

The Honorable Marsha J. Pechman

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ST. PAUL FIRE AND MARINE  
INSURANCE COMPANY; THE CHARTER  
OAK FIRE INSURANCE COMPANY,

Plaintiffs,

v.

CITY OF SEATAC; CITIES INSURANCE  
ASSOCIATION OF WASHINGTON;  
PUBLIC RISK UNDERWRITERS OF THE  
NORTHWEST, INC. d/b/a CLEAR RISK  
SOLUTIONS f/k/a CANFIELD &  
ASSOCIATES; K&S DEVELOPMENTS,  
LLC; GERALD and KATHRYN KINGEN,

Defendants.

No. 2:16-cv-00103-MJP

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY RELIEF**

**I. PARTIES**

1. Plaintiff St. Paul Fire and Marine Insurance Company (hereinafter “St. Paul”) is a foreign insurance company licensed to conduct business in the State of Washington. St. Paul is organized under the laws of the State of Connecticut with its principal place of business located in the State of Connecticut.

2. Plaintiff The Charter Oak Fire Insurance Company (hereinafter “Charter Oak”) is a foreign insurance company licensed to conduct business in the State of Washington. Charter

1 Oak is organized under the laws of the State of Connecticut with its principal place of business  
2 located in the State of Connecticut.

3 3. The City of SeaTac (hereinafter the “City”) is a municipality located in King  
4 County, Washington.

5 4. Cities Insurance Association of Washington (hereinafter “CIAW”) is a direct  
6 property and casualty insurance carrier organized under the laws and regulations of Washington  
7 State. CIAW has its principal place of business located in Ephrata, Washington.

8 5. Public Risk Underwriters of The Northwest, Inc. d/b/a Clear Risk Solutions f/k/a  
9 Canfield & Associates (hereinafter “Canfield) is a corporation licensed to conduct business in  
10 the state of Washington. Canfield is registered in the State of Washington with its principal place  
11 of business located in Ephrata, Washington.

12 6. K&S Developments, LLC (hereinafter “K&S”) is a Washington limited liability  
13 company located in King County, Washington. All members of K&S are citizens of the State of  
14 Washington.

15 7. Gerald and Kathryn Kingen (hereinafter collectively “Kingen”) are husband and  
16 wife, residing in King County, Washington. At all relevant times, Kingen was an owner of K&S.

17 **II. JURISDICTION AND VENUE**

18 8. This Court has jurisdiction over this claim pursuant to 28 U.S.C. §1332 as the  
19 amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and diversity amongst  
20 the parties is complete.

21 9. Venue is proper with this Court pursuant to 28 U.S.C. § 1391 as this claim  
22 involves SeaTac’s claim for insurance proceeds stemming from an alleged loss occurring in King  
23 County, Washington.

1 10. Venue is also proper with this Court pursuant to 28 U.S.C. § 1391 as the City  
2 resides in in this judicial district and all defendants are residents of this judicial district.

3 **III. RELEVANT FACTS**

4 **1. The Project Background**

5 11. K&S Developments, LLC (hereinafter “K&S”) has alleged the following factual  
6 allegations<sup>1</sup>:

7 12. K&S borrowed funds to purchase property known as the SeaTac Center (the  
8 "Property").

9 13. K&S planned to develop the Property for commercial and retail use, including the  
10 development of a "park-and-fly" facility.

11 14. Beginning in 2004, K&S began to propose to the City certain development plans,  
12 including the park-and-fly.

13 15. In February 2005, the City adopted a moratorium on park-and-fly construction.

14 16. The City's 2005 moratorium on park-and-fly construction allegedly delayed and  
15 interfered with K&S's planned development.

16 17. The City "adopted interim regulations which also frustrated, delayed, and  
17 interfered with" K&S's planned development.

18 18. After the 2005 moratorium, the City allegedly promised to execute a development  
19 agreement allowing K&S to proceed with the proposed park-and-fly development.

20 19. The City failed to provide the promised development agreement.

21  
22  
23 <sup>1</sup> The factual allegations contained in Section 1. Project Background of III. Relevant Facts of St. Paul's  
Complaint are merely a restatement of what K&S has already alleged against the City in the lawsuit  
entitled *K&S Developments, LLC v. City of SeaTac, et. al.*, King County Cause No. 12-2-40564-6. St.  
Paul does not adopt K&S's allegations as true.

1           20.    The City used the promise to execute a development agreement to "further  
2 frustrate, delay and interfere with" the planned development.

3           21.    The City used its regulatory power to interfere with K&S's business relationships  
4 with third parties "for unlawful purposes" including the purpose of protecting the "City's own  
5 business and proprietary interests."

6           22.    The City acted with "unlawful purposes" and engaged in "unlawful conduct."

7           23.    The City's actions and resultant delays caused K&S "to incur additional debt, fees  
8 and costs... as well as other damages."

9           24.    The City "reneged on its promise to provide a development agreement..."

10          25.    The City took advantage of K&S's financial stress such that K&S agreed to  
11 develop the property as a "mixed-use residential complex."

12          26.    In 2008, K&S and the City "entered into a Development Agreement."

13          27.    However, the terms of the "Development Agreement" were by that point  
14 "unreasonable and unenforceable."

15          28.    Thereafter, the City continued to "frustrate, delay and interfere with K&S's efforts  
16 to develop the Property..."

17          29.    The City itself wanted to acquire the property "at less than fair market value."

18          30.    While the City delayed and interfered with K&S's ability to develop the property,  
19 the City was "secretly, and without legal authority" engaging in a surreptitious plan to itself  
20 purchase the property.

21          31.    The City hired "Colliers<sup>2</sup> to represent the City as an undisclosed principal to  
22 acquire the property."

23  

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<sup>2</sup> Colliers provides commercial real estate services.

1           32. Through Colliers, the City "put pressure on K&S's lenders to threaten foreclosure"  
2 and "offered to purchase the promissory notes secured against the Property from K&S's lenders,  
3 provided K&S would first sign agreements to provide a deed in lieu of foreclosure..."

4           33. K&S was unable to develop the Property while at the same time, acting through  
5 Colliers, the City was secretly bidding to buy the Property.

6           34. On or about December 31, 2009, while using Colliers as a front, the City  
7 "purchased the promissory notes..."

8           **2. The Underlying Lawsuit**

9           35. On December 24, 2012, K&S filed the lawsuit entitled *K&S Developments, LLC*  
10 *v. City of SeaTac, et al.*, King County Cause No. 12-2-40564-6 (hereinafter, the "Underlying  
11 Lawsuit").

12           36. In the Underlying Lawsuit, K&S asserted the following causes of action against  
13 the City:

- 14           • Inverse Condemnation under Washington law;
- 15           • Substantive Due Process violation under Federal law;
- 16           • Procedural Due Process violation under Federal law;
- 17           • Equal Protection violation under Federal law;
- 18           • First Amendment retaliation under Federal law;
- 19           • Federal Taking;
- 20           • Breach of Contract under Washington law;
- 21           • Negligent Delay under Washington law;
- 22           • Intentional or Negligent Misrepresentation under  
Washington law;
- 23           • Interference with Business Expectancy under Washington  
law;
- Substantive Due Process violation under Washington law;
- Privileges and Immunities violation under Washington  
law; and
- Promissory Estoppel under Washington law.

1           37.     On or about September 10, 2015, St. Paul learned for the first time that the City  
2 sought defense and indemnity coverage from St. Paul associated with the claims asserted against  
3 the City in the Underlying Lawsuit.

4           38.     St. Paul jointly participated in the City's defense against the claims asserted in the  
5 Underlying Lawsuit with CIAW.

6           39.     St. Paul and CIAW have reached an agreement regarding an allocation of defense  
7 costs incurred defending the City arising out of the claims asserted against the City in the  
8 Underlying Lawsuit.

9           40.     Pursuant to this agreement, St. Paul has agreed to pay 60% of the City's defense  
10 fees incurred to date and continuing through trial in the Underling Lawsuit.

11           41.     CIAW has agreed to pay 40% of the City's defense fees incurred to date and  
12 continuing through trial in the Underling Lawsuit.

13           42.     A verdict in the Underlying Action was entered on January 25, 2016. (Attached  
14 hereto as **Exhibit A**).

15           43.     The City will seek coverage under the St. Paul policies and assert that St. Paul  
16 must indemnify the City for any Judgment rendered as a result of this verdict.

17           44.     St. Paul asserts that there is no coverage available to the City under the St. Paul  
18 policies.

19           **3.     *The St. Paul Policies***

20           45.     CIAW is a self-insured insurance pool whose members include numerous  
21 municipal entities in the state of Washington.

22           46.     Prior to being self-insured, CIAW purchased insurance policies from St. Paul.

23           47.     CIAW also provided insurance coverage to the City applicable to the subject loss.

1 48. St. Paul issued a series of one-year package policies to CIAW, the last policy  
2 package expiring September 1, 2009.

3 49. Specifically, St. Paul issued the following policies to CIAW for the following  
4 policy periods:

<u>Policy No.</u>	<u>Policy Period</u>
GP06301648	09/01/05-09/01/06
GP06301883	09/01/06-09/01/07
GP06301990	09/01/07-09/01/08
GP06302090	09/01/08-09/01/09

5  
6  
7  
8 50. Both the City and CIAW qualify as a named insureds on each of the foregoing  
9 policies.

10 51. The St. Paul policies issued to CIAW contain several forms that are potentially  
11 implicated by the claims asserted in the Underlying Lawsuit.

12 52. The St. Paul policy forms associated with each of the forgoing policy periods are  
13 substantially the same.

14 53. Unless otherwise noted, the policy language referenced in this Complaint is taken  
15 from St. Paul policy number GP06302090 issued in for the 2008-2009 policy period.

16 *a. The "Public Entity Liability Protection Pooling Groups — Excess of Self-*  
17 *Insured Retention" Policy*

18 54. The St. Paul policy contains the following coverage form:

19 **"Public Entity Liability Protection Pooling Groups — Excess**  
20 **of Self-Insured Retention"** (hereinafter referred to as the  
21 "PELP").

22 Form OL023 Ed. 8-98.

23 55. Each PELP coverage part has a \$100,000 Self-Insured Retention for "each  
accident, event, offense, or wrongful act."

1           56. Each PELP coverage part has a \$10,000,000 limit for each accident, event,  
2 offense, or wrongful act.

3           57. The PELP coverage part contains the following insuring agreement:

4                   **What This Agreement Covers**

5                   **Bodily injury and property damage liability.**

6                   We'll pay amounts any protected person is legally required to pay as  
7                   damages for covered bodily injury or property damage that:

- 8
  - happens while this agreement is in effect; and
  - is caused by an event.

9 Policy Form OL023 Ed. 8-98, p. 2.

10           58. The PELP coverage part contains the following definitions that are applicable to  
11 the foregoing Insuring Agreement.

12                   *Property damage* means:

- 13
  - physical damage to tangible property of others, including  
14 all resulting loss of use of that property; or
  - loss of use of tangible property of others that isn't physically  
15 damaged...

16                   We'll consider all loss of use of:

- 17
  - damaged tangible property to happen at the time of the  
18 physical damage which caused it; and
  - undamaged tangible property to happen at the time of the  
19 event which caused it.

20                   *Event* means an accident, including continuous or repeated  
21 exposure to substantially the same general harmful conditions.

22 Policy Form OL023 Ed. 8-98, p. 2.

23           59. In addition to the foregoing, the PELP coverage part contains the following  
Insuring Agreement for Personal Injury Liability:



1 **Personal injury liability.** We'll pay amounts any protected person  
2 is legally required to pay as damages for covered personal injury  
that:

- 3 • results from your operations, other than advertising,  
4 broadcasting, publishing, or telecasting done by or for you;  
and
- 5 • is caused by a personal injury offense committed while this  
agreement is in effect.

6 Policy Form OL023 Ed. 8-98, p. 2.

7 60. The PELP coverage part contains the following definitions that are applicable to  
8 the PELP coverage part Insuring Agreement:

9 *Personal injury* means injury, other than bodily injury or  
10 advertising injury, that's caused by a personal injury offense.

11 *Personal injury offense* means any of the following offenses:

- 12 • False arrest, detention, or imprisonment.
- 13 • Malicious prosecution.
- 14 • Wrongful entry into, or wrongful eviction from, a room,  
dwelling, or premises that a person occupies.
- 15 • Invasion of the right of private occupancy of a room,  
dwelling, or premises that a person occupies.
- 16 • Libel or slander.
- 17 • Making known to any person or organization written or  
spoken material that disparages the products, work, or  
completed work of others.
- 18 • Making known to any person or organization written or  
spoken material that violates a person's right of privacy.
- 19 • Improper service of process.
- Violation of civil rights under any federal, state, or local  
law.

20 Policy Form OL023 Ed. 8-98, pp. 2-3.

21 61. The PELP coverage part contains the following exclusions:

22 **Exclusions - What This Agreement Won't Cover**

23 **Insuring Agreement Exclusions**

1 The following exclusions apply to all coverages provided by this  
insuring agreement.

2 . . .

3 **Breach of contract.** We won't cover loss or advertising injury that  
4 results from the failure of any protected person to do what is  
5 required by a contract or agreement. But we won't apply this  
6 exclusion to loss or advertising injury that results from the  
unauthorized use of an advertising idea if such use is not  
specifically prohibited by the contract or agreement.

7 Policy Form OL023 Ed. 8-98, p. 12.

8 **Deliberately breaking the law.** We won't cover injury or damage  
that results from:

- 9 • the protected person knowingly breaking any criminal  
10 law; or
- 11 • any person or organization breaking any criminal law with  
the consent or knowledge of the protected person.

12 Policy Form OL023 Ed. 8-98, p. 12.

13 **Expected or intended bodily injury or property damage.** We  
14 won't cover bodily injury or property damage that's expected or  
intended by the protected person.

15 Policy Form OL023 Ed. 8-98, p. 16.

16 **Public use of property.** We won't cover any loss or property  
damage that results from:

- 17 • any method or proceeding used in the taking or controlling  
of private property for public use; or
- 18 • the diminution in value, or inverse condemnation, of  
19 property that's caused by the taking or controlling or  
private property for public use.

20 *Method or proceeding* includes condemnation, adverse  
21 possession, and dedication by adverse use.

22 Policy Form OL023 Ed. 8-98, p. 22.

23 62. The PELP coverage part contains the following Endorsements:

1 **PUBLIC ENTITY LIABILITY PROTECTION POOLING**  
2 **GROUPS LIMITED PUNITIVE DAMAGES EXCLUSION**  
3 **ENDORSEMENT**

4 This endorsement changes your Public Entity Liability Protection  
5 Pooling Groups - Excess Of Self-Insured Retention.

6 **How Coverage Is Changed**

7 The following is added to the Exclusions - What This Agreement  
8 Won't Cover section. This change excludes coverage.

9 **Punitive damages.** We won't pay punitive damages awarded as a  
10 part of a judgment or settlement.

11 Policy Form OL103 Ed. 10-02.

12 **Criminal or dishonest acts.** We won't cover injury or damage  
13 that results from any criminal, dishonest, or fraudulent act or  
14 omission committed:

- 15 • by the protected person; or
- 16 • with the consent or knowledge of the protected person.

17 However, we won't apply this exclusion unless there has been a  
18 court determination that criminal, dishonest, or fraudulent  
19 conduct was committed by the protected person or with the  
20 consent or knowledge of the protected person.

21 Policy Form OL085 Ed. 10-02.

22 63. The PELP coverage part contains the following policy provisions:

23 **Right to investigate or defend.** We'll have the right to defend any  
protected person against a claim or suit for injury, damage, or loss  
covered by this agreement. We'll also have the right to investigate  
any claim or suit to the extent that we believe is proper. We may  
exercise such rights even if:

- all of the allegations of the claim or suit are groundless, false,  
or fraudulent; or
- the total amount of the damages and claim expenses for  
such injury, damage, or loss probably won't exceed a self-  
insured retention that applies.

...

1 However, we have no duty to defend any claim or suit or perform  
2 other acts or services. In addition, our right to defend protected  
3 persons against claims or suits **ends** when the limits of coverage  
4 that apply have been used up with the payment of:

- 5 • judgments;
- 6 • settlements; or
- 7 • indemnitee defense expenses assumed under contract.

8 Policy Form OL023 Ed. 8-98, p. 22.

9 **Self-Insured Retentions**

10 The self-insured retentions shown in the Coverage Summary and  
11 the information contained in this section fix the amount of  
12 damages and claim expenses which you'll be required to pay, and  
13 over which the limits of coverage will apply in accordance with  
14 the Limits Of Coverage section, regardless of the number of:

- 15 • protected persons;
- 16 • claims made or suits brought; or
- 17 • persons or organizations making claims or bringing suits.

18 **Each accident, event, offense, or wrongful act retention.** This  
19 is the amount that you will be required to pay for the combined  
20 total of:

- 21 • • • •
- 22 • all covered bodily injury and property damage that results  
23 from any one event;
- all covered personal injury or advertising injury that's  
caused by all personal injury or advertising injury offenses  
committed in a policy year;

• • • •  
**Payments over a self-insured retention.** We must be consulted  
prior to any payments being made or agreed to that erode the limits  
of coverage. If you settle or make payments on a claim where  
damages or claim expenses exceed the self-insured retention  
without first notifying or consulting with us, we will consider those  
voluntary payments to be your responsibility.

Policy Form OL023 Ed. 8-98, p. 11.

**Who Is Protected Under This Agreement**

1 **Public entity or other organization.** If you are shown in the  
2 Introduction as a named insured and a public entity or other  
organization, you are a protected person...

3 **Elected or appointed officials and members.** Any of your elected  
4 or appointed officials, directors, or executive officers, or members of  
5 any of your agencies, boards, or commissions, are protected persons  
only for the conduct of their duties as your elected or appointed  
officials, directors, executive officers, or members.

6 **Employees and volunteer workers.** Your employees are  
7 protected persons only for:

- 8 • work done within the scope of their employment by you;
- 9 • their performance of duties related to your operations; or.
- 

10 Policy Form OL023 Ed. 8-98, p. 7.

11 64. The PELP coverage part contains the following endorsement regarding “other  
12 insurance:”

13 This endorsement changes your Public Entity Liability Protection  
14 Pooling Groups – Excess of Self-Insured Retention.  
•••

15 **Other Insurance**

16 If there is any valid and collectible other insurance for injury or  
17 damage covered by this agreement, we’ll apply this agreement as  
excess insurance over such other insurance.

18 Policy Form OL089 Rev. 1-04.

19 **b. The "Public Entity Management Liability Protection — Claims-Made" Policy**

20 65. The St. Paul policy also provides coverage pursuant to the terms and conditions  
21 of the following coverage form:

22 **"Public Entity Management Liability Protection — Claims-  
23 Made"** (hereinafter referred to as the “PEML”).

Form 47279 Rev. 1-01. (2005-2006 and 2006-2007).

1 Form 47279 Rev. 7-06. (2007-2008 and 2008-2009).<sup>3</sup>

2 66. Each PEML coverage part contains a retroactive date of 9/1/1991 and has a Self-  
3 Insured Retention of \$100,000 for "each wrongful act."

4 67. Each PEML coverage part has a wrongful act limit of \$10,000,000.

5 68. Each PEML coverage part also has a \$10,000,000 total limit.

6 69. The PEML coverage part contains the following insuring agreement:

7 **Public entity management liability.** We'll pay amounts any  
8 protected person is legally required to pay as damages for  
covered loss that:

- 9
- 10 • results from the conduct of duties by or for a public entity;
  - 11 • is caused by a wrongful act committed on or after the  
12 retroactive date and before the ending date of this  
13 agreement; and
  - 14 • results in a claim or suit first made or brought against a  
15 protected person while this agreement is in effect, or during  
16 the limited reporting period or the extended reporting  
17 period, if either one applies.

18 We'll consider each wrongful act in a series of related wrongful  
19 acts to be committed on the date the first wrongful act in that  
20 series is committed.

21 Policy Form 47279 Rev. 7-06, p. 2.<sup>4</sup>

22 70. The PEML coverage part contains the following definitions that are applicable to  
23 the PEML Insuring Agreement.

*Protected person* means any person or organization that qualifies  
as a protected person under the Who Is Protected Under This  
Agreement section.

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21 <sup>3</sup> CIAW/City contend that the Underlying Lawsuit triggers coverage for CIAW/City under the PELP and  
22 PEML St. Paul policy forms. St. Paul disputes that the Underlying Lawsuit triggers any coverage  
23 obligation to CIAW/City under any St. Paul policy or policy form. However, to the extent that any St.  
Paul policy or policy form, apart from the PELP and PEML policy forms, is implicated by the claims  
asserted in the Underlying Lawsuit, St. Paul reserves all rights and defenses to amend this complaint or  
file a new complaint to assert any other claims or defenses.

<sup>4</sup> This is the exact same language as is contained in Policy Form 47279 Rev. 1-01.

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*Public entity* means a municipality, county, or other governmental body, department, or unit.

*Wrongful act* means any act, error, or omission.

...

*Related wrongful acts* means two or more wrongful acts that have as a common connection, tie, or link any fact, circumstance, situation, event, transaction, cause, or any series of related facts, circumstances, situations, events, transactions, or causes.

...

*Claim* means a demand that seeks damages.

*Suit* means a civil proceeding that seeks damages, including:

- an arbitration proceeding for damages to which the protected person must submit or submits with our consent; or
- any other alternative dispute resolution proceeding for damages to which the protected person submits with our consent.

Policy Form 47279 Rev. 7-06, p. 2.

71. In addition to the foregoing, the PEML coverage part for the 2005-2006 and 2006-2007 Policies specifically contain the following Notice in the header of the coverage form:

**Important note: This is a claims-made insuring agreement.** To be covered, a claim or suit must be first made or brought against a protected person while this agreement is in effect, or during the limited reporting period or the extended reporting period, if either one applies. This agreement should be read carefully, especially the What This Agreement Covers, When This Agreement Covers, and Limits Of Coverage sections.

Policy Form 47279 Rev. 1-01.

72. The 2007-2008 and 2008-2009 PEML coverage parts contains a similar Notice:

**Important note: This is a claims-made insuring agreement that includes defense expenses within the deductible.** To be covered, a claim or suit must be first made or brought against a protected person while this agreement is in effect, or during the limited

1 reporting period or the extended reporting period, if either one  
2 applies.

3 Policy Form 47279 Rev. 7-06.

4 73. The PEML coverage part contains the following provisions relating to when the  
5 coverage part is triggered:

6 **When This Agreement Covers**

7 **When a claim or suit must be first made or brought against a**  
8 **protected person.** We'll apply this agreement to claims or suits  
9 for loss covered by this agreement only when they're first made or  
10 brought against a protected person:

- 11 • while this agreement is in effect; or
- 12 • during the limited reporting period or the extended  
13 reporting period, if either one applies.

14 *Limited reporting period* means the 60 days, starting with the  
15 ending date of this agreement, during which claims or suits for  
16 covered loss may be first made or brought against a protected  
17 person.

18 *Extended reporting period* means the 12-month period of time,  
19 starting with the ending date of this agreement, during which  
20 claims or suits for covered loss may be first made or brought  
21 against a protected person.

22 Policy Form 47279 Rev. 7-06, p. 2.

23 74. The 2005-2006 and 2006-2007 PEML coverage parts contain substantially  
similar, but not identical policy language, which for the sake of accuracy is set forth as follows:

**When this Agreement Covers**

During this agreement or the limited reporting period, if it applies.  
We'll apply this agreement to claims for covered loss only when  
first made or brought:

- while this agreement is in effect; or
- during the limited reporting period, if it applies.



1 When we consider a claim to be first made or brought. We'll  
2 consider a claim for covered loss to be first made or brought on the  
earliest of the following dates:

- 3 • The date that we or any protected person first receives  
written notice of such claim.
- 4 • The date that we first receive written notice from any  
5 protected person of a specific wrongful act that caused the  
loss which resulted in the claim.

6 Policy Form 47279 Rev. 1-01, p. 3.

7 75. The PEML coverage part contains the following exclusions:

8 **Exclusions – What This Agreement Won't Cover**

9 ...

10 **Criminal, malicious, dishonest, or fraudulent acts or**  
11 **omissions, or knowing violations of rights or laws.** We won't  
cover loss that results from any criminal, malicious, dishonest, or  
12 fraudulent act or omission, or any knowing violation of rights or  
laws, committed by:

- 13 • the protected person; or
- 14 • anyone with the consent or knowledge of the protected  
person.

15 However, we won't apply this exclusion to our duty to defend that  
16 protected person until it has been determined or admitted in a legal  
proceeding that such act, omission, or knowing violation was  
committed by:

- 17 • the protected person; or
- 18 • anyone with the consent or knowledge of the protected  
person.

19 ...

20 Policy Form 47279 Rev. 7-06, pp. 7-8.

21 **Punitive damages.** We won't pay punitive damages awarded as a  
part of a judgment or settlement.

22 PS054 Ed. 10-02.

1           **Breach of contract.** We won't cover loss that results from the  
2 failure of any protected person to do what is required by any  
contract or agreement, other than a mutual aid agreement.

3 Policy Form 47279 Rev. 7-06, p. 7.

4           **Debt financing.** We won't cover loss that results from any type of  
5 debt financing issued by or for you. Debt financing includes bonds,  
debentures, guarantees of debt, or notes.

6 Policy Form 47279 Rev. 7-06, p. 8.

7           **Declaratory, injunctive, or other non-monetary relief costs.** We  
8 won't cover:

- 9           • any cost, expense, or fee; or
- 10           • any amount required to comply with a court or  
administrative order, judgment, ruling or decree, or a  
federal, state, or local law;

11 that results from any action or demand, or any part of any claim or  
12 suit, which seeks declaratory, injunctive, or other non-monetary  
relief.

13 Such costs, expenses, fees, or amounts include the following:

- 14           • The costs of physical alterations or other changes made to  
accommodate or afford accessibility to any disabled  
15 person.
- 16           • The costs of developing, implementing, or enforcing any  
company policy, procedure, or program.

17 Declaratory, injunctive, or other non-monetary relief includes:

- 18           • a judgment which declares the rights and duties of any  
person or organization; or
- 19           • any type of injunction, restraining order, or any other non-  
20 monetary relief.

21 Policy Form 47279 Rev. 7-06, p. 8.

22           76. The PEML coverage part also contains the following exclusion:

23           **Injury or damage.** We won't cover loss resulting from injury or  
damage.

1            *Injury or damage* means:

- 2            • bodily injury, personal injury, or advertising injury; or  
3            • property damage.

4 Policy Form 47279 Rev. 7-06, p. 9.

5            77. The PEML coverage part contains the following definitions applicable to the  
6 foregoing exclusion:

7            *Property damage* means:

- 8            • physical damage to tangible property of others, including  
9            all resulting loss of use of that property; or  
10            • loss of use of tangible property of others that isn't  
11            physically damaged.

12            *Personal injury* means injury, other than bodily injury or  
13            advertising injury, that:

- 14            • results from your operations; and  
15            • is caused by a personal injury offense.

16            *Personal injury offense* means any of the following offenses:

- 17            • False arrest, detention, or imprisonment.  
18            • Malicious prosecution.  
19            • Wrongful entry into, or wrongful eviction from, a room,  
20            dwelling, or premises that a person occupies, if such entry or  
21            eviction is committed by or for the landlord, lessor, or owner  
22            of that room, dwelling, or premises.  
23            • Invasion of the right of private occupancy of a room,  
             dwelling, or premises that a person occupies, if such  
             invasion is committed by or for the landlord, lessor, or  
             owner of that room, dwelling, or premises.  
             • Libel or slander.  
             • Making known to any person or organization material, in  
             any form of expression that disparages the business,  
             premises, products, services, work, or completed work of  
             others.  
             • Making known to any person or organization material, in  
             any form of expression that violates a person's right of  
             privacy.

Policy Form 47279 Rev. 7-06, p. 9.

1  
2 78. In addition to the foregoing, the PEML coverage part contains the following  
3 exclusions:

4 **Taking of private property for public use or benefit.** We won't  
5 cover loss that results from the taking or controlling of private  
6 property for public use or benefit, including the diminution in  
7 value of such property, by condemnation, inverse condemnation,  
8 adverse possession, dedication by adverse use, or any other  
9 method or proceeding.

10 Policy Form 47279 Rev. 7-06, p. 11.

11 **Unlawful personal gains.** We won't cover loss that results from  
12 any protected person's personal profit, advantage, or compensation  
13 to which that protected person is not legally entitled.

14 Policy Form 47279 Rev. 7-06, p. 11.

15 79. The 2005-2006 and 2006-2007 PEML coverage parts contain the following policy  
16 provisions:

17 **Right to investigate or defend.** We'll have the right to defend any  
18 claim or suit for covered loss made or brought against any  
19 protected person. We'll also have the right to investigate any claim  
20 or suit to the extent that we believe is proper. We may exercise  
21 such rights even if:

- 22 • any of the allegations of any such claim or suit are  
23 groundless, false, or fraudulent; or
- the total amount of the damages and claim expenses for  
such loss probably won't exceed a self-insured retention  
that applies.

...

However, we have no duty to defend any claim or suit or perform  
other acts or services. In addition, our right to defend protected  
persons against claims or suits **ends** when the limits of coverage  
that apply have been used up with the payment of judgments or  
settlements.

Policy Form 47657 Ed. 1-95, p. 1.

1 80. The 2007-2008 and 2008-2009 PEMPL coverage parts contain the following policy  
2 provisions:

3 **Right to investigate or defend.** We'll have the right, but not the  
4 duty, to defend any protected person against a claim or suit for loss  
covered by this agreement. We'll have such right even if:

- 5 • all of the allegations of the claim or suit are groundless, false,  
or fraudulent; or
- 6 • the total amount of the damages and claim expenses for  
such injury, damage, or loss probably won't exceed a self-  
7 insured retention that applies.

8 . . .

9 However, we have no duty to defend any claim or suit even if the  
10 amount of damages or defense expenses exceeds the self-insured  
retentions or the self-insured retention that applies.

11 Policy Form L0550 Ed. 7-06, p. 3.

12 81. The 2005-2006 and 2006-2007 PEMPL coverage parts contain the following  
13 endorsement:

14 **Self—Insured Retention**

15 The self-insured retention shown in the Coverage Summary and  
16 the information contained in this section fix the amount of  
damages and claim expenses which you'll be required to pay,  
and over which the limits of coverage will apply in accordance  
with the Limits Of Coverage section, regardless of the number  
of:

- 17 • protected persons;
- 18 • claims made or suits brought; or
- 19 • persons or organizations making claims or bringing suits.

20 **Each wrongful act retention.** This is the amount that you will be  
required to pay for the combined total of:

- 21 • all covered loss that happens in a policy year and is caused  
22 by any one wrongful act or series of related wrongful acts;  
and
- 23 • all claim expenses incurred in connection with such  
covered loss.

1 Policy Form 47657 Ed. 1-95, p. 2.

2 82. The 2007-2008 and 2008-2009 PEML coverage parts contain the following  
3 endorsement:

4 **Self—Insured Retentions**

5 The self-insured retentions shown in the Self-Insured Retentions  
6 Table and the information contained in this section fix the  
7 amount of damages and defense expenses incurred by or for you  
8 or any other protected person for covered loss that you'll be  
9 responsible for paying, and over which the limits of coverage  
10 will apply, regardless of the number of:

- protected persons;
- claims made or suits brought; or
- persons or organizations making claims or bringing suits.

11 . . .

12 Each wrongful act retention. You'll be responsible for the amount of damages  
13 and defense expenses within this self-insured retention for all claims or suits for  
14 covered loss that is caused by:

- the same wrongful act; or
- related wrongful acts.

15 Policy Form L0550 Ed. 7-06, pp. 1-2.

16 83. The 2005-2006 and 2006-2007 PEML coverage parts contain the following  
17 language with respect to “other insurance:”

18 The following replaces the Other Insurance section. This  
19 change:

- shows that this agreement applies over self-insured  
20 retentions; and
- explains what we mean by other insurance.

21 This agreement is primary insurance that applies over self-  
22 insured retentions. If there is any other insurance for loss  
23 covered by this agreement, we'll pay the portion of the  
damages which:

- exceed the self-insured retention; and
- equals our percentage of the total of all limits that apply.

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But we won't pay more than the limits of coverage that apply under this agreement. . .

*Other insurance* means valid and collectible insurance, or the funding of losses, other than insurance bought specifically to apply in excess of this agreement, that's provided for you by or through:

- another insurance company;
- a risk retention group;
- self-insurance method or program, other than any funded by you and over which this agreement applies; or
- any similar risk transfer method.

Policy Form 47657 Ed. 1-95, p. 3.

84. The 2007-2008 and 2008-2009 PEML coverage parts contain the following endorsement regarding "other insurance:"

**Other Insurance**

If there's any valid and collectible other insurance for loss covered by this agreement, the insurance under this agreement is excess, and we won't make any payments until the other insurance has been used up with the payment of amounts that are subject to its limits of coverage.

*Other insurance* means insurance, or the funding of losses, that's provided by or through:

- another insurance company;
- us, except under this agreement;
- any of our affiliated insurance companies;
- a risk retention group;
- a self-insurance method or program other than any funded by you and over which this agreement applies; or
- any similar risk transfer or risk management method.

However, we won't consider umbrella insurance, or excess insurance, that you bought specifically to apply in excess of the limits of coverage that apply under this agreement to be other insurance.

1 Policy Form L0550 Ed. 7-06, p. 5.

2 *c. St. Paul Policy Language Applicable To All Coverage Parts*

3 85. The St. Paul policies contain the following policy language applicable to all  
4 coverage parts:

5 **WHAT TO DO IF YOU HAVE A LOSS**

This form applies if:

6 . . .

- 7 • your policy provides any liability protection and  
8 there's an accident, act, error, event, incident,  
9 offense, or omission that may result in damages or  
10 other amounts which may be covered under that  
11 protection.

Coverage under your policy may be affected by any failure  
12 to fulfill any of the duties described in this form.

13 However, neither this form, nor any of these duties, change  
14 or eliminate any coverage condition or requirement, or  
15 exclusion or other coverage limitation, anywhere in the rest  
16 of your policy, such as:

- 17 • a specific coverage trigger, reporting, notice, or  
18 knowledge condition or requirement; or  
19 • an exclusion or other coverage limitation that's  
20 based, all or in part, on knowledge.

21 This form and the rest of your policy should be read  
22 carefully to determine:

- 23 • the extent of the coverage provided by your policy;  
and  
• the rights and duties of you and any other person or  
organization protected under your policy.

**If Your Policy Provides Liability Protection**

If your policy provides liability protection and there's an  
accident, act, error, event, incident, offense, or omission that  
may result in damages or other amounts which may be  
covered under that protection, you or any other person or  
organization protected under your policy must do all of the



1 following in connection with that accident, act, error, event,  
2 incident, offense, or omission:

3 1. As soon as possible after having knowledge of the  
4 accident, act, error, event, incident, offense, or  
5 omission, tell us or one of our authorized  
6 representatives what happened. Do this even if no  
7 demand against you or any other person or  
8 organization protected under your policy has been  
9 made.

10 Include all of the following information that's reasonably  
11 available:

- 12 • The time, place, and specific nature of the accident,  
13 act, error, event, incident, offense, or omission.
- 14 • The type of demand that has been or may be made  
15 against you or any other person or organization  
16 protected under your policy.
- 17 • The name and address of each person or  
18 organization that may make a claim or bring a suit.
- 19 • The name and address of each person who may be a  
20 witness.
- 21 • The name and address of each person or  
22 organization that may be involved and is protected  
23 under your policy.

Our United States of America (USA) Claim Call Center is  
available from anywhere in the USA at any time at the following  
toll-free telephone number to tell us this information:

1-800-787-2851

Also, our Internet web site is available from anywhere at any time  
at the following address to tell us this information:

[www.travelers.com](http://www.travelers.com)

However, neither we nor any of our authorized representatives  
need to be told of an accident, act, error, event, incident, offense,  
or omission that first involves your workers compensation  
insurance unless the liability protection provided by your policy is  
likely to be involved.

...

3. As soon as possible after receiving them, mail, deliver, or  
otherwise give to us a copy of:

- all written demands made; and
- all legal documents relating to any suit brought;

against you or any other person or organization protected under your policy.

4. Cooperate with and, when requested, assist us in:

- securing and giving evidence;
- attending hearings and trials;
- obtaining the attendance of witnesses; and
- taking other reasonable steps to help us investigate or settle, or defend a person or organization protected under your policy against, a claim or suit.

5. Not assume any financial obligation or pay out any money, other than for first aid given to others at the time of an accident, without our consent.

**When we consider you to have knowledge of an accident, act, error, event, incident, offense, or omission**

If you're an organization, we'll consider you to have knowledge of an accident, act, error, event, incident, offense, or omission only if any person has knowledge of it while he or she is your:

- appointed or elected official if you're a public entity or tribal government;
- employee, or authorized person, with a duty given by you to tell us, one of our authorized representatives, or any of the persons described above, about that accident, act, error, event, incident, offense, or omission.

We'll also consider you to have knowledge of an accident, act, error, event, incident, offense, or omission if any person has knowledge of it while he or she is that organization's:

...

- appointed or elected official if it's a public entity or tribal government; or

...

**When we consider other persons or organizations to have knowledge of an accident, act, error, event, incident, offense, or omission.** We'll consider any person or organization protected under your policy, other than you, to have knowledge of an accident, act, error, event, incident, offense, or omission if you or

1 any of the persons described in the When we consider you to have  
2 knowledge of an accident, act, error, event, incident, offense.

3 Policy Form 40814 Rev. 8-03.

4 86. The 2007-2008 and 2008-2009 St. Paul policies contain the following policy  
5 language applicable to all coverage parts:

6 This endorsement changes the General Rules and What To Do If  
7 You Have A Loss forms attached to your policy. These changes  
8 apply only to each liability protection that is subject to one or more  
9 self-insured retentions.

10 . . .

11 **If Your Policy Provides Liability Protection**

12 If your policy provides liability protection and there's an accident,  
13 act, error, event, incident, offense, or omission that may result in  
14 damages or Other amounts which may be covered under that  
15 protection, you or any other person or organization protected under  
16 your policy must do all of the following in connection with that  
17 accident, act, error, event, incident, offense, or omission:

18 1. As soon as possible after having knowledge of the accident,  
19 act, error, event, incident, offense or omission, tell your  
20 claim handling service what happened. Do this even if no  
21 demand against you or any other person or organization  
22 protected under your policy has been made. Include all of the  
23 following information that's reasonably available:

- The time, place, and specific nature of the accident, act, error, event, incident, offense or omission.
- The type of demand that has been or may be made against you or any other person or organization protected under your policy.
- The name and address of each person or organization that may make a claim or bring a suit.
- The name and address of each person who may be a witness.
- The name and address of each person or organization that may be involved and is protected under your policy.
- Tell us what happened as soon as possible if the accident, act, error, event, incident, offense or omission will likely result in a payment of:

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- damages that is at least 50% of any applicable self-insured retention which applies to damages only; or
- damages and defense expenses that total at least 50% of any applicable self-insured retention which applies to damages and defense expenses. This notice must include all of the information described above.

...

Also tell us as soon as possible of:

...

- any claim or suit that seeks extra-contractual or punitive damages, even if they aren't covered under this policy.

3. Tell us when the combined total of all accidents, acts, errors, events, incidents, offenses, or omissions in a policy year will likely result in payments of:

- damages that are at least 50% of any total retention which applies to damages only; or
- damages and defense expenses that total at least 50% of any total retention which applies to damages and defense expenses.

...

5. As soon as possible after receiving them, mail, deliver, or otherwise give to:

- your claim handling service a copy of all written demands made; and
- your claim handling service and us a copy of all legal documents relating to any suit brought;

against you or any other person or organization protected under your policy.

...

7. Not assume any financial obligation or pay out any amount without our consent. However, we won't apply this rule to:

- any financial obligation or amounts paid for first aid given to others at the time of an accident; or
- amounts you pay within any self-insured retention.

*Your claim handling service* means the individual or organization that's approved by us and provides claims services for you. We won't consider your claim handling service to be us except when we

1 are providing claims services for you under a separate written  
2 agreement to specifically provide such services.

3 **When we consider you to have knowledge of an accident, act,  
4 error, event, incident, offense, or omission.**

5 If you're an organization, we'll consider you to have knowledge of  
6 an accident, act, error, event, incident, offense, or omission only if  
7 any person has knowledge of it while he or she is your:

8 . . . .

- 9 • appointed or elected official if you're a public entity or tribal  
10 government; . . .
- 11 • employee and is or acts as your insurance or risk manager  
12 or holds a management, or legal department; or
- 13 • employee, or authorized person, with a duty given by you  
14 to tell us, your claim handling service, or any of the persons  
15 described above, about that accident, act, error, event,  
16 incident, offense, or omission.

17 . . . .

18 3. The following is added to your:

- 19 • What To Do If You Have A Loss form; or
- 20 • General Rules, if it contains a What To Do If You  
21 Have A Loss section. This change adds rules that  
22 apply when your claim handling service is a person  
23 or organization other than us.

24 **Additional Rules**

25 . . . .

26 **Quarterly claim summaries.** Every ninety days starting from the  
27 date your policy begins, unless we agree in writing to a different  
28 schedule, you agree to mail, deliver, or otherwise give to us a  
29 summary of all open and closed claims and suits handled by your  
30 claim handling service. For each claim or suit, the summary must  
31 include the following information:

- 32 • The name of the claimant.
- 33 • A detailed description of the accident, act, error,  
34 event, incident, offense, or omission that is the  
35 subject of the claim or suit.
- 36 • A detailed description (including categories and  
37 amounts) of the damages and any other amounts  
38 sought in the claim or suit.
- 39 • The current status of the claim or suit, including  
40 whether it is closed or in litigation, arbitration,

or any other alternative dispute resolution proceeding.

- The date the claim or suit was reported to your claim handling service.
- The name, address, and telephone number of any defense counsel.
- The amount of defense expenses incurred by you as of the date of the summary.
- The name and telephone number of the person at your claim handling service who has responsibility for handling the claim or suit.

Policy Form D0127 Ed. 6-06.

**4. The Charter Oak Policies**

87. Charter Oak issued the following policies to the City:

<u>Policy No.</u>	<u>Policy Period</u>
ZLP-15N12693-13-PA	01/01/13-01/01/14
ZLP-15N12693-14-PB	01/01/14-01/01/15
ZLP-15N12693-15-PA	01/01/15-01/01/16
ZLP-15N12693-16-PA	01/01/16-01/01/17
ZUP-14T51473-13-PA	01/01/13-01/01/14
ZUP-14T51473-14-PB	01/01/14-01/01/15
ZUP-14T51473-15-PA	01/01/15-01/01/16
ZUP-14T51473-16-PA	01/01/16-01/01/17

88. The Charter Oak policies provide coverage in a manner substantially the same as the St. Paul policies.

89. There has been no tender by the City seeking coverage for the claims asserted in the Underlying Lawsuit under the Charter Oak policies.

90. To the extent that any tender for coverage arising out of or in any way related to the Underlying Lawsuit is made under the Charter Oak policies, Charter Oak reserves all rights and defense under the terms and conditions of the Charter Oak policies.

**5. The CIAW Policies**

91. Beginning on September 1, 2009, the City was insured by CIAW.

1 92. In pertinent part, the applicable CIAW policies provided Property Coverage,  
2 General Liability Coverage, and Wrongful Acts Liability Coverage.

3 93. The claims alleged against the City in the Underlying Lawsuit trigger defense and  
4 indemnity coverage under the CIAW policies.

5 94. CIAW and St. Paul shared in the defense of the claims asserted against the City  
6 in the Underlying Lawsuit.

7 95. The CIAW policies provide primary coverage to the City as compared to the St.  
8 Paul policies.

9 **6. Canfield**

10 96. Canfield is a third-party insurance administrator.

11 97. Canfield was retained by CIAW to administer claims for CIAW.

12 98. Via contract, St. Paul also retained Canfield to administer claims.

13 99. In violation of its contract with St. Paul, Canfield failed to provide St. Paul with  
14 notice of the subject claim.

15 100. On September 10, 2015, Canfield informed St. Paul for the first time of the  
16 Underlying Lawsuit

17 101. Thereafter, on or about September 14, 2015, Canfield tendered a claim for  
18 coverage under the St Paul policies on behalf of the City.

19 102. As a result, St. Paul was first made aware of the City's claim for coverage  
20 approximately 3 years after the City's initial claim was submitted to Canfield.

21 103. To the extent that St. Paul suffers any damages associated with Canfield's  
22 handling of the subject claim and/or delayed notification to St. Paul, Canfield is liable for all such  
23 damages.

1           **IV.     THERE IS AN ACTUAL AND JUSTICIABLE CONTROVERSY AS TO ST.**  
2   **PAUL’S COVERAGE OBLIGATIONS**

3           104.    There is no coverage available to the City for the claims against it in the  
4           Underlying Lawsuit.

5           105.    The PELP and PEML coverage parts contain specific requirements of the insured  
6           in the event of a loss or claim.

7           106.    There is an actual and justiciable controversy whether CIAW and/or the City  
8           fulfilled its duties to St. Paul with respect to the subject claim.

9           107.    The insuring agreement of the PELP coverage part provides coverage for *bodily*  
10           *injury or property damage* that is caused by a covered *event*, provided that the *bodily injury or*  
11           *property damage* occurs during a St. Paul policy period.

12           108.    There is an actual and justiciable controversy as to whether any of the claims  
13           against the City involve claims for *property damage* as that term is defined.

14           109.    There is an actual and justiciable controversy as to whether any of the claims  
15           against the City involve an *event* as that term is defined by the PELP coverage part.

16           110.    There is an actual and justiciable controversy as to whether the City has liability  
17           for *property damage* caused by a covered *event* as those terms are defined by the PELP coverage  
18           part.

19           111.    There is an actual and justiciable controversy as to whether any *property damage*  
20           that was allegedly caused by a covered *event* occurred during any St. Paul policy period.

21           112.    The PELP coverage part provides coverage for amounts that an insured is legally  
22           obligated to pay as damages for *personal injury* that is caused by a *personal injury offense* which  
23           happens during a St. Paul policy period.



1 113. There is an actual and justiciable controversy as to whether any of the claims  
2 against the City involve claims for *personal injury* as that term is defined by the PELP coverage  
3 part.

4 114. To the extent that the claims against the City involve claims for the recovery of  
5 *personal injury* damages, there is an actual and justiciable controversy as to whether such  
6 damages were caused by a *personal injury offense* as that term is defined by the PELP coverage  
7 part

8 115. To the extent that the claims against the City involve claims for *personal injury*,  
9 there is an actual and justiciable controversy as to whether such claims resulted in damages,  
10 which is required to implicate coverage for a *personal injury offense*.

11 116. To the extent that the insuring agreement of the PELP coverage part has been  
12 triggered, there is an actual and justiciable controversy as to whether the PELP coverage part  
13 contains exclusions that may otherwise operate to preclude coverage.

14 117. Pursuant to the PELP coverage part, coverage is excluded for liability due to  
15 breach of contract or agreement.

16 118. There is an actual and justiciable controversy as to whether any of the claims  
17 against the City are due to a breach of contract or agreement.

18 119. Pursuant to the PELP coverage part, coverage is excluded for liability that results  
19 from the City or its personnel deliberately breaking the law.

20 120. There is an actual and justiciable controversy as to whether any of the claims  
21 against the City result from the City or its personnel deliberately breaking the law.

22 121. Pursuant to the PELP coverage part, coverage is excluded for any *bodily injury* or  
23 *property damage* that was expected or intended from the standpoint of the City.

1           122. There is an actual and justiciable controversy as to whether the City is liable for  
2 any *bodily injury* or *property damage* that was expected or intended from the standpoint of the  
3 City.

4           123. Pursuant to the PELP coverage part, coverage is excluded for any *property*  
5 *damage* that results from any proceeding used in the taking of private property for public use or  
6 the diminution in value, or inverse condemnation of private property for public use.

7           124. There is an actual and justiciable controversy as to whether the City is liable for  
8 *property damage* that results from any proceeding used in the taking of private property for public  
9 use or the diminution in value, or inverse condemnation of private property for public use.

10           125. Pursuant to the PELP coverage part, coverage is excluded for any punitive  
11 damages awarded as a part of a judgment or settlement.

12           126. There is an actual and justiciable controversy as to whether the City is liable for  
13 or has agreed to pay for punitive damages.

14           127. Pursuant to the PELP coverage part, coverage is excluded for any injury or  
15 damage resulting from dishonest, fraudulent, or criminal acts or omissions.

16           128. There is an actual and justiciable controversy as to whether the City's liability is  
17 based on dishonest, fraudulent, or criminal acts or omissions.

18           129. To the extent that the Insuring Agreement in the PELP coverage part is potentially  
19 triggered and coverage is not otherwise excluded, there is an actual and justiciable controversy  
20 as to whether St. Paul has or had any duty to defend the City under the PELP coverage part  
21 against the claims asserted against the City in the Underlying Lawsuit.

22           130. The PELP coverage part contains a \$100,000 self-insured retention (hereinafter  
23 "SIR") for "each accident, event, offense, or wrongful act."

1           131. There is an actual and justiciable controversy as to whether the City's liability  
2 arises from separate accidents, events, offenses, or wrongful acts.

3           132. To the extent the City's liability arises from separate accidents, events, offenses,  
4 or wrongful acts, there is an actual and justiciable controversy as to whether such separate  
5 accidents, events, offenses, or wrongful acts trigger separate SIRs.

6           133. There is an actual and justiciable controversy as to whether the City's SIR  
7 obligation under the PELP coverage part can be satisfied by payment(s) from third-parties.

8           134. To the extent that any SIR obligation of the City under the PELP coverage part is  
9 paid in whole or in part by a third-party, there is an actual and justiciable controversy whether  
10 the City's SIR obligation has been satisfied.

11           135. Certain individual officials and/or employees of the City are named as defendants  
12 in the Underlying Lawsuit.

13           136. Pursuant to the PELP coverage part, such individuals may qualify as protected  
14 persons under the PELP coverage part, but only to the extent that their liability arises out of the  
15 performance of their duties as elected or appointed officials or in the course and scope of their  
16 employment with the City.

17           137. There is an actual and justiciable controversy as to whether the liability of any  
18 individuals and officials and/or employees of the City arises out of the performance of their duties  
19 as elected or appointed officials or in the course and scope of their employment with the City.

20           138. Pursuant to the PELP coverage part, to the extent that there is other valid and  
21 collectible insurance available to the City for purposes of the claims asserted in the Underlying  
22 Lawsuit, the coverage provided under the PELP coverage part may be excess over such other  
23 insurance.

1           139. To the extent that the St. Paul policy provides coverage, there is an actual and  
2 justiciable controversy as to whether the PELP coverage is excess over other insurance.

3           140. The insuring agreement of the PEML coverage part provides coverage for  
4 amounts that an insured becomes legally liable to pay as damages for loss that results from the  
5 conduct of duties by or for a *public entity*, provided that the liability is for a *wrongful act* that  
6 occurs during the policy period and results in a claim made during the policy period or during  
7 the limited *reporting period* or *extended reporting period*.

8           141. There is an actual and justiciable controversy as to whether any the claims against  
9 the City involve a *wrongful act* as that term is defined.

10           142. To the extent that the claims against the City involve a *wrongful act*, there is an  
11 actual and justiciable controversy as to whether such *wrongful act* occurred during the policy  
12 period.

13           143. There is an actual and justiciable controversy as to whether any claim was made  
14 against the City during the applicable claim *reporting period*.

15           144. There is an actual and justiciable controversy as to whether the claims against the  
16 City involve conduct of duties on behalf of a *public entity* as that term is defined.

17           145. To the extent that the insuring agreement of the PEML coverage part has been  
18 triggered, there is an actual and justiciable controversy as to whether the PEML coverage part  
19 contains exclusions that may otherwise operate to preclude coverage.

20           146. Pursuant to the PEML coverage part, coverage is excluded for liability arising  
21 from any criminal, dishonest, or fraudulent acts or omissions that constitute a knowing violation  
22 of the rights of another person.

1           147. There is an actual and justiciable controversy as to whether the City is liable based  
2 on any criminal, dishonest, or fraudulent acts or omissions that constitute a knowing violation of  
3 the rights of another person.

4           148. Pursuant to the PEML coverage part, coverage is excluded for punitive damages  
5 awarded as a part of a judgment or settlement.

6           149. There is an actual and justiciable controversy as to whether the City is liable for  
7 or has agreed to pay for punitive damages.

8           150. Pursuant to the PEML coverage part, coverage is excluded for any liability arising  
9 out of the breach of any contract or agreement.

10           151. There is an actual and justiciable controversy as to whether the City has any  
11 liability based on a breach of contract or agreement.

12           152. Pursuant to the PEML coverage part, coverage is excluded for liability for a loss  
13 that results from any type of debt financing on the part of the insured.

14           153. There is an actual and justiciable controversy as to whether the City is liable for a  
15 loss that resulted from any type of debt financing on the part of the City.

16           154. Pursuant to the PEML coverage part, coverage is excluded for any costs,  
17 expenses, or fees, as well as any amounts required to comply with a court order, judgment or  
18 ruling that includes declaratory, injunctive, or other non-monetary relief.

19           155. There is an actual and justiciable controversy as to whether any claims asserted  
20 against the City involve claims for declaratory, injunctive, or other non-monetary relief.

21           156. Pursuant to the PEML coverage part, coverage is excluded for loss resulting from  
22 *injury or damage* as those terms are defined under the PEML coverage part.  
23

1 157. There is an actual and justiciable controversy as to whether any claims asserted  
2 against the City involve claims for *injury or damage* as those terms are defined under the PEML  
3 coverage part.

4 158. Pursuant to the PEML coverage part, coverage is excluded for any loss that results  
5 from any taking of private property for public use or the diminution in value by condemnation or  
6 inverse condemnation of private property for public use.

7 159. There is an actual and justiciable controversy as to whether the City has any  
8 liability for loss that results from a taking of private property for public use or the diminution in  
9 value by condemnation or inverse condemnation of private property for public use.

10 160. Pursuant to the PEML coverage part, coverage is excluded for any loss that results  
11 from an insured’s personal profit or other gain to which that insured is not entitled.

12 161. There is an actual and justiciable controversy as to whether the Underlying  
13 Lawsuit involves claims that the City profited or otherwise acquired gains to which it was not  
14 entitled.

15 162. To the extent that the Insuring Agreement in the PEML coverage part is  
16 potentially triggered and coverage is not otherwise excluded, there is an actual and justiciable  
17 controversy as to whether St. Paul has or had any duty to defend the City under the PEML  
18 coverage part against the claims asserted against the City in the Underlying Lawsuit.

19 163. The PEML coverage part contains a self-insured retention (hereinafter “SIR”) for  
20 each wrongful act or related wrongful acts.

21 164. There is an actual and justiciable controversy as to whether the City’s liability  
22 arises from a single wrongful act, related wrongful acts, or multiple unrelated wrongful acts.  
23

1 165. To the extent the City's liability arises from multiple unrelated wrongful acts,  
2 there is an actual and justiciable controversy as to whether such unrelated wrongful acts trigger  
3 separate SIR obligations.

4 166. There is an actual and justiciable controversy as to whether the City's SIR  
5 obligation under the PEML coverage part can be satisfied by payment(s) from third-parties.

6 167. To the extent that any SIR obligation of the City under the PEML coverage part  
7 is paid in whole or in party by a third-party, there is an actual and justiciable controversy whether  
8 the City's SIR obligation has been satisfied.

9 168. Pursuant to the PEML coverage part, to the extent that there is other valid and  
10 collectible insurance available to the City for purposes of the claims asserted in the Underlying  
11 Lawsuit, the coverage provided under the PEML coverage part may be excess over such other  
12 insurance.

13 169. To the extent that the St. Paul policy provides coverage, there is an actual and  
14 justiciable controversy as to whether the PEML coverage is excess over other insurance.

15 170. St. Paul reserves the right to assert any other exclusions or grounds for which  
16 coverage for the claims against the City may be excluded under the policies of insurance issued  
17 by St. Paul.

18 **V. THERE IS AN ACTUAL AND JUSTICIABLE CONTROVERSY AS TO**  
19 **CHARTER OAK'S COVERAGE OBLIGATIONS**

20 171. There is an actual and justiciable controversy whether the City has tendered a  
21 claim for coverage under the Charter Oak policies.

22 172. There is an actual and justiciable controversy whether the Charter Oak policies  
23 provide coverage for any of the claims asserted against the City in the Underlying Lawsuit.

**VI. FIRST CAUSE OF ACTION – DECLARATORY RELIEF**

(Against the City of SeaTac)

173. St. Paul incorporates by reference as though fully set forth herein, and restates and re-alleges each of the paragraphs 1 through 172 above.

174. St. Paul is entitled to Declaratory Judgment in its favor, specifically including a judicial determination that it does not owe any coverage obligations to the City under the policies of insurance issued by St. Paul to CIAW and the City for the claims asserted against the City in the Underlying Lawsuit.

**VII. SECOND CAUSE OF ACTION – DECLARATORY RELIEF**  
(Against Defendant Cities Insurance Association of Washington)

175. St. Paul incorporates by reference as though fully set forth herein, and restates and re-alleges each of the paragraphs 1 through 174 above.

176. An actual and justiciable controversy exists as to whether CIAW is the primary liability insurer for the City for the claims arising out of the Underlying Lawsuit.

177. St. Paul asks that the Court grant declaratory relief entering a judicial determination that St. Paul has no obligation to provide any indemnity to the City with respect to the claims arising from the Underlying Lawsuit and that the policies and coverage parts issued by St. Paul are excess to the policies issued by CIAW with respect to indemnification of the City.

178. St. Paul asks that the Court grant declaratory relief entering a judicial determination that the primary liability insurance indemnity obligations to the City arising from claims asserted in the Underlying Lawsuit lie solely with CIAW.

179. St. Paul asks that the Court grant declaratory relief entering a judicial determination that, to the extent that the City incurs any defense fees after the completion of the Underlying Lawsuit yet still arising from the Underlying Lawsuit, St. Paul has no obligation to



1 provide any defense to the City and that the policies and coverage parts issued by St. Paul are  
2 excess to the policies issued by CIAW.

3 180. St. Paul asks that the Court grant declaratory relief entering a judicial  
4 determination that, to the extent that the City incurs any defense fees after the completion of the  
5 Underlying Lawsuit yet still arising from the Underlying Lawsuit, the primary liability insurance  
6 defense obligations to the City for such future defense fees lie solely with CIAW.

7 **VIII. THIRD CAUSE OF ACTION – SUBROGATION**  
8 (Against Defendant Canfield)

9 181. St. Paul incorporates by reference as though fully set forth herein, and restates and  
10 re-alleges each of the paragraphs 1 through 180 above.

11 182. To the extent that St. Paul suffers any damages associated with Canfield’s acts or  
12 omissions which were in any way associated with the City’s claim for coverage benefits under  
13 the St. Paul policies, based on the equitable doctrine of subrogation, St. Paul is entitled to  
14 recovery of any and all amounts that St. Paul may have incurred or may in the future incur as a  
15 result of Canfield’s acts or omissions.

16 **IX. FOURTH CAUSE OF ACTION – BREACH OF CONTRACT**  
17 (Against Defendant Canfield)

18 183. St. Paul incorporates by reference as though fully set forth herein, and restates and  
19 re-alleges each of the paragraphs 1 through 182 above.

20 184. St. Paul is entitled to recovery of any damages sustained by St. Paul as a result of  
21 Canfield’s breach of contract.

22 **X. FIFTH CAUSE OF ACTION – CONTRIBUTION AND INDEMNIFICATION**  
23 (Against Defendant Canfield)

185. St. Paul incorporates by reference as though fully set forth herein, and restates and  
re-alleges each of the paragraphs 1 through 184 above.

1 186. To the extent that St. Paul suffers any damages associated with Canfield's acts or  
2 omissions which were in any way associated with the City's claim for coverage benefits under  
3 the St. Paul policies, based on the equitable doctrines of contribution and indemnification, St.  
4 Paul is entitled to reimbursement from Canfield for any and all amounts that St. Paul has incurred  
5 or may in the future incur as a result of Canfield's acts or omissions.

6 **XI. PRAYER FOR RELIEF**

7 1. For a declaration that St. Paul owes no defense obligation to the City for any  
8 claims asserted in the Underlying Lawsuit.

9 2. For a declaration that St. Paul owes no indemnity obligation to the City for any  
10 claims asserted in the Underlying Lawsuit.

11 3. For a declaration that the policies issued by St. Paul are excess to the policies  
12 issued by CIAW with respect to the defense of the City for any claims asserted in the Underlying  
13 Lawsuit, to the extent that the City incurs any defense fees after the completion of the  
14 Underlying.

15 4. For a declaration that the policies issued by St. Paul are excess to the policies  
16 issued by CIAW with respect to the indemnification of the City for any claims asserted in the  
17 Underlying Lawsuit.

18 5. For a declaration that the PELP coverage part of the St. Paul policies is excess to  
19 the policies issued by CIAW with respect to the defense of the City for any claims asserted in  
20 the Underlying Lawsuit, to the extent that the City incurs any defense fees after the completion  
21 of the Underlying.

1           6.       For a declaration that the PELP coverage part of the St. Paul policies is excess to  
2 the policies issued by CIAW with respect to the indemnification of the City for any claims  
3 asserted in the Underlying Lawsuit.

4           7.       For a declaration that the PEML coverage part of the St. Paul policies is excess  
5 to the policies issued by CIAW with respect to the defense of the City for any claims asserted in  
6 the Underlying Lawsuit, to the extent that the City incurs any defense fees after the completion  
7 of the Underlying.

8           8.       For a declaration that the PEML coverage part of the St. Paul policies is excess  
9 to the policies issued by CIAW with respect to the indemnification of the City for any claims  
10 asserted in the Underlying Lawsuit.

11           9.       For a declaration that any and all primary liability insurance obligations of the  
12 City for the claims arising from the Underlying Lawsuit are the sole obligation of CIAW,  
13 including the duty to defend all such claims.

14           10.      For a declaration that the Charter Oak policies do not provide coverage to the  
15 City for the claims asserted in the Underlying Lawsuit.

16           11.      For subrogation from Canfield for any and all amounts that St. Paul may have  
17 incurred or may in the future incur as a result of Canfield's acts or omissions.

18           12.      For contribution and/or indemnification from Canfield for all amounts that St.  
19 Paul may have incurred or may in the future incur as a result of Canfield's acts or omissions.

20           13.      For all damages sustained by St. Paul as a result of Canfield's breach of the  
21 contract between Canfield and St. Paul.

22           14.      For all interest allowed by law.

23           15.      For attorney fees and costs allowed by statute and law.

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16. For other and further relief as the Court deems just and equitable.

DATED this 28<sup>th</sup> day of January, 2016.

LEATHER & ASSOCIATES, PLLC

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/s/ Eric J. Neal

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