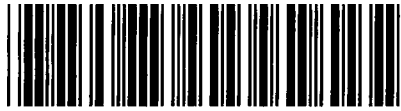




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**RATEPAYERS APPEAL OF THE  
DECISION BY WINDERMERE OAKS  
WATER SUPPLY CORPORATION  
TO CHANGE WATER AND SEWER  
RATES**

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**BEFORE THE STATE OFFICE**

**OF**

**THE ADMINISTRATIVE**

**HEARINGS**

**RATEPAYERS' REPRESENTATIVES THIRD REQUEST FOR INFORMATION TO  
WINDERMERE OAKS WATER SUPPLY CORPORATION**

COMES NOW, the Ratepayers' Representatives of the Windermere Oaks Water Supply Corporation and serves its Third Request for Information ("RFI") on Windermere Oaks Water Supply Corporation, questions RFI 3-1 through RFI 3-19 pursuant to 16 Texas Administrative Code (TAC) §22.144, of the Commission's Procedural Rules. Ratepayers request that Windermere Oaks Water Supply Corporation ("Corporation" or "WOWSC") provide the following information and answer the following questions under oath. The questions shall be answered in sufficient detail to fully present all of the relevant facts, within the time limit provided by the Presiding Officer or within 20 days, if the Presiding Officer has not provided a time limit. Please copy the question immediately above the answer to each question. These questions are continuing in nature. If there is a relevant change in circumstances, Windermere must submit an amended answer, under oath, as a supplement to its original answer. State the name of the witness for each question and can vouch for the truth of that answer.

Provide responses to the RFI's by filing with the Commission solely through the Interchange on the Commission's website and provide notice, by email, to all other parties that the

pleading or document has been filed, unless otherwise ordered by the presiding officer pursuant to the Order Suspending Rules in Docket 50664.

Respectfully submitted,

*Josephine Fuller*

Josephine Fuller, Ratepayer Representative  
328 Coventry Road  
Spicewood, Texas 78669  
(512)743-2553  
[ratepayersrepjosiefuller@gmail.com](mailto:ratepayersrepjosiefuller@gmail.com)

*Patti Flunker*

Patti Flunker, Ratepayer Representative  
305 Coventry Road  
Spicewood, Texas 78669  
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[ratepayersrepjosiefuller@gmail.com](mailto:ratepayersrepjosiefuller@gmail.com)

## CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic email on April 30, 2021 in accordance with the Order Suspending Rules, issued in Project 50664.

Josephine Fuller  
Josephine Fuller

Patti Flunker  
Patti Flunker

## **DEFINITIONS**

A. "WOWSC" used herein refers to the Windermere Oaks Water Supply Corporation and any person acting or purporting to act on their behalf, including without limitation, attorneys, agents, advisors, investigators, representatives, employees, contract employees or other persons.

B. "Board" as used herein refers to the Board of Directors of the Windermere Oaks Water Supply Corporation and any person acting or purporting to act on their behalf, including without limitation, attorneys, agents, advisors, investigators, representatives, employees or other persons.

C. The terms "document" or "documents" or "correspondence" are used in their broadest sense to include, by way of illustration and not limitation, all written or graphic matter of every kind and description whether printed, produced or reproduced by any process whether visually, magnetically, mechanically, electronically or by hand, whether final or draft, original or reproduction, whether or not claimed to be privileged or otherwise excludable from discovery, and whether or not in your actual or constructive possession, custody, or control. The terms including writings, memoranda, studies, reports, surveys, statistical compilations, notes, calendars, tapes, computer disks, electronic storage of any type, data on computer drives, e-mails, cards, records, contracts, agreements, invoices, licenses, diaries, journals, accounts, pamphlets, books, ledgers, publications, microfilm, microfiche and any other data compilations from which information can be obtained and translated, by you if necessary, into reasonably usable form, "Document", "documents" or "correspondence" shall also include every copy of a document where the copy contains any commentary or notation of any kind that does not appear on the original or any other copy.

**RATEPAYERS REPRESENTATIVES THIRD REQUEST FOR INFORMATION TO THE  
WINDERMERE OAKS WATER SUPPLY CORPORATION**

- 3-1 Provide all correspondence the WOWSC has received from February 2, 2020 to present from any ratepayer/member related to the increased water and sewer rates, including their inability to pay the increased rates. Also, include all replies from the WOWSC to ratepayer/member correspondence mentioned above.
- 3-2 Provide all correspondence the WOWSC has received from the ratepayers/members related to their billed amount for water and/or sewer service from April 1, 2020 – Present. Also, include all replies from the WOWSC to ratepayer/member correspondence mentioned above.
- 3-3 Provide all correspondence the WOWSC has received from the ratepayers/members related to their number of gallons used for water and/or sewer service used from April 1, 2020 – Present. Also, include all replies from the WOWSC to ratepayer/member correspondence mentioned above.
- 3-4 Has the WOWSC disconnected any water/sewer service for nonpayment from April 1, 2020 to Present? If yes, how many disconnections has been for nonpayment in this time frame.
- 3-5 The WOWSC's February 2, 2020 board meeting minutes page 3 #2. xviii. 2 states "communicate to membership what rates would be without legal expenses defending lawsuits."<sup>1</sup>. State (in dollars and cents) what the WOWSC calculates water rates and sewer rates would be without legal expenses defending lawsuits. Produce all communications sent out to the membership addressing this matter.
- 3-6 The WOWSC February 2, 2020 board meeting minutes page 3 #2. xviii. 3 states "Include statement why special assessment is not pursued, special assessment is at the end of the fiscal years"<sup>2</sup>. Provide the WOWSC's explanation for not pursuing a special assessment and produce all communications sent out to the membership addressing this matter.
- 3-7 Provide the denial letter referenced in WOWSC's answer to Staff's RFI 2-7(ii) specifically, the denial letter from Allied World to the WOWSC cited in the letter from Shidlofsky Law Firm to Allied World Specialty Insurance Company, which states; "*By letter dated **December 19, 2019**, Allied World denied coverage for the WSC and the Director Defendants under policy number 5105-0560-03 with respect to the Second Amended Original Complaint filed in the Underlying Lawsuit.*"<sup>3</sup>

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<sup>1</sup> [https://www.wowsc.org/documents/778/2020-02-01\\_WOWSC\\_Annual\\_Board\\_Meeting\\_Minutes\\_Approved.pdf](https://www.wowsc.org/documents/778/2020-02-01_WOWSC_Annual_Board_Meeting_Minutes_Approved.pdf)

<sup>2</sup>id

<sup>3</sup> [https://interchange.puc.texas.gov/Documents/50788\\_74\\_1109904.PDF](https://interchange.puc.texas.gov/Documents/50788_74_1109904.PDF)

- 3-8 Admit or Deny the WOWSC filed on March 19, 2021 a Civil Action lawsuit in United States District Court for The Western District of Texas, Case 1:21-CV-00258-RP<sup>4</sup> (see exhibit A) in which WOWSC and former and current board members Dana Martin, William Earnest, Thomas Michael Madden, Robert Mebane, Patrick Mulligan, Joe Gimenez, David Bertino, Mike Nelson, Dorothy Taylor, and Norman Morse are named as plaintiffs in an Original Complaint, by the Shidlofsky Law Firm against Defendant Allied World Specialty Insurance Company.
- 3-9 If the answer to RFI 3-8 is admit, state whether the WOWSC is paying litigation expenses for the individual plaintiffs and the legal and factual bases (if any) on which the WOWSC is doing so.
- 3-10 Please produce all agreements between the WOWSC or Lloyd Gosselink, on the one hand, and any of the individual plaintiffs in in Case 1:21-cv-00258-RP, on the other hand, concerning payment, advancement or reimbursement of litigation expenses.
- 3-11 Produce all invoices reflecting legal expenses incurred by or on behalf of the individual plaintiffs in Case 1:21-CV-00258-RP.
- 3-12 Produce the records that reflect payments, if any, by the individual plaintiffs for litigation expenses in Case No. 1:21-CV-00258-RP.
- 3-13 What financial account/fund/bank account is the WOWSC pulling funds from to pay the Shidlofsky Law Firm's for representation of the WOWSC and the individual plaintiffs in Case 1:21-cv-00258-RP?
- 3-14 Are any of WOWSC funds used to pay the Shidlofsky Law Firm for representation of the WOWSC and past and current directors' representation in Case 1:21-cv-00258-RP generated by the income of the water and/or sewer rates?
- 3-15 Admit or Deny, legal expenses billed for November 2019 were included in the 2020 rate increase?
- 3-16 What was the total amount of billing for legal services in November 2019 was included in the 2020 rate study?
- 3-17 Admit or Deny, legal expenses billed for December 2019 were included in the 2020 rate increase.

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[https://www.pacermonitor.com/public/case/39116925/Windermere\\_Oaks\\_Water\\_Supply\\_Corporation\\_et\\_al\\_v\\_Allied\\_World\\_Specialty\\_Insurance\\_Company](https://www.pacermonitor.com/public/case/39116925/Windermere_Oaks_Water_Supply_Corporation_et_al_v_Allied_World_Specialty_Insurance_Company)

- 3-18 What was the total amount of billing for legal services in December 2019 included in the 2020 rate study?
- 3-19 Please provide legal invoices for November and December 2019 which were not included in the WOWSC answers to Ratepayers request of RFI-1-9, submitted by the WOWSC on January 28, 2021 under a protective order.
- 3-20 State whether the WOWSC intends to pursue recovery of litigation expenses paid, advanced or reimbursed for each individual defendant in Cause No. 48292 as to whom it is finally determined that the person has not met the standard set forth in 8.101(a) or that indemnification is prohibited by Section 8.102.
- 3-21 If the answer to the preceding RFI was anything other than an unequivocal “yes” for each person as to whom it is finally determined that the person has not met the standard set forth in 8.101(a) or that indemnification is prohibited by Section 8.102, state the legal and factual bases (if any) on which the WOWSC contends it need not pursue such recovery.
- 3-22 Provide the WOWSC's determination and calculation of the demand of \$250,000 in Case 1:21-CV-00258-RP (see exhibit B) and if this demand includes legal expenses from 2019 which the WOWSC included in the 2020 WOWSC rate increase.



## **EXHIBIT A**



3. Plaintiff William Earnest (“Earnest”) is an individual that resides and intends to remain in the State of Texas. Thus, Earnest is a citizen of Texas.

4. Plaintiff Thomas Michael Madden (“Madden”) is an individual that resides and intends to remain in the State of Texas. Thus, Madden is a citizen of Texas.

5. Plaintiff Robert Mebane (“Mebane”) is an individual that resides and intends to remain in the State of Texas. Thus, Mebane is a citizen of Texas.

6. Plaintiff Patrick Mulligan (“Mulligan”) is an individual that resides and intends to remain in the State of Texas. Thus, Mulligan is a citizen of Texas.

7. Plaintiff Joe Gimenez (“Gimenez”) is an individual that resides and intends to remain in the State of Texas. Thus, Gimenez is a citizen of Texas.

8. Plaintiff David Bertino (“Bertino”) is an individual that resides and intends to remain in the State of Texas. Thus, Bertino is a citizen of Texas.

9. Plaintiff Mike Nelson (“Nelson”) is an individual that resides and intends to remain in the State of Texas. Thus, Nelson is a citizen of Texas.

10. Plaintiff Dorothy Taylor (“Taylor”) is an individual that resides and intends to remain in the State of Texas. Thus, Taylor is a citizen of Texas.

11. Plaintiff Norman Morse (“Morse”) is an individual that resides and intends to remain in the State of Texas. Thus, Morse is a citizen of Texas.

12. Defendant Allied World is a Delaware corporation with its principal place of business in the State of New York. Accordingly, Allied World is a citizen of both Delaware and New York. On information and belief, Allied World is duly authorized to and does conduct insurance business in Texas. Allied World may be served with process through its agent for service of process, Corporation Service Company, 211 E 7th Street, Suite 620, Austin, Texas 78701-3218.

**II.**  
**VENUE AND JURISDICTION**

13. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. § 1332(a)(1) because Plaintiffs and Allied World are citizens of different states and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

14. Venue is proper in this District and Division pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated are in this District. Moreover, Allied World is subject to the Court's personal jurisdiction with respect to this action, as it issued the insurance policies to WSC in this District and conducts regular business in this District.

**III.**  
**BACKGROUND FACTS**

15. This is an insurance coverage dispute between Plaintiffs and Allied World based on Allied World's breach of its contractual duty to defend Plaintiffs with respect to a lawsuit styled *Rene Ffrench, et al. v. Friendship Homes & Hangars, LLC, et al.*; Cause No. 48292 pending in the 33rd Judicial District Court of Burnet County, Texas (the "Underlying Lawsuit").

**A. The Underlying Lawsuit**

16. The Underlying Lawsuit revolves around the sale by WSC of an approximately 10-acre tract within the Spicewood Airport community (hereinafter, the "Airport Tract").

17. Rene Ffrench, John Richard Dial, and Stuart Bruce Sorgen (the "Underlying Claimants") allegedly are members/customers and owners of the assets and revenues of the water supply and sewer service cooperative (the "Cooperative"<sup>1</sup>). WSC is allegedly organized under Chapter 67 of the Texas Water Code and is the entity that operates the Cooperative.

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<sup>1</sup> Whether WSC is actually a Cooperative is in dispute in the Underlying Lawsuit. Nothing asserted in this lawsuit against Allied World shall be deemed an admission, concession, or argument that WSC is a Cooperative. Rather, the

18. Based on both the certificate of formation and the bylaws of WSC, the Underlying Claimants allege that, “WSC has no power to engage in activities or use assets in a manner that is not in furtherance of the legitimate business of a ‘water supply cooperative’ or ‘sewer service cooperative.’”<sup>2</sup> As a cooperative, any year-end revenues not otherwise needed for operations of the enterprise allegedly are required to be returned to the “Owners.”

19. The Underlying Claimants allege that WSC is not a stakeholder in the Cooperative, and, as such, is prohibited from making profit. Moreover, it “cannot operate at a loss; the . . . Owners are required to make up any shortfall through increases in rates and fees, assessments or otherwise.”<sup>3</sup>

20. A Board of Directors elected by and from the Owners operates and manages the Cooperative’s assets. Officers elected by the Board from among its Directors carry out day-to-day operations. The Board is comprised of five (5) Directors and three (3) Officers, who are identified as the President, Vice President and Secretary-Treasurer. The Directors and Officers have the fiduciary duties of an agent/manager. The Non-Profit Act requires that each Director and Officer shall discharge these duties in good faith, with ordinary care, and in a manner reasonably believed to be in the best interest of the Owners of the Cooperative enterprise.

21. According to the Underlying Claimants, Texas statutes and WSC’s governing document limit WSC’s power to convey real property interests of the Cooperative enterprise that WSC holds in the Cooperative’s name. The Board allegedly has no power to approve or effectuate

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assertions herein and any references to WSC as a Cooperative in this pleading and this lawsuit are setting forth and identifying the factual allegations made against WSC in the Underlying Lawsuit by the Underlying Claimants.

<sup>2</sup> Second Amended Original Petition filed on November 15, 2019 in the Underlying Lawsuit (the “Underlying Second Amended Petition”), p. 15; Third Amended Original Petition filed on August 24, 2020 in the Underlying Lawsuit (the “Underlying Third Amended Petition”), p. 10.

<sup>3</sup> Underlying Second Amended Petition, p. 17; Underlying Third Amended Petition, p. 12.



any conveyance that is contrary to this expressed limitation, give away a valuable Cooperative asset, or to transfer an asset for a fraction or none of its market value. Rather, in keeping with its agency/managerial role, the Board has a duty to secure the highest price obtainable for assets that are no longer needed for Cooperative purposes.

22. Pursuant to state statute, the power to convey real property interests in the WSC's name is triggered only when such conveyance is authorized by "appropriate resolution" of the Board.<sup>4</sup> The Board can only approve or adopt a resolution by majority vote at a duly noticed open meeting and otherwise in compliance with the WSC's governing documents and applicable law.

23. According to the Underlying Claimants, any transaction between the organization and a sitting Director is presumptively adverse. The Board purportedly can authorize such a transaction only by valid Board action upon fulfillment of several special conditions, which includes the Board's receipt of full disclosure by the interested Director and a determination by a majority of disinterested Directors made in good faith that the transaction is fair to the organization and is in the organization's best interests. An additional condition is that the minutes of the Board meeting at which action is taken must reflect the interested Director's disclosure and a statement that the Board was aware of the conflict of interest and nevertheless decided the transaction was fair to the WSC and was in the WSC's best interests.

24. The Underlying Claimants allege that the Owners have the right, and its Directors have the duty, to rescind any unlawful approval and to prevent and/or annul any conveyance or transaction made pursuant to such unlawful approval.

25. Directors who unreasonably delay or refuse to take such steps allegedly breach their duty to act with ordinary care and in a manner reasonably believed to be in the best interest of the

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<sup>4</sup> Underlying Second Amended Petition, p. 19; Underlying Third Amended Petition, p. 15.

enterprise. Such misconduct, however, does not estop the WSC or its Owners from recovering their property or its value.

26. According to the Underlying Claimants, in 2013, the Board (at that time including Mulligan, Earnest and Madden) voted to upgrade the WSC's wastewater treatment facilities and relocate them away from the Airport Tract. Purportedly, the Directors agreed unanimously that relocating the facilities would free the valuable Airport Tract for sale and be the "highest and best use" of the Airport Tract.<sup>5</sup>

27. The sale of the Airport Tract allegedly was identified as one of the key components for funding the upgraded wastewater treatment plant improvements and other Cooperative needs.

28. The Board allegedly committed to the Owners that the Airport Tract would be sold for the best possible price, and the proceeds would be used to defray the cost of the new facilities and for other Cooperative purposes.

29. Following the August 2013 meeting, Directors Mulligan, Earnest, and Madden claimed to have gathered deeds and other records in preparation to engage a real estate professional to market the Airport Tract. At the Board's February 18, 2014 meeting, Mulligan allegedly was directed to obtain a survey and appraisal of the land to be sold. The Underlying Claimants allege that these Directors did none of these things.

30. The Board allegedly never listed, advertised, or marketed the Airport Tract.

31. Around this same time, Martin (who was not yet a member of the Board), a local real estate agent and an owner of Windermere Airport, LLC ("Windermere Airport"), purportedly put together a proposal for the purchase by Windermere Airport of a 0.558-acre tract within the Airport Tract from the Windermere Oaks Property Owners' Association ("POA") at "fair market

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<sup>5</sup> Underlying Second Amended Petition, p. 21; Underlying Third Amended Petition, p. 17.

value.”<sup>6</sup> Martin’s offer price was allegedly based on a recent sale of a 1.415-acre hangar lot on Cessna Lane for \$185,000, or \$3.00 per square foot.

32. According to the Underlying Claimants, POA members had been using a 30,000-square-foot portion of the Airport Tract for storage of boats and other items (the “Storage Tract”). By e-mail dated April 3, 2014, Taylor allegedly notified Mebane of the Board’s vote to market the Airport Tract as a single parcel and requested that the POA items be removed from the Storage Tract.

33. In late 2014, the TCEQ approved the WSC’s Closure Plan for the old wastewater treatment plant. This, according to the Underlying Claimants, should have cleared the way for prompt and aggressive marketing and sale of the Airport Tract. The Directors, however, allegedly never followed through with any listing or other marketing.

34. Martin was elected to the WSC’s Board in 2015. Shortly thereafter, she allegedly took actions associated with the purchase of a portion of land known as Tract G, a Cooperative-owned hangar lot across from the Airport Tract, for \$95,000, which equaled \$12.75 per square foot. The Underlying Claimants allege that there is no record the Board ever voted on, or even considered, any transaction involving Tract G.

35. Thereafter, Martin allegedly was again involved with efforts by the POA to purchase the Storage Tract. The POA’s proposed price was around \$20,000 - \$25,000, or in the range of \$0.66 - \$0.83 per square foot. The minutes of the Board’s July 16, 2015 meeting allegedly reflect that the Directors (including Martin, Mebane, Earnest, Madden and Mulligan) discussed the POA’s offer in executive session but then rejected it.

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<sup>6</sup> Underlying Second Amended Petition, p. 22; Underlying Third Amended Petition, p. 19.



36. Martin thereafter presented the other Directors with a “Purported Appraisal” of the Airport Tract, but this appraisal did not, according to the Underlying Claimants, reflect the fair market value of the Airport Tract. The Underlying Claimants further allege that there was no indication that the Board ever professionally listed or marketed the Airport Tract or that the Board ever fielded any offers or negotiated for sale of the Airport Tract.

37. In March 2016, Martin allegedly began efforts to purchase the Airport Tract for herself or her own entity. The Underlying Claimants allege that she was involved as seller (in her capacity as WSC fiduciary) and purchaser (for her own personal financial gain).

38. Martin claimed that Mebane (then-President of the Board) decided that the Airport Tract should not be sold as a single parcel, as the Board had planned for years. Rather, Martin claimed that Mebane determined that the Board should dispose of the “most valuable and desirable 3.8 acres of the Airport Tract with all of the Airport Tract’s frontage along the Piper Lane taxiway to a sitting WSC Director for a fraction of its market value.”<sup>7</sup> Martin claimed that the March 2016 transaction was “negotiated” and that she made a “good faith” offer to purchase, which was countered by other Directors.<sup>8</sup> The Underlying Claimants assert that the Board’s records are devoid of any such negotiations.

39. According to the Underlying Claimants, the “disinterested Directors” were the same ones that had acknowledged a duty to market the Airport Tract as a whole to obtain the best possible offer and were aware that the Board had conveyed a comparable property for \$12.75 per square foot. None of the Directors allegedly disclosed to the Owners prior to the Board’s December 19, 2015 meeting that they intended to authorize the piecemeal transfer of the Airport Tract and

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<sup>7</sup> Underlying Second Amended Petition, p. 26; Underlying Third Amended Petition, p. 23.

<sup>8</sup> Underlying Second Amended Petition, p. 27; Underlying Third Amended Petition, p. 23.

all of the taxiway frontage for a fraction of the comparable property. The proposed transaction was never mentioned as a discussion or action item on any posted meeting agenda for any Board meeting. Instead, the Board allegedly raised the topic out of the blue at its regular meeting on December 19, 2015, and, after a five-minute executive session, Mebane, Madden and Mulligan unanimously voted to accept an offer from Martin on behalf of Friendship Homes & Hangars, LLC (“FFH, LLC”) to carve off the frontage and separate the remainder of the Airport Tract from all taxiway access for a “net price” of \$200,000, or \$1.19 per square foot. The Underlying Claimants allege that there was no “appropriate resolution” to approve this sale. Moreover, the Board did not allegedly fulfill the special conditions required to approve an interested-Director transaction.

40. Prior to closing, Martin allegedly subdivided the land she intended to purchase into two platted hangar lots. Mebane, as WSC President, allegedly signed Martin’s subdivision plat on March 3, 2016. The plat was approved and recorded on March 8, 2016. The plat Martin prepared and processed, and that Mebane signed on behalf of the WSC, allegedly failed to reserve a taxiway for the remainder of the Airport Tract. The Underlying Claimants allege that there are no posted records reflecting a resolution to adopt the land transfer to Martin.

41. On or about March 13, 2016, Mebane and Madden allegedly executed and delivered a document purporting to be a resolution in which they “certified,” as President and Secretary of the WSC, respectively, that the resolution stated therein was “an accurate reproduction of the one made” by the Board and was “legally adopted on the date of the [February 22, 2016] meeting of the Board of Directors, which was called and held in accordance with the law and the bylaws of the corporation, at which a quorum was present.”<sup>9</sup>

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<sup>9</sup> Underlying Second Amended Petition, p. 29; Underlying Third Amended Petition, p. 26.

42. The resolution described the property to be conveyed as two platted hangar lots by reference to the recorded plat, not as unplatted acreage. However, the Underlying Claimants allege that no resolution was considered or actually adopted at the February 22, 2016 meeting or any other time.

43. Mebane executed two deeds, each of which conveyed one platted hangar to FHH, LLC.

44. The Underlying Claimants assert that, if the Board had marketed the Airport Tract as a whole and sold it for the best possible price, WSC could have retired all of its outstanding debt in March 2016 and had additional amounts left over to pay facility costs and upgrade equipment.

45. Instead, the Owners allegedly sustained an immediate loss of \$500,000 in cash when the Board sold the most desirable portion of the Airport Tract to an interested director.

46. The Underlying Claimants further assert that the remainder of the Airport Tract was rendered unmarketable, and had its value instantly diminished by \$640,000, when it was separated from taxiway access.

47. Martin allegedly later replatted the hangar lots again to create a third hangar lot, which was conveyed to Johann and Michael Mair. The profit from Martin's sale to the Mairs allegedly should have benefited WSC and the Owners as opposed to Martin individually.

48. The Underlying Claimants assert that WSC still has debt outstanding and incurred additional debt to pay expenses that could and should have been covered by the proceeds from the sale of the Airport Tract. The Board allegedly has struggled with strategies to restructure the debt.

49. The Board purportedly has postponed needed repairs and the acquisition of a generator and other equipment needed to provide the Cooperative services and to remain in



compliance with applicable regulations. At the same time, the Board allegedly has raised rates, service fees, and membership fees. Moreover, the Board also allegedly has allowed the Cooperative to become financially dependent on collecting standby fees from nonpatrons.

50. The Board's composition changed in 2018. At that time, the Board allegedly investigated the March 2016 transaction, engaging a professional forensic appraiser to analyze the financial impact of the sale. The appraiser's report allegedly confirmed that the Owners sustained an immediate loss of more than \$1,000,000.

51. According to the Underlying Claimants, the March 2016 "fire sale" was unauthorized, improper, and unfair to the Owners and involved breaches of fiduciary duty and other misconduct by Directors. The newly constituted Board allegedly determined that its fiduciary duties required prompt efforts to recover the misappropriated property or to otherwise make the Owners whole by pursuing all available avenues of relief. Accordingly, the Board directed WSC's counsel to send a demand letter to Martin and FHH, outlining the numerous unauthorized and illegal acts that led to the sale.

52. The Underlying Claimants allege that, from and after the March 2016 "fire sale," the legitimate business of the Cooperative has been continuously compromised as a result of the acts and omissions of the agents responsible for managing the assets it uses to operate.

53. The Underlying Claimants assert that the Director Defendants Martin, Earnest, Madden, Mabane, Mulligan, Gimenez, Bertino, Nelson, Taylor, and Morse (the "Director Defendants") engaged in various *ultra vires* acts in violation of Section 20.002(c) of the Texas Business Organizations Code, including the unauthorized conveyance of property; improper use of Cooperative assets; improper disbursement of Cooperative assets to benefit the Directors; and failure to recover loss.

54. The Underlying Claimants specifically assert:

Had the Airport Tract been properly marketed and sold for what it was worth in March 2016, the Owners would have netted well over \$1,000,000. They could have extinguished the outstanding debt, acquired needed equipment, made a healthy allocation to the reserve fund and received a respectable dividend, all in furtherance of the legitimate business of a water supply and sewer service Cooperative. Instead, the Cooperative's unfaithful fiduciaries gave away valuable property interests for next to nothing, devalued other property interests, and now propose not only to leave that transaction intact but to make it worse by giving away the Piper Lane taxiway. The Owners have been burdened with unnecessary debt service and higher rates and fees, and the Cooperative still doesn't have needed equipment and facilities. The Board has no power to manage the Cooperative's assets in this manner.

55. The Underlying Claimants also assert claims that the Director Directors breached their fiduciary duty to the WSC.

56. The Underlying Claimants seek to recover the damages that the Director Defendants purportedly caused based on their alleged conduct. They also seek exemplary damages and attorneys' fees, as permitted by law.

**B. The Insurance Policies**

57. Allied World issued to WSC Commercial Water Plus Package policy number 5105-0560, which was in effect annually for consecutive policy periods from March 17, 2016 to March 17, 2020 (the "Policies").

58. The Policies have multiple coverage forms, including the Public Officials and Management Liability Coverage Form claims-made coverage (the "POML Coverage"), which provides coverage for Wrongful Acts, subject to a limit of \$1,000,000 for each claim, and coverage for Injunctive Relief, subject to a limit of \$5,000 for each action for injunctive relief. The POML Coverage is subject to a \$3,000,000 aggregate limit for all Claims, all Wrongful Acts, and Offenses, and all Actions for Injunctive Relief. The retroactive date on each policy is identified as March 17, 2000.



**C. Request for Coverage and Allied World's Wrongful Denial of Coverage**

59. On May 31, 2019, WSC and the Director Defendants submitted the Underlying Lawsuit to Allied World, requesting defense and indemnity under the Policies.

60. The First Amended Original Petition was filed on November 4, 2019, and the Second Amended Complaint was filed on November 5, 2019. On November 8, 2019, WSC and the Director Defendants again submitted to Allied World a request for defense and indemnity under the Policies based on the allegations in the Second Amended Original Petition. WSC and the Director Defendants then sent a follow up letter dated November 22, 2019.

61. By letter dated December 19, 2019, Allied World—through its authorized third-party claims administrator, Network Adjusters, Inc.—wrongfully denied coverage and refused to provide a defense for WSC and the Director Defendants based on the allegations within the Second Amended Original Petition.

62. WSC and the Director Defendants retained coverage counsel, who sent a letter to Allied World dated May 18, 2020 requesting that Allied World reconsider its improper coverage position. To date, Allied World has not responded to that May 18, 2020 challenge letter.

63. While continuing to self-fund the defense and awaiting Allied World's response to the May 18, 2020 challenge letter, the Underlying Plaintiffs filed their Third Amended Original Petition on August 24, 2020. WSC and the Director Defendants submitted the Third Amended Original Petition to Allied World on August 25, 2020, along with a follow up as to the status of Allied World's coverage review with respect to the Underlying Lawsuit.

64. In fact, the undersigned contacted Mr. Flynn and his supervisor, Bryan Wakefield, on numerous occasions by e-mail and telephone to follow up on the status of Allied World's coverage review, including on May 18, 2020, June 12, 2020, August 25, 2020, October 7, 2020,

October 23, 2020, October 29, 2020, November 3, 2020, November 20, 2020, December 2, 2020, December 3, 2020, December 7, 2020, December 16, 2020, December 29, 2020, January 8, 2021, January 27, 2021, February 9, 2021, February 18, 2021, February 26, 2021, March 2, 2021, March 5, 2021, March 9, 2021, March 10, 2021, March 11, 2021, March 12, 2021, and March 16, 2021.

65. Despite these communications with Allied World and repeated assurances that a written response to the challenge letter would be forthcoming, Allied World has yet to formally respond.

66. Mr. Flynn communicated to the undersigned on March 10, 2021 via telephone that Allied World would be issuing a coverage letter shortly and that it would not be a denial. To date, however, Allied World has not issued that referenced coverage letter.

**IV.**  
**CAUSES OF ACTION**

**Count I**  
**Declaratory Judgment**

67. Plaintiffs incorporate by reference paragraphs 1 through 66, above, as if restated herein in their entirety.

68. The POML Coverage in the policies issued to WSC—as the Named Insured—states as follows:

**A. COVERAGE A. INSURING AGREEMENT – LIABILITY FOR MONETARY DAMAGES**

1. We will pay those sums that the insured becomes legally obligated to pay as “damages” arising out of a “claim” for:

a. a “wrongful act,” . . .

\* \* \*

We will have the right and duty to defend any “claim” seeking those “damages.” . . .

\* \* \*

2. This insurance applies to “claims” for “wrongful acts” or offenses only if:

- a. The “wrongful act” or offense takes place in the “coverage territory,” and after the retroactive date shown in the declarations and before the end of the policy period; and
  - b. A “claim” is first made against any insured in accordance with paragraph 3.c. below, during the policy period or any Extended Reporting Period we provide according to **SECTION VII. – EXTENDED REPORTING PERIODS.**
- 3. A “claim” will be deemed to have been made at the earliest of the following times:
  - a. When notice of such “claim” is first received by any insured or by us, whichever comes first; or
  - b. When you become aware of a “wrongful act” or an offense which may subsequently give rise to a “claim” being made against any insured, and you give written notice to us, as described in **SECTION VI. – CONDITIONS**, of such circumstances as soon as practicable but no later than:
    - (1) The end of the policy period; or
    - (2) The end of any applicable Extended Reporting Period.
- 4. All related “claims” based on or arising out of: the same, related or continuous “wrongful acts” or offenses; or “wrongful acts” or offenses which arise from a common nucleus of facts; or the same act or interrelated acts of one or more insureds, shall be considered a single claim, which is first made when the earliest of such “claims” was made. All “damages” from all related “claims,” regardless of the number of:
  - a. Insureds;
  - b. Plaintiffs; or
  - c. “Claims” made; shall be subject to one “Each Claim” Limit of Insurance, and one Deductible.

69. Thus, Allied World (identified as “we” in the insuring agreement) agreed to pay those sums that the insured becomes legally obligated to pay as “damages” arising out of a “claim” for a “wrongful act,” as those terms are defined in the Policies. Allied World has a duty to defend the insureds against any “claim” seeking those damages, provided the “wrongful act” takes place after the retroactive date and the “claim” is first made against any insured during the policy period or any Extended Reporting Period.

70. In the Underlying Lawsuit, the Underlying Claimants seek to recover from Plaintiffs, who qualify as insureds under the Policies, “damages” that arise out of a “claim” for a



“wrongful act.” The “claim” was first made during an applicable Allied World policy period and timely submitted to Allied World for coverage.

71. Allied World has a duty to defend and, if necessary, indemnify Plaintiffs in connection with claims asserted in the Underlying Lawsuit under the POML Coverage. No exclusions or limitations to coverage apply to negate the duty to defend or indemnify the Plaintiffs/Insureds under the POML Coverage.

72. Allied World also improperly denied coverage under Coverage B of the Policies, which has the following insuring agreement:

**C. COVERAGE B. INSURING AGREEMENT - DEFENSE EXPENSES FOR INJUNCTIVE RELIEF**

1. We will pay those reasonable sums the insured incurs as “defense expenses” to defend against an action for “injunctive relief” because of a “wrongful act,” . . . to which this insurance applies.

73. The term “injunctive relief” means equitable relief sought through a demand for the issuance of a permanent, preliminary or temporary injunction, restraining order, or similar prohibitive writ against an insured, or order for specific performance by an insured.

74. In the Underlying Lawsuit, the Underlying Claimants seek injunctive relief against Plaintiffs.

75. No exclusions or limitations to coverage apply to negate coverage under Coverage B of the Policies.

76. By failing to defend Plaintiffs under Coverage A and refusing to provide coverage under Coverage B, Allied World has caused Plaintiffs to have to retain their own counsel and defend themselves against the claims in the Underlying Lawsuit without the benefit of insurance despite coverage existing.

77. An actual controversy exists concerning Plaintiffs' request for coverage under the Policies, and a present and practical needs exists for the Court to resolve this dispute.

78. A declaration by the Court of the rights and obligations of Plaintiffs and Allied World with respect to coverage for the Plaintiffs under the Policies will materially advance the interest of the parties.

79. Accordingly, pursuant to 28 U.S.C. § 2201, the Plaintiffs request that the Court enter a declaratory judgment against Allied World that Allied World has a duty to defend under Coverage A and, if necessary, a duty to indemnify Plaintiffs under Coverage A in connection with the Underlying Lawsuit. The Plaintiffs further request that the Court enter a declaratory judgment against Allied World that Allied World owes Plaintiffs coverage under Coverage B of the Policies in connection with the Underlying Lawsuit. Plaintiffs further request any other relief this Court deems proper.

**Count II**  
**Breach of Contract**

80. Plaintiffs incorporate by reference paragraphs 1 through 66, above, as if restated herein in their entirety.

81. The Policies constitute valid and enforceable contracts between Plaintiffs, as insureds, and Allied World, as the company providing the insurance under the Policies.

82. Under Coverage A of the Policies, Allied World promised to defend the insureds in connection with a "claim" seeking "damages" potentially covered by the Policies, and, if necessary, indemnify the insureds for those sums that the insureds become legally obligated to pay as "damages" arising out of a "claim" for a "wrongful act." Coverage applies if the "claims" for "wrongful acts" takes place after the retroactive date and is first made during the policy period or any Extended Reporting Period.

83. The Underlying Lawsuit is a “claim” that implicates Allied World’s duty to defend the insured because it is a “claim” for a “wrongful act” seeking “damages” that was first made and properly reported to Allied World during the applicable policy period.

84. Further, no exclusions or limitations in the Policies apply to bar coverage.

85. Allied World’s failure to defend the insureds under Coverage A of the Policies is a material breach of the parties’ contract.

86. Under Coverage B of the Policies, Allied World promised to pay those reasonable sums the insured incurs as “defense expenses” to defend against an action for “injunctive relief” because of a “wrongful act.”

87. The Underlying Lawsuit contains claims for “injunctive relief” that implicate this coverage under the Policies.

88. Further, no exclusions or limitations in the Policies apply to bar coverage under Coverage B.

89. Allied World’s failure to provide coverage under Coverage B of the Policies is a material breach of the parties’ contract.

90. As a direct and proximate result of Allied World’s material breaches of contract, Plaintiffs have suffered damages in an amount to be determined at trial, including attorneys’ fees and expenses incurred in defense of the Underlying Lawsuit, pre-judgment interest, and any other costs and relief that this Court deems appropriate.

**Count III**  
**Prompt Payment of Claims Act**

91. Plaintiffs incorporate by reference paragraphs 1 through 66, above, as if restated herein in their entirety.

92. The failure of Allied World to promptly accept its obligation to defend Plaintiffs in connection with the claims asserted against them in the Underlying Lawsuit constitutes a violation of Section 542.051 *et seq.* of the Texas Insurance Code, which is known as the Prompt Payment of Claims Act. The Act is a strict liability statute triggered by Allied World's refusal to provide a defense.

93. Plaintiffs, therefore, in addition to their claim for damages, are entitled to penalty interest on those damages at the rate of 18% per annum, as well as the attorneys' fees incurred by Plaintiffs in pursuing their claim for coverage, as set forth in Section 542.060 of the Texas Insurance Code.

**Count IV**  
**Attorneys' Fees Under the Civil Practice and Remedies Code**

94. Plaintiffs engaged the undersigned counsel to prosecute this lawsuit against Allied World and agreed to pay reasonable attorneys' fees and expenses through trial and any appeal.

95. As an alternative to the Prompt Payment of Claims Act, Plaintiffs pray that they be awarded all reasonable attorneys' fees incurred in prosecuting their causes of action through trial and any appeal pursuant to Section 38.001 of the Texas Civil Practice and Remedies Code.

**V.**  
**CONDITIONS PRECEDENT**

96. All conditions precedent to Plaintiffs' right to recover under the Policies have occurred, have been fully performed, or have been waived by Allied World.

**PRAYER**

Plaintiffs hereby pray that, upon final hearing of this matter, this Court declare that Allied World is obligated to provide a defense to Plaintiffs in connection with the Underlying Lawsuit and declare that Allied World is obligated to pay for Plaintiffs' "defense expenses" incurred in defending against an action for "injunctive relief" in the Underlying Lawsuit. Plaintiffs request the

court to adjudge that, by failing to comply with these contractual obligations, Allied World has breached its contract and violated the Prompt Payment of Claims Act. Further, Plaintiffs request that the Court adjudge that Plaintiffs recover all damages from and against Allied World that they may reasonably establish by a preponderance of the evidence, and that this Court award penalty interest under the Prompt Payment of Claims Act, attorneys' fees through trial and any appeal, costs of court, pre- and post-judgment interest, and such other and further relief, at law or in equity, to which Plaintiffs may show themselves to be justly entitled.

Respectfully submitted,

/s/ Blake H. Crawford

Blake H. Crawford

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MULLIGAN, JOE GIMENEZ, DAVID  
BERTINO, MIKE NELSON, DOROTHY  
TAYLOR, and NORMAN MORSE**



4. Allied World lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 4.

5. Allied World lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 5.

6. Allied World lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 6.

7. Allied World lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 7.

8. Allied World lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 8.

9. Allied World lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 9.

10. Allied World lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 10.

11. Allied World lacks knowledge or information sufficient to form a belief about the truth of the allegations in Paragraph 11.

12. Allied World admits the allegations in Paragraph 12.

13. Allied World admits the allegations in Paragraph 13.

14. Allied World admits the allegations in Paragraph 14.

15. Allied World admits that this matter arises out of a lawsuit styled *Rene Ffrench, et al. v. Friendship Homes & Hangars, LLC, et al.*, Cause No. 48292 pending in the 33<sup>rd</sup> Judicial District Court of Burnet County, Texas (the “Underlying Lawsuit”); however, Allied World denies that it breached its contractual duty to defend Plaintiffs.

16. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 16.

17. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 17.

18. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 18.

19. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 19.

20. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 20.

21. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 21.

22. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 22.



23. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 23.

24. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 24.

25. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 25.

26. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 26.

27. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 27.

28. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 28.

29. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 29.

30. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 30.

31. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 31.

32. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 16.

33. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 33.

34. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 34.

35. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 35.

36. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 36.

37. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 37.

38. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 38.

39. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 39.

40. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 40.

41. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 41.

42. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 42.

43. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 43.

44. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 44.

45. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 45.

46. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 46.

47. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 47.

48. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 48.

49. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 49.

50. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 50.

51. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 51.

52. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 52.

53. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 53.

54. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 54.

55. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 55.

56. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations inconsistent therewith set forth in Paragraph 56.

57. Allied World admits that it issued to Windermere Oaks Water Supply Corporation (“WSC”) as the Named Insured Commercial Water Plus Package policy number 5105-0560, which was in effect annually for consecutive policy periods from March 17, 2016 to March 17, 2020 (the “Policies”), the terms of which speak for themselves and denies any allegations inconsistent therewith as set forth in Paragraph 57.

58. Allied World states that the terms of the Policy speak for themselves and Allied World denies any allegations inconsistent therewith as set forth in Paragraph 58.

59. Allied World admits that WSC and the Director Defendants submitted a notice of claim to Allied World on May 31, 2019 and states that correspondence to Allied World providing such notice speaks for itself and Allied World denies any allegations in Paragraph 59 inconsistent therewith.

60. Allied World admits that the First Amended Petition in the Underlying Lawsuit was filed on November 4, 2019 and that a Second Amended Petition in the Underlying Lawsuit was filed on November 5, 2019. Allied World further admits that WSC and the Director Defendants sent a letter to Allied World on November 8, 2019, the content of which speaks for itself, and Allied World denies any allegations inconsistent therewith as set forth in Paragraph 60. Allied World also admits that WSC and the Director Defendants sent a letter to Allied World dated November 22, 2019, the content of which speaks for itself and Allied World denies any allegations inconsistent therewith as set forth in Paragraph 60.

61. Allied World admits that its third-party administrator, Network Adjusters, Inc., sent a letter dated December 19, 2019 in connection with the Second Amended Petition filed in the Underlying Lawsuit, the content of which speaks for itself and Allied World denies any allegations inconsistent therewith as set forth in Paragraph 61. Allied World further denies that it wrongfully denied coverage for the Second Amended Petition.

62. Allied World admits that coverage counsel for WSC and the Director Defendants sent a letter to Allied World, through its third-party administrator, Network Adjusters, Inc., dated May 18, 2020, the content of which speaks for itself and Allied World specifically denies any allegations inconsistent therewith as set forth in Paragraph 62. Allied World further denies the

implication of the impropriety of not responding to the May 18, 2020 letter, as that letter was written in connection with the allegations set forth in the Second Amended Petition filed in the Underlying Lawsuit, and, not long after that letter was issued, a Third Amended Original Petition was filed in the Underlying Lawsuit on August 24, 2020. Allied World then issued a supplemental coverage position letter dated April 12, 2021 in connection with the Third Amended Original Petition filed in the Underlying Lawsuit.

63. Allied World admits that the Third Amended Original Petition was filed in the Underlying Lawsuit on August 24, 2020. Allied World further admits that WSC and the Director Defendants, through counsel, submitted the Third Amended Original Petition to Allied World on August 25, 2020, the content of such submission speaks for itself and Allied World denies any allegations in Paragraph 63 inconsistent therewith.

64. Allied World admits that there were discussions between Mr. Flynn, Mr. Wakefield and WSC and the Director Defendants' coverage counsel, the contents of which speak for themselves and Allied World denies any allegations set forth in Paragraph 64 that are inconsistent therewith.

65. Allied World denies the allegations set forth in Paragraph 65 as it issued a coverage position letter in connection with the Third Amended Petition on April 12, 2021.

66. Allied World denies the allegations set forth in Paragraph 66.

67. Allied World incorporates each and every answer to the allegations set forth in Paragraphs 1 through 66 as if the same were set forth fully herein.

68. Allied World admits that the Policies provide Public Officials and Management Liability ("POML") coverage, the terms of such coverage speak for themselves, and Allied World denies any allegations contained in Paragraph 68 inconsistent therewith.

69. Allied World states that the terms of the POML coverage speak for themselves and denies any allegations inconsistent therewith as set forth in Paragraph 69. Further, Paragraph 69 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 69.

70. Paragraph 70 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 70.

71. Allied World denies the allegations in Paragraph 71.

72. Allied World states that the terms of Coverage B of the Policies speak for themselves and denies any allegations inconsistent therewith as set forth in Paragraph 72. Further, Allied World denies that it improperly denied coverage under Coverage B of the Policies.

73. Allied World states that the definition of “injunctive relief” as set forth in the Policies speaks for itself and denies any allegations in Paragraph 73 inconsistent therewith.

74. Allied World states that the allegations in the Underlying Lawsuit speak for themselves and Allied World denies any allegations in Paragraph 74 inconsistent therewith.

75. Allied World denies the allegations in Paragraph 75.

76. Allied World denies the allegations in Paragraph 76.

77. Paragraph 77 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 77.

78. Paragraph 78 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 78.

79. Paragraph 79 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 79.



80. Allied World incorporates each and every answer to the allegations set forth in Paragraphs 1 through 79 as if the same were set forth fully herein<sup>1</sup>.

81. Allied World admits that the Policies constitute valid and enforceable contracts between WSC and Allied World. Allied World states that the terms of the Policies speak for themselves and Allied World denies any allegations in Paragraph 81 inconsistent therewith.

82. Allied World states that the terms of Coverage A of the POML coverage section in the Policies speak for themselves and denies any allegations in Paragraph 82 inconsistent therewith. Further, Paragraph 82 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 82.

83. Paragraph 83 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 83.

84. Allied World denies the allegations in Paragraph 84.

85. Paragraph 85 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 85.

86. Allied World states that the terms of Coverage B of the POML coverage section in the Policies speak for themselves and denies any allegations in Paragraph 86 inconsistent therewith. Further, Paragraph 86 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 86.

87. Paragraph 87 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 87.

88. Allied World denies the allegations in Paragraph 88.

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<sup>1</sup> Paragraph 80 of Plaintiffs' complaint states that "Plaintiffs incorporate by reference paragraphs 1 through 66 above, as if restated in their entirety." Presumably, this is a typo, which is why Allied World incorporates by reference its answers to Paragraphs 1 through 79 of Plaintiffs' complaint.

89. Paragraph 89 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 89.

90. Paragraph 90 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 90.

91. Allied World incorporates each and every answer to the allegations set forth in Paragraphs 1 through 90 as if the same were set forth fully herein.<sup>2</sup>

92. Paragraph 92 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 92.

93. Paragraph 93 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 93.

94. Allied World lacks sufficient knowledge or information to form a belief about the truth of the allegations in Paragraph 94.

95. Paragraph 95 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 95.

96. Paragraph 96 calls for a legal conclusion to which no response is required. To the extent a response is required, Allied World denies the allegations in Paragraph 96.

**With respect to relief sought against Allied World:**

Allied World denies that it is obligated to provide a defense to Plaintiffs in the Underlying Lawsuit, that it is obligated to pay for Plaintiffs' "defense expenses" incurred in defending against an action for "injunctive relief" in the Underlying Lawsuit, that it has breached its contractual

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<sup>2</sup> Paragraph 91 of Plaintiffs' complaint also states that "Plaintiffs incorporate by reference paragraphs 1 through 66 above, as if restated in their entirety." Again, presumably, this is a typo, which is why Allied World incorporates by reference its answers to Paragraphs 1 through 90 of Plaintiffs' complaint.

obligations under the Policies, and that it violated the Prompt Payment of Claims Act. Allied World further denies that Plaintiffs are entitled to any damages, including penalty interest under the Prompt Payment of Claims Act, attorneys' fees through trial and any appeal, costs of court, and pre-and post-judgment interest, as requested. Finally, Allied World denies that Plaintiffs are entitled to any other or further relief from this Court.

### **ADDITIONAL AND AFFIRMATIVE DEFENSES**

Without limiting the scope of the foregoing denials, Allied World asserts the following additional and affirmative defenses:

1. No coverage is available under either Coverage A or Coverage B of the POML coverage section of any of the Policies for the Underlying Lawsuit because the Contractual Liability Exclusion (Exclusion No. 11) precludes coverage for the Underlying Lawsuit in its entirety.

2. The Contractual Liability Exclusion states that the insurance does not apply under either Coverage A or Coverage B of the POML coverage section to “‘damages’, ‘defense expenses’, costs or loss based upon, attributed to, arising out of, in consequence of, or in any way related to any contract or agreement to which the insured is a party or a third-party beneficiary, including but not limited to, any representations made in anticipation of a contract or any interference with the performance of a contract.”

3. The Contractual Liability Exclusion applies to bar coverage for “damages”, “defense expenses”, costs and loss in connection with the Underlying Lawsuit because all of the allegations set forth in the Underlying Lawsuit are based upon, attributable to, arise out of, are in consequence of, and/or are related to WSC's agreements to convey certain property interests of

the WSC, including the sale of the airport tract to Plaintiff Dana Martin and her alter ego company, Friendship Homes and Hangars, LLC, as alleged in the Underlying Lawsuit.

4. Additionally, no coverage is available under either Coverage A or Coverage B of the POML coverage section of any of the Policies for the Underlying Lawsuit because the Criminal Acts Exclusion (Exclusion No. 12) and Violation of Law Exclusion (Exclusion No. 19) preclude coverage for the Underlying Action in its entirety.

5. The Criminal Acts Exclusion states, in relevant part, that the insurance does not apply under either Coverage A or Coverage B of the POML coverage section to “‘damages’, ‘defense expenses’, costs or loss arising out of or contributed to by any fraudulent, dishonest, criminal or malicious act of the insured...or the willful violation of any statute, ordinance or regulation committed by or with the knowledge of the insured.” However, the exclusion also states that Allied World “will defend the insured for covered civil action subject to the other terms of [the POML coverage part] until either a judgment or final adjudication establishes such an act, or the insured confirms such act.”

6. Similarly, the Violation of Law Exclusion provides that the insurance does not apply under either Coverage A or Coverage B of the POML coverage section to “‘damages’, ‘defense expenses’, costs or loss arising from an insured’s willful violation of any federal, state, or local law, rule or regulation.”

7. The Criminal Acts and Violations of Law Exclusions apply to bar coverage for the Underlying Lawsuit because there was a finding in a lawsuit related to the Underlying Lawsuit captioned *TOMA Integrity, Inc., et al. v. Windermere Oaks Water Supply Corporation*, Case No. 47531, filed in the 33<sup>rd</sup> District Court of Burnet County, Texas (the “TOMA Action”) that the WSC board violated the Texas Open Meetings Act (“TOMA”) by not providing public notice to

the WSC members in connection with the meeting discussing the sale of the airport tract to Martin and by not listing any items on the agenda for that meeting.

8. Further, that finding is a “final adjudication” as required under the Criminal Acts Exclusion because after the trial court in the TOMA Action issued its order finding that WSC violated TOMA, WSC did not challenge the trial court’s order. The plaintiffs did appeal, however, arguing that the trial court abused its discretion in failing to void the WSC board’s actions in light of the TOMA violation. Nonetheless, the appellate court affirmed the trial court’s order that the WSC board violated TOMA, but that it would not void the board’s actions and entered a judgment on June 21, 2019 stating same.

9. Accordingly, because both the Criminal Acts and Violation of Law Exclusions preclude coverage arising out of the willful violation of statute, rule or regulation and because there has been a final adjudication that WSC violated TOMA in connection with the meeting discussing the sale of the airport tract, which sale is the subject of the allegations in the Underlying Lawsuit, both exclusions serve to bar coverage for the Underlying Lawsuit in its entirety.

#### **RESERVATION OF ADDITIONAL DEFENSES**

Allied World expressly reserves its right to amend and/or supplement this Answer and these Affirmative Defenses to assert additional defenses under the Policies and applicable law.

#### **JURY DEMAND**

Allied World requests a trial by jury on all issues so triable.

#### **PRAYER**

WHEREFORE, Allied respectfully requests that the Court enter judgment in its favor and against the Plaintiffs as follows:

- a. Declare that Allied World is not obligated under any of the Policies to defend, or

pay any defense costs, or indemnify the Plaintiffs in the Underlying Lawsuit;

b. Declare that Plaintiffs are not entitled to recover any interest, costs, or other damages against Allied World;

c. That the Plaintiffs' Original Complaint be dismissed with prejudice;

d. That Allied World be awarded its costs, including reasonable attorneys' fees, in this Action; and

e. That Allied World be awarded all other just and proper relief this Court deems proper.

Respectfully submitted,

s/ Joseph A. Ziemianski

Joseph A. Ziemianski

Attorney-In-Charge

Texas State Bar No. 00797732

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OF COUNSEL:

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ATTORNEY FOR DEFENDANT,  
ALLIED WORLD SPECIALTY INSURANCE  
COMPANY

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing document was served on all counsel of record via the Court's electronic filing system on April 29, 2021.

*s/ Joseph A. Ziemianski*

Joseph A. Ziemianski

## **EXHIBIT B**



**U.S. District Court [LIVE]  
Western District of Texas (Austin)  
CIVIL DOCKET FOR CASE #: 1:21-cv-00258-RP**

Windermere Oaks Water Supply Corporation et al v. Allied World Specialty Insurance Company  
Assigned to: Judge Robert Pitman  
Demand: \$250,000,000  
Cause: 28:1332 Diversity-Breach of Contract

Date Filed 03/19/2021  
Jury Demand Defendant  
Nature of Suit 110 Insurance  
Jurisdiction Diversity

**Plaintiff****Windermere Oaks Water Supply Corporation**

represented by **Douglas P. Skelley**  
Shidlofsky Law Firm PLLC  
7200 N. Mopac Expressway, Suite 430  
Austin, TX 78731  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Blake Holt Crawford**  
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*ATTORNEY TO BE NOTICED*

**Plaintiff****Dana Martin**

represented by **Douglas P. Skelley**  
(See above for address)  
*LEAD ATTORNEY*  
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**Blake Holt Crawford**  
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*ATTORNEY TO BE NOTICED*

**Plaintiff****William Earnest**

represented by **Douglas P. Skelley**  
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*LEAD ATTORNEY*  
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**Blake Holt Crawford**  
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*ATTORNEY TO BE NOTICED*

**Plaintiff****Thomas Michael Madden**

represented by **Douglas P. Skelley**  
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*LEAD ATTORNEY*  
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**Blake Holt Crawford**  
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**Plaintiff****Robert Mebane**

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**Blake Holt Crawford**  
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**Plaintiff****Patrick Mulligan**

represented by **Douglas P. Skelley**  
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*LEAD ATTORNEY*  
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**Blake Holt Crawford**  
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**Plaintiff****Joe Gimenez**

represented by **Douglas P. Skelley**  
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LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**Blake Holt Crawford**  
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**Plaintiff****David Bertino**

represented by **Douglas P. Skelley**  
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LEAD ATTORNEY  
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**Blake Holt Crawford**  
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**Plaintiff****Mike Nelson**

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LEAD ATTORNEY  
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**Blake Holt Crawford**  
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**Plaintiff****Dorothy Taylor**

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LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**Blake Holt Crawford**  
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**Plaintiff****Norman Morse**

represented by **Douglas P. Skelley**  
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LEAD ATTORNEY  
ATTORNEY TO BE NOTICED

**Blake Holt Crawford**  
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V.

**Defendant****Allied World Specialty Insurance Company**

represented by **Joseph A. Ziemianski**  
Cozen O'Connor  
1221 McKinney, Suite 2900  
Houston, TX 77010-2011  
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Date Filed	#	Docket Text
03/19/2021	<u>1</u>	COMPLAINT ( Filing fee \$ 402 receipt number 0542-14611230), filed by Patrick Mulligan, Norman Morse, William Earnest, Joe Gimenez, Mike Nelson, Dana Martin, David Bertino, Windermere Oaks Water Supply Corporation, Thomas Michael Madden, Dorothy Taylor, Robert Mebane. (Attachments: # <u>1</u> Civil Cover Sheet Civil Cover Sheet)(Crawford, Blake) (Attachment 1 replaced and flattened on 3/19/2021) (cj). (Entered: 03/19/2021)
03/19/2021	<u>2</u>	REQUEST FOR ISSUANCE OF SUMMONS by David Bertino, William Earnest, Joe Gimenez, Thomas Michael Madden, Dana Martin, Robert Mebane, Norman Morse, Patrick Mulligan, Mike Nelson, Dorothy Taylor, Windermere Oaks Water Supply Corporation. (Crawford, Blake) (Main Document 2 replaced and flattened on 3/19/2021) (cj). (Entered: 03/19/2021)
03/19/2021		Case assigned to Judge Robert Pitman. CM WILL NOW REFLECT THE JUDGE INITIALS AS PART OF THE CASE NUMBER. PLEASE APPEND THESE JUDGE INITIALS TO THE CASE NUMBER ON EACH DOCUMENT THAT YOU FILE IN THIS CASE. (cj) (Entered: 03/19/2021)
03/19/2021		If ordered by the court, all referrals and consents in this case will be assigned to Magistrate Judge Austin (cj) (Entered: 03/19/2021)
03/19/2021	<u>3</u>	Summons Issued as to Allied World Specialty Insurance Company. (cj) (Entered: 03/19/2021)
03/24/2021	<u>4</u>	Certificate of Interested Parties by David Bertino, William Earnest, Joe Gimenez, Thomas Michael Madden, Dana Martin, Robert Mebane, Norman Morse, Patrick Mulligan, Mike Nelson, Dorothy Taylor, Windermere Oaks Water Supply Corporation. (Crawford, Blake) (Entered: 03/24/2021)
04/16/2021	<u>5</u>	SUMMONS Returned Executed by Patrick Mulligan, Norman Morse, William Earnest, Joe Gimenez, Mike Nelson, Dana Martin, David Bertino, Windermere Oaks Water Supply Corporation, Thomas Michael Madden, Dorothy Taylor, Robert Mebane. Allied World Specialty Insurance Company served 3/8/21; answer due 4/29/21. (Crawford, Blake) Modified on 4/16/2021 (lt). (Entered: 04/16/2021)
04/29/2021	<u>6</u>	ANSWER to <u>1</u> Complaint, with Jury Demand . Attorney Joseph A. Ziemianski added to party Allied World Specialty Insurance Company(pty:dft) by Allied