



1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833  
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<https://www.planjpa.org/>

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**CLAIMS COMMITTEE MEETING  
AGENDA**

**Thursday, December 8, 2022  
8:30 a.m.**

**Embassy Suites San Francisco Airport  
250 Gateway Boulevard  
South San Francisco, CA 94080**

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In compliance with the Americans with Disabilities Act, if you need a disability-related modification or accommodation to participate in this meeting, please contact Katie Sullivan at (916) 244-1164 or (916) 244-1199 (fax). Requests must be made as early as possible and at least one full business day before the start of the meeting.

Documents and materials relating to an open session agenda item that are provided to the Pooled Liability Assurance Network (PLAN) JPA Board of Directors less than 72 hours prior to a regular meeting will be available for public inspection at 1750 Creekside Oaks Dr., Suite 200, Sacramento, CA 95833.

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|--------------------|---|
| <b><u>Page</u></b> | <b>1. CALL TO ORDER</b>   |
|                    | <b>2. INTRODUCTIONS</b>   |
|                    | <b>3. APPROVAL OF AGENDA AS POSTED (OR AMENDED)</b>   |
|                    | <b>4. PUBLIC COMMENTS</b> - The Public may submit any questions in advance of the meeting by contacting Katie Sullivan at: <a href="mailto:katie.sullivan@sedgwick.com">katie.sullivan@sedgwick.com</a> . This time is reserved for members of the public to address the Committee relative to matters of the Claims Committee not on the agenda. No action may be taken on non-agenda items unless authorized by law. Comments will be limited to five minutes per person and twenty minutes in total. |

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**5. CLAIMS MATTERS**

A. Consideration of the City of Foster City's Request for Defense Counsel

*Recommendation: Staff recommends the Claims Committee provide direction.*

**6. CLOSED SESSION**

A. Pursuant to Government Code Section 54956.95(a), the Committee will hold a closed session to discuss the following claims:

- *Foster City Marina, LLC v. Foster City*
- *James Hill v. City of East Palo Alto*

B. Pursuant to Government Code Section 54957.1, the Committee will report in open session any reportable action taken in closed session.

**7. CLOSING COMMENTS**

This time is reserved for comments by Claims Committee members and/or staff and to identify matters for future Claims Committee business.

- A. Claims Committee
- B. Staff

**8. ADJOURNMENT**

**NOTICES:**

- The next Claims Committee meeting will occur on Thursday, January 26, 2023, at 1:30pm via videoconference.

December 8, 2022

Agenda Items 5.A

**CLAIMS MATTERS**

**SUBJECT:** Consideration of the City of Foster City's Request for Defense Counsel

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**BACKGROUND AND HISTORY:**

The City of Foster City requests Attorneys Benjamin Stock and Nicholas Muscolino from Burke, Williams, & Sorenson to represent them in the matter of *Foster City Marina LLC v. The City of Foster City*.

Mr. Stock and Mr. Muscolino are not on PLAN JPA's approved panel list and Mr. Stock currently serves as the City Attorney for The City of Foster City. The Claims Committee gave conditional approval pending further discussion at its meeting in December.

Susan DeNardo, PLAN JPA Litigation Manager, will be present to discuss this matter with the Committee.

**STAFF RECOMMENDATION:**

*Staff recommends the Claims Committee provide direction.*

**REFERENCE MATERIALS ATTACHED:**

- Benjamin Stock Curriculum Vitae
- Nicholas Muscolino Curriculum Vitae
- Certificate of Professional Liability Insurance



# Benjamin L. Stock

## Partner

Pronouns: he, him, his

### Marin County

181 Third Street, Suite 200  
San Rafael, California 94901

[bstock@bwslaw.com](mailto:bstock@bwslaw.com)

415.755.2605 D  
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## PRACTICE GROUPS

Litigation  
Public

## EDUCATION

J.D., University of California, Hastings  
College of the Law, 2000

B.A., Environmental Science, University of  
California, Berkeley, 1996

## ADMISSIONS

State Bar of California  
United States District Court for the Central  
District of California

## AFFILIATIONS

League of California Cities, Legal  
Advocacy Committee  
League of California Cities, City Attorney's  
Department Municipal Handbook  
Committee

Benjamin Stock is an accomplished litigator in both state and federal courts. His litigation and transactional practice emphasizes municipal law, eminent domain, land use, and construction law. Additionally, Ben serves as Town Attorney for both Ross and Tiburon, City Attorney for the cities of Benicia and Foster City, and General Counsel for Eastern Contra Costa Transit Authority, Sanitary District Number 5, Sausalito-Marín City Sanitary District, and Vallejo Flood and Wastewater District.

With regard to his eminent domain practice, Ben plays a key role in public clients' property acquisition activities. He counsels public clients on early considerations and pre-acquisition activities necessary to the condemnation process. He also litigates condemnation actions, negotiates settlements and, when necessary, takes the matters through trial. Additionally, Ben drafts transactional documents related to the acquisition of property through eminent domain. He is currently assisting multiple public entities with their condemnation needs throughout the state. Ben has spoken at numerous conferences on issues involving eminent domain.

In addition to eminent domain, Ben has extensive experience representing public entities in litigation at both the trial court and appellate court levels. His areas of specialization include inverse condemnation and land use, CEQA, breach of contract, environmental law, and dangerous conditions public liability.

Ben also assists numerous public entities across the state on complex land use matters and in tax allocation matters before the State Board of Equalization.

## RESULTS

- *City of Fillmore v. State Board of Equalization* (2011) 194 Cal.App.4th 716. Ben successfully obtained judicial intervention when the BOE failed to follow its regulations.
- *City of Industry, et al. v. City of Fillmore, et al.* (2011) 198 Cal.App.4th 191. Successfully overturned a demurrer whereby Plaintiffs claim that Defendants fraudulently obtained sales tax money from Plaintiffs.
- *Thompson Pacific Construction v. City of Sunnyvale* (2007) 155 Cal.App.4th 525. Ben assisted the City of Sunnyvale in a complex public contract dispute in both trial and appellate court, resulting in a favorable published decision with statewide significance in the areas of the false claims act and the duty of a public entity to supply accurate specifications for public work project.

- *108 Holdings v. City of Rohnert Park* (2006) 136 Cal.App.4th 106. Ben successfully defended the City against claims that the City unlawfully amended its general plan.
- *Emeryville Redevelopment Agency v. Harcross Pigments* (2002) 101 Cal.App.4th 1083. Ben represented the Redevelopment Agency on an appeal after a complex jury trial that resulted in a published Appellate opinion, which allowed the Agency to acquire the property at a fair price.

## INSIGHTS

### Presentations

"Interpreting and Valuing Easements Under Eminent Domain," CLE International's 20th Annual Northern California Eminent Domain Conference, October 30, 2018

"Ethics: Considerations for Your Eminent Domain Practice," CLE International Northern California Eminent Domain Conference, San Francisco, October 2016

"Ethical Considerations When Representing the Condemnor," CLE International, San Francisco, October, 2014

"The Interplay Between the Polanco Act and Eminent Domain: Condemning Contaminated Property," California Redevelopment Association Legal Issues Symposium, August, 2006

### Publications

"Public Agency's Failure to Increase Final Offer from Amount of Its Appraisal Ruled Unreasonable as a Matter of Law, Thus Allowing Property Owner to Recover Its Litigation Expenses," *Burke Public Law Update*, November 2010

"California Supreme Court Gives Eminent Domain a Vote of Confidence," *California State Bar Public Law Journal*, Vol. 26, No. 1, p. 9, Winter, 2003



# Nicholas J. Muscolino

## Partner

Pronouns: he, him, his

## Oakland

1901 Harrison Street, Suite 900  
Oakland, California 94612

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510.903.8818 D  
510.273.8780 T

## PRACTICE GROUPS

Litigation

Public

Real Estate and Business

## EDUCATION

J.D., Order of the Coif, University of California, Davis School of Law, 2009

B.A., *magna cum laude*, Political Science and Business Economics, University of California, Santa Barbara, 2006

## ADMISSIONS

State Bar of California

United States Court of Appeals for the Ninth Circuit

United States District Court for the Central District of California

United States District Court for the Northern District of California

## AFFILIATIONS

Contra Costa County Bar Association

Bay Area City Attorneys Association

League of California Cities

Nick Muscolino is a partner in the firm's Oakland office. Nick specializes in the legal and procedural defenses available to public entities under California law. He has successfully represented public entities in trial and appellate courts throughout California in disputes concerning inverse condemnation, preemption, eminent domain, the California Environmental Quality Act (CEQA), water rights, flood and storm water diversions, public nuisance, negligence, quiet title, breach of contract, the Religious Land Use and Institutionalized Persons Act (RLUIPA), the Fair Housing Act, the Fair Employment and Housing Act, the First Amendment, Section 1983, preemption, redevelopment dissolution, local land use and zoning, and general plan consistency.

Nick also provides advisory services to cities and other public entities. He has served as a deputy or assistant city attorney to several cities. In that capacity, he advises on the Brown Act, the Public Records Act, CEQA, litigation, mobilehome issues, civil rights issues, affordable housing, and other areas of general municipal law. Nick drafts the staff reports, resolutions, ordinances, and agreements (e.g., purchase and sale, joint powers, loan, disposition and development), that public agencies need to serve the public. He also provides opinion letters on the legality of various housing preferences under state and federal law, and other land use and zoning-related issues.

Nick graduated Order of the Coif from the University of California, Davis in 2009, where he served as an Executive Editor of the Journal of Environmental Law and Policy. After law school, Nick served as a law clerk to the Honorable Justice Morgan Christen of the Alaska Supreme Court (now of the Ninth Circuit Court of Appeals) in Anchorage before entering private practice at a large law firm in San Francisco.

Nick works closely with clients to understand their goals and to determine how to achieve their desired outcomes in the most cost-effective and timely manner.

## RESULTS

- Nick represented a northern California transit district in litigation involving (1) affirmative claims against a property owner for nuisance, negligence, and injunctive relief arising out of the property owner's construction of improvements that damage the district's infrastructure during storm events; and (2) defending against claims for inverse condemnation, negligence, and breach of contract. Nick successfully defeated a multi-million dollar inverse condemnation claim via motion for summary adjudication.

- Nick defended a city in a federal lawsuit alleging that a resolution and ordinance affecting rail-related development violated the Dormant Commerce Clause and is preempted by the Interstate Commerce Commission Termination Act, the Hazardous Materials Transportation Act, and the Shipping Act.
- Nick defended a northern California sanitary district in litigation alleging that the district had overcharged customers for sanitary sewer fees. After three rounds of demurrers, the court sustained the district's demurrer with prejudice.
- Nick defended a northern California city against a petition for writ of mandate alleging that the city's approval of a project violated CEQA and the Planning and Zoning Law. Nick defeated the petition on the merits and persuaded the trial court to award the City nearly \$70,000 in costs to prepare the administrative record.
- Nick defended a northern California city in a lawsuit alleging more than \$10 million in damages for the city's alleged taking of private water rights without just compensation. Nick defeated the breach of contract claims at the pleadings stage by successfully asserting the Government claims Act. He then defeated the remaining inverse condemnation claims via motion for summary judgment.



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
10/24/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Aon Risk Services Central, Inc. Chicago IL Office 200 East Randolph Chicago IL 60601 USA	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C. No. Ext):</b> (312) 381-1000	<b>FAX (A/C. No.):</b> (312) 381-7007
	<b>E-MAIL ADDRESS:</b>	
	<b>INSURER(S) AFFORDING COVERAGE</b>	<b>NAIC #</b>
<b>INSURED</b> Burke, Williams & Sorensen, LLP 444 South Flower St., Ste 2400 Los Angeles CA 90071-2953 USA	<b>INSURER A:</b> Scottsdale Ins Company	41297
	<b>INSURER B:</b> Westfield Specialty Insurance Comp	16992
	<b>INSURER C:</b> Evanston Insurance Company	35378
	<b>INSURER D:</b> Endurance American Specialty Ins Co.	41718
	<b>INSURER E:</b> Ironshore Specialty Insurance Company	25445
	<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:** 570096187882**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b>						EACH OCCURRENCE
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)
							MED EXP (Any one person)
							PERSONAL & ADV INJURY
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG
	OTHER:						
	<b>AUTOMOBILE LIABILITY</b>						COMBINED SINGLE LIMIT (Ea accident)
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)
	<input type="checkbox"/> OWNED AUTOS ONLY	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident)
	<input type="checkbox"/> HIRED AUTOS ONLY	<input type="checkbox"/> NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident)
	<b>UMBRELLA LIAB</b>	<input type="checkbox"/> OCCUR					EACH OCCURRENCE
	<b>EXCESS LIAB</b>	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE
	<input type="checkbox"/> DED <input type="checkbox"/> RETENTION						
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b>						<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				E.L. EACH ACCIDENT
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE-EA EMPLOYEE
							E.L. DISEASE-POLICY LIMIT
A	Lawyers Prof			LWS0000997	01/15/2022	01/15/2023	Per Occurrence
D				LPN30015160400	01/15/2022	01/15/2023	Aggregate
C				MKLV7PL0005109	01/15/2022	01/15/2023	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Legal Services

Deductible: \$350,000 Each Claim, \$700,000 in the Aggregate and \$50,000 Step-Down, including defense costs

**CERTIFICATE HOLDER****CANCELLATION**

The City of Foster City 610 Foster City Boulevard Foster City, CA 94404-2222 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE  <i>Aon Risk Services Central, Inc.</i>

Holder Identifier :

Certificate No : 570096187882





# ADDITIONAL REMARKS SCHEDULE

Page \_ of \_

AGENCY Aon Risk Services Central, Inc.		NAMED INSURED Burke, Williams & Sorensen, LLP	
POLICY NUMBER See Certificate Number: 570096187882			
CARRIER See Certificate Number: 570096187882	NAIC CODE	EFFECTIVE DATE:	

## ADDITIONAL REMARKS

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**  
**FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

**ADDITIONAL POLICIES** If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	OTHER							
E				LPL7CABW3D1003	01/15/2022	01/15/2023		
B				LPL00003Y2	01/15/2022	01/15/2023		