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SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON COUNTIES RISK POOL, AMERICAN
INTERNATIONAL GROUP, 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.

CLARK COUNTY / SLAGLE'S
MOTION FOR DISCRETIONARY REVIEW

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ORIGINAL

1. Introduction.

Clark County (County) and former Deputy Sheriff Donald Slagle (Slagle) seek relief from this Court on the basis that the trial court erred in applying Washington appellate courts' well-established body of insurance principles to the liability insurance policies issued by the Washington Counties Risk Pool (WCRP) and Lexington Insurance Company (Lexington).

Discretionary review is appropriate in this case, in part, because the trial court's decision undermines liability insurance policies held by municipalities across the State of Washington, casting doubt upon whether employees of these municipalities are entitled to the same basic protections afforded to insured individuals working for private companies. As has long been recognized by this Court, liability insurance and its attendant rights represent a significant public interest. In support of this public interest, this Court has established prolific and long-standing principles applicable to liability insurance policies. These principles include the repeated affirmation of: (1) an insurer's duty to defend; and (2) the ability of an insured to protect itself when it is abandoned by its insurer by executing a covenant judgment and assignment of rights. In articulating this body of law, this Court has repeatedly applied the same

insurance principles to insurance policies issued by commercial insurers and risk pools alike.

The trial court in this case ignored and/or disregarded this prolific body of law and held that this Court's well-considered insurance principles do not apply to insurance policies purchased through risk pools organized under RCW 48.62, *et. seq.*, and to policies purchased directly from commercial insurance companies, including American General Insurance, Inc., and AIG, owned Lexington Insurance Company. The question as to whether municipalities and their employees have the same rights under an insurance policy purchased through a risk pool, as any other insured in Washington, is a question of great public importance that impacts municipalities, cities, towns, counties, public utility districts, school districts and their employees who currently obtain third-party liability insurance coverage through risk pools in this state. Direct review of this significant issue is required, both to vindicate this Court's prior rulings in this area and to provide guidance to the hundreds of entities and their tens of thousands of employees who currently have insurance coverage through risk pools.

2. Identity of Moving Parties.

Petitioners Clark County and Donald ask this Court for the relief designated in Part 3.

3. Statement of Relief Sought.

Clark County/Slagle request that this Court grant discretionary review pursuant to RAP 2.3(b) of the trial court's November 13, 2014, November 26, 2014 and December 12, 2014 orders.

The trial court concluded that liability policies issued by the Washington Counties Risk Pool ("WCRP") and its excess carrier, Lexington Insurance Company ("Lexington"), were not to be interpreted in accordance with Washington's common law insurance principles and upheld WCRP/Lexington's denial of a duty to defend Clark County ("County") and Sheriff Detective Donald Slagle ("Slagle"), and voided the County/Slagle assignment of their contractual and extra-contractual claims to Davis/Northrop made pursuant to a covenant judgment settlement.

4. Argument and Authority of Petitioners Davis/Northrop.

Clark County and Donald Slagle join the argument, authority and relief requested by petitioners Larry Davis and Alan Northrop to the extent they are consistent with the positions taken herein.

5. Facts Relevant to Motion.

This case arises out of WCRP and Lexington's refusal to honor their legal and contractual obligations to their insureds, Clark County and Slagle. Clark County purchased third-party liability insurance coverage through WCRP that provided Clark County and its employees (including

Slagle) with consecutive annual primary and excess insurance policies. Each year, from July 10, 2002 through October 1, 2010, the WCRP liability insurance program provided the County/Slagle with \$25,000,000 in annual coverage comprised of the following:

- \$500,000 deductible to be paid by the County;
- \$9,500,000 in coverage under a primary policy ostensibly issued by WCRP, but 100% reinsured by private insurance companies, including ACE, AIG, and AIG-owned Lexington;
- \$15,000,000 in excess/umbrella coverage under policies issued directly by private insurance companies like Lexington.

The annual primary policies issued by WCRP are typical “occurrence” based insurance policies with traditional insurance terminology. They contain a “declarations” page, refer to the County/Slagle as “named insureds,” describe the “insuring agreement” with its “policy period,” “limits,” “coverages,” and “deductibles,” all well-known terms in the insurance setting. The contracts contain a standard insurance policy definition of the term “occurrence” and contain a contractual “duty to defend.” Moreover, each of the annual policies provides a provision that specifically states that they are to be “governed by and construed in accordance with the laws of the state of Washington.”

In 2012, Davis and Northrop brought a lawsuit against Clark County and Slagle alleging claims for both negligence and civil rights violations arising out of their seventeen year incarceration and imprisonment. The County/Slagle tendered the case to WCRP/Lexington for a defense.

The Davis/Northrop complaint that was tendered to WCRP/Lexington alleged discrete and continuing events that occurred during relevant WCRP policy periods from 2002 to 2010. Despite the fact that the complaint contained allegations of misconduct during its policy periods, WCRP repeatedly refused to defend the County/Slagle on the grounds that the complaint did not assert any allegations of an "occurrence"¹ during any policy period. Lexington similarly denied any coverage obligation.

Together WCRP/Lexington abandoned County/Slagle and left them to fend for themselves in the defense of Davis/Northrop action. All told, the County/Slagle incurred nearly \$700,000 in fees, costs and expenses defending the case. Despite repeated invitations, WCRP/Lexington refused to participate in mediation of this case and rejected all settlement offers made by Davis/Northrop. Following the refusal of

¹ The WCRP policies defined an occurrence as an accident including a continuous or repeated exposure that resulted in bodily injury, property damage, or errors or omissions.

WCRP/Lexington to participate in settlement discussions or provide County/Slagle any defense, the case proceeded to trial.

Ten days into trial and the day after Slagle testified in his own defense, the County/Slagle, in consultation with their independently retained counsel, concluded that a settlement was necessary to protect their interests and avoid a potentially catastrophic judgment against them. Counsel for the County/Slagle gave notice in open court and on the record that they intended to settle the case. Written notice of this intent to settle was also give to WCRP.

Following this agreement in open court, Davis/Northrop and the County/Slagle entered into a covenant judgment settlement whereby the County/Slagle agreed to a stipulated judgment and assignment of their contractual and extra-contractual claims against WCRP/Lexington and other insurers.

On November 4, 2013, immediately following this settlement, WCRP/Lexington filed the present action against County/Slagle and Davis/Northrop for declaratory relief in the Cowlitz County Superior Court, seeking to invalidate the assignment of claims for damages arising from the wrongful denial of coverage to Davis/Northrop.

On April 8, 2014, Davis/Northrop filed a motion for summary judgment on WCRP's breach of the duty to defend County/Slagle under

the primary policies issued between July 2002 and October 2010. The County/Slagle later joined in that motion. In so moving, Davis/Northrop and County/Slagle sought answers to the following legal questions:

- (1) Whether the claims at issue and the WCRP primary policies were governed by Washington law on insurance;
- (2) Whether there was an "occurrence" during the period of any one of the WCRP primary policies at issue; and
- (3) Whether the assignments of claims by the County/Slagle to Davis/Northrup were valid.

On September 15, 2014, WCRP filed a motion for declaratory judgment seeking a determination that the assignment of rights to Davis/Northrop was invalid. Davis/Northrop and County/Slagle filed a motion seeking partial summary judgment that the assignment was valid with respect to claims against WCRP/Lexington.

On November 13, 2014, the trial court ruled that because WCRP was not an "insurer" under the Washington Insurance Code, its policies were not traditional insurance subject to Washington common law on insurance. Accordingly, the trial court ruled that it would not look to or rely upon any Washington appellate authority regarding insurance law or applying insurance principles. *See* Court's Ruling Re: 10/10/2014 Hearing at pp. 7-8, 13. The court extended its ruling to the "follow form"

insurance policies issued by Lexington because these policies incorporated WCRP's underlying policy. *Id.* at 14. In summary, the trial court held that the WCRP/Lexington policies were not governed by Washington's common law interpreting insurance policies.

Following this significant threshold ruling, the trial court held that the assignment of rights by County/Slagle to Davis/Northrop was invalid because it was prohibited by WCRP's interlocal agreement and the terms of the WCRP/Lexington insurance policy.

On November 21, 2014, the trial court applied its prior ruling that Washington common law on insurance did not apply to WCRP policies to the duty to defend and held that WCRP did not owe the County/Slagle a duty to defend as a matter of law.

On December 12, 2014, the trial court certified the decisions referenced above pursuant to RAP 2.3(b)(4), and stayed further proceedings in the case for 90 days. Petitioners County/Slagle timely filed their notice of discretionary review, as did the petitioners Davis/Northrop.

6. Grounds for Relief and Argument Why Review Should be Granted.

The County/Slagle have explained why direct review is appropriate in this case pursuant to RAP 4.2(a) in their statement of grounds for direct

review. However, interlocutory review of the trial court's rulings is also appropriate under several prongs of RAP 2.3(b).

(1) RAP 2.3(b)(4).

RAP 2.3(b)(4) allows a trial court to certify an issue as a basis for discretionary review of an interlocutory order. The language of RAP 2.3(b)(4) was based on 28 U.S.C. § 1292(b), which provides an instructive source of authority to interpret the rule. 2A Karl B. Tegland, *Wash. Practice Rules Practice* at 197, 203. In particular, federal courts addressing 28 U.S.C. § 1292(b) have indicated that the principal focus of the rule is institutional efficiency. *Forsyth v. Kleindienst*, 599 F.2d 1203, 1208 (3rd Cir. 1979), *cert. denied*, 453 U.S. 928 (1981). Federal Courts have further held that this rule is intended to materially advance the disposition of a case by allowing early appellate review of a legal ruling whose resolution may provide a more efficient disposition of the case. *Ford Motor Credit Co. v. S.E. Barnhart & Sons, Inc.*, 664 F.2d 377, 380 (3rd Cir. 1981).

In this case, the trial court has correctly recognized the significance of the threshold issues decided to date and the value in obtaining early appellate review by this Court. The trial court's findings under RAP 2.3(b)(4) and its conclusion that early appellate review will materially advance the ultimate termination of this lawsuit deserves deference by this

Court. Unfortunately, the trial court wrongly decided the threshold issue of whether this Court's decisions on the common law of insurance apply to municipal risk pools. Unless it is corrected immediately, that decision will affect the future discovery in the case and, indeed, whether the County/Slagle were allowed to settle a disputed claim through a covenant judgment and assignment and who has the right to pursue the claims in this case.

(2) RAP 2.3(b)(1-2).

Pursuant to RAP 2.3(b)(1-2), a party seeking discretionary review must demonstrate that the trial court erred and that such error will have an effect on further proceedings in the trial court. In this case, discretionary review is proper because the trial court's threshold decisions constituted obvious or probable error that will adversely impact the course of future proceedings in this case.

(a) Obvious or Probable Error.

This case arises from WCRP/Lexington's refusal to honor their legal and contractual insurance obligations to the County/Slagle. It is undisputed in this case that the County and Slagle are insured under subject WCRP/Lexington policies and that the policies expressly state that they are to be governed and construed in accordance with Washington law. WCRP/Lexington have sought to avoid their contractual and extra-

contractual obligations under these policies by arguing that they are not subject to Washington *insurance* law.

This Court has repeatedly treated policies issued by risk pools as subject to the same common law insurance principles that apply to all insurance policies issued in Washington. For instance, in *Wash. Public Utility Districts' Utilities System v. Public Utility District No. 1 of Clallam County*, 112 Wn.2d 1, 771 P.2d 701 (1989), this Court determined that a public utility district risk pool could be created by PUDs under a predecessor statute to RCW 48.62.031. In so holding, this Court upheld the authority of the districts to enter into the risk pool agreement and ultimately upheld coverage for a PUD treasurer under a risk pool policy. Critically, in arriving at these decisions regarding insurance coverage provided by a risk pool, this Court cited to insurance cases, referred to insurance treatises and relied on the longstanding insurance law principle that any ambiguities in an insurance policy must be construed in favor of coverage. *Id.* at 10-11, 16-17.²

In the present case, the trial court, unfortunately, disregarded this Court's holding in *Wash. Public Utility Districts' Utilities System* and decades of other Washington appellate precedent applying insurance law

² The Court of Appeals has similarly applied insurance common law principles to the interpretation of self-insurance pool insuring agreements in *City of Okanogan v. Cities Ins. Ass'n of Wash.*, 72 Wn. App. 697, 865 P.2d 576 (1994) (cities risk pool) and *Colby v. Yakima County*, 133 Wn. App. 386, 136 P.3d 131 (2006) (WCRP itself).

principles to risk pool insurance policies. Instead, the trial court erroneously ruled that municipalities and their employee's insured by risk pool policies do not get the same legal protections afforded to others in the state of Washington. In reaching this decision, the trial court mistakenly relied on a single statute that simply exempts risk pools from certain regulatory and financial solvency requirements under the insurance code.³ The trial court mistook this limited statutory exemption for a blanket exemption from all of Washington's common law governing the interpretation of risk pool insurance policies. The trial court's ruling cannot be reconciled with the fact that WCRP/Lexington provided Clark County and Slagle with insurance coverage under Title 48 RCW and that these policies are clearly defined as "insurance" under Washington's common law, *Bordeaux, Inc. v. American Safety Ins. Co.*, 145 Wn. App. 687, 696-97, 186 P.3d 1188 (2008) ("traditional insurance involves risk shifting, while self-insurance involves risk retention") and the code, RCW 48.01.040 ("insurance" means "a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies.").

As set forth below, both risk pools and commercial insurers and the policies issued by these entities are creatures of Title 48 RCW and,

³ RCW 48.01.050.

thus, the duty to defend/settle/indemnify, extra-contractual bad faith claims and covenant judgment settlements must be assessed under this Court's well-developed common law insurance principles. The trial court committed obvious or probable error in failing to apply those principles here.

RCW 48.01.030 governs commercial insurers and insurance pools created under RCW 48.62:

The business of insurance is one affected by the public interest, requiring that all persons be actuated by good faith, abstain from deception, and practice honesty and equity in all insurance matters. Upon the insurer, the insured, their providers, and their representatives rests the duty of preserving inviolate the integrity of insurance.

Consistent with RCW 48.01.030, this Court has developed a rich body of law that recognizes a liability insurer's duties to an insured arising out of the insurance contract. *Van Noy v. State Farm Mut. Ins. Co.*, 142 Wn.2d 784, 793, 16 P.3d 374 (2001). These obligations include the duty to defend the insured in the event the insured is sued. As this Court has repeatedly held, if the insurer breaches that duty to defend, the insured has numerous remedies, including the ability to execute a covenant judgment and assignment of rights against an insurer.

The trial court in this case erred in concluding that these traditional insurance principles and protections did not apply to insurance policies

issued by WCRP/Lexington. Instead, the trial court ruled that the insurance policy issued by WCRP/Lexington should be governed by vague unspecified contract principles that are somehow divorced from Washington's rich body of insurance contract law. For the reasons set forth below, the trial court's threshold ruling constitutes error and should be reviewed pursuant to RAP 2.3(b).

First, the County/Slagle *were insureds* under the WCRP/Lexington policies. These policies all contain a standard contractual duty to defend and contain a standard definition of "occurrence" found in typical occurrence based insurance policies. *Id.*

Second, while RCW 48.01.050 provides only a limited exemption for WCRP from the attendant financial solvency requirements and management obligations set forth elsewhere in Title 48 RCW, this limited exemption does not apply to all of 48 RCW or Washington common law because the policies issued by risk pools are regulated under RCW 48.62, *a part of the Insurance Code*, and the policies that it issues are defined as insurance under both the code and the common law. RCW 48.01.040.

Third, this Court has repeatedly applied common law insurance principles to risk pools like the WCRP. In *Wash. Public Utility Districts' Utilities System*, this Court applied the common law of insurance to true self-insured policies issued by a risk pool. *Id.* The Court of Appeals has

similarly applied insurance common law principles to the interpretation of self-insurance pool insuring agreements (including those policies issued by WCRP) in *City of Okanogan v. Cities Ins. Ass'n of Wash.*, 72 Wn. App. 697, 865 P.2d 576 (1994) (cities risk pool) and *Colby v. Yakima County*, 133 Wn. App. 386, 136 P.3d 131 (2006) (applying insurance principles to WCRP's own insurance policies). These courts all applied common law insurance principles, including the duty to defend and the continuous trigger of coverage, without even questioning whether these policies would be subject to Washington's common law on insurance.

In the present case, the trial court erred in disregarding this appellate authority and the traditional principles of Washington's common law on insurance. Ultimately, this erroneous threshold decision infected the trial court's later decision on whether WCRP/Lexington breached their duty to defend the County/Slagle and whether County/Slagle had the right to enter into a covenant judgment settlement, assigning their claims for damages against WCRP/Lexington to Davis/Northrop. These subsequent erroneous rulings on the duty to defend and the ability of an insured to settle a case by way of a covenant judgment/assignment are directly inconsistent with this Court's many prior rulings that afford robust protections to insureds under liability insurance policies.

With regard to the duty to defend, this Court's prior holdings are well developed and powerfully favor insureds. As this Court very recently stated in *Expedia, Inc. v. Steadfast Ins. Co.*, 180 Wn.2d 793, 802, 329 P.3d 59 (2014), "the duty to defend is triggered if the insurance policy *conceivably* covers allegations in the complaint." (Emphasis added). An insurer must give the insured the "benefit of the doubt" on a defense and must defend the insured until it is *clear* that a claim is not covered under the policy. *Id.* at 803.

Here, the events in the underlying case were alleged to have occurred over multiple years and throughout multiple policy periods of the WCRP/Lexington policies. Specifically, the allegations in Davis/Northrop's amended complaint alleged a continuous or progressive course of tortious conduct that began with the County/Slagle's investigation of Davis/Northrop, and continued during their conviction, incarceration and efforts to obtain post-conviction relief. The complaint alleged that the County/Slagle failed to come forward with evidence they had that would have set them free. The allegations included specific instances of conduct, including the destruction of DNA evidence in 2006 and 2007 after it had been ordered by the Court.

In simple terms, the allegations in the underlying case represented a continuing tort where harm was alleged to have occurred over the course

of decades. Despite the express allegation of a continuous tort during WCRP/Lexington's policy periods (2002-2010), County/Slagle were repeatedly denied a defense and otherwise abandoned by their insurers, WCRP/Lexington. In addressing these undisputed events, the trial court erred in failing to apply this Court's prior rulings on the duty to defend.

Similarly, with respect to an insured's ability to protect its self when it is abandoned by its insurer, this Court has developed a rich body of law providing that an insured may protect itself by way of a covenant judgment settlement. This Court has expressly recognized that such settlements typically involve: (1) a stipulated or consent judgment between the plaintiffs and the insured, (2) a covenant not to execute on that judgment against the insured, and (3) an assignment to the plaintiff of the insured's coverage and bad faith claims against the insurer. *Bird v. Best Plumbing*, 175 Wn.2d 756, 754-65, 287 P.2d 551 (2012); Thomas V. Harris, *Washington Insurance Law* § 10.02 at 10-3 (3d ed. 2010).

In the present case, when County/Slagle were abandoned by WCRP/Lexington, they followed this authorized and well-worn path that permits an insured to assign claims for damages against an insurer to resolve a case. Put simply, the County/Slagle relied on this Court's precedent and did exactly what insureds routinely do to control their risk

when they have been denied a defense and are otherwise abandoned by their insurers.

In holding that County/Slagle's assignment of claims to Northrop/Davis was invalid, the trial court disregarded this well-developed principle and this Court's holding in *Public Utility Dist. No. 1 of Klickitat County v. Int'l Ins. Co.*, 124 Wn.2d 789, 881 P.2d 1020 (1994), wherein this Court held that even where a contract term specifically prohibits assignments, an assignment of a claim or cause of action may be valid if made after the events giving rise to liability have already occurred when the assignment is made. *Id.* at 800-801. Unfortunately, the trial court appears to have disregarded this holding simply because the case involved "insurance principles."

Ultimately, for the foregoing reasons, the trial court committed obvious or probable error in its threshold decision regarding the applicability of Washington insurance common law to risk pool insurance policies and its subsequent decisions on the duty to defend and the County/Slagle's assignment of claims to Davis/Northrop.

(b) Effect on Future Proceedings in the Case.

The trial court's erroneous threshold rulings have rendered further proceedings useless because all of the remaining insurance and extra-contractual claims necessarily demand application of Washington

insurance law - law which the trial court has held does not apply to WCRP/Lexington. Moreover, the trial court's ruling has effectively required County/Slagle prosecute claims that it rightfully assigned to Davis/Northrop for the express purpose of controlling its risk exposure, avoid a potentially catastrophic judgment and settling a disputed claim after being abandoned by WCRP/Lexington.

First, with regard to the futility of proceeding without direction from this Court, all further rulings in this case will stem from the trial court's denial of the applicability of Washington's common law on insurance.⁴ In particular, the remaining claims include contractual insurance claims relating to WCRP/Lexington's breach of the duty to indemnify and settle, as well as negligence and extra-contractual bad faith claims relating to claims handling and post-settlement conduct. All of these claims will necessarily require the application of Washington common law on insurance. Proceeding with litigating these claims as if there were another body of applicable law would be a colossal waste of time and prove useless to all parties. The trial court's certification of the threshold issues for appeal and stay of proceedings implicitly

⁴ WCRP has stated as much: "Defendants, and this Court, are aware that whether insurance law and the extra-contractual duties that derive from an insurer-insured relationship is possibly the most central dispute in this case." (WCRP's Response to Defs' MPSJ Re Assignment at 16.)

acknowledges this potential futility and the judicial economy that accompanies obtaining appellate review at this juncture.

Second, from a practical standpoint, the trial court's threshold decision imposes substantial limitations and burdens on County/Slagle, neither of which have any interest in being bogged down in litigation with their insurers on claims that they rightfully assigned to Davis/Northrop. As detailed above, County/Slagle utilized a covenant judgment and assignment mechanism that has been repeatedly upheld by this Court to control its risk and settle a disputed claim. They were then sued by their insurers, WCRP/Lexington, and dragged into this case under the spurious and novel legal theory that an insured may not assign a claim for damages against an insurer that denied a defense and/or coverage. This suit has required County/Slagle to expend substantial resources in both defending and prosecuting a case that they had settled in a manner that has long been authorized by this Court as a way an insured may limit their risk. Based on the trial court's rulings, the County/Slagle are now in a position where they have to pursue these claims directly, thereby expending additional time, resources and energy. Because the trial court ruled that the assignment was invalid, the trial court has substantially impacted Davis/Northrop's ability to continue prosecuting this case, to participate in discovery, defend motions and, ultimately, to participate at trial. This

issue needs to be resolved immediately so that it can be determined who, as a matter of law, has the right to prosecute these claims.

Third, as is set forth in Davis/Northrop's motion for discretionary review, discovery will be tainted by this decision. The trial court's ruling impacts both the scope of discovery in the remaining contractual and extra-contractual insurance claims. In particular, there are thousands of pages of discovery being withheld by WCRP/Lexington on the basis of attorney-client and/or work product privilege in connection with the remaining insurance claims in this lawsuit. However, under this Court's ruling, *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686, 295 P.3d 239 (2013), an insurer is not able to assert such privileges in the claims adjusting context. *Id.* at 698-99. WCRP/Lexington have resisted discovery of these purportedly privileged materials by claiming that they are not subject to the common law on insurance and, thus, may claim privilege in contravention of *Cedell*. This is but one example of how the trial court's threshold ruling will infect future rulings and likely compromise the discovery process and the prosecution of the remaining claims and issues in this lawsuit.

If review does not occur now, there will be additional battles over the scope of discovery, with neither side having clarity on what claims remain, the standard applicable to those claims and the evidence that must

be developed in discovery to support them. Even if those issues are resolved, the scope of both written discovery and depositions will likely be different than it would on remand if the trial court's rulings were reversed by this Court, creating the potential for document production and depositions that might have to be repeated in any remand after an appeal from a final judgment, imposing additional burdens of time, travel and expense on the parties and witnesses.

Moving forward on the remaining discovery and claims will, thus, needlessly burden the parties until these threshold issues have been resolved. This very fact animated the trial court's decision to certify its decisions under RAP 2.3(b)(4) and to stay further activities before it. Without a definitive resolution of the certified issues, there is an inherent potential that all of the litigation in this case will be revisited. All of this will be averted by early appellate review and a definitive decision by this Court.

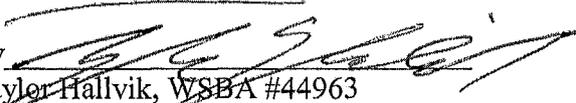
7. Conclusion

The fundamental question as to whether municipal corporations and their employees are owed the same contractual and extra-contractual duties as all other insureds in Washington is a threshold issue that requires immediate review. The Court should grant review under RAP 2.3(b) to vindicate its decisions on insurance principles applying to risk pools, the

duty to defend and covenant judgment settlements. Absent direct review, the trial court's error on these rulings will affect this case and untold other cases involving risk pools. The remainder of this case will be irreparably tainted by that decision and the potential for a waste of judicial resources, and unnecessary expense and efforts by the parties is clearly present.

DATED this 22nd day of December, 2014.

Respectfully submitted,
CLARK COUNTY PROSECUTING
ATTORNEY

By 

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Slagle*

APPENDIX

OFFICE RECEPTIONIST, CLERK

To: Kremer, Thelma; Hallvik, Taylor; Horne, Chris
Cc: 'Amy M. Magnano'; 'Brad Keller'; Brendan Winslow-Nason; 'Brooke Marvin'; 'Cathy Coleman'; 'David M. Norman'; David Whedbee; 'Devon Richards'; Diane Finafrock; 'Donald Verfurth'; Heather Poltz; Howard Goodfriend; 'Ian Hale'; 'John Connelly Jr.'; 'Judy Goldfarb'; Kathleen A. Karan; 'Kim Wolf'; 'Lori Yniguez'; 'Malana S. Che'; 'Micah LeBank'; 'Michael Farnell'; 'Mr. Ford (Asst.)'; 'Patrick F.'; Philip Talmadge; Roya Kolahi; 'Thomas M. Jones'; 'Tiffany Cartwright'; 'Timothy Ford'; 'Troy Biddle'; 'Vicki Hager'; Victoria Vigoren; 'William Leedom'
Subject: RE: WCRP v. CC; Cowlitz Superior No. 13-2-01398-4; Statement of Grounds for Direct Review and Motion for Discretionary Review

Received 12-22-2014

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Kremer, Thelma [mailto:Thelma.Kremer@clark.wa.gov]
Sent: Monday, December 22, 2014 4:40 PM
To: OFFICE RECEPTIONIST, CLERK; Hallvik, Taylor; Horne, Chris
Cc: 'Amy M. Magnano'; 'Brad Keller'; Brendan Winslow-Nason; 'Brooke Marvin'; 'Cathy Coleman'; 'David M. Norman'; David Whedbee; 'Devon Richards'; Diane Finafrock; 'Donald Verfurth'; Heather Poltz; Howard Goodfriend; 'Ian Hale'; 'John Connelly Jr.'; 'Judy Goldfarb'; Kathleen A. Karan; 'Kim Wolf'; 'Lori Yniguez'; 'Malana S. Che'; 'Micah LeBank'; 'Michael Farnell'; 'Mr. Ford (Asst.)'; 'Patrick F.'; Philip Talmadge; Roya Kolahi; 'Thomas M. Jones'; 'Tiffany Cartwright'; 'Timothy Ford'; 'Troy Biddle'; 'Vicki Hager'; Victoria Vigoren; 'William Leedom'
Subject: RE: WCRP v. CC; Cowlitz Superior No. 13-2-01398-4; Statement of Grounds for Direct Review and Motion for Discretionary Review

Pursuant to your request, attached please find copies of two briefs to be filed regarding the above-entitled matter:

1. Clark County/Slagle's Motion for Discretionary Review; and
2. Clark County/Slagle Statement of Grounds for Direct Review.

Hard copies of these appendices will be placed in the U.S. mail directed to you. If you have further questions, please contact this office. We appreciate your courtesies in this matter.

Thelma Kremer
Clark County Prosecutor's Office

-----Original Message-----

From: OFFICE RECEPTIONIST, CLERK [mailto:SUPREME@COURTS.WA.GOV]
Sent: Monday, December 22, 2014 4:30 PM
To: Kremer, Thelma; Hallvik, Taylor; Horne, Chris
Cc: 'Amy M. Magnano'; 'Brad Keller'; Brendan Winslow-Nason; 'Brooke Marvin'; 'Cathy Coleman'; 'David M. Norman'; David Whedbee; 'Devon Richards'; Diane Finafrock; 'Donald Verfurth'; Heather Poltz; Howard Goodfriend; 'Ian Hale';

'John Connelly Jr.'; 'Judy Goldfarb'; 'Kathleen A. Karan'; 'Kim Wolf'; 'Lori Yniguez'; 'Malana S. Che'; 'Micah LeBank';
'Michael Farnell'; 'Mr. Ford (Asst.)'; 'Patrick F.'; Philip Talmadge; Roya Kolahi; 'Thomas M. Jones'; 'Tiffany Cartwright';
'Timothy Ford'; 'Troy Biddle'; 'Vicki Hager'; Victoria Vigoren; 'William Leedom'
Subject: RE: WCRP v. CC; Cowlitz Superior No. 13-2-01398-4; Statement of Grounds for Direct Review; Part I

Per our recent phone conversation, I will expect the briefs via e-filing and the appendices via US mail.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

-----Original Message-----

From: Kremer, Thelma [mailto:Thelma.Kremer@clark.wa.gov]

Sent: Monday, December 22, 2014 4:19 PM

To: OFFICE RECEPTIONIST, CLERK; Hallvik, Taylor; Horne, Chris

Cc: 'Amy M. Magnano'; 'Brad Keller'; Brendan Winslow-Nason; 'Brooke Marvin'; 'Cathy Coleman'; 'David M. Norman';
David Whedbee; 'Devon Richards'; Diane Finafrock; 'Donald Verfurth'; Heather Poltz; Howard Goodfriend; 'Ian Hale';
'John Connelly Jr.'; 'Judy Goldfarb'; Kathleen A. Karan; 'Kim Wolf'; 'Lori Yniguez'; 'Malana S. Che'; 'Micah LeBank';
'Michael Farnell'; 'Mr. Ford (Asst.)'; 'Patrick F.'; Philip Talmadge; Roya Kolahi; 'Thomas M. Jones'; 'Tiffany Cartwright';
'Timothy Ford'; 'Troy Biddle'; 'Vicki Hager'; Victoria Vigoren; 'William Leedom'

Subject: RE: WCRP v. CC; Cowlitz Superior No. 13-2-01398-4; Statement of Grounds for Direct Review; Part I

Two documents are being filed today, however, our office had to complete that filing with four emails. The first document is entitled "Clark County/Slagle's Motion for Discretionary Review," and the Appendix, which was lengthy, was completed in a second email identified as Part II. The second document is "Clark County/Slagle Statement of Grounds for Direct Review," and again, the balance of the Appendix was completed in the second email to this document identified as Part II. The confusion may be because both Appendices to these documents are identical.

I hope that this explanation addresses your concern. If you have any further questions, please contact this office. Thank you.

Thelma Kremer

Legal Secretary

Clark County Prosecutor's Office -- Civil Division PO Box 5000 Vancouver WA 98666-5000

Tele: (360) 397-2478

Fax: (360) 397-2184

Email: thelma.kremer@clark.wa.gov

-----Original Message-----

From: OFFICE RECEPTIONIST, CLERK [mailto:SUPREME@COURTS.WA.GOV]

Sent: Monday, December 22, 2014 3:58 PM

To: Kremer, Thelma; Hallvik, Taylor; Horne, Chris

Cc: 'Amy M. Magnano'; 'Brad Keller'; Brendan Winslow-Nason; 'Brooke Marvin'; 'Cathy Coleman'; 'David M. Norman';
David Whedbee; 'Devon Richards'; Diane Finafrock; 'Donald Verfurth'; Heather Poltz; Howard Goodfriend; 'Ian Hale';
'John Connelly Jr.'; 'Judy Goldfarb'; Kathleen A. Karan; 'Kim Wolf'; 'Lori Yniguez'; 'Malana S. Che'; 'Micah LeBank';

'Michael Farnell'; 'Mr. Ford (Asst.)'; 'Patrick F.'; Philip Talmadge; Roya Kolahi; 'Thomas M. Jones'; 'Tiffany Cartwright'; 'Timothy Ford'; 'Troy Biddle'; 'Vicki Hager'; Victoria Vigoren; 'William Leedom'

Subject: RE: WCRP v. CC; Cowlitz Superior No. 13-2-01398-4; Statement of Grounds for Direct Review; Part I

This looks like a repeat of what was already sent to us today, so we will disregard. If that is not true, please let us know.

Thanks

-----Original Message-----

From: Kremer, Thelma [mailto:Thelma.Kremer@clark.wa.gov]

Sent: Monday, December 22, 2014 3:55 PM

To: OFFICE RECEPTIONIST, CLERK; Hallvik, Taylor; Horne, Chris

Cc: 'Amy M. Magnano'; 'Brad Keller'; Brendan Winslow-Nason; 'Brooke Marvin'; 'Cathy Coleman'; 'David M. Norman'; David Whedbee; 'Devon Richards'; Diane Finafrock; 'Donald Verfurth'; Heather Poltz; Howard Goodfriend; 'Ian Hale'; 'John Connelly Jr.'; 'Judy Goldfarb'; Kathleen A. Karan; 'Kim Wolf'; 'Lori Yniguez'; 'Malana S. Che'; 'Micah LeBank'; 'Michael Farnell'; 'Mr. Ford (Asst.)'; 'Patrick F.'; Philip Talmadge; Roya Kolahi; 'Thomas M. Jones'; 'Tiffany Cartwright'; 'Timothy Ford'; 'Troy Biddle'; 'Vicki Hager'; Victoria Vigoren; 'William Leedom'

Subject: WCRP v. CC; Cowlitz Superior No. 13-2-01398-4; Statement of Grounds for Direct Review; Part I

Dear Clerk:

Please find attached copies of the following:

1. Letter to the Clerk and all counsel regarding the e-filing of Clark County/Slagle Statement of Grounds for Direct Review;
2. Clark County/Slagle Statement of Grounds for Direct Review (Part I); and
3. Certificate of Service.

As specified in the letter, the Appendix for this motion involves many documents, so this filing will be done in two Parts. This email is Part I, which includes the Motion and the beginning documents of the Appendix. A second email will be sent which will include the remainder of the Appendix documents. As identified 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 problems with these documents, please contact this office. Have a good day!

Thelma Kremer

Legal Secretary

Clark County Prosecutor's Office -- Civil Division PO Box 5000 Vancouver WA 98666-5000

Tele: (360) 397-2478

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Email: thelma.kremer@clark.wa.gov

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