

From: [OFFICE RECEPTIONIST, CLERK](#)
To: [Tracy, Mary](#); [Linford, Tera](#)
Subject: FW: Two Lawyers' Input re: Mandatory Prof Liab Insurance
Date: Wednesday, August 26, 2020 2:47:49 PM

From: Chris Neal [mailto:cneal@coveragenorthwest.com]
Sent: Wednesday, August 26, 2020 2:47 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Neal4law <neal4law@gmail.com>
Subject: Two Lawyers' Input re: Mandatory Prof Liab Insurance

Dear Justices of the Washington Supreme Court,

We understand the issue of whether to mandate professional liability for lawyers is before you. My wife and I have been lawyers for approximately 30 years, and we have been proud members of the Washington Bar for the past 25 years (Bar Nos. 25685 and 25686). While we understand the professional liability insurance industry hungers for dry powder premium dollars from an untapped source, we oppose their feeding at our expense, or at the expense of clients exposed to rate increases resulting from mandatory insurance. So far as the available data has been able to take us, and as other viable remedies remain available to restore the very few affected, we submit that mandatory professional liability insurance is a solution in search of a problem. There are good reasons while only Oregon and Idaho require mandatory insurance.

You will recall the State Bar Association listened to its constituents and drove a stake through this issue back in May 2019, so we are surprised to see it rise back up off of the table for a second effort, especially so soon. That, to us, underscores the fact that this effort is driven by the insurance industry, something we recognize too well, having spent almost our entire careers in service to the insurance industry. The fact that the industry had a significant seat at the Task Force's table back in 2018-2019, when we did not, was not lost on us. As with any interested party who seeks a different outcome, however, it's likely the insurance industry sees appeal to the Supreme Court as its logical next step.

I will not waste your time, or mine, setting out here our entire case against mandatory insurance, but I will refer you to, and ask that you include in your deliberations, the below-provided email exchange I had with past WSBA President, Bill Pickett, in March 2019, in which I set forth our arguments and personal experiences on the matter, as well as the possibility we would have to leave the practice of law, should mandatory insurance come to pass.

In addition to the reasons presented to the WSBA, we would note that, if a lawyer must have insurance to maintain a license, it effectively makes the insurance industry a quasi-licensing industry. Preconditioning the practice of law on something new and, unlike the Bar exam, Ethics exam, background check, etc., something over which the lawyer has no control, creates a slippery slope. Transparency to potential clients by disclosing the lawyer carries no insurance? Sure. That's fair. Letting the insurance industry determine whether I'm able to do

that for which I've spent my life preparing and for which I'm otherwise completely qualified? No. That's untenable, and a bridge too far, especially without data supporting the need for a remedy.

We ask that you do not act to amend APR 26. We also ask that this email be included in the public record in its entirety.

We thank you for your efforts, and consideration, whatever the outcome.

- Christopher Neal - WSBA 25685

- Lisa Neal - WSBA 25686

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Begin forwarded message:

From: Chris Neal <cneal@coveragenorthwest.com>

Subject: Re: Your Update Email

Date: March 5, 2019 at 3:11:23 PM PST

To: Bill Pickett <Bill@wdpickett-law.com>

Thanks Bill. Much appreciated.

- Chris

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vCard: [Chris Neal](#)

On Mar 5, 2019, at 3:07 PM, Bill Pickett <Bill@wdpickett-law.com> wrote:

Hi Margaret,

Please include the following email string from member Chris Neal in this week's materials for the governors to review. Chris has a number of points that he would appreciate consideration of in advance of the mandatory malpractice insurance discussion. I know this is late material, but I would greatly appreciate it being added to everything being considered.

S_____

Chris ccing you on my email to WSBA. Thanks again for your comments. I am a trial

lawyer, and suspect that I have been accused of having a “plaintiff’s bias” on more than one occasion. That being said, please know that all comments are both welcome and appreciated when it comes to matters of consideration before WSBA.

Thanks and Peace,
Bill

Bill Pickett

Trial Lawyer

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From: Chris Neal [<mailto:cneal@coveragenorthwest.com>]

Sent: Tuesday, March 05, 2019 12:30 PM

To: Bill Pickett <Bill@wdpickett-law.com>

Subject: Re: Your Update Email

Bill,

Thanks for the prompt response. Please do share my comments with anyone in position to affect the outcome of this issue. My Bar No. is 25685 and my wife’s is 25686.

I see you identify yourself as a Trial Lawyer, which term frequently suggests a plaintiff bias. If that is the case with you, please know that I do not mean to impugn the motives of that group - each type of practitioner has his/her place in the arena and I respect all of them, even the ones who prosecute legal malpractice cases - everybody’s got to eat. That said, I forgot to mention another concern I have - the likelihood of an increase in frivolous claims/suits against lawyers filed by clients disappointed with their outcome, who want to get something back from the lawyer’s E&O carrier with a sweetener for their E&O lawyer’s efforts, all of which will come at the (potentially) innocent lawyer’s expense.

From my 30+ years experience, some of which I spent as a plaintiff’s lawyer, I know there will be lawyers to take those cases, but the impact on decent hardworking lawyers will be huge, even if they committed no harm, and even if the cases settle early. The affected lawyers will see E&O premium increases, their names on court dockets, their personal credit ratings will take a hit, some good home/auto companies (eg Amica) won’t even take people who have been sued for any reason, a claim/suit will impact their getting future clients, affect

their credibility with courts and opposing counsel, employers, neighbors, etc. - the beatdown goes on. Non-legal folk won't know the claim/suit was just a shakedown for quick cash - they'll just see a lawyer who was sued and assume the worst. That will hurt, not help, the profession. Good lawyers may exit claim-prone practices to avoid frivolous claims, reducing the number of available lawyers to the public. All to fix a problem that the WSBA has not managed to convince me, or my brethren (per surveys and letters I've seen in NW Lawyer), even exists.

The last issue concerns the availability of suitable insurance products. I carried individual E&O coverage for my work as a part-time lawyer doing insurance coverage work. Several years ago, I obtained my coverage through a broker in Tacoma who handled lots of E&O insurers. Do you know how many offered a part-time program for my area of legal work? One (Zurich), and it wasn't clear at the time they would continue to offer it. I'm sure if the E&O folks get their foot into Washington via mandatory insurance that they'll offer more "products," but it's less clear whether there would be sufficient competition to keep Washington's lawyers from being victimized on that end, as well. Incidentally, I was paying \$800/yr for my coverage then (2012), and the number I'm hearing bandied about lately is \$3,000 per lawyer (so \$6K from our household), which, with already outsized health insurance premiums (\$14K/yr) and high (\$5K per) deductibles, is simply a bridge too far for this retirement-horizen couple.

I very hope much hope the WSBA does not force mandatory insurance on Washington's lawyers. If it does, my back-up hope is that lawyers in my and my wife's position who limit their practices to work done for others under their policies will be allowed to keep their law licenses lit. If not, we might have to fold up shop in Washington, sell our home, and move back to Texas, one of the 48 states that does not mandate insurance, where we're both licensed - nothing like starting over in your 60s, but it shouldn't have to end that way when we've been good/loyal legal soldiers in Washington for more than 20 years. We've spent our entire adult lives working to get to this point, and forcing us into insurance will simply pull the rug out from under me and my wife, just as we're trying to thread the retirement needle at the same time we're also heading into the infirmaries of old age while also trying to avoid being ground up by the medical insurance/expense machine. Nobody's saying it should be easy, but, after 30+ years of blemish-free legal practice, it just shouldn't be this hard at the end.

Thanks again for the response, and for listening.
- Chris Neal

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On Mar 5, 2019, at 11:42 AM, Bill Pickett <Bill@wdpickett-law.com> wrote:

Thank you Chris. Good point and know that I appreciate your comments.
I will hope to include more issues in any future bar message.

With your permission I would like to relay your email to the full board for their consideration as they prepare to this week's meeting. Let me know.

As always, feel free to email and/or call with any questions or concerns. Again, your comments are well taken and appreciated.

Peace,
Bill

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From: Chris Neal [<mailto:cneal@coveragenorthwest.com>]
Sent: Tuesday, March 05, 2019 10:38 AM
To: Bill Pickett <Bill@wdpickett-law.com>
Subject: Your Update Email

Mr. Pickett,

This email address may not be the most appropriate way to contact you, so my apologies in advance if that's so.

I write to express concern that your update email omitted any reference to the only thing that's on the mind of every lawyer I know - mandatory insurance. Like too many others, I will be forced into early (and underfunded) retirement if/when the rule goes into effect. My solo firm's business model anticipates I do work only for larger firms to whose own insurance I am added for the work that I do - the public is protected. So, while I do not carry my own insurance, all of the work that I do is covered by insurance. However, under the new mandatory arrangement, it appears I will not be able to maintain my law license unless I can prove I, personally, carry my own separate liability coverage. My revenue stream is reduced as I head toward retirement, so that's not possible, and I'd have to leave the Bar, and the remainder of my career/income. As mentioned, many are in my boat, including my wife, Lisa Neal. We've practiced in Washington for more than 20 years.

And, yes, I have written Comments to this effect during the input period, asking that an exemption be applied to those in my position. I do not know the status of that request, and I received no response.

So far as I know, all of WSBA's polling shows Washington's lawyers are overwhelmingly against the mandatory insurance requirement for several reasons, including that WSBA has failed to make its case that the public has suffered in any way from the absence of mandatory insurance, even anecdotally. Cynically, this looks to me like an effort by the malpractice lawyers and E&O insurance industry (which has a seat at the table that I help pay for) to bring money in from the sidelines to further their own economic agendas at the expense of the very lawyers who want, and pay for, the WSBA to watch out for their interests, in addition to the public's.

For these reasons, I am surprised and disappointed your update email made no reference to the status of this important issue.

- Chris Neal

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