

**Minutes of Meeting of
Claims Committee of
Nevada Public Agency Insurance Pool
Date: November 5, 2012
Time: 1:30 P.M.
Place: Nevada Public Agency Insurance Pool
201 S. Roop Street, Conference Room, 2nd Floor
Carson City, NV 89701**

1. Roll

Committee members present: Mike Rebaleati, Cash Minor, Alan Kalt, Roger Mancebo, Steve West
Others present: Wayne Carlson, Donna Squires, Ann Wiswell, William Horn, Scott Brooke, Scott Glogovac, Jack Angaran, and Mary-Ann LeBrun

2. Public Comment

Chair Rebaleati called for public comment and hearing none, closed the public comment period.

3. For Possible Action: Approval of Minutes of Meeting of POOL Claims Committee October 24, 2007

On motion and second to approve the minutes, the motion carried.

4. For Possible Action: Consideration of Appeal from Incline Village General Improvement District of Coverage Determination by Nevada Public Agency Insurance Pool in the matter of Katz. v. Incline Village General Improvement District

Chair Rebaleati turned this item over to Wayne Carlson to describe the agenda item. Wayne explained that the purpose of the meeting was to review the appeal and determine whether or not coverage should be granted. He then invited Scott Glogovac, coverage attorney for Incline Village General Improvement District (IVGID) to present arguments for their appeal position.

Mr. Glogovac stated that there are two issues to be addressed: (1) the propriety of the coverage denial and (2) whether a duty to defend under the Coverage Form is required if there are covered allegations. As to the first issue, Mr. Glogovac stated that there were three exclusions upon which the POOL based its coverage denial:

#3. Coverage does not apply to any claim made against any **Assured** flowing from or originating out of the **Assured** gaining any profit or advantage to which they were not legally entitled.

#13. Coverage does not apply to any claim based upon or arising out of:

a. . . . the collection of taxes, or the collection of or payment of fees to or for any other entity, including hospitals, schools, commissions, joint commissions, boards, agencies, districts and authorities.

#15. Coverage does not apply to any liability for damages other than money damages or to any costs, fees or expenses that the **Assured** may become obligated to pay as a result of an adverse judgment for injunctive or declaratory relief.

Mr. Glogovac conceded that claims #1—4, 9, 12, and 13 of the Katz complaint are not covered because declaratory relief is not covered under the Form. He also conceded that there is no coverage for claims involving the collection of taxes or excess fees, and claims #6, 8, 10 and 11 are not covered. He argued that there was a potential for coverage only under claim #5 and a portion of 7 of the Katz complaint. While these claims allege collection of taxes, they also contain allegations that IVGID improperly expended the monies collected.

Mr. Glogovac argued that the three exclusions did not preclude potential coverage for monetary relief sought for improper expenditure of the taxes and fees collected by IVGID. He also argued that Nevada has not adopted

a public policy of excluding insurance coverage for the improper collection of taxes or fees as in Pennsylvania's *Central Daupin* case, cited by the Pool.

As to the second issue, Mr. Glogovac argued that a duty to defend was required, not discretionary, under insurance laws and that it is an ongoing duty because of the potential for an appeal, despite the summary judgment that has been entered in the Katz action. He conceded that Section III of the Coverage Form states that the Pool may defend an Assured at its discretion. He also noted that the Interlocal Cooperation Agreement (ICA) has a similar provision, Article 20, stating that the Pool, at its sole discretion, may undertake defense of a member for claims arising out of a Loss. He then argued that these provisions were not clear and that the reasonable expectation of the Members, based on the entire ICA, is for defense and indemnity coverage. Thus he argued that the Pool was required to defend so long as covered claims existed.

Upon conclusion of Mr. Glogovac's arguments, Jack Angaran, coverage attorney for the POOL, noted that the Pool is not an insurance company; thus insurance case law involving interpretation and the duty to defend do not apply. Insurance policies are generally adhesion contracts where the insured has no say in the terms. The Pool Coverage Form is not an adhesion contract as the Members of the Pool vote on and agree to its contents. It is subject to simple contract interpretation, which is governed by the intent of the Members.

He outlined the reasons that coverage must be denied under Exclusions #3, 13, and 15 of the Pool Coverage Form. Mr. Angaran noted that despite an allegation that IVGID "improperly expended" the monies collected as taxes and/or fees, the relief requested was still the same: refund/transfer of the monies (collected by IVGID from its citizens) back to IVGID's Utility, Recreation and Beach Funds (entities under Nevada statute as Members are aware) from its General Fund. This is part of the declaratory and equitable relief sought, not "money damages", and the language of the cited exclusions showed the intent of the Pool's Members to exclude coverage for such refunds. Although the complaint did not specifically use the words of the exclusion, the essence of the facts alleged was that IVGID had illegally or improperly collected taxes and fees for certain utility/recreation funds and used them for another fund; thus gained profit or advantage to which it was not legally entitled. If the allegations were proven, there would be no coverage under the Pool Coverage Part.

He also noted that the public policy cited in the *Central Daupin* case, while not expressly adopted by Nevada law, is consistent with common sense, and the intent of the Members in drafting the exclusions. There can be no insurance coverage for the unlawful collection of taxes and fees by a political subdivision. A political subdivision (Pool Member) would have no incentive to ensure that it collected monies legally from its citizens, if it could look to its fellow Members to pay back the monies improperly collected and spent. Concluding, Mr. Angaran emphasized that there was no potential for coverage based upon the clear language of the exclusions, jointly drafted by the Members of the Pool, who understood their intent; thus the POOL's correctly exercised its discretion to no longer defend IVGID in the Katz lawsuit.

Mr. Glogovac then responded by asserting that the POOL was not conforming to the NRS277 provisions that it could do a plan of insurance if the coverage form did not provide insurance. He referred to provisions of the ICA and NRS provisions. He stated that if it is insurance then the POOL cannot withdraw defense. He further asserted that the insuring agreement of the Coverage Form says that the POOL will pay the sum of damages as the result of an Event as defined and that the case states that money is at issue, thus is damages and the duty to defend should apply.

Mr. Angaran responded that the refunds demanded in the complaint seek equitable relief and not "money damages" and that the coverage form specifically excluded equitable relief. He further stated that the POOL is a pooled self-insurance fund permissible under NRS 277. The POOL thus is not an insurance company, nor regulated as such. Members jointly agree by board action to the terms of the coverage form, thus contract law and the intent of the members applies.

Chair Rebaleati allowed for one further statement from each attorney. Mr. Glogovac again asserted that the NRS 277 provisions cited NRS 681 regarding insurance companies as an argument that insurance laws applied and that the POOL coverage form was an adhesion contract subject to a duty to defend like any insurance policy. He stated that a refund of money is a payment of money and that the policy did not clearly exclude this from damages. He said it was a risk transfer issue and that ambiguity should inure to the favor of IVGID.

Mr. Angaran clarified that the POOL is not an insurer under NRS 277, but a pooled self-insurance fund, thus the Members of POOL could and do decide contractually what their coverage form includes. This is consistent with the ICA provisions as well which provide each Member the right and opportunity to decide on the terms of the Coverage. The terms were agreed upon by the Members, who are all the drafters, and can't be changed or construed against their intent.

Chair Rebaleati called for a recess before going into closed session.

- For Possible Action: Closed Session pursuant to NRS 241.015 (2)(b)(2) to Receive Information from the Attorney Employed or Retained by the Public Body Regarding Potential or Existing Litigation Involving a Matter over which the Public Body has Supervision, Control, Jurisdiction or Advisory Power and to Deliberate toward a Decision on the Matter, or Both.**

Chair Rebaleati opened the closed session and read the closed session agenda description. Various members asked questions for clarification of issues under consideration and what decision options they were to consider once back in open session. Chair Rebaleati adjourned the closed session and asked for the other attendees to return.

- For Possible Action: Decision Regarding Appeal from Incline Village General Improvement District of Coverage Determination by Nevada Public Agency Insurance Pool in the matter of Katz. v. Incline Village General Improvement District**

Chair Rebaleati reopened the committee meeting on this action item 6. Cash Minor offered a motion to deny the appeal of Incline Village General Improvement District. Chair Rebaleati asked if there was a second. Roger Mancebo seconded the motion. Chair Rebaleati asked whether there was any discussion and hearing none, called for the vote. The motion carried unanimously.

- Public Comment**

Chair Rebaleati asked for public comment and hearing none, closed the public comment period.

- For Possible Action: Adjournment**

On motion and second to adjourn, the meeting adjourned at about 3:20 p.m.

The Agenda was posted at the following locations:

**N.P.A.I.P.
201 S. Roop
Carson City, NV 89701**

**Carson City Courthouse
885 E. Musser Street
Carson City, NV 89701**

**Eureka County Courthouse
10 S. Main Street
Eureka, NV 89316**

**Churchill County Courthouse
155 North Taylor Street
Fallon, NV 89406**