When Governing Bodies Disagree

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Risk management considerations

* We're all on the same page. We're just reading different books. *

Coverage

• Insured vs. Insured Coverage Document language
  – Consider statutory limitations of officials suing officials
  – Language requiring assisting the Pool in defense of claims
• What capacity is the official being sued in
• When is an official an official and when are they an individual or candidate
• Language (particularly Public Officials Liability) for course and scope of duties
• Conflict of interest for defense counsel
• Can lead to need for multiple attorneys for each claim
• Conflicts of Pre-Loss Legal Services
Member relations

- Defending claims brought by your clients
  - Puts you in an adversarial relationship with one or more of your clients
- Coverage provided based on who is an official
  - May appear that the Pool has taken sides in disputes
  - Are your coverage and cancellation provisions based on objective factors

Underwriting

- If you underwrite civility risk, how do you do so objectively?
  - Experience rating
  - Scheduled credit/debit
- Will you cancel or non-renew?
  - Language in member agreements
  - Basis for cancellation or non-renewal
- What type of loss control do you provide?
  - Training on civility, conflict of interest and fiduciary duty
  - Pre-loss legal services
  - Sample policies

Public relations
Newspaper headlines!!

- FBI subpoenas Clackamas River Water documents for federal grand jury investigation
- Over the line behavior at Clackamas River Water begs for intervention by county commission
- Union pressures entire Clackamas River Water board to resign
- Two Clackamas River Water board members to resign at end of Oct.; county urges rest of board to follow suit
- Clackamas River Water employee files complaint, tort claim notice against two commissioners
- Renegade Clackamas water district board members stage takeover
- Troubled water district loses insurance
- Ex-Clackamas water commissioner seeks $20 million in free speech claim against colleagues
Media quotes!

“I’ve never seen it where something is so dysfunctional,” said Frank Stratton.

“The Special Districts Association of Oregon will renew Clackamas River Water’s property and liability coverage in January if the whole board resigns,” said Executive Director Frank Stratton.

“We have a ‘fiduciary responsibility’ to protect other members from costs and liability generated by the Clackamas County water district’s contentious and dysfunctional board.”

What to do?

X Assist with mediation (failed)
X Assist with interim management (failed)
X Assist with legal and consulting advice (failed)
✓ Drastically increased deductibles (failed)
✓ Threaten and then implement cancelation (worked)
✓ Require all board members resign to reinstate coverage (worked)

Lessons learned

• Some dysfunctional boards aren’t salvageable
  – Cancelation may be the only option
• Cancelation can lead to a larger public event than anticipated
  – Media coverage
    ▪ Communicate with the media in writing when making on the record statements
    ▪ Be honest, responsive and credible
    ▪ Gain the media’s trust as a reliable source for truthful information
    ▪ Everything you say can and will be used against you
  – Community awareness and involvement
    – Ultimate change for the better
    – Litigation against the Pool