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## **Court of Appeals Addresses Litigation Privilege in Anti-SLAPP Context**

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Division I of the Washington Court of Appeals recently applied the “litigation privilege” in the context of an “anti-SLAPP” motion. The litigation privilege is the legal doctrine that generally immunizes lawyers from defamation and related claims for statements made during or related to a judicial proceeding. Anti-SLAPP motions, in turn, are brought under Washington’s version of the Uniform Public Expression Protection Act (“UPEPA,” RCW chapter 4.105) and offer an expedited process for seeking dismissal of lawsuits (often called “strategic lawsuits against public participation” or “SLAPP”) that target activities protected by the First Amendment.

*Valve Corporation v. Bucher Law PLLC*, 2025 WL 1792620 (Wn. App. June 30, 2025), involved claims for tortious interference and abuse of process by a video game platform against two law firms representing customers with claims for anticompetitive practices against the platform. The user agreement with the platform required customers to agree to individual arbitration and required written notice that described the basis of any dispute. The law firms represented several thousand customers. They initially sent a collective letter to Valve on behalf of all of their clients. Valve objected to the collective letter and the law firms followed with individual emails for their clients. After the individual arbitrations had been

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initiated, Valve sued the law firms for tortious interference and abuse of process based on the initial communications. The law firms moved to dismiss under UPEPA—arguing, in relevant part, that their communications were protected by the litigation privilege. Although the trial court denied the motion, the Court of Appeals reversed and directed dismissal on remand.

The Court of Appeals' opinion includes a concise summary of the litigation privilege and how the privilege fits within the procedural construct of UPEPA. On the former, the Court of Appeals found that the communications by the law firm met the test of being related to a judicial proceeding because Valve's own subscriber agreement required them as a predicate to arbitration. On the latter, the Court of Appeals concluded that the communications were on matter of public concern because they asserted violations of federal antitrust law and state consumer protection law.

Although the *Valve* decision does not break new substantive ground on the litigation privilege, it applies the privilege in a procedural setting that is different than most others invoking the protection afforded by the doctrine.

## 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 has served on the Oregon State Bar Legal Ethics Committee and is a member of 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 503.860.2163 and Mark@frllp.com.