

Jun 13, 2016, 2:49 pm

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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.; J.
WILLIAM ASHBAUGH,
individually; 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,

Appellants.

NOTICE OF
SUPPLEMENTAL
AUTHORITY

Pursuant to RAP 10.8, Appellants Clark County and Donald Slagle hereby give notice of the following supplemental authority concerning this appeal:

1. *Lui v. Essex Ins. Co.*, _ Wn.2d _, No. 91777-9, Slip Opp. at 5 (Wash. June 9, 2016) ("We construe insurance policies as contracts.... When we interpret an insurance policy, we consider the insurance policy as a whole, giving the policy "a



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fair, reasonable, and sensible construction as would be given to the contract by the average person purchasing insurance.”)

2. *Nw. Bedding Co. v. Nat'l Fire Ins. Co. of Hartford*, 154 Wn. App. 787, 792, 225 P.3d 484 (2010) (“The language in standard form policies is interpreted in accord with the understanding of the average purchaser even if the insured is a more sophisticated business actor.”)
3. *Boeing Co. v. Aetna Cas. & Sur. Co.*, 113 Wn.2d 869, 883, 784 P.2d 507 (1990) (holding “it would be incongruous for the court to apply different rules of construction based on the policyholder because once the court construes the standard form coverage clause as a matter of law, the court's construction will bind policyholders throughout the state regardless of the size of their business.”)
4. *New Hampshire Indem. Co., Inc. v. Budget Rent-A-Car Systems*, 148 Wn. 2d 929, 64 P.3d 1239 (2003) (“The insured should not be left without a prompt and proper defense and if a primary insurer fails to assume the defense, for any reason, the secondary insurer which has a duty to defend should provide the defense and, to do justice, should be entitled to recoup its costs from the primary insurer.”) (emphasis added)
5. *Chartis Specialty Ins. Co. v. Queen Anne HS, LLC*, 867 F. Supp. 2d 1111, 1118 n.1 (W.D. Wash. 2012) (holding insured can pay limits of underlying policy and that a promissory note by insured in the amount of the underlying policy limits constituted sufficient tender of underlying policy limits to trigger excess insurer’s coverage obligations; “Some policies dictate *who* must pay the retained limit that triggers the excess insurer’s responsibilities. . . . The Chartis policy does not.”) (emphasis in original).
6. *Polygon Nw. Co. v. Am. Nat. Fire Ins. Co.*, 143 Wn. App. 753, 773-74, 189 P.3d 777 (2008) (“Under Washington law, in continuous damage situations, like this one, each insurer is jointly and severally responsible for the liability covered by the policy. *Gruol Constr. Co. v. Ins. Co. of N. Am.*, 11 Wn. App. 632, 637–38, 524 P.2d 427 (1974). The trial court correctly

concluded from this established rule that, for liability over the limits of those underlying policies, the excess insurers in turn each became liable for the entirety of any excess amount, consistent with the terms of their policies.”)

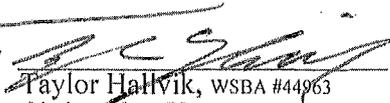
7. *Travelers Indem. Co. v. Forrest Cty.*, No. 2:14-CV-22-KS-MTP, 2016 WL 626549, at *5 (S.D. Miss. Feb. 16, 2016) (noting that “[o]ther courts have framed wrongful conviction coverage questions in a variety of ways, despite the substantial similarity among the various states’ laws regarding a liability insurer’s duty to defend or indemnify. Some courts have conducted a straightforward comparison of the language from the policy and complaint, looking for factual allegations of covered conduct within the applicable policy period. Other courts have focused on the public policy implications and practical consequences flowing from the coverage determination. Many courts have analogized civil rights claims like those asserted by the *Bivens* Plaintiffs’ to malicious prosecution or other tort claims. Finally, some courts have waded into the semantics of causation, concluding that injuries occurring during a wrongfully convicted plaintiff’s imprisonment were ultimately caused by the wrongful arrest and conviction, rather than any failure to act during a later policy period.” Proceeding to discuss numerous cases from other jurisdictions labeled as “Contrary Authority”) (emphasis added).

RESPECTUFLLY SUBMITTED this 13th day of June, 2016.

CLARK COUNTY PROSECUTING
ATTORNEY

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By


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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:

On this 16th day of June, 2016 I caused a true and correct copy of Clark County and Donald Slagle's Notice of Supplemental Authority to be filed with the court and served upon the following parties via email:

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Subject: RE: Washington Counties Risk Pool v. Clark County - Supreme Cause No: 91154-1 - Clark County and Donald Slagle's Notice of Supplemental Authority

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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.

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Subject: Washington Counties Risk Pool v. Clark County - Supreme Cause No: 91154-1 - Clark County and Donald Slagle's Notice of Supplemental Authority

Attached please find Appellants Clark County and Donald Slagle's Notice of Supplemental Authority

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Please let me know if you have any problems receiving the attachments.

Please note that our reception, address suite number and zip code have changed.

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