



Serving County Government

Craig L. Nelson, Executive Director

August 7, 2020

Oliver Glass
Dodge County Attorney
PO Box 147
Fremont NE 68026-0147

Agenda Item # 15
Date 8/26/20

Dear Oliver,

RE : **NIRMA File No.** :PROFDODGE033236
Insured :Dodge County, Nebraska
Claimant :West Gate Bank
Claims Made Date :July 16, 2020

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2020 AUG 11 AM 11:2
CLERK OF DISTRICT COURT

I have received and reviewed the Summons and Complaint that has been filed by the Plaintiff against Dodge County and several additional defendants. This was sent to me following my conversation with you on August 3, 2020, wherein you advised that you would like NIRMA to provide a defense on this matter for the county.

This Complaint it is founded on possible tax issues, injunctive relief and declaratory action all of which are excluded under the terms of the Public Officials Liability coverage. NIRMA, however under the Defense and Supplementary Payments portion of the Public Officials Liability coverage has allowed for certain claims to be provided defense coverage only under special conditions. This claim does meet those conditions and we have agreed to provide a defense for the county. The coverage that is applicable and will provide a defense is only for costs of the defense and will not provide any coverage should a Judge render a verdict granting damages to the plaintiff.

I have reviewed the coverage afforded to the county under the Public Officials Liability, Employment Practices Liability and Employee Benefits Liability Coverage Part D (Claim Made Coverage) that would appear to be applicable to this matter. An outline of that coverage and the decision with respect to defense of this matter follows.

The Public Officials Liability, Employment Practices Liability and Employee Benefits Liability Coverage Part D (Claims Made Coverage) states:

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

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policy period or Extended Reporting Period. The wrongful act(s) must occur within the coverage territory. Employee Benefits liability covers damage to employees, prospective 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 *wrongful act, claim or suit*, as we deem expedient. 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.

In addition we will defend *suits*:

1. Covered by this coverage part but not seeking *damages* other than plaintiff/claimant attorney's fees/expenses; or
2. Not covered solely as a result of exclusions 10, 23, 24 or 25 of this coverage part or the Injunctive Relief and Declaratory Judgments Common Policy Exclusion, but we will not pay for any *loss*, supplementary payments or plaintiff/claimant attorney's fees/expenses associated with those excluded *claims or suits*.

For these specific types of *suits*, the following provisions apply:

1. We will pay 85 percent of the defense expense incurred after the deductible amount has been paid by the *Insured*. The *Insured* will be responsible for the deductible amount and the 15 percent co-payment.
2. Our obligation to pay further defense expense or other expense ends after the first judgment has been entered except for appeals of such judgment made by the claimant.

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.

We will have the right, but no duty, to appeal any judgment.

Subject to the Limit of Liability stated in the Supplemental Declarations as applicable to each *wrongful act(s)* we will pay all costs taxed against the *Insured* in any *suit* defended by us.

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 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.
7. The limit of our liability for all costs and fees associated with the Defense and Supplementary Payments provision will not exceed \$50,000 for each *suit* and not exceed \$50,000 for each *policy period*. ...

SECTION V: EXCLUSIONS

In addition to the exclusions addressed in the Common Policy Exclusions, this Coverage Part is subject to the following additional exclusions. The following exclusions apply to this Coverage Part only.

- A. Insurance provided by this Coverage Part does not apply to any *claim* or suit for damages.
 1. Excluded by the Common Policy Exclusions.
 2. Covered under any other Coverage Part of this policy.
- B. We will not be obligated to make any payment nor to defend any suit in connection with any claim made against the Insured:
 25. Arising out of any *Public Officials Wrongful Act* of an *Insured* in connection with:
 - a. Any tax assessment or adjustment, or
 - b. The collection, refund, distribution or application of any taxes, or
 - c. Failure to anticipate tax revenue shortfalls, or
 - d. Guarantees on bond issues, or
 - e. The determination of assessed values, the formation of tax rates, or the formation of tax refunds;

COMMON POLICY EXCLUSIONS

Some exclusions are common throughout the policy and are referenced here. Other exclusions that are specific to certain coverage parts are addressed within the applicable coverage part and will supersede any exclusion addressed in this part of the policy that might conflict with the specific coverage part.

This insurance does not apply to any *claim or suit for damages* due to:
Injunctive Relief and Declaratory Judgments. Actions, *claims or suits* for injunctive relief and declaratory judgments including:

1. Demands or actions for relief or redress other than money *damages*; and
2. Fees or expenses due to demands or actions for relief or redress other than money *Damages*.

To begin the analysis of coverage for this Complaint, you have the Complaint and its allegations which would be considered to fit the definition of a wrongful act as used within the policy and, based on the Insuring Agreement. Then we look at the policy limitations and exclusions to see if there are any that apply to this coverage. You will see that exclusion 25 above noted does exclude coverage for all claims that pertain to tax issues and there is also a common policy exclusion for Injunctive Relief and Declaratory Judgments.

It is noted that under the Defense and Supplementary payments section of your coverage there is defense coverage granted for two special areas. The first of those items pertains to claims where damages are not being sought so that does not apply. The second part however provides partial defense coverage if the claim is excluded solely due to exclusions 10, 23, 24 or 25 as well as injunctive relief and declaratory judgment actions and this claim would fall in that category. NIRMA is therefore accepting the defense of the claim under that limited defense category which means that NIRMA will pay 75% of all defense costs after your county deductible of \$15,000.00 has been met. The county would be responsible for the remaining 25% of any costs if defense should exceed \$15,000.00. The limit of liability as noted in the applicable limits of liability is a total paid out of \$25,000.00 in fees by NIRMA.

NIRMA has retained Brandy Johnson with Governmental Law, LLC to represent the interest of Dodge County with respect to defense of this claim. Please provide Brandy or her associates whatever is needed to be able to provide a complete and effective defense.

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. 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.

Sincerely,



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

Cc: Dodge County Board of Supervisors, Fremont NE
Brandy Johnson, Governmental Law LLC, Lincoln NE