



December 15, 2020

Mr. Erik Sund, Interim City Manager
City of San Clemente
910 Calle Negocio
San Clemente, CA 92673

Dear Mr. Sund:

Re: *James Bieber v. Gene James*
Orange County Superior Court no. 30-2020-01145593-CU-DF-CJC

This concerns the appeal by the City of San Clemente of the Authority's denial of coverage to Council Member Gene James in the above referenced lawsuit. I reviewed your email of November 30, 2020, the email of Scott Smith to Paul Zeglovitch dated December 4, 2020, and the coverage denial letter of Carl Warren and Co., on behalf of the Authority, dated July 22, 2020.

After reviewing these, I have determined to deny the appeal and affirm the denial of coverage for defense or indemnity to Council Member James.

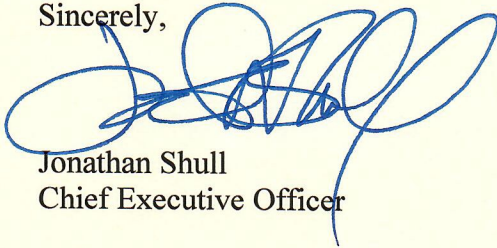
As you know, coverage under the Liability Program of the Authority extends to "Persons who are, or were, elected or appointed officials or **Employees** of the **Member**, whether or not compensated, while acting within the scope of their duties or employment as such...." In this lawsuit, there are no allegations of actions by Council Member James of actions he allegedly took on behalf of the City as a Council Member. The allegations of threats and defamation made by Plaintiff Bieber do not allege any actions by Council Member James within the scope of his duties as a Council Member.

We understand that Council Member James argues that the suit is motivated by his position as a Council Member, but there are no allegations relating to conduct in the course and scope of his office. Personal communications and campaign activities, as alleged, are not within coverage. Again, we do not assume that any of the allegations are true – just that even if they are true as alleged, they do not implicate actions in the course and scope of office.

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Please note that per the terms of the Memorandum of Coverage, Section 5.J.(iii), the City has the right to appeal this denial of Coverage to the Appeals Committee of the Authority, by written appeal within 90 days from the date of this letter. Per that section, "[t]he appeal request must state why the **Member** disagrees with the denial, and the **Member** should present any information that may have a bearing on the ultimate determination of coverage."

Sincerely,



Jonathan Shull
Chief Executive Officer

