



March 27, 2015

CONFIDENTIAL

Theresa L. Lafferty, Insurance Administrator
Lower Merion Township
75 East Lancaster Avenue
Ardmore, PA 19003-2323

Re: FOAC, et al. v. Lower Merion Township (Mont. C.P.)
DVIT Case No. E154908054

Dear Terry:

We have received the Complaint filed in the above referenced matter and, as we have already informed you, the Trust must respectfully deny coverage in this matter for the reasons stated herein.

Summary of Action Filed

On March 20, 2015 the plaintiffs, Firearm Owners Against Crime ("FOAC"), Kim Stolfer and Joseph Abramson, filed a Complaint against Lower Merion Township challenging the legality of certain Township firearms ordinances as violative of the Pennsylvania Constitution and a recent amendment to the Pa. Uniform Firearms Act ("UFA"), 18 Pa. C.S. §6120. FOAC is a statewide political action committee purportedly established to protect the constitutional rights of lawful firearm owners. FOAC President Kim Stolfer is suing in his official and individual capacities, whereas Mr. Abramson is a Township resident and gun owner.

The Complaint asserts claims against the Township for declaratory relief (Counts I & III) and injunctive relief (Counts II & IV) and requests as relief a declaratory judgment that the challenged ordinances are null and void and should be repealed, and that the Township should be enjoined against enforcing those ordinances and any other ordinances, laws or rules that regulate the use, possession or transfer of firearms. The plaintiffs are also seeking to recover an award of damages and reasonable expenses, including attorneys' fees and costs pursuant to 18 Pa. C.S. §6120.

The plaintiffs' claims are based upon allegations that the Township's firearms ordinances (Sections 109-16 and 109-21) violate the UFA, as amended by 18 Pa. C.S. §6120, and Article 1, Section 21 of the Pa. Constitution. They contend that Section 109-16 illegally infringes upon their right to bear firearms by unlawfully prohibiting persons from carrying or discharging firearms in a park without a special permit and that Section 109-21 unlawfully imposes a \$600 penalty for violating Section 109-16. In support of their allegations the plaintiffs cite the language of 18 Pa. C.S. §6120(a) which states in pertinent part that "*no county, municipality or*

township may in any manner regulate the lawful ownership, possession, transfer or transportation of firearms, ammunition or ammunition components when carried or transported for purposes not prohibited by the laws of this Commonwealth”.

Plaintiffs Stolfer and Abramson contend they have been harmed by these provisions because they are permitted by state law and the Pa. Constitution to openly carry firearms in the Township. Asserting that their right to bear arms has been infringed and that the Township ordinances wrongfully expose them to criminal prosecutions, Messrs. Stolfer and Abramson claim that they have a right to sue the Township as “person(s) adversely affected” by the Township’s ordinances within the meaning of the UFA, as amended by 18 Pa. C.S. §6120.

The plaintiffs further allege that after the Township had been repeatedly advised that its ordinances violated 18 Pa. C.S. §6120 the Township solicitor provided the manager with a proposed ordinance in December 2014 that would have removed the offending language, which ordinance was to be adopted by the Township board in January of this year. According to the Complaint, the Township board ultimately decided not to repeal the allegedly illegal ordinance provisions and therefore the Township has willfully violated 18 Pa. C.S. §6120 and the individual plaintiffs’ state constitutional rights.

Review of the Coverage Document

We refer to the Public Officials and Employees Liability (“POL”) Coverage Part of the current Trust Coverage Document (eff. 1/1/14), which states in pertinent part:

This is CLAIMS MADE Coverage.

1. Coverage Agreement

- a. **The Trust** will pay **Loss** that a **Covered Party** becomes legally obligated to pay resulting from **Claims**, to which this coverage applies, against the **Covered Party** by reason of **wrongful act(s)** rendered in discharging duties on behalf of a **Covered Entity**. This coverage does not apply to **wrongful act(s)** which occurred before the Retroactive Date, if any, shown in the Liability Coverage Declarations or which occur after the **Coverage Term**.

The Trust will have the right and duty to defend a **Covered Party** against any **Suit** asking for such damages and settle such **Suits** subject to the conditions in Section 7 of this Coverage Part. But:

- (4) **The Trust** has no duty to defend the **Covered Party** against any **Suit** seeking damages or other relief or remedy to which this coverage does not apply.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under or under **5. Coverage Extensions**.

- b. This coverage applies only if a **Claim** for damages because of the **wrongful act** is first made against any **Covered Party** during the **Coverage Term**.

4. Exclusions.

This coverage does not apply to any **Claim** or **Suit** made against a **Covered Party**:

- i. Arising out of the willful violation of a penal statute, ordinance, rule or regulation committed by or with the consent of any **Covered Party**.
- j. For any and all damages, penalties, fines, or other awards against any **Covered Party** who has knowingly and willfully committed a **wrongful act** which constitutes a crime, actual fraud, actual malice or willful misconduct.

- o. Seeking relief or redress in any form other than compensatory damages. Nor shall **The Trust** have any obligation to indemnify any **Covered Party** for any costs, fees including attorneys fees, or expenses which the **Covered Party** shall become obligated to pay as a result of an adverse judgment for injunctive or declaratory relief; however, **The Trust** will afford defense to the **Covered Party** for such **Claims** or **Suits**, if not otherwise excluded, where compensatory damages are requested.

8. Definitions

As used in this Coverage Part, the following definitions apply:

- b. **Claim** means a written notice to a **Covered Party** of the intent to hold that **Covered Party** liable for a **wrongful act**. A **Claim** includes any administrative proceeding referenced in **Section 5- Coverage Extensions**, of this Coverage Part, but does not include any other legal proceedings of any kind where the claimant is not seeking to receive an award of compensatory damages.

- f. **Loss** means **Defense Costs** and any money that any **Covered Party** is legally obligated to pay on account of a covered **Claim**, including but not limited to, compensatory damages, judgments, awards of a claimant's legal fees and costs, settlements, prejudgment and post-judgment interest. However, **Loss** does not include enhanced compensatory, punitive or exemplary damages, the multiplied portion of damages, taxes, fines or penalties nor does **Loss** include any costs incurred to comply with any order for or agreement to provide

injunctive relief or other non-monetary relief.

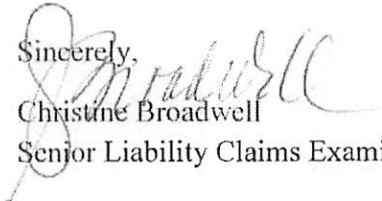
- k. **Wrongful act(s)** means any alleged or actual error, omission, neglect or breach of duty, or violation of any federal, state or local civil rights law, by a **Covered Party** while acting within the scope of his/her duties for a **Covered Entity** named in the Declarations.
- l. **Suit** means a civil proceeding in which compensatory damages because of **wrongful act(s)** to which this coverage applies are alleged. **Suit** includes an arbitration proceeding or any other alternative dispute resolution proceeding alleging such damages to which a **Covered Party** must submit or submit with **The Trust's** consent.

Summary of the Trust's Coverage Position

The POL Coverage Part of the applicable Trust Coverage Document does not provide coverage for the Township in this matter because the plaintiffs are not seeking to recover compensatory damages, but only declaratory and injunctive relief, and because the plaintiffs have alleged in their Complaint that the Township willfully violated 18 Pa. C.S. §6120 and otherwise engaged in willful misconduct in refusing to amend or repeal the allegedly illegal ordinances. The Trust therefore respectfully declines coverage and requests that the Township retain defense counsel at its own expense in this matter.

The Trust's coverage position is based on current information and it reserves the right to re-visit its coverage determination upon the filing of an Amended Complaint or the receipt of any new information. Should you have any questions in this matter, please do not hesitate to contact me at (267) 803-5726 or cbroadwell@dvit.com.

Sincerely,


Christine Broadwell

Senior Liability Claims Examiner