



Serving County Government

Nebraska Intergovernmental Risk Management Association

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Craig L. Nelson, Executive Director

Agenda Item # 276
Date 6/17/20 June 3, 2020

RECEIVED
2020 JUN -5 PM 1:22
DODGE COUNTY NEBRASKA
FREMONT, NEBRASKA

Board of Supervisors
Dodge County
435 N Park Street, Rm 102
Fremont NE 68025

Dear Board Members,

RE : **NIRMA File No.** :PROFDODGE032170
Insured :Dodge County, Nebraska
Claimant :Marti Sleister
Claims Made Date :June 24, 2018

NIRMA has received copy of the Summons and Complaint filed by Ms. Sleister against Dodge County. The Complaint was filed in Dodge County District Court on June 1, 2020, under Case ID: CI 20-268.

I will review for you the NIRMA coverage Liability Package Policy, No. N-1718-5, effective July 1, 2017 to July 1, 2018, to be sure that you have a clear picture of the involved coverage applying to this claim. The policy includes a Public Officials Liability, Employment Practices Liability and Employee Benefits Liability Coverage Part D (Claims Made Coverage) and this claim falls under the Employment Practices Liability portion of the coverage.

The coverage agreement for the Public Officials Liability, Employment Practices Liability and Employee Benefits Liability Coverage Part D (Claims Made Coverage) reads as follows:

SECTION I: INSURING AGREEMENT

A. LIABILITY

We will pay on behalf of the *Insured* all *loss* resulting from *wrongful act(s)* but only with respect to *claims* first made against the *Insured* during the *policy period* or Extended Reporting Period. The *wrongful act(s)* must occur within the *coverage territory* and on or after the retroactive date shown on the Supplemental Declarations page and before the end of the *policy period*. Employee Benefits liability covers the *Insured's* liability to employees, former employees, or their beneficiaries or legal representatives.

B. DEFENSE AND SUPPLEMENTARY PAYMENTS

We will defend any suit against the *Insured* that seeks damages this insurance covers, even if any of the allegations of the suit are groundless, false or fraudulent. We will make such investigation of any claim or suit as we deem expedient.

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Our duty to pay for defense expense begins only after we are notified of a claim or suit. Any previously incurred expenses are not covered and will not apply with respect to any applicable deductible obligation. We are not obligated to pay any claim or judgment or to defend any suit after the applicable limit of liability has been exhausted by payment of loss adjustment expenses, judgments or settlements. If we incur defense expense relating to the defense of a suit not covered by this insurance, we will expect you to reimburse us for the actual expense incurred. ...

The insured except at its' own cost and for its own account, will not, without our written consent, make any payment, admit any liability, settle any claim, assume any obligation, or incur any expense. ...

D. BACK WAGES

It is agreed that we will indemnify the Insured for back wages, overtime or similar claim(s), even if designated as liquidated damages, under any theory of law, including but not limited to, federal, state or local statutes, rules, ordinances or regulations, if such claim(s) arise out of an employment practices wrongful act committed on or after the Retroactive Date shown in the Supplemental Declarations or for claim(s) arising from collective bargaining agreements.

SECTION II: LIMITS OF LIABILITY

Regardless of the number of Insureds under this insurance, person or organizations who sustain damages payable under this insurance, and/or suit(s) brought under this insurance, our liability is limited to:

1. The Limit of Liability shown in the Supplemental Declarations as applicable to each wrongful act for all loss and all costs taxed against the Insured arising out of one wrongful act covered by this Coverage Part.
2. The Limit of Liability shown in the Supplemental Declarations as applicable to the Annual Aggregate subject to the above provision respecting each wrongful act and is the maximum limit of our liability for each policy period. In no event will our total Limit of Liability be increased for any Extended Reporting Period.
3. Subject to the Limits of Liability stated above, we will only be liable to pay for damages or loss adjustment expenses in excess of the deductible shown in the Supplemental Declarations for each and every wrongful act. In the event we expend funds either for damages or loss adjustment expense on behalf of the Insured, we will be reimbursed for such expenditures up to the amount of the deductible shown in the Supplemental Declarations. Upon written demand by us, the amount of such deductible will be payable to us within (30) days. ...
5. We will only be liable to pay \$10,000 for damages in excess of \$5,000 for back wages associated with the Back Wages coverage. This limit is part of, and not in addition to, the Limits of Liability shown in the Supplemental Declarations. Any payments made are part of, and not in addition to, the Annual Aggregate Limit of Liability stated in the Supplemental Declarations. ...

It is the County's privilege, if you so desire, to engage counsel of your own in the defense of any non-covered exposure however at this point no exclusions would appear to apply to this claim as

presented. Should you retain your own counsel, we request that your attorney coordinate his or her defense effort with the counsel being assigned to defend this action. NIRMA is defending the filed Complaint under a Reservation of Rights. Pamela Bourne, with Woods & Aitken Law Firm who defended the county on the initial Charge of Discrimination as filed with the NEOC by Ms. Sleister will continue to defend the filed Complaint of the plaintiff.

Dodge County does have a deductible under this coverage and the amount of the deductible is \$15,000.00. This will be billed to the county once the costs to defend the action have exceeded that amount.

NIRMA reserves the right to review any additional claims or lawsuits pertaining to this matter and to make a separate determination as to whether either a defense or indemnity might be provided by NIRMA. We reserve the right to assert all defenses to coverage under the policy. In investigating the Charge of Discrimination, defending any suit, or attempting any compromise settlement, NIRMA is not waiving any rights nor admitting any obligation under the policy. Our decision on coverage is based only the facts as presented to us to date and should not be construed as applicable to a new claim or an amendment to this claim. Our right to have notice of either situation is reserved, as are the notice provisions of the policy.

If you have any questions or other information that you would like NIRMA to review and consider, please let me know.

Sincerely yours,



Peter E. Eiden, AIC
NIRMA Property and Liability Claims Manager

Cc :Oliver Glass, Dodge County Attorney, Fremont NE
:Jean Andrews, Dodge County Contact Person, Fremont NE
:Pamela Bourne, Woods & Aitken Law Firm, Omaha NE