



Nebraska Intergovernmental Risk Management Association

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Serving County Government

Craig L. Nelson, Executive Director

October 4, 2021

Agenda Item # 23 b
Date 10/30/21

Board of Supervisors
Dodge County
c/o Jean Andrews
435 N Park Ave, Rm 204
Fremont, NE 68025

COPY

RECEIVED
Dodge County Highway Dept
2021 OCT -6 PM 1:59

RE : **NIRMA File No.** :PROFDODGE033804
Insured :Dodge County, Nebraska
Claimant :Lisa Emanuel
Claims Made Date :9-29-21

Dear Board of Supervisors,

I have received and reviewed a copy of the Notice of Charge of Discrimination as received by Dodge County regarding a claim of discrimination as filed by Lisa Emanuel against Dodge County. The notice was received in the NIRMA office from Dodge County Sheriff, Steve Hesperen.

The Charge of Discrimination filed with the Nebraska Equal Opportunity Commission alleges disability and retaliation at this point. Please refer to NIRMA's Public Officials and Employment Practices Liability Coverage Part D, Section I: Insuring Agreement, paragraph E. Extension of Coverage, which reads:

E. EXTENSION OF COVERAGE

We have at **our** option, the right, but not the obligation to investigate and defend any EEOC action or any action or administrative hearing presented by a federal, state, or local agency with a similar purpose against **you** prior to any **suit** being filed. This is in addition to the coverage otherwise provided by this Coverage Part. Such an action or administrative hearing requirement is considered a claim. **You** must notify **us** in accordance with **Your Duties, in the Event of a Claim or Suit** condition of this coverage section and describe the circumstances surrounding each action or administrative hearing submitted for consideration under this provision. The **deductible** amount shown in the Employment Practices Liability Coverage Part Supplemental Declarations shall apply to any expenditure **we** incur under this extension.

NIRMA, having received the Notice of Discrimination is exercising our option and will be providing an investigation and defense to this Charge of Discrimination, subject to the county's deductible of \$15,000.00. Pam Bourne with Woods Aitken LLP has been retained by NIRMA to defend the Charge of Discrimination on behalf of Kimball County. We would request that all Dodge

County employees cooperate fully with Pam or her associates in developing the information necessary to properly evaluate and defend the action filed against the county. We have requested that she prepare and file the required Position Statement on behalf of Dodge County regarding this Charge of Discrimination.

BOARD OF DIRECTORS

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I will also review the NIRMA Liability Package Policy, No., effective July 1, 2021 to July 1, 2022, to be sure that you have a clear picture of the involved coverage applying to this claim if it should proceed beyond an NEOC Charge only. The policy includes a Public Officials Liability, Employment Practices Liability and Employee Benefits Liability Coverage Part D (Claims Made Coverage) of which the Extension of Coverage for defending NEOC actions is a part as earlier discussed in this letter.

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: COVERAGE AGREEMENT

A. LIABILITY

We will pay on **your** behalf all **loss** resulting from **wrongful act(s)** but only with respect to **claims** first made against **you** during the **coverage agreement 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 **coverage agreement period**. Employee Benefits liability covers **your** liability to employees, former employees, or their beneficiaries or legal representatives.

B. DEFENSE AND SUPPLEMENTARY PAYMENTS

We will defend any **suit** against **you** that seeks **damages** this coverage 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.

The **Covered Person**, 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 **you** 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 and before the end of the **coverage agreement period** or for **claim(s)** arising from collective bargaining agreements.

SECTION II: LIMITS OF LIABILITY

Regardless of the number of **Covered Persons** under this coverage, persons or organizations who sustain **damages** payable under this coverage, and/or **claims** or **suit(s)** brought under this coverage, **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 **you** 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 **coverage agreement period**. In no event will our total Limit of Liability be increased for any Extended Reporting Period.

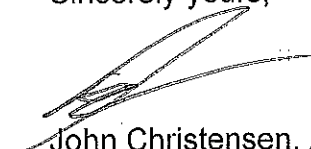
3. Subject to the Limits of Liability stated above, we will only be liable to pay for **damages** and **loss adjustment expenses** in excess of the **deductible** shown in the Supplemental Declarations for each and every **wrongful act**. In the event **we** expend funds either for **damages** or **loss adjustment expense** on **your** behalf, **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 thirty (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 above assigned counsel. Until such time as the relief requested is completely known, we will be unable to completely address coverage under the policy if a Complaint is later filed following resolution of the NEOC Charge. NIRMA is therefore defending the Charge of Discrimination under a Reservation of Rights.

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,



John Christensen, AIC
Property/Liability Claims Manager

Cc :Jean Andrews, NIRMA Contact
:Paul Vaughn, Dodge County Attorney
:Pam Bourne, Woods Aitken, LLP