

WASHINGTON COUNTIES RISK POOL

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Created by Counties for Counties



TO: WCRP Membership, Colleagues, and Interested Parties
FROM: Derek Bryan, WCRP Executive Director
DATE: November 9, 2016
RE: *WCRP vs. Clark County, et al*

You are no doubt aware of the litigation involving the Washington Counties Risk Pool and its former member, Clark County. The purpose of this release is to provide an overview of the legal issues before the State Supreme Court, and a summation of the resolution and current disposition of the matter.

The three primary issues before the Washington State Supreme Court were:

- (1) Whether the WCRP should be treated as an insurance company and subject to punitive bad faith statutory and common law in a dispute between a former Pool member and the Pool.
- (2) Whether a former Pool member can assign its rights as a member of the Pool to private claimants, despite the existence of an anti-assignment provision in both the governing Interlocal Agreement forming the Pool and the Pool's liability coverage document.
- (3) Whether the arrest, conviction and imprisonment of individuals by a public entity 9 years before that entity became a member of the Pool constituted a covered "occurrence" under the terms of the Pool's liability coverage document because the imprisonment continued into the time that public entity was a member of the Pool.

Issue number (3) above was of particular importance to the WCRP's excess liability insurance carriers, in that they faced enormous exposure if an "occurrence" was found during Clark County's membership in the Pool.

In November of 2014, the trial court ruled in favor of the WCRP on all three of these issues. In its decision, the trial court ruled that: (i) the Pool could not be treated as an insurance company for purposes of applying bad faith law; (ii) there was no right of assignment under the Interlocal Agreement and liability coverage document; and (iii) there was no covered "occurrence" under the terms of the WCRP's liability coverage

document because the “occurrence” took place at the time of arrest, conviction and imprisonment before Clark County became a member of the Pool.

Following certification by the trial court, the matter was accepted for direct appellate review by the Washington State Supreme Court. The Supreme Court heard oral arguments on May 10, 2016.

Following oral argument, the Pool’s reinsurers and excess carrier(s) increased their interest in settling the case and initiated mediation talks. The WCRP remained confident that the Supreme Court would affirm the trial court. However, because there still existed the potential for an unfavorable outcome, coupled with the possibility of continued costly and lengthy litigation, the WCRP reluctantly agreed to participate in settlement discussions.

In order to avoid the possibility of protracted litigation, the Pool eventually joined in a global settlement resolving the litigation. Under the terms of this settlement, the two former prisoners, Davis and Northrop, were paid \$15.5 million. This amount is in addition to \$10.5 million Clark County previously paid them. Of the \$15.5 million, \$13.5 million was paid by Lexington Insurance Company, or one of its subsidiaries, \$1 million was paid by ACE Insurance Company and \$1 million by the Washington Counties Risk Pool. The settlement included a global mutual release of claims and no party admitted liability for any of the asserted claims.

The WCRP would like to extend its many thanks and appreciation to those who provided support throughout this litigation. While we maintain that the Supreme Court would have upheld the trial court’s rulings, we are pleased to see this case reach an amicable resolution.

If you have questions, or would like to discuss the above, please contact Derek Bryan by telephone at (360) 292-4500, or by e-mail at derek@wcrp.wa.gov.