

# Nicholas E. Wheeler

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## Law Practice:

Nick is a trial lawyer with a practice focused primarily on defending product liability and legal malpractice claims. Despite practicing in the age of the “vanishing civil jury trial,” Nick has tried 15 jury trials in state and federal court.

Nick serves as the Chair of Cosgrave’s Product Liability & Medical Device Practice Group. As a product liability attorney, he primarily defends product manufacturers and resellers of a wide range of industrial and consumer products, with an emphasis on mechanical and electrical failures.

Nick’s legal malpractice work spans a wide range of substantive practice areas, with an emphasis on matters arising out of estate planning/probate and business disputes. He also defends railroad and transportation companies along with other general property damage, personal injury and wrongful death lawsuits.

Prior to entering private practice, Nick interned for Ancer L. Haggerty, then-Chief District Judge of the District of Oregon. He also clerked for the Appellate Division of the Oregon Department of Justice.

## INDUSTRIES

Healthcare

Manufacturing

Professional Services

Railroad

Trucking and Motor Carrier

## PRACTICE AREAS

Personal Injury & Property  
Damage Liability

Product Liability

Professional Liability

## Representative Cases:

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### Product Liability Defense

*Recreational Vehicles:* Obtained defense verdict on behalf of recreational vehicle manufacturer following a jury trial arising out of alleged violations of the Magnuson Moss Warranty Act and the Oregon Unlawful Trade Practices Act, in addition to claims for strict product liability, negligence and fraud.

*Farm/Industrial/Construction Equipment:* Obtained directed verdict in favor of product reseller in a jury trial arising out of allegedly defective John Deere tractor that caught fire.

*Building Supplies:* Obtained favorable high-low settlement on behalf of product retailer in \$22,750,000 product liability action arising out of allegedly defective 2"x6" board that broke under plaintiff's body weight during the construction of the roof of a pole barn, causing extensive injuries.

*Transportation:* Obtained favorable settlement on behalf of product manufacture in \$2,150,000 product liability action alleging the axle/suspension system on a commercial belly-dump trailer was defective and caused plaintiff's tractor-trailer to rollover in a corner on a highway.

*Medical Device/Pharmaceutical:* Obtained favorable settlement on behalf of medical device manufacture in \$8,500,000 product liability wrongful death action alleging decedent's house burned down as a result of the medical device spontaneously catching fire.

### Legal Malpractice Defense

Obtained defense verdict in jury trial on legal malpractice claim arising out of the alleged negligent handling of a probate estate and related advice about recovery of attorney fees.

Obtained summary judgment on plaintiff's claimed entitlement to \$300,000 in emotional distress damages in legal malpractice case arising out of lawyer's alleged negligent handling of plaintiff's divorce. Following summary judgment, obtained favorable settlement on what remained of plaintiff's claim.

### Railroad Defense

Obtained defense verdict in jury trial in \$4,000,000 employee lawsuit for vibration-based permanent injury and disability, based on claimed violations of the Federal Employer Liability Act and the Locomotive Inspection Act.

Obtained defense verdict in jury trial in \$2,250,000 employee lawsuit for permanent injury and disability based on claimed violations of the Federal Employer Liability Act and the Locomotive Inspection Act.

### General Liability Defense

Obtained defense verdict in jury trial on \$365,000 general liability action alleging plaintiff was negligently struck by a 30 foot metal beam being transported across the forks of a forklift by an employee.

## Education & Bar Admissions:

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Nick holds a Bachelor's degree in Business Administration and Management from Oregon State University. He earned his law degree from the University of Oregon School of Law, where he also served as Associate Editor of the Oregon Law Review.

Nick is a member of the Oregon State Bar, the Washington State Bar, and the United States District Court for the Districts of Oregon and the Western District of Washington.

## Professional:

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Nick's professional memberships include serving on the steering committees of ALFA International's Product Liability & Complex Torts and Professional Liability Practice Groups, the Oregon Association of Defense Counsel, where he recently served as Chair of the Product Liability Practice Group and regularly contributed articles to their quarterly publication "*The Verdict*," the National Association of Railroad Trial Counsel, the Oregon State Bar and the Multnomah Bar Association.

## Civic:

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Nick's volunteer activities have included the Classroom Law Project High School Mock Trial Competition, Toys for Tots, the American Mock Trial Association, and the New Lawyers Division of the Oregon State Bar.

## Personal:

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Nick and his wife have two sons. Nick enjoys just about anything outdoors, including boating, camping, and fly-fishing. When he isn't doing one of those things, you'll probably find him designing and building furniture in his shop.

## Presentations:

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**“The Rise of Virtual Focus Groups: How Remote Videoconferencing Platforms are Changing the Traditional Focus Group and How Defense Counsel Can Leverage These Technologies”**

Speaker, ALFA International Product Liability and Complex Torts Practice Group Seminar, June, 2022

**“Ethics Closing General Session: Erosion of the Attorney Client Privilege”**

Moderator, ALFA International Product Liability and Complex Torts Practice Group Seminar, September, 2019

**“Product Hacking, Cyber Security for Products, and the Internet of Things”**

Moderator, ALFA International Product Liability and Complex Torts Practice Group Seminar, October, 2017

**“Hot Topics Important to Product Manufacturers and Those Who Counsel and Defend Product Liability Litigation”**

ALFA International Product Liability and Complex Torts Practice Group Seminar, May, 2016

**“Trial War Stories Panel”**

Oregon State Bar Professional Liability Fund Semi-Annual Conference, August, 2015

**“Products Liability 101”**

Legal Department of Garmin International, Inc., Avionics Manufacturing, May, 2013

**“Metadata, What Must Be Produced in Litigation?”**

2007 Health Law Update, Oregon Health Lawyers Association, December, 2007

## Publications:

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**“Damages, 2016 Revision”**

Chapter 9 - Contributory Negligence and Comparative Fault, Oregon State Bar Publications, November, 2016

**“Nanotechnology - A Primer for Product Liability Lawyers”**

*The Verdict*, Oregon Association of Defense Counsel, Issue 1, 2016

**“Multi-Defendant Strict Liability Cases - Making the Case for Application of ORS 31.605[4]”**

*The Verdict*, Oregon Association of Defense Counsel, Issue 2, 2015

**“Defending Product Liability Actions- Ten Key Takeaways”**

*The Verdict*, Oregon Association of Defense Counsel, Issue 4, 2014

**“SawStop Table Saw Litigation: Three Key Takeaways for the Product Liability Practitioner”**

*The Verdict*, Oregon Association of Defense Counsel, Issue 2, 2014

“The Oregon Supreme Court Narrowly Construes the ***Nicastro* Plurality’s Limitation on Stream-Of-Commerce Personal Jurisdiction**”

*Product Liability Perspectives Newsletter*, ALFA Product Liability Practice Group, Winter 2013

“Compendium of Product Liability Law Issues”

ALFA International Product Liability Practice Group Seminar, 2011

“Compendium of Product Liability Law Issues“

ALFA International Product Liability Practice Group Seminar, 2009

“Compendium of Product Liability Law Issues”

Oregon ALFA International Client Seminar, March, 2007

“**Carmack Amendment Not Applicable to Brokers**”

*Transportation Update Newsletter*, ALFA International Transportation Practice Group, March, 2006

## Awards:

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Fellow, Litigation Counsel of America™ (2022)

*The Best Lawyers in America*, Product Liability Litigation - Defendants (2021, 2022)

## Client Comments:

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“I wanted to take a moment to thank you for all your work on the matter.... You did a great job on this case and made a very favorable impression on the Covered Party. I appreciated all the time and effort you put into this matter and the favorable result that you obtained.”

“At all times I have found Nick to be an excellent source of analysis, advice, counsel and assistance. Nick, literally, picked up the ball and ran with it like ‘Crazy Legs Hirsch,’ in what was, to me, a mine field.”

“I wish to thank you for your most excellent work on this file and throughout trial. I could not have been more pleased with the outcome, and it certainly was a pleasure working with you. I look forward to doing so again in the near future.”

“I particularly want to thank Nick for the great lawyering job he did on this. It made settlement possible.”

“Thanks for the fine work you did on behalf of our law firm. We appreciate your efforts in getting this matter resolved.”

“It is a good brief with the right amount of outrage without going over the top - well done.”

“It is difficult to express how thankful I am for your help.”