


**DISCLOSURE OF APPEARANCE OF CONFLICT OF INTEREST
AS REQUIRED BY G. L. c. 268A, § 23(b)(3)**

PUBLIC EMPLOYEE INFORMATION	
Name of public employee:	Justin Makuc
Title or Position:	Select Board, Chair
Agency/Department:	Town of Monterey
Agency address:	N/A
Office Phone:	N/A
Office E-mail:	justin@montereyma.gov
	<p>In my capacity as a state, county or municipal employee, I am expected to take certain actions in the performance of my official duties. Under the circumstances, a reasonable person could conclude that a person or organization could unduly enjoy my favor or improperly influence me when I perform my official duties, or that I am likely to act or fail to act as a result of kinship, rank, position or undue influence of a party or person.</p> <p>I am filing this disclosure to disclose the facts about this relationship or affiliation and to dispel the appearance of a conflict of interest.</p>
APPEARANCE OF FAVORITISM OR INFLUENCE	
Describe the issue that is coming before you for action or decision.	The Select Board is deciding how to allocate American Rescue Plan Act funds. One of the applications is from the Community Center Committee, for the construction of a pavilion at the Community Center property.
What responsibility do you have for taking action or making a decision?	I am one member of a three member Select Board that will decide how to allocate the American Rescue Plan Act funds. The Board is considering the disbursement of the remaining \$203,211, and, in doing so, is considering at least seven proposals. One of these proposals is for the construction of a pavilion at the Community Center property, and the Board will need to approved, deny, or otherwise act on this proposal.
Explain your relationship or affiliation to the person or organization.	My mother, Mary Makuc, works a part-time job with the Town as the Community Center coordinator. This position is compensated hourly, and is responsible essentially for coordinating events at the Community Center property.
How do your official actions or decision matter to the person or organization?	I believe that the Town could potentially benefit from the construction of a pavilion at the Community Center property, but I do not foresee the decision, regardless of its outcome, impacting my direct family member's financial status – positively or negatively.
Optional: Additional facts – e.g., why there is a low risk of undue favoritism or improper influence.	The proposal is to construct a pavilion in order to eliminate the need for an annual summer outdoor tent and to provide for a nicer more permanent space than an outdoor tent. The proposal is not to fundamentally change the programming at the Community Center. The proposal is not to change the Community Center coordinator position or its corresponding compensation.
If you cannot confirm this statement, you should recuse yourself.	<p>WRITE AN X TO CONFIRM THE STATEMENT BELOW.</p> <p><input checked="" type="checkbox"/> Taking into account the facts that I have disclosed above, I feel that I can perform my official duties objectively and fairly.</p>
Employee signature:	
Date:	11/1/22

Evaluations

Evaluations performed by Town Administrator and HR together (some will involve input from Board or Committee Chairs)

1. Police Chief
2. Director of Operations
3. Town Clerk
4. Building Commissioner
5. Fire Chief
6. Community Center Coordinator
7. COA Outreach Administrative Assistant
8. Office Assistant
9. Con Comm Agent

Evaluations performed by Department Heads

1. Transfer station attendants
2. Town Clerk Staff
3. Sergeant and Police Officers
4. Library staff
5. Firemen
6. Highway staff
7. Plumbing, Gas and Electrical inspectors

Evaluations performed by HR with input from the Select Board

1. Town Administrator
2. Select Board Secretary

Evaluations performed by other entities

1. Library Director performed by the Trustees
2. Principal Assessor and Clerk performed by the Board of Assessors
3. Health Agent

Job Description

Title: Inspector of Buildings, Building Commissioner and Code Enforcement Officer

Supervision: Works under the supervision of the ~~Select Board~~ Town Administrator and in accordance with applicable provisions of the Massachusetts General Laws, regulations (CMRs), town bylaws, rules and regulations.

Hours/Compensation: This position is a part time hourly, non-exempt position. The actual hourly rate will be authorized annually by annual appropriation.

Benefits: As this position requires less than 20 hours per week no Town benefits are offered. This position must participate in the OBRA retirement program.

Job Environment:

- Some work is performed under typical office conditions; some work is performed in the field under varying conditions, with exposure to the hazards associated with construction sites. Makes frequent contact with town departments and boards, state and regional agencies, builders and developers, real estate interests and periodic contact with the general public.
- Has access to all department-related confidential information such as personnel records, negotiating positions, pending litigation, which if disclosed, could have legal or financial repercussions.
- Errors could result in damage to property, endanger public safety, have legal and/or financial implications, and cause adverse public relations.
- Administrative, supervisory and inspection work related to the enforcement and interpretation of the State Building Code, the local zoning bylaw and other applicable regulations; all other related work as required.

Responsibilities:

The essential duties and responsibilities listed include the minimum requirements for the position. This position includes additional duties that are a natural progression from that position's essential duties. The omission of specific statements of duties does not exclude them from the responsibility of the employee in the position if the work is similar, related, or a logical assignment to the position.

- Plans, directs, coordinates and administers the activities of the building department which includes the activities of the plumbing, gas, and wiring inspectors and sealer of weights and measures.
- Reviews plans for building construction or alteration to determine compliance with state codes, local zoning bylaws, and other applicable regulations; issues building permits; maintains associated logs and inspection records. Responds orally and in writing to inquiries from property owners, banks, real estate firms, and the general public; explains building code regulations and bylaw provisions; explains procedures and assists applicants in completing required forms; discusses

construction methods and materials with building professionals in order to assure compliance with applicable codes and regulations.

- Inspects commercial buildings and alterations to commercial buildings under construction and upon completion to monitor compliance with code requirements and approved plans; inspects safety conditions of existing buildings; inspects places of assembly and public buildings annually.
- Confers with builders, architects, engineers, property owners, attorneys, and the general public regarding construction requirements and other related matters. Issues certificates of inspection, certificates of occupancy, notices of violation and stop work orders. Participates in the coordinated review process with various town boards including the Board of Public Works, Planning Board, Board of Health, Board of Appeals and Conservation Commission. Prepares and manages the annual budget for the Building Department; oversee the maintenance of departmental records and departmental correspondence; prepares department report for the Annual Town Report. Performs other similar or related duties as required or as situation dictates.
- Performs highly responsible duties of a technical nature requiring considerable judgment in the application, interpretation, and enforcement of the building codes, zoning bylaws, and other applicable regulations.
- Supervises 4 part time employees: Plumbing & Gas Inspector, Electrical Inspector, Local Inspector and the Assistant Building Inspector.

Recommended Minimum Qualifications:

Education & Experience: High school graduation plus five years of experience in the supervision of building construction or design; or Bachelor's degree in a field related to building design or construction; or equivalent combination of education and experience. Individual must be deemed qualified by the Building Official Certification Committee and shall first be certified as a MA Local Inspector.

Knowledge, Ability and Skill:

- Thorough knowledge of the materials and methods of building construction and the state building code, local zoning bylaws, and other applicable state statutes, rules and regulations, ordinances and bylaws.
- Ability to enforce all regulations firmly, tactfully, and impartially. Ability to deal appropriately with the general public and members of the business community. Ability to organize and assign work to subordinate personnel.
- Ability to communicate effectively both orally and in writing.
- Possession of a Class III motor vehicle operator's license required.
- Minimal physical effort required to perform functions under typical office conditions; moderate physical effort required when performing occasional fieldwork. Position requires the ability to operate a keyboard. Occasionally required to bend, reach, climb and otherwise access buildings under construction.

Job Description

Title: Town Clerk

Supervision: The Town Clerk is hired/appointed by the Board of Selectmen and reports directly to The Town Administrator.

Hours/Compensation: This position is a part time hourly, non-exempt position for 15 hours per week. The actual hourly rate will be authorized annually by ~~the Select Board and Finance Committee~~ and by annual appropriation.

Benefits: As this position requires less than 20 hours per week no Town benefits, including health care and retirement are offered. This position must participate in the OBRA retirement program.

Bldg insur blurb

Job Environment: Typical office environment; operates computers, printers, calculators, phones and the copier. The position requires frequent contact with other Town Hall employees, State agencies and the general public.

Responsibilities:

The essential duties and responsibilities listed include the minimum requirements for the position. This position includes additional duties that are a natural progression from that position's essential duties. The omission of specific statements of duties does not exclude them from the responsibility of the employee in the position if the work is similar, related, or a logical assignment to the position.

- Responsible for all duties, authorities and responsibilities associated with local and state elections.
- Responsible for creating and maintaining a budget for the Clerk's office.
- Serves as ex-officio member and Clerk of the Board of Registrars of voters.
- Responsible for all duties, authorities and responsibilities assigned to the Clerk with regard to town meetings.
- Responsible for all duties, authorities and responsibilities associated with vital statistics
- Responsible for the issuance of dog licenses, marriage licenses, business certificates, birth and death certificates
- Responsible for filing and recording all Board of Appeal and Planning Board decisions as well as public utility decisions
- Responsible and accountable for all duties prescribed by MGL.

Recommended Minimum Qualifications:

Education & Experience: High school diploma and a valid driver's license.

Knowledge, Ability and Skill:

- Knowledge of Windows programs/operating system as well as other office equipment.

- Excellent organizational skills, the ability to work with minimal supervision and the use of good judgment and tact regarding the requirements of the position.
- Ability to work well with the public and other Town employees.
- Minimal physical effort required to perform functions under typical office conditions.
- Position requires the ability to operate a keyboard.
- Ability to access large, heavy storage boxes/records.



MIIA Member Services
15 Cabot Road
Woburn, MA 01801-1003
TEL (800) 526-6442
FAX (781) 376-9907
www.emiia.org

November 1, 2022

Via email: justin@montereyma.gov

Select Board, Town of Monterey
Monterey Town Hall
Justin Makuc, Chair
435 Main Rd
P.O. Box 308
Monterey, MA 01245

Re: Terry Walker v. Town of Monterey et al,
U.S.D.C. District of Massachusetts, Civil Docket No. 3:22-cv-30117-KAR
Claim No.: M22PO509786

Dear Mr. Makuc:

Please accept this correspondence as MIIA Property & Casualty Group, Inc.'s ("MIIA") coverage position with respect to the complaint brought against the Town of Monterey ("Town"), Town Administrator Melissa Noe ("Noe") and former Select Board members Steven Weisz ("Weisz") and Donald Coburn ("Coburn") (collectively, "Town Defendants") by Terry Walker ("Plaintiff") in the United States District Court for the District of Massachusetts, Civil Docket No. 3:22-cv-30117-KAR ("Complaint"). The Complaint alleges that the Town Defendants retaliated against the Plaintiff, the Town Clerk, for reporting and complaining about alleged violations of the law and created a hostile work environment. As a result, the Plaintiff has brought claims for violation of the Whistleblower Act, violation of federal and state civil rights and intentional infliction of emotional distress.

MIIA administers a Public Officials Liability Coverage Form for the Town. We have closely examined said Coverage Form to determine if there is coverage available to the Town Defendants for the Complaint. For the reasons further explained below, MIIA will provide the Town Defendants with a defense in the above captioned matter under a full reservation of rights to later withdraw its defense of this matter and/or refuse to indemnify the Town Defendants in the event that it is determined that the allegations raised by the Plaintiff are not covered and/or are excluded under the Coverage Form.

In coming to our determination, we have reviewed the allegations in the Complaint and compared them to the coverage afforded under the Public Officials Liability Coverage Form administered by MIIA for the Town for the applicable time period. Below we have summarized the relevant allegations in the Complaint. While MIIA takes no position regarding the truth or validity of the allegations, we are obligated to compare the allegations as set forth by the Plaintiff to the Coverage Form to reach a coverage determination.

BACKGROUND

According to the Complaint, the Plaintiff has been employed by the Town as Town Clerk for approximately six years. The Plaintiff alleges that she has been repeatedly retaliated against for her objections to and refusals to engage in conduct which she believed to be illegal, a threat to public safety and/or violations of the Massachusetts State Ethics laws. The retaliation included taking away the Plaintiff's Town issued credit cards, removing her computer and printer access, harassing behavior and disparaging emails.

For example, the Plaintiff alleges that she made complaints of voter fraud against Noe because Noe allegedly insisted that voter ballots be destroyed and/or not counted in a local election. The Plaintiff also alleges that she refused to participate when Noe allegedly altered, amended or manipulated voter documents on multiple occasions. The Plaintiff alleges that she faced numerous instances of employment related retaliation and harassment as a result of making these complaints. She also alleges that she was subjected to a hostile work environment.

In May of 2021, the Plaintiff resigned from her work as the Town's lead grant writer based upon Noe's repeated harassment and unwanted criticism. In June of 2021, the Plaintiff complained to the Town regarding Noe's harassment and retaliation, however, no actions were taken. In July of 2021, an incident occurred following a Select Board meeting involving the Plaintiff and Noe. The Plaintiff allegedly feared for her safety and filed a police report regarding the incident. Thereafter, in September of 2021, Noe allegedly made false statements about the Plaintiff's work performance at a Select Board meeting in an effort to publicly discredit and disparage the Plaintiff. Despite the alleged harassment, the Town allegedly took little to no disciplinary action against Noe and her harassment of the Plaintiff increased.

The Plaintiff alleges that Noe and Coburn threatened that they would "dig up dirt" on the Plaintiff dating back forty years if she continued to pursue her complaints against them. In an email dated November 24, 2021, Coburn threatened the Plaintiff with bringing her "work history to the public's attention" if she did not withdraw her complaints. Weisz also allegedly attempted to get the Plaintiff to withdraw her complaints against Noe.

As a result of the above-described events, the Plaintiff filed the current four count Complaint. The specific counts are labeled as follows:

- Count I – Whistleblower (M.G.L. c. 149, § 185) against the Town;
- Count II – Massachusetts Civil Rights Act (M.G.L. c. 12, §§ 11H, 11I) against all of the Town Defendants;
- Count III – Intentional Infliction of Emotional Distress against Noe, Coburn and Weisz;
- and
- Count IV¹ – Violation of Civil Rights and Retaliation (42 U.S.C. § 1983) against Noe, Coburn and Weisz.

¹ This Count is labeled "Count I", however, it is likely a typographical error as there is already a Count I.

By way of relief, the Plaintiff is seeking money damages, interest, costs and attorney's fees. She alleges that she suffered loss of income, loss of wages, loss of employment benefits and other financial losses. Lastly, the Plaintiff is seeking punitive damages.

COVERAGE FORM PROVISIONS

In addressing MIIA's coverage obligations, we have reviewed the Plaintiff's allegations as raised in the Complaint and compared said allegations to the terms and conditions of the Public Officials Liability Coverage Form that MIIA issued to the Town. Sterilite Corp. v. Continental Gas Co., 17 Mass. App. Ct. 316, 318 (1983). We have referenced some of the more pertinent portions of the Coverage Form as they relate to MIIA's coverage position.

PUBLIC OFFICIALS LIABILITY COVERAGE FORM

SECTION I – Coverage

...

Coverage B – Employment Practices Liability

1. Coverage Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages resulting from "claims" against the insured by reason of "employment practices violations" or "third party violations" to which this coverage applies.

We will have the right and duty to defend any "claim" or "suit" seeking those damages, even if such "claim" or "suit" is groundless, false, or fraudulent. However, we will have no duty to defend any "claim" or "suit" seeking damages to which this coverage does not apply. . . .

...

- f. This coverage provides "back wages" for "employment practices violations" if there is a Back-Wages Limit shown in the Declarations. A separate Limit of Insurance applies to this coverage as described in Section III – Limits of Insurance.

...

- g. If a "claim" or "suit" includes both covered and uncovered matters, the insureds and we shall use best efforts to agree upon a fair and proper allocation between covered and uncovered damages with respect to the

settlement or any other indemnity payment made in connection with said “claim” or “suit”.

2. Exclusions

This Coverage B does not apply to any damages, costs, “claims” or “suits” made against the insured:

...

- b. Arising out of “Personal or Advertising Injury”, however this exclusion shall not apply to:

- (1) Libel, slander, or defamation arising out of an “employment practices violation”;

...

- (3) Discrimination arising out of an “employment practices violation” or “third party violation”.

- c. Arising out of the following:

- (1) Bodily injury to, or sickness, disease, emotional distress, or death of any person. However, this exclusion shall not apply to emotional distress arising out of an “employment practices violation” or a “third party violation”; or

...

...

- h. For fines, penalties, punitive damages, exemplary damages, or the multiplied portion of multiplied damages.

...

- v. We shall not be liable for that part of “loss”, other than Defense Costs:

- (1) Which constitutes “back-wages”, overtime, future wages, any other salary, wages, or earnings, or other similar “claims”, even if designated as liquidated damages, under any federal, state, or local statutes, rules, ordinances, or regulations; or for “claims” arising out of collective bargaining agreements, negotiations, or disputes.

However, this exclusion shall not apply to “back-wages” for “employment practices violations” if there is a Back-Wages Limit shown in the Declarations. A separate Limit of Insurance applies to this coverage as described in SECTION III – Limits of Insurance.

...

...

SECTION II - Who is an Insured

Each of the following is an insured:

1. You, the public entity named in the Declarations.
2. Your past, present, and future “executive officers” and other elected, appointed or employed officials operating under your jurisdiction while acting within the scope of their duties as such.

...

4. Your “employees,” but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

...

SECTION III – Limits of Insurance

...

2. The Annual Aggregate Limit is the most we will pay for all damages under this Coverage Form in one annual period. In no event shall our Annual Aggregate Limit be increased for any Extended Reporting Period.

...

4. Subject to Paragraph 2. above, the Back-wages Per Person Limit shown on the Declarations is the most we will pay for damages under Coverage B arising out of any “claim” for “back-wages”. Also subject to Paragraph 2. above, the Back-wages Per Person Limit shown on the Declarations is the most we will pay for the sum of damages under Coverage B arising out of more than one “claim” asserting that the insured owes any “back-wages” to one “employee”.

...

SECTION VII – Definitions

The words and phrases defined below apply to both the singular and plural of the defined words and phrases.

...

4. “Back-wages” means wages that would have been earned if a person had been employed, promoted, or received wage increases and includes overtime, future wages, pension and retirement benefits, even if designated as liquidated damages under any federal, state, or local statutes, rules, ordinances, or regulations arising out of an “employment practices violation”, but does not

include wage loss arising out of collective bargaining agreements, negotiations, or disputes.

...
8. "Claim" means any of the following in connection with alleged damages because of a "wrongful act", "employment practices violation", "third party violation", or "breach of fiduciary duty" to which this coverage applies:

- a. Written demand or notice for monetary or non-monetary relief;
- b. Summons, pleadings or legal documents filed or served in connection with a "suit";

...
12. "Employee" means any compensated or non-compensated "employee", including volunteer workers and student teachers teaching as part of their educational requirements. "Employee" includes a "leased worker". "Employee" includes a so-called volunteer or call firefighter or police officer. "Employee" does not include a "temporary worker" but does include seasonal or occasional workers. "Employee" does not include any person not considered a public employee as defined by Massachusetts General Laws Chapter 258.

13. "Employment practices violation" means "wrongful acts" involving:

- a. Employment related refusal to employ, promote, or grant tenure;
- b. Employment related dismissal, discharge, or termination of employment;
- c. Employment related coercion;
- d. Employment related demotion;
- e. Employment related evaluation, reassignment, or discipline;
- f. Employment related libel, slander, defamation, humiliation, or invasion of privacy;
- g. Employment related harassment or discrimination;
- h. Employment related retaliation; and
- i. Employment related violation of an individual's civil rights.

14. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws, or any other similar governing document.

...
27. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
...

d. Discrimination, unrelated to employment;

...

g. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

...

...

32. "Suit" means a civil proceeding in which damages because of "wrongful acts", "employment practices violations", "third party violations", or "breaches of fiduciary duty" to which this coverage applies are alleged. . . .

...

...

37. "Wrongful act" means any actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty, or any actual or alleged violation of civil rights, by an insured, individually or collectively, while acting within the scope of his or her duties as your "executive officer(s)", public official, officially appointed commission, committee, agency or board member, "employee" or volunteer worker, or while performing duties related to the conduct of your business.

...

As an initial matter, the Town is an insured under the Public Officials Liability Coverage Form. Additionally, Weisz and Coburn, as former members of the Select Board, are also insureds but only while acting within the scope of their duties as elected, appointed or employed officials operating under the Town's jurisdiction. Lastly, Noe, as the Town Administrator, is an insured but only for acts within the scope of her employment by the Town or while performing duties related to the conduct of the Town's business. As such, to the extent that Weisz and Coburn were not acting within the scope of their duties as members of the Select Board and/or Noe was not acting within the scope of her employment by the Town or while performing duties related to the conduct of the Town's business, they would not be considered insureds under the Coverage Form and not entitled to any coverage under it.

Coverage B of the Public Officials Liability Coverage Form provides coverage for those sums that the insured becomes legally obligated to pay as damages resulting from "claims" against the insured by reason of "employment practices violations" to which this coverage applies. The Coverage Form defines the term "employment practices violations", in relevant part, as "wrongful acts" involving employment related coercion, libel, slander, defamation, humiliation, harassment, discrimination, retaliation and violation of civil rights. Additionally, "wrongful act" is defined as any actual or alleged error, misstatement, misleading statement, act or omission, neglect or breach of duty, or any actual or alleged violation of civil rights. Here, the Complaint alleges "employment practices violations" including but not limited to employment

Justin Makuc, Chair
Select Board
November 1, 2022
Page 8

related coercion, slander, defamation, humiliation, harassment, retaliation and/or violation of civil rights sufficient to trigger coverage under the Coverage Form. While coverage is triggered under Coverage B, one or more exclusions and/or coverage limitations may operate to exclude portions of the Complaint and/or the damages sought from coverage.

Exclusion b excludes any damages, costs, "claims" or "suits" arising out of "personal or advertising injury". It further provides that this exclusion shall not apply to libel, slander, defamation and discrimination arising out of an "employment practices violation". Therefore, to the extent that it is later established that the alleged libel, slander, defamation and/or discrimination did not arise out of an "employment practices violation", the resulting damages would be excluded from coverage by operation of exclusion b.

Exclusion c(1) excludes any damages, costs, "claims" or "suits" arising out of bodily injury to, or sickness, disease, emotional distress or death of any person. It further provides, however, that this exclusion shall not apply to emotional distress arising out of an "employment practices violation". As such, similar to exclusion b above, to the extent that the Plaintiff's alleged emotional distress did not arise out of an "employment practices violation", it would be excluded from coverage by exclusion c(1).

Exclusion h excludes coverage for fines, penalties, punitive damages, exemplary damages or the multiplied portion of multiplied damages. Here, the Plaintiff is seeking punitive damages. As such, any award of punitive damages is excluded by exclusion h and MIIA will not pay any such punitive damages award under the Coverage Form.

Lastly, exclusion v(1) provides that MIIA shall not be liable for that part of loss, other than defense costs which constitutes "back-wages", overtime, future wages, any other salary, wages or earnings, or other similar "claims", even if designated as liquidated damages, under any federal, state or local statutes, rules, ordinances or regulations. It further provides, however, that this exclusion shall not apply to "back-wages" for "employment practices violations" if there is a Back-Wages Limit shown in the Declarations and that a separate Limit of Insurance applies to this coverage as described in SECTION III – Limits of Insurance. The Coverage Form defines the term "back-wages" as wages that would have been earned if a person had been employed, promoted or received wage increases and includes overtime, future wages, pension and retirement benefits, even if designated as liquidated damages under any federal, state or local statutes, rules, ordinances or regulations. Here, the Complaint alleges that the Plaintiff suffered lost wages and lost employment benefits. Therefore, because the Plaintiff is seeking "back-wages" for "employment practices violations", there is coverage for the Plaintiff's alleged "back-wages" subject to the Back-Wages Limit shown in the Declarations.

CONCLUSION

In summary, MIIA will provide the Town Defendants with a defense under the Public Officials Liability Coverage Form subject to a full reservation of its rights to later refuse to



Justin Makuc, Chair
Select Board
November 1, 2022
Page 9

indemnify them to the extent the claims and/or the resulting damages are not covered and/or are excluded from coverage.

In agreeing to defend the Town Defendants under this reservation of rights, MIIA does not waive, but instead expressly reserves all rights it has under the Public Officials Liability Coverage Form and Massachusetts law whether enumerated herein or not. Neither this letter, nor any action or inaction by MIIA, shall be considered a waiver of any known or unknown further defense to coverage. Furthermore, the foregoing in no way restricts MIIA from relying on or asserting any other grounds which are now available or which may become available to it in the future.

Please be advised that the Public Officials Liability Coverage Form has a per claim limit of insurance of \$1,000,000, with a Town deductible of \$2500.00. The Back-Wages Limit is \$150,000.

This matter has been forwarded to Attorney David Lawless at the law firm of Robinson Donovan PC. He may be reached at 413-732-2301. Internally, the MIIA claims handler assigned to this claim is Kathleen Ronchi. She may be reached at 781.939.6847. Should you have any questions or concerns regarding your retained representation in this matter and/or this reservation of rights, please feel free to discuss them with Ms. Ronchi.

If you are in possession of further information which you believe might impact the assessment of this matter, please forward the information to our attention as soon as possible. Additionally, in the event the Complaint is amended or altered in any way, please provide MIIA with a copy.

Very truly yours,



Andrew R. Weiner
Senior Counsel



Town Administrator

From: Justin Makuc
Sent: Wednesday, November 2, 2022 7:51 PM
To: Scott Jensen; Susan Cooper; Town Administrator
Subject: Fw: Walker v Monterey litigation

From: Donna Brewer <dbrewer@miyares-harrington.com>
Sent: Wednesday, November 2, 2022 12:07 PM
To: Justin Makuc <justin@montereyma.gov>
Subject: Re: Walker v Monterey litigation

Hi Justin, this is a typical Reservation of Rights letter. All insurance companies are required to send these letters when there is a possibility that the damages are excluded from coverage but the company has a duty to defend. Insurance companies are prohibited by law from covering damages for intentional wrongdoing (such as intentional infliction of emotional distress). In addition, public officials insurance will not provide a defense or pay damages if the defendant was acting outside the scope of his or her official position when engaged in the wrongful acts.

Whenever an insured receives a ROR letter, the insured is entitled to choose any legal counsel it wants to defend the action and the insurance company may pay. That means if you are not satisfied with David Lawless, you can demand that another lawyer be hired. I do not recommend that you do so. David is an excellent lawyer and will competently defend the town in this action. I do not believe that there is any action you need to take in response to this letter.

Donna Brewer
dbrewer@miyares-harrington.com
(617) 804-2423 dd

From: Justin Makuc <justin@montereyma.gov>
Date: Tuesday, November 1, 2022 at 11:00 PM
To: Donna Brewer <dbrewer@miyares-harrington.com>
Subject: Fw: Walker v Monterey litigation

Hi Donna,

Please see attached correspondence from the Town's insurer, MIIA, regarding coverage for the Walker v. Monterey litigation. Let me know if you desire any direction from the Board at this point, or if you have any advice for the Town regarding the litigation at this point.

Thank you,
Justin

From: Kathleen Ronchi <Kathleen.Ronchi@cabotrisk.com>
Sent: Tuesday, November 1, 2022 1:03 PM
To: Justin Makuc <justin@montereyma.gov>
Subject: Walker v Monterey litigation

Hello Justin:

Attached is our coverage correspondence regarding the litigation filed on behalf of Ms. Walker. If you have any questions, please do not hesitate to contact me.

Kathy

Kathleen Ronchi, AIC
Senior Claim Representative
MIIA Member Services
15 Cabot Road
Woburn, MA 01801

781.939.6847 Direct Line
781.376.9907 (fax)



CONFIDENTIALITY NOTICE: The information contained in this e-mail message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, and have received this communication in error, please contact the sender by reply e-mail and destroy all copies of the original message. Thank you.