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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.

DAVIS/NORTHROP'S
MOTION FOR DISCRETIONARY REVIEW

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1. Identity of Moving Parties

Petitioners Larry Davis and Alan Northrop ask this Court for the relief designated in Part 2.

2. Statement of Relief Sought

Granting of discretionary review pursuant to RAP 2.3(b) of the trial court's November 13, 2014, November 26, 2014, and December 12, 2014 decisions. The trial court concluded that primary and excess liability insurance policies issued by the Washington Counties Risk Pool ("WCRP") and Lexington Insurance Company ("Lexington") were not to be interpreted in accordance with Washington's common law insurance principles. It then upheld WCRP/Lexington's denial of a duty to defend Clark County ("County") and Sheriff Detective Donald Slagle and voided the County/Slagle's assignment of their contractual and extracontractual claims to Davis/Northrop made pursuant to a covenant judgment settlement.

3. Facts Relevant to Motion

This case arises out of the wrongful prosecution, conviction, and 17-plus year imprisonment of Davis/Northrop for a crime they did not commit, and of which they were exonerated by DNA evidence in 2010.

Upon their release, Davis/Northrop sued the County/Slagle under a number of theories, and expressly alleged both continuous and discrete

events and misconduct by the County/Slagle that occurred during the entire period of their imprisonment.¹ Among other things, they alleged that the County/Slagle failed to turn over (and in 2006, after DNA testing had been ordered, actually then destroyed) exculpatory evidence and information that could have been used to prove Davis/Northrop's innocence at any point in their lengthy ordeal.

The County/Slagle tendered the case to WCRP/Lexington. WCRP acknowledged the underlying Davis/Northrop complaint contained allegations satisfying the "personal injury" element of the policies. Nevertheless, WCRP/Lexington repeatedly denied coverage on the grounds that the complaint did not assert an occurrence during the policy period. They asserted that Davis/Northrop's allegations of an "occurrence" must be deemed to have happened only at the single point in time when they were first arrested and convicted in 1993, prior to the periods of the policies at issue. More specifically, WCRP/Lexington

¹ The County/Slagle were insured under a series of annual primary insurance policies in effect between 2002 and 2010. While the primary policies were ostensibly issued by WCRP, they were 100% re-insured by commercial insurers, including AIG, the AIG-owned Lexington, ACE American Insurance Co. and others.

WCRP's primary policies required two elements to trigger coverage: (1) an "occurrence" during the policy period, and (2) a "personal injury" at any time, whether during the policy period or not. The WCRP policies defined an "occurrence" as "an accident including continuous or repeated exposure to substantially the same conditions which results in...bodily injury." AIG, Lexington and others issued the excess policies for this same period and their excess policies allegedly "follow the form" of the primary policies.

asserted that the policies they issued were not subject to Washington's common law on insurance, and instead should be interpreted under vague "contract principles" they derived from the insurance law of other jurisdictions.

Abandoned by WCRP/Lexington, the County/Slagle were left to fend for themselves in the defense of the allegations and claims against them. Both insurers refused to participate in mediation sessions or in settlement discussions. The County/Slagle were compelled to vigorously defend Davis/Northrop's case on their own, incurring hundreds of thousands of dollars in fees, costs and expenses. Ten days into trial, and after Slagle testified in his own defense, the County/Slagle, in consultation with their counsel, concluded that a settlement was necessary to protect their interests and avoid a potentially catastrophic judgment against them. That same day, 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 given to WCRP/Lexington. The parties subsequently entered into a covenant judgment settlement whereby (1) they agreed to a stipulated judgment of \$35 million; (2) the County/Slagle paid \$10,500,000 to Davis/Northrop in partial satisfaction of that judgment; and (3) the County/Slagle assigned their claims, both

contractual and extra contractual, against WCRP/Lexington and their other insurers to Davis/Northrop.

WCRP/Lexington filed the present action for declaratory relief in the Cowlitz County Superior Court. On April 8, 2014, Davis/Northrop then filed a motion for summary judgment on WCRP's breach of the duty to defend, and the County/Slagle joined in the motion. That motion addressed three interrelated issues implicated by the duty to defend question: (1) whether the claims and policies at issue are governed by Washington common law insurance principles; (2) whether there was an "occurrence" during the period of any one of the WCRP primary policies so that WCRP/Lexington owed the County/Slagle a defense in the Davis/Northrop action; and (3) whether the assignment of claims by the County/Slagle to Davis/Northrop was valid.

WCRP later filed a cross-motion for summary judgment seeking a determination that the assignment by the County/Slagle was invalid, and the petitioners filed a motion seeking partial summary judgment that the assignment was valid with respect to the claims against WCRP/Lexington.

On November 13, 2014, the trial court ruled that Washington's common law on insurance did not apply to the policies issued by WCRP/Lexington, and the claims made under those policies, reasoning that because WCRP was exempted from the definition of "insurer" in

RCW 48.01.050, and because its policies stated they provided “joint self-insurance,” this Court’s common law insurance law principles did not apply. The court also extended this ruling to Lexington on the ground that the Lexington excess policies “follow form” to WCRP’s primary policies.

Based on that ruling, the court then held that the assignments were invalid and prohibited by the anti-assignment provisions contained in the policies and in the WCRP Interlocal Agreement, and that the insurance policies covering the County/Slagle thus did not afford them the same benefits and protections afforded to other Washington insureds, including the ability to protect their interests by entering into covenant judgment settlements.

On November 21, 2014, the trial court denied petitioners’ motion for partial summary judgment on the duty to defend (and granted summary judgment in favor of WCRP/Lexington), again basing its conclusion on its determination that Washington’s insurance common law did not apply to the policies at issue or the claims made under those policies.² Specifically, the trial court also rejected the notion that a continuous trigger of coverage applied when determining the timing of the occurrence alleged here. Instead, it applied a manifestation trigger of coverage to reduce the

² The trial court entered a written opinion on the duty to defend on November 26, 2014, and it is attached to the trial court’s formal order entered on December 12, 2014.

occurrence to the single point in 1993 when Davis/Northrop were first arrested and convicted, prior to the inception of insurance policies at issue in this case.

On December 12, 2014, the trial court also certified the issues referenced above pursuant to RAP 2.3(b)(4), and stayed further proceedings in the case for 90 days.

Petitioners Davis/Northrop then timely filed their notice of discretionary review.

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

Davis/Northrop have explained why direct review is appropriate in this case pursuant to RAP 4.2(a) in their statement of grounds for direct review. Interlocutory review is appropriate under several prongs of RAP 2.3(b).

(1) RAP 2.3(b)(4)

RAP 2.3(b)(4) allows a trial court, as here, to certify an issue as a basis for discretionary review of an interlocutory order. While no Washington case law expressly interprets RAP 2.3(b)(4), or enunciates a test for when certification is or is not appropriate, the language of RAP 2.3(b)(4) was based on 28 U.S.C. § 1292(b). 2A Karl B. Tegland, *Wash Practice Rules Practice* at 197, 203.

The trial court here made the requisite findings under RAP 2.3(b)(4) for certification, recognizing that the issues it decided were novel and that their final resolution by an appellate court would likely advance the ultimate resolution of the case. Its request for review by this Court merits deference. Immediate review under RAP 2.3(b)(4) will advance the proper and final disposition of this case. The trial court wrongly decided the gateway issue of whether this Court's decisions on the common law of insurance apply to municipal risk pools and their individual employees. That decision will affect the remaining claims in this case, future discovery, and indeed whether Davis/Northrop can even participate in it, as will be discussed *infra*.

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

The provisions of RAP 2.3(b)(1) and (2) require the party seeking discretionary review to demonstrate not only that the trial court erred, but that such error will have an effect on further proceedings in the trial court. Both tenets of RAP 2.3(b) are met here. Discretionary review is proper here because the trial court's decisions constituted obvious or probable error that will adversely impact the course of future proceedings in this case. RAP 2.3(b)(1-2).

(a) Obvious or Probable Error

This case is an insurance coverage dispute caused by WCRP/Lexington's refusal to honor their legal and contractual insurance obligations to the County/Slagle. The trial court confused the fact that risk pools, established under RCW 48.62, are not "insurers" under the Title 48 RCW with the fact that insurance policies issued by such risk pools to their members, and any extracontractual remedies, are governed by exactly the same common law insurance principles that apply to insurance policies issued by commercial insurers.³ Both risk pools and commercial insurers and the policies issued by these entities are creatures of Title 48 RCW and thus the duty to defend/settle/indemnify, extracontractual 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:

³ WCRP/Lexington have been completely candid as to what they believe the ultimate result of their assertion that "contract principles" control the interpretation of risk pool insurance policies will be. At a minimum, they claim that this Court's common law on the duty to defend, that protects insureds, does not apply. They believe covenant judgment settlements are not available to risk pool insureds because such pools can prevent assignments of rights, a core feature of covenant judgment settlements. Seemingly, they will argue that this Court's law on extracontractual remedies, like bad faith, does not apply to risk pool insureds. The unfairness of such an analysis, particularly to public employees insured by pools who have no involvement in developing the coverage of risk pool or excess insurer policies, is manifest.

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.

This Court has developed important public policy principles that recognize a liability insurer has fundamental duties of a quasi-fiduciary nature 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). Among those duties is the duty to defend the insured in the event the insured is sued, a duty to be discussed in more detail *infra*. If the insurer breaches that duty to defend, the insured has potent contractual remedies, as well as extracontractual remedies, for the insurer's bad faith available to it.⁴

The trial court here erred in accepting WCRP/Lexington's argument that these traditional insurance principles did not apply to the County/Slagle as insureds of the WCRP/Lexington, leaving the relationship between insureds and a risk pool insurer to be analyzed under some vague contract principles instead of the rich tradition of Washington's common law of insurance developed by this Court.

⁴ WCRP is insured under its re-insurance policies with ACE for extra-contractual coverage.

First, the County/Slagle *were insureds*. Indeed, the very annual policies issued by WCRP use *traditional liability insurance terminology*. They have a “declarations” page. They refer to the policies as “liability policies,” referencing the County/Slagle as “named insureds,” and describing the “insuring agreement” with its “policy period,” “limits,” “coverages,” and “deductibles,” all well-known terms in the insurance setting. *See* Wilsdon decl. The policies also contain a standard contractual duty to defend provision and a standard definition of “occurrence” found in occurrence-based insurance policies. *Id.* Indeed, the WCRP’s own counsel historically analyzed its policies under Washington insurance common law principles. *See* Cartwright decl.

Second, while the WCRP is not an insurer within the meaning of RCW 48.01.050, with the attendant financial solvency requirements and management obligations set forth elsewhere in Title 48 RCW, it is regulated by the Commissioner and the State Risk Manager, it is answerable to local elected officials, and it is “in the business of insurance” under RCW 48.01.030 as its activities include self-insurance *and* obtaining or purchasing insurance. It is created and regulated under RCW 48.62, *a part of the Insurance Code*, Title 48 RCW.⁵

⁵ WCRP’s representations below that its primary policies are “self-insurance” are simply not true. “Self-insurance” means a risk of loss not transferred by insurance policy or contract. *Bordeaux, Inc. v. American Safety Ins. Co.*, 145 Wn. App. 687, 696,

Third, consistent with the foregoing, this Court has applied common law insurance principles to risk pools like the WCRP. 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 risk pool could be created by PUDs under a predecessor statute to RCW 48.62.031. The pool self-insured for the first layer of coverage and purchased excess liability coverage. *Id.* at 4 n.1. This Court upheld the authority of the districts to enter into the risk pool agreement and upheld coverage for a PUD treasurer sued by the PUD. Critically, in arriving at these decisions, 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. This Court also applied the common law of insurance to excess carriers, like Lexington, who insure Washington risk pools. *Transcontinental Insurance Co., v. Washington Public Utilities District Utility System*, 111 Wn.2d 452, 467-70, 760 P.2d 337 (1988); *Public*

186 P.3d 1188 (2008), *review denied*, 165 Wn.2d 1035 (2009) (“traditional insurance involves risk shifting, while self-insurance involves risk retention”); RCW 48.62.021(6) (“self-insurance” means “a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.”). Here, 100% of WCRP’s risk for County/Slagle was transferred by re-insurance and excess insurance policies to AIG, the AIG-owned Lexington, and other commercial insurers.

Utility Dist. No. 1 of Klickitat County v. Int'l Ins. Co., 124 Wn.2d 789, 800-01, 881 P.2d 1020 (1994).⁶

Thus, the trial court here erred in concluding that Washington's traditional insurance common law principles did not apply to WCRP. That decision infected its later decision on WCRP/Lexington's duty to defend the County/Slagle and their right to enter into a covenant judgment settlement, assigning their contractual and extracontractual claims against WCRP/Lexington to Davis/Northrop.⁷

This Court's body of law on an insurer's duty to defend is well-developed and powerfully favors insureds. As this Court 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. In *American Best Food, Inc. v. Alea London, Ltd.*, 168 Wn.2d 398, 229 P.3d 693 (2010), for example, despite Washington authority

⁶ The Court of Appeals has similarly applied common law insurance principles to insurance policies issued by risk pool's, *including the policies issued by WCRP. Colby v. Yakima County*, 133 Wn.App. 386, 136 P.3d 131 (2006) and those issued by the Washington cities risk pool *City of Okanogan v. Cities Ins. Ass'n of Washington*, 72 Wn.App. 697, 865 P.2d 576 (1994).

⁷ The trial court's rulings on the duty to defend and the assignment issue are unsupported and erroneous even if Washington's insurance common law is inapplicable here.

indicating the insured had no coverage, the fact of a single Texas federal court decision to the contrary was sufficient to trigger the duty to defend. *Id.* at 403, 408.

Here, there is no existing appellate authority supporting WCRP/Lexington's argument confining claims like those of Davis/Northrop to a single triggering event. Rather, their tort claims included discrete and specific allegations of misconduct as well as continuing misconduct during the 2002-2010 policy periods. In fact, this Court in *Transcontinental Ins. Co.*, 111 Wn.2d at 469, *rejected* the "trigger of coverage theory" actually applied here by the trial court. ("[The insurer's] argument that coverage is triggered at the time injuries are first manifested was expressly rejected by the court ... as unpersuasive and inconsistent with Washington case law."). Notably, *Transcontinental* involved a risk pool. Moreover, WCRP's own coverage counsel recognized and argued for such a continuous trigger position in coverage letters for WCRP. *See Cartwright decl.*

Under Washington law, every policy in effect during any alleged ongoing events or injuries is ordinarily triggered regardless of when these events or injuries first began.⁸

⁸ *See, e.g., Gruol Construction Co. v. Insurance Co. of North America*, 11 Wn. App. 632, 636, 524 P.2d 427 (1974) ("... the resulting damage was continuous; coverage was properly imposed under [all the policies in effect during the entire process] even

The events in the present case happened over several years and violations continued well into the periods of the WCRP/Lexington policies. The allegations in Davis/Northrop's amended complaint stated 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. That complaint also alleged specific occurrences during each year of the WCRP coverage. For example, the County/Slagle failed to come forward with evidence they had that would have set them free.⁹

though the initial negligent act (the defective backfilling) took place within the period of Safeco's policy coverage.). *See also, Transcontinental Ins., supra* at 465, 470 ("Washington case law hold[s] that the time of an occurrence for insurance coverage purposes is determined by when damages or injuries took place." Court then ruled that coverage spanned multiple policy periods based upon "the bondholders' allegations of multiple separate causes, continuing causes, or long-standing causes resulting in injury during the policy periods"); *American Nat'l Fire Ins. Co. v. B & L Trucking & Constr. Co.*, 134 Wn.2d 413, 951 P.2d 250 (1998) ("All insurers providing coverage during any portion of the total time period of the continuing damage were held liable for the total amount of the continuing property damage."); *Certain Underwriters at Lloyd's v. Valiant Ins. Co.*, 155 Wn. App. 469, 475, 229 P.3d 930 (2010) (noting that under Washington law "an 'occurrence' can be a continuing condition or process; it need not be a single, isolated event"); *In re Feature Realty Litigation*, 468 F.Supp.2d 1287 (E.D. Wash. 2006) (City was sued for failing to take any action over a period of years with respect to a proposed plat amendment needed for the development of a subdivision; court rejected insurer's argument that all related acts should be deemed to occur at the time that the first such related act occurred).

⁹ Indeed Davis/Northrop demonstrated that in 2006 or 2007, the County destroyed DNA evidence, evidence that a court had already ordered tested and could have been used to set Davis/Northrop free.

This was a continuing tort that caused harm over the course of decades. The trial court erred in failing to apply this Court's teachings on the duty to defend.

Similarly, where an insurer has breached the duty to defend, this Court has developed a rich body of law providing that an insured may, in light of the insurer's bad faith abandonment of its duties toward the insured, protect itself by a covenant judgment settlement.¹⁰ This type of settlement is common in Washington law and "does not release a tortfeasor from liability; it is simply 'an agreement to seek recovery only from a specific asset -- the proceeds of the insurance policy and the rights owed by the insurer to the insured.'" *Besel v. Viking Ins. Co. of Wisconsin*, 146 Wn.2d 730, 737, 49 P.3d 887 (2002) (quoting *Safeco Ins. Co. of Am. v. Butler*, 118 Wn.2d 383, 399, 823 P.2d 499 (1992)). What occurred in this case is no different from what insureds do all the time when their insurers refuse to honor their contractual obligation to defend, settle, or indemnify. They enter into a deal with the plaintiff, one aspect of which is usually the assignment of the insured's rights against the insurer to the

¹⁰ Such a settlement typically involves: (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).

plaintiff. Any provision barring an insured from assigning its rights in a covenant judgment settlement is *void as against public policy*.

In sum, the trial court committed obvious or probable error in its key getaway decision and 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 error here largely rendered further proceedings useless and/or substantially altered the freedom of Davis/Northrop, as well as the County/Slagle, to act.

The issues for which discretionary review is being sought are threshold controlling issues of law that impact nearly every aspect of the remaining litigation, including not only the parties allowed to participate in the prosecution of claims in the action, but also the outcome and even existence of a number of these claims. The issues also affect whether the parties' claims can be addressed as a matter of law or can only be resolved after fact issues have been decided at trial, and the scope of permissible discovery in support of these claims.

First, the trial court's decision that the assignment was invalid directly controls which parties will prosecute, and bear the expense of prosecuting, the assigned claims in this case. In other words, there has been a ruling that Davis/Northrop will not be allowed to participate in the

case, and it makes no sense to wait until after the case is concluded to determine if this decision was correct. As discussed further below, there is substantial litigation left to undertake in this case, and many of the claims are fact-based and will ultimately require a jury trial to resolve. All of this litigation, and its expense, will need re-done if the trial court's decision was incorrect. Putting aside the potential waste of resources by both the parties and the courts, it would be prejudicial if litigation is required to continue to its conclusion without Davis/Northrop being permitted to participate.

Second, further rulings on the claims in this case will be dictated by the trial court's denial of the applicability of Washington's insurance common law.¹¹ For example, WCRP/Lexington have already submitted an omnibus summary judgment motion (now stayed) asking the trial court to extend its ruling on the inapplicability of Washington's insurance common law to the bad faith claims being asserted. Indeed, they have asked the court to extend its rulings into other areas to hold that WCRP/Lexington are also not subject to the negligence and constitutional claims being asserted, essentially leaving the WCRP/Lexington wholly unregulated and any person wronged by these entities without a remedy.

¹¹ Even 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).

By contrast, if Washington's insurance common law does apply such that there was a duty to defend, then all of the contractual coverage claims can effectively be resolved as a matter of law, as WCRP/Lexington likely will be estopped under this Court's decisions like *Besel* from denying coverage as a matter of law based on their bad faith denial of a defense.

Third, from a practical standpoint, discovery will also be tainted. WCRP/Lexington have resisted discovery, claiming they are not subject to Washington's common law on insurance, including this Court's decision in *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686, 295 P.3d 239 (2013). Under *Cedell*, courts must "start from the presumption that there is no attorney-client privilege relevant between the insured and the insurer in the claims adjusting process, and that the attorney-client and work product privileges are generally not relevant." *Id.* at 698-99. Thus, even communications involving an attorney are not privileged or work-product protected when an attorney "engage[s] in the quasi-fiduciary tasks of investigating and evaluating or processing [a] claim." WCRP alone has produced a 400-page privilege log of documents and communications that it asserts are not discoverable despite *Cedell*. Plainly, the petitioners are interested in such discovery, but WCRP/Lexington will resist. The issue of whether *Cedell* applies must be resolved before additional discovery on the bad faith and other claims can even occur.

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.

Lexington and respondent Ashbaugh have already filed, or indicated that they intend to file, additional dispositive motions that will be affected by the trial court's threshold rulings, and similar dispositive motions will be made by respondent ACE American Insurance Company. How these claims are to be handled -- and potentially even if certain of these claims exist -- will be directly impacted by the trial court's decision.

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

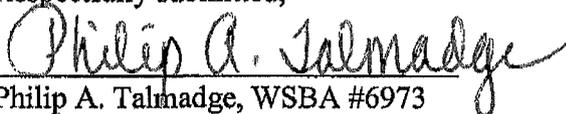
potential that all of the litigation in this case will be revisited. All of this will be averted by early appellate review and a definitive decision by this Court.

5. Conclusion

The Court should grant review under RAP 2.3(b) to vindicate the appellate 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 24th day of December, 2014.

Respectfully submitted,



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DECLARATION OF SERVICE

On said day below I emailed a courtesy copy and deposited in the U.S. Mail for service a true and accurate copy of the Motion for Discretionary Review in Supreme Court Cause No. _____ (Cowlitz County Cause No. 13-2-01398-4) to the following parties:

William Leedom Amy M. Magnano David M. Norman Bennett Bigelow Leedom PS 601 Union St Ste 1500 Seattle, WA 98101-1363	Howard M. Goodfriend Smith Goodfriend, P.S. 1619 8th Avenue North Seattle, WA 98109-3007
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Original efiled with:
Washington Supreme Court
Clerk's Office

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: December 24, 2014, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Roya Kolahi", written over a horizontal line.

Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick

OFFICE RECEPTIONIST, CLERK

To: Roya Kolahi
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Subject: RE: WCRP, et. al. v. Clark County, et. al.

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From: Roya Kolahi [mailto:Roya@tal-fitzlaw.com]
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Subject: WCRP, et. al. v. Clark County, et. al.

Good Morning:

Attached please find Davis/Northrop's Motion for Discretionary Review in Supreme Court (Cowlitz County Cause No. 13-2-01398-4) for today's filing. Per our telephone conversation this morning, I will be sending you the appendix via U.S. mail. Thank you.

Sincerely,

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