



ENVIRONMENTAL RISK SERVICES CORPORATION

July 18, 2012

Via Electronic Mail Only:
tcarpenter@resolute-ne.com

Ms. Theresa Carpenter
Resolute Management Inc.
New England Division
1000 Washington St.
Boston, MA 02118

Insured: City of Benicia
Atlanta International Insurance Company Policy Number GLA 02455
Policy Term: March 3, 1979 through March 3, 1980

Dear Ms. Carpenter;

I received your letter dated July 10, 2012 regarding the above-referenced claim. I sent you a response to your earlier inquiries in your letter to me dated May 16, 2012. Our letters presumably crossed in the mail. But please let me know if you did not receive my letter.

In your claim response on July 10 you wrote that the insurer cannot locate the policy and the claim is “denied or rejected”. Your response is premature. We are certain that Atlanta International Insurance Company (fka Drake Insurance Company of New York) issued the above-referenced policy to the City of Benicia with the stated term. In my prior letter to you I advised you that the City has conclusive “secondary” evidence of the policy. A Settlement Agreement concerning another matter identified the policy as follows: “Policy number GLA 02455 issued by ATLANTA INTERNATIONAL to CITY with effective dates of March 3, 1979 through March 3, 1980.” A copy of the Settlement Agreement is attached.

In my prior letter I also advised you that the City is diligently searching its records for additional evidence of the policy. But the insurer also is separately obligated to locate the policy in its own files, and reconstruct the policy if necessary from its underwriting records. It does not suffice for the insurer to merely assert that the insured has the burden to prove the policy. Section 2695.7(d) of the California Insurance Regulations (Title 10, Cal. Admin. Code) requires all insurers to do the following upon receipt of a claim: “Every insurer shall conduct and diligently pursue a thorough, fair, and objective investigation and shall not persist in seeking information not reasonably required for or material to the resolution of a claim dispute.”

The attached Settlement Agreement affirms that the policy exists and was previously located, presumably by Atlanta, in connection with the subject claim in 1997. Atlanta must undertake a similar search and locate the policy again.

Ms. Theresa Carpenter
July 18, 2012

Sincerely;



Mark O'Brien

Cc: Heather McLaughlin, Benicia City Attorney