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January 22, 2015

Via Email

City of Sparks
c/o Chet Adams
City Attorney
431 Prater Way
Sparks, NV 89432

RE: Insured: CITY OF SPARKS
Claim No.: EUW8292
Claimants: DARCIE L LATHAM
Policy: ZLP-15P19628

Dear Mr. Adams:

As you know, a claim was submitted to THE TRAVELERS INDEMNITY COMPANY (hereinafter referred to as "Travelers") for coverage under applicable policy parts for claims asserted by DARCIE L LATHAM. Plaintiff sent the city a Litigation Hold on October 22, 2013 concerning a potential claim by Darcie Latham against the city (hereinafter the "Claim").

As we discussed, for reasons explained below, Travelers reserves all its rights, including but not limited to our right to later deny coverage, the right to withdraw a defense (in the event one is provided) and cease paying defense costs, and the right to file a declaratory judgment action for a court determination of coverage.

Among other things, Travelers has reviewed the allegations contained in the Claim to evaluate coverage. Our coverage evaluation is based on the allegations made by the Plaintiff.

Claimant's Allegations

Per the Claim, on or about October 12, 2013, Ms. Latham was shot. The Claim provides no other details of the allegations.

We know from our investigation that Latham was shot by a City of Sparks police officer. Latham called 911 reporting that her mother, Monica Ritchey, had a loaded gun, was firing shots into the air and had threatened to commit suicide. Sparks officers Chad Mowbray, Ryan Simpson and Patrol Sgt. Mike Keating responded. Mowbray deployed an AR-15 rifle and walked towards the



residence. Both officer vehicles backed up in an attempt to de-escalate the incident. As Keating backed his vehicle up, Ritchey pointed the gun at Keating and Simpson. Keating and Simpson were unable to shoot at the moment as Ritchey's other daughter, Brittne Andrews-Zellefrow, was standing in front of them and in the line of fire. Keating observed Mowbray approaching from the south side and directed him over the radio to take the shot as Keating feared he, Simpson, or the bystanders in the street watching would be shot by Ritchey. Mowbray observed Latham walk into the street with something up to her head. He heard the radio instruction to "take the shot." Prior to doing so, he requested confirmation that it was the female on the west side of the street; Mowbray heard the reply of "yes" and that the female had a gun to her head and had pointed it at Simpson and Keating. Mowbray saw Latham walking with her hand to her head and it looked to him like she was holding a gun to her head. Mowbray, not knowing why Simpson and Keating hadn't shot and believing they couldn't protect themselves, and with the command to shoot, and observing Latham advance to Simpson and Keating, fired one shot. Latham was hit and fell to the ground. Soon thereafter, Ritchey was shot and subsequently died.

Applicable Policy

Travelers issued a Law Enforcement Liability Protection (LEL) policy, policy number GP06302581 for the policy period 07/01/13 to 07/01/14 with a \$1,000,000 each wrongful act and a \$300,000 SIR for each wrongful act. There is an aggregate limit of \$2,000,000.

The LEL policy (form PR T1 04 02 09), as modified by the SIR Endorsement provides:

SECTION I - LAW ENFORCEMENT LIABILITY COVERAGE

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies, but only to the extent that the amount of such damages exceeds the applicable self-insured retention. We will have the right, but not the duty, to defend the insured against any claim or "suit" seeking those damages. We will have such right even if the total amount of the damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies probably will not exceed the applicable self-insured retention. We will have no duty to defend the insured against any claim or "suit" even if the amount of damages or "defense expenses" exceeds the applicable self-insured retention.

We may, at our discretion, investigate any "wrongful act" or claim. We will have the right to settle any claim or "suit" that may result, if the total amount of damages because of "bodily injury", "property damage" or "personal injury" to which this insurance applies and "defense expenses" for such "bodily injury", "property damage" or "personal injury" exceeds, or we determine that such amount probably will exceed, the applicable self-insured retention.

b. This insurance applies to "bodily injury", "property damage" and "personal injury" only if:

- (1) The "bodily injury", "property damage" or "personal injury" is caused by a "wrongful act" committed by you or on your behalf while conducting "law enforcement activities or operations";
- (2) The "wrongful act" is committed in the "coverage territory"; and
- (3) The "bodily injury", "property damage" or "personal injury" occurs during the policy period.

2. Exclusions

This insurance does not apply to:

d. Criminal, Dishonest, Fraudulent Or Malicious Wrongful Acts "Bodily injury", "property damage" or "personal injury" arising out of any criminal, dishonest, fraudulent, or malicious "wrongful act" committed:

- (1) By the insured; or
- (2) With the consent or knowledge of the insured.

This exclusion does not apply to our duty to defend that insured until it has been determined or admitted in a legal proceeding that such "wrongful act" was committed:

- (1) By that insured; or
- (2) With the consent or knowledge of that insured.

This exclusion also does not apply to "personal injury" caused by malicious prosecution.

h. Injunctive Relief

Any loss, cost or expense arising out of complying with any injunctive or other non-monetary relief or any agreement to provide such relief.

SECTION II - WHO IS AN INSURED

1. If you are designated in the Common Policy Declarations as a public entity, you are an insured. Your lawfully elected or appointed officials, "executive officers" or directors are also insureds, but only with respect to their duties as your elected or appointed officials, "executive officers" or directors.

2. Each of the following is also an insured:

a. Your "volunteer workers", but only while performing duties related to the conduct of your business, and your "employees", other than your lawfully elected or appointed officials, "executive officers" or directors, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.

SECTION VI - DEFINITIONS

2. "Bodily injury" means any harm, including sickness or disease, to the health of other persons, including mental anguish, injury or illness, or emotional distress.

12. "Law enforcement activities or operations":

- a. Means any of the official activities or operations of your police department, sheriff agency or other public safety organization, other than a fire district or department, that enforces the law and protects persons or property; and
 - b. Includes:
 - (1) Ownership, maintenance or use of a premises that you own, rent or borrow in order to conduct such activities or operations;
 - (2) Ownership or operation of any of your jails, penal institutions or similar facilities;
 - (3) Providing first aid at the time of an accident, crime or medical emergency;
 - (4) Providing school security; and
 - (5) "Moonlighting".
19. "Personal injury" means injury, other than "bodily injury", caused by one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, provided that the wrongful eviction, wrongful entry or invasion of the right of private occupancy is committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
 - d. Oral or written publication, including publication by electronic means, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, provided that the claim is made or the "suit" is brought by a person or organization that claims to have been slandered or libeled, or that claims to have had its goods, products or services disparaged;
 - e. Oral or written publication, including publication by electronic means, of material that:
 - (1) Appropriates a person's name, voice, photograph or likeness;
 - (2) Unreasonably places a person in a false light; or
 - (3) Discloses information about a person's private life;
 - f. False or improper service of process; or
 - g. Violation of civil rights protected under any federal, state or local law.
28. "Wrongful act" means any act, error or omission.

Based on the limited information at present, there are several exclusions that may apply to preclude coverage for all or parts of Plaintiff's claims and they are set forth above. We reserve rights on the exclusions.

Regarding the exclusion for criminal, dishonest, fraudulent, or malicious "wrongful act", to the extent such conduct occurred and the conditions of the exclusions are met, coverage might not apply.

Regarding the exclusion for injunctive relief, injunctive or other non-monetary relief is excluded from coverage.

CONCLUSION

For the reasons addressed above, Travelers is affording coverage subject to a reservation of rights as set forth above. We will defend the matter under the LEL policy subject to a reservation of rights.

This letter is not intended to be, nor is it to be construed as, an exhaustive listing of all of the terms, conditions, limitations and exclusions of the insurance contract which might limit or preclude coverage for this matter. Travelers reserves the right to supplement this letter and does not waive any right to assert additional defenses to coverage.

If you have any additional information that you believe may be relevant to our analysis, please advise me. Also, if you receive service of any other demands, notices, summonses and legal papers, including, but not limited to, amended pleadings, please immediately forward them to me for review.

If you have any questions regarding our position in this matter, please do not hesitate to contact me. I may be reached at the number above.

Sincerely,

Nicolyn Harris
THE TRAVELERS INDEMNITY COMPANY

cc:

Via Email
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