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***Doctors Company v. Bennett Bigelow & Leedom:*
Court of Appeals Revisits the “Who Is the Client?” Question
in Insurance Defense**

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In late May, Division I of the Court of Appeals revisited the issue of who is the client of an insurance defense counsel. States vary in their approach. Under *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 388, 715 P.2d 1133 (1986), and WSBA Advisory Opinion 195 (1999), Washington is in the “one client” camp: the insured is the only client and the carrier is a third party payor.

This can have important implications if there is alleged malpractice in handling an insured’s case. In *Stewart Title Guar. Co. v. Sterling Sav. Bank*, 178 Wn.2d 561, 311 P.3d 1 (2013), the Supreme Court held that because the only client is the insured, the carrier did not meet one of the required elements for a legal malpractice claim—an attorney-client relationship with the lawyer being sued. The Supreme Court in *Stewart Title* also rejected the alternative argument that a carrier is an intended beneficiary of an insured’s attorney-client relationship and, therefore, qualifies under the narrow test articulated in *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994), for vesting a non-client with standing to bring a malpractice claim. Division II of the Court of Appeals made those same points last year in *Clark County Fire Dist. No. 5 v. Bullivant Houser Bailey, P.C.*, 180 Wn. App. 689, 699-70, 324 P.3d 743 (2014), in finding that *Stewart Title*

established a bright line rule rather than simply a case-by-case template for analysis.

The carrier in *Doctors Company v. Bennett Bigelow & Leedom, P.S.*, 2015 WL 3385264 (Wn. App. May 26, 2015) (unpublished) tried to maneuver around *Stewart Title* by arguing that the law firm advised the carrier directly—and, therefore, had also established an attorney-client relationship with the carrier—in addition to defending the insureds. Division I concluded that this co-client argument was not sufficiently developed in the record below and refused to consider it on appeal. The Court of Appeals then relied on both the “one client” standard and the *Stewart Title* rule in affirming summary judgment for the defendant law firm.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics, product liability defense and condemnation litigation. In his legal ethics practice, Mark handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. He is a past member of the Oregon State Bar’s Legal Ethics Committee, has chaired both the Washington State Bar Committee on Professional Ethics and its predecessor, the Rules of Professional

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