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No. 91154-1

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SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON COUNTIES RISK POOL, AIG CLAIMS, INC.;
LEXINGTON INSURANCE COMPANY; VYRLE HILL; J. WILLIAM
ASHBAUGH; and ACE AMERICAN INSURANCE COMPANY,

Respondents,

v.

CLARK COUNTY, a municipal corporation;
DONALD SLAGLE, an individual, LARRY DAVIS, an individual,
and ALAN NORTHROP, an individual,

Petitioners.

RESPONDENT LEXINGTON INSURANCE COMPANY'S RESPONSE
TO BOTH DAVIS/NORTHROP AND CLARK COUNTY/SLAGLE'S
MOTIONS FOR DISCRETIONARY REVIEW

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ORIGINAL

I. INTRODUCTION AND IDENTITY OF RESPONDING PARTY

Respondent-Plaintiff Lexington Insurance Company (“Lexington”)¹ provides this Response to Petitioners Larry Davis and Alan Northrop and Clark County and Donald Slagle’s (collectively, “Petitioners”) Motions for Discretionary Review (collectively, “Motions”).

Petitioners’ Motions before this Court stem from the superior court’s grant of certification for discretionary review on December 12, 2014.² Although the superior court’s rulings were not probable or obvious error, at this stage in the litigation, Lexington does not oppose discretionary review.³ However, Lexington asks this Court to include in the scope of discretionary review all of the issues subsumed in the superior court’s certification order.

II. DECISION BELOW

This case has proceeded to the summary judgment stage in the superior court, with summary judgment motions still pending.⁴ In

¹ Captioned entity AIG Claims, Inc. is not a proper party to this lawsuit. Contrary to Petitioner-Defendants’ claims, AIG Claims issues neither insurance nor reinsurance policies.

² See Appendix to Lexington’s Answer to both Davis/Northrop and Clark County/Slagle’s Statement of Ground for Direct Review (“Lexington’s Answer”), at 27.

³ Lexington, however, does oppose direct review. Lexington describes in its Answer why Petitioners have failed to demonstrate grounds warranting direct review in this Court, and why this Court should transfer review to the Court of Appeals.

⁴ Pending before the superior court is Lexington’s motion for partial summary judgment seeking judgment of Petitioners’ contractual claims “because the occurrence on which Davis and Northrop’s claims are based took place before any of the Lexington policies incepted.”

resolving three summary judgment motions, the superior court made a ruling that Washington contract law governed the case.⁵ Upon motion by Petitioners, the superior court certified one of the issues for review as “[w]hether Washington’s common law on insurance applies to the issues decided by the Court as set forth in her orders as of December 12, 2014.”⁶ Subsumed in the superior court’s certification order were two other issues: (1) was Clark County’s attempted assignment of its rights invalid; and (2) was there an “occurrence” under the Washington County Risk Pool’s (“WCRP”) contract, to which Lexington’s policy follows form?⁷ It is these rulings that form the bases of Petitioners’ Motions.

III. ISSUES PRESENTED FOR REVIEW

The following issues are presented for review: (1) whether Washington contract law applies to the liability contracts between WCRP and Clark County; (2) whether Clark County’s attempted assignment of its rights in the underlying lawsuit was invalid; and (3) whether Davis and Northrop’s allegations and subsequent settlement in the underlying lawsuit qualify as an “occurrence” during the effective dates of the WCRP contract, to which

⁵ See Appendix to Lexington’s Answer, at 15-17, 21-22.

⁶ Appendix to Lexington’s Answer, at 28.

⁷ See Appendix to Lexington’s Answer, at 9, 23. Also contrary to Petitioners’ briefing, Lexington and WCRP are not similarly situated in this litigation. Unlike WCRP, Lexington issued an excess coverage policy. Despite how Lexington and WCRP are differently situated in the litigation, resolution of the occurrence issue is essential to both WCRP’s potential defense obligation and Lexington’s potential indemnity obligation.

Lexington's policy follows form?

IV. ARGUMENT

Under the case's procedural posture, Lexington does not oppose discretionary review of all the issues. As described in greater detail in Lexington's Answer, direct review is not warranted in this case, and this Court should transfer discretionary review to the Court of Appeals for consideration.

But review of less than *all* issues will lead to multiple interlocutory appeals and judicial inefficiency. For example, omitting issue three, the occurrence issue, from review would lead to further appeals. The "occurrence" issue is an issue that resolves liability on the contractual claims (claims based on Lexington's follow-form policies and WCRP's contracts) in the case for multiple parties, if it determined there was no occurrence during the policy period. It is a purely legal issue that involves common issue of law and facts to the other issues before this Court on discretionary review. If discretionary review did not include a binding appellate court decision on this issue, the parties would undoubtedly seek interlocutory review of the superior court's subsequent rulings on the issue. This is so, even if the appellate court resolved the other issues. Thus, to promote judicial economy and avoid further interlocutory appeals, the Court should grant discretionary review to include all the above issues and

transfer the case to the Court of Appeals. Doing so will present the Court of Appeals with all of the interdependent contractual issues in one appeal, enabling it to resolve all of the issues in one opinion, and potentially leave only the parties' pending non-contractual claims to litigate.

V. CONCLUSION

For the forgoing reasons, Lexington respectfully requests that this Court transfer discretionary review to the Court of Appeals, and include in the scope of the discretionary review the above listed issues.

DATED this 26th day of January, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th, day of January, 2015, I caused to be emailed and mailed via first-class mail, postage prepaid, a true and correct copy of the foregoing document on the following:

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RESPONDENT LEXINGTON INSURANCE COMPANY'S RESPONSE TO BOTH DAVIS/NORTHROP AND CLARK COUNTY/SLAGLE'S MOTIONS FOR DISCRETIONARY REVIEW - 6

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Dated this 26th day of January, 2015, at Seattle, Washington.



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Subject: Washington Counties Risk Pool, et al. v. Clark County, et al. (No. 91154-1) - Respondent Lexington's Response to Motions for Discretionary Review and Answer to Statement of Grounds

Dear Clerk:

Please find the attached for filing:

1. Respondent Lexington Insurance Company's Response to Both Davis/Northrop and Clark County/Slagle's Motions for Discretionary Review;
2. Respondent Lexington Insurance Company's Answer to Both Davis/Northrop and Clark County/Slagle's Statements of Grounds for Direct Review; and
 - A. Appendix to Respondent Lexington Insurance Company's Answer to Both Davis/Northrop and Clark County/Slagle's Statements of Grounds for Direct Review.

Case Name: Washington Counties Risk Pool, et al. v. Clark County, et al.

Case Cause Number: 91154-1

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As stated in the Certificate of Service, hard copies of these documents will be placed in the U.S. Mail to all parties identified on the Certificate of Service. If you have any questions, please contact us.
Thank you,
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