



WASHINGTON STATE TRANSIT INSURANCE POOL | RISK MANAGEMENT IN MOTION

2629 12th Court SW | Olympia, WA 98502 | 360-786-1620 | www.wstip.org

Minutes of the
Executive Committee Meeting
October 25, 2018
WSTIP Office ~ Olympia, WA

Executive Committee Members Present	Staff Present
Paul Shinnars, President, Kitsap Transit Staci Jordan, Vice-President, Island Transit Shonda Shipman, Secretary, Whatcom Transportation Authority Nick Covey, Medium Member Rep, Link Transit Amy Asher, Small Member Rep, RiverCities Transit Danette Brannin, At-Large Member Rep, Mason Transit Suzanne Coit, Large Member Rep/Treasurer, Intercity Transit	Cedric Adams, Claims Manager Anna Broadhead, Board Relations Tracey Christianson, Executive Director Rick Hughes, General Counsel Joanne Kerrigan, Member Services Manager Andrea Powell, Administrative Services Manager
Board Members Present	Attorneys Present
Geri Beardsley, Community Transit Mike Burress, Community Transit (virtually) Emmett Heath, Community Transit Joe Macdonald, Skagit Transit (virtually) Dale O'Brien, Skagit Transit (virtually)	Miles Bludorn Frank Cordell Curt Feig
	Guests Present
	Brian White, Alliant

Call to Order

President Shinnars called the meeting to order at 9:04 am. Shinnars welcomed all participants as a sign in sheet was passed around the room. He explained the appeal process and how he had set aside two hours for the appeal. He welcomed Heath, Beardsley and the attorneys. He called for changes to the agenda, hearing no changes he asked for a motion to approve the agenda. **Covey moved to approve the agenda. Jordan seconded the motion and the motion passed.**

Consent Agenda

Minutes – September 27, 2018, September 2018 Administrative Vouchers/Checksⁱ,
September 2018 Claims Vouchers/Checksⁱⁱ

Shinnars asked if there were any items to remove from the consent agenda. There were no items removed from the consent agenda. **Jordan moved to approve the consent agenda. Covey seconded the motion and the motion passed.**

Coverage Appeal

Shinnars said he was hoping for a collaborative deliberation to the benefit of all members. He explained the appeal process (each side would get to speak, followed by rebuttals) and then the Executive Committee will go into Executive Session. The Executive Committee decision would be made in the open public meeting following the Executive Session.

[Click here](#) and [here](#) to view the supporting documentation for this appeal.

This is an appeal of a coverage denial of a class action claim brought by three Community Transit operators regarding back wages due for pre-trip inspections, mandatory meetings, and bid times. It is like the King County Metro case settled in 2017 and 2018. However, King County Metro's case was a Department of Labor action. Community Transit received the notice on August 15 and tendered the claim to WSTIP. The Executive Director denied the tender. Community Transit is appealing that decision to the Executive Committee. Shinnars asked if Community Transit would like to make any introductory remarks.

Beardsley thanked everyone for devoting time for the appeal. She briefed everyone on some of the facts. She gave a brief history of the King County Metro case, and an evolving case with Everett Transit (with the Department of Labor). It is the same attorneys bringing this action, but rather as a class action lawsuit. Community Transit would like the Pool to defend this case but reserve the right whether to indemnify the damages. She said Community Transit agrees double damages and punitive damages are not covered. Community Transit is seeking defense and depending on outcome, possibly coverage for back wages. Heath reiterated the request is that WSTIP defend the case, and then after focus on the legal technical question of indemnity and back wages.

Committee members asked if the pre-trip/check-in to their vehicles was manual or CAD/AVL and if the process had changed. Heath said it is a written SOP, they login electronically, leave from dispatch, spend time on pre-trip, read notifications/alerts on the board and then pull out of the yard. Beardsley said technology has changed but the pre-trip hasn't changed. They discussed if operators could clock in early, have a cup of coffee and visit with a friend. Heath said they are paid based on scheduled time, if they work in addition to the scheduled time, they fill out an exception form and submit it to dispatch where the exception log is kept.

Hughes asked about finding of fact to see if coverage exists and how it would work in context of settlement. Heath introduced Frank Cordell, Community Transit's coverage counsel. Cordell said a finding of fact or establishment of the facts could trigger the exclusions. Factual determination could take place in a hypothetical case between Community and WSTIP. We aren't suggesting this is an actual adjudication requirement. If there were some settlement, we would presumably say we have to pay X dollars, here are the factual reasons why one settles even if we don't agree with it and why WSTIP should cover it but only when we have more known facts. Cordell said that it would apply if, and when, there was a settlement. Cordell thanked the Executive Committee for allowing him to attend. He went through his slides ([click here](#)) as to why the Pool should defend Community Transit.

Christianson thanked Beardsley, Heath and Cordell for coming to the meeting. She said it's a tough duty to deny a claim and hopes the Executive Committee will make the right decision even if it is contrary to her denial. She said WSTIP has been providing defense to Community Transit since the tender. Christianson then introduced Curt Feig, WSTIP's coverage counsel.

Feig said his background is as a coverage lawyer and he was here to try to help the Executive Committee reach a coverage decision for the Pool. He reminded the Executive Committee that WSTIP is not an insurance company. Rather it is a Pool and insurance case law does not apply. He reasoned that the claim should not be covered since in his opinion, it does not meet the common definition of a loss, and even if it did, exclusion E and G bar coverage. He further recommended the Executive Committee decline giving any weight to the opinion of the insurance expert whose information was included in appeal documents stating that the expert is not able to offer an opinion regarding the Pool's formation documents or understanding of what coverage the members intended to provide to each other.

Hughes asked about the rule of construction and the use of ambiguous terms in the document. Feig said ambiguous terms would not necessarily go in favor of the member. Facts and evidence would determine the intent of the parties. Cordell added that the notion of construction isn't exotic but could not say whether Community Transit's presence on the Board means the rule doesn't apply. Rather, what they are asking is for the Executive Committee to give the member clarity.

Heath clarified that he believes if WSTIP decided to provide defense coverage it's then WSTIP's case and final settlement approval would be given to the Executive Committee. If WSTIP denies coverage WSTIP would have no decision in the case. Feig replied that is an interesting point considering how this situation could play. It may not be Pool money settling the case particularly if a decision to settle was made before the facts are determined. Cordell agreed the facts need to be reviewed. He assured the Executive Committee can find facts and determination could result in another meeting like this to decide to cover or not cover. Committee members asked if they say yes to defending if they would be obligated to pay a settlement. Feig said they wouldn't have strict obligation to pay the indemnity. The Committee also asked if the case could be parsed into two pieces (covered and not covered) for transparency. Feig said that is a good question but felt it would be difficult to craft some sort of settlement to support covering or denying some portion vs. simply an agreement to pay X dollars in settlement. Cordell said it doesn't work that way for a commercial insurer because the insurer isn't party to settlement agreement.

The committee asked in terms of process if a reservation of rights would start the whole process again. Beardsley said with reservation of rights you are reserving the right to see the facts. Feig said yes but it could result in another appeal. Christianson said it is important to know if the Executive Committee just wants to be the body to decide. It is different than the Executive Director seeking authority to settle if coverage is still in question.

Heath said if WSTIP goes forward to defend and results in a settlement, WSTIP gets to decide settlement amount (not to be confused with judgment which is a different matter). Shinnors said regardless of settlement or judgment coverage determination still resides with the Executive Director. Hughes said the Executive Director could make the determination, but Community Transit would be able to appeal again. Heath said if coverage were denied again, they would be back for an appeal for indemnification. The committee asked for a further explanation of reservation of rights.

Feig said a reservation of rights would mean WSTIP would defend but certain aspects of claim are not covered. Generally, you explain why they are not covered. Once a settlement or judgment is reached, it is then presented back to WSTIP and you decide what is and isn't covered. This means WSTIP pays the defense lawyer, but not necessarily the judgment or settlement or perhaps pays only a portion of the settlement based on coverage. Cordell said there could be a sequencing issue if there were an opportunity to settle before WSTIP made a final determination. Heath said in his role as CEO at Community Transit they would be willing to agree and give decision authority to WSTIP for indemnification. We believe part of the liability should be covered and that the Pool should defend the Member. Hughes reminded the committee they have the authority to make that decision.

Cordell and Feig both gave brief rebuttals. Beardsley reiterated her request to defend with a reservation of rights. Heath said he has felt the process was very professional and felt respected, Community is asking for defense coverage until settlement or judgement. Heath agreed that WSTIP is not an insurance company stating he believes in being in a Pool that tries to find coverage not deny coverage. He asked that WSTIP continue to defend and consider indemnity when more facts are known. Committee members asked further questions regarding the case, and Heath/Beardsley answered questions regarding their contract with the operators.

The Executive Committee recessed at 11:30 to gather lunch and resumed the meeting at 11:43 am. The attorneys, Heath, and Beardsley all left the meeting. Shinnars excused all staff and guests except for Hughes.

Executive Session

The Executive Committee went into Executive Session at 11:43 am for 47 minutes pursuant to RCW 42.30.110 (1) (i) to discuss with legal counsel representing the agency litigation or potential litigation in which a member acting in an official capacity is or is likely to become a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency. President Shinnars extended the session for an additional 45 minutes. Executive Session ended at 1:15 pm.

Immediately following the Executive Session, in open public meeting, Covey moved to defend Community Transit with a full reservation of rights. Jordan seconded the motion. The motion carried with one vote in opposition (Shipman). Covey also moved that when there is sufficient information to determine coverage the decision will come back to the Executive Committee. Asher seconded the motion and the motion was approved unanimously.

Shinnars asked Hughes to memorialize the decision in writing as required by the Bylaws. To see this document, [click here](#).

Brannin left the meeting at 1:00 pm. Heath and Beardsley rejoined the meeting via conference call from 1:15 pm to 1:22 pm. Beardsley and Heath thanked the Executive Committee for their decision and their time. O'Brien and Macdonald rejoined the meeting at 1:22 pm and left the meeting at 1:27 pm. Shinnars recapped the previous action taken.

Discussion Items

2018 Executive Committee Work Plan, Strategic Plan

This topic will be discussed in December.

Executive Committee Retreat

Jordan said a facilitator is being secured and if you have topics you'd like to discuss, please bring them forward to Jordan or Christianson.

2019 Budget Item: New Position

Powell said included in the 2019 budget is a new staff position which will be member support for Origami applications. There were no questions.

2019 Budget Item: Board Errors and Omissions Coverage

White explained this is special coverage for Pool staff, Executive Committee, and Board of Directors. This would provide coverage for a member vs member or a member vs WSTIP type of claim. It is a claims made policy not occurrence with no retroactive date of coverage. Christianson explained she has allocated \$35,000 for this coverage in the 2019 budget. If you don't want it in the budget, let her know now but she will ask again next year. Committee members asked if there had been any claims of this type. Christianson said no but another way to think about this coverage is to use the commercial market, so you aren't using your loss fund to defend yourself.

2019 Budget Item: Building Reserve Fund

Powell said staff is asking to increase the building reserve fund from \$15,000 to \$25,000 for the 2019 budget, the building is aging, and the goal is to keep the building in salable condition. In 2018 the fund was used to remodel the conference room, paint, and carpet. Shinners explained this is carving out a reserve not necessarily an associated expense.

Losses Above \$100,000 Report

This topic will be discussed in December.

Draft Public Officials Liability Coverage Document Matrix

This topic will be discussed in December.

Notice Letter from Department of Licensing

This topic will be discussed in December.

Action Items

Request to Engage Certified Public Accountant (CPA)

Powell explained the Request for Proposal had received four responses, the highest scoring response was also the low bid and the current external CPA. Staff request authority to negotiate a contract for external CPA services and execute a new agreement with StraderHallet. Shinners said the new agreement would be for three years with two one-year extensions. ***Shipman moved to authorize the Executive Director to negotiate a new agreement with StraderHallet for external CPA services for three years with two one-year extensions. Covey seconded the motion and the motion passed unanimously.***

Staff Reports

Executive Staff Report

Report included in the packet.

Sub-Committee Reports

Governance Policy Committee

No report. This committee is scheduled to meet immediately following the Executive Committee meeting.

Board Development Committee

No report. This committee is scheduled to meet immediately following the Executive Committee meeting.

Emerging Risks and Opportunities Committee Report

No report. This committee is scheduled to meet November 7 at the WSTIP office.

Data Governance Committee

No report.

Coverage Review Committee

Shinners encouraged everyone to review the matrix and the committee will meet (to be determined) prior to the December Annual Meeting. Please send comments, questions and concerns to Shinners or Christianson.

Nominations and Elections Committee

Report included in the packet.

Recap and Adjournment

Shipman moved to adjourn the meeting at 1:44 pm. Jordan seconded the motion and the motion passed.

Submitted this 6th day of December 2018.

Approved: 
184DD4B0640E419...
Shonda Shipman, Secretary

ⁱ Check numbers 27933 through 27979 in the amount of \$180,229.83. Internet transfers of \$45,653.59 for the 09/15/2018 payroll; \$44,048.64 for the 09/30/2018 payroll; and \$11,552.84 for the 09/2018 staff benefits, internet and ACH payments for staff credit cards, travel/expense reimbursements and professional/misc. services total \$29,509.03. Total voucher approval, including September 2018 staff payroll and Internet and ACH payments is \$310,993.93.

ⁱⁱ Check numbers 11452 through 11537 in the amount of \$301,193.21. Total voucher approval is \$301,193.21.