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Court of Appeals Rules on Authority of Insurance Defense Counsel

By Mark J. Fucile
Fucile & Reising LLP

Division II of the Court of Appeals recently addressed the authority of insurance defense counsel in an unusual scenario: where defense counsel had no contact with the insured throughout the course of the litigation involved. *Kruger-Willis v. Hoffenburg*, 198 Wn. App. 408, 393 P.3d 844 (2017), arose out of an automobile accident. The defendant drove a truck into the plaintiff's parked car. The defendant's insurer paid for the property damage involved, but then the plaintiff sued the defendant for the diminished value of the vehicle. The defendant prevailed at trial and the trial court awarded the defendant \$11,490 in fees and costs. In the course of litigating the fee award, defense counsel admitted that he had never had any contact with the defendant.

At that point, the plaintiff filed a motion under RCW 2.44.030, which allows a party to challenge opposing counsel's authority to act for the adverse party, and an accompanying motion to stay all proceedings until defense counsel produced his authority. The trial court denied the motions and, after further skirmishing in both the trial court and on appeal, the authority issue came before the Court of Appeals. At least where the amount involved is entirely within the insured's coverage and there is no reservation of rights, the Court of Appeals

concluded that insurance defense counsel had the requisite authority to appear for the defendant even though he never had any contact with the insured.

The Court of Appeals reasoned “that when an insurer has a contractual obligation to defend its insured, that insurer has the implied right to authorize defense counsel to represent its insured even in the absence of the insured’s express authority.” 198 Wn. App. at 415. In doing so, the Court of Appeals relied on both substantive insurance law and RPC 1.2(f)—which addresses authority to act. The Court of Appeals noted that RPC 1.2(f) includes both express authority and implied authority that is authorized by law. The Court of Appeals concluded that “[a]n insurer necessarily has implicit authority under its contractual duty to defend—to authorize defense counsel to represent its insured.” 198 Wn. App. at 417.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP handles professional responsibility, regulatory and attorney-client privilege issues for lawyers, law firms and corporate and governmental legal departments throughout the Northwest. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is also a former member of the Oregon State Bar Legal Ethics Committee and is a current member of the Idaho State Bar Section on Professionalism & Ethics. Mark writes the monthly Ethics Focus column for the Multnomah (Portland) Bar’s *Multnomah Lawyer*, the quarterly Ethics & the Law column for the WSBA *NWLawyer* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author/editor for the current editions of the OSB

Ethical Oregon Lawyer, the *WSBA Legal Ethics Deskbook* and the *WSBA Law of Lawyering in Washington*. Before co-founding Fucile & Reising LLP in 2005, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. He also teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is admitted in Oregon, Washington, Idaho, Alaska and the District of Columbia. He is a graduate of the UCLA School of Law. Mark's telephone and email are 503.224.4895 and Mark@frllp.com.