended jury verdict awarding \$1.65 million in quantum meruit for services rendered over a twelve-year period. *Patton v. Cox*, 313 Or App 262 (2021).
- Successfully defended trial court judgment denying anti-SLAPP motion to dismiss client's breach of fiduciary duty claims against homeowners' association and its board of directors. *Tokarski v. Wildfang*, 313 Or App 19 (2021).
- *Oregon School Boards Association v. Department of Revenue*, 2016 WL 5888932 (Or. Tax Regular Div.). Obtained Tax Court's reversal of denial of property tax exemption for public corporation/governmental association on basis of reasoning developed in Oregon Supreme Court opinion in *Pacific States Marine Fisheries Commission v. Department of Revenue*, below.
- *Pfizer v. Oregon Department of Justice*, 254 Or App 144, 294 P.3d 496 (2012). Worked with company's national and local counsel to obtain favorable ruling that pharmaceutical company records confidentially disclosed to State in trade practice litigation are exempt from public disclosure under the Oregon Public Records Law.

Representative Matters Cont.

- *Port of Portland v. Center for Environmental Health*, 238 Or App 404, 243 P.3d 102 (2010). On a matter of first impression in Oregon appellate courts, the Court of Appeals ruled that a public body's joint-defense agreement was exempt from disclosure under the Oregon Public Records law as a privileged record of an attorney-client communication.
- *Pacific States Marine Fisheries Commission v. Department of Revenue*, 346 Or 117, 206 P.3d 1037 (2009). On appeal from Oregon Tax Court to Oregon Supreme Court, presented question of special legal status of a multistate compact agency, a regional governmental body authorized by Congress, in context of Oregon state statutes exempting public corporations from local property tax.
- *Logan v. D.W. Sivers Co.*, 343 Or 339, 169 P.3d 1255 (2007), 207 Or App 231, 141 P.3d 589 (2006). On appeal to the Oregon Court of Appeals and on review by the Oregon Supreme Court the appellate courts recognized that a temporary exclusive dealing provision in an otherwise unenforceable letter of intent to purchase and sell commercial property stated a contractual promise that was breached by a sale of the property to a third party during the term of the exclusive dealing provision.
- *Mims v. City of Eugene*, 2005 WL 1865555 (9th Cir. 2005). On appeal to the Ninth Circuit Court of Appeals, the court confirmed reasonableness of City's riot control measures.
- *Nobl Park, LLC of Vancouver v. Shell Oil Co.*, 122 Wash App 838, 95 P.3d 1265 (2004), rev den, 154 Wash 2d 1027, 120 P.3d 577 (2005). Represented construction company in successfully persuading Washington Supreme Court to let stand a Washington Court of Appeals decision to exclude economic damages in a construction defect claim from coverage under the Washington Products Liability Act.
- *Kaib's Roving R.Ph. Agency v. Employment Dept.*, 338 Or 433, 111 P.3d 739 (2005). On review of a decision of the Court of Appeals, the Oregon Supreme Court ruled that under the Administrative Procedures Act, a reviewing court shall allow a business its attorney fees and costs if the court finds that a state agency "acted without a reasonable basis in fact or in law;" and contrary to the Court of Appeals' reading, the APA goes beyond merely allowing a court discretion to award fees but, instead, requires the court to award fees under the circumstances described.

Representative Matters Cont.

- *State of Oregon v. Bradley Morris Cunningham, Sr.*, 337 Or 528, 99 P3d 271 (2004). The Oregon Supreme Court reversed the Court of Appeals' reversal of Bradley Cunningham's conviction for murdering his wife, an attorney. The Oregon Supreme Court adopted the legal position that the State of Oregon presented for conviction, and that Harrang Long presented as a "friend of the court" on behalf of the victim's law firm. The high court concluded that the trial court correctly had admitted hearsay evidence under an exception to the hearsay rule, and upheld the conviction.
- *Leahy v. City of Gladstone*, 52 Fed Appx 10 (9th Cir 2002). Federal Circuit Court of Appeals for the Ninth Circuit, May 2002. Obtained order vacating large money judgment against client city for alleged taking of property without due process and just compensation.
- *Haupt v. Dillard*, 17 F.3d 285 (9th Cir. 1994). Obtained reinstatement by the Ninth Circuit Court of Appeals of civil claim for damages for criminal defendant who had been acquitted of murder charges after having been deprived of a fair trial.
- *Black v. Dept. of Human Resources*, 301 Or 221, 721 P.2d 451 (1986) and *Smith v. Dept. of Human Resources*, 302 Or 209, 721 P.2d 445 (1986). Argued that neither the state Constitution nor federal Constitution religious guarantees required the payment of unemployment insurance benefits to an employee terminated for engaging in religious activity that was illegal under state criminal law; an argument that was approved regarding the First Amendment by the United States Supreme Court in *Employment Div. v. Smith*, 494 US 872 (1990).
- *Salem College & Academy, Inc. v. Employment Division*, 298 Or 471, 695 P.2d 25 (1985). Analyzed whether freedom of religion guarantees of Oregon Constitution barred assessment of unemployment taxes on religious schools.
- *Planned Parenthood Ass'n, Inc. v. Dept of Human Resources*, 297 Or 562, 687 P.2d 785 (1984). Assessed whether Equal Privileges and Immunities Clause of Oregon Constitution, article I, section 20, barred administrative rule limiting reimbursement for abortions.
- *Bono v. SAIF*, 298 Or 405, 692 P.2d 606 (1984). As Solicitor General reasserted Attorney General's prerogative to represent State Accident Insurance Fund and to defend against claim for interim compensation by person not absent from work.
- *Matter of Jensen*, 54 Or. App. 1, 633 P.2d 1302 (1981). Secured a life-saving operation for a child over the religiously based objections of her parents on expedited appellate schedule from trial through the Court of Appeals to denial of review by the Oregon Supreme Court.

Representative Matters Cont.

Friend of the Court Briefs

- *Outdoor Media Dimensions, Inc. v. State of Oregon*, 331 Or 634, 20 P.3d 180 (2001). Amicus Curiae Brief for Oregon Outdoor Advertising Association to Oregon Supreme Court presented argument that commercial speech is protected from governmental regulation by Free Speech Clause of Oregon Constitution, article I, section 8.
- *Metropolitan Life Ins. v. Ward*, 470 US 869 (1985). Amicus Curiae Brief of 38 States to United States Supreme Court analyzed state taxes on insurance premiums under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

Opinions of the Attorney General

- Or. Op. Atty. Gen. OP-6300 (1990). Analysis of Indian Gaming Regulatory Act, USC § 2701 et seq. in response to question of Oregon Lottery Director.

Legislation

- Limited Liability Partnership (LLP) Legislation. 1999 Oregon Laws, Chapter 322, ORS 673.010 et seq. on behalf of Oregon Society of Certified Public Accountants.
- Limited Liability Company (LLC) Legislation. 1993 Oregon Laws, Chapter 431, ORS 673.010 et seq. on behalf of Oregon Society of Certified Public Accountants.

Memberships

- American Academy of Appellate Lawyers
- American Bar Association
 - Member, Administrative and Regulatory Law, Litigation and Antitrust Law Sections
- Multnomah Bar Association
- Marion Bar Association
 - Past president and past member of the Board of Directors
- Formerly served on Marion/Polk Legal Aid Service Board of Directors
- Formerly served on the Oregon Law Institute Board of Directors
- Oregon State Bar
 - Served as Chair of the Administrative Law Section, Executive Committee
 - Member, Appellate Practice, Administrative Law and Litigation Sections
 - Former member of the Judicial Administration Committee
 - Former member of the Continuing Legal Education Committee
 - Former member of the Board of Bar Examiners
 - Member of the Oregon Trial Court Judicial Resources Committee, by appointment of the Chief Justice of the Oregon Supreme Court
 - Member of the Attorney General's Advisory Committee on Administrative Rules, by appointment by the President of the Oregon State Bar
- Washington State Bar
 - Member, Appellate Practice and Administrative Law Sections of Washington State Bar

Publications

- "Someone Left the Cake out in the Rain," Oregon Bar Administrative Law Section Newsletter (Spring 2023)
- "Thinking Like an Administrative Lawyer," Oregon Bar Administrative Law Section Newsletter (Winter 2021)
- Editor and Chapter Co-Author, Oregon Administrative Law Treatise, Oregon State Bar Publications (2016 Supplement), and Chapter 13, Judicial Review of Administrative Decisions (2016 Supplement)
- "Introduction to Litigating a Contested Case," OLI Administrative Law CLE (November 2015)
- "From the Chair," Administrative Law Newsletter, Oregon State Bar Administrative Law Section (Winter 2013)
- "Postdecision Matters in the Court of Appeals," Appeal and Review: The Basics, Oregon State Bar Continuing Legal Education Treatise, chapter co-author (2010 edition)
- "Just Give Me A Declaratory Ruling," Administrative Law Newsletter, Oregon State Bar Administrative Law Section (Summer 2010)
- "The Promise of Megdahl Revoked; Coffey v. Board of Geologist Examiners," Administrative Law Newsletter, Oregon State Bar Administrative Law Section (Spring 2011)
- "The Office of Attorney General: Powers and Duties," National Association of Attorneys General, Editorial Committee Member and Contributing Author (1988); author and co-author of chapters entitled "Common Law Powers of the Attorney General; Origin and Development of the Office; State Administrative Law; Institutional Litigation"; and "Open Meetings and Public Records"
- "Post-Conviction Procedures," Criminal Law, Oregon State Bar Continuing Legal Education, co-author with Paul DeMuniz (1986)
- "Attorney Fees Under Administrative Procedures Act," Administrative Law, Oregon State Bar Continuing Legal Education, co-author with Richard Wasserman (1985)
- "Criminal Law Newsletter," Editor and Publisher (1979 – 1980)

Presentations

- Panelist and Written Materials Contributor, "Direct Appellate Court Review of Agency Orders; Washington Gets What Oregon Has Had for Over 40 Years," CLE Program for State of Washington Office of the Attorney General (January 12, 2022)
- Program Developer and Moderator, "Trying the Contested Case," Oregon State Bar Administrative Law Section CLE (November 4, 2021)
- Professionalism Program Panelist, Willamette Law School, 1L Orientation (August, 2015 – 2021)
- Professionalism for Civil Litigators, Multnomah Bar Association CLE Program Panelist (April 2021)
- Speaker/Presenter, National Association of Hearings Officials Annual Development Conference, "Challenging the Hearing's Official's Evidentiary Expertise," (September 2016)
- "Challenging Administrative Rules," Legal Aid and Oregon Law Centers Ad Law Task Force Training Session (August 2016)
- "Northwest Administrative Law Institute," co-sponsored by Oregon and Washington Bar Associations Administrative Law Sections, Program Planner (July 2014)
- "Litigating a State Constitutional Law Case," Panel Moderator, Oregon Law Institute (May 2009)
- "Oregon Administrative Law, 2012," Oregon State Bar Administrative Law Section, Program Planner (November 2012)
- "Appellate Tips for Litigators: Planning Trials for Success on Appeal," Oregon Law Institute, Program Planner and Panelist (October 2012)
- "What You Need to Know About Public Records and Open Meetings," Lorman Seminar, Program Planner, Moderator and Panelist (June 2012)
- "Litigation 101: Post Trial Matters," Marion County Bar Legal Education Program, Moderator and Panelist (May 2012)
- "When Public Sector Risk Managers Encounter Administrative Law," PRIMA Annual Conference, Presenter (June 2011)
- "Practice Pointers for Improving Performance at the Hearings Level," Program Planner and Panel Moderator, Oregon Law Institute (February 2009)
- "A Day with the Court of Appeals," Program Planner, Oregon Law Institute (March 2008)

Presentations Cont.

- "Dealing Successfully with State and Local Governments," Program Planner and Panel Moderator, Oregon Law Institute (October 2007)
- "Attorney Fee Awards on Judicial Review of State Agency Actions: Two Tests, Not One," Advanced Administrative Law, Oregon Law Institute (December 2005)
- "The Attorney's Role in Upholding Constitutions," Government Law Spotlight: Upholding Constitutions and Tribal Sovereign Immunity, Oregon State Bar Continuing Legal Education (November 5, 2004)
- "Judgment Day for Litigators," Program Planner and Presenter, Oregon Law Institute (December 2003)
- "Practicing Law in the Oregon Court of Appeals, Writing an Appellate Brief," Oregon Law Institute (2003)
- "Appellate Practice, Practical Consideration – Knowing Your Courts," Oregon State Bar Continuing Legal Education (1995)
- "Appellate Practice," Program Planner, Oregon State Bar Continuing Legal Education (1987)

Community Involvement

- Former Chair of the Board of Directors of Central Catholic High School
- Classroom Law Project: "We the People" Competition; Central Catholic High School



Portland

111 SW Columbia Street, Suite 950
Portland, OR 97201-5841
T: 503.242.0000
F: 541.686.6564

Eugene

800 Willamette Street, Suite 770
Eugene, OR 97401-2991
T: 541.485.0220
F: 541.686.6564

Salem

1201 Court Street NE, Suite 310B
Salem, OR 97301-4110
T: 541.485.0220
F: 541.686.6564