

WASHINGTON COUNTIES RISK POOL
Roundtable for County Claims Administrators and Risk Managers
NOTES

Thursday, March 24, 2011
Lodge at Suncadia, Cle Elum (nearby Roslyn), Washington

ATTENDANCE:

Adams County:	Linda Reimer, Claims Administrator/Risk Manager
Benton County:	Melina Wenner, Claims Administrator/Risk Manager
	Bryan Perry, Safety/Training Coordinator
Chelan County	Keith Goehner, Commissioner
	Gary Riesen, Prosecuting Attorney
	Cindy Dietz, Legal Administrative Supervisor
	Cathy Mulhall, County Administrator/Risk Manager
Clallam County:	Michael Chapman, Commissioner
Clark County:	Mark Wilsdon, Claims Administrator/Risk Manager
Columbia County:	Drew Woods, Claims Administrator/Risk Manager/Safety Officer
Cowlitz County:	Clyde Carpenter, Claims Administrator/Risk Manager/Safety Officer
Douglas County:	Steve Clem, Claims Administrator/Risk Manager
	Thad Duvall, Auditor
Franklin County:	Robert Koch, Commissioner
	Shawn Sant, Prosecuting Attorney
Garfield County:	Dean Burton, Commissioner
	Butch Low, Claims Administrator/Risk Manager/Safety Officer
Grays Harbor County:	Herb Welch, Commissioner
	Rose Elway, Claims Administrator/Risk Manager
	Dale Gowan, Central Services Director
	Joy Carossino, Safety Officer/RM Assistant
Island County:	Angie Homola, Commissioner
	Bruce Rohm, Safety Officer/Claims Assistant
Jefferson County:	David Alvarez, Chief Civil DPA
Kittitas County:	Lisa Young, Risk Manager/Safety Officer
Lewis County:	Lee Grose, Commissioner
	Harry Green, Claims Administrator/Risk Manager
	Jonathan Meyer, Prosecuting Attorney
Mason County:	Jerry Lingle, Commissioner
	Lynda Ring Erickson, Commissioner
	Dawn Twiddy, Risk Manager/Safety Officer
Okanogan County:	Andrew Lampe, Commissioner
	Nanette Kallunki, Claims Administrator/Risk Manager
Pacific County:	Bryan Harrison, Risk Manager
Pend Oreille County:	Laura Merrill, Commissioner
	Don Ramsey, Risk Manager
San Juan County:	Pete Rose, County Administrator
	David Kelly, Claims Administrator/Risk Manager/Safety Officer
Skagit County:	Billie Kadrmas, Risk Manager
	Adam Kick, Prosecuting Attorney
	Stephen Fallquist, Civil Deputy
Skamania County:	Jim Richardson, Commissioner
	Marilyn Butler, Claims Administrator/Risk Manager
Spokane County:	Steve Bartel, Claims Administrator/Risk Manager
Thurston County:	Sandra Romero, Commissioner
	Tammy Devlin, Claims Administrator/Risk Manager/Safety Officer
	Jon Tunheim, Prosecuting Attorney

Walla Walla County Jay Winter, Claims Administrator/Risk Manager/Safety Officer
 Mark Spinks, Public Records Officer

Whatcom County: Randy Watts, Claims Administrator/Risk Manager

Yakima County: Larry Peterson, Claims Administrator/Risk Manager

Washington OFM: *Not represented*

Broker Services: Mike Croke, Senior Area Vice President – AJGRMS, Inc.
 Liz Miser, Area Vice President – AJGRMS, Inc.
 Tim Chace, Director of Risk Control Services, AJGRMS, Inc.

Others: Eric Johnson, Executive Director, WSAC
 Jeff Mosen, Intergovernmental Policy Manager, CRAB
 Mike Tardif, Attorney at Law, Freimund Jackson Tardif

WCRP Staff: Vyrle Hill, Executive Director
 David Goldsmith, Member Services Manager
 Jill Lowe, Loss Control Coordinator
 Susan Looker, Claims Manager
 Mike Cook, Claims Analyst
 Tammy Cahill, Claims Representative
 Lisa Daly, Claims Assistant
 Sue Colbo, Accounting/Auditing Officer
 Claire Thompson, Administrative Assistant

Welcome: Claims Manager Susan Looker called the Roundtable to order at 9:00 a.m. and welcomed all attendees. Jill Lowe made some general announcements. Susan introduced Michael Tardif, attorney with the Olympia law firm of Freimund Jackson Tardif & Benedict Garratt, PLLC, who was the featured speaker.

Programs: Mike Tardif was asked to present information on Liability and Legal Questions Related to Right of Way. While preparing to present the information, he felt a recent case, *Chen v. Seattle 153 Wn. App. 890 (2009)*, was important to highlight the way courts traditionally looked at road liability and how that is more recently changing.

In the *Chen* matter, a pedestrian was killed in a marked crosswalk on a 5-lane arterial at 6:30 p.m. Sunday. The traffic was light and there were no witnesses. There was no signal at the intersection, but signals were present at the next intersection in both directions. The crosswalk had been improved with warning signs, overhead pedestrian lights and sidewalk “bulbs.” There was no road defect, no sight distance limitation, no misleading condition, and no violation of signing or lighting standards.

Claims included prior pedestrian accidents giving the city notice of hazard at the intersection; there were insufficient gaps in traffic to allow pedestrians to cross; and the intersection should be improved with pedestrian traffic signal, a center island in place of left turn lane, and other unspecified measures. The trial court granted summary judgment for the city. The Court of Appeals reversed and stated (in summary), 1) no defect or misleading condition in the road is required, 2) whether intersection is reasonably safe for ordinary travel is a question of fact, and 3) the jury must decide whether intersection is unsafe and if the city breached its duty of care. The Supreme Court declined review of city appeal.

Using the *Chen* case, Mike spoke about traditional road liability rules. Long-standing law governs local government road liability and includes, 1) there must be a “defect” in or closely proximate to the road, 2) the defect must be an unusual or extraordinary condition or hazard (there was no duty to protect motorists from common road hazards), 3) there must be “notice” of defect, either actual or constructive (if the government created the defect, notice was not required), 4) the government had an option to repair the defect or warn of its presence by signing,

5) signs were necessary only if required by law and/or the road defect was inherently dangerous or misleading, 6) there was no duty to repair or warn of open and apparent road defects. The effect of these traditional road liability rules led to the following: 1) there was liability only for actual road defects, not for failure to improve a road, 2) many cases were dismissed on pre-trial motions due to lack of defect, notice, or inherently dangerous or misleading condition, and 3) if the case was not dismissed, the question for a jury was whether the road was in a "reasonably safe condition for ordinary travel."

Mike commented he has concerns about the conclusions arrived at by the Court of Appeals in the *Chen* matter because they are contrary to approximately 120 years of prior law from the Supreme Court. Trial courts will deny summary judgment because reasonable safety of a road is now always a fact question for a jury, and these rulings create liability for lack of improvements to a road rather than only for defects. *Chen* will prevent dismissal of many deep pocket joint and several liability cases, which will require large settlements or risk even larger verdicts.

The *Chen* matter is still pending.

Break: 9:55 a.m. to 10:08 a.m.

Mike Tardif returned to his presentation on Liabilities and Legal Questions Related to Right of Way. He included information on right of way acquisition, width, and liability for fixed objects and activities; recreational immunity; hazard trees in right of way; liability for lack of sight distance; utility franchises and liability; and managing water in the right of way and liability for drainage. He made some general suggestions for management of risk in the right of way. He suggested that counties: comply with applicable statutes, such as rail crossing sight distance and herbicide requirements; comply with any existing county ordinances; adopt ordinances needed to set rules for right of way (e.g., encroachments); adopt high level policies where needed to limit liability for certain activities; and avoid low level policies and procedures that are not followed. He also recommended, when writing policies, not to promise too much – don't promise "safety" or "reasonable care" or "protecting" because it can cause future problems. (Note: Attorneys earned 2 CLE's for attending this complete presentation by Mike Tardif.)

Case Updates: Randy Watts discussed two cases, *Robb v. Seattle* and *Gregoire v. Oak Harbor*. The Seattle case involved a wrongful death of a no fault motorist with a long gun by a mentally ill person. The deceased was shot with shells that Seattle police had failed to pick up on the street. Division 1 wanted to find a method for compensation, so went outside the Public Duty Doctrine to tort law. They theorized the act of not picking up the shells created an inherent risk. Randy thought this case was an example of the "camel's nose in the tent" and will create more problems using the Public Duty Doctrine. The case was denied on summary judgment and will go before a jury.

Gregoire v. Oak Harbor involves a jail suicide. The detainee was arrested, taken to jail, where he was given no mental evaluation, was observed to be crying, and 10 minutes later jail personnel found him hanging by a sheet. They tried to revive him, but the jail personnel had not received CPR training. The trial jury said it was the inmate's fault, but the court found that jail suicide is "foreseeable", that the jail has a responsibility to protect inmates, and that you could not ask for comparative fault to be assigned to the deceased. Randy recommended at least one person on jail staff be trained in and can perform CPR, and that all inmates should be evaluated upon intake.

Lunch Break, 11:50 a.m. – 1:30 p.m.

Eric Johnson, Executive Director of WSAC, presented Active & Dead Bill Updates, a legislative update. WSAC continues to pursue additional local revenue options, but admits they have not had much success doing so. Some bills that are of liability interest are: HB 1719 Limiting Liability for Unauthorized Passengers in a Vehicle, SB 5605 Limiting Government Liability for Various Activities, HB 1670/SB 5387 Addressing the Regulation of Self-Insurance Programs by the State Risk Manager, and SHB 1445/SB 5353 Duty Related Presumption for Heart Attack and Strokes.

Eric reported joint and several reform is dead for this year, but there is interest in looking at it next year.

Vehicle Use Policy: The Roundtable reconvened at 1:30 p.m., brought to order by Jill Lowe and Mark Wilsdon. Mark presented the Clark County Vehicle Use Policy to the attendees. He noted Clark County had some resistance to implementing the program. Some unions complained, but were unaware it was included in earlier bargaining, so had to accept it. Mark also noted the purpose was to set down a policy and procedure, not to punish people for not complying. If they find instances of those not complying, they refer them to Human Resources for appropriate action. Human Resources also deals with union concerns.

One of the features of Clark County's policy is to encourage use of privately owned vehicles, for which they pay expenses. As their use of county owned vehicles decreases, a question arises about the liability exposure of the county while employees drive their own vehicles. Does the county owned vehicle count accurately reflect the liability exposure for vehicle units to the underwriters? Vehicle use and policies will be a focus at the 2011 Summer Conference, under the Membership Compact.

Roundtable Comments: Attendees introduced themselves around the table and the following comments were made:

1. Tammy Devlin (Thurston) commented the county is dealing with a lot of personal injury claims right now.
2. Clyde Carpenter (Cowlitz) advised all who have rodeo or fair royalty of the need to know what these people are doing – what are their duties? Do they travel for the county? Do they perform in events while acting as royalty? What is the liability to the county for these activities? He is currently working to define the activities and liabilities of his rodeo/fair royalty so that he can adequately ensure coverage.
3. David Alvarez (Jefferson) noted they have a new contract for an equestrian park, and also have some water issues.
4. Larry Peterson (Yakima) made a few comments about contractors' indemnity and liability. Mark Wilsdon wants to look at this issue and will make it a priority.
5. Pete Rose (San Juan) commented about prescriptive easements.

The Roundtable ended at 2:35 p.m.