



APR CLAIMS

January 30, 2018

VIA EMAIL and CERTIFIED MAIL, RRR TO:

Ms. Dorothy Taylor
President
Windermere Oaks Water Supply
Box 279
Spicewood, Texas 78669

Rè: Insured: Windermere Oaks Water Supply Corporation
Insurer: Allied World Specialty Insurance Company
Date of Loss: 10/28/2016
Policy #: 5105-0460-03
Policy Period: 3/17/2016 TO 3/17/2017
Limit of Ins.: \$5,000
Subject: TOMA Integrity, Inc. vs Windermere Oaks Water Supply Corp.
Claim #: 2017001776

RESERVATION OF RIGHTS

Dear Ms Taylor

As a member of the Allied World group of insurance companies, the Insurer named in the caption above will be referred to in this letter as "Allied World." Allied World issued a Commercial WaterPlus Package Policy to Windermere Oaks Water Supply Corporation (hereinafter "WOWSC") under policy number 5105-0460-0, which includes Public Official and Management Liability with Employment Practices and Employee Benefits Coverage Form (Claims-Made) (the "POML Coverage Section") for the Policy Period of March 17, 2016 through March 17, 2017 (the "Policy").¹ Allied World has requested and authorized its Third Party Administrator, Network Adjusters, Inc., to evaluate the above-captioned matter on its behalf. Accordingly, this correspondence shall provide Allied World's supplemental coverage position under the Policy in connection with the mandamus pleading filed in Texas State Court styled, *TOMA Integrity, Inc. vs Windermere Oaks Water Supply Corporation*.

We have reviewed the information provided to us along with the relevant provisions of the Policy and completed our coverage investigation. As will be explained in greater detail below, Allied World has

¹ The Policy's other Coverage Parts – Property Coverage, Commercial Crime Coverage, and Commercial General Liability – are inapplicable to this matter, as this loss does not trigger the Insuring Agreements of those Coverage Parts.

determined that the Policy will provide a maximum of \$5,000 in “defense expenses” under Coverage B of the Policy’s POML Coverage Section.

This correspondence is directed to you in your capacity as an authorized representative of the above-named Insured for insurance coverage purposes. To the extent that you are not acting on behalf of the Insured with respect to insurance matters, we request that you direct a copy of this letter to the appropriate representative and advise the undersigned accordingly.

To assist you in understanding this coverage analysis, we suggest that you review the Policy along with this letter. This letter does not modify any of the terms and conditions of the Policy. Allied World must reserve its right to decline or limit coverage should any of the exclusions, endorsements, or any other provision of the Policy prove to be applicable.

SUMMARY OF ALLEGATIONS

The summary of facts that follows is based upon the allegations contained within the documents and information received to date. We recognize that those allegations are unsubstantiated at this time, and nothing in this letter is intended to suggest or imply that they have any legal or factual merit.

This matter was originally submitted to us on January 24, 2017, though it was reported as “Record Only.” The issue at that time was that, during a Board meeting of the entity, two (2) individuals took issue with the entire Board, upon learning that the Board had sold WOWSC property to a Board member. There was a petition before the Board for their removal of the individual who purchased the property. An analysis was made under both the General Liability Coverage part and the Public Officials Management Liability Policy for a coverage grant. The matter was disclaimed under both coverage parts in a letter to you dated March 22, 2017. This current matter is premised as a derivative claim thereof from the prior claim as to a violation of the Texas Open Meetings Act.

The Petition

A Mandamus pleading was filed as Plaintiff’s Original Petition for Mandamus and Discovery Requests in 33rd District Court, Burnet County, under Cause No. 47531 (the “Petition”). This Petition seeks equitable and injunctive relief to void the action and decisions that the Windermere Oaks Water Supply Corporation (WOWSC) to sell a parcel of WOWSC property to a Board member. Plaintiff TOMA Integrity, Inc. filed the Petition against WOWSC in seeking to enforce the application of the Texas Open Meetings Act (TOMA.). The Petition contains One Count for Mandamus/Injunctive Relief.

SUMMARY OF COVERAGE

We direct your attention to certain terms and conditions in the policy of insurance issued by Allied World that have affected coverage in this matter. As you know, the Policy is comprised of multiple coverage parts. Due to the nature of the underlying facts and allegations made therein and based upon the information received to date, it is Allied World’s position that analysis of this matter is properly conducted under Insuring Agreement (B) the POML Coverage Section of the Policy. We expressly note that the Commercial General Liability Coverage Section is inapplicable because the Petition does not allege “bodily injury” or “property damage” caused by an “occurrence” or “personal and advertising injury” caused by an offense and, therefore, the insuring agreement for the Commercial General Liability Coverage Section is not met. We further note that coverage under Insuring Agreement (A) of the POML Coverage Section is inapplicable, because the Petition

does not seek "damages", defined to mean monetary damages, arising out of a "claim" for a "wrongful act". If you disagree, or would like us to review this matter under any other coverage section, please contact me.

Please note that the following observations concerning coverage are based on the information presently available, and may be subject to change in the event Allied World becomes aware of additional information.

We direct your attention to the PUBLIC OFFICIALS AND MANAGEMENT LIABILITY COVERAGE FORM WA-PO 00006 00 (03/12), a part of your Policy which states in pertinent part:

SECTION I. – COVERAGES

C. COVERAGE B. INSURING AGREEMENT – DEFENSE EXPENSES FOR INJUNCTIVE RELIEF

1. We will pay those reasonable sums the insured incurs as "defense expenses" to defend against an action for "injunctive relief" because of a "wrongful act," an "employment practices" offense, or an offense in the "administration" of your "employee benefit plans" to which this insurance applies.

However:

- a. The amount we will pay for "defense expenses" is limited as described in **SECTION IV. – LIMITS OF INSURANCE**; and
- b. We have no obligation to arrange for or provide the defense for any action for "injunctive relief."

No other obligation or liability to pay sums or perform acts or services is covered.

2. This insurance applies only if:
- a. The action seeking "injunctive relief" is brought in a legally authorized court or agency of the United States, any of its states or commonwealths, or any governmental subdivision of any of them;
 - b. Such action is filed during the policy period; and
 - c. The insured:
 - (1) First notifies us as soon as practicable after retaining counsel to respond to such action but in no case later than 60 days after the end of the policy period; and
 - (2) Is reasonably expedient in requesting us to reimburse any "defense expenses" incurred.

SECTION II. – EXCLUSIONS

This insurance does not apply under either **Coverage A or Coverage B** to:

5. Attorney's Fees and Court Costs

Any award of court costs or attorney's fees which arises out of an action for "injunctive relief"

19. Violation of Law

"Damages," "defense expenses," costs or loss arising from an insured's willful violation of any federal, state, or local law, rule, or regulation.

27. Profit, Advantage or Remuneration

Any "Damages," "defense expenses," costs or loss based upon or attributable to the insured gaining any profit, advantage or remuneration to which the insured is not legally entitled.

SECTION VIII. – DEFINITIONS

3. "Claim" means:

- a. written notice, from any party, that it is their intention to hold the insured responsible for "damages" arising out of a "wrongful act" of offence by the insured;
- b. a civil proceeding in which "damages" arising out of an offence or "wrongful act" to which this insurance applies are alleged;
- c. an arbitration proceeding in which "damages" arising out of an offence or "wrongful act" to which this insurance applies are claimed and to which the insured must submit or does submit with our consent;
- d. any other civil alternative dispute resolution proceeding in which "damages" arising out of an offence or "wrongful act" to which this insurance applies are claimed and to which the insured submits with our consent; or
- e. a formal proceeding or investigation with the Equal Employment Opportunity Commission, or with an equivalent state or local agency.

A "claim" does not mean any ethical conduct review or enforcement action, or disciplinary review or enforcement action.

5. "Damages" means monetary damages

6. "Defense expenses" means reasonable and necessary fees or expenses incurred by or on behalf of the insured for:

- a. Legal fees charged by the insured's attorney;
- b. Court costs;
- c. Expert witnesses; and
- d. The cost of court bonds, but we do not have to furnish these bonds.

"Defense expenses" do not include:

- (1) Any salaries, charges or fees for any insured, insured's "volunteer workers" or "employees," or former "volunteer workers" or "employees"; or
- (2) Any expenses other than a., b., c. and d. above.

12. "Injunctive relief" means equitable relief sought through a demand for the issuance of a permanent, preliminary or temporary injunction, restraining order, or similar prohibitive writ against an insured, or order for specific performance by an insured.

25. "Wrongful act" means any actual or alleged error, act, omission, neglect, misfeasance, nonfeasance, or breach of duty, including violation of any civil rights law, by any insured in the discharge of their duties for the Named Insured, individually or collectively, that results directly but unexpectedly and unintentionally in "damages" to others.

Based on the foregoing Policy language, and our review of the materials received, the Petition constitutes an action for “injunctive relief” because of a “wrongful act” against an insured during the policy period.

According to the Policy’s Declarations, the Policy’s POML Coverage Section provides \$5,000 Limit of Insurance for Each Action for Injunctive Relief under Coverage (B). Pursuant to Section IV, Paragraph (2) of the Policy’s POML Coverage Section, the Aggregate Limit of Insurance set forth in the Declarations for Coverage (B) applies to all “defense expenses” arising out of all actions for “injunctive relief”. Pursuant to Section IV, Paragraph (4), subject to the Aggregate Limit of Insurance, the “Each Action for Injunctive Relief” Limit of Insurance is the most we will pay under Coverage (B) for all “defense expenses” arising out of a single action for “injunctive relief”.

Although Allied World has determined that Insuring Agreement (B) responds to this matter, certain provisions in the Policy’s POML Coverage Section may also apply to bar or limit coverage for this action. Without intending to be exhaustive or exclusive, Allied World takes this opportunity to briefly identify some of these provisions.

First, in the Petition, Plaintiff seeks equitable and injunctive relief to void the action and decisions that the Windermere Oaks Water Supply Corporation (WOWSC) to sell a parcel of WOWSC property to a Board member. Plaintiff TOMA Integrity, Inc. filed the Petition against WOWSC in seeking to enforce the application of the Texas Open Meetings Act (TOMA.). According to Section II of the Policy’s POML Coverage Section Exclusion (27), this insurance does not apply under Coverage (B) to “damages,” “defense expense,” costs or loss based upon or attributable to the insured gaining any profit, advantage or remuneration to which the insured is not legally entitled. Because the action for “injunctive relief” is alleged to be based upon or attributable to profit, the insured gaining any profit, advantage or remuneration to which the insured is not legally entitled, this matter falls within the scope of Exclusion (27) and, therefore, Allied World respectfully reserves its rights to limit coverage for this matter pursuant to Exclusion (27).

Second, according to Section II of the Policy’s POML Coverage Section, Exclusion (19), this insurance does not apply under Coverage (B) to “damages,” “defense expense,” cost or loss arising from an insured’s willful violation of any federal, state, or local law, rule or regulation. In this matter, Plaintiff asserts violations of TOMA. Given the allegations, Allied World further reserves its rights to limit coverage to the extent the insured willfully violated any federal, state, or local law, rule or regulation.

Third, we note that the Petition seeks attorney’s fees. According to Section II of the Policy’s POML Coverage Section, Exclusion (5), this insurance does not apply under Coverage (B) to any award of court cost or attorney’s fees which arises out of an action for “injunctive relief”. Allied World expressly disclaims coverage for any award of attorney’s fees which arise out of the Petition.

Lastly, in addition to the foregoing, Allied World continues to reserve its rights, remedies, and defenses, including, without limitation, its right to disclaim or limit coverage as this matter continues to evolve, to the extent that:

1. the parties involved are not insureds;
2. this matter does not involve “wrongful acts”;
3. any amounts incurred in connection with do not constitute covered or insurable “damages” or “defense expenses”; and

4. this matter involves covered and uncovered matters or parties.

Please note that Section VI, Condition (6) of the Policy's POML Coverage Section provides that if other valid and collectible insurance is available to the insured for a loss or "defense expenses" we cover under this Coverage Form, this insurance is excess over any of the other insurance and its deductible or self-insured retention provisions, whether primary, excess, contingent or on any other basis. Accordingly, please advise as soon as possible if there are any other insurance carriers that have been placed on notice of this matter. In addition, please forward us copies of any and all other coverage letters issued by any other insurance carrier(s) in connection with this "claim." Allied World expressly reserves its rights related to other insurance.

RESERVATION OF RIGHTS

Based on the above, Allied World will provide coverage for the Petition under a Reservation of Rights. As outlined above, the coverage afforded under Coverage B of the Policy's POML Coverage Section is limited to \$5,000 in "defense expenses". This means that Allied World will pay up to a maximum of \$5,000 in "defense expenses" incurred in connection with the Petition.

Allied World's coverage position addressed herein is based upon the facts currently known, and Allied World will consider and evaluate any additional information you may present to it which you believe to be relevant to its coverage determination.

Please understand that this letter is not intended to provide an exhaustive review of all Policy terms, conditions and exclusions and Allied World expressly reserves its right to rely upon and enforce additional Policy terms when appropriate. Allied World may revise its coverage position and raise any other coverage issues or coverage defenses without prejudice, waiver or estoppel. Furthermore, this letter does not constitute a waiver of any policy provisions or defenses available to Allied World. Allied World expressly reserves all of its rights and defenses under the Policy and applicable law. Additionally, Allied World reserves the right to seek a determination in a court of law regarding any issues of coverage discussed herein as well as those not raised by this letter, but of which Allied World may subsequently become aware.

If you have any questions or concerns regarding Allied World's coverage position or anything stated herein, or if you have additional information which you believe may affect Allied World's coverage position, please do not hesitate to contact the undersigned at 303 221 9676 or by email pflynn@networkadjusters.com

Sincerely,

Pete Flynn

Network Adjusters, Inc.

"Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison."