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No. 91154-1  
SUPREME COURT  
OF THE STATE OF WASHINGTON

WASHINGTON COUNTIES RISK  
POOL; LEXINGTON INSURANCE  
COMPANY; AMERICAN  
INTERNATIONAL GROUP, INC;  
VYRLE HILL, Executive Director of  
the Washington Counties Risk Pool,  
in both his individual capacity and  
official capacity; and ACE  
AMERICAN INSURANCE  
COMPANY,

Respondents,

v.

CLARK COUNTY, WASHINGTON,  
a municipal corporation; DONALD  
SLAGLE, an individual; LARRY  
DAVIS, individually, and as assignee  
of Clark County and of Donald  
Slagle; and ALAN NORTHROP,  
individually, and as assignee of  
Clark County and of Donald Slagle,

Petitioners.

RESPONDENT  
WASHINGTON  
COUNTIES RISK POOL'S  
STATEMENT OF  
ADDITIONAL  
AUTHORITY  
(RAP 10.8)

Respondent Washington Counties Risk Pool ("WCRP")  
submits the following additional authorities bearing on several issues  
addressed at oral argument on May 10, 2016:

On the issue whether Clark County's continued withholding or destruction of potentially exculpatory evidence after 1993 could constitute an "occurrence during the policy period" within the meaning of the JSLIP:

Regardless of how the question is framed . . . an official's failure to come forward during the applicable policy period and rectify civil rights violations which occurred prior to the policy period does not trigger coverage under an occurrence policy.

*The Travelers Indem. Co. v. Forrest County*, \_\_\_ F. Supp.3d, \_\_\_\_ 2016 WL 626549 at \*6 (S.D. Miss. 2016) (Mississippi law; insurer had no duty to defend civil rights lawsuit under occurrence policies issued years after wrongful convictions; "courts have consistently rejected the notion of a 'continuing trigger' or 'multiple triggers' throughout the term of a wrongfully convicted plaintiff's imprisonment").

On the issue whether the joint self-insurance obligations of WCRP county-members regarding the timing of an "occurrence" involving wrongful conviction must be interpreted in light of a participating county's reasonable expectations, as expressed in the language of the JSLIP:

From the standpoint of a reasonable person in the position of the insured, policy coverage for injury arising from a malicious prosecution occurring during the policy period exists if the insured's conduct in instituting such a

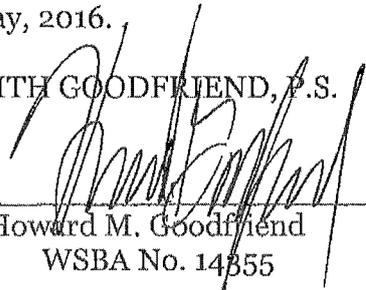
prosecution took place during the covered period. For the foregoing reasons, we adopt the majority rule that when the contract does not specify, insurance coverage is triggered on a potential claim for malicious prosecution when the insured sets in motion the legal machinery of the state.

*Zook v. Arch Specialty Ins. Co.*, \_\_\_ S.E.2d \_\_\_ 2016 WL 1164257, at \*4 (Ga. App. Mar. 25, 2016).

On the issue whether coverage is triggered under an “occurrence” based policy when the injury commences and not when the cause of action accrues for purposes of a statute of limitations, see *Selective Ins. Co. of the Se. v. RLI Ins. Co.*, 2015 WL 4250364, at \*6 (N.D. Ohio July 13, 2015), *order clarified sub nom. Selective Ins. Co. of the Se. v. RLI Ins. Co.*, 2015 WL 5812843 (N.D. Ohio Oct. 1, 2015) (“in Ohio the tort of malicious prosecution occurs for the purpose of insurance coverage under an occurrence based policy when criminal charges are filed.”)

Dated this 13<sup>th</sup> day of May, 2016.

SMITH GOODFRIEND, P.S.

By: 

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Attorneys for Respondent WCRP

**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

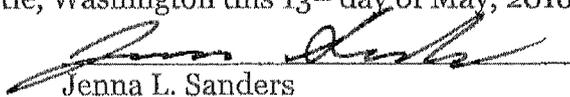
That on May 13, 2016, I arranged for service of the foregoing Respondent Washington Counties Risk Pool's Statement of Additional Authority, to the Court and to the parties to this action as follows:

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**DATED** at Seattle, Washington this 13<sup>th</sup> day of May, 2016.

  
Jenna L. Sanders

# SMITH GOODFRIEND, PS

May 13, 2016 - 4:08 PM

## Confirmation of Filing

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**Appellate Court Case Title:** Washington Counties Risk Pool, et al. v. Clark County, Washington, et al.

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