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No. 72566-1-I

COURT OF APPEALS  
DIVISION II  
OF THE STATE OF WASHINGTON

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BROUGHTON LAW GROUP, INC. P.S. a Washington  
Corporation,

Appellant,

v.

FIRE INSURANCE EXCHANGE, a California Company and a resident  
of Washington State,

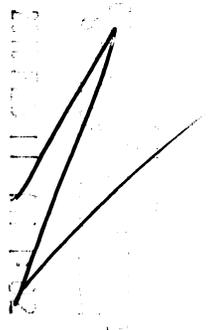
Respondent,

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APPELLANT'S OPENING BRIEF

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Broughton Law Group, Inc. P.S.  
William H. Broughton, WSBA #8858  
9057 Washington Avenue NW  
Silverdale, WA 98383

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**I.**

**INTRODUCTION**

Appellant Broughton Law Group (“BLG”) is the assignee and current owner of claims by California insured Terry Parks. Parks was insured by Respondent Fire Insurance Exchange when a Counterclaim was filed against him in a King County Superior Court legal malpractice lawsuit he had filed against attorney Janice Fink. The insurance company denied coverage and withdrew its defense shortly after tender. BLG appeals the Order of Dismissal by the trial court holding as a matter of law that Respondent insurance company did not breach its duty to defend and duty to indemnify under its homeowner’s policy issued to its insured. The insured also appeals the trial court’s denial of the insured’s Motion for Partial Summary Judgment.

Fink sued alleging the tort of outrage. Her counterclaims were based on a series of threatening and defamatory written statements by the insured to Fink and others. Applying California law, the trial court opined that the insurance company’s duty to defend and indemnify its insured was limited to the allegations in the Counterclaim. The trial court also opined that additional evidence contained in the Court file at the time of tender did not establish any possibility of coverage and therefore did not establish a duty to defend.

This appeal follows.

## II.

### ASSIGNMENTS OF ERROR

**1. The trial court erred in denying the insureds Motion for Partial Summary Judgment where the allegations of the counterclaim on their face did not preclude any possibility of coverage triggering the duty to defend.**

#### Issues Pertaining to Assignment of Error

- (i) A duty to defend is triggered where allegations in the counterclaim in support of the tort of Outrage show at least a potential for coverage.
- (ii) An insurance policy providing coverage for libel, slander and defamation should provide a defense to a claim for outrage that is based on allegations that resemble defamation.
- (iii) The facts alleged in the Counterclaim and extrinsic facts contained in the Court file indicated a potential for the insured to be held liable for published and unpublished derogatory statements covered by the policy.
- (iv) The tort of Outrage can be committed recklessly are is not excluded under the policy.

**2. The trial court erred in granting the insurance company's Summary Judgment Motion for Dismissal.**

Issues Pertaining to Assignment of Error

- (i) The insurance company had constructive notice of the contents of the court file at the time of tender of the claim which included publication of derogatory statements by the insured.
- (ii) Upon tender, the insurer failed to make a diligent inquiry into the bases for the Counterclaim taking the position there was no duty to defend based solely on its erroneous interpretation of the policy.
- (iii) The insurer now raises coverage and indemnity defenses never raised until after this litigation was filed.
- (iv) Unpublished statements by the insured should also have been defended as the policy does not require publication.

**III.**

**STATEMENT OF THE CASE**

In support of her outrage Counterclaim, now disbarred attorney Janice Fink alleged that on several occasions including by a letter delivered to her on September 16, 2008 the insured made "death threats and insults" to Fink. She quotes that letter in her Counterclaim, attached as

*Appendix A-5*, which refers to Fink as a “fat, ugly, cunt, whore, bitch, liar, and despicable excuse for a human being”. The letter also describes Fink as a “phoney scum” and requests God to strike her down to her death. CP 101.

The Counterclaim was tendered to the insurer in July 2011. The court file at that time included several declarations from Fink. One of those is attached at *Appendix A-7*. CP 259-261. Fink declares she has lived in fear of the insured for years. She claims the insured sent derogatory mail and emails both to her work and home. She notes the insured has posted threats on his website and to Avvo.com. She attaches posts by the insured on his website as Exhibit A to her Declaration. CP 259-261. A-25.

Fink also filed a declaration in Opposition to a Motion for Summary Judgment filed by the insured. CP 197-237. *Appendix A-10*. She attaches a letter from the insured to Judge Trickey stating Fink is dishonest, manipulative and incompetent. CP 203-237. She again references Park’s website where “derogatory statements” about Fink are posted. CP 198. The website postings are included in the Lam Declaration. CP 185-196.

The trial court in the underlying litigation on motion determined the insured to be incapacitated and a guardian ad litem was appointed for

him to defend the Fink outrage claims. Evidence of the insured's incapacity was on file at the time of the tender. CP 238-239.

### **A. The Underlying Policy**

The insureds (Mr. and Mrs. Parks) were issued a "Protector Plus" California Home Owners Insurance policy, number 0924704114, by Fire Insurance Exchange. The personal liability section of the policy contains the following:

#### **"Coverage E - Personal Liability**

We pay those damages which an **insured** becomes legally obligated to pay because of **bodily injury, property damage** or personal injury resulting from an **occurrence** to which this coverage applies. Personal injury means any injury arising from:

- (1) false arrest, imprisonment, malicious prosecution and detention.
- (2) wrongful eviction, entry, invasion of rights to privacy.
- (3) libel, slander, defamation of character.
- (4) discrimination because of race, color, religion or national origin...."

The policy defines "occurrence" as follows:

**"Occurrence** means an accident including exposure to conditions which results during the policy period in **bodily injury** or **property damage**. Repeated or continuous exposure to the same general conditions is considered to be one **occurrence**.

**Occurrence** does not include accidents or events which take place during the policy period which do not result in

bodily injury or property damage until after the policy period.”

The policy defines bodily injury as:

“**Bodily injury** – means bodily harm, sickness or disease, including care, loss of services and death resulting from that injury.”

The policy also contains exclusions. The policy excludes injuries caused “intentionally”, as follows:

“We do not cover **bodily injury, property damage** or personal injury which: ... 3. is either: a. caused intentionally by or at the direction of an **insured**; or b. results from any **occurrence** caused by an intentional act of any **insured** where the results are reasonably foreseeable.”

CP 44-96.

### **B. Fire Insurance’s Initial Defense And Subsequent Withdrawal And Refusal To Defend Or Otherwise Extend Coverage**

Notice of the lawsuit was provided by the insured to Defendant in a timely manner on July 5, 2011. CP 41, 365. On July 13, 2011 the insurance company accepted defense of the claim and retained Seattle attorney Polly Becker of Helsell Fetterman to defend its insured. CP 42, 367. Ms. Becker wrote the company on July 15, 2011 indicating she would keep the company apprised of future developments. CP 369.

Attorney Vic Lam, who had been defending the insured, provided Ms. Becker with all pleadings filed until that time including Fink's ER 904 submissions and her Declarations. CP 42.

On August 16, 2011 the insurance company issued a letter denying coverage of the claim under its policy. CP 371-375.<sup>1</sup> The denial letter stated that "the claims alleged are not covered" and that "certain exclusions apply to further preclude coverage." The letter states that an exclusion "precludes coverage for bodily injury or property damage arising from any occurrence caused by an intentional act of any insured where the results are reasonably foreseeable. To the extent you intended to cause damage to the Plaintiff the exclusion will apply." CP 240-245.

The insured challenged the denial of coverage and the insurance company referred the matter to coverage counsel. CP 246. On October 12, 2011 the insurance company's coverage counsel asserted that: "coverage for 'personal injury' is not triggered unless the claimant has alleged the commission of one of the enumerated acts or offenses ... (in the policy). Coverage thus is triggered by the offense, not the injury or damage which a plaintiff suffers." CP 248-251. The insurer then asserted that while the policy covered libel, a claim would need to "allege the

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<sup>1</sup> Ms. Becker contemporaneously withdrew her representation.

defamatory statement was published” and “allege every necessary element of defamation”. CP 249.

The insurance company’s counsel also took the position that Ms. Finks’ claims did not constitute bodily injury because there was no physical injury. CP 250. It also expounded on the position taken in the insurer’s initial August 16th, 2011 letter, stating that “the event may not be deemed an ‘accident’ merely because the insured did not intend to cause injury”, and that since there was no “accident” there was no “occurrence” and thus no coverage for bodily injury. CP 251.

In February 2012 the insured retained Richard Dykstra, an attorney with Friedman Rubin, to review the insurance company’s position. Upon reviewing the claim, Mr. Dykstra noted that there was a duty to defend. CP 253. The insurance company refused to change its position. CP 256-257.

The insured was forced to retain counsel and a jury later awarded damages to Fink. CP 43.

**IV.**  
**ARGUMENT**

This Court should grant Plaintiff's Motion for Partial Summary Judgment because Fire Insurance Exchange wrongfully denied defense and coverage as a matter of law.<sup>2</sup>

**A. Defamation Did Not Have To Be Specifically Alleged For The Duty To Defend To Arise**

**SUMMARY OF ARGUMENT**

- First, the insurance company wrongfully denied coverage because the pleadings and extrinsic evidence demonstrated a bare potential for coverage under the policy<sup>3</sup> and it failed to show there was no possibility for coverage.
- Second, Fire Insurance Exchange's coverage denial relied on case law interpreting materially different language **not found in the insureds' policy.**
- Third, the insurance company restrictively interpreted ambiguous terms ("arising from") to deny a defense where the insureds' conduct (defamation) was not plead in the lawsuit but was clearly the basis for the outrage claim.

In California, insurers are required to defend policyholders where there is any potential for coverage under the policy. The insurer can only escape its defense obligation "if the third party complaint can by no conceivable theory raise a single issue which could bring it within the

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<sup>2</sup> Review is *de novo*. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009)

<sup>3</sup> "Bare potential for coverage" is the lowest standard found in the law.

policy coverage." *Gray v. Zurich Insurance Company*, 65 Cal.2d 263, 275 n.15, 54 Cal.Rptr. 104, 112, 419 P.2d 168, 176 (1966).<sup>4</sup> This duty arises at the beginning of a lawsuit. It is broader than the duty to indemnify which is triggered at the end of the lawsuit when all the facts are known. *Gray*, at 271–72.

The outcome of an adjudication does not change the duty to defend. So long as a “bare potential” for coverage existed at the onset of an adjudication an insurance company must defend. *Buss v. Superior Court*, 16 Cal.4th 35, 49–50, 65 Cal.Rptr. 2d 366(1997). Even if an adjudication reveals that a claim was not covered, the duty to defend without a right for reimbursement remains.<sup>5</sup> *Id.*

The California Supreme Court has subsequently noted that this "cannot reasonably be understood to refer to anything beyond a bare 'potential' or 'possibility' of coverage as the trigger of a defense duty." *Montrose Chemical Corp. v. Superior Court*, 6 Cal.4th 287, 300, 24 Cal. Rptr.2d 467, 474, 861 P.2d 1153, 1160 (1993). The *Montrose* Court explained:

To prevail, the insured must prove the existence of a *potential for coverage*, while the insurer must establish *the*

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<sup>4</sup> Washington case law is consistent with California law on this issue.

<sup>5</sup> Fink was awarded damages on her outrage claim. CP 43

absence of any such potential. In other words, the insured need only show that the underlying claim may fall within policy coverage; the insurer must prove it cannot." *Montrose* at 300 (italics in original).

This duty extends to facts extrinsic to the complaint. *Montrose* at 295.

Potential for coverage in this third party setting may arise in a number of ways:

(a) ambiguity in the policy, in which case "ordinary principles of insurance contract interpretation required it be construed in the insured's favor, according to his reasonable expectations", or

(b) "if the underlying complaint alleges the insured's liability for damages potentially covered under the policy, or

(c) "if the complaint might be amended to give rise to a liability that would be covered under the policy"

*Montrose*, at 299 (internal citations and quotations omitted).

As a matter of law, the complaint and extrinsic facts in this dispute demonstrate:

A) That a covered claim existed or could be amended as such;

B) The insurance company relied on case law interpreting language not in this policy;

C) The tort of outrage can be committed recklessly and the insured was suffering from a diminished capacity.

Summary judgment is appropriate as a matter of law because the insured provided a claim that raised the “bare potential” of coverage and the insurance company failed to provide a credible theory that would eliminate every conceivable theory of coverage.

**B. The Complaint And Extrinsic Evidence Demonstrated Coverage Or The Potential Thereof**

An insurance company cannot deny defense or coverage of a submitted claim based solely on a reading of the four corners of the complaint. There is a need to look beyond the complaint because complainants may “stretch the action which lies in only non-intentional conduct to the dramatic complaint that alleges intentional misconduct.” *Gray*, at 276. This would “designate the third party as the arbiter of the policy's coverage.” *Id.* When a complaint alleges something covered under the policy, or could be amended as such there is a duty to defend. *Montrose*, at 299; *See also Gray*, at 276 (“Defendant cannot construct a formal fortress of the third party's pleadings and retreat behind its walls.”).

Fink’s Counterclaim did not match the facts on which it was based. The Counterclaim alleged the commission of the tort of outrage under

Washington law, via multiple communications, threatening claimant's life and making numerous derogatory statements. CP 101, App 1.

The insured initially sent a September 11, 2008 letter to the trial court after he lost his claims to probate an unwitnessed will in the underlying TEDRA dispute. He made numerous potentially defamatory statements in that letter. CP 204, 214, 221, 235-236 (“j. fink, .... manipulated me ... used me like a yo yo”, lied while being deposed, was “dishonest and crooked”, and “used the Rules of Professional conduct for toilet paper”). This letter was known to the insurer (actually and constructively) as it was submitted by Fink in her declaration submitted in response to the insureds Motion for Summary Judgment filed in June, 2011. CP 197-198. That pleading also references and attaches posts made by the insured on his website about Fink. She declares she considered these comments “derogatory”. CP 198.

Fink's ER 904 documentation, which was provided to defense counsel hired by the insurer, suggests that the insured relayed potentially defamatory statements to illustrator Bill Forst so he could draw cartoons depicting Fink committing acts constituting malpractice extrinsic to the complaint. CP 137. (cartoon signed by “Wm Forst”).

Fink's ER 904 disclosures also demonstrated publication by the insured via the Internet. CP 185-196. Printed copies of these documents include publically accessible statements be made by the insured concerning Fink. She is accused of "lying, withholding information, failing to provide correct legal counsel, manipulating the interpretation of the law for his [sic] own financial benefit, [sic] abusing and exploiting me". . .

A thirty-five page letter to Judge Trickey submitted to the court by Fink before tender includes a conditional statement that:

"Hopefully, I will never see any of the lawyers or my relatives who were involved with this case; because, if I do, I've given warning that I have a self imposed [sic] restraining order: [sic] if any of them get within one hundred yards of me I will feel my life is being threatened and will kill them out of self-defense."  
CP 210.

The insurance company failed to consider any of this extrinsic evidence readily available in the court file at the time of tender. Instead, it allowed Fink (who was facing a potentially career ending malpractice suit), to be the arbiter of coverage by refusing to look beyond the four corners of the complaint.

The insurance company had a duty to defend as a matter of law because extrinsic evidence clearly showed that some, if not all, of the

communications on which claimant alleged personal and bodily injuries were potentially defamatory published statements clearly falling within the defamation coverage provided by the policy.

**C. The Legal Authority Cited By The Insurance Company Construed Policy Language Not In This Policy**

The insurance company denied coverage and withdrew its defense asserting that the tort of Outrage is not on the list of covered claims.<sup>6</sup> Coverage counsel repeatedly asserted that coverage is not triggered unless the counterclaim specifically alleges commission of an offense identified in the policy. CP 249. In support of this proposition, the insurer relied on *Fibreboard Corp. v. Hartford Accident and Indemnity Co.*, 16 Cal.App.3d 492, 511, 20 Cal.Rptr.2d 376(1993). This position by the insurer is erroneous.

The insuring agreement in the policy at issue provides:

We pay those damages which an insured becomes legally obligated to pay because of bodily injury, property damage or personal injury resulting from an occurrence to which this coverage applies. Personal injury mean any injury **arising from:** ... (3) libel, slander, defamation of character. CP 59, A-26.

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<sup>6</sup> This policy does not have a list of enumerated offenses for which coverage is provided contrary to the standard ISO policies construed in the authorities relied on by Fire Insurance Exchange. CP 254.

This policy language covers the insured from any claim of injury that has even a minimal causal connection with a statement that conveys an unjustly unfavorable impression. *Acceptance Ins. Co. v. Syufy Enterprises*, 69 Cal.App.4th 321, 328, 81 Cal.Rptr.2d 557(1999). Contrary to the assertions of the insurer, the coverage here is not limited to claims for the specific legal causes of action “libel” or “slander”. The policy applies to Fink’s claims of injury that are based upon the allegedly libelous statements.

When there is ambiguity in the policy “ordinary principles of insurance contract interpretation require it be construed in the insured's favor, according to his reasonable expectations” or “if the underlying complaint alleges the insured's liability for damages potentially covered under the policy, or if the complaint might be amended to give rise to a liability that would be covered under the policy.” *Montrose*, at 299 (citations omitted, emphasis in original). See also *Vandenberg v. Superior Court*, 21 Cal.4th 815, 840, 88 Cal.Rptr.2d 366(1999) (stating a court should interpret undefined terms to give them their ordinary and popular meaning as understood by the average purchaser of insurance, and not in a legalistic manner).

The policy issued in the case *sub judice* does not restrict coverage to an enumerated list of offenses found in a typical ISO style policy. Consequently, the duty to defend is not limited to claims alleging specific torts and is not limited to claims specifically alleging “libel” or “slander”. The phrase “arising from” broadly links a factual situation with the event creating liability, and “connotes only a minimal causal connection or incidental relationship.” *Acceptance Ins. Co. v. Syufy Enterprises, supra*.

A case on point factually and legally with the instant dispute is *Billings v. Commerce Insurance Company*, 936 N.E.2d 408 (Mass. 2010). There, the Massachusetts Supreme Court addressed the issue of whether an insurance company has a duty to defend a complaint filed against its insured alleging that the insured was “spreading rumors” as part of a claim for intentional infliction of emotional distress. The court stated as follows:

An insured has a duty to defend an insured when the allegations in a complaint are reasonably susceptible of interpretation that states or roughly sketches a claim covered by the policy term. *Billings* at 414.

In response to the argument by the insurer that the complaint failed to specifically plead a claim for defamation, libel or slander, the court stated that a theory pleaded in a complaint is not decisive in determining whether it is reasonably susceptible of an interpretation that states or

roughly sketches a claim for damages because of “personal injury” arising from libel, slander or defamation of character. The court explained its reasoning as follows:

The process is not one of looking at the legal theory enunciated by the pleader but of “envisaging what kinds of losses may be proved as lying within the range the allegations of the complaint, and then seeing whether any such loss fits the expectation of the policy. *Billings* at 415.

The court then concluded that the allegations in the complaint that the insured had “spread rumors” that his neighbors would fill wetlands and build houses in a marsh triggered defense. Although pleaded as a claim for intentional infliction of emotional distress, it was reasonably susceptible of an interpretation that roughly sketched a claim of libel, slander, or defamation, whose defense is covered under the terms of the policy.

While this authority is from Massachusetts, the legal standard employed there is identical to the standard to be applied under California law in this dispute.

**D. An Insurer Who Sells A Homeowner’s Policy Specifically Covering “Libel, Slander, Defamation” Cannot Refuse To Defend Claims Based On That Conduct**

**SUMMARY OF ARGUMENT**

An insured should reasonably expect a policy that specifically says it covers defamation to cover claims based on defamation to cover it (or at

least defend and investigate it) and not exclude it later in the policy as “intentional”.

The second basis relied upon by the insurer to excuse its duty to defend was that the counterclaim alleged only outrage which the insurer contends was intentional conduct excluded from coverage<sup>7</sup>. CP 251. California cases do not support this position. A duty to defend is triggered even where a complaint alleges only intentional conduct that is arguably excluded from coverage. *Gray v. Zurich Ins. Co., supra*. The rule enunciated in *Gray* is that where it is possible for the third party claimant to amend the complaint based on the same facts and hold the insured liable for covered damages, there is a duty to defend. *Id.*

Allegations in a complaint that harm is intended or reasonably foreseeable do not by themselves trigger a policy exclusion and relieve an insurance company of its duty to defend. Exclusions are construed narrowly and must be proven by the insurer. *Waller v. Truck Ins. Exchange, Inc.*, 11 Cal.4th 1, 44 Cal.Rptr.2d 370(1995). This is particularly the case where the policy states it covers the claim. In

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<sup>7</sup> The policy excluded coverage for “bodily injury, property damage or personal injury which: ... 3. is either: a. caused intentionally by or at the direction of an insured; or b. results from any occurrence caused by an intentional act of any insured where the results are reasonably foreseeable.” CP 15-16

determining whether an occurrence is an excluded intentional act, intent and expectation are judged from the standpoint of the insured, who must subjectively plan injury or subjectively foresee injury as practically certain. *Waller* at 44 (citations and quotations omitted).

The policy at issue specifically covers defamation. See *Appendix A-26*. For insurance to function an insured must do more than commit an intentional act to trigger the intentional act exclusion. An “accident” requires that the acts and the manner in which they are done must be intended, and that the objective accomplished must occur as intended by the actor.

The insurance company accepted the framing of a Counterclaim that its insured intentionally caused harm and denied him a defense on that basis. CP 240. Its coverage counsel took the position that “accidents” could not be “purposeful acts” or “deliberate acts”. CP 248-251. This ignores the second requirement that the insured intended to commit outrage (or defamation resulting in outrage). Outrage is not always intentional and can be committed recklessly. *Grimsby v. Samson*, 85 Wn.2d 730, 49 P.3d 887 (2002), See WPI 14.03.03.

The court file at the time of tender also reflects pleadings questioning Parks competence and capacity to defend Fink’s claims. An

order appointing a GAL was entered on August 18, 2011. CP 238-239. The insurer took no action to investigate its insureds incapacity when the acts complained of were committed.

One defense to the outrage claim is that the insured acted to disseminate statements exposing Fink as a dishonest and incompetent lawyer and/or to confront her with it. While these communications contain derogatory salutations and wishes of calamity, they did not by themselves demonstrate an intent to cause injury.

Even if one or more of these communications involved an intent to cause the harm alleged, an insured must defend an entire action prophylactically. *Buss*, at 48–49 (“[t]o defend meaningfully, the insurer must defend immediately. To defend immediately, it must defend entirely. It cannot parse the claims, dividing those that are at least potentially covered from those that are not.” (internal quotations and citations omitted)). The insured’s letter to Judge Trickey states that Fink lied to him and his deceased cousin (her former client) and “manipulated the law to her own advantage”. He indicates he needs “psychiatric help”. He complains Fink had perjured herself. CP 204-205, 208, 221. Fink bases her claims in part on this letter. CP 197.

Intent is not required to prove defamation or outrage and there is a plethora of decisions holding an insurer must defend defamation related claims.

In *Cincinnati Insurance Co. v Eastern Atlantic Co.*, 260 F.3d 742 (7th Cir. 2001) the Court explains the rationale:

But it is important to this case that the exclusion is not of intentional torts as such (nor is defamation an intentional tort in any simple sense), but of tortious conduct in which there is an intent to injure or an expectation of injuring. And in the case of defamation, at least, the exclusion does not track the tort. Apart from the exotic case in which defaming a fictitious person has the unintended and unexpected consequence of defaming a real person with the same name as the fictitious character, resulting in liability if the defendant should have known better, or the slightly more common case, treated similarly, of mistaken identification, e.g., *Ryder v. Time, Inc.*, 557 F.2d 824, 825-26 (D.C. Cir. 1976), defamation is often not intended or expected to injure anyone. The defamer may have made a good-faith though inadequate attempt to conceal the victim's name, may have thought the victim's reputation already impaired beyond possibility of further damage, or, the most common case, may have thought the defamatory statement true, in which event there would be no injury in a legal sense. So intent to injure or expectation of injuring is not an element of the tort of defamation, as it is of tortious interference with contract or with advantageous business relations (which is not a tort covered by the insurance policy, though we have seen that there is still a duty to defend if the facts constituting a covered tort, such as defamation, are alleged). Because the exclusion, therefore, though broad, is not so broad as to make the coverage illusory, it must be enforced according to its terms. *Fuisz v. Selective Ins. Co.*, 61 F.3d 238, 243-45 (4th Cir. 1995).

The insured certainly believed the statements made to Judge Trickey (and many of the others) were true. There are also defenses that Fink's reputation was already impaired beyond further damage.

**E. It Was Reasonable For The Insured To Expect Fink's Claims To Be Covered**

Under a reasonable expectation of coverage analysis, ambiguous terms are interpreted to protect "the objectively reasonable expectations of the insured." *Minkler v. Safeco Ins. Co. of America*, 49 Cal.4th 315, 321, 110 Cal.Rptr.3d 612(2010) (citations omitted). In the case of ambiguity "basic coverage provisions are construed broadly in favor of affording protection, but clauses setting forth specific exclusions from coverage are interpreted narrowly against the insurer." *Id.*

This court applies the "objectively reasonable expectation of the insured" test to decide whether an insurer would expect to be covered when making potentially defamatory statements. *Minkler* at 321. As a matter of law the average insured untrained in legal interpretation would expect that a complaint alleging the commission of the tort of outrage arising from potentially defamatory communications would be covered under the defamation section of their insurance.

The insurance company had an obligation to defend Parks when, and if, there was any possibility that his claimed misbehavior towards Fink was either unintended or resulted in unexpected, unforeseen, or undesired circumstances. The insurance company has the duty to prove an exclusion, and it must show that in each communication Mr. Park's intent was to cause the injuries alleged by Ms. Fink and not to expose the truth of her allegedly illegal and unethical actions as a lawyer. It has failed to do so.

For insurance to function an insured must do more than commit an intentional act to trigger the intentional act exclusion. An "accident" requires that the acts and the manner in which they are done must be intended, and that the objective accomplished must occur as intended by the actor.

The insurance company accepted the framing of a third party complainant that the insured intentionally caused harm and denied him a defense on that basis. Its coverage counsel took the position that "accidents" could not be "purposeful acts" or "deliberate acts". This ignores the second requirement that the insured intended to commit outrage.

Alternatively, only reasonably foreseeable personal and bodily injury are excluded under the policy. An insured is not strictly liable for

any consequence of their actions. The insured is an aged man, who communicated in writing, from California, to an attorney one would expect would be hardened to terse communication. It was not foreseeable that his acts would cause: (1) an experienced attorney to buy a gun, mace, activate an in-home alarm, (2) undergo hours of training to use an infrared gun sight, (3) dress nightly in tight dark clothes, and (4) make plans to defend herself from an in-home night intrusion by the insured. CP 259-261. It was not foreseeable that she would lock herself in her bedroom every night with her gun nearby in fear of Parks. CP 260. It was not foreseeable that she would call the police because of an erroneous belief that the insured was in her home. CP 260. It was not foreseeable that Fink would suffer insomnia, nausea, shortness of breath, shakiness and heart palpitations. CP 43.

While rude, telling someone in writing that you hope they burn, die, or go to hell should not foreseeably cause someone's life, relationships, and well-being to "completely change". CP 260. Additionally, Mr. Park's impaired mental capacity prevented him from intentionally acting to cause severe emotional distress or from being able to foresee severe emotional distress. CP 238-239.

**F. The Insurer Was On Notice That Some Derogatory Statements Were Published.**

**SUMMARY OF ARGUMENT**

Under a reasonable expectation of coverage analysis, the objectively reasonable expectations of the insured would be that the policy covers both published and unpublished communications.

The third reason advanced by the insurer for its position that it had no obligation to defend is based upon its claim that publication of the defamatory statements was required to trigger its defense obligations. CP 250. While the insured disputes that publication is required for a duty to defend to arise under this policy, there was ample evidence in the court file at the time of tender that some of the statements by the insured relied upon by Fink to sustain her claims of outrage were published. Fink attached pertinent pages of a printout from a web site belonging to the insurer as Exhibit A to her declaration filed with the court on April 19, 2011. CP 260. Fink attaches to her declaration filed with the court on June 20, 2011 a letter the insured had written to King County Superior Court Judge Michael Trickey. CP 203-237. Fink specifically declares that these comments by the insured are “derogatory” and continue to haunt

her. CP 198. She further declares that the statements by the insurer caused not only emotional distress but “physical symptoms”. CP 260.

It is axiomatic that the insurer was on constructive notice of the pleadings on file with the court at the time of tender in July of 2011. In California, extrinsic evidence to the complaint can generate a duty to defend, even if a complaint does not, on its face, create a potential for coverage under the policy. *Gray v. Zurich Ins. Co. supra*. Facts known by the insured at the time the insured tenders the claim for defense determines the existence of the insurer’s defense obligation. *Block v. Golden Eagle Ins. Corp.*, 121 Cal.App.4th 186,192, 17 Cal. Rptr.3d 13 (2004).

In denying the insureds motion for Partial Summary Judgment and in granting the insurer’s motion for Summary Judgment of Dismissal, the trial court accepted the insurers position that the insurer was relieved of its duty to defend because there was no potential for coverage as a matter of law.

The insurer now relies on *Gunderson v. Fire Ins. Exch.*, 37 Cal.App.4th 1106,1114, 44 Cal. Rptr. 2d 272 (1995). The insurer claims that the extrinsic facts known by the insurer at the time of tender were not sufficient to trigger its duty to defend. It now claims that the insured’s

letter to Judge Trickey was protected by absolute immunity. It claims that the website postings by the insurer did not specifically identify Fink. It claims the cartoons did not contain evidence that they were published or disclosed to anyone other than Fink. It asserted Fink's claims for damages were not based on the published writings. It claims its insured had to prove the web posting were seen by others. (See Defendant's Response to Plaintiff's Motion for Partial Summary Judgment).

Interestingly, none of these arguments were advanced by the insurer when it determined there was no duty to defend. CP 248-251. They are more appropriate to show defenses to the duty to indemnify rather than the duty to defend. The record is clear that little, if any, investigation was done by the insurer. It decided to deny a defense based on its interpretation of the policy.

In fact, California law imputes a duty to investigate in third-party claims. "[A]n insurer's obligation of equitable contribution for defense costs arises where, after notice of litigation, a diligent inquiry by the insurer would reveal the potential exposure to a claim for equitable contribution, thus providing the insurer the opportunity for investigation and participation in the defense in the underlying litigation." *St. Paul Mercury Ins. Co. v. Mountain W. Farm Bureau Mut. Ins. Co.*, 210

Cal.App.4th 645, 663 (2012), quoting *OneBeacon America Ins. Co. v. Fireman's Fund Ins. Co.*, 175 Cal.App.4th 183, 203 (2009) (italics added).

Nevertheless, the insurer now contends that only the non-published statements by the insured formed the basis for Fink's outrage claims. This position is directly controverted by Fink's declarations that were on file with the court at the time of tender. This position is untenable both factually and legally. Because the insurer withdrew its defense after six weeks, it did no discovery on Fink's claims.

Its current arguments are analogous to "Monday morning quarterbacking" now that the trial is over.

Trial counsel for the insured has submitted a Declaration that Fink relied on published communications at the trial as well as unpublished ones. CP 43. He also declares Fink complained of physical injury including loss of sleep, nausea, shortness of breath and anxiety disorder as a result of actions by the insured. CP 43.

The insurance company's policy fails to define the phrase "libel". The policy does not require "publication" to trigger coverage. Under a "reasonable expectation of coverage" analysis, this ambiguous term (libel) would be interpreted according to "the objectively reasonable expectations of the insured". *Minkler*, at 315. The Merriam Webster dictionary defines

“libel” as a written or oral defamatory statement or representation that conveys an unjustly unfavorable impression”. It says nothing about publication. The objectively reasonable expectation of an insured would be that language offering to cover “libel” would not require publication.

An insurance company cannot construe language promising to cover personal liability “arising from libel” to mean that the complaint must include all the elements of libel under California law including publication. The ambiguity of the terms requires that the reasonable expectation of an insured who is not trained in the law be given effect. When there is a clear claim for personal and bodily injury arising from a number of potentially libelous statements, the lay-insured would expect coverage.

## V.

### **REQUEST FOR ATTORNEY’S FEES**

Under the law of both Washington and California, an insurance company is responsible for payment of those attorney’s fees incurred by an insured in obtaining coverage that has been wrongfully denied. *Olympic Steamship Co. v. Centennial Insurance Co.* 117 Wn. 2d 37,811 P. 2d 673 (1991). RAP 18.1 authorizes an award of fees if applicable law

grants to a party the right to recover reasonable attorney's fees. Appellant is entitled to attorney's fees on appeal pursuant RAP 18.1 and the authority cited herein.

The insured is entitled to recover attorney's fees on appeal because the refusal of the insurer to defend its insured was unreasonable. *Brandt v. Superior Court*, 37 Cal.3d 813, 210 Cal.Rptr. 211 (1985). Under *Brandt*, the attorney's fees expended on this appeal have been entirely dedicated toward enforcing the insurance contract breached by Fire Insurance Exchange.

## VI.

### CONCLUSION

This Court should grant Plaintiff's Motion of Partial Summary Judgment because the insurance company wrongfully denied coverage as a matter of law. *The insurance company must defend immediately, entirely, and prophylactically — without reimbursement — as long as a "bare potential" of coverage existed at the time the claim is made.* The information available to the insurance company demonstrated that the claim fell within the insurance coverage promise.

Some, if not all, of the statements were potentially defamatory and were covered directly. The insurance company also frustrated the objectively reasonable expectations of its insured by claiming that the “Personal Liability” coverage only covered enumerated offenses whereas the policy terms were actually ambiguous and covered all acts that give rise to a bare potential of coverage.

Further, in failing to examine the extrinsic facts, the insurance company accepted Ms. Fink’s narrow characterization of the insured’s subjective intent. This ignored his repeated expression of his intent to expose the truth in the very communications on which the claim was based.

As a matter of law the insurance company breached its duty to defend under the policy and Plaintiff’s Motion for Partial Summary Judgment should be granted.

**DATED** this 10th day of February, 2015

BROUGHTON LAW GROUP, INC., P.S.



William H. Broughton WSBA#8858

HONORABLE BRUCE E. HELLER

**RECEIVED**

APR 26 2011

BROUGHTON LAW GROUP  
ATTORNEYS AT LAW

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TERRY PARKS, a single man,

Plaintiff,

vs.

JANYCE LYNN FINK, an individual, and FINK  
LAW GROUP PLLC, a Washington professional  
limited liability company,

Defendants.

Case No.: 10-2-04520-1 SEA

**DEFENDANTS' AMENDED  
ANSWER, AFFIRMATIVE  
DEFENSES AND  
COUNTERCLAIMS**

In an amended answer to plaintiff's complaint ("Complaint"), defendants hereby admit, deny and alleges as follows:

**I. PARTIES**

1. Defendants lack knowledge of the truth or falsity of the statements as to where Mr. Parks is a resident contained in paragraph 1 of the Complaint herein and, therefore, **DENY** same.

2. With regard to Paragraph 2 of the Complaint, defendant Janyce Fink **ADMITS** she is a resident of King County, Washington, and has been continually licensed attorney practicing law in the State of Washington since 1995.

3. With regard to Paragraph 3 of the Complaint, defendant Fink Law Group PLLC **ADMITS** that it is professional limited liability company formed and existing under the laws of the state of Washington, located in King County, Washington, and that the professional services provided by Ms. Fink to John J. Balko, Jr. ("Mr. Balko") were in the course and scope of her working for the law firm, Fink Law Group, PLLC.

## II. JURISDICTION & VENUE

4. With regard to Paragraph 4 of the Complaint, defendants **ADMIT** that venue and jurisdiction of the action are within King County and its Superior Court.

## III. FACTS

5. Defendants **ADMIT** that Janyce Fink performed legal services for Mr. Balko from approximately 2001 to the time of Mr. Balko's death (July 2007). All remaining allegations in paragraph 5 of the Complaint are **DENIED**.

6. Defendants **ADMIT** that, during the course of her work for Mr. Balko, Ms. Fink prepared "draft" wills for Mr. Balko. All remaining allegations in paragraph 6 of the Complaint are **DENIED**.

7. Defendants admit that during the course of her representation of Mr. Balko, she prepared one or more draft wills for Mr. Balko. Defendants admit that at one or more times while Ms. Fink represented Mr. Balko he was hospitalized. Defendants **DENY** all remaining allegations in paragraph 7 of the Complaint.

8. Defendants **DENY** all allegations in paragraph 8 of the Complaint.

9. Defendants **ADMIT** that between 2005 and 2007, Ms. Fink gave Mr. Balko a number of blank and "Draft" Wills for his consideration. All remaining allegations in paragraph 9 of the Complaint are **DENIED**.

10. Defendants **DENY** all allegations in paragraph 10 of the Complaint.

11. Defendants **ADMIT** that Mr. Balko's health began to deteriorate in January 2007. Defendants lack knowledge of the truth or falsity of the statement relative to Mr. Parks' activities and interactions with Mr. Balko when Ms. Fink was not present, including why Mr. Parks came to Seattle. Defendants **DENY** that Ms. Fink ever disclosed to Mr. Parks anything about Mr. Balko's financial affairs and/or his estate plans prior to Mr. Balko's death. All remaining allegations in paragraph 11 of the Complaint are **DENIED**.

12. Defendants **ADMIT** that after Mr. Balko's death, Mr. Parks refused to allow Ms. Fink access to Mr. Balko's personal papers and medical records located within Mr. Balko's temporary residence at the Marriott Residence Inn, and that Ms. Fink asked Mr. Parks to witness her inventory of Mr. Balko's safe deposit boxes. Defendants lack knowledge of the truth or falsity of the remaining statements contained in paragraph 12 of the Complaint and therefore **DENY** same.

1 13. Defendants **ADMIT** that after Mr. Balko's death, Mr. Parks asked to see Mr. Balko's  
2 2005 will. Defendants permitted Mr. Parks to view Mr. Balko's 2005 Will and the "draft" wills of  
3 Mr. Balko. All remaining allegations in paragraph 13 of the Complaint are **DENIED**.

4 14. Defendants **ADMIT** that after Mr. Balko's death, Ms. Fink told Mr. Parks that Mr.  
5 Balko was given copies of blank and "draft" wills for future reference and/or use, that Mr. Balko  
6 might have signed a will of some sort without Ms. Fink's knowledge, and that Mr. Parks  
7 accompanied Ms. Fink while she inventoried Mr. Balko's safe deposit boxes. All remaining  
8 allegations in paragraph 14 of the Complaint are **DENIED**.

9 15. Defendants **ADMIT** that after Mr. Balko's death, Ms. Fink asked attorney William  
10 Dussault if she should allow Mr. Parks to accompany her inventory of Mr. Balko's safe deposit  
11 boxes; whether he knew if Mr. Balko had revoked his 2005 will; to draft a memo relative to the 2006  
12 "draft" will; and to assist Mr. Parks with any questions he had relative to same. All remaining  
13 allegations in paragraph 15 of the Complaint are **DENIED**.

14 16. Defendants lack knowledge of the truth or falsity of the statements contained in  
15 paragraph 16 of the Complaint and therefore **DENY** same.

16 17. Paragraph 17 of the Complaint herein calls for a legal conclusion. Defendants **DENY**  
17 all allegations therein.

#### 18 **IV. CAUSE OF ACTION - LEGAL MALPRACTICE**

19 18. Paragraph 18 of the Complaint calls for a legal conclusion. Defendants **DENY** all  
20 allegations therein.

21 19. Paragraph 19 of the Complaint calls for a legal conclusion. Defendants **DENY** all  
22 allegations therein.

23 20. Paragraph 20 of the Complaint calls for a legal conclusion. Defendants **DENY** all  
24 allegations therein.

#### 25 **V. AFFIRMATIVE DEFENSES**

26 21. Failure to State a Claim Upon Which Relief Can be Granted. Plaintiff has failed to  
27 state a claim upon which relief can be granted.

28 22. Lack of Standing. Plaintiff lacks standing to bring the claims stated in the Complaint.

29 23. Lack of Duty: Defendants owe no duty to Plaintiff.

30 24. Breach of Duty: Defendants aver that if there was any duty owed to plaintiff (which is  
31 expressly denied), there was no breach of that duty.



## XII. THE TORT OF OUTRAGE

1  
2 35. On several occasions, motivated solely by greed, plaintiff Parks has threatened the  
3 life of Ms. Fink, including by a letter he delivered to her on or about September 16, 2008, wherein  
4 he states as follows:

5 "To: jayne [sic] fink (fat, ugly, stinkin [sic] cunt, whore, bitch) [sic]

6 You are the biggest liar, most despicable [sic] excuse for a human being, ever to set foot  
7 on god's green earth. I condemn you to a living hell while on earth, and eternal damnation in  
8 hell a.d. You and I both know the truth, about what happened the final week before Johnny  
9 died and the few weeks following his death - how do you live with yourself knowing what  
10 you do? Your legal skills consist of total abuse and exploitation of your clients. You  
11 manipulate the law for your own financial benefit. You must use the paper the "Washington  
12 State Court Rules: Rules of Professional Conduct" is written on, for toilet paper; because,  
13 you sure as hell don't abide by them. You and your ethics are the shit on that toilet paper,  
14 and should be flushed into a cesspool where you belong. You literally robbed and stole from  
15 a charity who's [sic] mission is to help find and prevent [sic] missing children. You screwed  
16 over Johnny Balko, insulted his generous and innocent spirit, and made a complete mockery  
17 of his final wishes, plans, and dreams - you phony scum - you never cared about him, only  
18 about stealing what you could from him, and from his mother - may god's great anger and  
19 fierce vengeance strike you down to your death -

20 **FUCK YOU, AND THE WHORE BITCH WHO BROUGHT YOU INTO THIS**  
21 **WORLD!**

22 Terry Parks"

23 36. Mr. Parks' death threats and insults, and this lawsuit, are motivated solely by his  
24 anger at being left out of the will of a man, John Balko, to whom he was distantly related.

25 37. Mr. Parks makes no allegations that the "draft" will on which he bases this lawsuit  
26 was negligently prepared. In fact, his lawsuit depends upon this court's conclusion that the "draft"  
27 will was entirely proper in form, but was not fully executed consistent with Washington's laws of  
28 descent and distribution.

38. Mr. Parks acts are unacceptable in civilized society and constitute outrageous  
conduct, actionable under the laws of the state of Washington.

39. Ms. Fink has suffered injury and loss as a result of Parks' outrageous conduct, for  
which she is entitled to recover damages from Parks in an amount to be proved at time of trial.

**XIII. FRIVOLOUS LITIGATION**

2 40. Plaintiff Parks' claims are not based in fact or supported by applicable law, and have  
3 been asserted in bad faith. His theories of liability are, moreover, not subject to reasonable debate  
4 and are, in fact, frivolous.

5 41. Defendants are entitled to recover as damages their actual legal costs, including  
6 reasonable attorneys fees, and all actual out of pocket costs incurred by them in responding to this  
7 frivolous complaint.

**X. RELIEF REQUESTED**

8 WHEREFORE, defendants pray for judgment against plaintiff as follows:

9 A. That plaintiff's Complaint be dismissed with prejudice;

10 B. For attorney fees and costs associated with defending this matter since Mr. Parks  
11 and/or his attorneys have actual knowledge that Ms. Fink met her standard of care in regards to Mr.  
12 Balko and/or Mr. Parks and, therefore, plaintiff's Complaint has been brought in bad faith and/or in  
13 violation of CR 11, and in violation of RCW 4.84.185;

14 C. For costs and disbursements herein, including reasonable attorneys' fees as prevailing  
15 party on plaintiff's claims for relief;

16 D. For damages to be proven at trial for the counterclaims set forth above, and for costs  
17 and disbursements herein including reasonable attorneys' fees attributable to said counterclaims; and

18 E. For such other relief as the court deems just and equitable.

19 DATED this 26th day of April, 2011.

20 SMYTH & MASON, PLLC

21 By /s/ Jeff Smyth  
22 Jeff Smyth, WSBA #6291  
23 Attorneys for Defendants  
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1 **RECEIVED**

2 APR 19 2011

3 BROUGHTON LAW GROUP  
4 ATTORNEYS AT LAW

HONORABLE BRUCE E. HELLER

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6  
7 SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

8 TERRY PARKS,

9 Plaintiff,

10 v.

11 JANYCE LYNN FINK, an individual, and  
12 FINK LAW GROUP PLLC, a Washington  
13 professional limited liability company,

14 Defendants.

NO. 10-2-04520-1 (SEA)

SECOND DECLARATION OF  
JANYCE LYNN FINK IN SUPPORT  
DEFENDANTS' MOTION FOR  
LEAVE TO AMEND ANSWER AND  
ASSERT COUNTERCLAIMS

15  
16 JANYCE LYNN FINK, under penalty of perjury under the laws of the State of Washington  
17 states and declares as follows:

18 1. I am a defendant in this matter and the member/manger of Fink Law Group PLLC.  
19 I am over the age of eighteen, am competent to testify herein, and I do so from my personal  
20 knowledge.

21 2. I have lived with the fear of Mr. Parks harming me for years. When he first began  
22 threatening me by sending mail to my home, emails to my work address, posting threats on his  
23 website and on Avvo.com, I purchased a hand gun, professional grade mace spray, and activated  
24 the alarm system that was built into my home. Prior to his vicious behavior I had never  
25 contemplated being harmed in my home even though I have lived alone since April 2007. In  
26 response to Mr. Parks' threats, I contacted Mark Larsen, King County Prosecuting attorney, who  
27 introduced me to Captain Brown (the Seattle Police Chief for the West Precinct), who in turn sent  
28 the police over to my house to inspect the premises for access.

1 I then spent hours training with a personal protection specialist who taught me how to use  
2 the infra red beam on my gun so that I could defend myself in the dark, dressing for bed in tight,  
3 black garments so that I could hide in my bedroom without being readily visible to Mr. Parks, and  
4 how to most effectively use my mace spray when he entered my bedroom.

5 Within days of his threats I phoned "911" late in the night because I believed Mr. Parks was  
6 in my home. Within minutes three or four police cars surrounded my home while the 911 operator  
7 talked to me while I was hiding in my bedroom closet. The police entered my home after  
8 deactivating my alarm, searched through my entire home, then eventually came to my locked  
9 bedroom door and allowed me to come out. I was crying and shaking horribly. My neighbors came  
10 to my house to calm me down. They stayed with me until I was able to return to my bedroom and  
11 the police had left.

12  
13 Mr. Parks' threats continue to this day both in his web postings and my thoughts. Every  
14 night I am reminded that Mr. Parks wants me to die. Each night I lock myself in my bedroom, have  
15 my weapon near me and activate my alarm system. Mr. Parks' threats of harm have completely  
16 changed my life, my relationships, and my general sense of well being to the extent I am distracted  
17 and fearful.

18 3. I have received numerous threats and horrible communications from Terry Parks.  
19 Because Mr. Parks' counsel suggests there was only one such threat, I feel it is important to notify  
20 the court that the September 16, 2008 letter is just one of many examples.

21 4. Attached hereto as **Exhibit A** is a true and correct copy of pertinent pages of a  
22 printout from a website of a charity Terry Parks claims Mr. Balko intended to benefit.

23 5. Attached hereto as **Exhibit B** is a true and correct copy of an email I received from  
24 Avvo Customer Care dated September 26, 2008.

25 6. Attached hereto as **Exhibit C** is a true and correct copy of an email I received from  
26 Terry Parks dated September 26, 2008.

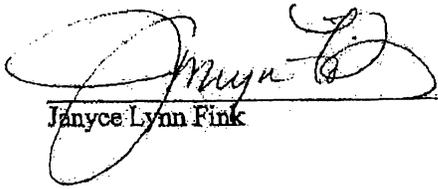
27 7. Attached hereto as **Exhibit D** is a true and correct copy of an email I received from  
28 Terry Parks dated September 27, 2008.

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8. Terry Parks suggestion that defendants charged Ms. Balko's estate over \$600,000 in attorneys fees is simply false.

9. Attached hereto as Exhibit E is a true and correct copy of Plaintiffs' First Set of Interrogatories and Requests for Production and Answers Thereto (without attachments).

DATED at Seattle, Washington, this 19<sup>th</sup> day of April, 2011.

  
\_\_\_\_\_  
Janyce Lynn Fink

HONORABLE BRUCE E. HELLER

Summary Judgment Hearing Date: July 1, 2011  
Time of Hearing: 11:00 a.m.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

TERRY PARKS,

Plaintiff,

vs.

JANYCE LYNN FINK, an individual, and  
FINK LAW GROUP PLLC, a Washington  
professional limited liability company,

Defendants.

Case No.: 10-2-04520-1 SEA

**DECLARATION OF JANYCE  
LYNN FINK IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT**

JANYCE LYNN FINK, under penalty of perjury under the laws of the State of Washington states and declares as follows:

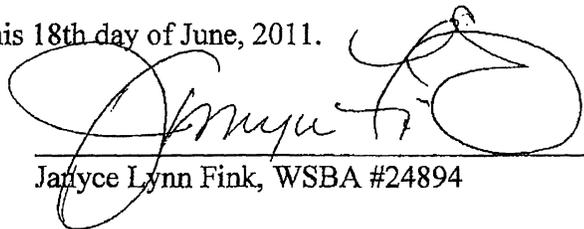
I am a defendant in this matter and the member/manager of Fink Law Group PLLC. I am over the age of eighteen, am competent to testify herein, and I do so from my personal knowledge.

1. I do not take Mr. Parks' threats lightly. He has repeatedly threatened me and others. For example, in September of 2008, Mr. Parks sent a long email to Judge Trickey, who ruled against Mr. Parks' attempt to contest the John J. Balko, Jr. probate of the November 2005 Will. I received a copy of Mr. Parks' email from the attorney for the Estate, Sheila Ridgway. A true and correct copy of her email to me dated September 26, 2008 with Mr. Parks' email is attached hereto as **Exhibit 1**. Mr. Parks' intent to hurt me is vividly clear in his email where he wrote:

1           “Hopefully, I will never see any of the lawyers or my relatives who were involved in  
2 this case; because, if I do, I’ve given warning that I have a self imposed restraining order: if any  
3 of them get within one hundred yards of me I will feel my life is being threatened and will kill  
4 them out of self-defense.”

5           2.       His threats continue to haunt me to this day. He has not removed his derogatory  
6 comments about me from a website for a charity he supports, which comments echo those in his  
7 earlier horrible threatening communications to me and to Judge Trickey. His deposition in this  
8 case was scheduled for May 19, 2011, at my attorney’s office. Mr. Parks did not show up for  
9 his deposition, but as I understand it, his attorney, Mr. Lam, confirmed with Mr. Smyth that Mr.  
10 Parks was in Washington. I was terrified when I learned that Mr. Parks had not arrived for his  
11 deposition. (I planned to ‘attend’ the deposition by telephone only because I do not want to be  
12 in the same room as Mr. Parks.) Mr. Parks knows where I live. I was worried and frightened  
13 that he was not at his deposition because he was instead looking for me. I locked myself in my  
14 house with my alarm on. I did not and do not feel safe because of Mr. Parks.  
15

16           DATED at Seattle, Washington, this 18th day of June, 2011.

17   
18  
19 Janyce Lynn Fink, WSBA #24894  
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**EXHIBIT 1**

A-12

**Linda Petorak**

---

**From:** Fink, Janyce [IMCEAEX-OU=JFINKLAW\_OU=FIRST+20ADMINISTRATIVE+20GROUP\_CN=RECIPIENTS\_CN=JANYCE@HMC1.COMCAST.NET]  
**Sent:** Friday, September 26, 2008 8:54 AM  
**To:** 'steve.brown@seattle.gov'  
**Subject:** FW: Customer Question  
**Attachments:** 9\_11\_08 letter to judge trickey for his decision.rtf  
**Importance:** High

Dear Captain:

This email was originally sent to the court by Parks. It was forwarded to Judge Trickey's bailiff, then the attorney for the PR for John J. Balko's estate (Sheila Ridgway). Ms. Ridgway forwarded it to me.

*Janyce L. Fink*

Fink Law Group PLLC  
Attorneys & Counselors

Dedicated to Common Sense Solutions in a Complicated World

---

Columbia Center  
701 - Fifth Avenue  
Suite 4780  
Seattle, Washington 98104

E-Mail: [janyce@flgpllc.com](mailto:janyce@flgpllc.com)  
Telephone : 206.282.0115

IMPORTANT: Emails to clients of FINK LAW GROUP PLLC presumptively and normally contain confidential and privileged material for the sole use of the intended recipient. Emails to non-clients are normally confidential and may be privileged under specific circumstances, civil and/or court rule(s). The use, distribution, transmittal or re-transmittal by an unintended recipient of any communication is prohibited without our express approval in writing or by email. Any use, distribution, transmittal or re-transmittal by persons who are not intended recipients of this email may be in violation of law and is strictly prohibited in any event. If you are not the intended recipient please contact the sender at (206) 282-0115 and delete all copies of this email. IRS rules require that certain standards be met when written tax advice is given by attorneys before a client might qualify for tax penalty protection. Any tax advice in this communication is not intended to be used, nor should you use it, for that purpose. If you wish to have an opinion that may assist you in obtaining penalty protection, please let us know. In such a case a special written engagement with our firm is required.

---

**From:** Sheila Ridgway [mailto:[sheila@RidgwayGafken.com](mailto:sheila@RidgwayGafken.com)]  
**Sent:** Tuesday, September 23, 2008 3:44 PM  
**To:** Kurt Bulmer; Fink, Janyce  
**Subject:** FW: Customer Question  
**Importance:** High

Hello,

I thought you should see what Terry Parks has sent to Judge Trickey.

**Sheila C. Ridgway**  
Sheila C. Ridgway  
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**From:** Byrne, Robert [mailto:Robert.Byrne@kingcounty.gov]  
**Sent:** Tuesday, September 23, 2008 1:23 PM  
**To:** Sheila Ridgway  
**Subject:** FW: Customer Question

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**From:** Byrne, Robert  
**Sent:** Tuesday, September 23, 2008 1:22 PM  
**To:** 'bill@bbroughtonlaw.com'; 'sheila@ridgwayafken.com'  
**Cc:** 'tparks@sbhsi.com'  
**Subject:** FW: Customer Question

Counsel: the attachment to this email was forwarded to our court by the clerk's office. Judge Trickey has reviewed the letter and asked that I forward it to you. I have printed a copy and will be placing it in the court file along with a copy of this email.

Bob Byrne  
Sailiff to Judge Michael Trickey

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**From:** Dowd, Bob  
**Sent:** Friday, September 12, 2008 8:56 AM  
**To:** Byrne, Robert  
**Cc:** CustomerServiceEmail, DJA  
**Subject:** FW: Customer Question

Hi Bob

We received the attached letter from a party in an action that I assume Judge Trickey presided over. I am not sure if this is appropriate for me to send to the Judge or not so I thought I would forward it to you and let you decide.

Have a great weekend.

***Bob Dowd***  
Information & Records Services Manager  
Department of Judicial Administration

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**From:** Terry Parks [mailto:tparks@sbhsi.com]  
**Sent:** Thursday, September 11, 2008 7:43 PM  
**To:** CustomerServiceEmail, DJA  
**Subject:** Customer Question



Judge Michael Trickey  
516 3rd Ave., Rm. 203  
Seattle,  
WA 98104

Re: Case # 07-4-044229  
SEA

Dear Judge Trickey:

First I'd like to thank you  
for your expertise, time, and  
wisdom in rendering a fair  
and equitable judgement for  
the John Joseph Balko, Jr.

probate estate case.

Unfortunately, the decision has pretty much ruined my life and my families life; hopefully, they will be able to get some aspect of their lives back without me.

Obviously, truth and justice had no bearing on this case.

From the very beginning I was lied to by my cousin's estate lawyer, attorney j. fink, she strung me along and used me like a yo yo.

Which she also did to

Johnny Balko. She manipulated the law to her own advantage. Then, when I finally realized she could not be trusted, I hired my own attorney to advise me what to do. I now realize he also lied to me, withheld information from me, and strung me along; while, manipulating the law to his financial advantage. And this is not just my perception of things, a great number of other people who

no truth or justice, I now realize I just need to look out for myself and forget about anyone else. My constant thoughts now revolve around furious anger and vengeance. I know if I seek psychiatric help I would be institutionalized for what I want to do to my relatives in Washington and to the lawyers who created the insanity, regarding this case. What the lawyers, involving five law firms now dealing

two months I was away from my own family, and away from helping my wife with our one year old grandson, who we care for on a daily basis. When I realized lawyer j. fink was lying and manipulating me, and others (she used power of attorney papers, after Johnny's death, to gain access to safety deposit boxes), I hired a lawyer to advise me and represent my rights (w. broughton). My attorney gave me a

and notarized - could you have changed the name Betty Rich as it was written on the 05 Will?).

There's other things that make it obvious to me, and others, that all these lawyers played me like a yo yo, used me, abused me, exploited me, lied to me, made me a complete fool. I feel completely drained and have no feelings for compassion or doing the right thing

anymore. These attorney's made me realize the legal profession is completely dishonest and crooked and they manipulate the law to benefit themselves and screw their clients. The "Washington State Court Rules: Rules of Professional Conduct" may as well be used for toilet paper, because they certainly aren't followed by any lawyer I've come in contact with - I have no

respect for the law or the legal profession anymore! I have no intent to carry on with a civil case against lawyer j. fink, it would just mean more years of abuse, lies, deceit, and taking more of what little financial resources I have left. As far as the grievance I filed against lawyer j. fink with the WA State Bar Association, I have no interest in pursuing that any farther, again because I don't believe they

would be any more honest than the rest of the thieving, crooked lawyers in WA, and it would just be a waste of my time (if this probate is an example of WA justice you deserve j. fink)

Sincerely;

Terry Parks

2009 MISSING PERSON BINDER DISTRIBUTION TRIP  
BEING PLANNED FOR MID-MAY TO MID-JUNE

The Terry Parks family is again going to donate the needed money to support the mission of the FOCUS/"3-CHILDREN" Organization. The donated funds will be used to conduct a missing person flyer posting and distribution trip between Santa Cruz, Calif. to Seattle, WA. Over 3,000 miles will be driven and over 200 Post Offices will be stopped at and the charities Missing Person Binder will be left for display. This is the 16th year this MAC SHACK PROGRAM (Mobile Awareness Center), will be done by the charity. Stops will also be made at National Park Visitor Centers (Olympic National Park), National Forest Visitor Centers (Leavenworth, WA National Forest Visitor Center receives over 300,000 visitors each year), Federal Fish Hatcheries (Leavenworth, WA Federal Fish Hatchery Visitor Center receives over 250,000 visitors annually), and Federal Custom Houses. We plan on posting and distributing over 30,000 flyers of missing persons on this month long trip, featuring 200 missing children.

LATEST UP-DATE ON THE CONTINUING  
COURT PROCEEDINGS INVOLVED  
WITH THE JOHN JOSEPH BALKO JR.  
PROBATE COURT CASE

When I realized the attorney I hired to help me with legal counsel concerning my cousin Johnny Balko's Probate Case was lying, withholding information, failing to provide correct legal counsel, manipulating the interpretation of the law for his own financial benefit, abusing and exploiting me, plus the judge in the case didn't allow a court date, rather made a "Summary Judgement" ruling against my side of the case, without consideration of any of the evidence I had or without any testimony from the dozens of witnesses I have, I became angry and vented my rage and frustration of being swindled and defrauded of the money and property my cousin Johnny Balko intended for me to administer (a great deal of which was intended to benefit the F.O.C.U.S./"3-CHILDREN" Organization charitable Programs), by writing a letter containing my opinion of the main estate lawyer. A lot of derogatory expletives were used and because my cousin's estate lawyer obviously had no intent to try and carry out his final wishes and intent, I warned her that she didn't know what people dressed in costume, wearing a mask, intent is and she should be careful. This lawyer, or the lawyer hired by this lawyer, apparently turned the letter I wrote over to the judge and he ruled "Harassment Charges" against me and put out a warrant for my arrest and \$15,000.00 bail. How I found out about all this is even more bazaar. I was on a 15 day missing children flyer posting and distribution trip in Marin, Sonoma, and Lake Counties in California, and two police officers from the town I live (San Bruno) came to my house. They told my wife there was no warrant out for my arrest; but, if I wrote anything else to the lawyer there would be a warrant for my arrest issued. She contacted me and told me what had happened. The San Bruno Police have never talked to me about this, and I don't believe they had the right to confront my wife with this information. I don't even discuss the probate court situation with my wife because her

## SECTION II - EXCLUSIONS

### Applying To Coverage E - Personal Liability

We do not cover:

1. Liability of an **insured** assumed under any contract or agreement relating to a **business** of an **insured**. Liability of **persons** other than an **insured** assumed under any contract or agreement, whether **business** or non-business, is not covered. Liability of any agreement between an **insured** and a corporation or association of property owners is not covered except as provided under Loss Assessment Coverage.
2. Punitive or **exemplary damages** or the cost of defense related to such damages.
3. **Property damage** to property owned by an **insured** or any other resident of your household.
4. **Property damage** to non-owned property in the care, custody or control of an **insured**. We *do* cover such damage caused by Fire, Smoke or Explosion.
5. **Bodily injury** to any **person** if an **insured** has or is required to have a policy providing workers' compensation, occupational disease or non-occupational disability benefits covering the **bodily injury**.
6. **Bodily injury** to any resident of the **residence premises** except a **residence employee** who is not covered under Workers' Compensation or Employers' Liability Coverage.
7. **Bodily injury** or **property damage** when an **insured** is covered under any nuclear energy liability policy. This exclusion applies even if the limits of that policy have been exhausted.
8. Personal injury caused by a violation of penal law or ordinance committed by or with the knowledge or consent of any **insured**.
9. Personal injury sustained by any **person** as a result of an offense directly or indirectly related to the employment of this **person** by the **insured**.
10. Personal injury arising from or during the course of civic or public activities performed for pay by an **insured**.
11. Personal injury to any resident of the **residence premises**.
12. Any loss, cost, or expense resulting from the clean-up, detoxification, or treatment of any site used by you or any **person** acting on your behalf for the disposal, storage, handling, processing or treatment of waste.

### Applying To Coverage F - Medical Payments To Others

We do not cover **bodily injury**:

1. To you or any resident of your **residence premises** except a **residence employee**.
2. To a **residence employee** who is off the **insured location** and not in the course of employment by an **insured**.
3. To any person eligible to receive benefits provided or mandated under any workers' compensation, occupational disease or non-occupational disability law.
4. Resulting from any **nuclear hazard**.

### Applying To Coverage E and F - Personal Liability and Medical Payments To Others

We do not cover **bodily injury**, **property damage** or personal injury which:

1. arises from or during the course of **business** pursuits of an **insured**.

But we do cover:

- a. that part of a residence of yours which is rented or available for rent:
    - (1) on an occasional basis for sole use as a residence.
    - (2) to no more than two roomers or boarders for sole use as a residence.
    - (3) as an office, studio or private garage.
  - b. part-time services performed directly by an **insured** under age 21 who is a resident of your household. "Part-time" means no more than 20 hours per week.
2. results from the rendering or failure to render **business** or professional services.
  3. is either:
    - a. caused intentionally by or at the direction of an **insured**; or