



CHUBB GROUP OF INSURANCE COMPANIES
Specialty Claim Service Center

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October 26, 2015

*Via E-mail to DrFKirk@verizon.net
via First Class Mail*

Francine Kirkpatrick, President
Palisair Homeowners Association
16050 Anoka Drive
Pacific Palisades, CA 90272

RE: Insured: Palisair Homeowners Association
Policy No.: 8227-6754
Claim No.: 326413
Plaintiffs: Gerard Del Colliano, *et al.*
Company: Federal Insurance Company

Dear Dr. Kirkpatrick:

This follows our recent communications and Federal Insurance Company's correspondence to Palisair dated May 12 and June 17, 2014, and June 1, 2015, wherein we discussed the potential for coverage under Federal's Protection for Community Association Leaders Policy number 8227-6754, for the now Second Amended Complaint entitled *Gerard Del Colliano and Krista Del Colliano v. Palisair Homeowners Association, Larry Friedman, Violet Walquist, Syd Vinnedge, Diana Ungerlieder, Hal Erdley, and Francine Kirkpatrick* (State of California, Los Angeles County Superior Court, Case No. BC 541387) (the "SAC"). As we have previously indicated, this matter has been reassigned to me for further handling, and we take this opportunity to supplement and amend Federal's May 12 and June 17, 2014, and June 1, 2015 coverage correspondence, which is incorporated by reference.

Federal reiterates its acceptance of coverage for this matter as to Palisair Homeowners Association, Larry Friedman, Violet Walquist, Syd Vinnedge, Diana Ungerlieder, Hal Erdley, and Francine Kirkpatrick under the Insuring Clause set forth in Subsection I of the D&O Liability Coverage Section, subject to a reservation of rights, as previously discussed, and the applicable \$10,000 Deductible Amount, and as additionally discussed below.

Background

In the SAC, dated March 9, 2015, the plaintiffs, Gerard Del Colliano and Krista Del Colliano, maintain that, on October 21, 2013, they submitted architectural drawings of a proposed partial second story renovation on the Del Colliano's single family home to the HOA's Plans

Committee. On November 23, 2013, members of the Plans Committee allegedly met with the plaintiffs to consider their application.

Thereafter, an appraiser, Ken Kirschner, retained by the HOA, allegedly rendered his opinion the planned renovations would “impact” the values of neighboring properties, but he allegedly refused to say exactly how it would impact such values. This was allegedly followed by another meeting on December 21, 2013, attended by adjacent property owners who allegedly expressed their concerns over the effects of the project. At another meeting on February 17, 2014, the HOA’s then-CEO, Larry Friedman attended, along with others. By letter dated February 23, 2014, signed by Mr. Friedman, the HOA allegedly rejected the plaintiffs’ application, in breach of the CC&R’s (Covenants, Conditions, and Restrictions). The HOA’s Board has allegedly unreasonably delayed the process, and allegedly admitted to “discriminating” against a newer property owner who involved his attorney in the process.

The plaintiffs seek declaratory relief, general, special, and compensatory damages, attorneys’ fees and costs pursuant to causes of action for Declaratory Relief, Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing, Breach of Fiduciary Duty, and Negligence – Negligent Abuse of Discretion.

In the plaintiffs’ June 25, 2015 Offer to Compromise under California Code of Civil Procedure §998, the plaintiffs sought \$925,000, including, among other recoveries, \$462,000 for “personal injury damages,” and \$37,000 for “additional living expenses.”

Coverage

The plaintiffs’ original ADR Request, the Complaint, FAC, and the SAC are **Related Claims**, as that term is defined in the Policy. As such, pursuant to Subsection VIII.(D) of the D&O Section, Reporting, the ADR Request, Complaint, FAC, and SAC will be treated as a single **Claim**, first made on February 21, 2014 by way of service of the ADR Request, during the **Policy Period** effective from June 2, 2013 to June 2, 2014.

Federal has reserved its right to decline to accept coverage for matters that do not constitute a covered **Loss**, as that term is defined in the Policy, as amended by Endorsement No. 1. While **Loss** includes damages, judgments, settlements, interest, and **Defense Costs**, **Loss** does not include matters uninsurable under the law, taxes, fines or penalties, as well as other items set forth in the definition of **Loss**.

The plaintiffs seek damages for alleged emotional distress and bodily injuries, damages allegedly arising out of their loss of use of the residence, and injunctive relief. In their §998 Offer to Compromise, dated June 25, 2015, those alleged damages constitute a significant part of the total damages sought. Exclusion III.(C) precludes coverage for **Loss**, other than **Defense Costs**,

which constitutes the cost of compliance with any order for, or grant of or agreement to provide non-monetary relief; Exclusion III.(D), as amended by Endorsement No. 1, precludes coverage for **Loss**, including **Defense Costs**, on account of any **Claim** where all or part of such **Claim** is directly or indirectly based upon, arising from, or in consequence of, or in any manner related to any mental, emotional distress, bodily injury, sickness, disease or death; and Exclusion III.(E) operates to preclude coverage under the D&O Section for **Loss**, including **Defense Costs**, on account of any **Claim** for any **Property Damage**, which includes the loss of use of tangible property whether or not such property is damaged or destroyed. Federal concludes that a large part of the relief sought by the plaintiffs does not qualify as covered **Loss** under the Policy, including related **Defense Costs**.

There are a number of Policy terms, provisions, conditions and/or exclusions that would operate to bar indemnity and/or defense coverage for some of the damages that the plaintiffs seek in the SAC, and which may, under California Civil Code §2860(a), arguably create a potential conflict of interest entitling the **Insureds** to the right to select independent counsel.

California Civil Code §2860(a) provides, in relevant part, that “(i)f the provisions of a policy of insurance impose a duty to defend upon an insurer and a conflict of interest arises which creates a duty on the party of the insurer to provide independent counsel to the insured, the insurer shall provide independent counsel to represent the insured unless, at the time the insured is informed that a possible conflict may arise or does exist, the insured expressly waives, in writing the right to independent counsel.” In accordance with this section, the **Insured** has the right to select independent counsel to represent its interests. Please advise us whether Palisair elects to appoint independent counsel to defend their interests in this matter.

Pursuant to the California Code of Regulations, Title 10, Chapter 5, Subchapter 7.5 Fair Claims Settlement Practices Regulations, if you believe all or part of this claim has been wrongfully denied or rejected, you may have this matter reviewed by the:

California Department of Insurance
Consumer Services Division
300 South Spring Street
Los Angeles, CA 90013
(800) 927-4357

Federal’s position with respect to this matter is based upon the information provided to date. Federal reserves its right to assert additional terms and provisions under the Policy and at law, which may be applicable.

October 26, 2015
Francine Kirkpatrick, President
Palisair Homeowners Association
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If you have any questions concerning the coverage available under the Policy, or the matters raised in this letter, please feel free to contact me.

Very truly yours,



Donn Burkholder
D&O Examiner
Chubb & Son
A division of Federal Insurance Company

Palisair101215

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