



City of Chesapeake

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June 27, 2008

Jackie Hahn, Assistant Vice President
Hudson Insurance Group
Hudson Specialty Insurance Company
17 State Street, 29th Floor
New York, New York 10004

**Re: Certificate of Liability Insurance; Policy No. FSP6115788,
Claim No. FRE 577**

Dear Ms. Hahn,

Please accept this correspondence in response to your letter dated June 10, 2008, relating to notice of potential claims filed by the City of Chesapeake, Virginia, under Policy No. FSP6115788 with Hudson Specialty Insurance Company ("Hudson"). The City of Chesapeake gave notice of potential claims by letter dated May 15, 2008, and included the well failure claims received from citizens residing in the vicinity of the Battlefield Golf Course, which is currently owned by MJM Golf, LLC ("MJM Golf").

Hudson has denied coverage on grounds that the Pollutant Conditions under which claims could be made were commenced and discovered prior to the April 28, 2008 inception date of the policy. Hudson also denied coverage for well failure claims related to well functioning as not resulting from Pollutant Conditions. On behalf of the City, I appreciate your expressed willingness to allow the City to submit additional information that we believe would cause Hudson to alter its reasons for disclaiming coverage.

The City believes that Hudson's determinations are premature. The letter sent to Hudson on May 15, 2008, was intended to serve as a notice of potential future claims only and was not intended to be taken as a claim for coverage at this time. The preliminary nature of the notice is evident by the undisputed fact that the City has not completed its study of the fly ash deposited on the Battlefield Golf Course. Thus, the City has not yet "discovered" a "Pollution Condition," as these terms are defined in the insurance policy.

Under federal and state regulations, fly ash is not in itself considered a pollutant, irritant or contaminant. In fact, the beneficial use of fly ash is expressly permitted by these regulations and in the case of the Battlefield Golf Course, the use of fly ash to construct the golf course was approved by the Virginia Department of Environmental Quality. The City's testing of the fly ash is intended to determine whether any of the individual components of fly ash pose a threat to public health and safety. Those tests have not been completed. The City reserves the right to file official claims under the insurance policy in the event any such threat by Pollutant Conditions is discovered in the future.

Concerning the well failure claims, you may not know that MJM Golf is obligated under the conditional use permit issued by the City to replace failed wells within a 2,000 foot radius of the boundaries of the golf course property, whether such failure is due to contamination or lack of water source. A rebuttable presumption lies that well failures within the specified radius are caused by the construction or operations of the golf course. The conditional use permit contains a deadline for filing claims; however, MJM Golf since agreed to extend the acceptance of well failure claims so long as the fly ash exists on site. The claims which were attached to my letter of May 15, 2008, (and those enclosed) are claims filed by the residents under the conditional use permit stipulation and contractual extension. They were sent to you as a courtesy. Since MJM Golf is ultimately responsible for replacing any wells that go dry or suffer contamination due to the fly ash or other activities at the golf course, any official filing of claims will most likely be made by MJM Golf.

Nevertheless, in the overriding interest of public health and safety, the City has conducted tests on many of the residents' wells and continues to analyze those results. The preliminary analyses indicate that some wells are producing water with levels of boron higher than might be expected; however, boron is not a hazardous material and is not regulated by the federal and state governments. Additionally, the City has not yet determined the source of the boron, which may be the result of previous activities on or near the Battle Golf Course site.

Based on the well tests to date, the City is not aware of the existence of any pollutant in the wells resulting from fly ash that would negatively impact public health or safety. Although MJM Golf is responsible for contaminated wells, it is nevertheless incumbent upon the City to reserve the right to file claims with Hudson in the event any pollutant is discovered in the future as a result of the fly ash studies.

As to the non-functioning wells, Hudson states that this condition could not have been caused by a Pollution Condition. The scientific basis for this conclusion is unclear; however, again it must be stressed that the City has not filed a claim for well damage at this time. Although MJM Golf is responsible for non-functioning wells, it is nevertheless incumbent upon the City to reserve the right to file claims with Hudson in the event there is evidence that the dry wells resulted from Pollution Conditions or other condition covered by the insurance policy.

In our continuing effort to keep Hudson informed of potential insurance claims, I am enclosing several new failed well claims of the adjacent residents. These claims are made under the conditional use permit and contractual extension described above and are being sent to Hudson as a courtesy. Please do not mistake the use of the word "claims" made under MJM Golf's regulatory and contractual obligations to the residents with the term "claims" under the Hudson insurance policy.

Thank you for your understanding of the current state of the City's ongoing efforts to guard against any and all threats to the health and safety of its citizens. In the event the City must follow a more formal procedure to contest the findings in your letter of June 10, 2008, I would appreciate your guidance in this regard. I would also request a copy of the Insuring Agreement referenced in your letter, as currently the City has only been provided the certificate of insurance.

Very truly yours,



Ronald S. Hallman
City Attorney

cc: William Harrell, City Manager
Mary Ann Saunders, Assistant to the City Manager

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