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SUPREME COURT OF THE STATE OF WASHINGTON

WASHINGTON COUNTIES RISK POOL, AMERICAN
INTERNATIONAL GROUP, INC.; LEXINGTON INSURANCE
COMPANY; VYRLE HILL; 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 VYRLE HILL'S OPPOSITION
TO MOTIONS FOR DISCRETIONARY AND DIRECT REVIEW

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I. INTRODUCTION

Respondent, Vyrle Hill, opposes the Motions for Discretionary and Direct Review. Mr. Hill is the Washington Counties Risk Pool (the "Pool") Executive Director. He has been individually sued by Petitioners, and he was dragged into this dispute even though there was no need nor any factual or legal basis for doing so. He now has a keen and strong personal interest in obtaining a prompt adjudication of the claims against him. The lengthy and unnecessary delay that interlocutory review would entail would deprive Mr. Hill of a prompt adjudication and cause him significant and unnecessary prejudice.

Mr. Hill had pending before the trial court a motion for summary judgment on certain grounds, and there are additional dispositive motions he wants to pursue before the trial court that should result in all claims against him being dismissed. Many of the legal issues Mr. Hill has raised in the pending summary judgment motion, and others that he intends to raise in additional dispositive motions, have little or nothing to do with the prior trial court summary judgment rulings for which Petitioners seek interlocutory review. The trial court should proceed and address these and other dispositive legal issues which provide separate, independent bases for dismissal of the claims against Mr. Hill. Granting interlocutory review now will unduly delay Mr. Hill's ability to obtain dismissal of the claims

against him, forcing him to endure the significant personal consequences that flow from the mere pendency of a lawsuit against him seeking damages of tens of millions of dollars.

There is a strong policy against piecemeal appeals, for good reason, and there is a strong presumption that a trial court should finish its work and fully adjudicate a dispute before appellate review commences. In that manner, all parties at the same time get to present whatever appellate issues they believe are warranted. Mr. Hill has a compelling interest in obtaining a prompt resolution of the claims against him, without the indefinite lengthy delay associated with interlocutory review. Mr. Hill's interests are separate from, and in addition to, the strong interests the Pool has in obtaining a resolution of any remaining claims against it. Interlocutory review would unduly delay resolution of the remaining claims and deny Mr. Hill of his opportunity and right to promptly defeat them.

Mr. Hill did not initiate this dispute. Rather, Davis and Northrop did. They unnecessarily and improperly joined the Pool's Executive Director in his personal capacity as an additional counterclaim defendant. There was absolutely no need to do so. Full and complete relief can be implemented, depending on which side prevails, without Mr. Hill being a party. Whether their motive was punitive or strategic, there simply was no

reason, and no basis, for Davis and Northrop to belatedly drag Mr. Hill personally into this high stakes litigation. Davis and Northrop picked this fight with Mr. Hill, and they escalated it by publicly making acrimonious allegations attacking his integrity and professional competence. Having done so, Davis and Northrop cannot now call a "timeout" when it is Mr. Hill's turn to defend himself, while they spend up to what could be two years appealing two trial court rulings they dislike. Davis and Northrop will suffer no harm by waiting until the trial court finishes its work by adjudicating the remaining claims, including Mr. Hill's pending and other dispositive motions. The only way to avoid significant prejudice to Mr. Hill is to deny discretionary and direct review.

II. ISSUE PRESENTED FOR REVIEW

Should interlocutory review be granted on the issue of whether state "insurance" law principles apply to the Pool where such review would unnecessarily delay and prejudice Respondent Hill's efforts to obtain prompt dismissal of the claims against him on grounds separate and apart from any alleged "insurance" law issues?

III. RESTATEMENT OF THE FACTS

Mr. Hill is the Executive Director of the Pool whose position in part involves participating in the Pool's multi-level claims appeal process.¹ He has had an unblemished career in local government leadership for the

¹ Mr. Hill incorporates and adopts the extensive Restatement of the Facts set out in the Pool's Opposition to Motions for Discretionary Review.

past 40 years. In their Second Amended Counterclaims, Davis and Northrop profess to sue Mr. Hill for alleged negligence, tortious interference, and due process and equal protection violations. App. in Supp. of Resp't Vyrle Hill's Opp'n to Mots. for Review ("Hill App.") at 1-64. The claims being made against him are as follows:

- **Negligence Claim:** Mr. Hill allegedly breached a duty of care Davis and Northrop claim was owed to them when Mr. Hill upheld the denial of Clark County's tender of a claim under the Pool's joint self-insurance liability coverage. *Id.* at 54-55 ¶¶ 209-212.
- **Tortious Interference Claims:** Mr. Hill allegedly wrongfully interfered with (i) Clark County's contractual duties to Davis and Northrop under their settlement agreement, and (ii) with the benefits owed by the Pool to Clark County as a Pool member county. *Id.* at 59-61 ¶¶ 240-250.
- **Due Process Claim:** Mr. Hill allegedly deprived Donald Slagle of an alleged property interest in the Pool's joint self-insurance liability coverage without notice and an opportunity to be heard. *Id.* at 57 ¶¶ 223-230.
- **Equal Protection Claim:** Mr. Hill allegedly intentionally treated Slagle's claim for joint self-insurance liability coverage different than other similarly situated claims. *Id.* at 58 ¶¶ 231-236.

A motion for summary judgment regarding the due process and equal protection claims is on file in the trial court awaiting completion of the parties' briefing, a hearing, and a trial court ruling. Mr. Hill also plans to pursue dismissal of any remaining negligence and tortious interference claims. Those alleged claims lack any legal basis whatsoever: the Executive Director of a county risk pool owes no duty of reasonable care

to the litigation opponents of its member counties; and an agent, such as the Executive Director of a risk pool, cannot as a matter of law interfere with the contracts of its principal, the Pool. *Olympic Fish Prods., Inc. v. Lloyd*, 93 Wn.2d 596, 598, 611 P.2d 737, 738 (1980) (affirming dismissal of tortious interference claim because defendant was a corporate officer of one of the contracting parties).

None of the above dispositive issues turn on the “insurance” law issues about which Petitioners seek review. Rather, any claims against Mr. Hill can be resolved without regard to whether a risk pool and the liability protections it affords are subject to insurance or contract law. Because of this, Mr. Hill should not be denied his opportunity to defeat the accusations against him now, without delay, not two years from now after other “insurance” issues are resolved on interlocutory review.

Davis and Northrop instead seek to freeze the progress of the entire case by seeking discretionary and direct interlocutory review of what was a carefully considered, thoroughly briefed, pretrial ruling that was unfavorable to them. Davis and Northrop should not be permitted to drag Mr. Hill into this contentious litigation (when there was no need to do so), make serious accusations involving his professional integrity, and then call a “time out” for up to two years while they seek piecemeal appellate review.

The mere pendency of these un-adjudicated multimillion dollar claims has significant personal repercussions for Mr. Hill. The lawsuit must be disclosed by Mr. Hill on every loan application that asks. Mr. Hill likely cannot refinance his home, or buy a new home that involves financing, or get a loan to purchase a car. If he tries to obtain new employment, a basic background check would result in questions about pending lawsuits such as this, especially with its vitriolic (but misguided) allegations. His insurability regarding D & O insurance is impacted; and his ability to secure personal umbrella liability insurance is potentially impacted. But perhaps most important, since Petitioners' counsel have sent inflammatory correspondence to the Washington State Risk Manager attacking Mr. Hill and his integrity by name, his professional reputation has been blemished and will remain so until the claims have been dismissed. *See Hill App.* at 81-83 ("This appears to be only the tip of the iceberg with respect to the misconduct engaged in by WCRP, Hill, and others."). The Motions for Discretionary and Direct Review should be denied.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

A trial court's certification under RAP 2.3(b)(4) of issues for discretionary review does not supersede an appellate court's discretion to decline such review. *See Drafter's Cmt., 2002 Amend. to RAP 2.3*

(making amendment to RAP 2.3(b) clear “that **review under any of the enumerated grounds is discretionary**”) (emphasis added). Because this Court is not bound by the trial court’s certification of issues, and because Petitioners fail to establish the criteria required for direct review,² this Court should decline discretionary and direct review so that Mr. Hill can pursue prompt adjudication of any claims against him.

Discretionary review is not favored because it lends itself to piecemeal appeals. *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 380, 46 P.3d 789, 794 (2002). Pretrial review of rulings confuses the functions of trial and appellate courts. *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn. App. 457, 462, 232 P.3d 591, 593-94 (2010). A trial court finds facts and applies rules and statutes to the issues that arise in the course of a trial. *Id.* An appellate court reviews those rulings for legal error and considers the harm of the alleged error in the context of its impact on the entire trial. *Id.* This policy is served by requiring finality before appeal so as to conserve appellate energy and eliminate delays caused by interlocutory appeals. *Wlasiuk v. Whirlpool Corp.*, 76 Wn. App. 250, 253-54, 884 P.2d 13, 15 (1994). The rule also emphasizes the deference that appellate courts owe to the trial

² Mr. Hill adopts and joins in the Pool’s Answer to Statement of Grounds for Direct Review.

judge as the individual initially called upon to decide the many questions of law and fact that occur in the course of a trial. *Id.* (citing *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 374, 101 S. Ct. 669, 673, 66 L. Ed. 2d 571 (1981); 9 James W. Moore, et al., *Federal Practice* § 110.07 at 39 (2d ed. 1991)). Permitting piecemeal appeals undermines the independence of the trial judge, as well as the special role that trial judges play in our judicial system. *Id.* Furthermore, discretionary review of nonfinal orders is discouraged because the remedy by appeal is generally adequate. *Scavenius v. Manchester Port Dist.*, 2 Wn. App. 126, 127, 467 P.2d 372, 373 (1970).

A party seeking discretionary review bears a heavy burden of meeting the RAP 2.3 criteria, which are strictly applied. *In re Grove*, 127 Wn.2d 221, 235, 897 P.2d 1252, 1259-60 (1995) (noting that fewer than 10 percent of motions for discretionary review are granted). Even when the criteria for certification under RAP 2.3(b) are present (and they are not present here), discretionary review is not mandatory. *See In re Petersen*, 138 Wn.2d 70, 88-90, 980 P.2d 1204, 1214-15 (1999); *Bachowski v. Usery*, 545 F.2d 363, 368 (3d Cir. 1976). Discretionary review should be limited to extraordinary cases and not as a vehicle to obtain expedited review of a difficult case. *United States v. Am. Soc'y of Composers, Authors & Publishers*, 333 F. Supp. 2d 215, 221 (S.D.N.Y. 2004) (quoting

German v. Fed. Home Loan Mortg. Corp., 896 F. Supp. 1385, 1398 (S.D.N.Y. 1995)); *Robbins Co. v. Lawrence Mfg. Co.*, 482 F.2d 426, 429-30 (9th Cir. 1973).

Davis and Northrop have made personal and professionally harmful allegations against Mr. Hill to which he has not yet been afforded any opportunity to show how unfounded those claims are. They should not be permitted to launch such serious accusations and then indefinitely delay their resolution, which is what the result would be under the automatic stay of the entire case implicated by discretionary review. *See* RAP 7.2. During that years-long delay, Mr. Hill would not only have lingering unresolved damaging allegations implicating his professional reputation, but his ability to purchase a new home, or to refinance his existing home, and his insurability would be jeopardized.

Mr. Hill not only wants his CR 56 motion for summary judgment on the constitutional claims heard and ruled upon but also the ability to pursue now additional dispositive motions regarding the legally baseless negligence and tortious interference claims sought to be asserted against him. As Executive Director of the Pool, Mr. Hill did not owe any duty (of reasonable care or otherwise) to Davis and Northrop, who were the litigation opponents of one of the Pool's member counties. And, Mr. Hill, an agent of the Pool, is as a matter of law not capable of interfering with

his principal's own contracts. *Olympic Fish Prods., Inc.*, 93 Wn.2d at 598, 611 P.2d at 737. Any such claims against Mr. Hill can be resolved without resolution of the "insurance" law debate between the other parties. Mr. Hill should be allowed to pursue dismissal of any claims against him without the indefinite delay involved in interlocutory review of other issues.

For this reason, the promotion of judicial economy in this case weighs decisively against granting discretionary review. Rather, promoting judicial economy in this case means resolving the issues remaining for adjudication in the trial court, including the Counterclaims against Mr. Hill and the remaining claims against the other parties. Then, after the trial court has dealt with all claims by and between all parties, those parties that want to challenge any trial court rulings can appeal them at that time, from a final appealable judgment of the entire case.

In sum, there remains trial court work to be done in this case. Davis and Northrop cannot avoid their responsibility to diligently pursue all of their claims, particularly their affirmative counterclaims that dragged others, like Mr. Hill, into this case by joining them as parties when there was no need to do so. Davis and Northrop do not now get to put those claims "on ice" for two years while they seek interlocutory review under an "exception to the rule." Davis and Northrop can seek appellate review

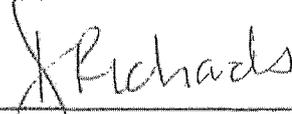
of the assignment and duty to defend rulings upon conclusion of the trial court portion of this case under the normal rules that govern appeals from final judgments, along with the right of all parties to pursue whatever other appellate issues are spawned by the still-remaining claims. Discretionary review is not a vehicle for early review of unfavorable or difficult decisions. *Am. Soc'y of Composers*, 333 F. Supp. 2d at 221 (quoting *Fed. Home Loan Mortgage Corp.*, 896 F. Supp. at 1398); see *Robbins Co.*, 482 F.2d at 429-30 (granting review of an order denying summary dismissal in a patent infringement case).

V. CONCLUSION

The Motions for Discretionary and Direct Review should be denied. Mr. Hill has an interest in promptly resolving the serious and damaging claims against him. Interlocutory review will only serve to unreasonably delay such resolution.

DATED this 26th day of January, 2015.

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The undersigned attorney certifies that on the 26th day of January, 2015, a true copy of the foregoing was served on each and every attorney of record herein via email and U.S. Mail:

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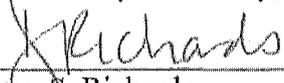
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

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Case Name: Washington Counties Risk Pool, et al. v. Clark County, et al.
No. 91154-1

Attached for filing is the following: Respondent Vyrle Hill's Opposition to Motions for Discretionary and Direct Review. A courtesy copy of the Appendix is attached and will be mailed to the Court and counsel today via U.S. mail due to size.

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