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Federal Court Orders Attorney Testimony in Insurance Bad Faith Case

By Mark J. Fucile
Fucile & Reising LLP

The federal district court in Seattle recently ordered an attorney to testify at a deposition in an insurance “bad faith” case. *Water’s Edge Condominium Owners Association v. Affiliated FM Insurance Company*, 2022 WL 3054209 (W.D. Wash. Aug. 2, 2022) (unpublished), involved allegations by the plaintiff condominium owners association that one of the defendant carriers, MiddleOak Specialty Insurance, had improperly denied coverage on a property damage claim. The lawyer involved investigated the association’s property damages and drafted the carrier’s letter denying coverage. The association argued, therefore, that the lawyer was a central witness in the subsequent litigation over whether the denial was in “bad faith.” The court granted the association’s motion to compel the lawyer’s deposition.

In doing so, the court noted that under *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686, 295 P.3d 239 (2013), a lawyer handling the insurance claim adjustment process is assisting the insurer in carrying out its quasi-fiduciary responsibility to fairly consider claims submitted by its insureds. In *Cedell*, the Washington Supreme Court concluded that there is ordinarily no attorney-client privilege between the insured and the carrier in the claims adjustment process. Accordingly, the insured is generally entitled to the carrier’s

claim file and related discovery—including material that in other settings may fall within privilege or work product protection.

Because the lawyer in *Water's Edge* investigated the association's claim for the carrier and drafted the carrier's coverage denial letter, the court found that the lawyer fell within *Cedell* and that privilege did not bar the lawyer's deposition concerning the quasi-fiduciary tasks the lawyer had performed for the carrier. The court qualified its decision by allowing the carrier to object if the deposition moved into areas involving legal advice offered to the carrier on its own exposure. Nonetheless, the court allowed the deposition to proceed.

Water's Edge underscores the potentially broad discovery available in bad faith litigation—including the ability to take the deposition of a carrier's lawyer who was involved in the claim adjustment process.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP advises lawyers, law firms and legal departments throughout the Northwest on professional responsibility and risk management. Mark has chaired both the WSBA Committee on Professional Ethics and its predecessor, the WSBA Rules of Professional Conduct Committee. Mark is a member of the Oregon State Bar Legal Ethics Committee and the Idaho State Bar Section on Professionalism & Ethics. Mark writes the Ethics Focus column for the Multnomah (Portland) Bar's *Multnomah Lawyer*, the Ethics & the Law column for the WSBA *Bar News* and is a regular contributor on legal ethics to the WSBA *NWSidebar* blog. Mark is a contributing author and the editor-in-chief for the WSBA *Legal Ethics Deskbook* and is a contributing author and principal editor for the OSB *Ethical Oregon Lawyer* 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.