

**CITY OF BURIEN  
AGENDA BILL**

<b>Agenda Subject:</b> Motion to approve an agreement with the Washington Cities Insurance Authority regarding insurance coverage for the Westmark v. Burien litigation		<b>Meeting Date:</b> July 19, 2010
<b>Department:</b> Legal	<b>Attachments:</b> 1. Proposed Agreement	<b>Fund Source:</b> N/A <b>Activity Cost:</b> N/A <b>Amount Budgeted:</b> N/A <b>Unencumbered Budget Authority:</b> N/A
<b>Contact:</b> Craig Knutson, City Attorney		
<b>Telephone:</b> (206) 248-5535		
<b>Adopted Initiative:</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>Initiative Description:</b> Street Overlay Program	
<b>PURPOSE/REQUIRED ACTION:</b> The purpose of this agenda item is for the City Council to consider approving an agreement with the Washington Cities Insurance Authority (WCIA) regarding insurance coverage for the Westmark v. Burien litigation.		
<b>BACKGROUND (Include prior Council action &amp; discussion):</b> There have been several unresolved issues between the City of Burien and its insurance provider WCIA regarding insurance coverage for the Westmark v. Burien litigation. Attached is a proposed agreement with WCIA that would resolve these remaining issues in a manner favorable to the City.  The agreement includes provisions for WCIA to: <ol style="list-style-type: none"> <li>(1) reimburse the \$510,341.77 the City contributed toward payment of the Westmark I judgment (paragraph 3 of the attached agreement);</li> <li>(2) accept the defense and coverage of Westmark III (the remaining part of the Westmark case seeking attorney's fees in Federal Court) without reservation of rights (paragraphs 4 and 5 of the attached agreement); and</li> <li>(3) reimburse the approximately \$60,000 the City has paid on Westmark III (paragraph 4 of the attached agreement).</li> </ol> The agreement also contains a mutual release of all claims (paragraph 7 of the attached agreement).  Approval of this agreement is intended to resolve the City's prior and remaining liability exposure in the Westmark litigation without expenditure of City funds. The agreement has already been approved by WCIA.		
<b>OPTIONS (including fiscal impacts):</b> <ol style="list-style-type: none"> <li>1. Approve the agreement as presented.</li> <li>2. Do not approve the agreement as presented.</li> </ol>		
<b>Administrative Recommendation:</b> Approve the agreement as presented.		
<b>Committee Recommendation:</b> N/A		
<b>Advisory Board Recommendation:</b> N/A		
<b>Suggested Motion:</b> Move to approve the agreement with the Washington Cities Insurance Authority regarding insurance coverage for the Westmark v. Burien litigation and authorize the City Manager to sign the agreement.		
Submitted by: Craig Knutson <b>Administration</b> _____	Mike Martin <b>City Manager</b> _____	
<b>Today's Date:</b> July ____, 2010	<b>File Code:</b> \\File01\records\CC\Agenda Bill 2010\071910ls-WCIA agreement re Westmark	

## **WESTMARK v. BURIEN CLAIMS AGREEMENT**

1. Whereas, on June 24, 1996, Westmark Development Corporation and Trizec Investment Corporation (“Westmark”) filed suit against the City of Burien (“Burien”) (Snohomish County Superior Court Cause No. 96-2-04778-1) (“Westmark I”), which tendered its defense to the Washington Cities Insurance Authority (“WCIA”); and
2. Whereas, WCIA accepted Burien’s tender of defense of Westmark I under a reservation of rights and assigned Westmark I a date of loss of February 28, 1993, under the WCIA 1993 Coverage Document, with limits of liability for ultimate net loss of \$5,000,000; and
3. Whereas, WCIA and Burien agreed to settle Westmark I, with WCIA paying as indemnity the sum of \$200,000; and
4. Whereas, in June 1998, Westmark filed a second suit against Burien (Snohomish County Superior Court Cause No. 98-2-04813-0) (“Westmark II”) seeking to enforce the settlement of Westmark I; and
5. Whereas, Burien tendered the defense of Westmark II to WCIA, which denied coverage; and
6. Whereas, Westmark II was eventually dismissed, with the Court permitting Westmark to file an Amended Complaint in the previously-dismissed Westmark I case, which WCIA continued to pay for Burien’s defense ; and
7. Whereas, on October 7, 2005, WCIA advised Burien that the limits of liability for ultimate net loss for Westmark I were \$5,000,000 under the 1993 coverage document, some of which had been eroded by payment of defense costs; and
8. Whereas, on October 12, 2005, Burien’s City Attorney wrote to WCIA stating that Burien was entitled to coverage under the 2003 Coverage Document, with limits of liability for ultimate net loss of \$14,000,000; and
9. Whereas, on November 18, 2005, a jury verdict was returned against Burien in the amount of \$10,710,000; and
10. Whereas, WCIA accepted accepted Burien’s designation that Westmark I was tendered under WCIA 2003 coverage document; and
11. Whereas, by August 2008, WCIA paid a total of \$14,000,000 in ultimate net loss (including \$200,000 in 2002, and \$11,748,316.56 in 2008) and then pursued claims against its Reinsurers’ on account of said paid losses; and
12. Whereas, Burien paid an additional \$510,341.77 to satisfy the Westmark I judgment; and
13. Whereas, on November 28, 2008, Westmark filed a third suit (USDC Cause No. 09-35392 “Westmark III”) alleging further liability on the part of Burien, which Burien has been defending; including incurring substantial attorneys fees and defense costs; and
14. Whereas, Burien and WCIA desire to resolve any remaining issues concerning the payment of ultimate net loss for the Westmark claims.

**NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:**

1. With respect to the amount of ultimate net loss already paid by WCIA in connection with Westmark I, Burien acknowledges that WCIA's payments (totaling \$14,000,000) have exhausted the applicable limit of liability for ultimate net loss under the 2003 coverage document.
2. It is agreed that the amount paid by Burien to satisfy the Westmark I judgment (\$510,341.77), is in excess of the limit of liability for ultimate net loss applicable to the Westmark I claim under the 2003 coverage document.
3. WCIA accepts Burien's tender of the claim for the amount paid by Burien (\$510,341.77) for the Westmark I judgment under the 1993 coverage document, and WCIA agrees to reimburse Burien for said payment.
4. Burien tenders the defense of Westmark III to WCIA under the 1993 coverage document. WCIA agrees to defend Burien in Westmark III under the terms of the 1993 coverage document, without a reservation of rights. WCIA agrees to reimburse Burien for all reasonable and necessary legal fees and costs incurred in the defense of Westmark III as a part of the ultimate net loss under the 1993 coverage document.
5. WCIA and Burien agree that the following sums will be credited to the 1993 coverage document limit of liability for ultimate net loss (\$5,000,000):
  - (a) The sum WCIA will reimburse Burien for the Westmark I judgment (\$510,341.77);
  - (b) All sums WCIA will reimburse Burien under paragraph 4 above;
  - (c) Any amount WCIA pays on behalf of Burien to defend or indemnify it in the Westmark III; and
  - (d) Any further amount of ultimate net loss that WCIA may incur regarding any further claims made by Westmark against Burien in any other claim or suit.
6. Burien and WCIA agree that WCIA shall be entitled to appoint defense counsel to defend Westmark III, and WCIA is entitled to control of Burien's defense of Westmark III.
7. Except as specifically agreed herein, Burien releases WCIA for any and all claims arising out the Westmark claims and suits under any other coverage document, and further the parties mutually release each other with respect to any and all claims arising in any way out of the Westmark claims or suits, specifically including WCIA's handling of said claims up to the effective date of this agreement.

Dated this \_\_\_\_ day of , 2010

**Washington Cities Insurance Authority**

**City of Burien**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

