



APR CLAIMS

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December 19, 2019

SENT VIA EMAIL AND CERTIFIED MAIL, RRR TO:

Dorothy Taylor – Director
Windermere Oaks Water Supply Corp.
PO Box 279
Spicewood, TX 78669
director2@wowsc.org

Jose E. de la Fuente - Attorney at Law
816 Congress Ave. Ste 1900
Austin, TX 78701
jdelafuente@lglawfirm.com

Re: Insured: Windermere Oaks Water Supply Corporation
Insurer: Allied World Specialty Insurance Company
Date of Loss: 10/28/2016
Policy #: 5105-0560-03
Policy Period: 3/17/2016 to 3/17/2017
Subject: Friendship Homes and Hangars
Claim #: 2017001776

DISCLAIMER OF COVERAGE

Dear Ms. Taylor and Mr. de la Fuente,

Network Adjusters, Inc. is the authorized third-party claims administrator for Allied World Specialty Insurance Company. Allied World issued a Commercial Water Plus Package Policy to Windermere Oaks Water Supply Corporation (hereinafter “WOWSC”) under policy number 5105-0460-03, which includes Public Official and Management Liability Coverage Form (Claims-Made) (the “POML Coverage Section”) for the Policy Period of March 17, 2016 through March 17, 2017 (the “Policy”).

This correspondence shall provide Allied World’s supplemental coverage position under the Policy in connection with a new filing that now comes forward as a Second Amended Original Petition, the style of which is Renee Ffrench, John Richard Dial, and Stewart Bruce Sorgen, Intervenor Plaintiffs vs. Friendship Homes and Hangars, LLC, Windermere Oaks Water Supply Corporation and its Directors, William Earnest, Thomas Michael Madden, Dana Martin, Robert Mebane, and Patrick Mulligan, Defendants, filed in District Court, Burnet County, Texas, 33rd Judicial District under Cause No. 48292.

This is the fourth filing on this matter going back to 2016. This newly filed Complaint contains new claims, adds additional Defendant parties, and seeks monetary damages and punitive damages from all of the current and former directors of Windermere Oaks Water Supply.

This current Pleading involves an allegation that WOWSC itself breached their fiduciary duty to WOWSC by approving the land sale and by failing to pursue claims related to the land sale, as well.

This matter arises out of certain sale of land by WOWSC to Friendship Homes and Hangars, LLC (Dana Martin.) Certain members of WOWSC have asserted that former Board members of WOWSC and WOWSC itself breached their fiduciary duty to WOWSC by approving the land sale and by failing to pursue claims related to the land sale respectively.

We have reviewed the information provided to us along with the relevant provisions of the Policy and completed our coverage investigation. **As discussed below, Allied World has determined that there is no coverage afforded for this action under the Policy.**

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.

Windermere Oaks Time Line of Events

FIRST PETITION

January 24, 2017

Correspondence was received involving a “potential” claim as a “situation” that is developing within Windermere. WOC sold a parcel of land to one of their board members Dana Martin and the sale is approved by the Board of Directors. According to standards in place by the BOC, the petition must have 10% of the ownership, signed to be accepted for review. This particular transaction only had 5% of membership and was not accepted by the Board of Directors.

MANDAMUS ACTION

December 22, 2017

Attorney Bill Aleshire, of Austin, Texas, representing TOMA, Integrity, Inc., filed a Mandamus Action seeking discovery requests and there is no demand for monetary damages. The style of the pleading is, Integrity, Inc. vs. Windermere Oaks Water Supply Corporation that was filed in the District Court of Barnett County, Texas, 33rd District Court under Cause number 47531. This Complaint reads that, on December 19, 2015, the WOWSC Board, acting without any competitive bid process or public announcement other intent, sold valuable property belonging to WOWSC to a business owned by one

of the Board members (Dana Martin). Additionally, the board also gave the board member a right of first refusal for the purchase of even additional WOWSC property. There is no item on the meeting agenda giving Fair Notice to the public, or WOWSC ratepayers, that any WOWSC property would be sold. They submit that this is a blatant violation of the Texas Open Meetings Act. Property was sold to Dana Martin for \$200,000.

This claim was analyzed under the Policy's General Liability coverage form and the Public Officials coverage form. It was a mandamus action seeking equitable and injunctive relief to avoid the action and decisions that the Windermere Oaks Water Supply Corporation made to sell a parcel of property to a Board member. Here, TOMA Integrity, Inc. filed the petition in seeking to enforce the application of the Texas Open Meetings Act. This was a one-count Complaint seeking that Mandamus action.

AMENDED COMPLAINT

April 10, 2017

Attorney Bill Aleshire filed his first amended complaint in the matter seeking the court to set the date on the mandamus action to reverse the violation of Toma public notice section 551.041 and declare avoid the action the WOWSC board took on December 19, 2015 to sell WOWSC property.

PETITIONER INTERVENTION

May 31, 2019

Attorney Bill Aleshire filed an Original Petition in Intervention in the matter. The Plaintiffs are René Ffrench, John Richard Dial, Stewart Sorgen as Intervenor Plaintiffs and as representatives for Windermere Oaks Water Supply Corporation vs Friendship Homes and Hangers, LLC, Windermere Oaks Water Supply Corporation and its Directors William Earnest, Thomas Michael Madden, Dana Martin, Robert Mebane and Patrick Mulligan as Defendants again in 33rd District Court. This Intervenor Pleading was filed to protect the interests of WOWSC and its members from the financial scar that was caused by the name Defendant WOWSC Directors. These Defendant Directors are said to have acted inconsistently with the limitation on their authority by selling the property to one of their own Board members for a very small fraction of the value of the property. This action that was taken by the Directors was done in a closed session. Intervenor members stand as representatives of WOWSC for the Corporation's claims against the name Defendant Directors for betraying WOWSC by exceeding their authority.

SECOND AMENDED ORIGINAL PETITION

November 5, 2019

Plaintiff-Intervenors in this case are three (3) members of WOWSC who filed this intervention seeking to protect the interests of WOWSC and its members from the financial harm that was caused by the named Defendant, WOWSC Directors. It is alleged that those Defendant Directors acted inconsistently with the limitation on their authority by selling WOWSC property to one of their own Board members for a small fraction of the value of the property and to challenge ownership by the Defendant, Friendship Homes, of certain property. Intervenor Plaintiff members stand as representatives of

WOWSC for the Corporation's claims against the named Defendant WOWSC Directors for betraying WOWSC members by exceeding their authority in the sale of this plot of land to another Director at a reduced price.

At a WOWSC Board meeting on December 19, 2015 and February 22, 2016, the Defendant WOWSC Directors approve the sale of WOWSC property, approximately 3.86 acres, along the west side of Piper Lane to Defendant, Friendship Homes and Hangars. The company, later created by then WOWSC Board member, Dana Martin, was the sale of this property which was done without public notice or competition for sale of the land and had been adjudged to have violated the Texas Open Meetings Act. These negotiations were done in closed session after an executive session was completed. The price approved by the Defendant, WOWSC Directors, for the property was to net \$200,000 to WOWSC. An appraisal of the property was commissioned by the Defendant, WOWSC Directors, and in particular, Dana Martin, herself, identifying the highest and best use of the property as "vacant land." The appraisal failed to recognize as Defendant Martin being a realtor herself who had sold similar properties in the area, that the property's highest and best use was division into several airport hangar lots, for which the value was actually \$700,000.

The Intervenor-Plaintiffs now seek to enjoin the performance of any act or the transfer of property by the WOWSC that 1) recognizes or facilitates the sale of Tract 1 (3 acres), and 2) that recognizes or facilitates the implementation of the unauthorized right of first refusal of Tract 2 (7 acres) without full and fair compensation to WOWSC. Additionally, they seek the sum of \$100,000.00.

Intervenor-Plaintiff members ask the Court to set aside and enjoin the land sale contract, enjoined implementation of Defendant, Friendship's right of first refusal and denial of an access easement from Tract 1 on to Tract 2; set aside and enjoin the performance of the land sale contract in Tract 1 as being inconsistent with the expressed limitation on the authority of the Defendant WOWSC Directors.

Causes of Action

As to the Causes of Actions in his Pleading, Plaintiffs allege:

- ...Ultra vires actions
- ...Unauthorized conveyance of property by current and former Directors
- ...Ultra vires use of cooperative assets by current and former Directors
- ...Adverse transactions
- ...Disbursement of cooperative funds for the benefit of Directors, current and former
- ...Breach of fiduciary duties
- ...Contractual fraud
- ...Conspiracy by Directors to disperse cooperative funds
- ...Exemplary damages
- ...Attorney fees

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 (A) 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 (B) of the POML Coverage Section is applicable, because the Petition seeks “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

A. COVERAGE A. INSURING AGREEMENT – LIABILITY FOR MONETARY DAMAGES

1. We will pay those sums that the insured becomes legally obligated to pay as “damages” arising out of a “claim” for:

- a. a “wrongful act,” or
- b. an “employment practices” offense, or
- c. an offense in the “administration” of your “employee benefit plans,” to which this insurance applies.

We will have the right and duty to defend any “claim” seeking those “damages.” However, we will have no duty to defend the insured against any “claim” seeking “damages” for a “wrongful act” or an “employment practices” offense or an offense in the “administration” of your “employee benefit plans” to which this insurance does not apply. We may, at our discretion, investigate any “wrongful act,” “employment practices” offense or an offense in the “administration” of your “employee benefit plans,” and settle any “claim” that may result.

However:

The amount we will pay for “damages” is limited as described in **SECTION IV. – LIMITS OF INSURANCE**; and

Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of “damages” or “defense expenses” under **Coverages A. and B.**

No other obligation or liability to pay sums or perform acts or services is covered under this insurance unless explicitly provided for below under **Coverage A. Supplementary Payments.**

2. This insurance applies to “claims” for “wrongful acts” or offenses only if:

a. The “wrongful act” or offense takes place in the “coverage territory,” and or after the retroactive date shown in the declarations and before the end of the policy period; and

b. A “claim” is first made against any insured in accordance with paragraph 3.c. below, during the policy period or any Extended Reporting Period we provide according to **SECTION VII. – EXTENDED REPORTING PERIODS.**

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”

8. Claims Against Other Insured

Any actions for “injunctive relief” or “claims” brought:

- a. By a Named Insured against any other insured; or
- b. By one Named Insured against another Named Insured.

11. Contractual Liability

“Damages,” “defense expenses,” costs or loss based upon, attributed to, arising out of, in consequence of, or in any way related to any contract or agreement to which the insured is a party or a third-party beneficiary, including, but not limited to, any representations made in anticipation of a contract or any interference with the performance of a contract.

12. Criminal Acts

“Damages,” “defense expenses,” costs or loss arising out of or contributed to by any fraudulent, dishonest, criminal or malicious act of the insured (except for “sexual abuse” which is excluded in the Sexual Abuse exclusion below), or the willful violation of any statute, ordinance or regulation committed by or with the knowledge of the insured. However, we will defend the insured for covered civil action subject to the other terms of this Coverage Form until either a judgment or final adjudication establishes such an act, or the insured confirms such act.

15. ERISA, COBRA and WARN Act Liability

“Damages,” “defense expenses,” costs or loss arising out of or contributed to by any insured's obligations under:

- a. The Employee Retirement Income Security Act of 1974 (ERISA);

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 VI. –CONDITIONS

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.

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 offense 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.

EXPLANATION FOR ALLIED WORLD’S DISCLAIMER OF COVERAGE

Based on the foregoing Policy language and our review of the materials received, we have determined that the Policy will not afford coverage for the Complaint for several reasons. Please take note of seven (7) enumerated exclusions that will give preclusive effect to a coverage grant.

First, in the Petition, Plaintiff seeks equitable and injunctive relief to void the action and decisions that the Windermere Oaks Water Supply Corporation (WOWSC) initiated to sell a parcel of WOWSC property to a Board member. According to Section II of the Policy’s POML Coverage Section

Exclusion (27), this insurance does not apply under Coverage (A) 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.

Second, according to Section II of the Policy’s POML Coverage Section, Exclusion (19), this insurance does not apply under Coverage (A) 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, there were violations of the Texas Open Meetings Act (TOMA) as there was no public notice given to WOWSC members of the upcoming meeting nor items listed on the agenda. 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 (A) 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, Exclusion 8 “claims against another insured” is applicable. We submit that you refer the matter to your Directors and Officers (D and O) carrier for their review and consideration. This portion of the Pleading is better addressed under a Fidelity Liability Policy which is not specifically contained within the Policy form of your current Public Officials – Management Liability, as well as the General Liability coverage part. Nevertheless, the ERISA exclusion would apply as to fiduciary duties.

In the complaint, the plaintiffs have made a claim for punitive damages. Allied World denies any obligation to provide payment for punitive damages, or any other damages, that do not meet the definition of “loss” or “losses” as defined above and by the policy. You should, therefore, take whatever actions you deem appropriate to protect your interests, including notifying any prior carriers that may provide coverage for this loss.

Based on the above considerations, as to the Exclusions, Allied World denies the coverage grant for defense representation and indemnity under the Policy to WOWSC.

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.

You may contact the Texas Department of Insurance
to obtain information on companies,
coverages, rights or complaints at
1-800-252-3439

You may write the Texas Department of Insurance
P.O. Box 149104
Austin, TX 78714-9104
FAX # (512) 475-1771
Web: <http://www.tdi.state.tx.us>
E-mail: ConsumerProtection@tdi.state.tx.us

Sincerely,

Pete Flynn

Pete Flynn
General Adjuster
Network Adjusters, Inc. on behalf of Allied World Specialty Insurance Company
pflynn@networkadjusters.com
303-221-9676

"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."

cc: Sandy Batchelor (via email only)
AIA Insurance Agency, Inc.
sbatchelor@aiaagency.com