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No. 72116-0-I

COURT OF APPEALS, DIVISION I,  
OF THE STATE OF WASHINGTON

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POST-CONFIRMATION COMMITTEE OF IN RE PIERCE COUNTY  
HOUSING AUTHORITY,

Appellant,

vs.

PIERCE COUNTY,  
A political subdivision of the State of Washington,

Respondent.

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**APPELLANT'S REPLY BRIEF**

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Darrell L. Cochran, WSBA No. 22851  
Loren A. Cochran, WSBA No. 32773  
Christopher E. Love, WSBA No. 42832  
Counsel for Appellant

PFAU COCHRAN VERTETIS  
AMALA, PLLC  
911 Pacific Avenue, Suite 200  
Tacoma, Washington 98402  
(253) 777-0799

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## I. REPLY ARGUMENT

Respondent Pierce County engages in a rhetorical tautology by repeating the incorrect contention that the Appellant Committee seeks a defense and indemnification of the Pierce County Housing Authority (“PCHA”) as a separate corporate entity. That is *not* what the Committee argued at the trial court’s summary judgment stage nor in its opening brief. Instead, Appellant’s action was one seeking indemnification from Pierce County’s self-insurance fund for liability incurred *by a board of commissioners providing volunteer services for the county*.

Further, the Pierce County Code’s language, the Code creators’ intent, and extrinsic evidence from Pierce County’s past practices and procedures plainly show that the County intended to provide self-insurance coverage to PCHA volunteer commissioners, because those commissioners provided a direct benefit to the county by serving on the Board.

Finally, two Pierce County Risk Managers provided diametrically opposed opinions specifically for this case as to whether coverage existed for individual board members. Appellant provided the sworn opinion of Pierce County’s Risk Manager for more than three decades, Michael Panagiotu, who was in charge at the time of the relevant facts of this case, and who testified that the County’s self-insurance fund was designed and maintained to provide coverage in cases just like the one at bar. The other opinion comes from Panagiotu’s former employee Mark Maenhout who now works as Pierce County’s current risk manager. Respectfully, the

trial court's order improperly ignored the two competing conclusions and deprived the Appellant of proper consideration under the Uniform Declaratory Judgments Act and, specifically, RCW 7.24.090. Therefore, the trial court's order should be reversed.

**A. The Committee's Claims Were Brought Against the PCHA Board Members**

As explained in Appellant's opening brief, the Committee's claims, which the bankruptcy court recognized as good and valuable based upon the sworn testimony of Michael Panagiotu, were brought against the board members acting in their official capacity for the benefit of Pierce County, acting as PCHA.

Respondent Pierce County asserts that PCHA's status under Washington law as an entity independent from Pierce County—as well as the PCHA Board members' status as uncompensated non-employees of Pierce County—is the basis for contesting coverage for their negligent acts under Pierce County's self-insurance fund. However, the Pierce County Code (PCC) provisions controlling the coverage issue extend coverage to far more individuals than Pierce County's paid employees. The Code clearly and unambiguously provides coverage to volunteers like PCHA Board members whose services Pierce County accepts, such as individuals who agree to help Pierce County fulfill its statutory obligations stemming from the County's creation of a housing authority by accepting an uncompensated appointment from the Pierce County Executive to serve on the Board.

Members of the PCHA Board who were appointed by the Pierce County Executive and confirmed by the County Council, despite operating independently from Pierce County itself, agree to provide a service for Pierce County by accepting an appointment to the Board, thus fulfilling Pierce County's legal obligations to create a housing authority under RCW 35.82.040. And even though Board members received no compensation from Pierce County, coverage of such non-compensated individuals is directly addressed by the Code's repeated usage of the term "volunteer." PCHA volunteer board members were providing a service to Pierce County, and thus they are entitled to coverage under the County's self-insurance fund.

**B. The Code's Legislative History Supports Appellant's Position That PCHA Volunteer Board Members Are Covered Under Pierce County's Self-Insurance Fund**

The legislative history of the Pierce County Code supports that PCHA Board members we intended to be covered under the self-insurance fund. Michael Panagiotu, Director of Pierce County's Department of Risk Management and Insurance for nearly 32 years, served on the committee responsible for creating Pierce County's self-insurance fund, as currently codified in PCC 2.120 *et seq.*<sup>1</sup> According to Panagiotu, the self-insurance fund was created not only for Pierce County employees, but also for individuals providing services for Pierce County's benefit.<sup>2</sup>

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<sup>1</sup> CP at 385-386. In contrast, Pierce County's declarant, Mark Maenhout, did not participate in the self-insurance fund's creation. CP at 386.

<sup>2</sup> CP at 386.

It was particularly important that the self-insurance fund cover appointed, volunteer board members. In my experience as Director, such board members were concerned with potential exposure to legal liability inherent in agreeing to perform a service for Pierce County by accepting appointment to such boards, especially without the incentive of compensation. As a common sense matter, Pierce County would experience great difficulty in finding anyone to accept appointment to such boards without assurances that, in the event he/she were subject to a lawsuit while in his/her official capacity, Pierce County would defend against and indemnify for any such claims.<sup>3</sup>

Thus,

Pierce County established its self-insurance fund to establish coverage for claims against employees and individuals who agreed to perform a service for Pierce County by accepting an appointment by the Pierce County Executive, the Pierce County Council, and approved by the County Council, regardless of the individual's status as an employee under the direct control of Pierce County, a member of a board independent of Pierce County, and/or the individuals lack of compensation by Pierce County.<sup>4</sup>

Panagiotu testified that PCC 2.120.010(A) and PCC 2.120.030(B) address coverage of volunteers like PCHA Board members, and, based on his role in creating and developing the self-insurance fund, this interpretation comports with the underlying legislative intent.<sup>5</sup>

**C. The Committee Exhausted Administrative Remedies In Accordance with the Bankruptcy Court's Order**

The Bankruptcy Court's Third Amended Plan transferred to the

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<sup>3</sup> *Id.*

<sup>4</sup> CP at 386.

<sup>5</sup> CP at 387.

Committee all of **PCHA's insurance claims and causes of action** against Pierce County and its insurance policies and self-insurance fund for coverage of claims asserted by underlying plaintiffs against the PCHA, as well as any claims or causes of action that the Committee determines must be filed in order to trigger insurance that would give rise to an insurance claim.

PCHA's claims, which were assigned to the Committee, are for coverage regarding the underlying action. The nature of these claims was specifically outlined by the Bankruptcy Court in its Third Amended Plan and in the October 19, 2012 order Allowing Claims and Transferring Remaining Plan Assets to Committee.

On February 14, 2013, pursuant to the conditions established in the bankruptcy discharge and the stipulated dismissal of the underlying action, PCHA, through its counsel tendered the Committee's claims against it to Pierce County.<sup>6</sup>

Eleven (11) days later, on February 25, 2013, Pierce County rejected PCHA's tender of claims in a letter from Deputy Prosecuting Attorney Donna Masumoto on behalf of Mark Maenhout.<sup>7</sup> Then on September 30, 2013, 217 days after the County rejected PCHA's tender of claims, this suit was filed seeking to establish coverage.

**D. The Statute of Limitations Was Tolled Until Bankruptcy Closed in October 2012**

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<sup>6</sup> CP at 331, 356, 360.

<sup>7</sup> CP at 331.

Similarly, the three-year statute of limitations as asserted by Respondent County is not applicable to this case. Most significantly, pursuant to 11 U.S.C. § 362(a)(1), the Bankruptcy Court ordered a stay of all proceedings when PCHA filed its bankruptcy petition. Any and all causes of action were tolled from the moment of PCHA's Chapter 9 bankruptcy filing on October 13, 2008, until October 19, 2012, when the Bankruptcy Court entered an Order Granting Discharge to Debtor discharging PCHA from bankruptcy proceedings. Furthermore, the insurance and indemnity coverage action did not accrue until the County rejected PCHA's tender of coverage on February 25, 2013. The statute of limitations did not expire for either the coverage action or for any action for damages.

## II. CONCLUSION

According to the man integral in Respondent Pierce County's risk management process for more than three decades, self-insurance coverage for volunteer board members conferring a benefit to the county through service was a practical necessity. "Pierce County would experience great difficulty in finding anyone to accept appointment to such boards without assurances that, in the event he/she were subject to a lawsuit while in his/her official capacity, Pierce County would defend against and indemnify for any such claims."<sup>8</sup>

For this reason, and for the reasons asserted previously, the trial

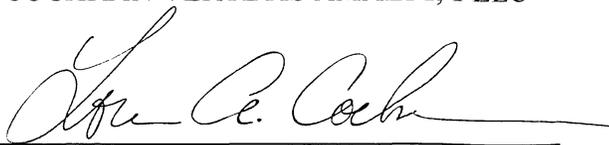
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<sup>8</sup> *Id.*

court's dismissal of the declaratory action without further consideration under RCW 7.24 *et seq.* was premature and should be reversed.

RESPECTFULLY SUBMITTED this 2nd day of March 2015.

PFAU COCHRAN VERTETIS AMALA, PLLC

By: 

Darrell L. Cochran, WSBA No. 22851  
Loren A. Cochran, WSBA No. 32773  
Christopher E. Love, WSBA No. 42832  
PFAU COCHRAN VERTETIS AMALA, PLLC  
911 Pacific Avenue, Suite 200  
Tacoma, Washington 98402  
(253) 777-0799

**CERTIFICATE OF SERVICE**

Kim Snyder, being first duly sworn upon oath, deposes and says:

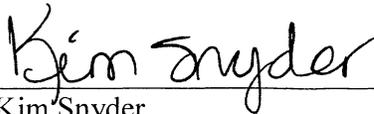
I am a citizen of the United States of America and of the State of Washington, over the age of twenty-one years, not a party to the above-entitled matter and competent to be a witness therein.

That on March 2, 2015, sent via ABC Legal Messengers, a true and correct copy of the above document, directed to:

Donna Masumoto  
Pierce County Prosecutor  
955 Tacoma Ave. South, Ste. 301  
Tacoma, WA 98402-2160

Attorney for: Pierce County

DATED this 2nd day of March 2015.

  
\_\_\_\_\_  
Kim Snyder  
PCVA Legal Assistant

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