August 24, 2026

Nan Benson
Marshall County
1 E. Main Street, Suite 6
Marshalltown, IA 50158-4915

RE: Insured – Marshall County
Claimant – Animal Rescue League of Marshalltown
Claim No. – Z01916846

Lawsuit: Animal Rescue League of Marshalltown v. Marshall County, Iowa; City of Laurel, Iowa; and Jordan Gaffney, in his official capacity as Marshall County Attorney, filed in the Iowa District Court for Marshall County; Case No. EQCI013153

Dear Ms. Benson:

This letter sets forth the position of Employers Mutual Casualty Company ("EMC") with respect to insurance coverage for the claims asserted by the Animal Rescue League of Marshalltown ("Plaintiff") in the above-referenced lawsuit. EMC addresses coverage under the Commercial General Liability Policy (the "CGL Policy"), Linebacker Policy, Law Enforcement Policy, and Commercial Umbrella Policy issued to Named Insured, Marshall County (the "County"). Based upon a review of the above-referenced lawsuit, and these policies, it has been determined that EMC will provide the County and Jordan Gaffney ("Gaffney") with a defense to the claims alleged under the County's Linebacker Policy. The defense is being provided under a reservation of rights.

EMC has retained the Lamson Dugan & Murray law firm to represent the County and Gaffney. The attorney handling the matter is Jason Palmer. Mr. Palmer can be reached at (402) 397-7300. Please provide Mr. Palmer with your complete cooperation. The County and Gaffney have the right to retain personal counsel at its/his own expense.

Although EMC has determined that it will provide the County and Gaffney with a defense, it may not have any obligation to provide coverage for some or all of any settlement or judgment. Accordingly, EMC's defense is being provided subject to a full and complete reservation of EMC's rights under the terms, conditions, limitations, endorsements and exclusions contained in the EMC policies and at law. Additionally, EMC reserves its rights to withdraw from the defense of this matter if it is determined that no such defense is owed and to seek reimbursement of defense costs if it is determined that EMC did not have a duty to defend and this is permitted by law.

Policies Reviewed

Commercial General Liability Policy: 4S62669 Form: CG0001 (04/13)
Applicable Effective Dates: 10/01/25 – 10/01/26
Limits: $2,000,000 each occurrence; $300,000 damage to premises rented to you (any one premises); $10,000 medical expense (any one person); $2,000,000 personal & advertising injury (any one person or organization); $4,000,000 general aggregate; $4,000,000 products/completed operations aggregate

Linebacker Policy: 4K62669 Form: CL7001 (10/23)
Applicable Effective Dates: 10/01/25 – 10/01/26
Limits: $2,000,000 each loss; $2,000,000 aggregate for each policy term; and $5,000 insured's deductible per claim

Law Enforcement Policy: 4G62669 Form: LE7002 (08/18)
Applicable Effective Dates: 10/01/25 – 10/01/26
Limits: $2,000,000 each occurrence; $2,000,000 aggregate for each policy term; $5,000 medical expense; $5,000 insured's deductible per loss

Commercial Umbrella Policy: 4J62669 Form: CU0001 (04/13)
Applicable Effective Dates: 10/01/25 – 10/01/26
Limits: $2,000,000 each occurrence; $2,000,000 personal and advertising injury; $2,000,000 aggregate; $10,000 insured's retained limit

Summary of Allegations

Based upon the information that has been provided for review and EMC's investigation, set forth below is a summary of the facts and allegations as we understand them. If any of our information is incorrect, please let us know. If you believe additional information impacts the conclusions in this letter, please forward information you believe is missing to my attention.

Facts Alleged in the Petition

On July 6, 2026, Plaintiff, a nonprofit corporation that provides shelter, care, and related services for animals, filed a Petition and Jury Demand against the County, the City of

Laurel, and Gaffney, in his official capacity as the County Attorney (collectively, the "Defendants"). According to the Petition, on or about May 1, 2026, County law enforcement executed a search warrant in connection with an animal-neglect investigation or related criminal proceedings and seized numerous animals from a residence within the County. Before or during the seizure, County Sheriff's deputies allegedly requested Plaintiff's assistance catching, transporting, housing, feeding, maintaining, and caring for the animals. Because Plaintiff did not have a written animal-control contract with the County at the time, Plaintiff allegedly requested confirmation that it would be paid for the requested services before agreeing to assist with the seized animals. Given the alleged assurance that the County would ensure reimbursement, Plaintiff accepted custody and care of the seized animals.

After the seizure, Plaintiff provided emergency assistance, including housing, food, veterinary care, sanitation, staffing, maintenance, utilities, and other services necessary for the animals' care. From May 5, 2026, through June 23, 2026, Plaintiff allegedly repeatedly contacted the County and the County Attorney regarding the required disposition hearing and invoices for ongoing care costs. Because the Defendants allegedly did not timely commence the required disposition hearing, the animals remained in Plaintiff's custody for approximately sixty-one days before their legal status was resolved or otherwise released through the criminal process. The prolonged delay allegedly caused Plaintiff to incur substantial financial costs, materially affected Plaintiff's shelter capacity and operations, and postponed permanent resolution for the animals. The Defendants' acts and omissions also allegedly caused Plaintiff to incur legal expenses and suffer other unspecified damages. It is further alleged that the County and the City of Laurel did not make a good-faith effort to negotiate and resolve Plaintiff's reimbursement claim as the plea agreement with the criminal defendant and the criminal defendant's execution of a surrender of the animals bypassed the overdue statutory disposition process without resolving Plaintiff's accrued costs or the Defendants' prior failure to obtain timely judicial disposition.

Count I is Implied Contract. It is alleged that the Defendants' acceptance of the benefit of Plaintiff's services created an implied contract, which the Defendants have breached by failing and refusing to pay Plaintiff the reasonable value of the services provided. As a result, Plaintiff has allegedly suffered damages, including, but not limited to, boarding charges, animal-care expenses, veterinary expenses, staffing expenses, operational disruption, and other consequential damages.

Count II is Detrimental Reliance/Promissory Estoppel. Plaintiff allegedly relied upon the Defendants' promise, assurance, or representation that Plaintiff would be reimbursed if it assisted with the seized animals and, as a result, incurred substantial expenses and suffered operational harm. Despite Plaintiff's reliance and the Defendants' acceptance and benefit of Plaintiff's services, the Defendants have allegedly failed and refused to reimburse Plaintiff.

Count III is Mandamus. To prevent similar failures concerning animals placed in Plaintiff's custody by law enforcement, it is alleged that mandamus is necessary to compel performance of the County Attorney's legal duty to initiate, pursue, or facilitate the required statutory judicial procedures to obtain a disposition order concerning the seized animals under Iowa Code 717B. To the extent the animals have been surrendered or released to Plaintiff through the criminal process, mandamus allegedly remains appropriate to address any unresolved statutory duties, reimbursement-related disposition issues, and continuing or prospective duties concerning animals placed with Plaintiff. It is further alleged that the County has failed to operate or maintain an animal control system since the end of the County's contract with Plaintiff. Thus, mandamus is also allegedly necessary to compel performance of legal duties under Iowa Code 351, which establishes duties regarding animal enforcement and impoundment, and to ensure there are proper animal control operations in place within the County.

In its prayer for relief, Plaintiff is seeking damages, including implied contract damages and detrimental reliance and/or reasonable value of services damages; a writ of mandamus, including the pre-judgment and post-judgment interest as allowed by law; costs; attorneys' fees to the extent allowed by contract, statute, equity, or other applicable law; and other and further relief deemed just and proper.

Coverage Analysis

1. Commercial General Liability Policy

The CGL Policy contains two primary coverage sections – Coverage A and Coverage B. Coverage A provides coverage for sums the insured is legally obligated to pay as damages because of "bodily injury" or "property damage" caused by an "occurrence" during the policy period. Coverage B provides coverage for sums the insured is legally obligated to pay as damages because of "personal and advertising injury" committed during the policy period.

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Here, Plaintiff has not made a claim for damages because of "bodily injury,"[1] "property damage,"[2] and/or "personal and advertising injury"[3] as defined by the CGL Policy. Rather, Plaintiff is seeking to compel performance of certain legal duties under Iowa law with respect to the disposition of the seized animals and animal control operations within the County. Moreover, although there are allegations that Plaintiff incurred financial expenses and suffered operational disruption because of the delay to initiate and/or failure to initiate disposition proceedings, claims for purely economic losses are not claims for "property damage" under the CGL Policy. As such, coverage under the County's CGL Policy is barred at the outset.

Other terms, conditions, limitations, and exclusions may apply to further limit or bar coverage for Plaintiff's lawsuit under the County's CGL Policy, including, but not limited to, the **Exclusion – Law Enforcement Activities (CG7605 (10/14))**, and the **Tort Liability of Governmental Subdivisions Iowa (CG7117 (10/01))**, which is intended to preserve any immunity an insured may have under statute or rule of civil procedure. However, because there is no coverage for Plaintiff's lawsuit under the County's CGL Policy in the first instance, these terms, conditions, and exclusions are not discussed further.

2. Law Enforcement Policy

The Law Enforcement Policy provides coverage for sums an insured becomes legally obligated to pay for "bodily injury" and "property damage" caused by an "occurrence" during the policy period under Coverage A and for sums an insured becomes legally obligated to pay for "personal and advertising injury" that is committed during the policy period under Coverage B. Coverage is provided if such "bodily injury" and "property damage" or such "personal and advertising injury" "arises out of the performance of the insured's law enforcement activities and all operations necessary and incidental thereto."

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[1] "Bodily injury" is defined, as amended by the **Commercial General Liability Amendment Municipalities (CG7633.2 (01/21))**, as "bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from bodily injury, sickness or disease."

[2] "Property damage" is defined as "[p]hysical injury to tangible property including all resulting loss of use of that property; … or [l]oss of use of tangible property that is not physically injured."

[3] "Personal and advertising injury" is defined as injury, including consequential "bodily injury," arising out of one or more of the following enumerated offenses: a. false arrest, detention or imprisonment; b. malicious prosecution; c. wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor; d. oral or written publication, in any manner, of material that slanders or libels a person's or organization's goods, products or services; e. oral or written publication, in any manner, of material that violates a person's right of privacy; f. the use of another's advertising idea in your "advertisement"; or g. infringing upon another's copyright, trade dress or slogan in your "advertisement."

As an initial matter, similar to the CGL Policy, the Law Enforcement Policy only provides coverage for sums an insured becomes legally obligated to pay as damages. As explained above, Plaintiff has likewise not made a claim for damages because of "bodily injury,"[4] "property damage,"[5] and/or "personal and advertising injury"[6] as defined in the Law Enforcement Policy. As such, coverage under the County's Law Enforcement Policy is barred at the outset.

Other terms, limitations, and exclusions contained in the County's Law Enforcement Policy may also apply to further limit or bar coverage for Plaintiff's lawsuit, including, but not limited to, the Non-Monetary, Injunctive or Declaratory Relief Exclusion (exclusion **p.** to Coverage A; exclusion **r.** to Coverage B), the Breach of Contract Exclusion (exclusion **b.** to Coverage B), and the **Tort Liability Endorsement (LE7108 (01/08))**, which is intended to preserve any immunity an insured may have under statute or rule of civil procedure. However, because there is no coverage for Plaintiff's lawsuit under the County's Law Enforcement Policy in the first instance, these terms, conditions, and exclusions are not discussed further.

3. <u>Linebacker Policy</u>

There are two types of coverage available to insureds under the Linebacker Policy. Coverage A provides coverage for Public Officials Liability "because of a 'public officials wrongful act' rendered in discharging duties on behalf of the named insured." Coverage B provides coverage for Employment Practices Liability "because of an 'employment wrongful act' rendered in discharging duties on behalf of the named insured." There is no claim for an "employment wrongful act." Therefore, Coverage B does not apply and will not be discussed further.

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[4] "Bodily injury" is defined as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time."

[5] "Property damage" is defined as "[p]hysical injury to tangible property including all resulting loss of use of that property; … or [l]oss of use of tangible property that is not physically injured."

[6] "Personal and advertising injury" is defined as injury, including consequential "bodily injury," arising out of one or more of the following enumerated offenses: a. false arrest, detention or imprisonment; b. malicious prosecution; c. wrongful entry into, or eviction of a person from, a room, dwelling or premises that the person occupies, or invasion of the right of public occupancy; d. 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; e. oral or written publication, in any manner, of material that violates a person's right of privacy; f. assault and battery; g. erroneous service of process; h. violation of property rights; i. discrimination, unless insurance thereof is prohibited by law; j. humiliation or mental anguish; k. violation of civil rights protected under 42 USC 1981 et seq. or State law; l. the use of another's advertising idea in your advertisement"; or m. infringing upon another's copyright, trade dress or slogan in your advertisement.

Coverage A – Public Officials Liability

Under this portion of the Linebacker Policy, EMC agrees to pay for "defense expense(s)" and/or those sums that the insured becomes legally obligated to pay as "damages" because of a "public officials wrongful act" rendered in discharging duties on behalf of the County.

Public Officials Wrongful Act

"Public officials wrongful act" is defined in the Linebacker Policy to mean any of the following:

(1) Actual or alleged errors;

(2) Misstatement or misleading statement;

(3) Act, omission, neglect, or breach of duty by an insured

in the discharge of the duties of the "organization."

"Public Officials Wrongful Act(s)" does not include an "employment wrongful act."

Here, Plaintiff alleges that the Defendants have failed and/or refused to reimburse Plaintiff for the services provided with respect to the seized animals and have delayed and/or failed to initiate disposition proceedings concerning the seized animals. Plaintiff further alleges that the County has failed to operate or maintain an animal control system since the end of its contract with Plaintiff. These are claims for actual or alleged errors, or acts, omissions, neglect, or breaches of the County's duties. As such, a potential claim for a "public officials wrongful act" has been alleged.

Coverage Activation

The Linebacker Policy is a claims-made policy and provides coverage for the wrongful acts of the insured provided:

(1) The "wrongful act" on which the claim is based occurs on or after the "retroactive date" shown in the Declarations and not after the end of the policy period; and

(2) The claim is first made and reported against any past, present or future insured:

(a) During the policy period, or

(b) If extended reporting period applies during that period.

b. A claim will be deemed to have been made at the earliest of the following times:

(1) When a claim is received by any insured;

(2) When a claim is received by us; or

(3) When you become aware of a "wrongful act" which may give rise to a claim being made against you.

c. You must give prompt written notice to us of such circumstances no later than:

(a) The end of the policy period; or

(b) If the Basic Extended Reporting Period applies, the end of the Basic Extended Reporting Period.

d. This insurance does not apply to any claim arising out of any "wrongful act" that occurs prior to the effective date of this policy or prior to the first policy issued by us that is an uninterrupted renewal that was either:

(1) The subject of any demand, claim or other proceeding which was initiated against the insured; or

(2) Based upon facts and circumstances which would cause a reasonable person to believe a claim would be made and which was known to any insured.

e. All claims resulting from a single "wrongful act" or a series of related "wrongful acts" shall be deemed one "wrongful act." All such "wrongful acts" shall be deemed to have occurred at the time of the first "wrongful act" took place or is alleged to have taken place.

The Linebacker Policy's retroactive date is October 1, 2001. According to Plaintiff's lawsuit, the potentially wrongful conduct occurred in 2026. Therefore, the alleged "wrongful acts" were committed after the Linebacker Policy's retroactive date.

Based on the information obtained for review, it appears that Plaintiff first made a claim against the County with the filing of its lawsuit on July 6, 2026. EMC was notified of Plaintiff's lawsuit on July 9, 2026. This was within the County's October 1, 2025, to October 1, 2026, policy period with EMC. As a result, Plaintiff's claim was made and reported during this policy period for purposes of the Linebacker Policy's activation requirements.

Who Is An Insured

The Linebacker Policy only provides coverage for insureds under the policy. Each of the following is an insured under the Linebacker Policy:

a. The "organization" named in the Declarations;

b. The "organization's" past, present, or future lawfully elected, appointed or employed officials;

c. Lawfully appointed members of the commissions, boards, or other units operated under your jurisdiction and within an allocation of your total operating budget, provided however, that none of the above are insureds with respect to operations involving airports, transit authorities, hospitals, nursing homes, housing authorities, port authorities, gas utilities or electric utilities unless specifically stated in the declarations that the boards are covered.

d. "Employees" past, present, or future of the "organization" while acting within the course and scope of their employment while conducting the business of the organization.

…

The County is the Named Insured on the Linebacker Policy and is named as a defendant in Plaintiff's lawsuit.

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Gaffney is also named as a defendant in Plaintiff's lawsuit in his official capacity as County Attorney. The Linebacker Policy is endorsed with **Additional Insured – Designated Person or Entity (CL7124 (01/18))**, which states that the Linebacker Policy's Who Is An Insured provision is "amended to include the person(s) or entity(ies) shown in the Schedule but only with respect to a 'wrongful act' arising out of your operations or operations they perform on your behalf." The Declarations designate the County Attorney, among others, for purposes of this endorsement. Because the alleged "wrongful acts" in Plaintiff's lawsuit appear to arise out of the County's operations, Gaffney is an additional insured under the County's Linebacker Policy for such purposes.

Linebacker Policy Exclusions

Coverage under the Linebacker Policy is subject to policy exclusions. Each of the exclusions under the Linebacker Policy is an absolute exclusion, with no duty for EMC to defend or pay "damages" unless otherwise indicated. If both an absolute exclusion and an exclusion with a duty to defend apply, coverage for "defense expenses" is excluded and EMC has no duty to defend.

5.d. Contractual Liability

There is no coverage under the Linebacker Policy for:

(1) Amounts actually or allegedly due under the terms of a contract;

(2) Failure, refusal, or inability of the insured to enter into, renew or perform any contract or agreement. Exclusion **5.d. (2)** applies to Coverage **A** only; or

(3) The procurement of goods and/or services, including, but not limited to construction, architect, or engineering, contracts or agreements.

We will defend a claim under Exclusion **5.d.** but will have no obligation to pay "damages."

Plaintiff alleges that the Defendants breached an implied agreement by failing and refusing to pay Plaintiff the reasonable value of the services provided for the seized animals. EMC will provide a defense for such claim, but there is no coverage for any "damages" awarded as amounts due under the terms of a contract, for any failure, refusal, or inability of the insured to perform any contract or agreement, or for the procurement of goods and/or services. EMC reserves the right to rely on this exclusion.

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5.e. Knowingly Wrongful Acts, Illegal Acts, Self-Dealing or Illegal Profit

There is no coverage under the Linebacker Policy for:

(1) Any criminal, malicious, fraudulent, knowingly wrongful, or dishonest act or omission.

(2) Any "wrongful act" based upon or attributable to an insured gaining any personal profit or advantage to which an insured is not legally entitled.

(3) The return of any remuneration paid to an insured if such payment is held to be in violation of the law.

This exclusion shall not apply until it has been established that the insured did commit such "wrongful act".

This exclusion will bar coverage if it is established that an insured committed a malicious, fraudulent, knowingly wrongful, or dishonest act or omission, or unlawfully gained a profit or advantage to which it was not entitled. This exclusion applies separately to each insured under the Linebacker Policy and does not apply until it is established that such "wrongful act" has been committed. EMC reserves the right to rely on this exclusion.

5.g. Expected or Provided Facilities, Products or Services

There is no coverage under the Linebacker Policy for:

Any expense for facilities, products or services normally provided or expected, by anyone, to be provided by the insured. We will defend a claim under Exclusion **5.g.**, but will have no obligation to pay "damages."

Plaintiff's lawsuit alleges that the County has failed to operate or maintain an animal control system since the end of its contract with Plaintiff. If such services are normally provided or expected to be provided by the County, there is no coverage for any expense incurred for providing the same, though EMC will defend a claim seeking such "damages." EMC reserves the right to rely on this exclusion.

5.k. Law Enforcement Activities

There is no coverage under the Linebacker Policy for:

> Any law enforcement activities to protect the public or property including the operation of adult or juvenile correctional or detention facilities or programs. This exclusion applies to Coverage **A** only.

If a claim arising out of the County's law enforcement activities to protect the public or property would be made by Plaintiff, such claim would be barred by this exclusion. EMC reserves the right to rely on this exclusion.

<u>Defense and "Defense Expenses"</u>

EMC has the right and duty to select defense counsel. EMC's duty to pay "defense expenses" begins when it is notified of a claim. Any previous expenses incurred are not covered. EMC's obligation to pay further "defense expenses" ends after the first judgment has been entered except for appeals of such judgment made by the plaintiff. "Defense expenses" are subject to the deductible.

EMC will provide a defense and pay "damages" for any claim seeking monetary damages that are covered by the Linebacker Policy. With regard to these claims, EMC will pay "defense expenses" incurred in the defense of a covered claim, in addition to the applicable limit of liability. EMC will pay claimant/plaintiff attorney's fees/expenses, if awarded in satisfaction of a covered claim pursuant to a statute, subject to the policy's limits of liability. This provision plus any "damages" will not exceed the Each Loss limit of liability shown in the Declarations.

For those claims not seeking monetary damages or seeking monetary damages that are not covered by the Linebacker Policy, "defense expenses" are paid within the policy's limits of liability. EMC's obligation to pay "defense expenses" ends when the limit of liability shown in the Declarations has been exhausted by the payment of "defense expenses." EMC will pay claimant/plaintiff attorney's fees/expenses, if awarded in satisfaction of a claim pursuant to a statute, subject to the policy's limit of liability. This provision plus any "defense expenses" will not exceed the Each Loss limit of liability shown in the Declarations.

Plaintiff does not appear to be seeking potentially covered monetary damages. Therefore, "defense expenses" will be paid subject to, and erode, the Linebacker Policy's limits of liability.

Deductible

The applicable deductible is the amount shown in the Declarations for which the County is responsible. The deductible is $5,000. It can be met either by "damages" or "defense expenses" or a combination of both. The deductible does not reduce the applicable liability limits. EMC may, or will if required by law, pay part of or all of any deductible amount, to effect settlement of any claim. Upon notice of EMC's payment of a deductible amount, the County is required to promptly reimburse EMC for the part of any deductible amount we pay.

Damages

The Linebacker Policy defines damages to mean "those amounts that the insured becomes legally obligated to pay for claims arising out of a 'wrongful act' to which this insurance applies."

"Damages" does not include:

- **a.** Fines or penalties imposed by law;
- **b.** Salaries of your "employees" and office expenses incurred by you; or
- **c.** Judgments or awards arising out of matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed.

There is no coverage for any relief awarded to Plaintiff that does not fall within the Linebacker Policy's definition of "damages."

Attorney's Fees

As noted above, the Linebacker Policy provides for the payment of plaintiff's attorney's fees and expenses only if awarded pursuant to statute in satisfaction of a claim. Otherwise, the Linebacker Policy only provides coverage for costs taxed against the insured. There is no coverage for attorneys' fees awarded as costs.

Tort Liability Endorsement

The Linebacker Policy is endorsed with the **Tort Liability Endorsement (CL7128 (05/20))**, which removes from coverage under the Linebacker Policy any claim against an insured for which an insured is immune from liability due to the provisions of any statute. However, this endorsement preserves EMC's duty to pay "defense expenses" relating to such claims. If it is determined statutory immunity applies, EMC will continue to provide a defense, but will have no coverage for any damages that may otherwise be covered under the Linebacker Policy.

4. Commercial Umbrella Policy

The Commercial Umbrella Policy provides similar coverage to that of the CGL Policy's Coverage Form on an excess basis. The analysis above regarding the CGL Policy Coverage Form applies to the Commercial Umbrella Policy. For the same reasons discussed above with respect to the CGL Policy, there is no potential coverage under the Commercial Umbrella Policy excess to the CGL Policy.

The Commercial Umbrella Policy is endorsed with **Law Enforcement Liability (CU7464 (07/15))**. This endorsement bars coverage for "bodily injury," "property damage" or "personal and advertising injury" arising out of any act or omission resulting from law enforcement activities of the County's police department or any of the County's other law enforcement agencies, including their agents or "employees" unless coverage is provided by valid insurance described in the "underlying insurance." The Law Enforcement Policy is "underlying insurance." However, for the same reasons discussed above with respect to the Law Enforcement Policy, there is no potential coverage under the Commercial Umbrella Policy excess to the Law Enforcement Policy.

The Commercial Umbrella Policy is also endorsed with the **Linebacker Public Officials and Employment Practices Liability Coverage Endorsement (CU7290.1 (10/23))**. Pursuant to this endorsement, the Commercial Umbrella Policy provides coverage consistent with, and no broader than, that provided by the Linebacker Policy but on an excess basis. However, the endorsement provides that the Commercial Umbrella Policy only provides excess coverage if a claim for monetary damages covered by the underlying policy is being alleged. Because a claim for monetary damages covered by the Linebacker Policy is not being alleged, the Commercial Umbrella Policy does not potentially provide excess coverage to that provided by the Linebacker Policy.

Lastly, the Commercial Umbrella Policy is endorsed with the **Governmental Subdivision Hazards Restrictive Endorsement (CU7294 (08/06))**, which modifies the coverage provided by the Commercial Umbrella Policy and bars coverage for claims for which the County is immune from liability by statute or rule of civil procedure.

Conclusion

EMC will defend the County and Gaffney against Plaintiff's lawsuit under the County's Linebacker Policy. Because policy terms, conditions, limitations, and exclusions may limit or bar coverage, this defense is being provided subject to a reservation of rights. “Defense expenses” will be paid subject to, and will erode, the Linebacker Policy’s limits of liability. The payment of such “defense expenses” is also subject to the County meeting its deductible.

There is no coverage under the County’s CGL Policy, the Law Enforcement Policy or the Commercial Umbrella Policy. A potentially covered claim under those policies has not been presented.

EMC has attempted to identify all the coverage considerations related to this claim; however, this letter should in no way be construed as a waiver, modification or alteration of any of the terms, conditions, limitations, endorsements or exclusions of EMC’s policies or rights at law. As a matter of convenience for the reader, certain policy provisions are quoted in this letter. If you do not have access to a copy of the policies, EMC can supply a copy. If there are any discrepancies between the policy language quoted in this letter and the language actually contained in the policies, such discrepancies are the product of inadvertent typing errors, and the language actually contained in the policies will control.

This position is based upon information received to date regarding this claim. EMC reserves the right to amend and supplement this letter. EMC invites you to submit any additional information you may have or may receive in the future regarding this claim. Should you have any questions regarding this letter or the handling of this claim, please contact me at the following address and phone number:

EMC Insurance
ATTN: Claims
P. O. Box 712
Des Moines, Iowa 50306
(515) 345-7385
Jaynell.M.Schumacher@EMCIns.com

Sincerely,

Jaynell Schumacher, AIC, AINS
Senior Specialty Casualty Claims Adjuster

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