



NEW YORK MUNICIPAL INSURANCE RECIPROCAL

November 25, 2013

Abraham Zambrano
Village Manager
Stanley H. Kellerhouse Municipal Building
1 Van Wyck Street
Croton-on-Hudson, NY 10520



Re: Insured: Village of Croton-on-Hudson (the "Village")
Claimant: Greentree Realty, LLC
Claim No.: TCRH-2005-014-001

Dear Mr. Zambrano:

As you may recall, this matter was originally submitted to NYMIR for coverage in 2005 when the Village was served with Petition/Complaint arising out of the Village's resolution to close a demolition debris processing facility on Claimant's property. Claimant filed a proceeding in state court against the Village alleging that the Village interfered with its use of the property. The proceeding has been dormant for several years but Claimant was recently granted permission by the Supreme Court, Westchester County, to file an Amended Complaint. The Amended Verified Petition and Complaint seeks a declaration that: 1) the operation of a construction and demolition processing facility on property owned by Claimant is a pre-existing non-confirming use which is unaffected by the Village's adoption of Local Law 230-18 in 2001, and 2) that Local Law 230-18 is void because it is pre-empted by state law. In addition, the Petition/Complaint seeks, pursuant to Article 78 of the CPLR, to vacate and set aside the determination of the Village's Building Inspector that the debris processing facility on the property is not a pre-existing nonconforming use. Finally, Claimant seeks in excess of \$25 million in damages as well as attorney's fees due to the alleged violation of its constitutional right to use of the property.

NYMIR accepts the handling of this matter on behalf of the Village in accordance with the terms and conditions of the Municipal Public Official's Liability Policy (the "Policy") issued to the Village for the June 1, 2005-June 1, 2006 policy period, and to the extent permitted by law. The Policy's \$1 million per occurrence limit of liability and its \$15,000 per claim indemnity deductible are applicable here.

In light of the allegations contained in the Complaint, we direct your attention to certain Policy terms and conditions that may affect coverage should a settlement occur or verdict be rendered in favor of Claimant. The Policy's insuring agreement provides that *"we will pay all sums the insured legally must pay as damages because of an error or omission."*

With respect to Claimant's demands, "damages" are defined as:

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Conference of Mayors



Association of Counties

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Zambrano
11/25/2013
p.2

money and does not include fines or penalties or any claim asking for injunctive or equitable relief, or attorney's fees or costs associated with a claim for injunctive or equitable relief.

In addition, pursuant to Section C. Exclusions, the Policy specifically excludes coverage for:

1. "Bodily injury or "property damage."¹
* * *
3. Errors or omissions, deliberately done without just cause, excuse, or justification which are reasonably calculated to injure another or others.

The Article 78 Petition and demands for declaratory relief are not covered as they do not meet Policy's the definition of "damages". However, Claimant has included a demand for compensatory damages arising out of alleged constitutional violations. Therefore, we will provide a defense to the Petition/Complaint. Please recognize, however, that if at some point the constitutional claims are dismissed, we would not be able to provide coverage for the continued defense of this matter.

Michael Miranda, Esq. will continue to defend this matter. Please see that the Village provides its complete cooperation to Mr. Miranda's firm and its staff in the defense and investigation of this matter. If you have any questions or wish to discuss this matter, please feel free to contact me.

Very truly yours,



Christina M. Leone
Claims Counsel
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cc: Michael A. Miranda, Esq.
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240 Mineola Blvd.
Mineola, NY 11501

¹ "Property damage" is defined as physical injury to tangible property including all resulting loss of use, or loss of use of tangible property not physically injured. Please note that "loss of use" during the time until a court finally determines that the municipality's action constitutes a taking of private property is not excluded with respect to "land use regulation claims", which are those claims arising out of the application of a land use, zoning, building, subdivision or other similar ordinance or regulation.