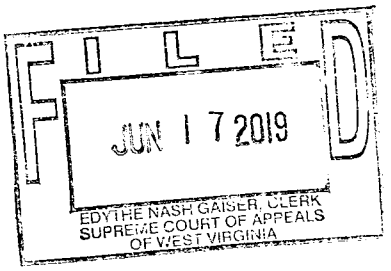
NO. 19-0103

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

WEST VIRGINIA COUNTIES GROUP SELF-INSURANCE RISK POOL,

Petitioner and Plaintiff below,

v.



GREAT CACAPON VOLUNTEER FIRE DEPARTMENT,

Respondent and Defendant below.

BRIEF OF RESPONDENT GREAT CACAPON VOLUNTEER FIRE DEPARTMENT

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I. STATEMENT OF THE CASE

Petitioner seeks relief from the January 3, 2019 Order of the Circuit Court of Morgan County, West Virginia correctly dismissing its Amended Complaint against Respondent Great Cacapon Volunteer Fire Department ("VFD"). The Circuit Court appropriately determined that Petitioner's claim for recovery of money it paid to the Morgan County Commission ("Commission") in accordance with a "Coverage Contract" for damages the Commission sustained from a fire is subrogation prohibited by W.Va. Code § 29-12A-13(c). JA000088. Irrespective of Petitioner's attempt to disavow the unequivocal allegations that permeate the Amended Complaint and circumvent the statute with a very narrow application of the subrogation doctrine, its claim is clearly one of subrogation.

Petitioner's initial Complaint, filed but not served, identified Petitioner as the "subrogee" of the Commission, did not include the Commission as a party, and referenced an insurance policy the Commission had with Petitioner providing it with the right to subrogate against Respondent and others. JA000043-54. By the very allegations in the original Complaint, Petitioner's self-styled subrogation claim was impermissible. W.Va. Code § 29-12A-13(c). As such, Petitioner then embarked upon a journey in an attempt to cleverly disguise its subrogation claim.

Specifically, Petitioner amended the Complaint to include the Commission as a plaintiff, remove the Petitioner's "as the subrogee of" designation, change references from "insurance policy" to "coverage contract", and drop the product liability claims against two defendants identified in the initial Complaint. JA000006. Without any doubt, Petitioner amended the Complaint to avoid dismissal of its subrogation and other claims pursuant to the immunity and protections afforded to the VFD by the West Virginia Governmental Tort Claims and Insurance Reform Act ("Act"), W.Va. Code § 29-12A-1, *et. seq*, which immunizes the VFD from liability

for any loss based on product liability and prohibits subrogation claims against a political subdivision. W.Va. Code § 29-12A-5(a)(15); W.Va. Code § 29-12A-13(c). Regardless of the changes to the terminology utilized in the Complaint, the germane of the Petitioner's claim remains the same: Petitioner, in violation of West Virginia law, impermissibly seeks subrogation against the VFD for the costs incurred in adjusting the claim and the payment to the Commission as an insured loss for property damages arising from the fire. JA000011; JA000052-53.

II. SUMMARY OF THE ARGUMENT

If W.Va. Code § 29-12A-13(c) prohibiting subrogation against the VFD did not exist, then the doctrine of subrogation would provide Petitioner with the only legal basis to assert a claim against Respondent and others to recover what it paid to the Commission as an insured loss for the fire damages. Without the right of subrogation pursuant to its "Coverage Contract" with the Commission, Petitioner literally has no legal basis to assert a claim against Respondent or the other defendant. Thus, Petitioner's only potential legally valid claim is one for subrogation. However, W.Va. Code § 29-12A-13(c) does exist, and, hence, Petitioner's claim was properly dismissed by the Circuit Court.

The Commission owned the fire hall located at 179 Spring Street, Great Cacapon, West Virginia, which it protected from loss pursuant to a "Coverage Contract" it had entered with Petitioner. JA000006. Respondent VFD occupied the fire hall, where it kept a 1985 Chevrolet Brush Truck.[1] JA00008. On July 5, 2016, a fire destroyed the fire hall, resulting in loss of property to both the Commission and Respondent.[2] JA000009. Pursuant to its Coverage Contract with Petitioner, the Commission presented a claim to Petitioner under its property damage coverage for

[1] Respondent insured the brush truck through a commercial automobile insurance policy. JA000019

[2] Respondent disputes liability for the fire. It also incurred damages and expenses from the fire for which it was compensated through its own insurance policy.

the damages sustained from the fire. JA000011. Complying with the terms of its Coverage Contract, Petitioner compensated the Commission for its damages. JA000011. The Coverage Contract provides Petitioner with the "right to subrogation for payments made by WVCoRP to the Commission." JA000009. Petitioner's Amended Complaint asserts that pursuant to its contract with the Commission it "has the right to subrogation from these Defendants for the property damage claim to the property." JA000011. Despite these undeniable allegations in the Amended Complaint that its claim is based upon subrogation, it has the right to subrogate, and it is seeking reimbursement of money it paid to the Commission for property damage sustained, Petitioner argues its claim is not subrogation in the hope that the Court will not read the actual allegations and the language contained within the insurance documents.

Moreover, the germane of Petitioner's claim against the Respondent constitutes the general and normal meaning of subrogation. Petitioner paid a loss under its coverage contract, and it seeks recovery of that payment from the Respondent. Petitioner has attempted to redefine the term subrogation, which has always been an equitable concept that permits someone to recover money it has paid from the person who allegedly caused the damage. It is not only illogical to assert that simply because Petitioner is a Risk Pool that its claim does not constitute subrogation, but it flies in the face of common sense.

Whether Petitioner is a Risk Pool has no bearing on the issue. *Any* claim for subrogation is prohibited by the Act. W.Va. Code § 29-12A-13(c). It does not matter if the subrogee is an insurance company, is a self-insured risk retention, is a risk pool, is another entity, or is a person. If the claim is founded upon the concept of subrogation, it is prohibited by the statute.

The purpose of the Act is to make insurance coverage affordable to political subdivisions such as the Respondent VFD, not to regulate how an insurer of a political subdivision adjusts and

pays claims. W.Va. Code § 29-12A-1. The prohibition against subrogation against political subdivisions furthers the Act's overall purpose and provides a financial benefit to the political subdivisions. By limiting the liability of and recovery against political subdivisions, the Act lowers the cost of liability insurance. To find that a subrogation claim by a risk pool is exempt from the statutory bar against such claims undermines one of the primary purposes of the Act.

Public policy also does not support the Petitioner's position. When two or more political subdivisions are involved in an accidental loss with contested and disputed liability, the best practice is for each political subdivision to absorb its own losses and damages and be compensated through its own coverage. Otherwise, unnecessary protracted litigation between political subdivisions and those who provide loss coverage to political subdivisions will occur. Litigation in such situations takes both time and resources from political subdivisions that would best be used to provide the necessary governmental services to its citizens, thereby contradicting the purposes of the Act. If a political subdivision is concerned another political subdivision utilizing its property would negligently cause damage to such property, written agreements between the political subdivisions addressing responsibility for damages and/or providing loss coverage for the property would address the concern.

To adopt Petitioner's outcome would necessarily punish those political subdivisions insured through private insurance. A privately insured political subdivision would be prohibited from subrogating against another political subdivision responsible for the damages based upon the language of the statute, yet if the political subdivision is a member of a "risk pool", there would be no prohibition against subrogation. It is patently unfair to allow a political subdivision covered for liability losses by a risk pool to subrogate against another alleged at fault political subdivision yet utilize the same statute to prohibit a privately insured political subdivision from pursuing a

subrogation claim against another political subdivision. The residents of Morgan County, or any political subdivision for that matter, are not being properly served by having two of its political subdivisions, the County Commission and a Volunteer Fire Department, involved in protracted litigation to recoup damages from an accidental fire with disputed negligence. Petitioner's claim frustrates the purposes of the Act.

III. STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Should this Court desire to hear oral argument, Respondent submits that argument would be most appropriate under Rule 19 of the West Virginia Rules of Appellate Procedure. Each of the assignments of error revolve around the exercise of judicial discretion and application of settled law, as referenced in Rule 19. Respondent recognizes that this Court has not issued an opinion with respect to whether a risk pool is subject to the provision of W.Va. Code § 29-12A-13(c) or whether the West Virginia Governmental Tort Claims and Insurance Reform Act is an insurance law of this state, which would be issues of first impression encompassed by Rule 20(a)(1) of the West Virginia Rules of Appellate Procedure. However, this Court should applied well-settled subrogation law rather than create new law.

IV. ARGUMENT

A. STANDARD OF REVIEW

"Appellate review of a circuit court's order granting a motion to dismiss a complaint is *de novo.*" Syllabus Point 1, *Davis v. Mount View Health Care, Inc.*, 220 W.Va. 28, 640 S.E.2d 91 (2006). A de novo standard of review is also applied when the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute. *Hawkins v. Ford Motor Co.*, 211 W. Va. 487, 490, 566 S.E.2d 624, 627 (2002).

A circuit court should dismiss a complaint if it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim that would entitle him to relief. *Chapman v. Kane* Transfer Co., 160 W.Va. 530, 236 S.E. 2d 207 (1977). In deciding on a Motion to Dismiss, the circuit court can consider matters susceptible to judicial notice. *Forshey v. Jackson*, 22 W.Va. 743, 748, 671 S.E.2d 748, 753 (2008). West Virginia Rule of Evidence 201(b) permits a court to take judicial notice of a fact that is not subject to reasonable dispute because "it can be accurately and readily determine from sources whose accuracy cannot reasonably be questioned." The Rules of Evidence also require a Court to take judicial notice of common law and public statutes. W.Va. R. Evid. 202.

B. Petitioner's Claim Clearly Constitutes The Normal and Ordinary Meaning of Subrogation as Defined by the Supreme Court of Appeals of West Virginia.

Petitioner's claim against Respondent constitutes subrogation that is unequivocally prohibited by W.Va. Code § 29-12A-13(c). To find otherwise the Court must ignore the allegations set forth in the Complaint, ignore the allegations set forth in the Amended Complaint, disregard the normal definition and use of subrogation, overturn prior case law, create an exception to W.Va. Code § 29-12A-13(c)'s prohibition against claims of subrogation, and repudiate the plain and unequivocal language contained in the coverage contract between Petitioner and the Commission. If Petitioner's claim is not based upon principles of subrogation, then what is the basis and foundation for Petitioner's claim?

Subrogation is an equitable doctrine. *State ex rel. Allstate Ins. Co. v. Karl*, 190 W. Va. 176, 184, 437 S.E.2d 749, 757 (1993). "Subrogation, being a creation of equity, will not be allowed except where the subrogee has a clear case of right and no injustice will be done to another." Syl. Pt. 2, *Kittle v. Icard*, 185 W.Va. 126, 405 S.E. 2d 456 (1991). "Absent a clearly expressed

legislative intent requiring otherwise, 'subrogation' is to be given its usual, ordinary meaning." *Kittle v. Icard*, 185 W. Va. 126, 130, 405 S.E.2d 456, 460 (1991) (internal citation omitted). "In its normal sense, *subrogation gives the payor a right to collect what it has paid from the party who caused the damage*." *Id.* (emphasis added). As previously explained by this Court, "'subrogation' used in W.Va. Code § 29-12A-13(c), implicates *diverse circumstances* whereby one party may acquire or exercise rights derived from another party's rights—such as sureties, co-debtors, purchasers, persons paying debts of strangers, creditors and officers." *Foster v. Keyser*, 2012 W.Va. 1, at 21, 501 S.E.2d 165 at 185; *Citing* 18 Michie's Jurisprudence "Subrogation" sections II 6-36. n (emphasis added). "The doctrine of subrogation has been *greatly expanded* and is broad enough to cover *all cases in which one person pays an obligation which in justice and good conscience should have been paid by another.*" 18 M.J. Subrogation § 4 (2018) (emphasis added).

Simply stated, the well-settled law could not be any clearer. Contrary to Petitioner's attempt to redefine subrogation narrowly, Petitioner's claim is a typical example of a "diverse circumstance" of subrogation as described by the *Foster* Court. Petitioner is exercising rights it derived pursuant to the Coverage Contract with the Commission to seek recovery of money paid to the Commission for property damages sustained, allegedly by the fault of another. *Foster*, 2012 W.Va. at 21; 501 S.E.2d at 185. The Commission, not Petitioner, sustained damage to its Fire Hall as a result of the fire. JA000009. The Petitioner compensated the Commission for its loss, as obligated under the coverage contract. The Petitioner, not the Commission, seeks to recover its money from the Respondent, who allegedly caused the damage. Absent the prohibition set forth in W.Va. Code § 29-12A-13(c), subrogation is the only legal basis that provides Petitioner the right to collect what it has paid to the Commission from Respondent and other defendants. JA000011; *Kittle,* 185 W. Va. at 130, 405 S.E.2d at 460. But for the Commission presenting a

claim for property damage pursuant to its coverage contract with Petitioner and Petitioner having a right of subrogation pursuant to contract, Petitioner would have no right to assert a claim against Respondent. JA000011.

In an attempt to rewrite the broad definition of subrogation, Petitioner focuses on one narrow definition and interpretation of the term insurance used within the Black's Law definition of subrogation. Yet, subrogation is an equitable remedy and a creation of equitable principles. Within the context of W.Va. Code § 29-12A-13(c), subrogation includes a variety of circumstances, and is not limited to circumstances involving private insurance. *Foster,* 2012 W.Va. at 21, 501 S.E.2d at 185. Petitioner's status as a risk pool has no bearing on W.Va. Code § 29-12A-13(c)'s prohibition on subrogation claims. It is irrational to argue that simply because Petitioner is a risk pool, its claim is not one for subrogation.

Regardless, even though Petitioner may not be an insurance company per se, a risk pool and/or self-insurance is merely another form of insurance. "Self-insurance is just a form of insurance...the modifying term 'self' just indicates where it emanates." *Jackson v. Donahue,* 193 W.Va. 587, 591,457 S.E.2d 524, 529 (1995), *citing Hillegass v. Landweher,* 176 Wisc. 2d 76, 499 N.W.2d 652 (1993). As defined by Black's Law Dictionary, insurance involves a contract by which one party agrees to *indemnify* another party against risk of loss, damage or liability arising from the occurrences of a specific contingency. Black's Law Dictionary, pg. 870 (9th Ed. 2009) (emphasis added). The term indemnify is defined by Black's Law as follows:

> 1. To reimburse (another) for a loss suffered because of a third party's or one's own act or default. 2. To promise to reimburse (another) for such loss. 3. To give (another) security against such a loss.

Black's Law Dictionary, pg. 837 (9th edition). Insurance is a broad term that can also be used to generically describe any measure taken by someone to protect against risks, including contracting

with a Risk Pool to protect against losses. Petitioner's actions meet the Black's Law dictionary definition of insurance. Pursuant to the Coverage Contract with the County Commission, Petitioner agreed to indemnify, or in other words, promised to reimburse the Commission, for a loss to its property from the occurrence of a specific contingency. In exchange for the Commission's contribution to the collective fund, Petitioner promised to reimburse the Commission for a loss.

A risk pool is akin to and operates in a similar fashion as an insurance company. To protect against its risk of loss, the Commission decided to participate in a risk pool by entering into a Coverage Contract with the Petitioner that provided "loss coverage over real property" owned by the Commission. JA000006. There was a fire at the property owned by the Commission, the Commission presented a claim to Petitioner under its property damage coverage contract, and the Petitioner investigated, adjusted, and paid the Commission its damages in accordance with the coverage contract. JA000011. Petitioner took the same exact actions of an insurance company when an insured presents a claim pursuant to an insurance policy.

Also like an insurance carrier, a risk pool collects premiums (contributions) and pays losses. Membership in Petitioner's risk pool requires execution of a member agreement, "which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members and the terms, coverages, limits and deductibles of the plan." W.Va. CSR § 114-65-2.7. All members of the risk pool are required to contribute, in accordance with the membership pool agreement, to the collective fund from which all liabilities for all pool members are paid. W.Va. CSR § 114.65-2.4. Even though the contributions by the members may not be technically premium payments as considered with insurance premiums, risk pool member's contributions serve the same purpose as an insurance premium. Each member of the risk pool contributes money

which is set aside to pay losses for all members of the pool. Members of the risk pool agree through the membership agreement to pay/compensate/indemnify another member of the pool against risk of loss, damage or liability through use of the collective fund. In exchange for the contribution to the pool's fund, and in the event of a covered loss, Petitioner investigates, adjusts and compensates the member for its loss. Petitioner also defends members of the pool against claims for covered losses. Comparable to insurance, the Risk Pool member agreement limits the coverage available for losses and can require deductibles from its members for covered losses.

Just as a private insurance company would, Petitioner is seeking to recoup the money it paid from the alleged at fault party. Importantly, Petitioner's subrogation claim is not recouping money on behalf of only the Commission, but on behalf of every member of the risk pool. The compensation the Commission received for its losses came from the collective fund. Money Petitioner recoups in this lawsuit will be returned to the collective fund, not directly back to the Commission. Likewise, if another member of the risk pool had a covered loss, the Commission's contributions to the funds would have been utilized to compensate the other member for that loss and money recouped through the Risk Pool's right of subrogation under the coverage contract would be returned to the fund. Notwithstanding the slight nuances between a risk pool and insurance company, Petitioner's entire focus on the definition of insurance is irrelevant as West Virginia law clearly holds that subrogation involves a variety of circumstances not limited to the involvement of insurance companies and insurance contracts.

No matter how Petitioner attempts to convolute the issue, its claim has all the seminal characteristics of a subrogation claim unequivocally established by the allegations in the Amended Complaint:

> "WVCoRP entered into a ***Coverage Contract*** with the Commission, providing loss coverage over real property..." JA000006 (emphasis added).

"Therefore, WVCoRP ***may subrogate*** against the Great Cacapon Volunteer Fire Department." JA0000007. (emphasis added).

"Pursuant to WVCoRP's ***Coverage Contract*** with the Commission, WVCoRP ***has the right to subrogation*** for payments made by WVCoRP to the Commission." JA000009 (emphasis added.)

WVCoRP "made payments under this ***Coverage Contract*** for reimbursement to the Commission..." JA000009 (emphasis added).

"As a direct and proximate result of the property damage to the covered Fire Hall, WVCoRP has made payments to its Member, the Commission, and therefore ***has the right to subrogation*** against these responsible parties." JA000010 (emphasis added).

The "Commission presented a claim to WVCoRP under its property damage ***coverage***, for which WVCoRP compensated the Commission..." JA000011(emphasis added).

"***Under the Commission's Coverage Contract, WVCoRP has the right to subrogation*** from these Defendants for the property damage claim to the property." JA000011. (emphasis added).

In considering a motion under Rule 12(b)(6) of the West Virginia Rules of Civil Procedure, the allegations pled in the complaint are accepted as the truth and the Plaintiff "enjoys the benefit of all inferences that plausibly can be drawn from the pleadings." *Kopelman & Associates, L.C. v. Collins*, 196 W.Va. 489, 493, 473 S.E.2d 910, 914 (1996). As such, it is taken as true that the "Coverage Contract" between Petitioner and the Commission provides Petitioner with the right of "subrogation".

The only plausible inference that can be drawn from the allegations in the Complaint is that Petitioner's claim is for subrogation. Despite these allegations, Petitioner renounces the plain and unequivocal language in its coverage contract and disregards the allegations in the Amended Complaint. The Court cannot alter the clear meaning and intent of the terms of the coverage contract between Petitioner and Commission to now suggest that the parties didn't mean to use the word "subrogation" in the coverage contract. The word subrogation was used in the contract

because that provides Petitioner the right to pursue recovery of damages against another alleged responsible party. "It is not the right or province of a court to alter, pervert or destroy the clear meaning and intent of the parties as expressed in unambiguous language in their written contract or to make a new or different contract for them." Syl. Pt. 3, *Cotiga Development Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 128 S.E.2d 626 (1962). "A valid written instrument which expresses the intent of the parties in plain and unambiguous language is not subject to judicial construction or interpretation but will be applied and enforced according to such intent." Syl. Pt. 1, *Cotiga Development Co. v. United Fuel Gas Co.*, 147 W. Va. 484, 128 S.E.2d 626 (1962). To find that the Petitioner's claim is not one for subrogation would require the Court to disregard the allegations in the Complaint, disregard the intent of the parties to the Coverage Contract, alter the Coverage Contract, and ignore the actual facts underlying what occurred (i.e., clear subrogation).

Petitioner's claim constitutes the general, normal definition of subrogation. Petitioner paid a loss under its Coverage Contract to the Commission, and Petitioner is seeking recovery of that payment from the Respondent, the alleged wrongdoer responsible for the damage. The Coverage Contract with the Commission provides Petitioner with the right to "collect what it has paid from the party who caused the damage." *Kittle*, 185 W. Va. at 130, 405 S.E.2d at 460. Otherwise, Petitioner would not have compensated the Commission for the damages, it would not have the right of subrogation, and it would not have a right to assert a claim against the Respondent.

Regardless of Petitioner's recent attempt to parse words and deconstruct the definition of subrogation, its claim against Respondent is undeniably one for subrogation prohibited by statute. Thus, the Circuit Court properly dismissed Petitioner's claim as being prohibited by W.Va. Code § 29-12A-13(c).

C. PETITIONER'S STATUS AS A RISK POOL IS OF NO CONSEQUENCE AS W.VA. CODE § 29-12A-13(C) EXPLICITLY PROHIBITS ANY CLAIM FOR SUBROGATION.

The Act unambiguously bars *any* claim of subrogation irrespective of whether the subrogee is a person, entity, insurance company, or risk pool: "in no event may *any claim be presented* or *recovery be had under the right of subrogation.*" W.Va. Code § 29-12A-13(c)(emphasis added). There is no doubt Petitioner's claim is one for subrogation as discussed herein. Petitioner's status as a risk pool does not exempt it from application of the statute. To accept Petitioner's argument that risk pools are somehow excluded from this statute requires the Court to ignore the plain language of the statute and read into the statute a non-existent exception to the bar on claims of subrogation. "Where the language of a statute is clear and without ambiguity the plain meaning is to be accepted without resorting to the rules of interpretation." Syl. Pt. 5, *Walker v. West Virginia Ethics Comm'n*, 201 W.Va. 108, 492 S.E.2d 167 (1997). The language of W.Va. Code § 29-12A-13(c) could not be plainer and more unambiguous. Petitioner cannot circumvent the statutory prohibition of subrogation against a political subdivision simply because it is a risk pool.

D. THE CIRCUIT COURT PROPERLY FOUND THAT THE WEST VIRGINIA GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT, W.VA. CODE § 29-12A-1, *ET SEQ.* IS NOT AN INSURANCE LAW OF THIS STATE.

The Act does not regulate insurance; rather, it limits liability and recovery against a political subdivision so that political subdivisions can procure adequate coverage relative to their potential liability for civil damages arising from the political subdivision's alleged negligence. By immunizing political subdivisions for certain losses, prohibiting recovery of punitive damages, limiting recovery of non-economic damages, and barring subrogation claims, the Act reduces the liability and damage exposure for a political subdivision thereby reducing the cost of liability coverage. Limiting liability and recoverable damages against a political subdivision does not amount to an insurance law of the state. Most telling that the Act is not an insurance law of the

state is the fact that the Act provides political subdivisions with the options to purchase insurance, form risk pools, or institute a self-insurance program to provide coverage for losses. W.Va. Code § 29-12A-16(b). The Act does not mandate specifically how the political subdivision is to insure itself, does not mandate the limits of liability insurance for political subdivisions, does not mandate requirements for insurance to be provided to political subdivisions, and it does not mandate how claims are to be adjusted or resolved.

The purpose of the Act is to "limit liability of political subdivisions and provide immunity to political subdivisions in certain instances and to regulate the costs and coverage of insurance available to political subdivisions of such liability." W.Va. Code § 29-12A-1. The Legislature found that political subdivisions such as Respondent VFD, are unable to obtain

> adequate liability insurance at a reasonable cost due to: The high cost in defending such claims, the risk of liability beyond the affordable coverage, and the inability of political subdivisions to raise sufficient revenues for the procurement of such coverage without reducing the quantity and quality of traditional governmental services. Therefore, it is necessary to establish certain immunities and limitations with regard to the liability of political subdivisions and their employees, to regulate the insurance industry providing liability insurance to them, and thereby permit such political subdivisions to provide necessary and needed governmental services to its citizens within the limits of their available revenues.

W.Va. Code § 29-12A-2. As explained by this Court, the goal of the Act is to assist local governmental entities to be able to afford liability insurance without having to sacrifice services citizens depend on government to supply. *Randall v. Fairmont City Police Dept.*, 186 W.Va. 336, 412 S.E.2d 737 (1991). Relating specifically to the purpose of the bar to subrogation claims provided for in W.Va. Code § 55-12A-13(c), this Court recognized that the

> clear and sole purpose of the statute is to provide financial benefit to political subdivisions. Aside from accomplishing that purpose, the statute is not to be applied to inure in the benefit of private parties that are liable for injuries and damages, nor to prejudice the rights of injured plaintiffs to pursue and obtain all otherwise proper legal remedies and relief available against parties that are so liable, nor to alter legal relations and duties between insured and insurers.

Foster v. Keyser, 2012 W.Va. at 22 n. 18, 501 S.E.2d at 186 (1997).

The overarching purpose of the Act and statute is to limit liability of political subdivisions which in effect lowers cost of insurance, permitting political subdivisions to acquire adequate liability insurance without having to sacrifice the quantity and quality of governmental services. Without the protections of the Act, the VFD and perhaps the Commission would spend most, if not all, their resources to pay for the cost of liability coverage.

The Act and the specific statute were enacted to protect political subdivisions such as the VFD against the type of claim being pursued by Petitioner.

E. PETITIONER'S PROPOSED CHARACTERIZATION OF ITS CLAIM AND SEEKING REIMBURSEMENT FOR DAMAGES DOES NOT SUPPORT THE PUBLIC POLICY GOALS OF THE WEST VIRGINIA GOVERNMENTAL TORT CLAIMS AND INSURANCE REFORM ACT, W.VA. CODE § 29-12A-1, *ET SEQ.*

Petitioner essentially argues that it would be better for the small Respondent VFD, which receives money from the Commission to be able to even purchase its insurance policy, to bear the loss because less would be coming from public funds. Petitioner does not consider the damages and losses the Respondent incurred as a result of the fire. Both political subdivisions unfortunately sustained damage to their respective property. The VFD should not be penalized by not having the benefit of W.Va. Code § 29-12A-13(c) to Petitioner's claim simply because the VFD protected itself from risks through a private company and the Commission procured its coverage for risks through a risk pool.

In situations involving two political subdivisions both sustaining damages as a result of disputed liability, the best practice is to prohibit subrogation between the two subdivisions, as mandated by the statute, and have each absorb its own losses and damages. Sometimes, application of the Act may work a hardship on persons or entities injured by political subdivisions. *Randall*

v. Fairmont City Police Dept., 186 W.Va. 336, 343, 412 S.E.2d 737, 744. Otherwise, unnecessary protracted litigation between political subdivisions and those who provide loss coverage to political subdivisions will occur. Litigation in such situations will take time and resources from both political subdivisions that would best be used towards providing the necessary governmental functions to its citizens.

To the extent a political subdivision is concerned that another political subdivision utilizing its property would negligently cause damage to such property, written agreements between the political subdivisions addressing responsibility for damages and/or requiring the leasing party to provide loss coverage for the property would address the concern. The residents of Morgan County are not properly served by having two of its political subdivisions, the County Commission and a Volunteer Fire Department, involved in protracted litigation to recoup damages from an accidental fire with disputed negligence.

It is patently unfair to permit a political subdivision covered by a risk pool to subrogate against a privately insured political subdivision, while the statute nonetheless prohibits the privately insured political subdivision from subrogating against another at fault political subdivision. The political subdivisions who are not members of the risk pool are essentially punished. Such a narrow interpretation and application of the act is not what the Legislature intended. The intent of the at issue statute was unequivocally to bar *any* subrogation claim. If Petitioner is permitted to move forward with a subrogation claim against Respondent, then all political subdivisions, whether insured through private insurance, self-insurance or a risk pool, would have to be permitted to subrogate against another political subdivision for alleged losses, including a claim by the VFD against Petitioner for the damages the VFD sustained in the fire.

Whether Respondent is insured through a private insurance and Petitioner is covered through a risk pool should have no bearing on the outcome of this matter. Astonishingly, Petitioner believes it is best for the small VFD, which is wholly supported by the Commission and donations/fundraisers from the community, and which adamantly disputes liability for the fire, should bear all the expenses for the damages sustained by both political subdivisions. This does not further the purposes of the statute or Act.

V. CONCLUSION

WHEREFORE, for all the reasons enumerated herein, the Great Cacapon Volunteer Fire Department respectfully prays that this Honorable Court uphold the rulings of the Morgan County Circuit Court and deny Petitioner's Request to overturn the Dismissal Order.

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